



THE GOVERNMENT OF NEW SOUTH WALES

**REVIEW OF THE NSW
GRAIN MARKETING ACT 1991**

FINAL REPORT

NSW GOVERNMENT REVIEW GROUP
JULY 1999

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ABBREVIATIONS/ACRONYMS

ABB	Australian Barley Board
AGEA	Australian Grain Exporters Association
AWB	Australian Wheat Board
C&F	Cost and Freight
CAP	Common Agricultural Policy
CIE	Centre for International Economics
COAG	Council of Australian Governments
EEP	US Export Enhancement Program
EU	European Union
FOB	Free On Board
GATT	General Agreement on Tariffs and Trade
GMCC	Grain Marketing Consultative Committee
GRDC	Grains Research and Development Corporation
JFA	Japanese Food Agency
NCP	National Competition Policy
NSWGB	New South Wales Grains Board
RMSA	Rural Marketing and Supply Association Inc.
SPS	Sanitary and Phytosanitary
TPA	Trade Practices Act
WTO	World Trade Organisation

DEFINITIONS

The Terms of Reference require the Review Group to identify any issues of market failure, their nature and extent, which need to be, or are being addressed by the *NSW Grain Marketing Act 1991*. 'Market failure' is defined as the situation where freely operating markets fail to provide the most desirable and achievable outcome for society as a whole.

There are several forms of market failure:

- *Imperfect competition* is characterised by unequal bargaining power between market participants. The misuse of market power may result in inefficient resource allocation.
- *Externalities* and *spillovers* are benefits or costs associated with the activities of an individual or business which are imposed on others. The existence of externalities indicates that market participants are either not reaping the full rewards or are not bearing the full costs of their actions. Consequently, there may be too few or too many resources devoted to the activity in question.
- *Public goods* are goods, which because they cannot be withheld from one individual without withholding them from all, must be supplied communally. Examples include lighthouses, radio signals and national defence. Because there are no property rights for them, they are free to be utilised by anyone as and when desired. These conditions tend to lead to under-investment in these goods.
- *Imperfect information* is where market participants are not equally and fully informed. The competitive market model assumes that prices and other relevant information is available at no cost and that the information obtained is perfect. Neither of these assumptions hold in reality: the cost and accuracy of information varies greatly. Markets sometimes fail, therefore, because of a lack of information or because the cost of obtaining information is too high to make it worthwhile. This may lead to decisions by market participants which are not in their own best interests and/or the best interests of the general community.

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EXECUTIVE SUMMARY

Introduction

1. In NSW, the marketing of many coarse grains and oilseeds is under the control of the NSW Grains Board. The Board is a statutory marketing authority. It was established under the *NSW Grain Marketing Act 1991*.
2. The review of the *NSW Grain Marketing Act 1991* and its Regulations was undertaken to fulfil the NSW Government's commitment under the Competition Principles Agreement.
3. The Review Group was chaired by NSW Agriculture and comprised representatives nominated by the NSW Grains Board, the NSW Farmers' Association, the Rural Marketing and Supply Association Inc., the Australian Grain Exporters Association, NSW Treasury, NSW Agriculture and The Cabinet Office.
4. The Review Group prepared and distributed an Issues Paper in May 1998, and followed this with a program of public consultation with public forums on the Issues Paper held in five grain producing centres throughout NSW. 103 submissions were received by the Review Group. The Review Group also held meetings with key stakeholders which enabled them to speak directly to the Review Group about their submissions.
5. The Terms of Reference for the Review required an assessment of whether the public benefits of the legislation which establishes the NSW Grains Board exceed the costs and whether the legislative objectives can only be achieved by restricting competition.
6. The Review concentrated on clarifying the objectives of the legislation and on identifying the key restrictions within the legislation and assessing the public benefits and costs of each of them.
7. The Review Group identified the vesting of declared commodities in the NSW Grains Board as the primary competition restricting provision of the Act. Associated with and enabled by vesting are a number of other provisions which also restrict competition, namely:
 - the domestic single desk for vested commodities (which is maintained only for malting barley, with some exceptions);
 - the export single desk for vested commodities; and
 - the Authorised Buyer scheme and the compulsory grower fee for 'divested' commodities.
8. The Review Group used various quantitative techniques to evaluate the costs and benefits of changing the legislation. Except for the analysis of the domestic malting barley market, the results of the quantitative analyses were not sufficiently robust to draw definitive conclusions.
9. The Review Group was required to submit this Report to the Minister for Agriculture.

The NSW Grain Marketing Act 1991

10. The principal powers and functions of the *NSW Grain Marketing Act 1991* are the establishment of the Board and the Grain Marketing Consultative Committee, and the giving of certain powers to and requiring certain functions of those bodies.
11. The Act provides for the vesting of declared commodities (coarse grains and oilseeds) produced in NSW in the Board, which then operates as the single authority responsible for the marketing of those commodities. Coarse grains are defined as barley, grain sorghum and oats. Oilseeds are defined as sunflower, canola, safflower, linseed and soybeans.
12. The Board uses its powers to act as a marketing agent for the purposes of exporting vested commodities under a single desk arrangement for NSW, and operates as a single desk for domestic sales of NSW malting barley. The Board also trades in unregulated grains and in the domestic market for wheat throughout Australia, and has acted as an agent for the Australian Barley Board (ABB) for the purpose of exporting canola.
13. As well as its explicit powers, the Board is empowered “...to do all things necessary for, or incidental to, achieving the purpose of improving the marketing of coarse grains and oilseeds in NSW”. The Board has wide powers in relation to promotion of products and in encouraging improved methods of production, marketing and use of products. It is able to enter into a wide range of joint activities and to appoint agents and buyers on its behalf.
14. The Board must accept a vested commodity that was grown in NSW, provided that it conforms to the applicable standards of quality or grade and is delivered to the Board in accordance with the Act.
15. The Board has the power to create and use financial reserves as it considers necessary or expedient to carry out its functions under the Act.

The Objectives of the Act

16. The Review Group was required to clarify those objectives of the NSW Government which are being addressed by the *NSW Grain Marketing Act 1991*, assess the continuing appropriateness of those objectives, and consider whether the objectives of the legislation can only be achieved by restricting competition.
17. The Terms of Reference also required the Review Group to identify any issues of market failure, their nature and extent, which need to be, or are being addressed by the Act. The National Competition Policy principle relating to government intervention is that governments should only intervene in freely operating markets to correct instances of market failure.
18. The stated objectives of the Act include “*purposes relating to the marketing of coarse grains and oilseeds; to constitute the New South Wales Grains Board; and for other purposes*”. This statement does not reveal what it was that the NSW Government was wanting to achieve by intervening in the market for these commodities.

19. The stated purpose of the Board, being to do “...*all things necessary for or incidental to achieving the purpose of improving the marketing of coarse grains and oilseeds in New South Wales*” is somewhat process oriented but casts some light on the intentions of the legislators.
20. On balance, after reviewing the evidence the Review Group concluded that it was reasonably clear that the principle objective of the Act was to increase returns to NSW coarse grain and oilseed producers by having a single, more powerful, entity marketing their product both in domestic and international markets.
21. Neither the stated objectives of the Act nor the inferred objective identified by the Review Group, provide clarification of the forms of market failure which the Act is intended to address, or the broader public benefit outcomes sought by the NSW Government. It was the majority view of the Review Group that to make the stated objectives of the Act and the Board more consistent with Competition Policy principles they need to be modified.
22. The Review Group, while taking account of equity and social welfare considerations, recognised that any legislative intervention in the NSW coarse grains and oilseeds industries should be required to generate public as well as industry benefits to be consistent with Competition Policy and contemporary NSW Government regulatory policy.
23. The majority of the Review Group concluded therefore that there is a case to redefine the objectives of the Act to make them less ‘process’ and more ‘outcome’ orientated, by focusing them on addressing identified market failures.

Recommendation on the Issue of the Purpose of the Legislation

24. ***Recommendation 1:*** *The Review Group recommends that the purpose of the NSW Grain Marketing Act 1991, or any alternative legislation that may be introduced, be defined to make it clear that the outcome the NSW Government seeks is to achieve net public benefits by addressing identified failures in markets for NSW coarse grains and oilseeds.*

Restrictions on Competition

25. The Terms of Reference required the Review Group to identify any restrictions on competition in the *NSW Grain Marketing Act 1991*, analyse the likely effect of these restrictions on the economy generally and weigh the costs and benefits of the restrictions. The guiding principle of the Review was that the Act should not restrict competition unless it could be demonstrated that:
 - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation could only be achieved by restricting competition.

Vesting

26. Vesting is a legislative arrangement under which legal ownership of a commodity is commonly transferred from primary producers to a statutory marketing authority. Vesting is therefore a restriction on competition.
27. Typically, vesting has been enacted with a view to providing benefits to growers and the wider community, by:
 - (a) in domestic markets, providing primary producers with countervailing power against the greater market power of purchasers of their produce; and
 - (b) in export markets:
 - enabling an industry to take advantage of market opportunities which are unable to be exploited by private exporters acting independently. For example, by creating a ‘single-desk’ seller which can use its aggregate market power to extract price premiums, or which can obtain access to restricted markets where entry is limited to statutory authorities; and/or
 - providing primary producers with countervailing power against ‘corrupted’ world market conditions which depress or distort commodity prices.
28. Vesting may provide the Board with the capacity to ‘price discriminate’ between the domestic and export markets and/or between export markets. Price discrimination refers to the practice of increasing prices in one market by diverting supply to other, less price responsive, markets. The overall objective is to maximise total revenue from the various markets.
29. Arguments to provide farmers with countervailing power are frequently based on the assumption that unless there are many purchasers of farm commodities there will be an absence of competition and purchasers will be able to use their relatively greater market power to force down prices.
30. A concern in relation to regulation which is designed to provide a more even *balance* of market power between producers and purchasers rather than focusing on countering market power *abuse*, is that it is a blunt instrument with the potential to more than offset the lack of market power of producers, with possible attendant efficiency losses. This concern was not held by the NSW Farmers’ Association or Grains Board members of the Review Group.
31. In considering the need to provide growers with countervailing power on the domestic market it was therefore necessary for the Review Group to distinguish between (i) an imbalance of market power between growers and purchasers and (ii) the abuse of market power by purchasers.
32. When anti-competitive behaviour by market participants (eg., market power abuse) does occur, Government policy is to favour addressing the problem through the provisions of the *Trade Practices Act 1974*, notably Parts IV and V. Under the Competition Principles

Agreement, COAG agreed to extend this Act to apply to unincorporated businesses and government business enterprises.

33. For the purposes of this Review, relevant issues in relation to the maintenance of vesting powers in the domestic market were therefore:
- whether there was evidence of, or the potential for, market power abuse in the domestic markets for the commodities vested in the Board; and if so
 - whether the Board could effectively counter instances of market power abuse by purchasers of coarse grains and oilseeds and ensure prices stay at (or quickly return to) competitive levels, and whether this approach is more effective in addressing market power abuse in those markets than relevant provisions of the *Trade Practices Act 1974*.
29. The Review Group had concerns about the effectiveness of trade practices legislation in preventing market power abuse in coarse grains and oilseeds marketing, and the practical ability of the prosecution avenue provided by the *Trade Practices Act 1974* to provide redress against abuses of market power. The NSW Farmers' Association and the Grains Board representatives, in particular, contended that this Act has never been and is not likely to become effective in this regard.
30. The Review Group concluded that government intervention in the marketing of NSW coarse grains and oilseeds should focus on (i) countering market power abuse by domestic purchasers of these commodities and (ii) enabling exploitation of opportunities in international markets to obtain market power premiums or to gain access to restricted markets.

Recommendation on the Issue of the Objectives of the Legislation

36. **Recommendation 2:** *Further to Recommendation 1, should the current legislative arrangements continue, or alternative statutory marketing arrangements be introduced, the Review Group recommends that the objectives of such intervention in the marketing of NSW coarse grains and oilseeds should relate to:*
- (i) *countering market power abuse by domestic purchasers of these commodities, but only where it is demonstrated that such abuse occurs (or has the strong potential to occur) and cannot effectively be addressed by recourse to the Trade Practices Act 1974; and*
 - (ii) *exploiting opportunities to obtain market power premiums in export markets and access to restricted markets for these commodities, but only where extraction of such price premiums or market access is demonstrated to be dependent on intervention by the NSW Government.*

Net Public Benefit Assessment of Competition Restrictions

37. The Review Group was required to investigate whether vesting is required to meet the objectives of the Act and which, if any, of the Board's activities were dependent on vesting.

38. The principal competition restriction under the Act is the vesting of NSW barley, grain sorghum, oats, safflower, sunflower, canola, linseed and soybean in the NSW Grains Board, and the associated single desk marketing power which vesting provides the Board on both domestic and export markets.
39. Issues considered in determining whether this restriction is justified were the potential for domestic purchasers of each of the grains and oilseeds to extract above normal profits from growers, and the potential for NSW growers to derive price premiums from international markets that could not be realised in the absence of the restriction. It was noted, however, that only malting barley is not divested on the domestic market.
40. In noting this it becomes apparent that the Board uses its vesting power for two separate purposes, 'marketing' and 'levying'. These involve positioning itself as a monopoly supplier through the single desk and Authorised Buyer fees, respectively. Of these two forms of intervention, particularly given the relatively low level of the fee, the Authorised Buyer arrangement is a much lesser restriction on competition than the prohibition on entry associated with the single desk.

Conclusions on Domestic Market Intervention

41. The majority of the Review Group members (excluding the NSW Farmers' Association and Grains Board representatives) were satisfied that there was no substantive evidence of potential market failure which warrants continued intervention in the domestic market for any of the commodities vested in the Board. It was observed that these commodities are part of an array of substitutable cropping activities at the farm level and the domestic market for each of these commodities is well developed and contestable. Consequently, these members concluded that there appears to be no scope for significant market power abuse by domestic purchasers.
42. The NSWFA and NSWGB representatives, however, asserted that with some grains (particularly malting barley) where often only one or two domestic end-user customers exist, there is clear ground for market power abuse to occur and farmers are reliant on a "loyal and dedicated marketing agent" supplying a range of marketing services. They also stressed the need to retain vesting of domestic malting barley to enable the Board to satisfactorily service the export malting barley market.

Conclusions on Export Market Intervention

43. The majority of the Review Group (excluding the NSW Farmers' Association and Grains Board representatives) were satisfied that the structure of the various industries and global market conditions for the commodities are such that there is no benefit to be obtained from the maintenance of an export single desk for NSW grain sorghum, oats, canola, safflower, sunflower, linseed or soybean.
44. There was sufficient evidence for the Review Group to conclude that the statutory marketing authority status of the Board provides it with privileged access to the high price Japanese market for feed barley and malting (food) barley, which is presently controlled through an import quota arrangement. The Review Group accepted that the

single desk provides the Board with the ability to obtain price premiums in that market and thereby deliver a net benefit to the NSW economy.

45. The majority of the Review Group found the evidence in regard to the Chinese market for barley to be inconclusive, but recognised the potential for market power premiums in relation to Schooner barley and were therefore inclined to adopt a precautionary approach and favour retaining the single desk for this market also. The Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. representatives, however, were of the view that since premiums could not be clearly demonstrated for barley being exported to China, under Competition Policy guidelines the restriction to competition in that market should not be maintained.
46. It was recognised by the Review Group that separation of export barley markets, i.e., maintaining statutory controls only in relation to some export markets, may be impractical. If this proves to be the case, it was the majority view (excluding the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. representatives) that the barley export controls should apply to all overseas markets.
47. It was the view of the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. representatives that continuation of the single desk for all barley exports could not be justified on the grounds of maintaining access to a single market, namely the Japanese market, and that in any case the current restrictions on access to that market appear likely to be relaxed in the near future.

Consideration of Ecologically Sustainable Development

48. Of the factors which COAG agreed should be taken into account where relevant, the public benefit assessment described above focused on the interests of consumers, the competitiveness of Australian business and the efficient allocation of resources. Of the remaining factors identified by COAG, the Review Group considered it appropriate to consider the relevance to the legislation under review of the issues of ecologically sustainable development and regional development.
49. Two arguments relevant to an assessment of the impact of the *NSW Grains Marketing Act 1991* on ecologically sustainable development were identified. The first was that income transfers from processors and consumers to grain producers achieved through the activities of the Board, make investments in ecologically sustainable farming practices more affordable for farmers. The counter argument was that the use of commodity marketing legislation as a means of addressing environmental concerns is inefficient on the basis that:
 - any benefits from increased on-farm investments in environmental protection may be offset by environmental costs associated with additional resources being attracted into grain production;
 - such arrangements are ineffective in targeting environmental problems because there is no requirement for grain producers to spend any increased returns (assuming they exist) on ecologically sustainable practices;
 - where increased returns are spent on environmental measures, most will naturally be directed to investments characterised by high levels of private rather than public

- benefits (eg., investments to improve on-farm productivity rather than to prevent or ameliorate off-site degradation); and
- the method of transferring income is highly inequitable in so far as processors and consumers of grain products, rather than taxpayers as a whole, are required to finance these payments.
43. The majority of Review Group members concluded that ecologically sustainable development should not be explicitly included in the public benefit assessment on the basis that the legislation under review is likely to have offsetting positive and negative effects on the sustainability of farming practices. There was also a question over whether the Act was intended to address the sustainability of farming practices, and whether ecologically sustainable development may be more effectively addressed by arrangements which are less restricting of competition than vesting.
44. The NSW Farmers' Association and Grains Board representatives argued that even though they may not have been intended it would be unfortunate to lose any environmental benefits that did derive from the Act, and contended that there was a clear risk that such benefits could be lost as a result of deregulation, and may not be replaced.

Consideration of Regional Development

52. In relation to regional development there are two opposing arguments. The first is that income transfers to grain producers may generate positive regional multiplier effects. However, as with the issue of ecologically sustainable development, there are countering efficiency and equity arguments for not using regulated commodity markets to promote regional development.
53. It follows that less distortionary and more equitable approaches to regional development will involve taxpayers generally (rather than grain users and consumers) funding services which address relevant forms of market failure, such as regional communities having poor information and skills in relation to local development opportunities. Increasingly, governments are also choosing to address regional development by focusing on social justice issues, such as access by regional communities to government services.
54. The majority of Review Group members (excluding the NSW Farmers' Association and Grains Board representatives) agreed that any regional development benefits which might potentially be attributed to regulated marketing of NSW coarse grains and oilseeds would be offset by costs imposed on other regional industries and regions. There is insufficient information to determine whether the net effect would be positive or negative on a State-wide basis. This was therefore considered to be a neutral issue for the purposes of the net public benefit test.
55. It was further agreed, however, that there are other more effective and more equitable means than commodity marketing legislation for addressing the regional development concerns of government. These members consequently concluded that a case in favour of the existing legislative arrangements could not be made on the basis of regional development considerations.

Majority Recommendation on the Issue of Regulating Domestic and Export Sales of Grain Sorghum, Oats, Canola, Safflower, Sunflower, Linseed and Soybean

56. **Recommendation 3a:** *It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the existing power to establish and maintain a system of compulsory acquisition in relation to grain sorghum, oats, canola, safflower, sunflower, linseed or soybeans produced in NSW, whether those commodities are to be traded within or outside Australia, be removed in accordance with the time frame established in Recommendation 15.*

Minority Recommendation on the Issue of Continued Regulation of Domestic and Export Sales of Grain Sorghum, Oats, Canola, Safflower, Sunflower, Linseed and Soybean

57. **Recommendation 3b:** *It is recommended by the NSW Grains Board and NSW Farmers' Association members of the Review Group (two of the eight members) that vesting of NSW grain sorghum, oats, canola, safflower, sunflower, linseed and soybean, as it currently exists, be retained and be subject to a further review within five years time, i.e., by 31 August 2004.*

Majority Recommendation on the Issue of Regulating Domestic Sales of Feed and Malting Barley

58. **Recommendation 4a:** *It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the existing power to establish and maintain a system of compulsory acquisition in relation to feed and malting barley produced in NSW, where those commodities are to be traded within Australia, be deregulated in accordance with the time frame established in Recommendation 15.*

Majority Recommendation on the Issue of Regulating Export Sales of Feed and Malting Barley

59. **Recommendation 5a:** *It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group:*
- (i) that the power to establish and maintain a 'single desk' for NSW feed and malting barley to overseas markets where market power or access premiums can be demonstrated and government intervention is required to gain those premiums (namely, feed and malting barley exports to Japan), be retained; and*
 - (ii) that ongoing retention of this power be subject to a further net public benefit review within five years time, i.e., by 31 August 2004, and every five years subsequently if retained.*

Other Recommendations on the Issue of Regulating Export Sales of Feed and Malting Barley

60. **Recommendation 5b:** *It is recommended by the NSW Government members of the Review Group (four of the eight members):*
- (i) that in addition to the markets captured at Recommendation 5a(i), the power to establish and maintain a 'single desk' for NSW malting barley exported to China also be retained;*
 - (ii) that ongoing retention of this power be subject to a further net public benefit review within five years time, i.e., by 31 August 2004, and every five years subsequently if retained; and*
 - (iii) that, subject to Recommendation 11, the power to establish and maintain a 'single desk' for exports of NSW feed and malting barley to overseas markets other than those covered by (i) above, be removed in accordance with the time frame established in Recommendation 15.*
61. **Recommendation 5c:** *It is recommended by the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. members of the Review Group (two of the eight members) that the power to establish and maintain a 'single desk' for exports of NSW feed and malting barley to overseas markets other than those captured at Recommendation 5a(i) be removed in accordance with the time frame established in Recommendation 15.*

Minority Recommendation on the Issue of Regulating Domestic and Export Sales of Feed and Malting Barley

62. **Recommendation 4b/5d:** *It is recommended by the NSW Grains Board and NSW Farmers' Association members of the Review Group (two of the eight members) that vesting of NSW feed and malting barley, as it currently exists, be retained and be subject to a further review within five years time, i.e., by 31 August 2004.*

Recommendations on the Issue of Unused Powers of the Board

63. **Recommendation 6:** *It is recommended by the Review Group that the unused power to fix wholesale prices for grades, classes and descriptions of vested commodities, be repealed immediately.*
64. **Recommendation 7:** *It is recommended by the Review Group that the unused powers to:*
- process commodities or manufacture products from commodities; and*
 - act as a purchasing agent for farm inputs (equipment, machinery, seed, fertiliser etc.),*
- be removed immediately, provided that so doing would not prevent the NSW Grains Board, or any statutory body that may replace the Board, from undertaking these functions at some stage in the future.*

Maintaining Recommended Functions of the NSW Grains Board

Role of the Commonwealth

65. The Review Group acknowledged the constitutional role of the Commonwealth in matters relating to international trade, and therefore, the potential role of the Commonwealth in maintaining controls over exports which are found to generate net public benefits.
66. The Review Group also invited a representative of the South Australia Government to outline the outcomes of the Competition Policy review of the Australian Barley Board and the arrangements which are being put in place by the Victoria and South Australia Governments. The approach used to maintain export powers in those jurisdictions using State legislation places an element of uncertainty on the need for Commonwealth involvement in NSW.
67. Similarly, the maintenance of State export controls over sugar exports from Queensland, and ongoing negotiations between the Commonwealth and the NSW rice industry in relation to export controls, raised further uncertainty on the part of the Review Group about the Commonwealth's role in these matters.
68. The Review Group agreed that a national single desk arrangement administered by the Commonwealth, similar to that recently introduced for the wheat industry, would be a more effective arrangement for maximising single desk returns from barley exports. Such an arrangement would avoid the situation where state marketing authorities compete among themselves for export sales, and in so doing, can erode some of the above normal returns which could be earned from some export markets.
69. In the absence, however, of any certainty that a Commonwealth-based arrangement is achievable, the Review Group considered it essential that an alternate State-based proposal be developed, to maintain the single desk for relevant export sales of barley produced in NSW in a manner which least restricts competition.

Issues in Maintaining Export Marketing Powers

70. The majority of the Review Group identified two issues which should critically influence how malting and feed barley export powers are maintained by the NSW Government. To increase the effectiveness of these statutory powers, the first issue is the need to avoid placing any future marketing authority in the situation where it is required to pursue competing 'public' and 'industry' objectives. The second issue is the implication for the current Board's revenue base of removing those powers which fail to generate net public benefits.
71. The separation of regulatory and commercial functions of public monopolies is an explicit principle of Competition Policy. The fundamental principle is to ensure that there is no conflict of interest in the performance of the two functions and to also ensure that no regulatory advantage is provided over domestic competitors in the relevant market for those commercial functions.

Conclusions

72. The majority of the Review Group (excluding the NSW Farmers' Association and Grains Board representatives) concluded that the NSW Government should constitute a new statutory authority which holds any legislated monopoly power over exports of NSW barley to markets where premiums can be earned, but which does not itself undertake trading activity.
73. In principle, the proposed new Authority would require only those resources sufficient to:
- effectively and efficiently administer processes for licensing out the commercial business it controls;
 - monitor the performance of successful licence holders in delivering on contract obligations;
 - undertake functions which are a necessary adjunct to the achievement of the public benefits which were found to be associated with the export single desk for barley; and
 - report to the Minister for Agriculture on the activity of the Authority and its performance in terms of delivering these public benefits.
64. In the event that the NSW Government does not accept the majority recommendation to deregulate the export of coarse grains and oilseeds other than barley, and retains export powers over these other commodities, it was again the view of the majority (excluding the NSW Farmers' Association and Grains Board representatives) that the conclusion in paragraph 72 and the principles in paragraph 73 should apply equally to the wider set of commodities.
65. The Review Group reached a majority conclusion that it would be appropriate for the resources required to perform these functions and the ongoing costs of the Authority's activities to be funded through a charge against those growers who export commodities under the licences issued by the Authority.
66. The Review Group acknowledged that adoption of the majority recommendations involves removing the statutory basis of the Board and could substantially reduce its existing revenue base. Therefore, to allow growers the option of maintaining a 'grower dedicated' trading body, it would be appropriate for the NSW Government to allow sufficient time for the development and implementation of a privatisation plan. Providing an appropriate period of transition to a deregulated market during which the Board was not commercially disadvantaged would as far as possible protect its current value and thereby facilitate growers making a considered decision as to whether the Board should be privatised or its affairs be wound up. It should be noted, however, that the Grains Board representative was opposed to any option which involved the liquidation of the Board being considered.
67. While some Review Group members favoured retaining all of the Board's existing market intervention powers during this transitional period, including single desk arrangements which were otherwise recommended for repeal, other members contended that the desired purpose could be served simply by maintaining the Board's revenue

stream. That is, provided ‘revenue neutral’ levy arrangements could be established which did not involve prohibiting entry by other traders (i.e., compulsory acquisition and a single desk), the commercial position of the Board would be protected while at the same time substantially reducing the restrictions on competition associated with its activities. Extension of the current Authorised Buyer arrangements to other vested commodities and to export marketing, with the associated fees set at a revenue neutral level, was considered to be a realistic option in this regard.

68. The majority of the Review Group (excluding the NSW Farmers’ Association and Grains Board representatives) concluded that the issue of whether or not it is practically possible to implement the type of export control outlined in Recommendation 5a should be referred to the joint industry/government Working Group described in later paragraphs. The four Government members further concluded that if this arrangement could not be effectively implemented, the export single desk power should remain over all NSW barley exports and destinations. The Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. representatives, however, were of the view that if the specified export markets could not be segregated, the single desk should not be maintained.

Recommendations on the Future Institutional Arrangements for Exports of NSW Barley

79. **Recommendation 8:** *It is recommended by the Review Group that the NSW Government approach the Commonwealth Government in relation to the possible establishment of a national single desk for Australian barley exports.*
80. **Recommendation 9:** *Should the NSW Government consider it inappropriate or unnecessary to approach the Commonwealth on the matter of a national single desk for barley exports, or should the Commonwealth be unwilling to implement such an arrangement, it is recommended by the Review Group (excluding the NSW Farmers’ Association and Grains Board representatives) that pursuant to Recommendation 5 (whichever of 5a, 5b, 5c or 5d is adopted), a new NSW statutory authority be established with the functions of:*
- *administering single desk exports of NSW barley;*
 - *managing and licensing requests to export NSW barley to markets under the single desk restriction;*
 - *monitoring the use and effectiveness of the monopoly powers in delivering industry and public benefits; and*
 - *accounting to the NSW Government and industry on the performance of its functions.*

Majority Recommendation on the Issue of the Means by which the New Statutory Authority Should Control Exports of NSW Barley

81. **Recommendation 10:** *Pursuant to acceptance of Recommendation 9, the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group recommend that the power of the new Authority extend to the control of exports of barley from NSW by the issuing of licences to export feed or malting barley to specified overseas markets.*

Recommendation on the Issue of the Practicality of Differentiating Between Export Markets for NSW Barley

82. **Recommendation 11:** *It is recommended by the Review Group that the issue of whether or not it is practically possible to implement the type of export control described in Recommendation 10 be referred to a joint industry/government Working Group (see Recommendation 19). If it is determined that it is not feasible in practice to differentiate between export markets for the purpose of single desk marketing, it is further recommended:*
- (i) *by the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. members (two of the eight members), that Recommendation 9 not be accepted and that the power to establish and maintain an export single desk for NSW barley be removed subsequent to the 1999/2000 harvest but no later than 31 August 2000; and*
 - (ii) *by the NSW Government members (four of the eight members), that the power of the new Authority extend to the control of all exports of NSW barley.*

Recommendation on the Issue of the Principles to be Applied if Export Powers are Retained over Commodities Other Than Barley

83. **Recommendation 12:** *It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc., and the four NSW Government members of the Review Group that should the NSW Government not accept the majority recommendation to deregulate the export of coarse grains and oilseeds other than barley, and decide to retain export powers over these other commodities, the principles in Recommendations 9, 10, and 11 should apply equally to the wider set of commodities.*

Majority Recommendation on the Issue of Funding of the Proposed New Statutory Authority

84. **Recommendation 13a:** *Pursuant to acceptance of Recommendation 9, it is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the new Authority be funded by charges against the organisation or organisations to whom export licences are granted.*

Minority Recommendation on the Issue of Funding of the Proposed New Statutory Authority

85. **Recommendation 13b:** *While opposed to the establishment of a grain export authority, it is recommended by the NSW Farmers' Association and NSW Grains Board members of the Review Group (two of the eight members) that in the event that such a grain export Authority is established, it should be funded through compulsory charges on all NSW barley and other vested grain sales.*

Recommendation on the Issue of the Future of the NSW Grains Board's Monopoly Position

86. **Recommendation 14:** Pursuant to acceptance of the principle (embodied in Recommendation 9) of separating the Board's current statutory and commercial functions, it is recommended by the Review Group that NSW grain growers be given the option of privatising the NSW Grains Board and:
- (i) should this option be taken up, that the privatised Board be guaranteed sole export rights to commodities and markets controlled by the new Authority for an initial three to five year period; or
 - (ii) should this option not be taken up, that the assets of the Board be liquidated and returned to growers as soon as possible but in a manner and to a schedule determined by the joint industry/Government Working Group described in Recommendation 19. NB. The Grains Board representative was opposed to any option which involved the liquidation of the Board being considered.

The Future of the Board

87. Implementation of the majority recommendations for reform of State-level statutory arrangements, particularly if a national single desk for barley exports is not established, requires consideration of the future use of the assets of the NSW Grains Board, including the grower equity fund.
88. Since its establishment, the Board has been financially self supporting and over that period has accrued substantial capital assets and an equity fund in the order of \$22 million.
89. The Premier has formally advised that the financial reserves of the NSW Grains Board are not the property of the NSW Government, but rather are grower funds held by the Board for the purposes of the *NSW Grain Marketing Act 1991*.
90. As discussed earlier, an important consequential issue of the proposed new statutory arrangements is that the current Board must be either privatised or its assets liquidated and returned to growers. The Review Group was unanimously of the view that growers should be consulted on this matter, but did not come to a consensus on the form this consultation should take.

The Timing of Reforms

91. The Board informed the Review Group that professional advice it has sought indicates that, if market deregulation was to be introduced beyond present levels, the equity fund would need to be increased to at least \$60 million for privatisation of its operations to be successful.
92. The Review Group did not consider itself to be the appropriate body, nor was it in a position, to make judgements about the level of reserves required for successful privatisation. Moreover, the Review Group was of the view that the equity level *per se* was not the key issue for the review and that, rather than recommending a desired level

of reserves, its role in this regard was to determine the appropriate period for continuing any compulsory charge arrangements (which might be used to raise equity funds).

93. For some Review Group members, a concern with continuing the existing statutory powers for the purposes of levying compulsory charges on growers to raise a particular level of equity funds is that such an arrangement would force growers to provide financial support to a future private business entity in which they might not otherwise invest and whose success is not guaranteed. It follows, therefore, that any transition period should not be based on grower equity funds reaching a pre-determined level, but simply on a period of time which the NSW Government considers reasonable before removing those market intervention powers which do not satisfy the net public benefit test. That is, while the option should remain open for growers to agree to introduce compulsory charges specifically for the purposes of raising equity reserves for the privatised Board, the timetable for reforming the existing single desk arrangements should not be linked to the level of the Board's reserves.
94. Where proposed legislative reforms will have a substantial impact on institutional arrangements in an industry, current NSW Government policy is to favour providing advance warning before the changes come into effect. This has been the approach in other recent Competition Policy reviews. Allowing adequate time for industry to adjust and establish alternative arrangements is considered to be the most equitable way of introducing change.
95. In this regard, the Review Group noted that the NSW Minister for Agriculture had given an assurance to the NSW Farmers' Association that the principal powers of the Grains Board would continue until June 2001, at least as a transitional measure.
96. There was considerable debate on the issue of timing amongst the Review Group members recommending deregulation, namely, the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. representatives and the four NSW Government members. In addition to the point made in the above paragraph, these members also noted the requirements of Competition Policy that unjustified regulations should not be retained beyond the end of 2000. These members were also concerned to ensure that deregulation occurs in a manner which least affects the commercial value of the Board and is least disruptive of any proposals to privatise the Board. The alternative recommendations on this matter reflect the differing views of members on what comprises an appropriate period of notice in respect of deregulation of the various marketing powers of the Board.

Conclusions

97. The 31 August date referred to below was agreed to be a practical time of the year for implementing reforms because it does not fall within the harvest period for any of the commodities vested in the Board, and is also the end of the Board's financial year.
98. The Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. representatives and the four NSW Government members all concluded:

- (i) that the power to compulsorily acquire and establish a single desk in relation to domestic sales of commodities currently vested in the Board should, except with respect to malting barley, be repealed as soon as possible, but no later than 31 August 2000;
 - (ii) that the power to compulsorily acquire and establish a single desk in relation to export sales of commodities currently vested in the Board should, except with respect to canola and feed and malting barley, be allowed to continue through the upcoming 1999/2000 harvest, but be removed by no later than 31 August 2000;¹ and
 - (iii) that regulation of export sales of feed and malting barley to markets where market power or access premiums can be earned (and subject to the feasibility issue discussed earlier and covered by Recommendation 11) be retained and reviewed within five years, i.e., by 31 August 2004, in accordance with National Competition Policy guidelines and NSW policy on regulation reviews.
99. With respect to domestic sales of malting barley, the AGEA and RMSA members concluded that the power to compulsorily acquire and establish a single desk should be allowed to continue through the upcoming 1999/2000 harvest, but be removed by no later than 31 August 2000.¹ The four Government representatives were of the view that the transition period should include an additional harvest to allow more time for both growers and the Board to adjust to a deregulated market and to minimise the commercial risk faced by the Board during the transition to the Board's privatisation.
100. The Government members were of the view, however, that in order to extend the Board's domestic barley single desk to 31 August 2001 in a manner which is least restrictive of competition then certain arrangements should be imposed for the 2000-2001 crop. These arrangements would be in the form of an authorisation scheme which would allow private traders and domestic users to purchase barley from growers for the purpose of domestic trading and use, subject solely to the payment of a predetermined 'authorised buyer' fee to the Board. The Minister for Agriculture would set the fee based on the advice of the Board and industry. The fee would be similar to that proposed for canola in paragraph 102 ie. not exceeding \$5/tonne.
101. In relation to canola exports the Government, RMSA and AGEA members considered that there was no market failure rationale for retaining the export single desk for canola. However, these members recognised that the single desk for canola makes an important contribution to the NSW Grains Board's financial viability. These members were therefore of the view that the Board's export single desk power be retained until 31 August 2001 to minimise the commercial risk faced by the Board during the transition to the Board's privatisation
102. The Government, RMSA and AGEA members were of the view, however, that in order to extend the Board's canola export single desk to 31 August 2001 in a manner which is least restrictive of competition then certain arrangements should be imposed for the 2000-2001 crop. These arrangements would be in the form of an export authorisation scheme. Under the scheme private traders would be allowed to purchase canola from

¹ Inquiries with the Grains Board by the NSW Government members of the Review Group did not reveal any contractual obligations which might prevent this approach being implemented.

growers for the purpose of exporting subject solely to the payment of a predetermined 'authorised buyer' fee to the Board. The Minister for Agriculture would set the fee based on the advice of the Board and industry, but this should not exceed \$5/tonne, the figure understood to have been negotiated by the Board in recent authorised private exports of canola.

103. The Board, however, indicated that they could not support any such authorisation arrangements, on the basis of their administrative difficulties.
104. The Government members, together with the AGEA and RMSA representatives, concluded that:
 - (i) provided the approach is supported by growers, levy arrangements for the purposes of raising equity could be retained/introduced beyond the date of removal of the single desk power but no later than 31 August 2005, in relation to all the commodities and markets covered by paragraphs 98, 99, 100 and 101; and
 - (ii) while the Working Group should recommend on the appropriate means of achieving this outcome, a form of constrained vesting would be a possibility (i.e., vesting to enable charges to be levied but not for the purpose of compulsory acquisition of the commodity).

Establishment of a joint industry/NSW Government Working Party

105. With some reservations from the NSW Farmers' Association and Grains Board members, the Review Group proposes that a joint industry/NSW Government Working Group be established to consider equity and viability issues, to develop a draft proposal to privatise the NSW Grains Board, to consult with growers in developing the privatisation proposal and to advise of the conduct of a grower poll on all the relevant issues. A draft Terms of Reference for the Working Group is attached at Appendix 8.
106. The Working Group should be appointed by the Minister for Agriculture in consultation with the NSW Farmers' Association, the NSW Grains Board and NSW Agriculture, and include at least one representative of each of those organisations. However, membership of the Working Party need not be limited to these organisations. For example, the AGEA and RMSA representatives considered that the Working Group should also include a representative of the Prime Wheat Association. The Working Group should be required to complete its activity by 31 August 2000, so as to facilitate new legislative and corporate arrangements being in place as soon as possible after 1 September 2000.
107. The majority of the Review Group concluded that any compulsory charges which the Working Group recommends and the grower poll affirms should be retained/introduced for the purpose of raising equity, should extend for no more than another five financial years after the proposed commencement of the new arrangements, i.e., not beyond 31 August 2005.
108. In addition to the question of whether or not to privatise (or wind-up) the Board, growers should be given the choice of the magnitude and duration of any compulsory charges to be levied for the purposes of raising equity, and the commodities to be covered by any such charges, if the vote is to continue the Board.

Recommendation on the Issue of the Timing of Deregulation of Existing Coarse Grain and Oilseeds Marketing Arrangements, Excluding Domestic Sales of Malting Barley

109. **Recommendation 15a:** *It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the following time steps apply to implementation of the majority recommendations for reform to the existing NSW coarse grain and oilseeds marketing arrangements (excluding domestic sales of malting barley):*

- *that the power to compulsorily acquire and establish a single desk for export sales of oats, grain sorghum, safflower, sunflower, linseed and soybean continue through the upcoming 1999/2000 harvest, but be removed by no later than 31 August 2000;*
- *that the power to compulsorily acquire and establish a single desk for export sales of canola be removed no later than 31 August 2001 conditional upon an export authorisation scheme being introduced between 31 August 2000 and 31 August 2001. The scheme would involve:*
 - *allowing private traders to purchase canola from growers for the purpose of exporting subject solely to the payment of a pre-determined 'authorised buyer' fee to the Board; and*
 - *the Minister for Agriculture setting the fee based on the advice of the Board and industry (capped at \$5/tonne).*
- *that the power to compulsorily acquire and establish a single desk for domestic sales of all commodities currently vested in the Board, except malting barley, be removed as soon as possible but no later than 31 August 2000; and*
- *that regulation of export sales of feed and malting barley, subject to the outcome of Recommendation 11, be retained and reviewed within five years, ie., by 31 August 2004 (in accordance with National Competition Policy guidelines and NSW policy on regulation reviews).*

Recommendations on the Timing of Deregulation of Domestic Sales of Malting Barley

110. **Recommendation 15b:** *With respect to domestic sales of malting barley:*

- *the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. members of the Review Group (two of the eight members), recommend that the power to compulsorily acquire and establish a single desk continue through the upcoming 1999/2000 harvest, but be removed by no later than 31 August 2000; whereas*
- *the Government members (four of the eight members) recommend that the single desk continue through to include the 2000/01 harvest and be removed by no later than 31 August 2001 conditional upon an authorisation scheme being introduced between 31 August 2000 and 31 August 2001. The scheme would involve:*
 - *allowing private traders and domestic users to purchase barley from growers for the purpose of domestic trading and use, subject solely to the payment of a pre-determined authorised buyer fee to the Board; and*
 - *the Minister for Agriculture setting the fee based on the advice of the Board and industry (capped at \$5/tonne).*

Summary of Recommendations on Market Deregulation

Commodity or Commodity Group	Recommendation	Review Group Member Support
All commodities currently vested in the Board.	Maintain all existing and currently used powers and functions of the Board.	NSWFA and NSWGB members.
Exports of feed and malting barley.	Remove immediately the power to fix wholesale prices.	All Review Group members.
	If feasible to differentiate between export markets, retain existing market intervention powers in relation to those markets where premiums can be obtained, and review again by 31 August 2004.	AGEA, RMSA, and all four NSW Government members.
	If not feasible to differentiate between export markets, retain existing market intervention powers, and review again by 31 August 2004.	The four NSW Government members.
	If not feasible to differentiate between export markets, maintain existing market intervention powers for the 1999/2000 harvest, but remove by 31 August 2000.	AGEA and RMSA members.
Exports of canola.	Maintain existing market intervention powers for the 1999 harvest.	AGEA, RMSA and all four NSW Government members.
	Arrangements to apply for the 2000 harvest (ie between 31 August 2000 and 31 August 2001) include allowing private traders to purchase canola for the purpose of exporting subject solely to the payment of a pre-determined 'authorised buyer' fee and the Minister for Agriculture setting the fee based on advice from the Board and industry.	
	All export control powers to be removed by 31 August 2001.	
Exports of grain sorghum, oats, safflowers, sunflowers, linseed and soybeans.	Maintain existing market intervention powers for the 1999/2000 harvest, but remove by 31 August 2000.	AGEA, RMSA and all four NSW Government members.
Domestic sales of malting barley.	Maintain existing market intervention powers for the 1999/2000 harvest, but remove by 31 August 2000.	AGEA and RMSA members.
	Maintain existing market intervention powers for the 1999/2000 harvest with new arrangements to apply for the 2000/2001 harvest (ie between 31 August 2000 and 31 August 2001) which include allowing private traders and domestic users to purchase barley for the purpose of domestic trading and use, subject solely to the payment of a pre-determined 'authorised buyer' fee and the Minister for Agriculture setting the fee based on advice from the Board and industry.	The four NSW Government members.
	All domestic trading powers to be removed by 31 August 2001.	
Domestic sales of all vested commodities other than malting barley.	Remove existing market intervention powers as soon as possible, but no later than 31 August 2000.	AGEA, RMSA and all four NSW Government members.

111. Note: The NSW Farmers' Association and Grains Board members recommended retention of the Board's single desk powers and therefore did not have a position on the timing issues dealt with in Recommendation 15.

Recommendation on the Issue of Consulting With Growers on the Future of the Board

112. **Recommendation 16:** *It is recommended by the Review Group that NSW coarse grain and oilseeds growers be consulted on their wishes regarding privatising or winding-up the NSW Grains Board.*

Majority Recommendation on the Issue of the Approach to Consulting With Growers

113. **Recommendation 17a:** *Pursuant to Recommendation 16, it is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the consultation process involve the conduct of a grower poll on all the relevant issues, and that a joint industry/NSW Government Working Group be established to undertake the tasks in the draft Terms of Reference at Appendix 8.*

Minority Recommendation on the Issue of the Approach to Consulting With Growers

114. **Recommendation 17b:** *Pursuant to Recommendation 16, it is recommended by the NSW Farmers' Association and Grains Board members of the Review Group (two of the eight members) that the joint industry/NSW Government Working Group referred to in Recommendation 17a be formed to undertake the tasks in the draft Terms of Reference at Appendix 8, but that the consultation process not involve the conduct of a grower poll, but an alternative mechanism to be determined by the Minister in consultation with the Working Group.*

Majority Recommendation on the Issue of the Content of the Grower Poll

115. **Recommendation 18:** *It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the grower poll cover at least the following:*

- *whether the NSW Grains Board should be privatised or the equity fund and other assets of the Board be liquidated and distributed back to growers;*
- *whether compulsory grower charges should be continued/introduced for the purposes of raising equity;*
- *if so, which grains should be subject to such compulsory charges, for how long (but not beyond 31 August 2005) and the quantum of the charges; and*
- *the mechanism by which these charges should be levied (eg., constrained vesting),*

with other details to be determined by the Working Group within the bounds of the Terms of Reference shown at Appendix 8.

Recommendations on the Composition and Operating Horizon of the Joint Industry/NSW Government Working Group

116. **Recommendation 19:** *It is recommended by the Review Group that the Working Group be appointed by the Minister for Agriculture in consultation with the NSW Farmers' Association, the NSW Grains Board and NSW Agriculture, and include at least one representative of each of those organisations. However, the full membership of the Working Party should be subject to Ministerial discretion.*
117. **Recommendation 20:** *It is recommended by the Review Group that the Working Group be required to complete its activity by 31 August 2000, so as to facilitate new legislative and corporate arrangements being in place as soon as possible after 1 September 2000.*

Composition and Selection of the Board and Consultative Committee

118. The Board consists of a Managing Director and six part time members appointed by the Governor. A Selection Committee is constituted to nominate the part-time members and consists of five persons appointed by the Minister of whom one is to be a person nominated by the Minister and is to be the Chairperson, and four who are to be appointed from a panel of not less than six persons nominated by the NSW Farmers' Association.
119. As with the Board, the *NSW Grains Marketing Act 1991* establishes the Grain Marketing Consultative Committee. The Committee consists of:
- four members appointed by the Minister from a panel of at least six persons nominated by the NSW Farmers' Association; and
 - the Director-General of NSW Agriculture (or his delegate - to be included in a minor forthcoming amendment to the Act).

Role of the NSW Farmers' Association

120. Some members of the Review Group were concerned about the integral involvement of the NSW Farmers' Association in determining the composition of the Selection Committee (four of the five members are nominated by the Association) and, hence, the Board itself. The Association also has the major role in determining the composition of the Consultative Committee (again, four of the five members are nominated by the Association).
121. This concern did not relate to any observed or implied problems or lack of probity in how the process has been implemented in the past, but rather to the fact that the Association does not represent all of, and exclusively, the constituents of the Board. The involvement of the Association in the selection and oversight of the Board therefore has strong potential to isolate the Board from one form of accountability, that of allowing the constituency of the Board itself to express their views on the Board's performance through these processes.

Conclusions

122. In relation to representation on the proposed new statutory authority, or on any new consultative committee, or on the existing Board or Consultative Committee (should these arrangements be maintained), the Review Group did not have a firm view on whether grower representation should continue to be on the basis of selection rather than election. However, to enable maximum flexibility in nominating producer representatives, the majority of the Review Group agreed that the formal role of the NSW Farmers' Association in nominating representatives to the Selection and Consultative Committees, should be discontinued.
123. The majority of the Review Group (with the exception of the Board representative) agreed that membership of the proposed new Authority should comprise a NSW Government representative (who will chair the Authority), two grain growers, and two non-growers with expertise in any of agribusiness or commerce, corporate management, administration of statutory powers, or international trade in agricultural commodities. The Board representative was of the view that the new Authority should have three grain grower representatives.

Majority Recommendation on the Issue of the Selection of the Board

124. **Recommendation 21a:** *It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group, in order to maximise flexibility with respect to representation on the NSW Grains Board and Consultative Committee should the current arrangements continue:*
- *that the NSW Farmers' Association have no formal exclusive role in relation to nominating representatives to the NSW Grains Board Selection Committee or the Consultative Committee; and*
 - *that the enabling legislation simply detail the number and mix of government, industry and community group representatives, and the appropriate mix of skills, with Ministerial discretion as to the selection process(es) to be followed.*

Minority Recommendation on the Issue of the Selection of the Board

125. **Recommendation 21b:** *Should the current statutory arrangement continue, it is recommended by the NSW Farmers' Association and Grains Board members of the Review Group (two of the eight members) that the existing role of NSW Farmers' Association in relation to nominating representatives to the NSW Grains Board Selection Committee and the Consultative Committee also continue.*

Majority Recommendation on the Issue of the Composition of the Proposed New Statutory Grain Export Authority

126. **Recommendation 22a:** *It is recommended by all Review Group members excepting the NSW Grains Board member that membership of the new export Authority, should it be established, comprise a NSW Government representative (who will chair the Authority), two grain growers, and two non-growers with expertise in any of international trade in agricultural commodities or other agribusiness, commerce, corporate management, or administration of statutory powers, with Ministerial discretion as to the selection process(es) to be followed.*

Minority Recommendation on the Issue of the Composition of the Proposed New Statutory Grain Export Authority

127. **Recommendation 22b:** *While completely opposed to the establishment of a grain export Authority, it is recommended by the NSW Grains Board member of the Review Group that membership of the new export Authority, should it be established, comprise an additional grain grower member to those specified in Recommendation 22a, i.e., three grain grower members rather than two.*

Industry Service Functions

128. Industry services refers to services provided to participants in an industry on an industry-wide basis, apart from services directly related to the marketing of a commodity. Industry services which are commonly provided by statutory marketing authorities in NSW include:

- the collection and dissemination of market intelligence;
- industry promotion;
- research and development of commodities and production systems;
- research into pest and disease control; and
- education and training materials and forums.

103. The legislative objective of providing industry groups with the power to impose compulsory charges to fund such services is an accepted approach to addressing the market failure situation where individuals may 'free-ride' on the benefits generated by others.

104. Research and promotion are typical examples of activities where it may be difficult for individuals acting in isolation to capture sufficient benefits to warrant the investment. In the absence of industry-wide approaches to funding these activities, under-investment may therefore occur.

105. While compulsory charges can be effective in addressing problems of under-investment they can also cause public costs, particularly when they are poorly designed. For example, the imposition of a compulsory charge forces all producers to contribute to the cost of certain services and so may stifle individual innovation and restrict competition by reducing the ability of producers to source these services from alternative suppliers.

106. In the situation where charges are linked directly to a particular function or activity, assessment of the appropriateness of the compulsory charge approach must be specifically related to the function or service to which the charge applies.
107. In addition to the general issues described above, if the ‘majority’ recommendations are implemented the new Authority will have a statutory role limited to the barley industry and involving a much reduced set of legislated powers and functions to those of the current Board. This further raises the issue of the continuing appropriateness under the proposed new legislative arrangements of the existing industry service functions of the Board.
108. For the purpose of this Review the Board’s reserves of \$22 million, which have been raised from retained income from pools and grain trading and the \$1.50 per tonne Authorised Buyer fee, are included as a grower service.
109. Two related issues considered by the Review Group were:
- (a) that producers of malting barley, oats, oilseeds, feed barley and grain sorghum who sell only to the Board, make non-explicit contributions to the funding of services and the contribution they make is at a differential rate to those contributing through the Authorised Buyer fee; and
 - (b) that there is no transparent relationship between the compulsory (Authorised Buyer fee) contributions to Board funds by particular coarse grain and oilseed industries and the services provided to those industries.
136. These observations indicate that the industry services intended to be provided by the Board are not clearly defined, and also raise the possibility of cross-subsidisation of services between different industry sectors and/or between growers who market their commodities in different ways.

Conclusions

137. The Review Group found it difficult to assess in the context of a review such as this, the exact extent to which various grower services would be under-provided in the absence of compulsory funding
138. The majority of the Review Group agreed to the approach adopted in other NSW Competition policy reviews of statutory marketing authorities where it has been proposed that grower support be used as a proxy for the benefits of compulsorily funded industry services.
139. The approach outlined above requires proponents of compulsory charges to seek growers agreement, on an industry by industry basis, to the suite of services to be funded, and importantly, to set the charges on the basis of specified services to be provided to each industry, rather than on a discretionary basis.
140. The Review Group was advised by NSW Agriculture that a possible alternative mechanism for raising compulsory charges is through an industry services committee arrangement under the new *NSW Agricultural Industry Services Act 1998*. This Act

provides for the establishment of committees with compulsory charge powers which comply with Competition Policy principles.

141. The services currently provided by the Board are of a nature (i.e., related to marketing) that the privatised body would continue to deliver them and fund them through retained earnings. If growers subsequently (post privatisation) decided that they needed further non-marketing industry services, funded by compulsory charges, and it could be demonstrated that those services would pass a market failure (net public benefit) test, they could seek the establishment of a separate arrangement under the *NSW Agricultural Industry Services Act 1998*.
142. Given that the Board's reserves are the property of growers, the Review Group was in agreement that growers should have a significant input into any decision regarding their further build-up and future use. A majority view was that at the same time as growers are approached to vote on the future use of their reserves and other assets of the Board, they could also vote on the establishment of an agricultural industry services committee to deliver those non-marketing industry services which they are prepared to compulsorily fund. They could potentially also vote on the preferred provider of those services, which may be the committee itself or a body such as the privatised Board under contract to the committee.
143. The NSW Farmers' Association and Grains Board representatives did not consider the establishment of a committee under the *Agricultural Industry Services Act 1998* to be a feasible or appropriate option for the NSW coarse grains and oilseeds industries.
144. To avoid unnecessary costs being imposed on producers, the majority of the Review Group agreed that the joint industry/Government Working Group recommended to be established, should develop an 'Industry Services Strategy' and growers should be provided with the opportunity to vote on the Strategy as part of the poll on the future of the Board.

Majority Recommendation on the Issue of Future Delivery of Industry Services

145. **Recommendation 23a:** *The Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group recommend that the Working Group develop an 'Industry Services Strategy' and that NSW coarse grains and oilseeds growers be provided with the opportunity to vote for or against the strategy as part of a poll on the issue of whether to privatise the Board.*

Minority Recommendation on the Issue of Future Delivery of Industry Services

146. **Recommendation 23b:** *The NSW Farmers' Association and Grains Board members of the Review Group (two of the eight members) oppose in principle the process outlined in Recommendation 23a but, if it is to proceed, recommend that rather than taking a poll, NSW coarse grains and oilseeds growers be consulted on the matter by an alternative means to be determined by the Minister in consultation with the Working Group.*

Majority Recommendation on the Issue of Funding of Industry Services

147. **Recommendation 24:** *The Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group further recommend that any non-marketing industry services which growers agree should be funded through a compulsory charge on themselves should be provided - either directly or under contract with a body such as the privatised Board - by a committee constituted under the NSW Agricultural Industry Services Act 1998 (or a similar regulatory arrangement)*

Summary of Main Recommendations on Institutional Arrangements and the Future of the NSW Grains Board

Recommendation	Review Group Member Support
A national single desk for barley exports be established.	All Review Group members.
Failing a national single desk being established, a new NSW statutory authority be established which administers single desk export powers through licensing arrangements, but does not itself trade in commodities.	All Review Group members, except for the NSWFA and NSWGB members.
Membership of the new the authority to comprise a NSW Government representative (Chair), two non-growers with relevant professional expertise and: <ul style="list-style-type: none"> - two, or - three (in the event that such an Authority is established) grain growers, with Ministerial discretion as to the selection process.	AGEA, RMSA, NSWFA and all four NSW Government members. NSWGB member.
The new authority to be funded by charges: <ul style="list-style-type: none"> - against the organisation(s) to which export licences are granted; or - on all NSW barley (and other vested grain) sales. Growers to be given the option of privatising the Board, with a proposal to be developed by a joint NSW Government/industry Working Group.	AGEA, RMSA and all four NSW Government members. NSWFA and NSWGB members. All Review Group members.
If the decision is to privatise: <ul style="list-style-type: none"> - the new legislative and corporate arrangements to commence as soon as possible after 1 September 2000; - the privatised Board to be guaranteed sole export rights to commodities and markets controlled by the new authority for 3-5 years; - growers to decide whether compulsory charges should be used to raise equity and/or for the delivery of non-marketing industry services and, if so, the nature and duration (not beyond 31 August 2005) of any such charges. If the decision is to not privatise, the assets of the Board to be liquidated and returned to growers in a manner and to a schedule determined by the Working Group.	All Review Group members. All Review Group members. All Review Group members.
The Working Group to consult with growers in developing its proposals, with the consultation process: <ul style="list-style-type: none"> - to include a poll; or - to not include a poll. Working Group to be appointed by and at the discretion of the Minister for Agriculture, but to comprise at least one representative of each of the NSWFA, NSWGB and NSW Agriculture.	AGEA, RMSA and all four NSW Government members. NSWFA and NSWGB members. All Review Group members.

1. INTRODUCTION

THE NSW GRAINS INDUSTRY AND THE NSW GRAINS BOARD

- 1.1 Grain growers in NSW produced 12.5 million tonnes of grains and oilseeds in 1996/97. The main grain crop grown in NSW is wheat. The second most important crop in terms of value and volume is barley. Oilseeds, particularly canola, are a significant crop in NSW both for direct export and further processing into oil. Oats and grain sorghum also play a significant role in the domestic NSW feed market. Detailed information on Australian and NSW coarse grains and oilseeds production and marketing is provided in Appendix 3.
- 1.2 Based on Australian Bureau of Statistics Agricultural Census data for the 1996/97 season there were 5,713 producers of barley, 838 producers of grain sorghum, 8,111 producers of oats (for grain), 1,808 producers of canola, and 279, 40, 4 and 517 producers of sunflower, safflower, linseed and soybeans, respectively, in NSW at that time. In total, there were some 15,045 grain producers (excluding rice growers) in NSW in 1996/97. Many of these growers were also producing one or more of the other listed commodities. According to the Census data, there were only 2,997 grain producers who did not include wheat in their farm enterprises.
- 1.3 There are a number of sectors within the NSW grains industry, including producers, grain storage and transportation, export and domestic marketing, the shipping industry and domestic users. The domestic users of coarse grains are diverse, and include feedlots, dairies, poultry and other intensive agricultural industries, the horse racing industry, flour millers, other human consumption, industrial users, farmers (seed purchases), maltsters (brewers) and stockfeed mixers and suppliers.
- 1.4 In NSW, the marketing of many coarse grains and oilseeds is under the control of the NSW Grains Board (NSWGB or “the Board”). The Board is a statutory marketing authority. It was established under the *NSW Grain Marketing Act 1991*, replacing existing statutory marketing boards for barley, oats, oilseeds and sorghum.
- 1.5 The purpose of the *NSW Grain Marketing Act 1991* is to improve the marketing of coarse grains and oilseeds in NSW. As well as establishing the Board, the Act gives the Board a wide range of powers and functions. These powers include the vesting of commodities in the Board and powers to operate an authorised buyer system.
- 1.6 The Board operates as a single desk for domestic sales of NSW malting barley and acts as a marketing and accumulation agent and single desk for the purpose of export marketing of all vested commodities. The Board also has a number of legislative powers it does not use.
- 1.7 The NSWGB employs 30 staff in its Sydney head office and is supported by five offices throughout regional NSW and southern Queensland, with a further 10 personnel servicing growers and regional customers. Sales turnover in the last three financial years peaked at \$325 million in 1995/96.

THE COMPETITION PRINCIPLES AGREEMENT AND LEGISLATION REVIEW

1.8 The Competition Principles Agreement was endorsed by all members of the Council of Australian Governments (COAG) in April 1995. The Agreement commits the NSW Government to review, by the year 2000, all legislation that restricts competition.

1.9 The Agreement requires that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition.

1.10 As described in *Implementing Competition Policy and Microeconomic Reform in NSW: An Overview by the NSW Government* (The Cabinet Office, June 1996), the objective of the Competition Policy review is to minimise anti-competitive regulation so as to

“...increase business and consumer choice and reduce production and transportation costs in an effort to lower prices for goods and services. ...The NSW Government believes that as long as the public interest is protected, competition will help us to create a confident, stronger and more vibrant economy. For consumers and business alike, competition means better services, wider choice and lower prices”.

1.11 This policy statement also makes it clear that in the implementation of Competition Policy the NSW Government places considerable emphasis on the protection of consumers and the public interest, noting that *“...there needs to be careful scrutiny to ensure that the benefits of competition are passed on to consumers”* and further, that *“...the NSW Government is committed to ensuring that the rights and needs of consumers are protected and not disadvantaged by reforms”.*

1.12 The NSW Government’s commitment to ensuring that the effects of economic reform, of which Competition Policy is a key element, contribute to a fairer and more just society is also documented in more general social justice policy statements. For example, the *Fair Go, Fair Share, Fair Say: New South Wales Social Justice Directions Statement* (NSW Government, October 1996) describes how the Government links economic and social policy,

“Sustainable economic development is essential to produce the resources and jobs necessary for social justice. Social justice is essential to ensure the human resources, infrastructure and community cohesion necessary for economic development. They must progress in tandem or both will be diminished”,

and assures that

“Economic policy will be managed with its social justice implications firmly in mind”.

1.13 In undertaking the Competition Policy Reviews, governments agreed that:

- the objectives of legislation will be clarified;
- the nature of the restriction will be identified;

- the likely effects of the restriction on competition and the economy generally will be analysed;
- the costs and benefits of the restriction will be assessed and balanced;
- alternative means for achieving the same result will be considered;
- any new anti-competitive legislation must conform to the net public benefit principle; and
- retained anti-competitive legislation must be reviewed at least once every ten years to determine if it is still required.

1.1 In assessing the costs and benefits of particular legislation, COAG agreed that the following matters, where relevant, would be taken into account:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally, or of a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

1.1 Importantly, it is pointed out by the National Competition Council that “...under the *NCP agreements, equity and social welfare considerations carry the same weight as financial considerations in the public interest test*”.² In a similar vein, the Commonwealth Department of the Treasury has stated that,

*“It needs to be emphasised that while Competition Policy aims to promote efficiency and economic growth - because of the pay-offs they provide for community welfare - it also accommodates situations where competition conflicts with other social objectives. The CPA explicitly provides for a range of social, environmental, regional and equity criteria to be taken into account in addressing the public interest. Governments can choose not to implement the NCP reforms if, taking such criteria into account, costs are objectively judged to exceed benefits.”*³

1.2 As part of its commitments under the Competition Principles Agreement, the NSW Government has undertaken a review of the *NSW Grain Marketing Act 1991*. Consistent with the Agreement, the purpose of the Review is to determine if the legislation creates a net public benefit, taking the items at 1.14 into account. The Terms of Reference for the Review are in Appendix 1.

2 National Competition Council (1998), *NCP: Some Impacts on Society and the Economy*, National Competition Council, Canberra.

3 Department of the Treasury (1998), *The Socio-Economic Consequences of the National Competition Policy*, Canberra, November.

THE REVIEW FRAMEWORK AND PROCESS

The Review Process

1.17 The Review Group was chaired by NSW Agriculture (Mr Don Hayman, Executive Director, Policy and Corporate Planning) and comprised representatives nominated by:

- the NSW Grains Board (Mr Athol Roberts);
- the NSW Farmers' Association (Mr Angus MacNeil);
- the Rural Marketing and Supply Association Inc. (Mr Alan Winney);
- the Australian Grain Exporters Association (Mr Lloyd George);
- NSW Treasury (Mr Peter Shields);
- NSW Agriculture (Mr Scott Davenport); and
- The Cabinet Office (Mr Jim Booth).

1.12 The Review Group held seven meetings during the review. Key functions of the Review Group were the preparation and distribution of an Issues Paper, consultation with stakeholders, consideration of submissions and preparation of this report.

1.13 The Review Group released the Issues Paper and called for public submissions in May 1998. The closing date for submissions was 30 June 1998. 103 submissions were received and are listed in Appendix 2.

1.14 The Review Group conducted public forums on the Issues Paper in:

- Lockhart (9 June 1998);
- West Wyalong (10 June 1998);
- Parkes (10 June 1998);
- Moree (11 June 1998); and
- Gunnedah (11 June 1998).

1.11 The purpose of the forums was to provide information to interested stakeholders on the review process, including the Terms of Reference and methods by which they could provide input to the Review, and to highlight the issues of concern to the Review Group.

1.12 The Review Group also held meetings on 7-8 July 1998 with key stakeholders in the NSW grains industry, to enable them to speak to their submissions to the Review Group. Each meeting lasted for approximately 60 minutes and consisted of a short presentation on the submission by the stakeholder, and then a question and answer session. Stakeholders who attended these meetings were:

- the NSW Grains Board;
- the Rural Marketing and Supply Association;
- the NSW Farmers' Association;
- the Australian Grain Exporters Association;
- the Prime Wheat Association;
- the Australian Lot Feeders Association;
- Joe White Maltings Limited;

- Cargill Australia Ltd;
- the Australian Wheat Board;
- Barrett Burston Malting Company; and
- the NSW Grains Board Consultative Committee.

The Decision Framework and the Competition Principles Agreement

1.23 In the conduct of the Review, the Review Group considered that the matters raised in the last four dot-points in paragraph 1.14, namely:

- economic and regional development, including employment and investment growth;
- the interests of consumers generally, or of a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources,

were the matters particularly relevant to the Review.

1.23 More specifically, the Review Group was interested in a number of related issues, including:

- the competition restrictions in the Act (the way in which the Act might influence the production or market behaviour of individuals or firms);
- the associated public benefits and costs of these restrictions, including equity and social welfare considerations as well as financial considerations;
- potential market failure rationales for government intervention in the various coarse grains and oilseeds industries covered by the Act; and
- where a market failure is found to exist, alternative ways of addressing that failure, including non-legislative approaches or legislative arrangements which may be less restrictive than the current Act.

1.21 It is relevant to note that while this is a review of the efficiency and effectiveness of the powers and functions of the Board in undertaking tasks to meet the Government's social objectives, it is not a review of the commercial efficiency of the Board, nor of its competence as a marketer of coarse grains and oilseeds.

1.22 The Review Group agreed that an appropriate decision framework which would enable the Group to address the Terms of Reference for the Review is that shown in Figure 1.

STRUCTURE OF THE REPORT

1.27 **Chapter Two** - contains background information on the provisions of the *NSW Grain Marketing Act 1991*.

Chapter Three - contains a description of the process of identifying the original objectives of the Act and determining their continuing appropriateness.

Chapter Four - contains details of the restrictions on competition arising from the Act and a theoretical basis for assessing the benefits and costs of those restrictions.

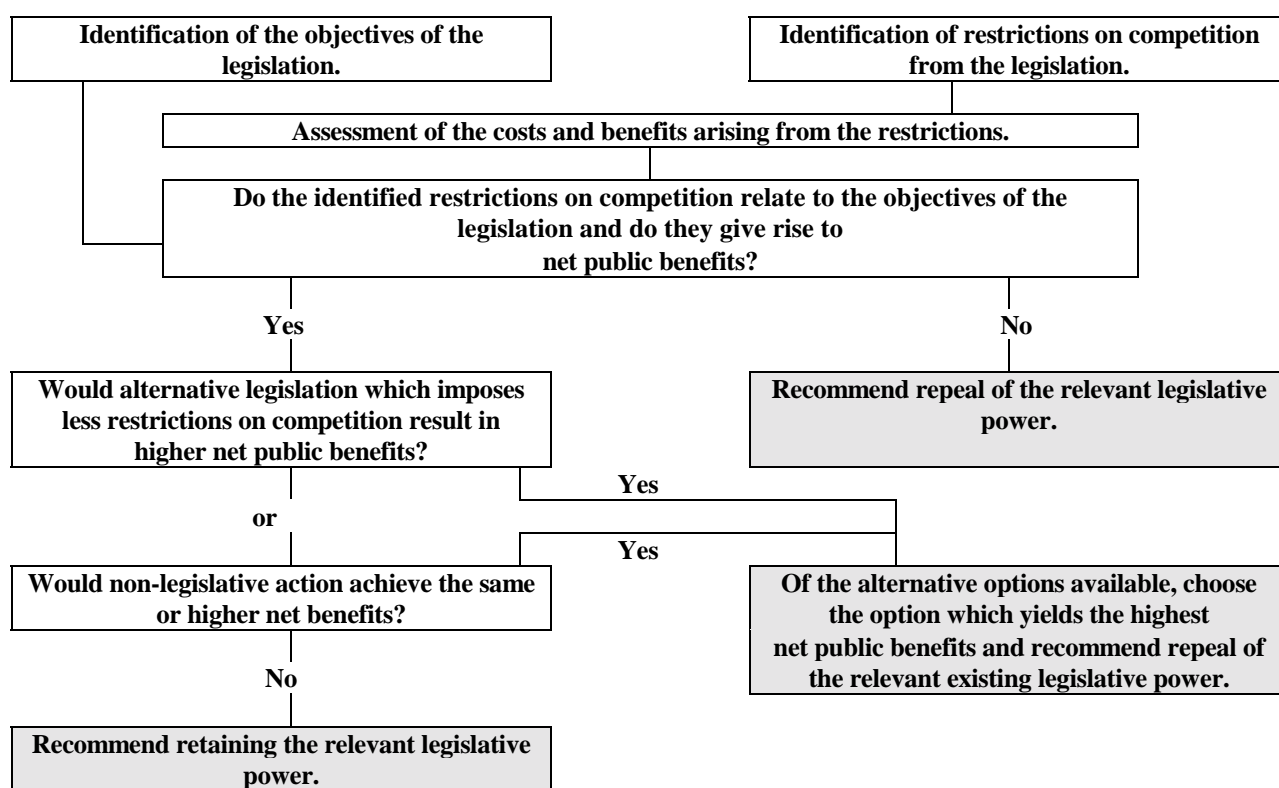
Chapter Five - comprises an evaluation of the net public benefits of the restrictions and concludes with recommendations on legislative reform.

Chapter Six - contains a discussion of approaches for maintaining recommended functions currently performed by the NSW Grains Board, and the management and funding of and accountability for the performance of those functions.

Chapter Seven - comprises a discussion of current industry services provided by the Board and an assessment of options for the future delivery of such services.

Chapter Eight - contains a complete listing of the recommendations made throughout the report.

Figure 1.1: Review Decision Framework



2. THE NSW GRAIN MARKETING ACT 1991

THE HISTORY OF STATUTORY MARKETING OF COARSE GRAINS AND OILSEEDS IN NSW

- 2.1 While the current *NSW Grain Marketing Act* was enacted in 1991, the orderly marketing of grains in NSW has a much longer history. The primary legislation in NSW by which statutory marketing authorities were established was the *Marketing of Primary Products Act 1927*, which has since been replaced by a 1983 Act of the same name.
- 2.2 Under the *Marketing of Primary Products Act 1927*, four marketing boards for grains were established, including those for barley, oats, sorghum and oilseeds. This legislation requires a majority of growers at a poll to support the proposal for the establishment of a board to take place.
- 2.3 A review of grain marketing arrangements was held following the insolvencies of the NSW Grain Sorghum Marketing Board and the NSW Oilseeds Marketing Board in the late 1980s. While the review was underway, the Oats Marketing Board also became insolvent. The various insolvencies occurred for a number of reasons, including the Boards incurring significant trading losses, the default of major creditors and the lack of adequate financial reserves.
- 2.4 The review, which concluded in 1990, recommended certain regulatory changes, including that vesting powers be removed or that the circumstances in which these powers could be used should be strongly constrained (see Appendix 4). The review also recommended that the power to collect a compulsory levy should be constrained to providing non-trading activities, such as industry service functions.
- 2.5 A decision was made by the NSW Government of the day, supported by a grower poll and the NSW Farmers' Association, to create a single body to market those grains previously marketed separately and to enable the collection of compulsory charges. The 1991 Act is based on the types of provisions found in the *Marketing of Primary Products Act 1983*, but several significant changes were made. In particular, these related to constrained vesting powers of the Board, the appointment of Board members by selection rather than election, and improved monitoring and accountability processes. The Act has operated largely unchanged since that time.
- 2.6 The major provisions of the Act are set out in Appendix 5. The most significant sections of the Act are discussed in more detail in the following sections.

PROVISIONS OF THE NSW GRAIN MARKETING ACT 1991

Introduction

- 2.7 As noted in Chapter 1, the stated purpose of the *NSW Grain Marketing Act 1991* is to improve the marketing of coarse grains and oilseeds in NSW.

- 2.8 The principal powers and functions of the Act are the establishment of the Board and the Grain Marketing Consultative Committee (GMCC), and the giving of certain powers to and requiring certain functions of those bodies.
- 2.9 The Act provides for the vesting of declared commodities (coarse grains and oilseeds) produced in NSW in the Board, which then operates as the single statutory marketing authority responsible for the marketing of those commodities.

Establishment of the NSW Grains Board and the GMCC

- 2.10 The Act constitutes the Board and details its functions. The Board consists of the Managing Director and six part-time members appointed by the Governor, four of whom are growers and two with expertise in one or more of the fields of finance, marketing, economics, accountancy or law.
- 2.11 A Selection Committee is constituted to nominate the part-time members to ensure there is a balance of skills and experience in the areas of grain production, marketing and financial management.
- 2.12 The Act also establishes the GMCC and sets out its functions. Its main function is to make recommendations to the Board on its operations and the commodities covered by the Board.

The General Functions of the Board

- 2.13 The Act confers a number of powers on the Board, including all things necessary for, or incidental to, achieving the purpose of improving the marketing of coarse grains and oilseeds in NSW.
- 2.14 Marketing is defined as buying, selling, financing, collecting, cleaning, grading, packing, treating, carrying, storing, warehousing, rehandling, distributing (by wholesale or retail), delivering and promoting.
- 2.15 The Board acts as a marketing agent for the purposes of exporting vested commodities under a single desk arrangement for NSW, and also operates as a single desk for domestic sales of NSW malting barley. It also develops markets and promotes NSW grains and oilseeds, in preference to supplies from other origins, in Australian and overseas markets.
- 2.16 The Board operates in the export market via a number of selling options, including selling direct to end-users on both an FOB and C&F basis, and to agents and traders.
- 2.17 While it has never exercised these powers, the Board is also authorised to:
- process commodities or manufacture products from commodities;
 - fix wholesale prices for grades, classes and descriptions of vested commodities; and
 - act as a purchasing agent for farm inputs (equipment, machinery, seed, fertiliser etc).

Commodities Vested in the Board

- 2.9 The Act allows for a primary product to be declared by the Governor, by proclamation published in the Gazette, to be a commodity and to be added to the control of the Board. Currently the commodities vested in the Board are coarse grains and oilseeds.
- 2.10 Coarse grains are defined as barley, grain sorghum and oats. Oilseeds are defined as sunflower, canola, safflower, linseed and soybeans.
- 2.11 To add a commodity to the list of commodities vested in the Board, a proclamation may be made in respect of coarse grains or oilseeds without the need to conduct a poll of producers. A proclamation in relation to any other primary product may only be made if a majority of producers at a poll are in favour.

Powers of the Board to Appoint Agents and Other Miscellaneous Powers

- 2.12 The Act empowers the Board to appoint agents and authorised buyers and to act as a marketing or purchasing agent.
- 2.13 An Authorised Buyer Scheme has been established for domestic trade in commodities vested in the Board. Authorised Buyers are registered with the Board and collect a fee from growers of \$1.50 per tonne on the commodities they handle.
- 2.14 The Board uses its powers to act as a marketing agent. The Board trades (both in the domestic and export markets) in unregulated grains (eg., triticale, lupins, field peas, chick peas, cotton seed, maize and faba beans) and in the domestic market for wheat. The Board has also acted as an agent for the Australian Barley Board (ABB) for the purposes of exporting canola.
- 2.15 As well as the above functions, the Act sets out a broad range of miscellaneous functions which the Board may carry out. These functions include such things as promoting and encouraging the use of commodities the Board is associated with, maintaining laboratories, carrying out research (i.e., conducting chemical, physical, bacteriological and economic research, and investigating improved methods of producing, marketing and using the commodity), entering into trade mark agreements and publishing relevant information.
- 2.16 As well as explicit powers, the Board is empowered to do all things necessary for, or incidental to, achieving the purpose of improving the marketing of coarse grains and oilseeds in NSW. The Board has wide powers in relation to promotion of products and in encouraging improved methods of production, marketing and use of products. It is able to enter into a wide range of joint activities and to appoint agents and buyers on its behalf.

The Vesting Power of the Board and Exemptions from the Vesting Provisions

- 2.17 If a product has been declared a commodity under the Act, the Governor may proclaim that the commodity is to be divested from producers and become absolutely vested in and be the property of the Board.

- 2.18 The Act makes it an offence for a producer to supply, sell or deliver any of the commodities vested in the Board, to a person other than the Board or its authorised agents or buyers.
- 2.19 The Board must accept a vested commodity that was grown in NSW, provided that it conforms to the applicable standards of quality or grade and is delivered to the Board in accordance with the Act.
- 2.20 The Board, following consultation with the GMCC, may exempt (and revoke such exemption) from the vesting of a commodity in the Board, the following:
- small producers of the commodity;
 - sales of the commodity directly from producers to consumers, processors, merchants or retail vendors; and
 - that portion of the commodity that the producer requires for the producer's own use, including for livestock and seed.
- 2.26 Exemptions currently granted include an exemption for maltsters purchasing malting barley of specified varieties. Specifically, exempt varieties are those considered to be non-mainstream, where the total volume traded is low, and in those situations where malting companies own the plant variety rights to a particular variety.

Payment for Vested Commodities and Payment Schemes

- 2.27 The Act requires that payments to producers for any commodity of the same quality or grade delivered to the Board during such periods determined by the Board should be made at a uniform rate. The Board has the power to establish grades, classes and descriptions.
- 2.28 In determining payment rates, the Board may make suitable deductions for:
- expenditure incurred in marketing, returning, destroying or otherwise disposing of the commodity;
 - the costs, charges and expenses incurred by the Board in the administration of this Act;
 - any reserves created by the Board; and
 - any other matters that are, in the opinion of the Board, relevant or that are prescribed.
- 2.32 The Board operates a number of pools for segregated grades and classes of grain. The Act allows for exceptions to this provision.
- 2.33 In addition to pools, the Board offers a range of other marketing and payment options, including cash trading and futures-linked contracts. Similar to other traders, the Board pays bonuses and differential payments based on quality for malting barley, canola and milling wheat.

2.34 As noted earlier, the Board's powers extend to the setting of wholesale prices for vested products and to the manufacturing and processing of commodities marketed by it. However, the Board has never used these powers.

The Funding of the Board and the Power to Create Financial Reserves

2.36 Under Section 62 of the Act, the Board has the power to create and use financial reserves as it considers necessary or expedient to carry out its functions under the Act. The Board currently holds financial reserves of approximately \$22.1 million. These have been accumulated from a number of sources, including retained earnings on pools and cash trading, Authorised Buyer fees, and revenue from other investments.

2.37 Subsequent to the 1990 review, the Board has been financially self-supporting and operates in a commercial manner. The Board uses commercial credit to facilitate its accumulation and trading activities.

3. THE OBJECTIVES OF THE ACT

BACKGROUND

- 3.1 As part of the review process, the Review Group is required to clarify those objectives of the NSW Government which are being addressed by the *NSW Grain Marketing Act 1991*, and to consider whether the objectives of the legislation can only be achieved by restricting competition.
- 3.2 This Review must clarify for what reason the NSW Government of the day wished to influence the trading environment for grain and why it was considered that greater benefits to NSW would arise from this intervention rather than from a freely operating grain market.
- 3.3 The objectives of the *NSW Grain Marketing Act 1991* are stated in the Act as “... relating to the marketing of coarse grains and oilseeds; to constitute the New South Wales Grains Board; and for other purposes”.
- 3.4 This general statement is of the form traditionally used in legislation and does not reveal what benefits the Government of the day envisaged the people of NSW would derive from establishment of the Board and statutory intervention in the marketing of coarse grain and oilseeds.
- 3.5 The Hansard record of the second reading speech of the bill (see Appendix 7) in part states that “... *the principal object of this legislation is to establish the New South Wales Grains Board as the single statutory authority responsible for the marketing of coarse grains and oilseeds in New South Wales. It will provide for the dissolution of the four marketing boards responsible for the marketing of barley, oats, oilseed and grain sorghum. Though many provisions of the bill are based on provisions found in the Marketing of Primary Products Act 1983, the need for a new and separate legislative framework was recognised by all parties involved in the consultation leading up to the introduction of the bill to create a single, stronger body that was more likely to influence the marketing environment than a number of smaller authorities*”.
- 3.6 The second reading speech also explains that the powers of the proposed NSW Grains Board would differ significantly from authorities set up under the *Marketing of Primary Products Act 1983*. These differences included: that the Board would have constrained powers of vesting for commodities; that appointment of Board members would be by selection rather than election; and that a more effective process of monitoring and accountability would be implemented.
- 3.7 Those functions given to the Board by the Act provide an indication of the objectives to be met by the Board, which in turn provide an indication of the objectives of the Act. The general functions of the Board are prescribed in Division 1 of the Act. The section headings in Division One are:
32. General functions of the Board
33. Functions relating to the marketing of the commodity

34. Voluntary deliveries of the commodity
 35. Board may deal in commodity
 36. Grades and wholesale prices of the commodity
 37. Manufacturing and processing of the commodity
 38. Board may deal in other products etc.
- 3.8 It is clear from these headings that the Board was intended to have broad powers in relation to the marketing, pricing and quality of commodities covered by the Act and that these powers generally relate to improving the returns of coarse grain and oilseed producers. This included an expectation that growers would benefit from an export single desk.
- 3.9 These conclusions are supported by Section 32 of the Act, where it is stated that “*the Board may do all things necessary for or incidental to achieving the purpose of improving the marketing of coarse grains and oilseeds in New South Wales*”. The Board reiterates this statement as its key objective in its Annual Report.

SUBMISSIONS

- 3.10 In its Issues Paper, the Review Group asked for comments on the following question, “What is your understanding of the objectives of the Act?” In response, a number of submissions from industry organisations made comments on what they considered the current objectives to be and related issues.
- 3.11 In its submission the NSW Farmers’ Association stated that they understood that the objective of the current Act, and the appropriate objective of any future Act, is, “*to assist growers to collectively improve their bargaining position in the face of market failure and corrupt markets*”. The Association noted the long term continuing production and export support policies in other grain exporting countries, and the concentration of market power in several domestic coarse grain (eg., malting barley) and oilseed (eg., canola) markets.
- 3.12 The Association went on to observe that “*... world markets are still corrupt, free market forces are not operating [and] countervailing power market forces are still very much required to assist growers to get a fair crack of the whip*”.
- 3.13 The Australian Lot Feeders Association (ALFA) expressed the view that “*... the objective of the legislation setting up the Board is to provide a mechanism for the exercise of market power. While intended Board outcomes are not defined, it seems that the acquisition/wholesale price fixing/upstream investment powers of the Board were intended, in a very large part to be exercised on behalf of, and to the benefit of, growers as distinct from a cross sector, whole of industry, constituency*” and “*Consequently, despite the lack of clarity in the wording of the Act about the intended outcomes of Board activities, and the ambiguity of what is meant by the Board purpose of ‘improving the marketing of coarse grains and oilseeds in NSW’, it is apparent that the underlying intent was the exercise of statutory supply control and price fixing powers on behalf of grain growers alone*”.

- 3.14 In its submission, the Grains Board has interpreted the literal objective of the Act, “*to do all things necessary and incidental to achieving the purpose of improving the marketing of coarse grains and oilseeds in NSW*”, as being related to three distinct objectives in the areas of:
- grain marketing;
 - value adding and value capture; and
 - providing discipline (with flexibility) in the grain marketing system.
- 3.13 The proposed objective of the Act to be achieved by intervention in ‘grain marketing’, as stated in the Board’s submission, is to “*... capture the greatest possible level of value for both the supplier and user (customer) so as both parties can achieve their benefits or objectives from the supply and purchase of the product while capturing value from NSW product for the NSW community*”.
- 3.14 The Board proposed that intervention in ‘value adding and value capture’ is to meet an objective of capturing economies of scale in storage, transport and supply to customers. The submission further states that intervention in relation to ‘providing discipline (with flexibility) in the grain marketing system’, relates to a number of sub-objectives. These include providing countervailing market power for producers and ensuring adequate levels of market development and product promotion in overseas markets, and ensuring adequate levels of research.
- 3.15 It was also stated in the Board’s submission that some overseas buyers have a clear preference to purchase from authorities with security of supply, such as is provided by a vesting and single desk arrangement. An example of this was cited as being the Japanese Food Agency in the case of feed barley.
- 3.16 While a number of farmers made submissions to the review, few addressed the issue of identifying the current objectives of the Act. One submission stated that the objective of the Act is to “*receive, grade and market in the most cost effective way the vested commodity*”.
- 3.17 Generally submissions from individual farmers tended to focus on whether they supported or did not support the primary legislative powers of the Board, namely vesting, the collection of the \$1.50 per tonne authorised buyer levy and single desk exporting arrangements. Consequently, they did not specifically refer to the current objectives of the Act or what the future objectives of the Government should be.
- 3.18 The Prime Wheat Association claimed that the purpose for having the Board had been achieved and that a new set of objectives needed to be set for any future legislative intervention: “*The NSWGB and Government, with the continuance of certain aspects of the legislation, need to identify and clearly articulate a new set of objectives with which to benchmark the performance of the legislation. This should be progressed immediately*”.
- 3.19 In its submission, the NSWGB contended that the future objective of the legislation should be to retain the NSWGB, with existing powers, for purposes in the general areas of:

- correcting/countervailing market failure - domestic market;
- correcting market failure - export markets;
- promotion of NSW coarse grains and oilseeds, and market research and development;
- ability to scrutinise the process of marketing vested grains; and
- industry growth and reliability.

3.19 The NSWGB stated that the market failure inherent in the domestic markets which they refer to in the above points, is a lack of competition amongst the purchasers of certain coarse grain and oilseed products, particularly malting barley and canola, but also sorghum and oats. *“The objective of this legislation is to provide a flexible mechanism, capable of working closely with the industry’s key NSW stakeholders to trigger participation from time to time in the case of market failure”* (NSWGB submission).

3.20 In relation to export markets, the NSWGB submission referred to market failures relating to:

- the market power of international grain trading houses;
- government intervention (particularly the USA and the EU) through subsidies and export restitutions in the international grain market; and
- the potential for transfer pricing by international grain trading houses in an increasingly global grain market.

3.26 In submissions to the Review, all NSW Grains Board domestic customers who made a submission to the Review, including merchants, grain processors, stock feed manufacturers and intensive animal industries (such as lot feeders), unanimously supported the removal of the statutory powers of the Grains Board on the domestic market and the cessation of all direct government intervention in the marketing of grains in NSW. These sectors of the industry considered that there were no legitimate reasons for the NSW Government to intervene in the sector.

3.27 It was pointed out by the Board that the maltsters position of opposition to the current regulations is a complete turnaround from their position expressed to a review conducted in 1995.⁴

DISCUSSION

3.26 It is clear to the Review Group from the broadly stated powers of the Act, and from the comments in the second reading speech for the 1991 Act, that the Government of the day sought to influence the marketing environment for coarse grains and oilseeds produced in NSW. However, it is not clear from the Act and supporting material precisely why this broad objective was adopted.

3.27 The Review Group accepted that it was likely that downward distortion of coarse grain prices on international markets due to subsidised production and exports from

4 Joint submission by Australia’s Major Malting Companies and the Australian Grain Marketing Federation to the Grains Council of Australia Australian Malting Barley Industry Review, 27 June 1995.

competitors, such as the European Union and the US, was an important consideration at the time the legislation was enacted. While this was not presented as an argument in the second reading speech, there is a substantial body of literature from the time detailing the problem of corrupted world prices for agricultural commodities, particularly grains.

3.28 For example, an independent commentator writing in 1990 reported: “*For Australia, relations with the EC have often been acrimonious because of the dumping of EC surpluses in Australia’s traditional markets. More recently, a resurgence of disputes with the United States has arisen because of its subsidised exports under the Export Enhancement Program (EEP).*”⁵

3.29 This issue is a major theme in both the NSW Farmers’ Association and NSW Grains Board submissions.

3.30 The Review Group found that:

- while it is stated in the Act that the purpose of the Act, is described as “... *relating to the marketing of coarse grains and oilseeds; to constitute the New South Wales Grains Board; and for other purposes*”, this stated purpose provides no indication of the intended outcome or the reasons for pursuing that outcome. Rather, it describes a process for meeting a more fundamental, unstated, objective;
- the *NSW Grain Marketing Act 1991* was established at a time when international markets were characterised by subsidies to growers and exporters in export competing countries;
- the Act, and the Board constituted under the Act, was established at a time when statutory marketing authorities were made more accountable than the older style statutory marketing authorities of the past; and
- the recurring opinion in submissions, which is supported by the statement in the second reading speech that “...*a stronger body is more likely to influence the marketing environment*”, is that the objective of the current Act is to increase returns to coarse grain and oilseed producers by increasing their bargaining power on domestic and international markets.

3.24 While there was generally consensus in the submissions that this appeared to be the broad objective of the Act, there was not a consensus of opinion on the justification for the objective. The varying opinions fell into two categories:

- those that suggested that increasing the returns of coarse grain and oilseed producers, through various means, is an objective in itself; and
- those that suggested that increasing the returns of coarse grains and oilseed producers is justified on the basis of market failures which, in the absence of the

⁵ Harris, S. (1990), ‘Agricultural trade and agricultural trade policy’ in D.B. Williams (ed.), *Agriculture in the Australian Economy* 3rd Edition, Sydney University Press, South Melbourne, 342-360.

Act, would result in coarse grains and oilseed producers receiving less than a ‘fair’ return for their produce.

- 3.24 As well as clarifying the current objectives of the legislation, the Terms of Reference require the Review Group to assess the continuing appropriateness of those objectives. That is, the Review Group had to make an assessment of the current objectives in light of current public policy principles, conditions in domestic and international markets, and any changed circumstances in the economy and the community since the introduction of the Act.
- 3.25 In making this assessment, the Review Group has given consideration to contemporary public policy principles, the outcomes of other recent reviews of statutory marketing arrangements, and the nature of domestic and international markets for the coarse grains and oilseeds currently vested in the Board.
- 3.26 The Terms of Reference also required the Review Group to identify any issues of market failure, their nature and extent, which need to be, or are being addressed by the *NSW Grain Marketing Act 1991*. The National Competition Policy principle relating to government intervention is that governments should only intervene in freely operating markets to correct instances of market failure.

CONCLUSIONS

- 3.35 The stated objectives of the Act relate to matters of process. These include “*purposes relating to the marketing of coarse grains and oilseeds; to constitute the New South Wales Grains Board; and for other purposes*”. This statement does not reveal what it was that the NSW Government was wanting to achieve by intervening in the market for these commodities.
- 3.36 The stated purpose of the Board, being to do “*...all things necessary for or incidental to achieving the purpose of improving the marketing of coarse grains and oilseeds in New South Wales*” is also somewhat process oriented but casts some light on the intentions of the legislators.
- 3.37 On balance, after reviewing the evidence the Review Group concluded that it was reasonably clear that the principle objective of the Act was to increase returns to coarse grain and oilseed producers by having a single, more powerful, entity marketing their product both in domestic and international markets.
- 3.38 Neither the stated objectives of the Act nor the inferred objective identified by the Review Group, provide clarification of the forms of market failure which the Act is intended to address, or the broader public benefit outcomes sought by the NSW Government. The Review Group therefore concluded that to make the stated objectives of the Act and the Board more consistent with Competition Policy principles they need to be modified.

- 3.39 The Review Group concluded that there was general support for the objectives of the Act to be more outcome orientated. For example, the NSW Farmers' Association favoured an outcome of improving the bargaining position of growers in response to 'corrupted' domestic and export markets (i.e., to address specified instances of market failure). The Grains Board similarly favoured this outcome and highlighted other potential areas of market failure relevant to the objectives of the Act, such as promotion and research.
- 3.40 The Review Group, while taking account of equity and social welfare considerations, recognised that any legislative intervention in the NSW coarse grains and oilseeds industries should be required to generate public as well as industry benefits to be consistent with Competition Policy and contemporary NSW Government regulatory policy.
- 3.41 The Review Group concluded therefore that there is a case to redefine the objectives of the Act to make them less 'process' and more 'outcome' orientated, by focusing them on addressing identified market failures. The specific outcomes found to be appropriate are identified in Chapters 5 and 6.

RECOMMENDATION

3.42 ***Recommendation 1:***

The Review Group recommends that the purpose of the NSW Grain Marketing Act 1991, or any alternative legislation that may be introduced, be defined to make it clear that the outcome the NSW Government seeks is to achieve net public benefits by addressing identified failures in markets for NSW coarse grains and oilseeds.

4. RESTRICTIONS ON COMPETITION

INTRODUCTION

- 4.1 The Terms of Reference require the Review Group to identify any restrictions on competition in the *NSW Grain Marketing Act 1991*, analyse the likely effect of these restrictions on the economy generally and weigh the costs and benefits of the restrictions. The guiding principle of the Review is that the Act should not restrict competition unless it can be demonstrated that:
- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation can only be achieved by restricting competition.
- 4.2 Where the criteria at (a) and (b) are met, competition restrictions in legislation may be retained. However, to be consistent with Competition Policy principles, where competition restricting provisions of the Act are identified and it is determined either that the provisions do not yield a net public benefit or that the same objective could be achieved without restricting (or by a lesser restriction on) competition, then it is necessary to recommend repeal of those provisions.
- 4.3 The term ‘restricting competition’ can mean obvious and major restrictions, such as restricting entry to an industry, the vesting of a commodity, setting prices or banning certain commercial behaviour. However, it may also include restrictions where the effects are more subtle. The definition applied by the Review Group was that competition is restricted when the behaviour of individuals or firms is changed from that which would otherwise occur in the absence of regulation.
- 4.4 The Review Group recognised that legislative provisions which restrict competition may be entirely appropriate and justified to meet public policy objectives. That is, the Review Group did not approach the Review with a preconception that legislative provisions which restrict competition are necessarily ‘bad’ or in some way fundamentally flawed. The Review process was expressly intended to identify whether the provisions of the *NSW Grain Marketing Act 1991*, can be justified on the grounds that they deliver net public benefits.
- 4.5 In applying the decision rule outlined above, the Review Group identified the vesting of declared commodities in the NSW Grains Board as the primary competition restricting provision of the Act. Associated with and enabled by vesting are a number of other provisions which also restrict competition, namely:
- the domestic single desk for vested commodities (which is maintained only for malting barley, with some exceptions);
 - the export single desk for vested commodities; and
 - the Authorised Buyer scheme and the compulsory grower fee for ‘divested’ commodities.

- 4.5 The Review Group was required to determine what factors, if any, prevent the private sector from independently addressing the policy objectives underpinning the *NSW Grain Marketing Act 1991*, and as a result, indicate where and how government intervention is necessary.
- 4.6 The focus on correcting market failures⁶ as a basis for government intervention is in recognition that the Australian economy is a market economy, where markets are relied upon, at least in the first instance, to allocate resources throughout the economy. A major part of the process of microeconomic reform in Australia has been to align government intervention with addressing problems of market failure and the achievement of explicit and transparent social objectives, and to otherwise allow markets to operate without interference.
- 4.7 Legislation which restricts competition in a particular market, but which effectively addresses instances of market failure will therefore result in positive outcomes for the community. Conversely, it is recognised that legislation can generate public costs:
- where it is ineffective or inefficient in addressing market failure problems;
 - where it duplicates other legislation aimed at addressing the problem; or
 - where it does not address a market failure at all.
- 4.8 To assess the costs and benefits arising from the restrictions identified at paragraph 4.5, the Review Group adopted the approach of:
- identifying the relevant benefits and costs to be included in the public benefit test;
 - where possible, quantifying the identified costs and benefits;
 - undertaking qualitative assessments of the relative magnitude of costs and benefits which could not be quantified; and
 - assessing the net public cost or benefit.
- 4.2 In this process, consideration was given to impacts on:
- economic and regional development, including employment and investment growth;
 - the interests of consumers generally, or of a class of consumers;
 - the competitiveness of Australian business; and
 - the efficient allocation of resources.
- 4.2 The justification for vesting and the associated restrictions on competition are assessed in the following sections.
- 4.3 Under the Act, the Board has a number of other powers, some of which (such as the power to set wholesale prices for coarse grains in NSW) are potentially competition restricting but have never been exercised. The nature of these powers and their continued relevance, are discussed at the end of the chapter.

6 Market failure is defined on page v.

VESTING**Background**

- 4.13 In the marketing of agricultural commodities, vesting is a legislative arrangement under which legal ownership of a commodity is commonly transferred from primary producers to a statutory marketing authority. Vesting is therefore a significant competition restriction.
- 4.14 Typically, vesting has been enacted with a view to providing benefits to growers and the wider community, by:
- (a) in domestic markets, providing primary producers with countervailing power against the greater market power of purchasers of their produce; and
 - (b) in export markets:
 - enabling an industry to take advantage of market opportunities which are unable to be exploited by private exporters acting independently. For example, by creating a single desk seller which can use its aggregate market power to extract price premiums or which can obtain access to restricted markets where entry is limited to statutory authorities; and/or
 - providing primary producers with countervailing power against ‘corrupted’ world market conditions which depress or distort commodity prices (see Appendix 3 for a summary description of production and export subsidies in export competing countries).
- 4.15 Vesting may provide the Board with the capacity to ‘price discriminate’ between domestic and export markets and/or between export markets. Price discrimination refers to the practice of increasing prices in one market by diverting supply to other, less price responsive, markets. The overall objective is to maximise total revenue from the various markets, which may also stimulate production and lead to enhanced supply certainty and continuity.

Countervailing Power in the Domestic Market

- 4.16 Arguments to provide farmers with countervailing power are frequently based on the assumption that unless there are many purchasers of farm commodities there will be an absence of competition and purchasers will be able use their relatively greater market power to force down prices.
- 4.17 Studies of primary product markets in Australia, however, have found that unless there are substantial barriers to entry to the processing and wholesaling sectors the threat of new entrants reduces the extent to which purchasers can abuse their market power.⁷ That is, provided the purchasing sector is contestable, above normal returns earned by

⁷ See, for example, Industry Commission (1991), *Statutory Marketing Arrangements for Primary Products*, AGPS, Canberra, and Industries Assistance Commission (1989), *Food Processing and Beverage Industries*, AGPS, Canberra.

‘middlemen’ will in theory be competed away by new entrants, or alternatively, the threat of new entrants may be a sufficient deterrent to such behaviour.

- 4.18 When markets are contestable, the ability to abuse market power may arise from producers having poor information about the range of marketing options available and prevailing prices. In this case, government intervention that more closely addresses the problem may involve providing an industry body with the power to collect a compulsory industry levy to finance market information services to growers. These issues are discussed further in Chapter 7.
- 4.19 The 1989 inquiry into the Australian food processing and beverage industries by the Industries Assistance Commission concluded that these industries ⁸ were “...*generally competitive and/or contestable*”. However, the NSWGB and NSW Farmers’ Association submissions, together with a number of other submissions, questioned the competitiveness of the domestic wholesale market for commodities such as malting barley and canola (and perhaps even feed barley).
- 4.20 A difficulty for governments in attempting to legislate to provide offsetting countervailing power to a particular industry, rather than correcting anti-competitive behaviour at its source, is identifying how much power should be provided and in what form. There may be public costs in the form of producers extracting above normal returns from value-adding industries, for example, associated with providing a statutory authority (eg., the Grains Board) with powers beyond those required to offset potentially anti-competitive activities of processors.
- 4.21 When anti-competitive behaviour by market participants (eg., market power abuse) does occur, Government policy is to favour addressing the problem through the provisions of the *Trade Practices Act 1974*, notably Parts IV and V. Under the Competition Principles Agreement, COAG agreed to extend this Act to apply to unincorporated businesses and government business enterprises.
- 4.22 This Act, together with its complementary state legislation (the *Fair Trading Act 1987* in NSW), provides general protection for businesses against abuse of market power by other businesses with whom they have dealings. Where there is scope for abuse of market power in domestic markets, best practice regulatory principles adopted by the NSW Government require it to be demonstrated that this generic legislation is inadequate or inappropriate for dealing with the problem before more specific regulation is considered.
- 4.23 Commercial disputes occur in most markets from time to time and it is to be expected that disputation between agricultural product market participants will also arise on occasion. Legal processes are available to the disputants. In addition to the long-standing competitive conduct provisions in the *Trade Practices Act 1974* (section 46), the accompanying boxed section describes new provisions in that Act which relate to commercial disputes involving unconscionable conduct (section 51AC).

8 Relevant industries covered by the Inquiry included: ASIC code 2140: margarine, oils and fats; ASIC code 2175: prepared animal and bird foods; ASIC code: 2186: beer; and ASIC code 2187: malt.

Unconscionable Conduct Provisions of the *Trade Practices Act 1974*

Amendments to the *Trade Practices Act 1974* which came into effect on 21 July 1998, extended the unconscionable conduct provisions to cover small business (section 51AC). The provisions provide an alternative mechanism for small business, which include coarse grains and oilseeds producers, aggrieved in dealings with processors.

The court is not limited to consider specific matters but may consider the following in determining whether a buyer has engaged in unconscionable conduct against a seller:

- the relative strengths of their bargaining positions;
- whether, as a result of conduct engaged in by the buyer, the seller was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the buyer;
- whether the seller was able to understand the documents relating to the purchase of the goods;
- whether any undue influence or pressure was exerted on, or any unfair tactics were used against the seller by the buyer in relation to the purchase of the goods;
- the amount for which, and the circumstances in which, the seller could have supplied identical or equivalent goods to a person other than the buyer;
- the extent to which the buyer's conduct towards the seller was consistent with the buyer's conduct in similar transactions between the buyer and other like suppliers;
- the requirement of any applicable industry code;
- the requirements of any other industry code, if the supplier acted in reasonable belief that the buyer would comply with that code;
- the extent to which the buyer unreasonably failed to disclose to the seller any intended conduct of the buyer that might affect the interests of the seller, and any risks to the seller from the buyer's intended conduct (being risks the buyer should have foreseen could not be apparent to the seller);
- the extent to which the buyer was willing to negotiate the terms and conditions of any contract for the acquisition of goods with the seller; and
- the extent to which the buyer and seller acted in good faith.

Individual producers and the ACCC can bring civil actions in the Federal Court for unconscionable conduct seeking monetary compensation, rescission or variation of a contract, refund, or specific performance of a contract. Actions can also be brought in State Courts of competent jurisdiction.

4.24 An authorisation process allows the Australian Competition and Consumer Commission (ACCC) to authorise commercial behaviour that would otherwise contravene the competitive conduct rules in the *Trade Practices Act 1974*, if the proposed arrangement passes a net public benefit test. Recent examples of this are the authorisations in South Australia of collective negotiation by chicken growers on contract terms with major processors.

4.25 It is apparent that, at least in principle, in the absence of the *NSW Grain Marketing Act 1991*, the potential would still exist for coarse grain and oilseed growers who are dissatisfied with the marketing practices of processors or wholesalers to:

- take legal action under the *Trade Practices Act 1974*;
- seek an authorisation under the *Trade Practices Act 1974*;
- undertake their own processing and marketing through the formation of vertically integrated voluntary business structures, or by investing directly in the existing processing and wholesaling sector; or
- export their product.

- 4.25 For the purposes of this Review, relevant issues in relation to the maintenance of vesting powers in the domestic market were therefore:
- whether there was evidence of, or the potential for, market power abuse in the domestic markets for the commodities vested in the Board; and if so
 - whether the Board could effectively counter instances of market power abuse by purchasers of coarse grains and oilseeds and ensure prices stay at (or quickly return to) competitive levels, and whether this approach is more effective in addressing market power abuse in those markets than relevant provisions of the *Trade Practices Act 1974*.
- 4.8 That is, to assess the effectiveness of the NSW Government's intervention in domestic coarse grains and oilseed markets to provide countervailing power to growers, consideration first needs to be given to the extent to which wholesale buyers (eg., processors) are in a position to exercise market power abuse and the adequacy of the *Trade Practices Act 1974* (Cth) in addressing this problem.
- 4.9 The Review Group recognised an important distinction between the *Trade Practices Act 1974* and the *NSW Grain Marketing Act 1991* in addressing anti-competitive behaviour in that any sanctions under the *Trade Practices Act 1974* that may be ordered can only be initiated after the fact, whereas the existence of a marketing board allows for a pre-emptive approach. It could be further argued, however, that the threat of prosecution under that Act may act as a significant deterrent to anti-competitive behaviour.
- 4.10 The Review Group had concerns about the effectiveness of trade practices legislation in preventing market power abuse in coarse grains and oilseeds marketing. The NSW Farmers' Association submission, for example, noted that "...*successive Trade Practices Acts and consumer protection devices have not stopped the progressive accumulation of retail selling powers, for example, in the hands of Woolworths and Coles, the fact that we have two dominant maltsters in Australia, and the fact that we have a single oilseeds crusher responsible for almost 90% of the market in NSW.*"
- 4.11 Doubts were also expressed to the Review Group as to the practical ability of the prosecution avenue provided by the *Trade Practices Act 1974* to provide redress against abuses of market power:
- because it is difficult to obtain conclusive evidence of market power abuse;
 - because grain farmers often have a real or perceived dependence on their buyers which makes them unwilling to mount a legal challenge, even if they have sufficient evidence; and
 - because of concerns about the cost of mounting such a challenge.
- 4.18 In relation to this last point, while acknowledging that civil proceedings for damages would involve private costs, Government members of the Review Group pointed out that these could be substantially reduced by industry associations taking individual cases forward in order to set precedents that were in the best interests of the industry as a whole. Where a business is suspected of breaching Part IV of the *Trade Practices Act 1974*, an individual producer is simply required to provide the ACCC with substantive

evidence, after which the ACCC meets all subsequent investigation costs and may impose various penalties or prosecute the offender under the Act.

- 4.19 In considering the need to provide growers with countervailing power on the domestic market it was necessary for the Review Group to distinguish between (i) an imbalance of market power between growers and purchasers and (ii) the abuse of market power by purchasers. Given that there will always be differences in market power between businesses, the public policy approach now favoured by government is to regulate to minimise and penalise the abuse of market power.
- 4.20 Statutory marketing legislation operates to counter the *symptoms* of a market power abuse problem rather than its more fundamental *causes*. It is therefore often regarded as a second-best approach compared to use of trade practices legislation, which is designed to operate by correcting the source of the market failure. Correcting the source of market failure, however, can often either be difficult or involve a considerable period of time.
- 4.21 A concern within Government in relation to regulation which is designed to provide a more even *balance* of market power between producers and purchasers rather than focusing on countering market power *abuse*, is that it is a blunt instrument with the potential to more than offset the lack of market power of producers, with possible attendant efficiency losses (see paragraph 4.20). This concern was not shared by the NSW Farmers' Association or the Grains Board in relation to the commodities vested in the Board.
- 4.22 If this does occur, then adverse efficiency effects could involve distortions in price signals to both growers and purchasers of grain, potentially resulting in resources being attracted away from other activities into grain production.
- 4.23 In summary, in the context of the domestic market, justification for vesting depends on there being scope for protracted abuse of market power by domestic buyers which cannot be redressed by trade practices law but which can be effectively countered by vesting.
- 4.24 The Review Group investigation into the need to provide growers with countervailing power to prevent market power abuse by domestic purchasers of the various commodities vested in the Board is reported in Chapter 5. However, many of the arguments of the proponents of vesting were found to relate not only to this issue but to also be closely linked with grower confidence and support for a grower-focused marketing organisation. These issues are discussed in some detail in Chapter 6.

Taking Advantage of the Export Market

- 4.38 As discussed in Chapter 3, it appears that the *NSW Grain Marketing Act 1991* was essentially designed to enhance growers returns by giving the Board the capacity to increase domestic prices by selling coarse grains onto export markets (often referred to as 'exporting domestic surpluses').
- 4.39 In economic terms, this relies on the capacity of the Board to 'price discriminate' between domestic and export markets. Price discrimination refers to the ability to

achieve higher prices in one market by diverting supply to another, less price responsive, market. This provides an opportunity to increase the total revenue obtained from sales into the two markets.

- 4.40 The general case for agricultural commodities produced in Australia is for the domestic market to be more price responsive to domestic supply conditions than the international market is to Australian exports. It is therefore most usual for price discrimination to involve exploiting these conditions to raise domestic prices by redirecting supply onto the world market, thereby increasing growers returns by way of an income transfer from domestic purchasers. The extent of any such transfer is, of course, limited by substitutability and import parity.
- 4.41 Vesting/single desk arrangements may also enhance the capacity of the industry to capture price premiums - by preventing competition from other local suppliers and increasing the market share of the authorised supplier - or gain access to particular export markets, such as those where 'government' bodies are preferred suppliers.
- 4.42 Proponents of supply control regulation also argue that vesting and single desk arrangements provide other benefits such as:
- economies of scale in marketing, storage, handling and processing;
 - the ability to 'aggregate' grain which provides supply security to purchasers;
 - by enabling a single body to control large quantities of grain there is an increased capacity to sell into those export markets with the highest returns; and
 - establishing an organisation dedicated to marketing NSW commodities in priority over commodities sourced from other potential suppliers.
- 4.8 Expanding on this last point, the Board and NSW Farmers' Association representatives on the Review Group made the following observations:

"With single desk sellers such as the NSWGB, dedication to aggressive marketing and market development exists on behalf of NSW growers in direct competition with the trade promoting its cheaper or more profitable grain parcels from other origins. This also very much combats highly funded competitors such as the US Grain Council with its Government and grower backing, to push US grains into world markets at the expense of grain from NSW growers.

Because marketing is much more than price and opportunities, overseas end-users look for suppliers who can be relied upon to deliver grain of consistent quality each year. They also look for suppliers who know their product intimately and can and will assist customers in extracting maximum value from it. The average trader is seen as a middleman and/or logistics provider rather than an owner/supplier, or a 'branded' product supplier. For this reason, a dedicated NSW marketing agent such as the NSWGB will always put more effort into promoting its product than a trader playing one origin off against another.

Vesting in the NSWGB provides industry stability and confidence arising out of having a single marketer legislatively dedicated to the marketing and promotion of NSW produce before all other origins."

4.9 Vesting may also have negative effects, however, for example:

- economic theory suggests that by having only one seller, while higher prices may be achieved in the short to medium term, the drive to innovate and develop new markets and new value added products associated with competition amongst many exporters, which may be of greater benefit to growers in the longer term, may be diluted; and
- prolonged extraction of price premiums from international consumers could be expected to prompt investment in the development of alternative sources of supply and/or the development of substitute products, both to the long term detriment of the industry in Australia/NSW.

4.10 An issue for consideration by the Review Group was whether or not regulation was required to achieve the benefits identified by proponents of supply controls. For example, it is arguable that if benefits such as those relating to economies of scale are valued in the market, then firms which provided these services would obtain a comparative advantage over their competitors, thereby enabling forces other than government statute to determine the socially desirable level at which these services are provided. Where government regulation, such as vesting, is maintained for the purpose of delivering services which would otherwise be delivered by a competitive market, there is no guarantee that the level of service provision will be socially optimal. If there is under or over-investment as a consequence of the intervention, the benefits achieved may be offset by efficiency costs.

4.11 Further concerns with vesting arrangements involving export monopolies, which were expressed in several submissions from the private grain trade and domestic processors, is that they constrain the ability of private purchasers to manage risks (by ruling out the option of on-selling onto the world market) and may lead to higher costs for inputs and services. These are potential deterrents to investment in domestic industries which use the vested commodity.

4.12 In relation to the above-normal returns or price premia which a single desk arrangement may be able to obtain it was necessary for the Review Group to identify the particular type of premia which could only be achieved through regulation. For example, there are a number of different types of price premia which may or may not require or arise from single desk arrangements. Principally the three main types of price premiums available in commodity markets are:

- ‘competitive’ price premiums;
- ‘price discrimination’ or market power price premiums; and
- premiums associated with market intervention in the importing country.

4.8 The three types of price premiums are differentiated from each other by the manner in which they arise in the market place.

Competitive Price Premiums

- 4.49 A competitive price premium reflects the normal activities of suppliers attempting to achieve the highest price possible in a market and/or gain sales over a competitor. There will be a number of factors which determine these price premiums, such as favourable credit terms, services associated with the product, loyalty, security of supply, product quality, and transport efficiencies.
- 4.50 The capturing of competitive price premiums can also be considered as simply selling into those markets where the highest net returns can be earned. Competitive price premiums will therefore be available in both domestic and export markets, and are not dependent on statutory intervention.

Price Discrimination Premiums

- 4.51 Price discrimination premiums result from the ability of a supplier to differentially price their product by customer, place or over time. The ability to price discriminate between markets is commonly referred to as market power. For price discrimination to occur, a seller must face differing demand responsiveness in respective markets. In particular, the exporter must face inelastic demand in some markets such that price can be increased to obtain above normal returns with there being little risk of alternative suppliers entering the market or the purchaser undertaking product substitution.
- 4.52 Where Australian (or NSW) growers produce a product for which there are no close substitutes from other exporting countries, single desk arrangements avoid the situation where a number of Australian exporters would otherwise compete away any potential premiums. Because such returns are dependent upon there being a single exporter and because the opportunity to exploit these returns is only available through statutory arrangements which establish a single desk seller, this form of competition restriction is generally accepted as having the potential to generate public benefits.

Market Restriction Premiums

- 4.53 Market restriction premiums may be generated as a result of intervention in the market by the importing country, such as with quotas and central buying agencies. In the case of a quota, because supply is restricted, the domestic price is likely to be raised relative to prices in unrestricted markets. Therefore, a seller into such a market may be able to extract some of the quota rent.
- 4.54 The price premium received can be difficult to measure, with the best available technique being to compare the FOB price received in this market with the FOB price into a similar market.
- 4.55 In some situations, it could be argued that a statutory marketer has advantages in being able to secure quota, particularly where a central buying agency is involved. Those benefits in terms of market access and price premium directly attributable to statutory arrangements can be considered a benefit for the public benefit test. However, it must be demonstrated that similar benefits cannot be obtained by private traders.

Countervailing Power against Corrupted World Markets

4.56 The information on characteristics of international trade in coarse grains and oilseeds presented in Appendix 3 includes some brief comments on the adverse impact on commodity prices of subsidised production and exports in competing countries, particularly the European Union and the US.

4.57 As noted earlier, the NSW Farmers' Association and NSW Grains Board submissions both raised the issue of 'corrupted world markets' as a major justification for maintenance of the export single desk for the vested commodities, particularly feed grains. The Association, for example, submitted that:

“During the seventies and eighties the large unremitting export subsidies offered by the EU played havoc with world grain prices. ...It was essentially to ...reduce its stockholdings and increase its market share as well as to specifically retaliate against European subsidies that the US in 1985 developed and introduced the Export Enhancement Program (EEP). ...The combination of two major powers using their enormous resources to drive down world prices to levels where even the most efficient grain growers would not make profits was most evident during the early nineties. In 1990-91 it caused a huge fall in returns between sowing and harvest and extreme hardship/dislocation in the Australian grain belt. ...Virtually 10 years later world markets are still corrupt, free market forces are not operating [and] countervailing market forces are still very much required to assist growers to get a fair crack of the whip”.

4.58 In other words, due to production and export subsidies, world market prices frequently are not a true reflection of the costs of producing and marketing the commodities and hence even very efficient producers, such as Australian grain growers, may be unable to obtain a 'normal' return for their product. The expressed concern is that in the absence of the statutory marketing arrangement, returns to growers would be determined, unfairly, by the level of the 'corrupted' world price for their produce. The use of this argument to support an export single desk for NSW coarse grains and oilseeds is based on the contention that this arrangement can to some extent offset these price effects.

4.59 The Board and NSW Farmers' Association made the following additional comments concerning the role of the Board in addressing the problem of corrupted world prices:

- (a) When NSW growers plant their barley each year, they are in a very different market phase to the one existing when they have to market the grain (6 - 18 months later). It is feasible that the market at planting time can be quiet buoyant, and can change and become very depressed due to subsidised planting and/or very favourable growing conditions in the Northern Hemisphere. These may cause overproduction and price discounting by harvest time. The level of production subsidy and export enhancement offered by the EU and USA for the marketing period during which NSW barley is marketed is often not known when planting and farm management plans are made. If overproduction has occurred this then becomes a period when buyers are in a very strong position.

- (b) In this situation, which can last many months, NSW growers may be faced with a lack of buying interest from the trade, due to their access to Government subsidised or discounted grain available on the world market. This is most often the EU and/or the US.
- (c) The existence of the NSWGB and *NSW Grain Marketing Act 1991* in such circumstances enables NSW growers to avoid dumping their grain and chasing the market down simply to obtain cash flow. Through pools and partial cash advances, producers can buy time for markets to recover (as was the case in 1994 following record low prices in 1993, and again in 1998).

4.60 The Uruguay Round of multilateral trade negotiations has to date resulted in some improvement in agricultural trade liberalisation, but its primary benefit has been to commit World Trade Organisation (WTO) member nations to consideration of longer run agricultural reform. The next round of WTO negotiations, which is due to commence this year, may bring about committed reforms. The Australian Bureau of Agricultural and Resource Economics, however, has observed a number of potential threats to further multilateral liberalisation of agriculture and trade policies, including:

- the potential for trading blocs formed by regional groupings of countries to be trade diverting;
- the potential for several developing countries which are going through a period of rapid industrialisation, to adopt protective and trade hindering or distorting policies for agricultural products; and
- the potential for some countries which are not yet members of the WTO to adopt increasingly protective policies toward their agricultural industries before joining the organisation.⁹

4.52 The question of whether the Grains Board can provide some protection to NSW grain growers from the vagaries of corrupted world markets is discussed at some length in the following chapter.

4.53 In this regard, the Review Group noted that while the Commonwealth Government regulates against the ‘dumping’ of products on the domestic market under the *Customs Tariff (Anti-Dumping) Act 1975* and the *Customs Act 1901* to protect local industries from the detrimental effects of a sporadic influx of unreasonably cheap imported products, this legislation is not designed to offset persistently low world prices.

4.54 Furthermore, Government members argued that in the situation where an export industry faces corrupted world prices, the primary form of market failure within the domestic economy is in theory likely to be poor information about future market developments, which may impact on the decisions of producers and cause them to make poor investment choices. To the extent that this is true there could possibly be a role for government in information provision. However, if industry has access to the same information as government, a more efficient outcome will result if investment decisions

⁹ ABARE (1997), Research Report 97.6, AGPS, Canberra.

are made by individual grain growers and their financiers, rather than having government endeavouring to assess the most efficient level of resource retention in the industry.

- 4.55 An equally important question in the debate on corrupted world prices is whether intervention which attempts to protect the incomes of grain producers is the responsibility of the Commonwealth or State Governments. Given its constitutional responsibility for international trade matters, there would appear to be a strong case for this problem to be addressed at the national level by the Commonwealth Government.

IMPLICATION FOR LEGISLATIVE OBJECTIVES

- 4.65 In view of the foregoing discussion, the Review Group concluded that government intervention in the marketing of NSW coarse grains and oilseeds should focus on (i) countering market power abuse by domestic purchasers of these commodities and (ii) enabling exploitation of opportunities in international markets to obtain market power premiums or to gain access to restricted markets.

RECOMMENDATION ON LEGISLATIVE OBJECTIVES

4.66 ***Recommendation 2:***

Further to Recommendation 1, should the current legislative arrangements continue, or alternative statutory marketing arrangements be introduced, the Review Group recommends that the objectives of such intervention in the marketing of NSW coarse grains and oilseeds should relate to:

- (i) countering market power abuse by domestic purchasers of these commodities, but only where it is demonstrated that such abuse occurs (or has the strong potential to occur) and cannot effectively be addressed by recourse to the Trade Practices Act 1974; and*
- (ii) exploiting opportunities to obtain market power premiums in export markets and access to restricted markets for these commodities, but only where extraction of such price premiums or market access is demonstrated to be dependent on intervention by the NSW Government.*

5. NET PUBLIC BENEFIT ASSESSMENT OF COMPETITION RESTRICTIONS

INTRODUCTION

- 5.1 As described in Chapter 2, the NSWGB has vesting powers over certain commodities produced in NSW. Products which are declared to be commodities under the Act - currently barley, oats, grain sorghum, canola, sunflower, safflower, linseed and soybeans - are divested from producers and become the property of the Board.
- 5.2 Vesting not only gives the Board property rights over the commodities, it also places the Board in the position of having to take delivery of all vested commodities which meet specified standards. The Board must accept a vested commodity which is grown in NSW, provided it conforms to the applicable standards of quality or grade and which is delivered to it in accordance with the Act.
- 5.3 A consequence of the vesting arrangement is that the Board is responsible for marketing all commodities of which it takes delivery.
- 5.4 The Review Group was concerned to investigate which, if any, of the Board's activities were dependent on vesting and whether vesting is required to meet the objectives of the Act.
- 5.5 To the extent that these relate to the provision of countervailing market power to growers against purchasers of their products, the Review Group was interested in whether conditions in the domestic and/or international markets for the commodities vested in the Board under the *NSW Grain Marketing Act 1991* are such that vesting is both warranted and effective.
- 5.6 Since its establishment in 1991, the Board has taken compulsory delivery of only malting barley. The vesting power exercised by the Board gives it legal ownership of the NSW malting grade barley crop when it is harvested and requires producers of that grain to deliver the crop to the Board. This arrangement maintains the Board as a monopoly supplier of NSW malting barley in both domestic and international markets. The case for retaining this monopoly position for malting barley is examined later in this chapter.
- 5.7 Other vested commodities (feed barley, oats, grain sorghum, sunflower, canola, safflower, linseed and soybeans) have been permitted to be traded on the domestic market by exemptions from vesting under Authorised Buyer agreements with the Board. Except for the charges associated with the Authorised Buyer scheme - registration fees of \$30 for the first three years and \$25 for subsequent 3-year periods and a grower fee of \$1.50 per tonne of commodity purchased - this arrangement has effectively deregulated the domestic market for these commodities.
- 5.8 This being the case, an obvious question for the Review Group was whether conditions in these markets justify maintaining the Board's vesting powers for these commodities.

- 5.9 At the request of the Review Group, NSW Agriculture established a Research Team to undertake a variety of qualitative and quantitative analyses of the NSW coarse grains and oilseeds industries and the domestic and international markets for those commodities vested in the Board. The results of the analysis of the export activities of the Board are presented later in the chapter. The following sections deal with domestic market issues.

VESTING AND THE DOMESTIC MARKET FOR COARSE GRAINS (EXCLUDING MALTING BARLEY)

Description and Discussion

- 5.10 With the single exception of malting barley, the Board does not use its vesting power to operate a single desk for coarse grains and oilseeds on the NSW domestic market. As noted above, these commodities can be traded through Authorised Buyers.
- 5.11 From the information in Appendix 3 it can be seen that in most years the NSW Grains Board is a relatively significant trader in the domestic market for feed barley and grain sorghum produced in NSW (see Table A3.7 in particular). In the context of the overall volume of trade, however, sales of these commodities through the Authorised Buyer system averaged between 60 and 80 per cent of total domestic sales.
- 5.12 The Board is a minor trader in the domestic oats market.
- 5.13 The Board does not always post cash bids for all vested coarse grains. In its submission to the Review, however, the Board argued that vesting of these commodities in the Board still has an important function, particularly when export ‘surpluses’ occur. “*By having the [Act] and the NSWGB, the Board is able to run pools to receive harvest surpluses and arrange export sales either direct to overseas customers or via the Trade*”. The implicit contention is that vesting underpins the market to maintain at least export parity by placing the Board, which has the export monopoly, in the position of being a buyer of last resort.
- 5.14 The Research Team carried out a qualitative ‘case study’ analysis of the domestic feed barley market to determine whether there was scope for buyers to abuse their market power and drive down prices and, if so, whether the Board could exercise market power and return prices to a more competitive level. Summary data about this market, which are additional to those given in Appendix 3 are shown in Tables 5.1 and 5.2.
- 5.15 The Authorised Buyer scheme provides entry into the NSW domestic market for private traders in NSW feed barley. As detailed in Table 5.1, since the Board’s first full year of operation in 1992/93, on an annual basis Authorised Buyers have handled between 49 and 93 per cent of the domestic trade in NSW feed barley.
- 5.16 The main market for feed barley and other coarse grains is for feed in the intensive livestock industries (poultry, beef, dairying and pigs).

Table 5.1: Exports, NSWGB and Authorised Buyer Sales of Feed Barley

	91/92	92/93	93/94	94/95	95/96	96/97	97/98
	'000t	'000t	'000t	'000t	'000t	'000t	'000t
Australian Exports							
Japan ¹	465	493	537	258	778	689	580
Saudi Arabia	157.0	497.0	na	na	na	na	na
Total	1,148.0	1,679.0	1,949.0	726.0	1,575.0	2,096.0	na
NSWGB Sales							
Japan	20.0	20.0	42.0	20.0	119.1	82.4	82.4
Open Destination sales	-	75.5	35.0	-	155.5	78.2	-
Domestic market sales	-	36.7	120.0	160.0	151.4	89.9	123.3
Total	20.0	132.2	197.0	180.0	426.0	250.5	205.7
Authorised Buyer Sales	347.9	468.6	740.9	151.3	465.1	463.9	652.3
Total NSW Sales	367.9	600.8	937.9	331.4	891.1	714.4	858.0
NSWGB Sales							
As % of national exports	1.7	5.7	3.8	2.8	17.4	7.7	na
As % of exports to Japan	4.3	4.1	7.8	7.8	15.3	12.0	14.2
As % of total NSW sales	5.4	22.0	21.0	54.0	47.8	35.1	24.0
As % of NSW domestic sales	0	7	14	51	25	16	16

Sources: NSWGB (1997) *Annual Report*; ABARE (1998), *Australian Commodity Statistics*; ¹ estimated by NSW Grains Board; na not available.

5.17 The NSW Farmers' Association noted in its submission that, while less marked than in the oilseed crushing and malt industries, there is significant market concentration in the stock feed and feed manufacturing industries. In this regard, the Board also advised that about 60 per cent of the NSW feedlot industry is in the hands of a single operator. This was put forward as one of the reasons for retaining the Board's vesting power over coarse grains, with two implicit assumptions being that there is a need for countervailing power and that the provision of that power would be effective in raising returns to growers.

5.18 The majority of the Review Group considered, however, that there are a number of reasons for doubting these assumptions:

- (a) Barley is a substitutable crop at the farm level and there is no compulsion on farmers to produce it from season to season. Barley grows in a range of physical environments and is usually only one of a number of alternative crops. Presumably, if market prices are too low or the historical experience of dealing with feed barley purchasers has been unpleasant, farmers may choose not to enter the market and produce an alternative crop. Thus, feed barley buyers will have little power over growers.
- (b) Arguably, the larger the on-going throughput requirement of barley purchasers (a large stockfeed manufacturer or the feedlotter mentioned by the Board, for example) the less likely they will be to abuse their market position and threaten the long term continuity of supply which they require to gain an acceptable return on their capital investment.

Table 5.2: Production of Coarse Grains in NSW

	91/92	92/93	93/94	94/95	95/96	96/97	97/98
	t	t	t	t	t	t	t
Barley (feed & malting)	749	1,044	1,310	291	1,074	1,483	1,159
Oats	579	761	613	197	711	610	503
Sorghum ¹	398	283	255	374	499	422	437
Maize	119	108	100	145	190	244	243
Triticale	97	147	110	54	209	335	183
Total	1,942	2,343	2,388	1,062	2,682	3,094	2,525
Barley as a % of Total	39	45	55	27	40	48	46

Sources: ABARE (1998), *Australian Commodity Statistics*; ¹estimated from NSW Grains Board Authorised Buyer sales.

- (c) The grain trading representatives advised the Review Group that in general prices in the feed grain market are more dependent on the world price of wheat than the domestic supply of any individual coarse grain, or even the total supply of coarse grains *per se*. This would imply that domestic feed grain buyers, regardless of their apparent market dominance, have little capacity to force prices down.
- (d) Similarly, it could be expected that a monopoly seller of feed barley (such as the Board if it exercised its single desk power) would have little scope to drive prices up. Recent research by NSW Agriculture identified that there is significant substitution between feed wheat, barley, oats and sorghum on the basis of relative price, provides empirical evidence for this conclusion.¹⁰ An additional factor supporting this view is that the Board's monopoly is only in NSW and any attempt by it to restrict supply and raise coarse grain prices in NSW could be eroded not only by NSW suppliers of unregulated substitutes, but also by an inflow of product from interstate, over which it has no control.
- (e) The grains vested in the Board, while being the major coarse grains produced in NSW (Table 5.2), are only part of a broader group of competing commodities used to manufacture feed (including commodities such as wheat, lupins, maize and triticale¹¹). The Review Group was informed that many of these commodities are readily substitutable products in the feed industry. Thus, if a feed grain buyer did have the capacity to abuse their market power, unless the Board controlled all substitute crops used in the feed industry, it would be unable to effectively counter the abuse because the buyer could purchase the unregulated commodities.
- (f) Finally, world trade in feed barley amounts to around 20 million tonnes per annum (with many traders already operating in Australia¹² and few barriers to entry). Furthermore, Australia is a 'small' country in the context of the global feed barley market and, if necessary, could export a much larger proportion of the annual

10 Singh, I. P. and Brennan, J. P. (1998), Estimation of demand elasticities for major feed grains in Australia, Contributed Paper to the 42nd Annual Conference of the Australian Agricultural and Resource Economics Society, University of New England, Armidale, January, 1998.

11 Wheat dominates these, with ABARE estimating that 5,893 tonnes were produced in NSW in 1997/98.

12 The AGEA member provided the Review Group with a list of four statutory bodies (other than the Grains Board), four Australian-owned companies, 17 foreign-owned companies with Australian subsidiaries and three foreign merchant companies trading in Australia, which could all potentially market NSW coarse grains and oilseeds.

output. Therefore, if any domestic buyer was in a position to manipulate domestic prices, their capacity to do so would be constrained by the prevailing world price and the alternative marketing option it provides growers. It follows that during periods of supply surplus it might also reasonably be expected that domestic prices would be maintained at export parity with or without vesting and the Board's associated export monopoly.

- (g) It further follows that, during periods of reduced supply on domestic markets, prices could be expected to rise to import parity, which would be relatively close to the prevailing world price if importation of feed grains was permitted, or higher if importation is not permitted, for reasons such as quarantine concerns. Provided there is good information in the market place, competition should drive these price effects irrespective of the legislative powers of the Board. For example, members of the Research Team cited the historically high prices paid to growers and manufacturers for stock feed during the major drought in the early 1990s, as evidence of the capacity of market forces to work efficiently in response to reduced supply.

- 5.19 In addition to the above points, a query was raised in relation to the role of the Board if supply 'surpluses' occur during a period of depressed world prices for coarse grains. Given the Board's responsibility to take delivery of all vested grains that conform with relevant standards, its stated intention that it will do so, and international laws preventing 'dumping' on world markets, the Board could have to deal with a build-up of stocks, with the associated issues of storage and disposal management.
- 5.20 The Research Team attempted to determine empirically whether the Board was able to price discriminate between the domestic and export markets for feed barley. Generally, however, econometric techniques can only test for the possible existence of price premiums by testing for price differences into different markets. They cannot provide information on why price differences exist, for example, whether any differences are because premiums are being extracted because of 'tight' demand, or otherwise.
- 5.21 The model used was based on an econometric technique commonly referred to as Carter analysis (see Appendix 9). This approach involves using regression analysis to compare prices in markets over time and to determine if the marketer is able to set different prices across markets.
- 5.22 Due to the small number of sales and the limited number of markets into which the Board sells, the results of the analysis were not robust and could not be regarded as providing evidence either for or against the existence of price premiums for sales of feed barley.
- 5.23 The Research Team then conducted the form of analysis commonly referred to as the 'CIE analysis' as an alternative mechanism for seeking clarification on the ability of the Board to price discriminate. The results of this analysis were also inconclusive. Most members of the Review Group therefore concluded that there was no empirical evidence that vesting enabled the Board to price discriminate and thereby extract price premiums on the export market.

- 5.24 The NSW Farmers' Association and Grains Board representatives were of the view that vesting did enable the Board to price discriminate on export markets and that the apparent lack of empirical evidence of this benefit was due to the data deficiencies noted in paragraph 5.22.
- 5.25 The members of the Review Group except the NSW Farmers' Association and Grains Board representatives concluded that characteristics of the domestic market for coarse grains (excluding malting barley) provide little scope for anything more than sporadic and very limited abuse of market power by buyers, particularly given that export parity should effectively provide a floor in the domestic market.
- 5.26 The NSW Grains Board and NSW Farmers' Association representatives did not share the majority view. They considered it to be of significant benefit to the industry that the vesting/single desk provisions gave NSW growers confidence that a buyer would be present in all areas at times of 'over-supply' either domestically or in world markets.
- 5.27 It was a concern to the other members of the Review Group, however, that the presence in the market of a statutory 'buyer of last resort' could be a disincentive to growers to invest in information to enable an objective assessment of the price risk associated with the production of vested crops. To the extent that growers are shielded from endemic market risks and provided with an operating environment which promotes production decisions which do not reflect market conditions, there is the potential for inefficient levels of investment and for appropriate, on-going, industry adjustment to be impeded. However, no evidence was presented to the Review Group that this was actually occurring.

Industry Support

- 5.28 A proxy measure for the extent of the benefits derived by the industry from the current legislative arrangements is the degree of industry support for the arrangements. The issue of current industry support for the powers and activities of the NSWGB was, however, the subject of considerable unresolved debate amongst Review Group members. It was noted, for example, that:
- the majority of grower submissions supported the Board;
 - a recent survey conducted by the Initiatives Group on behalf of the Board indicated a very high level of grower support; and
 - the NSW Farmers' Association 1998 General Conference voted to "*...support the operation of the NSW Grains Board and its marketing powers and negotiate a satisfactory outcome of the review process consistent with Association policy*".
- 5.27 The Initiatives Group survey found, in summary, that of the 150 grain producers surveyed:
- 95 per cent were in favour of retaining the NSW Grains Board;
 - 10 per cent disagreed with the export single desk;
 - 25 per cent felt deregulation would benefit growers; and

- 85 per cent of malting barley growers, 85 per cent of canola growers and 74 per cent of feed barley growers, were in favour of the export single desk.

5.28 The Board interprets this survey as indicating strong support (and little opposition) amongst growers for the powers and operations of the Board.

5.29 On the other hand, it was observed that:

- a significant number of those who attended the public meetings conducted by the Review Group expressed dissatisfaction with at least some powers of the Board, although the level of dissatisfaction varied across the State;
- the Initiatives Group survey included a significant number of growers from interstate (35 of the 150 respondents) and thus, while it provides relevant information, it could not be regarded as conclusively representing the views of NSW growers of grains vested in the Board;
- the NSW Agriculture Research Team had reservations about the technical validity of extrapolating the results of the survey to all NSW coarse grains and oilseeds producers;
- the vote at the NSW Farmers' Association 1998 General Conference was on an 'all or nothing' (rather than a partial reform) question, and that while it was carried by majority there was a substantial level of opposition to the motion (over 40 per cent);
- the Prime Wheat Association, a producer organisation claiming to represent 8,500 grain growers, including coarse grain and/or oilseed growers, made a submission strongly supporting deregulation, except in relation to single desk exports of barley; and
- the membership of the NSW Farmers' Association includes a substantial number of coarse grain and oilseed growers, but it cannot necessarily claim to represent the view of all coarse grains and oilseed growers in NSW¹³.

5.30 Following the series of public meetings on the Issues Paper, the Chairman of the Review Group summarised his overall impressions of the views expressed at those meetings as:

- general support for the export single desk for malting barley;
- lesser but still strong support for the domestic single desk for malting barley and the export single desk for feed barley;
- at best, moderate support for the export single desk for canola; and
- a lower level of support for the export single desk for oats, grain sorghum, safflower, sunflower, linseed and soybeans.

¹³ The Association advised the Review Group that it has approximately 5,000 fee-paying grain grower members, of which about 4,000 are likely to produce coarse grains and oilseeds. A qualitative assessment was made by Review Group members that the actual number of grain growers in NSW was in the order of 8,000 to 10,000.

- 5.31 This summation was accepted by the AGEA and RMSA representatives and by the NSW Government members of the Review Group.
- 5.32 The Board and the NSW Farmers' Association, however, were of the opinion that attendance at the public meetings was over-represented by opponents of the current arrangements and that the views expressed should not be regarded as being truly representative of NSW coarse grains and oilseeds growers.
- 5.33 Several members of the Prime Wheat Association made independent submissions to the Review casting doubt about the process by which the Association's position was arrived at and explicitly distancing themselves from the Association's view and supporting the *status quo*.
- 5.34 As can be seen from the above discussion, the Review Group was not able to form a clear consensus view of the attitudes of NSW coarse grains and oilseeds growers to the *NSW Grain Marketing Act 1991* and the Board.
- 5.35 The Grains Board and NSW Farmers' Association representatives noted, however, that no grower representative forum or survey has ever voted to oppose the Act and that every survey and conference debate on the matter had always had a majority supporting all current powers, with majorities of up to 85 per cent on canola and barley.

VESTING AND THE DOMESTIC MARKET FOR OILSEEDS

- 5.38 The main oilseeds currently grown in Australia and vested in NSW are canola, sunflower and soybeans, with small areas of safflower and linseed (see Appendix 3). Oilseeds production has shown an increasing trend throughout the 1990s, primarily due to increases in canola production. Canola has emerged as a significant crop in terms of the gross value of both oilseed and total crop production. Canola provides a valuable break in cereal crop disease cycles and has the capacity to improve soil structure.
- 5.39 According to information published by the Canola Association of Australia (*Canola News* various issues), NSW, South and Western Australia and Victoria all have production levels far greater than consumption, leading to export surpluses (for example, it is estimated that approximately 63 per cent of the 1997/98 crop was exported).
- 5.40 As with all vested commodities other than malting barley, the NSWGB permits domestic trading in canola under the Authorised Buyer scheme. As shown in Table A3.5 in Appendix 3, since the establishment of the Board, Authorised Buyers in total have handled the majority of the oilseeds produced in NSW. In recent years, however, the rapid growth in canola production and exports has seen the proportion of the crop traded by the Board increase substantially (to over 30 per cent in 1996/97 and 1997/98).
- 5.41 The Research Team conducted a qualitative assessment of the domestic canola market to determine whether there was scope for buyers to abuse their market power and, if so,

whether the Board having the power to operate a NSW single desk could counter this through price discrimination.

5.42 In its submission, the Board observed that in the domestic canola market “...*there is one industry participant capable of totally dominating seed, oil and meal prices in Australia*”, that being Cargill Australia Ltd.

5.43 According to industry sources, Cargill owns approximately 85 per cent of all oilseed crushing capacity in Australia, and 94 per cent of the oilseed crushing capacity in NSW¹⁴. The Review Group was advised that total domestic seed crush usage is in excess of 300,000 tonnes annually.

5.44 In NSW, Cargill has recently commissioned a new multi-seed (canola, sunflower and soybean) crushing facility at Newcastle, with the potential to process some 230,000 tonnes of seed. In addition, Cargill has large cottonseed crushing plants at Narrabri and Moree, giving the company an overall oilseeds crushing capacity in NSW of around 700,000 tonnes.

5.45 By contrast, the Review Group was informed that the other oilseed crushers in NSW have small plants, with a total capacity of about 53,000 tonnes. These are:

- Cootamundra Oilseeds Pty Ltd (Cootamundra ~ 5,000 tonnes);
- Australian Country Canola (Cudal ~ 3,000 tonnes);
- Seedex (Richmond ~ 15,000 tonnes);
- WC Caines (Maitland ~ 25,000 tonnes); and
- Puroil (Dubbo ~ 5,000 tonnes).¹²

5.44 Other oilseed crushers in Australia include:

- Riverland (Numurkah ~ 80,000 tonnes);
- Seedex (Millicent ~ 25,000 tonnes);
- Davison Oils (Pinjara ~ 25,000 tonnes); and
- Kojinup Oils (Kojinup ~ 3,000 tonnes).¹²

5.45 The Grains Board’s submission contained a comment implying that Cargill may have been abusing its market position:

“In 1991-1993 before the NSWGB became an active participant in the domestic canola market, its research showed that Cargill, then the buyer of almost all canola seed, was consistently bidding prices some \$5 - \$15 a tonne below export parity. Almost immediately the NSWGB commenced trading, Cargill’s bids lifted to export parity.”

5.48 The Board then put forward the proposition that,

¹⁴ Final Registration Brochure, 10th International Rapeseed Congress ‘*New Horizons for an Old Crop*’, National Convention Centre, Canberra, 26 - 29 September 1998.

“It is difficult to see how other market intervention without the freedom and flexibility of the GMA [NSW Grain Marketing Act 1991] could balance this oligopolistic market power/failure”,

and argued strongly in several Review Group meetings that

“...in periods of oversupply and short term low world prices, processors - like Cargill - can be expected to reduce prices to below export parity in this concentrated Australian processing sector”.

5.49 Other members of the Review Group observed, however, that the points noted above suggest that despite Cargill’s dominant market position, the domestic market for canola appears to be contestable and, arguably, that the entry into the NSW market of other traders in the export canola market (eg., the Australian Wheat Board, the Australian Barley Board or private trading companies) would have had the same impact on prices as the Board had.

5.50 Contrary to the Board’s suggestion, the AGEA representative on the Review Group made a submission to the effect that *“...prior to Australia producing exportable surpluses of canola, Cargill and other oilseed processors encouraged domestic production of canola by paying a premium above export parity. This increased the amount of domestically produced canola that crushers could process to meet local oil and meal demand. When Australia became a regular exporter of canola there was no longer a need for processors to encourage canola production and prices reduced to export parity.”*

5.51 The Government members suggested that, in theory, a factor which would now preclude purchasers driving prices below export parity is the substantial development of the canola industry and the increased range of marketing options available in Australia in recent years. This view was supported by the RMSA and AGEA representatives and was also commented on in the submission from the Prime Wheat Association:

“When the original legislation for Government intervention in grain marketing was established in the 1930’s, the Government and growers of the day were of the view that market failure existed. Growers were disadvantaged by poor communication of product pricing, both domestically and internationally, and in conjunction with no alternate storage options were compelled to sell on the day of delivery.

Many growers agree that today’s market environment, however, is substantially different in its operational characteristics, both domestically and internationally. The drivers for this process of evolution are consistent with many other industries. New technologies in the transportation of grain, domestic and international companies providing a range of grain contracting alternatives, using international futures market hedging and reporting to the minute via phone, fax, web site and print on market developments.

Another significant advancement since the legislation and its objectives were established is that grain growers now own and control substantial industry and on-farm storage assets and are pursuing collective action through the establishment of

grower co-operatives. Tools such as grain warehousing and on-farm storage are now being utilised by growers to control when their grain is sold.”

- 5.52 Furthermore, the upsurge in canola planting in recent years in response to persistent high prices is convincing evidence that canola is a substitutable crop at the farm level, with planting decisions driven primarily by considerations of the relative profitability of alternative cropping options. Obviously, farmers can freely choose whether or not to plant canola or to select an alternative crop. If canola prices are not competitive with alternative production options, presumably farmers will choose not to participate in that market. Thus, Review Group members other than the NSW Farmers' Association and Grains Board representatives, agreed that there seems to be little scope for canola buyers to abuse their market power in relation to prices offered to growers.
- 5.53 The point made earlier by the majority of Review Group members in relation to feed grains thus also becomes relevant here. That is, while recognising that canola can be imported into NSW it is arguable that the larger the capital investment and on-going throughput requirement of canola purchasers (Cargill, for example) the less likely they will be to abuse their market position and risk eroding the return on their investment by threatening the continuity of future local supplies.
- 5.54 In addition, with unfettered trade and a strong world market in which Australia is a relatively small player, it is considered likely that the threat or actuality of new entrants would make it improbable that domestic canola prices in Australia (and NSW) would long persist below export parity. Similarly, while ever large domestic surpluses persist, there seems to be little scope for the Board to exercise market power and raise prices beyond export parity.
- 5.55 The NSW Agriculture Research Team also attempted a 'Carter' analysis of the Board's canola trading activities (see Appendix 9). This analysis suffered from the same data limitations as the feed barley analysis and the results were unstable. They therefore could not be regarded as being reliable or providing evidence either for or against the existence of price premiums.
- 5.56 A 'CIE analysis' was also attempted, but the results of this analysis were also inconclusive.
- 5.57 With growth in export demand, the ability of a domestic crusher or end-user with significant market presence to derive above normal profits from growers may depend in part on the type of export trade involved. For example, if trade is principally in oil or meal, then the crusher may have relatively greater market power. If, however, there is also a substantial export trade in seed then the potential for monopoly profits would be eroded by growers selling seed directly onto world markets.
- 5.58 All the industry representatives agreed that there is a substantial trade in canola seed. This suggested to the majority of the Review Group (excluding the NSWFA and NSWGB representatives) that domestic oilseed crushers would have little ability to abuse their market power and drive prices below export parity. Furthermore, these members were of the view that the ability of processors to abuse their market power in

this instance would be further constrained by the capacity of growers to produce alternative crops.

- 5.59 The Review Group sought to explore the potential for market power abuse by domestic buyers of canola by requesting the Research Team to undertake a comparative analysis of canola prices in NSW and Victoria (where both the domestic and export markets are unregulated). The proposition underpinning this request was that market power abuse could be reflected in persistently lower prices in the unregulated Victorian market.
- 5.60 Price series were constructed of the best daily bids in Victoria and NSW (FOB, Fridays, unlimited oil basis) from a suite of major dealers¹⁵ over the period January 1996 to October 1998. From this analysis it was found that prices were higher in Victoria than in NSW 50 per cent of the time (52 of 105 observations) and lower on just four occasions, with an overall average difference of \$2.60 per tonne. This difference was statistically significant at the 99 per cent confidence level.
- 5.61 The relative smallness of this difference was considered by the Review Group to not support the case one way or another, particularly as figures provided by the Board for the period subsequent to October 1998 tended to show the Board offering the highest prices in both States. In addition, members of the Research Team advised the Review Group that it was not possible to determine the cause of the observed price difference and that it may not be appropriate to presume that it is in any way attributable to whether or not the market is regulated.
- 5.62 While the analysis should not be considered conclusive¹⁶, the results do not lend support to a market power abuse argument. Rather, they might support a previously untested contention (of the AGEA representative on the Review Group) that the inability of private buyers to export NSW canola (because of the Board's export single desk) increases their price risk and may reduce the price they are willing to pay for NSW canola.
- 5.63 The Review Group noted that other commentators on grain marketing had drawn similar conclusions. For example, in a recent paper on the Competition Policy Review of the Australian Barley Board it was observed that "*...domestic deregulation does not remove all the problems of regulation of the grain industry while export controls are in place. This is because without the option of exporting grain, large domestic users are unable to manage price risks effectively*" (A.S. Watson 1997, 'The Meyers Report' & the Australian Barley Board, July, Melbourne).
- 5.64 However, an alternative view of the cause of the observed price difference for canola in NSW and Victoria proposed by the NSWGB is that, with NSW being the major canola-producing state, the export single desk in NSW forces traders to compete for export product in the much tighter Victorian market and thereby pushes up prices in that market. (Other members of the Review Group observed that this would imply that Victoria canola growers are beneficiaries of the NSW regulation.)

15 Australian Wheat Board (Portland/Geelong and Port Kembla); Australian Barley Board (Portland/Geelong); NSWGB (Portland/Geelong and Newcastle); Cargill (Portland/Geelong and Newcastle).

16 Use of average per tonne prices on the day would have been more indicative of market conditions, but information on quantities traded is not available.

- 5.65 Consistent with the finding on coarse grains (excluding malting barley) vested in the Board, the majority of the Review Group were of the opinion that a case to maintain vesting of canola (and other oilseeds) could not be made on the grounds of abuse of market power by buyers in domestic oilseeds markets.
- 5.50 While large domestic surpluses persist, it might reasonably be expected that domestic prices will be maintained at close to export parity without vesting and the Board's associated export monopoly and, provided there is good information in the market place, competition should ensure appropriate price signals and efficient investment responses by both growers and processors, without the need for legislative intervention.
- 5.51 The NSW Grains Board and NSW Farmers' Association representatives did not agree with this conclusion and made a further joint submission to the Review outlining the reasons for their position (see the accompanying boxed section):

**Joint Supplementary Submission by the NSW Grains Board and NSW Farmers' Association
Representatives on Reasons to Maintain Statutory Power to Retain Vesting of NSW Canola**

- (a) Canola production and investment in canola processing capacity in NSW have both been increasing under the market regulations. Cargill, the major processor, has recently commissioned a new crushing facility at Newcastle, indicating that the *NSW Grain Marketing Act 1991* has not restricted industry growth, investment or competition in NSW during this period of strong demand for canola.
- (b) Vesting of canola has given the industry confidence and NSW growers can rely on the dedication and loyalty of the NSWGB to provide quality and price signals to ensure that their product meets customer requirements. Growers operate in a highly concentrated domestic market, one that is supply rather than demand driven. Production now exceeds domestic demand; a trend that will continue as international demand remains strong. As production increases and surpluses to domestic requirements need to be managed through periods of oversupply the role of the NSWGB to achieve the best outcome for growers, will become more important.
- (c) As growers continue to switch productive land from other grains to canola, canola will become a core rather than subsidiary income stream for them. Over the past nine years, canola production in NSW has increased from 82,000 tonnes to 600,000 tonnes or a 730 per cent increase. The revenue earned from canola as a percentage of total revenue has however increased by a far greater percentage. This is due to the fact that the unit price of canola is much higher than either wheat or barley (around \$375 versus \$125 to \$135 per tonne) yet the yields are fairly similar (around 1.6 to 1.9 tonnes per hectare). If production, and the shift in area of productive land, to canola continues canola could well account for around 30 per cent of farm revenue of a farmer producing wheat, barley and canola in the farm rotation management program.
- (d) The product will also need to be managed through periods of market failure and price depression just as has been the case with barley in 1993 and 1998. The Board, as a receiver of last resort under vesting, will provide options for the NSWGB and growers to manage cash flow and marketing during periods of uncertainty in future.
- (e) NSW is the largest canola producing state in Australia followed by WA and Victoria. Many factors influence price including quality, location, storage and handling costs and finance costs. The canola prices in NSW and Victoria vary during the year. At harvest time and throughout the year the price in NSW has been consistently close to or about that of Victoria. The NSWFA and NSWGB believe that recent strong direct grower bidding by traders in Victoria is somewhat driven by their inability to export seed bought from growers in NSW. This is forcing them to concentrate their efforts in Victoria. Should NSW deregulate export, the volume of seed available for traders to bid on for direct export would expand by NSW export surpluses (i.e., it would potentially quadruple). The increased competition between growers would be expected to change the concentration of bidding of traders away from Victoria and to reduce prices and competition from traders. The NSWGB would have a greatly reduced capacity to maintain its present strong bids for export sales from both Victoria and NSW, where its prices are always identical and often the highest.

- 5.68 The NSWFA and the NSWGB strongly disagreed that if vesting was removed the market would continue to operate in a way which provides growers with information, marketing options (including risk management) and confidence equal to that of other vested grains competing for the same area, eg., barley. Their view is that removal of vesting will undermine industry confidence in canola, particularly during any periodic downturn in demand.
- 5.69 As a counterpoint to this, the content of the submissions from canola processors and private traders who are potential competitors with the Board indicates that in their view the growth of the industry has occurred *despite* (rather than being in any way attributable to) vesting.
- 5.70 The Board and the Association further believe that without vesting/single desk export powers, it would not be possible for the NSWGB to borrow the current level of funds and purchase such a large proportion of the canola crop. Therefore this would “...represent a drop in demand and a weakening in bidding”.
- 5.71 The submission by the NSWFA and NSWGB representatives was given detailed consideration by the Review Group but the other members of the Review Group found the arguments to be unconvincing.
- These members are of the opinion that the observed growth in canola production is being driven by persistently higher returns to growers for this crop relative to competing alternatives¹⁷ (as noted in paragraph (c) in the boxed section) and, further, that these returns are a function of global demand, which is not influenced by the powers or activities of the Board.
 - Given the already large and increasing export surpluses of canola being produced in NSW and nationally, these members could not accept that the Board had any capacity to raise domestic prices above export parity. Moreover, since the Board itself does not ‘consume’ canola but must on-sell it to domestic or overseas consumers in open competition with many other traders, it is not clear to these members how the activities of the Board can influence the overall level of demand in the market place (other than through storage and supply scheduling services, which could be provided by any trader with access to the necessary infrastructure).
 - These members do not consider that the possibility of future supply surpluses and low prices provides justification for retaining vesting and single desk powers for canola. Rather, it is believed that in the absence of market power abuse a more responsible and sustainable strategy would be to seek to ensure that growers have good information about market conditions upon which to base their crop planting decisions. That is, the industry should be encouraged to adjust in response to market signals rather than being shielded from them (see also the comments at paragraph 5.27).

¹⁷ This view is shared by the Australian Bureau of Agricultural and Resource Economics and other industry commentators as evidenced in papers presented at the OUTLOOK '99 Conference, Canberra, 17-18 March 1999.

THE EXPORT SINGLE DESK FOR VESTED COMMODITIES OTHER THAN MALTING BARLEY**Background**

5.72 In submissions to the Review, some grain growers, the Board and the NSW Farmers' Association claimed that single desk selling on export markets was an important benefit of the legislation establishing the Board. The Board is able to act as a single desk seller of NSW coarse grains and oilseeds on export markets and thereby either access more markets or extract higher export prices than would otherwise be the case. An inference of this claim is that more than one NSW export seller of the vested commodities would result in lower prices being received by NSW growers.

5.73 A critical issue for continued government support for such arrangements is whether a NSW single desk exporter is able to obtain returns above the level that would exist in a non-regulated export market and whether those premiums more than offset the efficiency costs associated with the arrangement. The same issue arises in situations where it is possible that the single desk arrangement provides privileged access to a 'premium' overseas market.

5.74 Factors which impact on the ability of a single desk seller to obtain above normal returns from export markets were discussed in Chapter 4 (and in Appendix 9) and include:

- in the short term, the degree to which the monopolist is able to dominate trade, or particular segments of world trade; and
- in the longer term, the contestability of the markets into which the monopolist sells.

5.71 Potential gains associated with single desk exporting therefore include higher unit returns, while potential costs include:

- the loss of market and product development that might be associated with having a number of competing Australian exporters;
- the administrative cost to industry and government of maintaining the arrangement;
- to the extent that prices received may be 'pooled', inefficiencies in production arising from individual growers not receiving accurate market signals about their product; and
- reduced liquidity and higher input costs in domestic end-user markets, leading to under-investment in that sector.

5.72 In its 1991 report into *Statutory Marketing Arrangements for Primary Products*, the Industry Commission stated that:

"Whatever the rationale, any attempt to achieve higher prices cannot succeed unless Australia can influence the prices it receives on various overseas markets by controlling the quantities and types of supplies entering those markets - otherwise overseas buyers will simply source supplies elsewhere." (p.45)

5.73 The Commission further stated that

“...it is essential to distinguish between premiums earned from ‘market power’ and those earned from ‘quality and services provided’ in any evaluation of the soundness of giving statutory backing for the objective of increasing producers’ returns from export sales.

Quality and service premiums are a recompense for value adding activity and are achievable without statutory intervention. To restrict them to statutory bodies could inhibit innovation or prevent sales being made at least cost. On the other hand, market power premiums would be lost to Australia if supplies going to world markets were not controlled in some way. In this case some form of statutory arrangement might be justified. Thus the control of Australian export supplies, where the conditions for extracting market power premiums are present, can be sound. But if those conditions are absent, control cannot provide a net benefit to Australia.” (p.49)

5.74 In its submission to the Industry Commission Inquiry, the NSW Government itself recognised that there may be grounds for compulsory acquisition or vesting powers when there are opportunities for maximising export income through possible price premiums resulting from single desk selling.

The NSW Grains Board Export Single Desk

5.79 While the Board does not use its vesting power to operate a single desk for coarse grains and oilseeds on the NSW domestic market, with the single exception of malting barley, the Board does operate a single desk for the export of all commodities vested in it.

5.80 The Board in its submission identified a number of areas where it considers benefits arise directly from the NSW export single desk. These are:

- maximisation of export returns to NSW grain growers through the extraction of ‘price premiums’ from export markets which could only be obtained through a single desk;
- access to markets, in particular the Japanese feed barley market, which would not be available to others;
- provision of countervailing market power against concentrations of buying power on export markets;
- dedicated market promotion of NSW coarse grains and oilseeds by the NSWGB;
- assisting the Board provide competition on the domestic market for canola, where a significant concentration of market power exists;
- provision of off-setting benefits to NSW growers in the face of corrupted world markets for coarse grains and oilseeds; and
- the benefits to growers arising from lower marketing costs in export markets achieved by the NSWGB through economies associated with product critical mass and lower financing costs.

- 5.77 The Board and NSW Farmers' Association also argued that quality premiums achieved in a competitive market are not necessarily shared with growers or consumers, but accrue to the strongest player in the supply chain.
- 5.78 The principal commodities exported by the Board are malting barley, feed barley and canola (see Tables A3.6 and A3.7 in Appendix 3). In 1997/98, The Board exported 111,100 tonnes of malting barley (546,000 tonnes in 1996/97), 82,400 tonnes of feed barley (161,000 tonnes in 1996/97), and 105,000 tonnes of canola (124,000 tonnes in 1996/97). Board records indicate that some of these sales were made on an open destination basis. That is, the sales were made to private traders with the Board having no control over, but generally being aware of, the destination of the commodity, as well as in some instances participating in market development.
- 5.79 There were no exports of other vested commodities by the Board in year 1996/97, and just one small shipment (5,000 tonnes of grain sorghum) in 1997/98. According to Board records, during its history there have been only five shipments of vested commodities other than barley and canola, one of safflower and four of grain sorghum. In this regard, the Board advised that over this period domestic demand for these other commodities has remained strong and has successfully competed supply away from export markets.
- 5.80 The Review Group assessed the justification for the export single desk for the vested commodities in four categories; feed barley, malting barley and canola individually, and the other 'minor' grains as a group. In this section of the report, the minor grains, feed barley and canola are discussed. Malting barley is discussed in the following section. As noted previously, the final section in this chapter relates to the unused powers of the Board.

The Export Single Desk for Oats, Grain Sorghum, Safflower, Sunflower, Linseed and Soybeans

- 5.85 While the NSWGB maintains a NSW export single desk over oats, grain sorghum, safflower, sunflower, linseed and soybeans, there has not traditionally been significant export surpluses of these commodities in NSW.
- 5.86 As noted earlier, over its seven year history, exports of these 'minor' commodities by the Board have been limited to one shipment of safflower and three shipments of grain sorghum.
- 5.87 All of these commodities are produced in several other Australian states, and exports of oats and sorghum are made every year from those states by other traders.
- 5.88 The majority of the Review Group therefore agreed to base consideration of whether or not the single desk for these commodities should be retained, on a qualitative assessment of the Board's ability to extract premiums from world markets.
- 5.89 The criterion established by the Review Group was that if exports by the Board to any particular country comprised less than one per cent of total imports into that country, then the Board had no market power in that market. If this criterion was not met in any

of the markets to which the Board exported, then the export single desk in that commodity could not be justified. That is, the decision rule was

Do exports from NSW into any export market equate to more than one per cent of total imports in that market?

⇒ *no - 'significant' market share does not exist - the NSWGB cannot achieve price premiums in export markets, cease price premium analysis.*

⇒ *yes - 'significant' market share exists - move to the next step of identifying 'price differences' through methodologies such as the Carter model.*

5.90 The Board argued that the reason for the limited export history was that during the 1990s there had been strong domestic demand for these commodities and, hence, little in the way of export 'surpluses'. It contended that this situation could change and that the single desk would then become more relevant. The Board representative on the Review Group therefore did not concur with the use of this criterion.

5.91 The Research Team reviewed available international trade data and presented the Review Group with the conclusion that the NSWGB did not have a significant market share in any export market for those particular oilseeds and coarse grains. The situation for the individual grains was summarised as follows:

- oats - no exports;
- grain sorghum - insignificant exports;
- linseed - no exports;
- safflower - insignificant exports;
- sunflower - no exports; and
- soybeans - no exports.

5.88 This implies that the Board is a price 'taker' rather than a price 'setter' and that it can do little, if anything, to influence export prices for these commodities and must accept prevailing world prices, even if they are corrupted by interventionist policies in competing countries. On the basis of this analysis, most members of the Review Group (except the Board and NSW Farmers' Association representatives) concluded that the NSW export single desk for these commodities should not be retained.

5.89 The Board and NSW Farmers' Association representatives did not agree with this position. They were of the view that the Review had focused to an inappropriate extent on the export market and the Board's ability to influence prices for these commodities and had overlooked other benefits of the single desk for growers when making overall decisions in relation to farm management and long term farm sustainability. In this regard they argued that "*... as farm management and ecological sustainability becomes more sophisticated and critical for long-term survival, an integrated farm management program will be essential. Realistic and reliable information will be essential. To imply to growers that there is a strong and ongoing demand for certain crops, eg., oats, when an opportunistic market emerges will not help farmers in the long term.*" Additional arguments put forward by these members for Review Group consideration are shown in the accompanying boxed section.

**Joint Supplementary Submission by the NSW Grains Board and NSW Farmers' Association
Representatives on Reasons to Maintain Statutory Power to Regulate Export Sales of NSW Oats, Grain
Sorghum, Safflower, Sunflower, Linseed and Soybeans**

- (a) There is no evidence that vesting has distorted production of those crops. Nor is there evidence that sufficient supplies have not been available to meet domestic demand at profitable returns to growers when making planting decisions.
- (b) The economic benefit of having a loyal NSW grower organisation, with sufficient critical mass and domestic and international credibility to stand in the market for a range of crops is difficult to quantify but cannot be disputed. These crops, together with barley and canola, form an integral bundle of commodities.
- (c) In the late 1980's, NSW had a number of small marketing Boards responsible for single desk marketing of oats, sorghum and oilseeds. They all eventually became insolvent, due to:
- their inability to spread risks across a range of commodities:
 - insufficient critical mass: and
 - small sales turnover.
- (d) This resulted in each Board having to take on unnecessary risk and impeded their ability to employ adequately resourced and skilled staff to manage the risks and responsibilities.
- (e) By contrast, once all the commodities had been combined under the *NSW Grain Marketing Act 1991*, the NSWGB has overcome the inadequacies of the single commodity marketing organisations. Production and trade in these commodities have increased as industry confidence has grown, benefiting growers and their communities. Exports of barley have increased in a competitive subsidised international market while increases in canola exports have been strong. Domestic demand for oats and sorghum remains healthy and the overall earnings for all crops continues to increase. At the same time the NSWGB's presence in the marketing of all grains, including sorghum, oats and the lesser volume oilseeds, has given growers confidence to improve their marketing and or sell to the NSWGB direct.

5.94 The conclusion drawn by the majority of the Review Group, however, is not predicated on, and nor should it be interpreted as, a forecast of future demand for the commodities in question. Rather, it is derived from what is considered to be convincing evidence that the existing statutory intervention is ineffective and will remain so.

5.95 The other Review Group members do not dispute the points noted at paragraph (a) in the boxed section but contend that they are secondary to the more fundamental issue of whether or not market failures exist which warrant statutory intervention, such as vesting. These members are also inclined to the view that these points provide additional evidence of the relatively inconsequential nature of the export single desk in influencing expected returns to growers and hence planting decisions.

5.96 The majority of the Review Group were therefore unable to agree with the Board and NSW Farmers' Association representative's claims about the "*...economic benefit of having a loyal NSW grower organisation*". Nor, given the range of crops which are competing and/or substitutable at either or both the farm and end-user level and which lie outside the jurisdiction of the *NSW Grain Marketing Act 1991*, could these members agree that the crops vested in the Board form "*...an integral bundle of commodities*".

5.97 This aside, these members are strongly of the view that statutory intervention in the marketing of agricultural commodities should focus on ameliorating identified instances of market failure, eg., market power abuse, associated with particular commodities. To

these members, the fact that there may be other commodities which are substitutable and/or competing at the farm level is no justification for arbitrarily including them in the statutory arrangement unless their markets also are characterised by market failure.

The Export Single Desk for Canola

5.98 Appendix 3 contains some information on Australian and NSW production and global trade in canola. Canada is by far the major exporter of canola seed and meal. Australia is the second largest canola exporter, but has annual exports generally totalling less than 10 per cent of Canada's. Australia's production and export 'surpluses' are, however, growing rapidly.

5.99 Japan is the major importer, followed by Mexico and the European Union. Australian exports in 1997/98 were primarily to Japan, China and Europe.

5.100 The NSW Grains Board maintains an export single desk for canola. Sales by the Board have been made on an FOB basis to date, including some sales to trading houses, although C&F sales may also be made. Those sales which are destined for Japan form only a small proportion of total Japanese imports (estimated to be in the order of 5 per cent). Under current arrangements, the Board allows traders to export canola that is purchased from the Board. The Board, in its submission to the review, described the arrangement as follows:

"The current 'restrictions', that is the operation of single desk exports is only a "notional" restriction in that no exporter at an FOB level is ever denied access to NSW canola for overseas customers. They only need bid a competitive price to the NSWGB and they will gain access to the seed on an FOB or C&F basis. In certain circumstances, also where a domestic trader is caught long on canola seed the NSWGB will stand in the market to buy it at ruling work prices or even assist the owner in exporting it." (page 46)

5.101 Two related questions for the Review Group were whether the Board's activities as an export single desk seller have generated higher returns for canola growers and whether these higher returns could only be achieved with the power of intervention provided to the Board by the Act.

5.102 Several characteristics of the Australian and NSW canola industry and the world market for canola, have a bearing on these questions.

- NSW canola production already substantially exceeds domestic demand and is growing rapidly. The situation is the same in other canola-producing states, which means that the Australian industry is export dependent (as noted in Appendix 3, almost 70 per cent of the 1997/98 national crop was exported). At the same time, however, Australian exports overall are only a small percentage of world trade, both in aggregate and to individual countries. The NSWGB on its own is thus a very small exporter. Given that canola is a relatively homogenous product, this suggests that the Board has negligible market power and hence is a price taker in international markets (see also Appendix 9).

- The Review Group was advised that canola from Australia ranges in oil content by season and region and must compete with canola from Canada, which has established standards for protein and oil, which on average, Australian seed has had difficulty in matching. That is, Canadian product is recognised as having higher ratings for some important quality characteristics, which may limit the potential for Australian growers to achieve competitive or market power premiums.
 - It is widely recognised that demand for mono-unsaturated oils has grown rapidly in recent years. If this demand growth is faster in another country than in Australia then prices could be expected to be higher in that country, particularly if the other market is import dependent. That market would therefore represent a residual market that Australian exporters, such as the Board, could exploit when prices are favourable. Under these circumstances, however, the higher prices received in that market would represent competitive price premiums rather than price discrimination premiums.
 - Canola is freely traded on world markets by private companies and statutory bodies alike and no evidence was presented to the Review to suggest that the statutory marketing authority status of the Board provides it with privileged access to any particular market.
 - The canola trade industry is contestable and well established in Australia and, in addition to the domestic processing industry, even if the Board's export single desk was removed, would provide NSW growers with a wide choice of buyers/agents for their commodity (see Footnote 11, p.35).
- 5.100 The export-dependent nature of the domestic industry and world market conditions for canola, strongly indicate to the majority of the Review Group (except the NSW Farmers' Association and Grains Board representatives) that the single desk powers of the Board do not enable it to obtain benefits for NSW growers that would not otherwise be available to growers in the absence of the single desk. The Board has no capacity to attract market power-based export price premiums, and does not gain access to international markets that would otherwise be closed to NSW product.
- 5.101 Furthermore, it appears to these members that the Board can do little, if anything, to influence export prices for canola and must accept the prevailing world price, even if it is a 'corrupted' price.
- 5.102 The NSW Grains Board and NSW Farmers' Association representatives disagreed with this conclusion and expressed the views detailed in the boxed section overleaf.
- 5.103 The other members of the Review Group did not think it necessary to try to balance the market power of buyers and sellers in the canola market (point (b) in the boxed section). Differences in the size of market participants is a feature of all markets and does not necessarily imply that the markets are uncompetitive or that they are unable to deliver socially desirable outcomes.

**Joint Supplementary Submission by the NSW Grains Board and NSW Farmers' Association
Representatives on Reasons to Maintain Statutory Power to Regulate Export Sales of NSW Canola**

- (a) The NSW Government needs to look ahead to ensure that the industry bodies and arrangements now being put in place for canola, a crop that will continue to earn a greater share of grain revenue from exports out of NSW, capture the benefit for NSW, its rural communities and NSW growers.
- (b) Canola production in NSW is increasing and supplies a concentrated domestic and international market. The balance of power between multiple small sellers and few major buyers is in favour of the buyer unless growers have supports in place to increase their selling power.
- (c) As growers shift productive land (and potential income) from other crops to canola, their dependence on quality information and a loyal buyer (the NSWGB) of canola increases as well. With knowledge that supplies will be managed to benefit NSW growers during tight and oversupply situations they can more confidently plan to manage their farms for long term sustainability rather than short term profit only.
- (d) A single desk seller has to take greater responsibility to lead the industry through crop information, price and quality signals to growers and market development options to processors, as occurs now in the two largest production states, NSW and WA, both with single desks.
- (e) The NSWGB is the only organisation operating in the market that returns all profits to NSW growers. The majority of export traders are international companies with a profit motive benefiting overseas shareholders, or shareholders other than NSW growers.
- (f) Vesting provides a risk management and cash flow option to growers through pooling. This underpins industry confidence when traders shift their interest to other crops at times of US and EU subsidies, credit and discounts. This benefits the community as well as individual growers.
- (g) The EU and US are reviewing the reform agenda and timing of their agricultural policies. This is being done in recognition of the potential social impact on declining rural communities. Just as barley and wheat are being exported into a corrupted world market, canola will inevitably face the same unfair competition. This could occur within 1 to 2 years as palm oil supplies return to normal and farmers around the world turn to oilseeds to counter falling returns from other winter cereals.

5.107 It is the considered opinion of these members that unless there is an identified failure in the export canola market which can be effectively ameliorated through statutory intervention by the NSW Government, neither of which have been demonstrated to be the case, there is no objective justification for maintaining the export single desk.

5.108 Many of the other issues raised by NSWFA and NSWGB members relate to dealing with problems associated with the canola industry potentially failing to respond appropriately to market signals and moving to a position where product is supplied to markets where prices are too low to maintain profitability. As noted at paragraph 5.71, other members of the Review Group do not consider that the possibility of future supply 'surpluses', and low prices, provides justification for statutory intervention.

5.109 These members are of the view that the industry should be encouraged to adjust in an ongoing way to market conditions.

The Export Single Desk for Feed Barley

- 5.110 According to ABARE data, trade in feed barley represents about 20 per cent of the global feed grains markets. Globally, the European Union, Canada and Australia are the three biggest exporters of barley, with Saudi Arabia and Japan being the major importers. Overall, Australian barley exports have been increasing in absolute terms and as a proportion of world trade, and currently comprise approximately 20 per cent of total world barley exports (see Appendix 3).
- 5.111 The NSW Grains Board maintains its single desk for NSW feed barley only for exports. Under the single desk arrangement, private traders can only export the grain if they obtain their supplies from the Board.
- 5.112 From Table 4.1 it can be seen that barley exports from NSW comprise a varying, but usually a reasonably small, proportion of Australian exports overall (7.7 per cent in 1996/97). These figures indicate that the Board's share of the world annual feed barley trade is somewhere in the order of 2 per cent.
- 5.113 The largest markets for Australian feed barley are Japan and Saudi Arabia, both of which are access-restricted markets. Japan is recognised as offering significant premiums over other export markets. The Board's sales to Saudi Arabia are through trading houses.
- 5.114 The Board's sales are a small percentage of total Japanese imports (about 5 per cent in 1996/97). In recent years, Board exports to Japan have increased as a proportion of total Australian exports to that country, but still represent less than 20 per cent of those exports. The Australian Barley Board (ABB) is the principal exporter of feed barley from Australia to Japan, supplying three to four times the amount of feed barley exported to Japan by the NSWGB.
- 5.115 The trade primarily exports Australian feed barley to Iran, Saudi Arabia, Kuwait and Taiwan.

Assessment of Market Power

- 5.116 The 'smallness' of the Board in the context of total world trade in feed barley, was an indication to the majority of the Review Group (except for the Grains Board representative) that it is unlikely that the Board is able to influence the prices it receives on the basis of its market power (see the Holloway analysis in Appendix 9).
- 5.117 The potential case for the Board having market power would be strengthened if the feed barley it exported could be differentiated from supplies from other sources and if there were no close substitutes. However, there are many substitutes and the NSW Grains Board is not the only, or even the major, Australian exporter of feed barley. Both of these facts lend substantial weight to the case against the Board having significant market power in export markets.

Meyers Strategy Group Report

- 5.118 In its submission, the Board quotes economic benefits of the NSW export single desk for barley from a Meyers Strategy Group (MSG) report of 1996.¹⁸ This was a confidential report, which was provided to the Research Team to enable them to provide the Review Group with a critical review of the methodologies used and the findings of the study.
- 5.119 As was confirmed from the report itself, the Board's submission states that the MSG had "*...calculated price premiums of \$2.63 per tonne and a market mix benefit of \$7.08 per tonne in 1996*".
- 5.120 The MSG report notes, however, that the approach used is "*...in effect, measuring competitor price premiums and thus, does not specifically measure the ability of the single desk to price discriminate in order to maximise revenues and thus, the gains are not a direct result of the single desk. The milling wheat report¹⁹ notes that these gains are not necessarily solely attributable to the single desk and identifies alternative structures that could also be used to capture these gains.*"(p19)
- 5.121 Furthermore, in the discussion of Competitor Price Premiums in Appendix 1 of the MSG report, it is noted that there may be non-price factors associated with such premiums and that these are all normal business operating processes and normally have no connection to market power. The subsequent discussion of 'market mix' gains or losses acknowledges that such gains are not a true measure of the ability of the firm to achieve gains by the use of market power since market share will not necessarily be proportionately distributed even if all suppliers have equal (or no) market power.
- 5.122 Therefore, significant doubts have been raised, including in the report itself, about the validity of attributing the apparent benefits to growers from the Grains Board's export barley marketing activities estimated by MSG, to the market power of the Board, and hence, to the statutory power provided to it by the NSW Government.
- 5.123 Support for this view is offered by the findings of the recent Competition Policy review of the Australian Barley Board²⁰, which concluded that there was no evidence that that Board - which trades much larger volumes of barley into the same markets as the NSW Grains Board - extracts premiums from international markets through market power (see Appendix 6).
- 5.124 In relation to the issue of 'corrupted' world markets, the AGEA representative pointed out that for Australia to argue for greater market access for our export grains, whilst at the same time maintaining export monopolies as a means of combating this problem,

18 Meyers Strategy Group (1996), Economic Analysis of the Value of the Single Desk, Report to the NSW Grains Board, Meyers Strategy Group, Sydney.

19 A study by the Strategic Planning Unit (SPU) of the value of the Australian Wheat Board single desk for milling wheat commissioned by the Grains Council of Australia. The MSG used an approximation of the methodology used in the SPU report.

20 Centre for International Economics (1997), Review of the Victorian and South Australian Barley Marketing Act 1993, Final Report to the Department of Natural Resources and Environment, Victoria, and Primary Industries South Australia.

would be sending mixed and confusing signals. Thus, it would make little sense to argue for a single desk marketing board to protect growers from governments that are currently using export and production subsidies. Whilst there still are some countries which continue to use subsidies as a means of increasing agricultural production and exports, the AGEA believe our best efforts to promote reform and argue from a position of strength, would be spent in leading by example and presenting to the world a system free of unnecessary trade encumbrances.

The Japanese Market for Feed Barley

- 5.125 The Board and other proponents of the NSW export single desk for feed barley contend that a major justification for the single desk is that it is the source of the Board's access to the Japanese market.
- 5.126 The Japanese Ministry of Agriculture, Forestry, and Fisheries is the official agricultural department and is involved, with the Ministry of International Trade and Industry, in international trade through import allocations. Japan still maintains some protective measures (including tariffs, quotas, and non-tariff barriers) on imported commodities to provide price and income support to its producers and security of supply to its consumers.
- 5.127 The Japanese Food Agency (JFA) also intervenes in trading arrangements (including import arrangements) for non-domestically produced commodities, eg., barley for human consumption, soybean, rapeseed, and livestock feeds (barley, rye and oats). The primary reason for intervention in these markets by the Japanese Government is the Food Security Policy. The main method of market intervention is import quotas administered by the JFA. The JFA offers weekly tenders within an overall annual quota allocation system.
- 5.128 While the Review Group was not itself able to obtain data to demonstrate the point or measure the premium, it is widely recognised in the industry that the Japanese pay above prevailing world prices for quota grain in order to guarantee continuity of supply. Several recent studies²¹ of Australian feed barley exports have been unanimous in coming to this conclusion. In its submission the NSW Grains Board provided confidential information about the size of the premium, indicating that it provides a significant margin above "...the lowest price markets".
- 5.129 Access to this market by the Board, and the price premium associated with sales, is said to be due to the Board being able to guarantee surety of supply to the JFA because the Board is a statutory authority. It is known, however, that while the JFA prefers to deal with statutory authorities, it does not exclude private traders. For example:
- in 1997 some companies in Canada achieved rights to supply barley to their own customers in Japan (source: Canadian Wheat Board 1997);
 - US barley is sold to the JFA by private traders;

21 For example, Meyers Strategy Group (1996) (referenced in Footnote 18, p54) and Centre for International Economics (1997) (referenced in Footnote 20, p55).

- the Review Group received confidential advice from a private company in Australia stating that they have a JFA quota for Australian wheat and barley; and
 - the JFA announced in March 1998 that it is looking into a Simultaneous Buy-Sell (SBS) system, which would allow Japanese end-users to determine their quality specifications and which grain company to buy from, while the JFA would still actually purchase the commodity (source: Idaho Barley Commission, 1998).
- 5.123 It was further suggested that part of any premium for Australian barley would be due to its quality attributes. The industry representatives on the Review Group explained that Australian feed barley has a bright, plump grain which is popular in Japan and the Middle East.
- 5.124 In response to this, the NSW Grains Board argued that private traders exporting feed barley to Japan, eg., the traders who fill the US allocation, do not receive the same price as Australian statutory marketing authorities. In its submission, the Board claimed that these sales face price discounts compared with Australian sales.
- 5.125 The Review Group requested that the Research Team give consideration to this issue. The Research Team was not able to obtain a sufficient body of data to enable any quantitative conclusions to be drawn. The evidence that was obtained did tend to support the contention of a significant discount on US feed barley sales to Japan over Australian sales.
- 5.126 A Japanese representative met with some Government members of the Review Group and gave evidence that NSW Grains Board sales of feed barley to Japan do attract a price premium over many other suppliers into that market, and that both access to feed barley quota and the price premium were largely attributable to the quasi-government status of the Board.
- 5.127 The recent review of the Australian Barley Board concluded that access to the premium Japanese feed barley market could be maintained through means other than an export single desk. In contrast, however, based on advice from the Japanese Food Agency, the 1995 review of grain marketing arrangements in Queensland recommended that export single desk arrangements be maintained (see Appendix 6).
- 5.128 While confident that continued access to this market is dependent on the Board's statutory authority status, the NSW Farmers' Association representative also made the point that it would be unwise to risk potential loss of access, and subsequent reduced returns to NSW growers, on the off-chance that it is not.
- 5.129 The export single desk may, however, impose costs on domestic end-users associated with the lack of development of risk management options and an increase in risk caused by not being able to use the export market to offset risk. That is, it may transfer some risk from producers to domestic end-users. The submission from the Stock Feed Manufacturers' Association of Australia described it in this way:

“Risk management strategies available to domestic users are limited by the existing single export desk arrangements, with consequent effects on prices. This is particularly

the case for barley. The once a year nature of the single desk dominated domestic market means that a substantial proportion of a user's requirement must be locked in by some form of physical price fixing contract at harvest. Unlike the circumstances which apply in a sophisticated deregulated market, there is severely restricted liquidity and uncertain trade in feed barley throughout the year under the present regulated system. This means that consumers are largely locked into the market price applying at harvest time.

During the year, the world price for barley varies with northern hemisphere harvests. Seasonal world barley price lows in August and September associated with European harvest supply contrast with Australian prices. The cash barley price locally is typically highest in August and September. In general, Australian cash prices are not very well aligned to the export price. The differential widens progressively from January through to September before falling through the Australian harvest period.

The inability in Australia to tap into world price movements, combined with carry costs imposed by the need for major harvest buying in November and December, add an estimated \$7.50/tonne to the cost of barley procurement versus overseas competitors. In addition, the inflexibility of inventory resale (in NSW only through the NSW Grains Board to export) adds costs in some years when alternative grains become available at a competitive price or business volume declines. This 'cost' is difficult to estimate.

Control of coarse grains export by the NSW Grains Board results in poor domestic market liquidity. No sector of the industry (grower, private trader or end user) has the ability to manage price risk in a global market context for these grains because of the export arrangements. traders are not able to hold large positions that would improve liquidity in domestic markets because they cannot access export markets. This has the effect of reducing the number of participants in the domestic sector and places a major constraint on growth in the production and consuming sectors of the grains industry."

- 5.130 The Review Group was not able to quantify this cost, but made a judgement that it was likely to be well below the benefits to the barley industry from privileged access to the Japanese market and the associated premium.
- 5.131 The Review Group therefore reached the conclusion that the weight of evidence was that statutory powers provided to the Board by the NSW Government to export NSW feed barley appear likely to deliver premium returns to NSW barley producers and a net benefit to the NSW economy through the access it provides to JFA quota. According to the Australian Barley Board, this benefit is in the order of \$20 per tonne, which over sales of 80,000 to 100,000 tonnes amounts to a benefit of \$1.6 million to \$2.0 million per annum.
- 5.132 This conclusion is dependent, however, on the continuation of current market conditions in Japan and the Board's continued access to that market. Deregulation of the Japanese feed barley market to provide enhanced access by private traders, or loss of access to the premium market by the Board, would eliminate these benefits.

DOMESTIC AND EXPORT MARKETING ARRANGEMENTS FOR NSW MALTING BARLEY**Background**

- 5.140 Traditionally, South Australia has been the major barley producing state in Australia. While it maintains this status, NSW, Victoria and Western Australia have all expanded their share of national production and are now almost on an equal footing (see Table A3.1 in Appendix 3).
- 5.141 Almost all malting barley which is grown in Australia and is classified as malting quality is ultimately used to produce beer. Before malting barley can be used in the brewing process it must be malted - that is, it must undergo a controlled germination and redrying process that prepares the grain for brewing. *“The conversion of malting barley into malt and then into beer is a complex process, the outcome of which is highly dependent on the biochemical composition and physical qualities of the original grain.”*²²
- 5.142 The suitability of barley for malt production depends on a number of features of the parcel of grain including:
- variety and intrinsic quality characteristics;
 - ability to germinate evenly and to the required percentage;
 - moisture content;
 - protein content and consistency;
 - grain size; and
 - freedom from damage (from weather, harvesting, insects).
- 5.136 The production of malting grade barley therefore depends not only on the variety of barley planted but also on good management and favourable agroclimatic conditions during the growing season. A grower thus does not know whether they will actually produce malting grade barley until after harvest. Barley that does not make malting grade enters the feed barley market.
- 5.137 The NSW Grains Board’s vesting power over malting barley gives the Board legal ownership of the NSW malting barley crop when it is harvested and requires producers to deliver the crop to the Board. Through this power, the Board has maintained single desk seller status in both the domestic and export markets for malting barley produced in NSW.
- 5.138 The Board allows some direct purchasing of malting barley from growers by maltsters, but usually charges the purchaser a negotiated fee in the order of 2-3 per cent of the purchase price for grain obtained in this way.

22 The Boston Consulting Group (1994), *Australia’s Malting Barley Industry Strategy: The Final Report and Strategic Recommendations to the Grains Council of Australia’s Malting Barley Strategic Planning Unit*, The Boston Consulting Group, October.

- 5.139 The Board's exports vary considerably from year to year depending on production (Table A3.6). In the most recent year, 1997/98, the Board exported 90,500 tonnes of malting barley to China and 20,600 tonnes to Japan (1996/97 exports totalled 546,000 tonnes, all of which went to China) and sold 194,900 tonnes to domestic buyers, mainly maltsters (175,000 tonnes sold domestically in 1996/97).
- 5.140 The NSWGB does not have any regulatory control over the product once it is no longer whole seed (i.e., once the process of turning the barley into malt has begun).
- 5.141 The main users of malting barley in the domestic market are the malt houses, which process barley to produce malt for use by the domestic brewing and food industries or for the export market. According to the Board, maltster requirements for NSW malting grade barley remain fairly constant from year to year, at about 200,000 tonnes.
- 5.142 Certain sales of malting grade barley have been exempted from vesting, allowing maltsters to purchase barley directly from growers. The exemptions are granted in specific cases and are mainly based on variety. Specifically, exempt varieties are those considered to be non-mainstream, where the total volume traded is low, and in those situations where malting companies own the plant variety rights to a particular type of barley.
- 5.143 The Act allows the Board to operate payment systems whereby prices received by growers of similar classes of products are as equal as possible. For the receipt of malting barley, the Board operates a number of pools. That is, prices received and costs deducted (except for quality differentials, freight, and storage in some cases) are pooled across all growers delivering their commodity to the Board, in a particular pool.
- 5.144 Key issues for the Review Group were whether there is likely to be significant abuse of market power by domestic consumers of malting barley (i.e., maltsters) and whether the single desk gives the Board the power to obtain above normal returns from international markets or obtain access to international markets which could not otherwise be realised.

The Domestic Single Desk for NSW Malting Barley

- 5.152 Evidence was presented to the Review Group indicating that there has been substantial investment in the malting industry in NSW in recent years. The NSWGB tabled information highlighting that:
- in September 1992, Joe White Maltings Limited increased its malting production at its NSW plant in Tamworth by 12,000 tonnes, or 27 per cent;
 - in July 1998, Barrett Burston Malting Co Pty Ltd increased production at its Thornleigh plant by 3,600 tonnes (10 per cent); and
 - the majority of expansion in Australia has been conducted in the south-eastern corner of the country, where 70 per cent of Australia's malt is produced. The main reason for this is that production costs are greatly reduced in the cooler climates found in this region: a cooler climate is preferred for malt production due to the heat produced by the germinating grain and the substantial costs associated with

running chiller plants to cool the grain and control the temperature during malt growth, particularly during the Summer period.

- 5.145 Notwithstanding the above, Joe White Maltings Limited submitted to the Review Group that downsides of continued regulation of malting barley would be “*no serious investment in barley breeding*” and “*no capital investments in replacement malting plant or new facilities*”.
- 5.146 The submission by Joe White Maltings Limited also provided information on the current location and capacity of malting companies in Australia as detailed in Table 5.3.

Table 5.3: Location and Capacity of Malting Companies in Australia

Company	Plant locations	Malt production (malt tonnes)
Joe White Maltings Limited	All States	275,000
Barrett Burston Malting Co Pty Ltd	Qld, NSW, Vic	250,000
Doosan Australia Pty Ltd	Victoria	55,000
Adelaide Malting Co. Pty Ltd	South Australia	45,000
Kirin Australia Pty Ltd	Western Australia	45,000
Maltco Pty Ltd	Victoria	30,000
Cascade Brewing Co Pty Ltd	Tasmania	5,000

Source: Submission by Joe White Maltings Limited

- 5.155 The Review Group observed that the Australian and NSW domestic markets for malting barley are heavily concentrated in the hands of two maltsters, Joe White Maltings Limited and Barrett Burston Malting Co Pty Ltd. These two companies are also the only ones with plants actually located in NSW.
- 5.156 In their submissions, the Board and the NSW Farmers’ Association argued that the imbalance of market power associated with the concentration in the domestic malting barley market places growers at a substantial disadvantage in selling their product and warrants the establishment of a single desk to provide growers with countervailing power (according to the Board it currently supplies all the NSW requirement for malting barley).
- 5.157 Barrett Burston Malting Co Pty Ltd put forward the counter argument that maltsters are in fact captive to growers as they have no other means to source the barley and there is no substitute in production for malting barley. On these grounds they concluded that “*...the end-users of malting barley cannot be considered to hold any market power in relation to growers*”.
- 5.158 Once again, however, the key issue for the Review Group was not whether the malting barley market is characterised by an *imbalance* of market power, but whether there is potential for market power *abuse* by purchasers in the absence of regulation such that the creation of monopoly selling arrangements is both justified and effective in preventing such abuse.

5.159 While malting barley is generally a higher return crop than feed barley and hence may be a desirable crop selection for growers, the Review Group noted that, as with feed barley and canola, this crop is substitutable with many other crop enterprises. That is, entry into this market by growers on a season to season basis is voluntary and is based on agronomic and commercial considerations.

5.160 Importantly, the research into the marketing of Australian malting barley by The Boston Consulting Group²³ concluded that,

“Malting barley is not a commodity. This puts growers in a strong position to capture returns from their industry.”(p.7)

“In all but the most distorted market conditions, malting barley growers have considerable opportunities to capture the benefits of differentiation because the greatest point of differentiation in the malting barley value chain is the grain itself. For example, some United States growers receive premiums of up to \$A30 per tonne for particular parcels of malting barley. The grain variety and its level and consistency of protein and moisture are the primary sources of these premiums. ...There is no necessity for malting barley growers to own or control organisations that influence industry pricing structures. Growers who supply grain of the required biochemical composition and consistency will attract a price determined by the customer’s need for their product. ...He or she can capture the benefits of this differentiation in the value chain.” (p95-96)

5.161 The discussion of malting barley production and marketing in Appendix 3 indicates that there is a relatively steady international market for malting barley in the order of three million tonnes. The NSW industry, and hence the Board, is small in relation to the total volume of trade (NSW malting barley exports comprise in the order of 10 per cent of national exports, which in turn comprise about 10 per cent of world exports). In this context, domestic purchasers face competition from export markets and even in the absence of market intervention the domestic price would be constrained to remain at least at export parity.

5.162 It was generally acknowledged in submissions to the Review that the domestic single desk for NSW malting barley provides the Board with market power and enables it to extract a price premium from local malt producers. This was confirmed by research conducted by the Research Team. The magnitude of this premium, over and above the price obtained from alternative (export) markets, was estimated to have averaged in the order of \$15 per tonne over the life of the Board.

5.163 This is consistent with, but cannot be directly compared to, the conclusion of the national level research conducted by The Boston Consulting Group, which found that,

“Under current marketing arrangements, malting barley destined for the domestic malt market receives a higher price than other malting barley that goes to export markets. This home consumption premium varies from state to state and year to year, depending on world malting barley prices and local supply conditions. In

23 The Boston Consulting Group (1994) (referenced in Footnote 22, p59).

some years malting barley for the domestic malt market attracts prices that are as much as \$50 per tonne greater than the export price.”(p.51)

- 5.164 The premium calculated by the Research Team involves estimated average annual transfers from domestic maltsters to growers of approximately \$1 million, and associated (but very small) public costs resulting from inefficient resource allocation (see Appendix 9).
- 5.165 The research results should not, however, be interpreted to mean that processors would necessarily capture the full estimated benefit of reduced costs (i.e., \$1 million per annum) if the domestic market for malting barley were to be deregulated.
- 5.166 The Review Group accepted that the premium incorporates to some extent the value of services (eg., price and quality risk management, accumulation, storage, delivery) provided to end-users by the Board. Hence, the transfer would be less if these services were valued separately. In this regard, however, the Review Group noted the support for deregulation by maltsters and, in particular, the point made in their submission that *“In Barrett Burston’s view, the benefits from vesting (i.e., an assured accumulation mechanism) are outweighed by the costs in terms of higher raw material prices”*.
- 5.167 In summary, in their submissions to this Review maltsters argued for deregulation of the domestic single desk for malting barley. An alternative, second-best outcome outlined by the maltsters would be for the Authorised Buyer scheme to be extended to also cover malting barley, with the associated fee to be not more than \$1 per tonne.
- 5.168 As noted in Chapter 3, it was drawn to the attention of the Review Group by the Board that as recently as 1995, the maltsters had publicly supported the retention of vesting and single desk selling. The Review Group is not aware, however, of the reasons for the change in attitude of the maltsters.
- 5.169 In light of the above points, the majority of Review Group members (except the Board and NSW Farmers’ Association representatives) concluded that while vesting of the NSW malting barley crop in order to establish a domestic single desk benefited growers without appearing to generate significant public costs, it could not be justified on the grounds of potential market power abuse by domestic maltsters.
- 5.170 The NSWFA and NSWGB did not agree with the above conclusion. They hold the view that the domestic single desk for malting barley must be retained: In support of their position, they made the points set out in the accompanying boxed section.
- 5.171 The majority of Review Group members are satisfied that there is no demonstrated market failure to justify intervention which has the effect of redistributing income along the domestic value chain for malting barley. It is the view of these members that support for maintaining the current domestic regulation must necessarily therefore involve a value judgement that the associated transfer from domestic maltsters (and potentially from beer consumers) to growers is desirable on other grounds. The point made at (a) in the boxed section reflects a judgement of this nature on the part of the NSWFA and NSWGB representatives. The other members of the Review Group did not believe it to be their role to make such judgements.

**Joint Supplementary Submission by the NSW Grains Board and NSW Farmers' Association
Representatives on Reasons to Maintain Statutory Power to Regulate Domestic Sales of NSW Malting
Barley**

- (a) The Research Team estimated that there is a small transfer from domestic processors to growers in NSW. In the NSWGB submission a case study calculated that the cost of malting barley represents less than 0.6 per cent of the price of beer. Given the insignificant size of the transfer from processors to growers this will not have any impact on the cost of beer to consumers. Even in situations where an ingredient with a much higher percentage of the total final cost of the branded product decreased in price it was not the consumer that benefited, rather someone along the value chain.
- (b) No quantitative evidence was presented to the Review Group to prove that the malting industry or community in NSW had been disadvantaged through vesting or single desk selling. Investment is still occurring in the malting industry in NSW and the fact that the NSWGB supplies more barley for domestic beer than any other state and that the NSWGB is supplying malting barley processors in at least three states (QLD/NSW/VIC) is strong evidence of the benefits of present malting barley vesting.

5.172 Contrary to the point made at (b) in the boxed section, the majority of the Review Group found the empirical results of the NSW Agriculture research and the findings of other recent reviews, together with the submitted views of maltsters themselves, to be conclusive evidence that the malting industry in NSW was in fact being disadvantaged by single desk selling of NSW malting barley on the domestic market. While the transfer may not be substantial at the retail level (i.e., from consumers), it is a burden for individual firms competing in the malting industry.

The Export Single Desk for NSW Malting Barley

5.173 The Board maintains an export single desk for NSW malting barley. The major market for sales by the Board is China, where the Board has undertaken substantial long-term market development.

5.174 While the Board is a relatively small player in the overall world market for malting barley, it holds a substantial share of the Chinese market. Total imports of barley into China were approximately 2 million tonnes in 1996/97, most of which was sourced in Australia, with 546,000 tonnes of malting barley (27 per cent of total barley imports) provided by the Board (see Tables A3.2 and A3.3 in Appendix 3). In the most recent year for which data are available (1997/98) the Board exported 90,500 tonnes of malting barley to China. This provided a basis for the Review Group to consider whether the Board may be able to exercise market power and extract market power premiums from the Chinese market.

5.175 In relation to the issue of potential export price premiums for malting barley, the submission from the Board stated that “...the Meyers Strategy Group calculated price premiums of \$2.63 per tonne and a market mix benefit of \$7.08 per tonne in 1996” and that “...the NSWGB under the GMA was extracting premiums of \$7-\$12 due to its single desk powers”. Unfortunately for the purposes of this Review, the calculation of these price premiums did not discriminate between feed and malting barley. The Board, however, is convinced that this finding applies to malting barley and that the Chinese market is a premium market compared to other overseas markets.

- 5.176 In contrast, the 1997 Competition Policy review of Australian Barley Board sales conducted by the Centre for International Economics found “...no evidence of price premiums in China”.²⁴ This finding is supported by information in the 1994 report by The Boston Consulting Group, which indicates that, at that time, China was a ‘middle of the road’ market for Australian malting barley. The Review Group recognised, however, that neither of these studies focused on export sales of NSW malting barley by the NSWGB.
- 5.177 As discussed in the previous section and described more fully in Appendix 9, the Research Team undertook a range of empirical analyses of the Board’s malting barley sales data to determine whether the Board is able to obtain market power premiums. The results of these analyses indicated that market power premiums are being extracted from *domestic* end-users through the export of domestic ‘surpluses’. The available sales data were not sufficient, however, to draw any robust conclusions as to whether or not the Board was obtaining market power premiums in export markets such as China and Japan.
- 5.178 Recent contract data were provided confidentially to the NSW Government members of the Review Group by the Grains Board. These showed that, similarly to feed barley, worthwhile price premiums were being received for NSW malting barley (actually sold as *food* barley) exported to Japan rather than other overseas destinations.
- 5.179 While good relations have built up between malting barley purchasers in China and the Grains Board and could influence sourcing and pricing decisions by Chinese importers, the Review Group also gave consideration to whether the presence of competitors in that market would limit the potential to obtain market power premiums except perhaps on an occasional and sporadic basis. For example, other exporters of Australian malting barley are direct competitors with the Board in that market, and in most years the Australian Barley Board has a larger share of that market than the Grains Board.
- 5.180 In its submission, the Board attributed the premiums it claimed to be receiving in the Chinese market to “...*service, supply reliability, quality management and technical support offered*” and premiums obtained in Japan to the JFA system of buying from Boards. The Board also observed that it has a product differentiation advantage in the Chinese market: “*China also has a preference for Schooner (and to a lesser degree Grimmett) malting barley because Schooner is the easiest of all malts to filter in the wort and filtration phase (Grimmett is similar). This relates to the low wort beta glucan levels in NSW barley.*”
- 5.181 It follows that a potential source of market power premiums is the relatively inelastic demand in China for Australian Schooner barley. This potential would, however, be undermined to the extent that there is competition between the NSW Grains Board and other suppliers of Schooner barley to that market (the Australian Barley Board, for example).

24 Centre for International Economics (1997) (referenced in Footnote 20, p55).

- 5.182 The Centre for International Economics report on the Australian Barley Board argued that, *“China is a highly contestable market, despite the significant share the ABB has in the market. There is no reason to believe that any consistent premiums could be extracted from the Chinese market in the future as a direct result of the ABB’s single desk status”* and went on to conclude that any export price premiums obtained for malting barley were most likely attributable to the special characteristics of Schooner barley, which make it a preferred grain in China, Japan and the Middle East.
- 5.183 The 1994 Boston Consulting Group report found that Australian malting barley:
- “...is low cost, robust, quick malting but, for some export customers, of relatively low diastatic power.²⁵ When delivered to malthouses in consistent parcels it is attractive to maltsters in the domestic and the majority of export markets”(p4);*
and
- “...is ideal for this developing Chinese market, which requires grain that is easy to malt with unsophisticated process control, has a rapid malting cycle and is clean and residue free.”(p.70)*
- 5.184 These observations tend to undermine the contention that the Grains Board is able to extract market power premiums in the Chinese market and lend credence to the contention expressed in the submission made by the Prime Wheat Association that *“Premiums ...obtained for growers by the NSWGB ...are largely derived from quality aspects of the grain and market development activities of the NSWGB.”*
- 5.185 In its submission to the Review, however, the Board argued that the principal factor in supply reliability was its ability to vest the commodity and thereby control the entire supply from NSW, and that *“a premium market like Japan will be lost to NSW growers without a single desk seller”*. That is, the Board is of the view that the export premiums it obtains, while appearing to relate to factors other than market power, may still be dependent on the statutory foundation of the Board.
- 5.186 The Board and NSWFA further contend that NSW coarse grain growers need a mechanism to ‘protect’ them from the effects of corrupted world markets and the best mechanism is the NSW export single-desk. To illustrate, the Board described in its submission the deleterious effect that production subsidies and export restitutions have had on world barley prices in the 1998 season. They further argued that because export restitutions encourage private grain traders to trade European Union barley, they would not be ‘loyal’ to NSW barley growers. Therefore, without the Board *“...NSW growers would effectively be on their own, competing with the EU ‘government treasury’ and the traders”*.
- 5.187 The RMSA and AGEA representatives disagreed with this argument. They emphasised the fact that the livelihood of many rural members of their organisations in NSW was totally dependent on NSW grain production. As such they were very loyal to NSW grain growers. In addition, these representatives pointed out that other grower-focused

²⁵ Brewers who use starchy adjuncts in their brew, such as unmalted rice or corn grits, require malt with high levels of diastase enzymes, which is not a common feature of malt produced in Australia.

entities, such as AWB Limited, Graincorp and GrainCo, operate in NSW so even in the absence of the Grains Board growers would not be ‘on their own’. Moreover, they also anticipated that the current or a revised form of NSW Grains Board would also continue to operate in the NSW market under any change to marketing arrangements.

- 5.188 In relation to the United States, the Board stated “*US growers continue to receive a plethora of Government assistance measures and reflect these measures in the trade, offering barley onto world markets at subsidised levels.*”
- 5.189 The Board also argued that NSW growers continue to need the ‘protection’ offered by the NSW single export desk against unfair competition from within Australia: “*There is no guarantee that NSW will not have to continue to compete with the Grain Pool of WA, Australian Barley Board and QLD Grainco monopolies on the fiercely competitive and subsidy affected international grain market for many years to come*”.
- 5.190 The public consultation process pursued through the course of the Review clearly indicated that there was widespread support from coarse grains growers for maintenance of the export single desk for NSW malting barley.
- 5.191 Based on there having been no evidence produced to show that export vesting of malting barley creates public costs, and on recent studies demonstrating premiums from the single desk (eg., Meyer Strategy Group), the NSW Farmers’ Association and Board representatives supported continuation of vesting of domestic and export malting barley.
- 5.192 The other members of the Review Group accepted that the malting (food) barley market in Japan is a premium market, with access constraints similar to the Japanese feed barley market.
- 5.193 The Review Group therefore reached the conclusion that, on the balance of probabilities, the export single desk for NSW malting barley to Japan most likely yielded benefits for NSW grain producers (and hence the NSW economy) that could not otherwise be obtained, and that it should therefore be retained.
- 5.194 The Government, NSWFA, AGEA and RMSA members of the Review Group acknowledged that because the existence of price premiums (and hence net public benefits) was not demonstrated in the case of China, strict application of Competition Policy principles would require a recommendation to remove the power to regulate exports to that market. However, the research on this point was inconclusive and it is possible that price premiums are being extracted from the Chinese market but are not being observed due to deficiencies in the data available. On these grounds, the Government and NSWFA members are of the considered opinion that a precautionary stance should be adopted and the regulatory powers be retained for a further period and then again be reviewed.
- 5.195 The AGEA and RMSA representatives, on the other hand, believe that the Competition Policy criterion should be strictly applied and that the export single desk for NSW malting barley should be retained only in relation to markets where price premiums have been clearly demonstrated, i.e., only Japan.

UNUSED POWERS OF THE BOARD

5.196 As noted in Chapter 2, there are a number of powers of the Board provided for in the *NSW Grain Marketing Act 1991*, which have never been exercised. These include powers to:

- process commodities or manufacture products from commodities;
- act as a purchasing agent for farm inputs (equipment, machinery, seed, fertiliser etc.); and
- fix wholesale prices for grades, classes and descriptions of vested commodities.

5.192 Over the seven year period the Board has been in operation it has not used any of these powers. An issue for the Review Group, therefore, was to assess whether these provisions should be retained. Moreover, the power to fix wholesale prices represents a direct and powerful restriction on competition.

5.193 The position of the Review Group was that powers which had not been used and were not likely to be exercised in the future, should be removed. This is a key principle of regulatory efficiency.

5.194 More specifically, the NSW Government members advised that the power to fix commodities prices was no longer a preferred option of government for addressing market failure problems, and were strongly of the opinion that this power should not be retained.

5.195 Under National Competition Policy there is no scope to retain legislation in ‘reserve’ unless it can be demonstrated to be in the public interest and that there are no less restrictive ways of achieving the same objectives.

5.196 The Grains Board representative advised the Review that the Board did not envisage exercising any of the powers identified at paragraph 5.194 at any time in the future. The Review Group, therefore, came to the conclusion that these powers should be removed.

5.197 However, in recommending removal of the powers in the first two dot-points of paragraph 5.196, the Review Group did not wish to preclude the Board from being able to undertake these functions if it should chose to do so at some stage in the future.

CONCLUSIONS

5.203 The principal competition restriction under the Act is the vesting of NSW barley, grain sorghum, oats, safflower, sunflower, canola, linseed and soybean in the NSW Grains Board, and the associated single desk marketing power which vesting provides the Board on both domestic and export markets.

5.204 Key issues considered in determining whether this restriction is justified were the potential for domestic purchasers of each of the grains and oilseeds to extract above

normal profits from growers (i.e., whether there was a need to provide growers with protection against market power abuse), and the potential for NSW growers to derive price premiums from international markets that could not be realised in the absence of the regulation.

- 5.205 In noting that only malting barley is not divested on the domestic market, it was also observed that the Board uses its vesting power for two separate purposes, ‘marketing’ and ‘levying’. These involve positioning itself as a monopoly supplier through the single desk and Authorised Buyer fees, respectively. Of these two forms of intervention, particularly given the relatively low level of the fee, the Authorised Buyer arrangement is a much lesser restriction on competition than the prohibition on entry associated with the single desk.

Domestic Market Regulation

- 5.206 In summary, the majority of the Review Group members (excluding the NSWFA and NSWGB representatives) were satisfied that there was no substantive evidence of potential market failure which warrants continued intervention in the domestic market for any of the commodities vested in the Board. It was observed that these commodities are part of an array of substitutable cropping activities at the farm level and the domestic market for each of these commodities is well developed and contestable. Consequently, there appears to be no scope for significant market power abuse by domestic purchasers.
- 5.207 The NSWFA and NSWGB representatives, however, asserted that with some grains (particularly malting barley) where often only one or two domestic end-user customers exist, there is clear ground for market power abuse to occur and farmers are reliant on a “*loyal and dedicated marketing agent*” supplying a range of marketing services, i.e., the NSWGB. To provide services that add value to farmers and farming communities a loyal and independent NSWGB needs to continue to have the critical mass to have credibility in the markets in which it operates. These include the information market, financial market and trading. They also stressed the need to retain vesting of domestic malting barley to enable the Board to satisfactorily service the export malting barley market.

Export Market Regulation

- 5.208 The majority of the Review Group (excluding the NSW Farmers’ Association and Grains Board representatives) were satisfied that the structure of the various industries and global market conditions for the commodities are such that there is no net public benefit to be obtained from the maintenance of an export single desk for NSW grain sorghum, oats, canola, safflower, sunflower, linseed or soybean.
- 5.209 There was sufficient evidence for the Review Group to conclude that, on the balance of probabilities, the statutory marketing authority status of the Board provides it with privileged access to the high price Japanese market for feed barley and malting (food) barley, which is presently controlled through an import quota arrangement. That is, the Review Group accepted that the export single desk provides the Board with the ability

to obtain price premiums in that market and thereby deliver a net benefit to the NSW economy.

- 5.210 The majority of the Review Group (except the Board representative) found the evidence in regard to the Chinese market for barley to be inconclusive, but recognised the potential for market power premiums in relation to Schooner barley and were therefore inclined to adopt a precautionary approach and favour retaining the single desk for this market also. A proviso on this was that there should be further research at a later date to revisit the issue of whether or not there is a premium on the Chinese market.
- 5.211 The RMSA and AGEA members, however, were of the view that since premiums could not be clearly demonstrated for barley being exported to China, under Competition Policy guidelines the restriction to competition in that market should not be maintained.
- 5.212 The Board representative was convinced that the export single desk enables the Board to also extract price premiums in the Chinese market for malting barley.
- 5.213 The NSWFA and Board representatives stated that as ownership of domestic processing becomes even more concentrated and integrated in international hands, many small local producers will have little bargaining power. Short term price pressures (eg., at harvest time or a sudden announcement of export subsidies) will cause unnecessary hardship to growers and rural communities without some of the options offered by the NSWGB.
- 5.214 The Review Group acknowledged that the international market for barley is still one where EU and US grower and export subsidies distort the international market to the detriment of Australian growers. These conditions are likely to persist for some time.
- 5.215 It was recognised by the Review Group that separation of export barley markets, i.e., maintaining statutory controls only in relation to some export markets, may be impractical. If this proves to be the case, it was the majority view (excluding the ASGEA and RMSA representatives) that the barley export controls should apply to all overseas markets.
- 5.216 It was the view of the AGEA and RMSA representatives that continuation of the single desk for all barley exports could not be justified on the grounds of maintaining access to a single market, namely the Japanese market, and that in any case the current restrictions on access to that market appear likely to be relaxed in the near future.

Other Matters to be Considered in Net Public Benefit Assessments

- 5.217 There was considerable debate amongst Review Group members as to whether the assessment of net public benefit described in this chapter gave due consideration to all the matters which COAG agreed should be taken into account in Competition Policy reviews (see paragraph 1.14). Importantly, however, it needs to be noted that COAG did not agree to all of these factors necessarily being taken into account in all reviews.

Instead, it was agreed that these factors should be taken into account “*where relevant*”.

- 5.218 Of the factors which COAG agreed should be taken into account where relevant, the public benefit assessment described in this chapter focuses on the interests of consumers, the competitiveness of Australian business and the efficient allocation of resources. Of the remaining factors identified by COAG, the Review Group considered it appropriate to also assess the relevance to the legislation under review of the issues of ecologically sustainable development and regional development.
- 5.219 The majority recommendations later in this chapter approve of arrangements that capture identified price premiums from world markets. While the majority of the Review Group discounted the need to provide growers with countervailing power as a rationale for domestic market regulation, an additional issue is whether a transfer to growers from domestic users and consumers can be justified on other ‘public interest’ grounds. That is, can the domestic single desk for malting barley be justified on environmental or regional development grounds.

Ecologically Sustainable Development

- 5.220 Two arguments relevant to an assessment of the impact of the *NSW Grains Marketing Act 1991* on ecologically sustainable development were identified. The first was that income transfers from processors and consumers to grain producers achieved through the activities of the Board, make investments in ecologically sustainable farming practices more affordable for farmers. The counter argument was that the use of commodity marketing legislation as a means of addressing environmental concerns is inefficient on the basis that:
- any benefits from increased on-farm investments in environmental protection may be offset by environmental costs associated with additional resources being attracted into grain production;
 - such arrangements are ineffective in targeting environmental problems because there is no requirement for grain producers to spend any increased returns (assuming they exist) on ecologically sustainable practices;
 - where increased returns are spent on environmental measures, most will naturally be directed to investments characterised by high levels of private rather than public benefits (eg., investments to improve on-farm productivity rather than to prevent or ameliorate off-site degradation); and
 - the method of transferring income is highly inequitable in so far as processors and consumers of grain products, rather than taxpayers as a whole, are required to finance these payments.
- 5.210 The proposition that financial incentives, whether they be in the form of commodity price subsidies or concessional finance, are required to achieve socially desirable levels of environmental protection also assumes that financial markets will fail to provide finance for on-farm investments which enhance the long term sustainability and hence profitability of farm enterprises. There is little evidence to suggest, however, that there is significant ‘failure’ in credit markets, and consequently, direct business

payments for environmental purposes are likely to represent ‘wind-fall’ gains to individuals who could have otherwise accessed finance from commercial sources.

- 5.211 Increasingly it is being accepted that the primary forms of market failure in relation to agriculture and the environment are information failures whereby farmers have poor information about the impact of production systems on the resource base, and where ‘spill-over’ effects occur because the activities of one farmer impose costs on others. More effective and less competition restricting responses to these problems therefore include information provision, research and group based initiatives such as Landcare which enable spill-over effects such as erosion, tree loss and stream contamination to be addressed on a local scale.
- 5.212 In submissions to the Review, no evidence was provided on the types and magnitudes of environmental expenditures undertaken by grain producers and how this might be effected by any change to the powers of the NSWGB.
- 5.213 The Government, AGEA and RMSA members of the Review Group therefore concluded that ecologically sustainable development should not be explicitly included in the public benefit assessment on the basis that the legislation under review is likely to have offsetting positive and negative effects on the sustainability of farming practices. There was also a question over whether the Act was intended to address the sustainability of farming practices, and whether ecologically sustainable development may be more effectively addressed by arrangements which are less restricting of competition than vesting.
- 5.214 The NSW Farmers’ Association and Board representatives argued that even though they may not have been intended it would be unfortunate to lose any environmental benefits that did derive from the Act, and contended that there was a clear risk that such benefits could be lost as a result of deregulation, and may not be replaced.

Regional Development

- 5.226 In relation to regional development the Review Group again identified two opposing arguments. The first is that income transfers to grain producers generate positive regional multiplier effects. However, as with the issue of ecologically sustainable development, there appear to be efficiency and equity arguments for not using subsidised commodity prices to promote regional development.
- 5.227 In terms of efficiency, this form of income transfer has significant unintended side-effects. For example:
- it provides a competitive advantage to one regional industry over another, such that the net effect on development in a particular region may be negligible, or even negative (eg., gains achieved through benefits to coarse grains and oilseeds growers may be offset by negative impacts on end-users of those commodities, such as graziers, intensive livestock producers, stockfeed manufacturers, maltsters, oilseed processors, rural merchants, private grain traders etc., many of whom are regionally based);

- it provides a disproportionate competitive advantage to those regions with most grain producers, such that the net effect on regional development, across regions, is again negligible or negative; and
- it puts governments in the position of ‘picking winners’, rather than allowing this to occur through market processes, with not only the above mentioned efficiency costs, but further public costs as regional adjustment problems are exacerbated when either the assisted industry becomes less competitive, or when assistance is withdrawn.

5.216 It follows that less distortionary and more equitable approaches to regional development will involve taxpayers generally (rather than just grain users and consumers) funding services which address relevant forms of market failure, such as regional communities having poor information and skills in relation to local development opportunities. Increasingly, governments are also choosing to address regional development by focusing on social justice issues, such as access by regional communities to government services.

5.217 The majority of Review Group members (excluding the NSW Farmers’ Association and Board representatives) agreed that any regional development benefits which might potentially be attributed to regulated marketing of NSW coarse grains and oilseeds would be offset by costs imposed on other regional industries and regions. There is insufficient information to determine whether the net effect would be positive or negative on a State-wide basis. This was therefore considered to be a neutral issue for the purposes of the net public benefit test. It was further agreed, however, that there are other more effective and more equitable means of addressing the regional development concerns of government.

5.218 These members consequently concluded that a case in favour of the existing legislative arrangements could not be made on the basis of regional development considerations.

5.219 On the other hand, as noted in the submissions to the Review by their respective organisations, the NSW Farmers’ Association and Board representatives on the Review Group were of the view that the *NSW Grains Marketing Act 1991* does provide net benefits to rural NSW in terms of regional development and that these benefits should be retained.

Conclusion

5.232 As is obvious from the discussion throughout this and the foregoing chapters, the Review Group did not come to a consensus view on many of the issues considered in the Review. This is reflected in the alternative recommendations detailed below.

5.233 The Grains Board is the major party affected by the Review and the Review Group agreed that the Board should be given the opportunity to present its views in this report in the form of a concise summary submission. A submission of this nature was prepared and is attached at Appendix 10.

RECOMMENDATIONS**Grain Sorghum, Oats, Canola, Safflower, Sunflower, Linseed and Soybeans****5.234 Recommendation 3a:**

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the existing power to establish and maintain a system of compulsory acquisition in relation to grain sorghum, oats, canola, safflower, sunflower, linseed or soybeans produced in NSW, whether those commodities are to be traded within or outside Australia, be removed in accordance with the time frame established in Recommendation 15.

5.235 Recommendation 3b:

It is recommended by the NSW Grains Board and NSW Farmers' Association members of the Review Group (two of the eight members) that vesting of NSW grain sorghum, oats, canola, safflower, sunflower, linseed and soybean, as it currently exists, be retained and be subject to a further review within five years time, i.e., by 31 August 2004.

Feed Barley and Malting Barley**5.236 Recommendation 4a:**

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the existing power to establish and maintain a system of compulsory acquisition in relation to feed and malting barley produced in NSW, where those commodities are to be traded within Australia, be deregulated in accordance with the time frame established in Recommendation 15.

5.237 Recommendation 5a:

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group:

- (i) that the power to establish and maintain a 'single desk' for NSW feed and malting barley to overseas markets where market power or access premiums can be demonstrated and government intervention is required to gain those premiums (namely, feed and malting barley exports to Japan), be retained; and*
- (ii) that ongoing retention of this power be subject to a further net public benefit review within five years time, i.e., by 31 August 2004, and every five years subsequently if retained.*

5.238 Recommendation 5b:

It is recommended by the NSW Government members of the Review Group (four of the eight members):

- (i) *that in addition to the markets captured at Recommendation 5a(i), the power to establish and maintain a 'single desk' for NSW malting barley exported to China also be retained;*
- (ii) *that ongoing retention of this power be subject to a further net public benefit review within five years time, i.e., by 31 August 2004, and every five years subsequently if retained; and*
- (iii) *that, subject to Recommendation 11, the power to establish and maintain a 'single desk' for exports of NSW feed and malting barley to overseas markets other than those covered by (i) above, be removed in accordance with the time frame established in Recommendation 15.*

5.239 Recommendation 5c:

It is recommended by the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. members of the Review Group (two of the eight members) that the power to establish and maintain a 'single desk' for exports of NSW feed and malting barley to overseas markets other than those captured at Recommendation 5a(i) be removed in accordance with the time frame established in Recommendation 15.

5.240 Recommendation 4b/5d:

It is recommended by the NSW Grains Board and NSW Farmers' Association members of the Review Group (two of the eight members) that vesting of NSW feed and malting barley, as it currently exists, be retained and be subject to a further review within five years time, i.e., by 31 August 2004.

Unused Powers of the Board

5.241 Recommendation 6:

It is recommended by the Review Group that the unused power to fix wholesale prices for grades, classes and descriptions of vested commodities, be repealed immediately.

5.242 Recommendation 7:

It is recommended by the Review Group that the unused powers to:

- *process commodities or manufacture products from commodities; and*
- *act as a purchasing agent for farm inputs (equipment, machinery, seed, fertiliser etc.),*

be removed immediately, provided that so doing would not prevent the NSW Grains Board, or any statutory body that may replace the Board, from undertaking these functions at some stage in the future.

6. MAINTAINING RECOMMENDED FUNCTIONS OF THE NSW GRAINS BOARD

INTRODUCTION

- 6.1 The NSW Grains Board was established by the *NSW Grain Marketing Act 1991* and commenced operations on 1 August 1991. Prior to that time, four separate commodity marketing boards operated in the NSW grains industry. The Grain Marketing Consultative Committee was also established under the Act and has the purpose of providing advice to the Board and oversighting certain activities.
- 6.2 In Chapters 4 and 5, the provisions of the *NSW Grain Marketing Act 1991* which restrict competition were identified and evaluated against the net public benefit criterion. In relation to the identified restrictions, the Review Group, at least in majority:
- (i) was satisfied that intervention in the domestic market for the commodities vested in the NSW Grains Board as provided for in the Act does not yield net public benefits and concluded that provisions in this regard should be repealed;
 - (ii) was satisfied that the monopoly powers of the Board in relation to exports of NSW feed and malting barley to Japan yield a net public benefit at present and should be retained;
 - (iii) was unable to conclusively determine whether or not the monopoly powers of the Board in relation to exports of NSW malting barley to China yield net public benefits but concluded they should be retained at least temporarily on precautionary grounds; and
 - (iv) was satisfied that the monopoly powers of the Board in relation to exports of other vested commodities do not yield net public benefits and concluded that provisions in this regard should be repealed.
- 6.3 A requirement of this Review is to assess how the benefits of the competition restricting provisions of the Act which are recommended should be retained (namely, those at (ii) and (iii) above, which both relate to export marketing of barley) can be maintained in a manner which least restricts competition.
- 6.4 In this Chapter, the potential role of the Commonwealth in maintaining export controls is considered, followed by a discussion of the least restrictive approach using State legislation. The future treatment of grower reserves held by the Board is also considered and the appropriateness of the current Board and Consultative Committee arrangements are examined.
- 6.5 The chapter concludes with recommendations on the preferred approach for maintaining the public benefits delivered by the current legislative arrangements and outlines a timetable for implementation of the recommended reforms.
- 6.6 In Chapter 7 the nature of the ‘industry services’ performed by the Board is explored and the case for statutory powers to underpin these functions is assessed. The discussion

in Chapter 7 takes account of the conclusions and recommendations arrived at in this chapter.

MAINTAINING EXPORT CONTROLS IN A MANNER WHICH LEAST RESTRICTS COMPETITION

The Role of the Commonwealth in Export Trade

- 6.7 The Review Group acknowledged the constitutional role of the Commonwealth in matters relating to international trade, and therefore, the potential role of the Commonwealth in maintaining controls over exports which are found to generate net public benefits.
- 6.8 The Review Group also invited a representative of the South Australia Government to outline the outcomes of the Competition Policy review of the Australian Barley Board and the arrangements which are being put in place by the Victoria and South Australia Governments (see Appendix 6). The approach used to maintain export powers in those jurisdictions using State legislation places an element of uncertainty on the need for Commonwealth involvement in NSW.
- 6.9 Similarly, the maintenance of State export controls over sugar exports from Queensland, and ongoing negotiations between the Commonwealth and the NSW rice industry in relation to export controls, raised further uncertainty on the part of the Review Group about the Commonwealth's role in these matters.
- 6.10 Nevertheless, the Review Group agreed that a national single desk arrangement administered by the Commonwealth, similar to that recently introduced for the wheat industry (see boxed section later in this chapter), would be a more effective arrangement for maximising single desk returns from barley exports. Such an arrangement would avoid the situation where state marketing authorities compete among themselves for export sales, and in so doing, erode some of the above normal returns which could otherwise be earned from some export markets.
- 6.11 This would also be consistent with the thinking at the time the *NSW Grain Marketing Act 1991* was put in place. In recognition of the greater effectiveness of a national single desk arrangement in securing market power premiums from export markets, in 1991 the then NSW Minister for Agriculture, Mr Armstrong, stated in his second reading speech that:

“The goal of restructuring is to establish in the long term a national coarse grains board. In October I wrote to Mr Kerin, the Federal Minister for Primary Industries and Energy, seeking his agreement to this proposal. Pending the establishment of a national board, the legislation has been prepared and its policy and principles have been endorsed unanimously by the NSW Farmers Association following an exhaustive industry consultation conducted by the NSW Department of Agriculture and Fisheries.”

- 6.12 In the absence, however, of any certainty that a Commonwealth-based arrangement is achievable, the Review Group considered it essential that an alternate State-based proposal be developed, to maintain the single desk for relevant export sales of barley produced in NSW in a manner which least restricts competition.

Maintaining Export Powers Under State Legislation

- 6.13 The majority of the Review Group identified two issues which should critically influence how malting and feed barley export powers are maintained by the NSW Government. To increase the effectiveness of these statutory powers, the first issue is the need to avoid placing any future marketing authority in the situation where it is required to pursue competing 'public' and 'industry' objectives. The second issue is the implication for the current Board's revenue base of removing those powers which fail to generate net public benefits.

Separating Regulatory and Commercial Functions

- 6.14 The separation of regulatory and commercial functions of public monopolies is an explicit principle of Competition Policy.²⁶ The fundamental principle is to ensure that there is no conflict of interest in the performance of the two functions and to also ensure that no regulatory advantage is provided over competitors in the relevant market for those commercial functions.
- 6.15 Where statutory authorities are required to simultaneously pursue public and industry benefit objectives there is the potential for public objectives to be compromised, and hence, less efficient public benefit outcomes achieved.
- 6.16 For example, where authorities have competing public and industry objectives incentives are created for the authority to be most responsive to those stakeholders who are most easily identified by the authority and who are most able to seek recourse from the authority. In the case of the Grains Board, this would be grain growers rather than the public more broadly. The inherent difficulties with building similar rapport with the public means less emphasis is likely to be placed on meeting the Government's public policy objectives.
- 6.17 It follows, therefore, that effective implementation of competition restrictions which are in the public interest will necessarily involve arrangements where there is a clear separation of regulatory from commercial objectives.
- 6.18 As part of this Review, the current Board was found to primarily have an industry (or 'private') benefit focus, which is reflected in the fact that the benefits achieved by the Board have, in large part, been in the form of income transfers to growers from other sectors of the NSW economy.
- 6.19 A further example of the regulatory powers of the Board being used to benefit the coarse grains and oilseeds industry, rather than the broader community, is where the regulatory

26 See, for example, NSW Government (1996), *Implementation of Competition Policy and Microeconomic Reform in NSW: An Overview by the NSW Government*, The Cabinet Office, Sydney, June, p8.

powers of the Board provide it with a competitive advantage in its private trading activities relative to other NSW grain traders. For example, the Board has a monopoly right to approve or disapprove all domestic and export sales of coarse grains and oilseeds produced in NSW, partly on the basis of any pecuniary benefits which may flow to grain producers.

- 6.20 Furthermore, unlike private businesses which rely solely on commercial finance and trading profits to support their marketing activities, the Board can further support its marketing activities by using funds compulsorily acquired from grain producers.
- 6.21 While compulsory grower charges amount to less than one per cent of the Board's gross income each year, these charges represent an ongoing and accumulating source of revenue. If the Board were to be privatised, it would move to a competitively neutral position.
- 6.22 The Board has been operating in accordance with the provisions of the *NSW Grain Marketing Act 1991* and with the principle objective of providing industry benefits, however, Competition Policy now requires legislation to clearly target broader 'public' benefits. These matters were discussed in Chapter 3, where it was concluded that the objectives of the Act should be changed to clearly state those forms of market failure which it is intended to address, and the associated public benefit outcomes sought by the NSW Government.
- 6.23 In line with the principles outlined above, it is desirable that a different statutory arrangement be established which does not involve regulatory and commercial functions being undertaken by the same body. The preferred approach would be to constitute a new statutory authority (henceforth, the 'Authority') which holds the recommended legislated monopoly power over exports of NSW barley to destinations where a premium can be earned, but which does not itself undertake trading activity.
- 6.24 The scope of the Authority's activities would be limited to implementing those competition restricting powers which are found to generate net public benefits and would preclude trading activity, which would be undertaken by another party or parties under the oversight of the Authority. In other words, the Authority would not engage in trading activities in the exercise of its statutory powers, but rather, would contract out access to regulated commodities to commercial operators.
- 6.25 To the extent that there may be a public expectation that the NSW Government has some responsibility for the Board's borrowings and financial position, the separation of regulatory and trading activities could also further minimise any perception that the taxpayer is liable to cover any trading losses incurred by the trading body.
- 6.26 This revised structure is similar to that of the NSW Rice Marketing Board, to arrangements recently implemented by the Commonwealth in relation to wheat marketing (see boxed section overleaf), and arrangements currently being put in place by the Victorian and South Australian Governments in relation to barley marketing (see Appendix 6).

**Commonwealth Wheat Marketing Arrangements
(Restructure of the Australian Wheat Board)**

The Australian Wheat Board (AWB) restructure from a statutory marketing authority to a grower-owned company is being implemented by a two-stage process of legislative change to the *Wheat Marketing Act 1989 (Cth)*, which currently governs the AWB's operations as a statutory marketing authority.

Amendments to the Act in 1997 enabled the AWB to establish a wholly owned subsidiary company (nominated Company A) with two subsidiaries (nominated Companies B and C) to conduct its grain marketing and financing functions. Company A is the 'parent company', providing financing and other services to its subsidiaries. Company B will be responsible for all matters relating to pooling of wheat. Company C will undertake domestic trading of grains and other non-pool commercial activities not handled by Company A. From 1 July 1999, Companies A, B and C will cease to be owned by the AWB and will become grower-owned. Company B will be given the sole right to export wheat for the initial five-year period from 1 July 1999.

In order to separate regulatory and commercial functions, at the same time a Wheat Export Authority (WEA) will be established with functions to control exports of wheat, to monitor Company B's performance in relation to the export of wheat and to examine and report on the benefits accruing to growers from the performance of Company B. In other words, the WEA will have the legislated export monopoly on wheat and once the initial five-year period has passed, will have the task of managing and approving requests to export wheat from organisations other than Company B; monitoring the use of the monopoly; and accounting to government and industry on the performance of its functions.

The WEA will be initially funded from money retained for this purpose when other AWB assets are transferred to Company A. Provisions for continued funding of the WEA will be developed in consultation with industry before the expiry of Company B's export monopoly in 2004.

The WEA will comprise five members, encompassing government, commercial and grower expertise. Three members will be nominees of the Minister for Agriculture, Forestry and Fisheries: two of these will be independent persons, one being the chairperson, with skills in agribusiness or commerce, and the other having skills in business and commerce or expertise in marketing or finance (to ensure the proper balance of experience and expertise on the WEA); and one will be a government member, to bring a public and government policy perspective to deliberations of the WEA. The other two members will be nominees of the Grains Council of Australia. All members will be appointed by the Minister for a maximum term of three years.

These changes will give growers ownership and control of wheat marketing arrangements, with the Commonwealth Government's only remaining involvement being provision of the export monopoly.

Source: The Parliament of the Commonwealth of Australia: Senate (1998), *Wheat Marketing Legislation Amendment Bill 1998 Explanatory Memorandum*, ISBN: 0644 527269.

6.27 The proposed new structure would represent a substantial change to the current arrangements, whereby the Board is responsible for a range of statutory powers of the NSW Government and at the same time has a significant involvement in commercial grain trading. This issue is now discussed and a proposed approach for determining the future of these trading activities is outlined later in this chapter.

Revenue Implications of Repealing Powers which Fail the Public Benefit Test

6.28 The Board currently receives revenue from a number of sources, including the Authorised Buyer fee on sales through authorised buyers, profits from trading and pooling activities, income from the lease of storage and handling equipment, fees from Authorised Buyers for licences and returns on reserves. The Board uses commercial credit to facilitate its accumulation and trading activities.

- 6.29 Key outcomes of this Review are recommendations to maintain certain competition restrictions over the export marketing of certain coarse grains to certain markets and deregulation of all other export and domestic marketing controls. Implementation of these recommendations would be expected to have a significant impact on the Board's revenue base. For example:
- deregulation of the Authorised Buyer arrangements on the domestic market would eliminate these fees as a source of revenue;
 - the income flow presently derived by the Board from domestic sales of malting barley would be reduced; and similarly
 - the income flow presently derived by the Board from canola exports would also be reduced.
- 6.32 The potential effect of removing existing revenue sources on the Board's ability to effectively administer the statutory export controls, in addition to the policy principle requiring separation of regulatory and commercial functions, provides a further rationale to establish a new non-trading Authority to administer the retained export marketing powers.
- 6.33 The Review Group gave considerable attention to the issue of how the new Authority should be funded. The two principal alternatives were for the costs of the Authority: (i) to be a charge against the export 'pool' of the organisation which markets the grain, i.e., only growers utilising export marketing services authorised by the Authority bear the costs; or (ii) to be shared by all NSW barley producers.
- 6.34 Submissions were made to the Review that the ability to obtain 'premium' export prices through the statutory export monopoly may hold domestic barley prices above what would otherwise be export parity. That is, it was claimed that the export parity price (i.e., the 'floor' in the domestic market) in the absence of the export single desk would be lower than with the single desk in place. To the extent that this is true, even barley growers who do not export their grain would benefit from the single desk, and application of the 'beneficiary pays' principle would suggest that they should also share in funding the Authority (to avoid 'free-riding').
- 6.35 The majority of the Review Group (excluding the NSW Farmers' Association and Grains Board representatives) did not, however, find this argument convincing. It was noted, for example, that no evidence was presented to the Review to demonstrate that the NSW export single desk had any impact on the export parity price which underpins domestic prices nationally.
- 6.36 These members were also of the view that use of the 'beneficiary pays' argument as a basis for requiring contributions by all growers is not appropriate in these circumstances. Producers make their marketing choices on the basis of their perceptions of where the best return can be obtained. Thus, NSW barley producers who decide to export their crop do so because they believe it to be in their own best interests. The fact that other growers may derive a consequential benefit is purely incidental and does not provide grounds to require them to contribute to the marketing costs of those who choose to export.

- 6.37 Moreover, should a privatised Grains Board be given the trading rights to premium markets it will be able to capture those premiums and do with the returns what it pleases. The premiums may not necessarily be returned to growers in the form of better pool prices but may be internalised. For example, the funds could be spent on promotional activities, market information or other services which directly benefit the shareholders of the privatised trading body but not necessarily all growers in NSW.
- 6.38 It was concluded by these members, therefore, that it would be most appropriate and consistent with Competition Policy principles for the Authority to be funded by charges against those growers who export commodities under the licences issued by the Authority.
- 6.39 If an objective of the statutory intervention in export marketing of NSW barley is to raise prices to growers in the domestic market, then there would be grounds for requiring all barley producers to fund exports. However, the only justification for the export single desk identified by the Review Group as being consistent with Competition Policy principles is the achievement of market power and access premiums in overseas markets (i.e., to provide benefits to growers who choose to export their barley).
- 6.40 The NSW Farmers' Association and Grains Board representatives on the other hand, considered that it would be more appropriate for the on-going costs of the Authority's activities to be funded through charges on all NSW barley and vested grain sales.
- 6.41 An important issue for the Review Group was whether or not those provisions of the Act which fail the public benefit test should be repealed immediately, which could jeopardise the viability of the existing Board as a trading entity, or whether these changes should be introduced after a period sufficient to enable the present Board's commercial activities to be privatised. That is, continuation of effective delivery of the public benefits derived from the export single desk during the transition to the new institutional arrangements may require a staged reform process.
- 6.42 An argument identified by the Review Group favouring a transition period and privatisation of the Board was that, in contrast to a grower-dedicated organisation such as the Board, private international grain traders (who may otherwise undertake the regulated trade on behalf of the NSW Government) may return a significantly lesser amount of any above normal export returns to growers and the Australian economy.
- 6.43 For example, when offering export pools to Australian growers for malting and feed barley to Japan and malting barley to China, an international trader would need to only offer a price marginally above the best domestic price on offer to secure supply, with the remaining price premium potentially being retained and used to support the company's trading activities world-wide. Arguably, an industry owned body would face greater incentives to offer growers prices which more closely reflected the full amount of any above normal returns available in relevant export markets.
- 6.44 The Review Group was unanimous in its concern to ensure that the export market benefits derived from the statutory intervention should as far as possible be returned to the Australian economy, and concluded that the most effective way to achieve this was to ensure they are, in the first instance, returned to grain growers.

- 6.45 The majority of the Review Group was also of the view that the current Board should be privatised to allow growers to determine marketing priorities, with the NSW Government's only involvement in grain marketing being provision of the export monopoly.
- 6.46 In this regard and in order to ensure a smooth transition to the new arrangements, while at the same time as far as possible retaining the benefits of the Board's existing arrangements, it was considered by the Review Group that the best approach would be to allow NSW grain growers the option of privatising the Board and, should this option be taken up, to guarantee the privatised Board sole access to the export monopoly powers of the new Authority for a specified period.

Conclusions

- 6.45 Similarly to the findings of the 1990 review of NSW coarse grains and oilseeds marketing boards (see Appendix 4) and the expressed preference of the NSW Government at the time the *NSW Grain Marketing Act 1991* was put in place (see Appendix 7), the Review Group concluded that national single-desk arrangements would be more effective than the current arrangements in maximising public benefits in the form of market power premiums in certain export markets for barley produced in NSW.
- 6.46 In the absence of such an arrangement being put in place the Review Group concluded that retention of state-level regulated marketing arrangements for feed and malting barley exports to those markets where premiums can be earned can be justified on net public benefit grounds.
- 6.47 The majority of the Review Group (excluding the NSW Farmers' Association and Grains Board representatives) concluded that the NSW Government should constitute a new statutory authority which holds any legislated monopoly power over exports of NSW barley to markets where premiums can be earned, but which does not itself undertake trading activity.
- 6.48 In principle, the proposed new Authority would require only those resources sufficient to:
- effectively and efficiently administer processes for tendering out the commercial business it controls;
 - monitor the performance of successful tenderers in delivering on contract obligations;
 - undertake functions which are a necessary adjunct to the achievement of the public benefits which were found to be associated with the export single desk for barley; and
 - report to the Minister for Agriculture on the activity of the Authority and its performance in terms of delivering these public benefits.
- 6.42 In the event that the NSW Government does not accept the majority recommendation to deregulate the export of coarse grains and oilseeds other than barley, and retains export powers over these other commodities, it was again the view of the majority (excluding

the NSW Farmers' Association and Grains Board representatives) that the principles in paragraphs 6.47 and 6.48 should apply equally to the wider set of commodities.

- 6.43 The Review Group reached a majority conclusion that it would be appropriate for the assets and resources required to perform these functions and the ongoing costs of the Authority's activities to be funded through a charge against the export pool.
- 6.44 The Review Group acknowledged that adoption of the majority recommendations involves removing the statutory basis of the Board and could substantially reduce its existing revenue base. Therefore, to allow growers the option of maintaining a 'grower dedicated' trading body, it would be appropriate for the NSW Government to allow sufficient time for the development and implementation of a privatisation plan.
- 6.45 Providing an appropriate period of transition to a deregulated market during which the Board was not commercially disadvantaged would as far as possible protect its current value and thereby facilitate growers making a considered decision as to whether the Board should be privatised or its affairs be wound up. It should be noted, however, that the Grains Board representative was opposed to any option which involved the liquidation of the Board being considered.
- 6.46 While some Review Group members favoured retaining all of the Board's existing market intervention powers during this transitional period, including single desk arrangements which were otherwise recommended for repeal, other members contended that the desired purpose could be served simply by maintaining the Board's revenue stream. That is, provided 'revenue neutral' levy arrangements could be established which did not involve prohibiting entry by other traders (i.e., compulsory acquisition and a single desk), the commercial position of the Board would be protected while at the same time substantially reducing the restrictions on competition associated with its activities. Extension of the current Authorised Buyer arrangements to other vested commodities and to export marketing, with the associated fees set at a revenue neutral level, was considered to be a realistic option in this regard.
- 6.47 The NSW Farmers' Association and Grains Board members of the Review Group were of the view that it would be difficult, if not impossible, to effectively implement export control constrained to a limited number of export markets, namely, Japan and China. For example, if the returns from those markets were high, on-selling of NSW grain into those markets from other, non-regulated, overseas destinations could still prove profitable and to some extent compete away overall returns to NSW growers.
- 6.48 The majority of the Review Group (excluding the NSW Farmers' Association and Grains Board members) concluded that the issue of whether or not it is practically possible to implement the type of export control outlined in Recommendations 5a and 5b (paragraphs 5.237 and 5.238) should be referred to the joint industry/government Working Group described later in this chapter. The four Government members further concluded that if this arrangement could not be effectively implemented, the export single desk power should remain over all NSW barley exports and destinations. The Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. representatives, however, were of the view that if the specified export markets could not be segregated, then the single desk should be removed.

6.49 Both a Commonwealth national single desk similar to the Wheat Export Authority and the Review Group's proposed approach using powers of the NSW Government, provide for the separation of regulatory and commercial objectives and functions and, in so doing, create incentive structures whereby those statutory powers are most likely to be used in a manner which maximises public benefits.

Recommendations

6.57 **Recommendation 8:**

It is recommended by the Review Group that the NSW Government approach the Commonwealth Government in relation to the possible establishment of a national single desk for Australian barley exports.

6.58 **Recommendation 9:**

Should the NSW Government consider it inappropriate or unnecessary to approach the Commonwealth on the matter of a national single desk for barley exports, or should the Commonwealth be unwilling to implement such an arrangement, it is recommended by the Review Group (excluding the NSW Farmers' Association and Grains Board representatives) that pursuant to Recommendation 5 (whichever of 5a, 5b, 5c or 5d is adopted) a new NSW statutory Authority be established with the functions of:

- *administering single desk exports of NSW barley;*
- *managing and licensing requests to export NSW barley to markets under the single desk restriction;*
- *monitoring the use and effectiveness of the monopoly powers in delivering industry and public benefits; and*
- *accounting to the NSW Government and industry on the performance of its functions.*

6.59 **Recommendation 10:**

Pursuant to acceptance of Recommendation 9, the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group recommend that the power of the new Authority extend to the control of exports of barley from NSW by the issuing of licences to export feed or malting barley to specified overseas markets.²⁷

6.60 **Recommendation 11:**

It is recommended by the Review Group that the issue of whether or not it is practically possible to implement the type of export control described in Recommendation 10 be referred to a joint industry/government Working Group (see Recommendation 19). If it is determined that it is not feasible in practice to differentiate between export markets for the purpose of single desk marketing, it is further recommended:

- by the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. members (two of the eight members), that Recommendation 9 not be accepted and that the power to establish and maintain an export single desk for*

²⁷ An illustrative example of this consistent with the findings detailed in Chapters 4 and 5 would be the issuing of a licence to export NSW feed barley to Japan.

- NSW barley be removed subsequent to the 1999/2000 harvest but no later than 31 August 2000; and*
- (ii) *by the NSW Government members (four of the eight members), that the power of the new Authority extend to the control of all exports of NSW barley.*

6.61 Recommendation 12:

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that should the NSW Government not accept the majority recommendation to deregulate the export of coarse grains and oilseeds other than barley, and decide to retain export powers over these other commodities, the principles in Recommendations 9, 10, and 11 should apply equally to the wider set of commodities.

6.62 Recommendation 13a:

Pursuant to acceptance of Recommendation 9, it is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the new Authority be funded by charges against the organisation or organisations to whom export licences are granted.

6.63 Recommendation 13b:

While opposed to the establishment of a grain export authority, it is recommended by the NSW Farmers' Association and NSW Grains Board members of the Review Group (two of the eight members) that in the event that such a grain export Authority is established, it should be funded through compulsory charges on all NSW barley and other vested grain sales

6.64 Recommendation 14:

Pursuant to acceptance of the principle (embodied in Recommendation 9) of separating the Board's current statutory and commercial functions, it is recommended by the Review Group that NSW grain growers be given the option of privatising the NSW Grains Board and:

- (i) *should this option be taken up, that the privatised Board be guaranteed sole export rights to commodities and markets controlled by the new Authority for an initial three to five year period; or*
- (ii) *should this option not be taken up, that the assets of the Board be liquidated and returned to growers as soon as possible but in a manner and to a schedule determined by the joint industry/Government Working Group described in Recommendation 19. NB. The Grains Board representative was opposed to any option which involved the liquidation of the Board being considered.*

6.65 Issues in relation to the timing of implementation of the above recommendation are considered in the following section.

THE FUTURE OF THE BOARD**The Equity Fund and Residual Assets of the Board**

- 6.66 Implementation of the majority recommendations for reform of State-level statutory arrangements, particularly if a national single desk for barley exports is not established, requires consideration of the future use of the assets of the NSW Grains Board, including the grower equity fund.
- 6.67 The Board receives no funding from the NSW Government. Since its establishment, the Board has been financially self supporting and is financed by the grains industry. Over that period it has accrued substantial capital assets and an equity fund which, as previously noted, is currently in the order of \$22 million.
- 6.68 The Premier has formally advised that the financial reserves of the NSW Grains Board are not the property of the NSW Government, but rather are grower funds held by the Board for the purposes of the *NSW Grain Marketing Act 1991*.
- 6.69 Every grain grower in NSW who has supplied the Board or an Authorised Buyer has a registration number with the Board. Since 1991, all authorised buyer fees paid to the Board have been recorded by the Board against the registration number of the various growers on whose behalf they have been paid. The Board's stated purpose in doing this is to establish each grower's equity relationship with the Board, where the information can be used in the future in the event of the Board being restructured with grower ownership.
- 6.70 As discussed earlier, an important consequential issue of the proposed new statutory arrangements is that the current Board must be either privatised or its assets liquidated and returned to growers. The Review Group was unanimously of the view that growers should be consulted on this matter, but did not come to a consensus on the form this consultation should take.
- 6.71 The Board has informed the Review Group that professional advice it has sought indicates that if market deregulation was to be introduced beyond its present levels, the equity fund would need to be increased to at least \$60 million for privatisation of its operations to be successful. The Review Group is aware of proposals for the eventual privatisation of the Board based on continuation of compulsory charge powers for a sufficient period to facilitate raising the equity fund to this level.
- 6.72 The Review Group did not consider itself to be the appropriate body, nor was it in a position, to make judgements about the level of reserves required for successful privatisation. Moreover, the Review Group was of the view that the equity level *per se* was not a key issue for the review and that, rather than recommending a desired level of reserves, its role in this regard was to determine the appropriate period for continuing any compulsory charge arrangements (which might be used to raise equity funds). It was agreed that the task of giving detailed consideration to equity and viability issues should be referred to a joint industry/NSW Government Working Group.

- 6.73 For some Review Group members, a concern with continuing the existing statutory powers for the purposes of levying compulsory charges on growers to raise a particular level of equity funds is that such an arrangement would force growers to provide financial support to a future private business entity in which they might not otherwise invest and whose success is not guaranteed. Consequently, there is significant risk of a 'write-down' of grower equity should the privatised body be non-competitive, and therefore, in the ability of the privatised body to effectively undertake the trading activities contracted to it.
- 6.74 Furthermore, maintaining statutory levies for this purpose effectively represents a form of preferential government support for a future private NSW grain trader. While the NSW Government could provide such revenue raising powers, there is no guarantee that reserves beyond \$60 million would not subsequently be requested,²⁸ nor that the resultant privatised body would necessarily remain competitive with other grain trading organisations. It follows, therefore, that any transition period should not be based on grower equity funds reaching a pre-determined level, but simply on a period of time which the NSW Government considers reasonable before removing those market intervention powers which do not satisfy the net public benefit test.
- 6.75 That is, while the option should remain open for growers to agree to introduce compulsory charges specifically for the purposes of raising equity reserves for the privatised Board, the timetable for reforming the existing single desk arrangements should not be linked to the level of the Board's reserves.
- 6.76 Where proposed legislative reforms will have a substantial impact on institutional arrangements in an industry, current NSW Government policy is to favour providing advance warning before the changes come into effect. This has been the approach in other recent Competition Policy reviews. Allowing adequate time for industry to adjust and establish alternative arrangements is considered to be the most equitable way of introducing change.
- 6.77 In this regard, the Review Group noted that the NSW Minister for Agriculture had given an assurance to the NSW Farmers' Association that the principal powers of the Grains Board would continue until June 2001, at least as a transitional measure.
- 6.78 There was considerable debate on the issue of timing amongst the Review Group members recommending deregulation, namely, the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. representatives and the four NSW Government members. In addition to the point made in the above paragraph, these members also noted the requirements of Competition Policy that unjustified regulations should not be retained beyond the end of 2000. These members were also concerned to ensure that deregulation occurs in a manner which least affects the commercial value of the Board and is least disruptive of any proposals to privatise the Board. The alternative recommendations on this matter reflect the differing views of members on what comprises an appropriate period of notice in respect of deregulation of the various marketing powers of the Board.

²⁸ When privatisation of the NSW Grains Board was given consideration in 1994, the equity requirement was estimated to be in the order of \$20-\$25 million.

- 6.79 The 31 August date referred to below and in the recommendations was agreed to be a practical time of the year for implementing reforms because it does not fall within the harvest period for any of the commodities vested in the Board, and is also the end of the Board's financial year.
- 6.80 The Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. representatives and the four NSW Government members all concluded:
- (i) that the power to compulsorily acquire and establish a single desk in relation to domestic sales of commodities currently vested in the Board should, except with respect to malting barley, be repealed as soon as possible, but no later than 31 August 2000;
 - (ii) that the power to compulsorily acquire and establish a single desk in relation to export sales of commodities currently vested in the Board should, except with respect to canola and feed and malting barley, be allowed to continue through the upcoming 1999/2000 harvest, but be removed by no later than 31 August 2000;²⁹ and
 - (iii) that regulation of export sales of feed and malting barley to markets where market power or access premiums can be earned (and subject to the feasibility issue discussed earlier and covered by Recommendation 11) be retained and reviewed within five years, ie., by 31 August 2004, in accordance with National Competition Policy guidelines and NSW policy on regulation reviews.
- 6.81 With respect to domestic sales of malting barley, the AGEA and RMSA members concluded that the power to compulsorily acquire and establish a single desk should be allowed to continue through the upcoming 1999/2000 harvest, but be removed by no later than 31 August 2000.¹ The four Government representatives were of the view that the transition period should include an additional harvest to allow more time for both growers and the Board to adjust to a deregulated market and to minimise the commercial risk faced by the Board during the transition to the Board's privatisation.
- 6.82 The Government members were of the view, however, that in order to extend the Board's domestic barley single desk to 31 August 2001 in a manner which is least restrictive of competition then certain arrangements should be imposed for the 2000-2001 crop. These arrangements would be in the form of an authorisation scheme which would allow private traders and domestic users to purchase barley from growers for the purpose of domestic trading and use, subject solely to the payment of a predetermined 'authorised buyer' fee to the Board. The Minister for Agriculture would set the fee based on the advice of the Board and industry. The fee would be similar to that proposed for canola in paragraph 102 ie. not exceeding \$5/tonne.
- 6.83 In relation to canola exports the Government, RMSA and AGEA members considered that there was no market failure rationale for retaining the export single desk for canola. However, these members recognised that the single desk for canola makes an important contribution to the NSW Grains Board's financial viability. These members were therefore of the view that the Board's export single desk power be retained until 31

²⁹ Inquiries with the Grains Board by the NSW Government members of the Review Group did not reveal any contractual obligations which might prevent this approach being implemented.

August 2001 to minimise the commercial risk faced by the Board during the transition to the Board's privatisation

- 6.84 The Government, RMSA and AGEA members were of the view, however, that in order to extend the Board's canola export single desk to 31 August 2001 in a manner which is least restrictive of competition then certain arrangements should be imposed for the 2000-2001 crop. These arrangements would be in the form of an export authorisation scheme. Under the scheme private traders would be allowed to purchase canola from growers for the purpose of exporting subject solely to the payment of a predetermined 'authorised buyer' fee to the Board. The Minister for Agriculture would set the fee based on the advice of the Board and industry, but this should not exceed \$5/tonne, the figure understood to have been negotiated by the Board in recent authorised private exports of canola.
- 6.85 The Board, however, indicated that they could not support any such authorisation arrangements, on the basis of their administrative difficulties.
- 6.86 The Government members, together with the AGEA and RMSA representatives, concluded that:
- (i) provided the approach is supported by growers, levy arrangements for the purposes of raising equity could be retained/introduced beyond the date of removal of the single desk power but no later than 31 August 2005, in relation to all the commodities and markets covered by paragraphs 98, 99, 100 and 101; and
 - (ii) while the Working Group should recommend on the appropriate means of achieving this outcome, a form of constrained vesting would be a possibility (ie., vesting to enable charges to be levied but not for the purpose of compulsory acquisition of the commodity).

Establishment of a Working Group

- 6.87 With some reservations from the NSWFA and Grains Board members, the Review Group proposes that a joint industry/NSW Government Working Group be established to consider equity and viability issues, develop a draft proposal to privatise the NSW Grains Board, to consult with growers in developing the privatisation proposal and to advise on the conduct of a grower poll on all the relevant issues. A draft Terms of Reference for the Working Group is attached at Appendix 8.
- 6.88 In relation to this proposal it is relevant to note that the NSW Farmers' Association representative tabled correspondence from the Association to the Review Group formally advising that the Association is opposed to the conduct of a grower poll on the future of the Board. The Grains Board representative advised that the Board is also of this view.
- 6.89 The Working Group should be appointed by the Minister for Agriculture in consultation with the NSW Farmers' Association, the NSW Grains Board and NSW Agriculture, and comprise at least one representative of each of those organisations. However, membership of the Working Group need not be limited to those organisations. For

example, the AGEA and RMSA representatives considered that the Working Group should also include a representative of the Prime Wheat Association.

6.90 The Review Group appreciates that the Working Group will have a number of substantial tasks to undertake but considers that it should be appointed and be required to complete its activity by 31 August 2000, so as to facilitate new legislative and corporate arrangements being in place as soon as possible after 1 September 2000.

6.91 The Review Group discussed a number of alternative approaches and options in relation to whether a poll of growers should be undertaken and, if so, how it should be conducted and what issues it should cover. While the NSW Farmers' Association and Grains Board representatives were firmly of the view that a grower poll should not be conducted, the other members of the Review Group considered this to be the best way to determine growers' support for the privatisation proposal.

6.92 Issues canvassed in relation to a grower poll included:

- whether growers should be given a choice between dissolving the Board and privatising it, or whether it should only be a choice between alternative privatisation models;
- whether it should be on a grain by grain basis (i.e., each grain industry voting individually on future arrangements in regard to that specific grain);
- whether it should be on a commodity group basis, with barley being one group, canola being another, and the other vested commodities bundled together as a third group;
- whether it should be taken on a whole of industry basis, i.e., all coarse grain and oilseed growers voting on a single proposal;
- whether there should be weighted or one-man-one-vote voting; and
- what compulsory charges should be retained, for what purpose and for how long.

6.58 The outcome of this discussion was agreement amongst Review Group members that it was not the appropriate body to decide on the detail of these matters and that they should be referred to the Working Group to resolve. The majority of the Review Group (excluding the NSW Farmers' Association and NSW Grains Board representatives, who did not support a poll being undertaken) concluded that ideally, the poll should cover:

- whether the NSW Grains Board should be privatised, or dissolved and the equity fund and other assets of the Board be distributed back to growers;
- whether compulsory grower charges should be continued for the purposes of raising equity; and
- if so, which grains should be subject to compulsory charges and for how long,

with other details to be determined by the Working Group (see Appendix 8).

6.76 The majority of the Review Group (once again excluding the NSW Farmers' Association and NSW Grains Board representatives) concluded that any compulsory charges which the Working Group recommends and the grower poll affirms should be retained/introduced for the purpose of raising equity, should extend for no more than

another five financial years after the proposed commencement of the new arrangements, i.e., not beyond 31 August 2005.

- 6.77 In addition to the question of whether or not to privatise (or wind-up) the Board, growers should be given the choice of the magnitude and duration of any compulsory charges to be levied for the purposes of raising equity, and the commodities to be covered by any such charges, if the vote is to continue the Board.

Recommendations

6.96 **Recommendation 15a:**

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the following time steps apply to implementation of the majority recommendations for reform to the existing NSW coarse grain and oilseeds marketing arrangements (excluding domestic sales of malting barley):

- *that the power to compulsorily acquire and establish a single desk for export sales of oats, grain sorghum, safflower, sunflower, linseed and soybean continue through the upcoming 1999/2000 harvest, but be removed by no later than 31 August 2000;*
- *that the power to compulsorily acquire and establish a single desk for export sales of canola be removed no later than 31 August 2001 conditional upon an export authorisation scheme being introduced between 31 August 2000 and 31 August 2001. The scheme would involve:*
 - *allowing private traders to purchase canola from growers for the purpose of exporting subject solely to the payment of a pre-determined 'authorised buyer' fee to the Board; and*
 - *the Minister for Agriculture setting the fee based on the advice of the Board and industry (capped at \$5/tonne).*
- *that the power to compulsorily acquire and establish a single desk for domestic sales of all commodities currently vested in the Board, except malting barley, be removed as soon as possible but no later than 31 August 2000; and*
- *that regulation of export sales of feed and malting barley, subject to the outcome of Recommendation 11, be retained and reviewed within five years, i.e., by 31 August 2004 (in accordance with National Competition Policy guidelines and NSW policy on regulation reviews).*

6.94 **Recommendation 15b:**

With respect to domestic sales of malting barley:

- *the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. members of the Review Group (two of the eight members), recommend that the power to compulsorily acquire and establish a single desk continue through the upcoming 1999/2000 harvest, but be removed by no later than 31 August 2000; whereas*
- *the Government members (four of the eight members) recommend that the single desk continue through to include the 2000/01 harvest and be removed by no later than 31 August 2001 conditional upon an authorisation scheme being introduced between 31 August 2000 and 31 August 2001. The scheme would involve:*

- allowing private traders and domestic users to purchase barley from growers for the purpose of domestic trading and use, subject solely to the payment of a pre-determined authorised buyer fee to the Board; and
- the Minister for Agriculture setting the fee based on the advice of the Board and industry (capped at \$5/tonne).

6.94 Note: The NSW Farmers' Association and Grains Board members recommended retention of the Board's single desk powers and therefore did not have a position on the timing issues dealt with in Recommendation 15. Key elements of the recommendations concerning reform of the existing regulation of the marketing of NSW coarse grains and oilseeds are summarised in Table 6.1.

6.95 Recommendation 16:

It is recommended by the Review Group that NSW coarse grain and oilseeds growers be consulted on their wishes regarding privatising or winding-up the NSW Grains Board.

6.96 Recommendation 17a:

Pursuant to Recommendation 16, it is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the consultation process involve the conduct of a grower poll on all the relevant issues, and that a joint industry/NSW Government Working Group be established to undertake the tasks in the draft Terms of Reference at Appendix 8.

6.97 Recommendation 17b:

Pursuant to Recommendation 16, it is recommended by the NSW Farmers' Association and Grains Board members of the Review Group (two of the eight members) that the joint industry/NSW Government Working Group referred to in Recommendation 17a be formed to undertake the tasks in the draft Terms of Reference at Appendix 8, but that the consultation process not involve the conduct of a grower poll, but an alternative mechanism to be determined by the Minister in consultation with the Working Group.

6.98 Recommendation 18:

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the grower poll cover at least the following:

- whether the NSW Grains Board should be privatised or the equity fund and other assets of the Board be liquidated and distributed back to growers;
- whether compulsory grower charges should be continued/introduced for the purposes of raising equity;
- if so, which grains should be subject to such compulsory charges, for how long (but not beyond 31 August 2005) and the quantum of the charges; and
- the mechanism by which these charges should be levied (eg., constrained vesting),

with other details to be determined by the Working Group within the bounds of the Terms of Reference shown at Appendix 8.

Table 6.1 Summary of Recommendations on Market Deregulation

Commodity or	Recommendation	Review Group Member
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Commodity Group		Support
All commodities currently vested in the Board.	Maintain all existing and currently used powers and functions of the Board.	NSWFA and NSWGB members.
Exports of feed and malting barley.	Remove immediately the power to fix wholesale prices.	All Review Group members.
	If feasible to differentiate between export markets, retain existing market intervention powers in relation to those markets where premiums can be obtained, and review again by 31 August 2004.	AGEA, RMSA, and all four NSW Government members.
	If not feasible to differentiate between export markets, retain existing market intervention powers, and review again by 31 August 2004.	The four NSW Government members.
Exports of canola.	If not feasible to differentiate between export markets, maintain existing market intervention powers for the 1999/2000 harvest, but remove by 31 August 2000.	AGEA and RMSA members.
	Maintain existing market intervention powers for the 1999 harvest. Arrangements to apply for the 2000 harvest (ie between 31 August 2000 and 31 August 2001) include allowing private traders to purchase canola for the purpose of exporting subject solely to the payment of a pre-determined 'authorised buyer' fee and the Minister for Agriculture setting the fee based on advice from the Board and industry.	AGEA, RMSA and all four NSW Government members.
Exports of grain sorghum, oats, safflower, sunflower, linseed and soybeans.	All export control powers to be removed by 31 August 2001.	
	Maintain existing market intervention powers for the 1999/2000 harvest, but remove by 31 August 2000.	AGEA, RMSA and all four NSW Government members.
Domestic sales of malting barley.	Maintain existing market intervention powers for the 1999/2000 harvest, but remove by 31 August 2000.	AGEA and RMSA members.
	Maintain existing market intervention powers for the 1999/2000 harvest with new arrangements to apply for the 2000/2001 harvest (ie between 31 August 2000 and 31 August 2001) which include allowing private traders and domestic users to purchase barley for the purpose of domestic trading and use, subject solely to the payment of a pre-determined 'authorised buyer' fee and the Minister for Agriculture setting the fee based on advice from the Board and industry.	The four NSW Government members.
Domestic sales of all vested commodities other than malting barley.	All domestic trading powers to be removed by 31 August 2001.	
	Remove existing market intervention powers as soon as possible, but no later than 31 August 2000.	AGEA, RMSA and all four NSW Government members.

6.103 *Recommendation 19:*

It is recommended by the Review Group that the Working Group be appointed by the Minister for Agriculture in consultation with the NSW Farmers' Association, the NSW Grains Board and NSW Agriculture, and include at least one representative of each of those organisations. However, the full membership of the Working Party should be subject to Ministerial discretion.

6.104 Recommendation 20:

It is recommended by the Review Group that the Working Group be required to complete its activity by 31 August 2000, so as to facilitate new legislative and corporate arrangements being in place as soon as possible after 1 September 2000.

6.105 The discussion in the following sections focuses on issues associated with the existing arrangements in relation to the composition and accountability of the Board and Consultative Committee. Except for some concluding comments and recommendations at the end of the Chapter dealing with the composition of the new export Authority, the material in these sections will be of most relevance in the event that the NSW Government does not accept the majority recommendations of the Review.

COMPOSITION AND ACCOUNTABILITY OF THE BOARD AND GMCC

Composition and Accountability of the Board

6.106 As detailed in Chapter 2, the Board consists of the Managing Director of the Board and six part time members appointed by the Governor. A Selection Committee is constituted to nominate the part-time members and consists of five persons appointed by the Minister of whom one is to be a person nominated by the Minister and is to be the Chairperson, and four who are to be appointed from a panel of not less than six persons nominated by the NSW Farmers' Association.

6.107 As well as being required to comply with the *Public Finance and Audit Act 1983* and the *Annual Reports (Statutory Bodies) Act 1984*, the activities of the Board are also subject to scrutiny by the Director-General of NSW Agriculture who is assigned under the Act to oversight the operations of the Board.

6.108 The Board must convene and conduct public meetings in accordance with the regulations of the Act at annual or other intervals as directed by the Minister. Reports (as prescribed by the Minister) must be circulated at or before such meetings (as prescribed by the Minister).

6.109 An Annual Meeting of the Board must be held not later than six months after each financial accounting period of the Board, or at such other time as may be prescribed or directed by the Minister. At least 21 days notice must be given, in accordance with the regulations of an annual meeting of the Board.

6.110 The Board is required to submit to the Minister a five year plan of its operations. The Board is to review the plan of operations each year and submit a revised plan to the Minister with the Annual Report it is required to submit under the *Annual Reports*

(Statutory Bodies) Act 1984. The plan of operations may include indicators against which the performance of the Board may be measured.

Submissions on the Accountability of the Board

6.111 In relation to the transparency and accountability of the Board, the Board in its submission to the Review made the following points:

“The NSWGB is required to publish annually a public report covering its financial position and marketing operations and associated activities. This provides the community with a wide ranging record of volumes and types of grains handled, markets serviced and payments made.

No other grain marketer/trader in NSW provides any such record of its dealings in course grains and oilseeds despite the fact that hundreds of thousands of tonnes of these crops are traded outside the NSWGB.

Each year the NSWGB is required to conduct an Annual Public Meeting at which growers and the community are given the opportunity to scrutinise the Annual Report and the NSWGB’s activities. The meeting is rotated between major rural towns around NSW.

Under the GMA 1991, there is provision for a body, called the Consultative Committee to further scrutinise the NSWGB activities and policies.

This Committee is put together by an independent group Chaired by a State Government selected member of the community with a Government representative, plus growers selected by the democratically elected Farmers Organisation in NSW. The Committee meets with the NSWGB quarterly and has access to the NSWGB on request.

Members of the producers community and general community have this body as their contact point in the event that they choose to scrutinise the NSWGB without going direct.

This gives the industry further opportunity to change policies or question them, so far as coarse grains and oilseeds marketing is concerned, and provides for the most healthy state of the industry.

The NSWGB is further subjected to public scrutiny via public debate and NSWGB addresses, at the NSW Farmers’ Association public forums such as their Annual Conferences and their monthly General Council Meetings.

When all other means of scrutiny fail or are ineffective members of the public always have the right to access the Minister for Agriculture or the NSW Parliament to air their issues. This step ensures that there is no other marketing operation in NSW (and possibly the world) which can be more openly and closely scrutinised than the NSWGB.”

6.112 In relation to the Board’s vesting powers the Consultative Committee states that it has:

“... sought to gauge grower reaction and to advise the Board accordingly. The Consultative Committee farmer members have been supportive of the continuation of vesting of malting barley because it confers benefits to growers”.

6.113 The Consultative Committee further states that:

“Performance indicators have been developed following consultation between the Board and the Consultative Committee. The relevant performance indicators are reviewed each quarter, and seek to assess the Board’s performance against a number of criteria including payment performance, price performance, vis-a-vis similar organisations in other Australian states, the Board’s accuracy in forecasting tonnages and prices, the level of stock sold, committed and uncommitted at key points in the year, and other relevant indicators”.

6.114 In conclusion the Consultative Committee states that its:

“...farmer members support the submission of the NSW Farmers’ Association and have strong faith in the efficacy of the arrangements and in their ability to get a better deal for growers than would be achieved in their absence”.

6.115 In relation to the management funding and the accountability of the NSW Grains Board, NSW Farmers’ Association generally supports the current Board and Consultative Committee arrangements. In relation to the selection process the Association expressed the following views:

“Obviously given NSW Farmers’ Association’s key role in nominating names to the Minister, we believe that the selection process has been effective for both the NSW Grains Board and the Committee”

6.116 The Association believes that sufficient accountability to growers exists in the current system and that growers are the sole stakeholders. They further state that while *“...there are other parties which have their occupations and incomes affected by the activities of the Board, however they do not make direct financial contributions to it”.*

Composition and Accountability of the Consultative Committee

6.117 As with the Board, the *NSW Grains Marketing Act 1991* establishes the Grain Marketing Consultative Committee (GMCC). The GMCC consists of:

- four members appointed by the Minister from a panel of at least six persons nominated by the NSW Farmers’ Association; and
- the Director-General of NSW Agriculture (or his delegate - to be included in a minor forthcoming amendment to the Act).

6.101 A member of the Board is not eligible to be appointed as a member of the Consultative Committee.

Submissions on the Accountability of the GMCC

6.119 The Consultative Committee outlined its role in its submission to the Review group. It stated:

“Historically the Consultative Committee has been formed by selection by the Minister from a list of six names submitted by NSW Farmers Association, from which the Minister has the ability to select four. The Minister then adds the Director of Marketing from NSW Agriculture, and those five people form the Consultative Committee.

NSW Farmers’ have adopted the policy of submitting growers only for the four positions over which it held sway, for specific reasons. Firstly, the Board is, under legislation, there to benefit growers. Secondly, the growers provide the funding for the Board. Thirdly, the NSW Grain Marketing Act 1991 marked a change from electing growers in regions to these type of Boards to a selection process. As a counterbalance to the selection process it was felt that growers should have another avenue through which their interests and complaints could be addressed to the Board, and hence the Committee was formed”.

6.120 In relation to the make-up of the Committee the Consultative Committee express the view that:

“There have been intermittent pushes from the RMSA for traders, and industry people in general, to be appointed to the Consultative Committee. The Committee does not believe this is appropriate because we would not get access to (commercial information) if there were competing traders on the Committee. There is nothing in the legislation or in practice that prevents merchants from having their own consultative committee, or arrangements with the Committee to liaise on issues of mutual interest”.

6.121 In relation to the selection process the Association expressed the following views:

“Although merchants argue that they should be represented on the Committee there is ample opportunity for merchants to have their own consultative committee with the Board. The virtues of a grower dominated committee are two fold, firstly they are able to influence the Board and have a dialogue with them in much more depth than would a body that has competing traders on it, secondly the original intent of the Committee was to provide a counter balance for the fact that growers were no longer directly elected members of the Board and that these were now selected by a Selection Committee. For that reason the Association makes no apology for the way in which the Consultative Committee is selected, we believe that growers formed the Board and growers have the main and if not the fundamental right to be represented on the body which consults with the Board.”

Conclusions

- 6.122 The Review Group observed that the Board has a comprehensive system in place for reporting back to NSW coarse grains and oilseeds growers on its activities and business performance.
- 6.123 There is not, however, any requirement to report to the NSW Government on the delivery of public benefits through the exercise of the Board's statutory powers.
- 6.124 Some members of the Review Group were concerned about the integral involvement of the NSW Farmers' Association in determining the composition of the Selection Committee (four of the five members are nominated by the Association) and, hence, the Board itself. The Association also has the major role in determining the composition of the Consultative Committee (again, four of the five members are nominated by the Association).
- 6.125 This concern did not relate to any observed or implied problems or lack of probity in how the process has been implemented in the past, but rather to the fact that the Association does not represent all of, and exclusively, the constituents of the Board. The involvement of the Association in the selection and oversight of the Board therefore has strong potential to isolate the Board from one form of accountability, that of allowing the constituency of the Board itself to express their views on the Board's performance through these processes.
- 6.126 In relation to representation on the proposed new statutory Authority, on any new consultative committee, or on the existing Board or Consultative Committee (should these arrangement be maintained), the Review Group did not have a firm view on whether grower representation should continue to be on the basis of selection rather than election. However, to enable maximum flexibility in nominating producer representatives, the majority of the Review Group agreed that the formal role of the NSW Farmers' Association in nominating such representatives, should be discontinued.
- 6.127 The legislative arrangements for establishing the NSW Rural Assistance Authority Board, under which the Minister for Agriculture has discretion to appoint members within minimal constraints associated with a requirement for the Board as a whole to represent specified groups and have certain skills, provides an alternative model. Under this approach, the legislation would simply detail which community groups should be represented on the Board and Consultative Committee, and in what proportion, and the appropriate mix of skills required to carry out their functions.
- 6.128 As in the case of the Wheat Export Authority, the composition of the new Authority should reflect its public focus. Hence, it would require expertise in areas such as the efficient administration of statutory powers, assessing the quality of organisations engaged in international trade and expertise in international commodity marketing. Importantly, representation should be impartial with respect to those organisations from whom the Authority sourced its services, and to avoid the public interest objectives of the Authority being compromised, grower representation would be in the

minority. Should further producer input be considered necessary, then there may be a case to continue with a Consultative Committee arrangement.

- 6.129 The majority of the Review Group (with the exception of the Board representative) agreed that membership of the Authority should comprise a NSW Government representative (who will chair the Authority), two grain growers, and two non-growers with expertise in any of agribusiness or commerce, corporate management, administration of statutory powers, or international trade in agricultural commodities.
- 6.130 The Grains Board member of the Review Group was of the view that membership of the Authority should include three, rather than two, grain growers.

Recommendations

6.131 **Recommendation 21a:**

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group, in order to maximise flexibility with respect to representation on the NSW Grains Board Selection Committee and Consultative Committee should the current arrangements continue:

- *that the NSW Farmers' Association have no formal exclusive role in relation to nominating representatives to the NSW Grains Board or the Consultative Committee; and*
- *that the enabling legislation simply detail the number and mix of government, industry and community group representatives, and the appropriate mix of skills, with Ministerial discretion as to the selection process(es) to be followed.*

6.111 **Recommendation 21b:**

Should the current statutory arrangement continue, it is recommended by the NSW Farmers' Association and Grains Board members of the Review Group (two of the eight members) that the existing role of NSW Farmers' Association in relation to nominating representatives to the NSW Grains Board Selection Committee and the Consultative Committee also continue.

6.112 **Recommendation 22a:**

It is recommended by all Review Group members excepting the NSW Grains Board member that membership of the new export Authority, should it be established, comprise a NSW Government representative (who will chair the Authority), two grain growers, and two non-growers with expertise in any of international trade in agricultural commodities or other agribusiness, commerce, corporate management, or administration of statutory powers, with Ministerial discretion as to the selection process(es) to be followed.

6.113 **Recommendation 22b:**

While completely opposed to the establishment of a grain export Authority, it is recommended by the NSW Grains Board member of the Review Group that membership of the new export Authority, should it be established, comprise an additional grain grower member to those specified in Recommendation 22a, ie., three grain grower members rather than two.

7. INDUSTRY SERVICE FUNCTIONS

INTRODUCTION

- 7.1 In the context of statutory industry arrangements in the agricultural sector, ‘industry services’ refers to services provided to participants in an industry on an industry-wide basis, apart from services directly related to the marketing of a commodity. Industry services which are commonly provided by statutory marketing authorities in NSW include:
- the collection and dissemination of market intelligence;
 - industry promotion;
 - research and development of commodities and production systems;
 - research into pest and disease control; and
 - education and training materials and forums.
- 7.2 The legislative objective of providing industry groups with the power to impose compulsory charges to fund such services is an accepted approach to addressing the market failure situation where individuals may ‘free-ride’ on the benefits generated by others.
- 7.3 Research and promotion are typical examples of activities where it may be difficult for individuals acting in isolation to capture sufficient benefits to warrant the investment. In the absence of industry-wide approaches to funding these activities, under-investment may therefore occur. In some instances, pest and disease control activities may also be of this nature. Government intervention through compulsory charges can reduce under-investment problems leading to more efficient levels of investment in these activities and improved resource allocation throughout the economy.
- 7.4 While compulsory charges can be effective in addressing problems of under-investment they can also cause public costs, particularly when they are poorly designed. For example, the imposition of a compulsory charge forces all producers to contribute to the cost of certain services and so may stifle individual innovation and restrict competition by reducing the ability of producers to source these services from alternative suppliers. This in turn may have a ‘crowding-out’ effect, whereby the emergence of alternative suppliers of these services is impeded.
- 7.5 In the situation where charges are linked directly to a particular function or activity, assessment of the appropriateness of the compulsory charge approach must be specifically related to the function or service to which the charge applies. The Review Group was supportive, in principle, of government intervention to support the industry-wide service functions of the Board. The Review Group recognised, however, that the merits of imposing compulsory charges needed to be assessed on a case-by-case basis.
- 7.6 The Review Group noted that in other Competition Policy reviews of similar legislation (eg., the reviews of the *NSW Banana Industry Act 1987* and the *NSW Dairy Industry Act*

1973), it has commonly been found that there are information failures and 'spillover' effects which justify industry-wide measures, particularly in relation to industry promotion and pest and disease control.

- 7.7 The question of whether or not the specific functions and services provided by the Board would be under provided or less efficiently provided to coarse grains and oilseeds growers in the absence of a compulsory charge - and as a consequence give rise to net losses to the general community - therefore represented a set of independent but related issues warranting consideration by the Review Group.
- 7.8 In addition to the general issues described above, if the majority recommendations are implemented, the proposed new Authority will have a statutory role limited to the barley industry and involving a much reduced set of legislated powers and functions to those of the current Board. This further raises the issue of the continuing appropriateness under the proposed new legislative arrangements of the existing industry service functions of the Board.

INDUSTRY SERVICES PROVIDED BY THE BOARD

Funding

- 7.9 The industry services referred to in this section are those non-trading grower services provided by the Board, including those funded through the compulsory Authorised Buyer fee.
- 7.10 Table 7.1 contains a summary of funds collected through the Authorised Buyer fee between 1991/92 and 1996/97. In 1996/97, for example, \$1.9 million dollars was collected in Authorised Buyer fees. Of this amount approximately 14 per cent was collected from oats growers, 21 per cent was collected from oilseeds growers, 36 per cent was collected from feed barley growers and 29 per cent was collected from grain sorghum growers.
- 7.11 The Authorised Buyer fee is effectively a market access fee levied on Authorised Buyers. While it is less restrictive than a single desk arrangement, the fee is a direct restriction on competition in that it both reduces the profitability of traders who choose to enter the domestic market for grains vested in the Board and may discourage entry into that market.
- 7.12 Since the fee applies only to Authorised Buyer sales and not to domestic sales through the Board, the fee may also restrict competition by providing the Board with a competitive advantage in bidding for business. The extent of any such competitive advantage will depend on the relative size of the margin the Board retains from its sales and the extent to which growers are informed of any differences in the net farm gate prices they would receive through alternative sales channels.

Table 7.1: Authorised Buyer Sales and Fees

	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
Oats						
Authorised Buyer sales (t)	74,338	184,239	221,176	67,112	152,156	181,974
Authorised Buyer fees (\$)	111,507	276,358	331,764	100,668	228,234	272,960
Oilseeds¹						
Authorised Buyer sales (t)	196,005	270,705	50,013	108,251	320,439	278,193
Authorised Buyer fees (\$) ²	0	0	75,019	162,377	480,658	417,290
Feed Barley						
Authorised Buyer sales (t)	347,903	468,641	740,884	151,332	465,111	463,859
Authorised Buyer fees (\$)	520,336	702,962	1,111,326	226,998	697,666	695,788
Grain Sorghum						
Authorised Buyer sales (t)	199,403	277,270	207,178	243,431	425,648	372,807
Authorised Buyer fees (\$)	299,104	415,905	310,767	365,146	638,472	559,211
Total fees (\$)	930,947	1,395,225	1,828,876	855,189	2,045,030	1,945,250

¹Oilseeds = canola, soybean, sunflowers, and safflower. Source: NSW Grains Board 1998; ²There was a scheme of arrangement in place in 1991/92 to 1993/94 to repay debt carried over from the previous marketing board arrangements.

7.13 In relation to this point, the Board advised that it also retains money (profits) from growers who deal directly with the Board, and that in general this amount is larger than the Authorised Buyer fee.

7.14 The Review Group noted that some part of the margin is a contribution to the equity reserve of the Board and is therefore a form of compulsory investment rather than being a fee for services to growers.

Industry Services Provided by the Board

7.15 The Board provides a variety of services to coarse grains and oilseeds growers and other sectors of the industry. These include the provision of market information, funding of services to promote quality and market development, the promotion of NSW grains both overseas and nationally, and the sponsorship of industry functions. The Board operates a forum for consultation and representation of NSW grains producers. The Board also regards its function of providing dedicated clearance of all vested grains, which removes domestic grain surpluses and arguably thereby improves the market for other, non-vested, grains, as a major service to the coarse grains industry.

7.16 More specific services mentioned by the Board in recent annual reports include the following.

- The development of sophisticated laboratory facilities within the Sydney Office, which are supported by four regional grain laboratories in NSW and Queensland.
- The Board commits substantial funds to market research and development in all grains handled by the Board. Through its network of domestic and overseas market contacts it is able to provide researchers with information to assist market development.

- In addition to research, the Board has been involved in projects such as industry studies and commodity risk management seminars.
- Major promotion initiatives of the Board are the 'Good Oil' Canola Quality Competition and the 'Better Malting Awards' for malting barley. These competitions are designed to provide clearer signals to growers about end-users quality requirements and "*offer industry recognition to those growers who strive for the best and who understand the ever increasing world demand for better grain*".
- In conjunction with the Grains Research and Development Corporation (GRDC) the Board is assisting to fund a national barley commercial testing facility in Queensland to enhance the testing and release of new malting barley crossbreds.
- The Board supports a number of activities for farmers. These include for example:
 - sponsorship of \$20,000 for the NSWFA 1997 Annual Conference;
 - \$30,000 for the 'Good Oil' Canola Quality Competition and the 'Better Malting Barley' Awards, which are annual competitions;
 - the Board was the major sponsor of the 1996 International Sorghum Conference; and have allocated \$15,000 to be a major sponsor of an international rapeseed conference to be held in Australia in the next few years;
 - the Board has sponsored a range of other industry forums, such as those for lotfeeders and stock feed producers during 1996-97; and
 - the Board provided sponsorship of \$5,000 for the 8th International Barley Technical Symposium in 1997.

7.17 The Board, through the NSW Oilseeds Advisory Committee, funds a number of oilseeds research projects. The Oilseeds Research Fund is drawn from Board reserves which derive from the Oilseed Debt Repayment Scheme.

7.18 In the area of communications, the Board provides a range of information through forums such as Grains Board publications, workshops, audio seminars and an internet facility.

7.19 For the purpose of this Review the Board's reserves of \$22 million, which have been raised from retained income from pools and grain trading and the \$1.50 per tonne Authorised Buyer fee, are included as a grower service on the basis that they "*...enhance the NSWGB's ability to support larger 'pools', improved grower services and lower borrowing costs*" (NSW Grains Board 1996/97 Annual Report).

7.20 Also relevant to the Board's reserves of \$22 million is the Board's proposed equity scheme which was submitted to the NSW Government for consideration. At this stage the NSW Government has confirmed that the Board's reserves belong to growers. The Government's decision on the proposed equity scheme, however, was deferred pending

consideration of the subject by this Review Group. This Chapter and Chapter 6 outline the Review Group's conclusions concerning the future of the equity fund.

RESEARCH AND DEVELOPMENT

- 7.21 The Board currently has the power to undertake anything to improve the marketing of coarse grains and oilseeds in NSW, including research and development for the benefit of the industry. In 1998, the Board trading statement indicated that \$497,000 was spent by the Board on quality control and research and development. In 1996 and 1997, the sum was \$426,000 and \$660,000, respectively.³⁰
- 7.22 Issues for the Review Group in relation to the research and development activities of the Board were whether these efforts were directed into areas of identified market failure (eg., where there are significant spillovers and hence is likely to be under investment) and whether there is any duplication (and hence inefficient investment) between those activities and the activities of other research agencies.

Submissions

- 7.23 The NSW Farmers' Association generally supports the services provided by the Board. Some of the views expressed by the Association include the following.

"The Association is unaware of any research carried out by the Board which duplicates any of the areas of the GRDC (Grains Research and Development Corporation). We believe that the Board does have a duty to invest in market research, in developing market places, in explaining to potential clients how to best use our products and what the best specification for their purposes of our products are etc.

The Grains Board has achieved several things with its research program. In particular, the writing and publication of the Better Malting Book, particularly in its translation to Mandarin, the technical back up the NSW Grains Board has given to its clients, and the research that the Board has undertaken with the BRI to make more objective measurements of colour, which will result in the introduction of improved systems in future harvests."

- 7.24 The Association expressed the view that compulsory charges for services such as promotion can be justified on the basis of the benefits flowing back to growers. They also argued that a reason for maintaining a standard levy across all grains and oilseeds is because the benefits from promoting one grain flow back to growers of other coarse grains and oilseeds. They state for example:

"As far as expenditure on improving quality standards on market development, etc, is concerned these are things which ultimately improve NSW market share and as

³⁰ This does not include the Board's Oilseeds Research Fund, a special account established for five years to dispose of surplus funds which remained after the Oilseed Scheme of Debt Repayment was completed in March 1994.

such would benefit the total industry. In the main growers are happy to pay, through the Board, for those services in the knowledge that they are significant beneficiaries of the improved markets”.

- 7.25 In relation to the amount of the Authorised Buyer fee and how it is set the Association state that to their knowledge:

“... the \$1.50 is not calculated on a fee-for-service basis, it is a reasonable charge to provide a number of services and, as previously stated, the key factors in assessing this equation are the impact of the Board’s borrowing cost, given levels of reserves, and the fact that a share of the \$1.50 is credited to growers accounts and can ultimately find its way back to the individual growers”.

- 7.26 The Association expressed the view that Association policy is for the \$1.50 per tonne Authorised Buyer fee to be reduced when the Board’s financial reserves reach an appropriate level. The Association stated:

“There needs to be wider understanding amongst growers of the impact of reserves on the cost of and availability of finance for pool payments. There also needs to be an understanding that the full introduction of an equity scheme allocating the Board’s reserves to individual growers would reduce very considerably the real long term cost on growers of this levy.

The Association believes that a reserves target should be agreed between the NSW Grains Board and growers somewhere between the present \$21 million and the Board’s target of \$57 to \$60 million. Once that target is within reach the levy should be reduced.”

- 7.27 In relation to the future use of the Board’s reserves and the proposed equity scheme the Association expressed the following view.

“The NSW Grains Board, having obtained from the Government assurances that its reserves belong to growers, can change its corporate structure into either a private corporation with a separate structure to delegate the legislative powers similar to the proposition for the AWB, or it could aim at a similar structure based on the grower cooperative principle. There would be two rationales for a change in structure, one would be to give growers effective ownership of the Board and an effective and valuable equity in it. The other option would be for the Board to become more broadly involved in related industry activities and have a structure through which it could fund those activities, perhaps slightly better than it does now. However, the Association believes that the legislative powers can be retained with a change in structure and that the debate needs to go on as to how the Board should be restructured in the future to best service the needs of growers and what functions, if any the Board should add to the bundle that it is already providing”.

- 7.28 The GRDC in their submission to the Review were generally supportive of the Board’s research and development activities. Importantly, the GRDC stated that:

“At the state level, industries have found that there are research problems and opportunities of particular significance to their own areas, in which it can be useful for research to be undertaken without complete dependence on externally controlled funds. Some of the research has been achieved by co-operative funding arrangements between the GRDC and a State trust, industry body or State Grains Board”.

7.29 In discussion on this issue amongst the Review Group, the Board noted that the GRDC cannot be expected to conduct research and development for every market. The Board further advised that it does not duplicate any of the research and development carried out by other research providers, but co-funds research in areas of mutual interest.

7.30 A number of concerns were expressed to the Review Group in relation to the \$1.50 per tonne Authorised Buyer fee. The following comments from submissions reflect those concerns.

“As a private trader within the supposedly deregulated domestic market a levy deduction of \$1.50/tonne has to be paid to the NSWGB for the trading of specific grains and oilseeds. There are several problems with this arrangement. Not only does this reduce the cash price for the grower when selling to a private trader, but also to all growers. Surely the grower should not incur a cost of whom they prefer to sell to. Why should they be penalised by an authority who has been set up to represent them and when the stated purpose of the Grain Marketing Act is to improve the marketing of course grains and oilseeds in NSW.

The Board has done very little with oats except impose levies. In our local area (Southern Riverina) they have never provided a competitive oats bid. Why should levies be collected on a grain that the NSWGB does very little to promote and to research. The same is with sorghum, which the Board has very little to do with. Why should they benefit from a levy collected by a licensed merchant as well as place export restrictions on sorghum when they have done very little to promote it overseas. This is stopping many export opportunities for growers and private traders to sell to potential buyers”.

“When the act was first established it was a time when growers were unable to access market information. They relied on their state marketing authority for that information. However, since then, there has been many changes in operational characteristics, with marketers and buyers providing up to the minute prices and reports via the internet, fax and phone. No longer does the grower rely on the Board to provide them with this. The levies they paid before helped them be provided with this information. Now this information is provided for next to nothing.”

7.31 In relation to funds used by the Board for research and development, the malting firm Barrett Burston expressed the view that:

“R&D should not be subject to the fragmentation and competition for scarce funds that is generated by having a separate NSW Grains Board Research Program. Moreover, Barrett Burston’s decision some years ago to embark on its own varietal

R&D program was prompted largely by the company's dissatisfaction with the existing R&D effort, including that undertaken by the Board".

- 7.32 In relation to the \$1.50 per tonne levy, the RMSA expressed the view that it is used anti-competitively by the Board to disadvantage private traders. They stated for example:

"Private traders are required to become an Authorised Buyer (AB) of the NSWGB in order to purchase vested grains directly from growers. Under this agreement, AB's are required to disclose all purchase details and deduct levies of \$1.50/tonne on behalf of the NSWGB. The NSWGB does not deduct this levy from growers that deal directly with them, to provide them with a trading advantage, derived directly from their vesting powers.

Whilst the current Act is broad enough to provide the NSWGB with the power to use levies as a trading tool against the private trade, this is clearly an anti-competitive activity which is conducted at a substantial cost to NSW growers.

The private trade markets over three quarters of the vested grain in NSW that is available to them after being placed at a price disadvantage of \$1.50 per tonne to the NSWGB.

This highlights how inequitable the current legislation is to the NSW grains industries.

The Board has been given wide ranging powers to levy and regulate grain flows within the state, but they trade a relatively small percentage of the total vested grain".

- 7.33 Mr G. Lane an agronomist and oilseed market adviser to growers in central NSW put forward the view that:

"Soybeans for crushing and human consumption, sunflower (crushing and birdseed), linseed and safflower all command levies to be paid to NSWGB yet they are not produced in quantities for export. Levies collected on these grains are simply a tax on growers with no potential benefit to the payer of the levy".

Discussion and Conclusions

- 7.34 The Review Group considered whether services provided by the Grains Board and funded from compulsory fees and trading profits would otherwise be characterised by under-investment.

- 7.35 The NSW Grains Board incurs substantial expenditure each year in the delivery of industry services to coarse grains and oilseeds producers in NSW. These services have a strong focus on market development and on improving crop quality, particularly for barley and canola, and according to the Board are funded more from retained earnings on sales than from the Authorised Buyer fee.

- 7.36 The Board advised the Review Group that virtually all research and development funded by the Board is market related, as distinct from more general or scientific research. This market research is an adjunct to the trading activities of the Board and, as expressed to the Review Group by the Board itself, “...*any good marketer would be doing it*”. A well known example of the Board’s long-term commitment to market development is that of the malting barley market in China.
- 7.37 The principal body constituted to undertake research and distribute research funds in the grains industry is the GRDC. Funding for the GRDC is provided through a levy on grain growers. The levy is set each year by the Grains Council of Australia (GCA) on 25 leviable crops (including those coarse grains and oilseeds which attract the Board’s Authorised Buyer fee) and is matched by the Commonwealth Government.
- 7.38 The annual research budget of the GRDC is approximately \$80 million. Other bodies such as CSIRO and state departments of agriculture also contribute to funding of research and development in the grains industry. In comparison to this pool of funds, the research and development budget of the Board is relatively small.
- 7.39 In relation to oilseeds research funding in Australia, the NSWGB is again one among many contributors. Other parts of the oilseeds industry, including private companies such as Cargill Australia Ltd, are major contributors to the national Oilseed Development Fund.
- 7.40 The Review Group concluded that given the focus on market development of the grower services provided by the Board and the difficulty for individual growers to capture the benefits of such investment, it is likely that many of the services provided by the Board would otherwise be subject to under-investment.
- 7.41 Two related issues considered by the Review Group were:
- (a) that producers of malting barley, oats, oilseeds, feed barley and grain sorghum who sell only to the Board, make non-explicit contributions to the funding of services and the contribution they make is at a differential rate to those contributing through the Authorised Buyer fee; and
 - (b) that there is no transparent relationship between the compulsory (Authorised Buyer fee) contributions to Board funds by particular coarse grain and oilseed industries and the services provided to those industries.
- 7.42 These observations indicate that the industry services intended to be provided by the Board are not clearly defined, and also raise the possibility of cross-subsidisation of services between different industry sectors and/or between growers who market their commodities in different ways.
- 7.43 The Review Group found it difficult to assess in the context of a review such as this, the exact extent to which various grower services would be under-provided in the absence of compulsory funding and the associated level of public cost. It was not practical, for example, for the Review Group to attempt to evaluate how effective the Board’s market

research activities have been over and above whatever private investment may have otherwise taken place.

7.44 Industry representatives noted that exclusive vesting powers may not be necessary to successfully encourage investment in research and development, citing the cotton, oilseed and pulse industries as particular examples. For example, the RMSA commented that,

“the Australian oilseed industry offers an excellent example of an industry that has delivered significant improvements in varieties for growers and consumers. The Australian Oilseed Federation collects voluntary levies from key stakeholders in the industry, such as processors, refiners and stock feed manufacturers, and directs these resources to improve research and development in the Australian oilseed industry. There have been marked improvements in canola yields in the past ten years and over the same time oil yields have also improved. This has been achieved without the compulsory powers of the single desk and with industry consultation between growers, consumers, breeders and processors for the benefit of the entire industry”.

7.45 The majority of the Review Group (excluding the Board and NSW Farmers’ Association representatives) agreed to the approach adopted in other NSW Competition policy reviews of statutory marketing authorities where it has been proposed that grower support be used as a proxy for the benefits of compulsorily funded industry services. While the activities of the Board have been subject to ongoing debate within the industry, the last time NSW coarse grains and oilseeds growers were subject to a formal poll was in 1991.

7.46 The approach outlined above requires proponents of compulsory charges to seek growers agreement to the suite of services to be funded, and importantly, to set the charges on the basis of specified services to be provided to each industry, rather than on a discretionary basis.

7.47 This approach would also resolve issues such as:

- potential changes to the functions of the Board, and hence the services that it may be appropriate for it to deliver, associated with the recommendations in Chapter 5 (while the proposed new statutory Authority has substantially reduced functions compared to the current Board, growers in particular coarse grains and oilseeds industries may still wish to use it, or a separately constituted body, as vehicle for the delivery of industry service functions);
- in regard to industry services which are identified to continue, whether levies raised from particular grains should only fund services to growers of those grains, or whether levies should be pooled across grains; and
- given that certain research benefits extend beyond NSW, the respective research roles of the new statutory authority and national bodies such as GRDC and the Australian Oilseeds Fund.

- 7.50 A further concern of the Government members of the Review Group which could be addressed through this approach is the funding of industry services on a discretionary basis by the Board from trading profits and compulsory charges.
- 7.51 To enhance accountability, compulsory charges should be hypothecated to particular services. Where this is not the case, such arrangements represent an excise, which as well as being anti-competitive, with resultant inefficiencies, may be in breach of the constitutional division of powers between the states and the Commonwealth (it is noted, however, that no concerns in this regard have arisen during the seven years of operation of the Board).
- 7.52 If the proposed poll of growers is taken, the NSW Farmers' Association and Board representatives (who are opposed to a poll) would prefer that the poll be conducted as a single, whole-of-industry poll, rather than on a grain by grain basis.
- 7.53 On the matter of the Board's financial reserves it can be argued that the Board's ability to raise reserves through regulatory powers potentially restricts competition by providing the Board with a competitive advantage relative to other grain traders in areas such as financing costs. Furthermore, to the extent that such reserves are used to support a future privatised body, arguably a competitive advantage will be provided to that body relative to other traders (see Chapter 6 for more discussion on this point).
- 7.54 On the other hand, the potential competitive advantage provided to the Board through its compulsory charge powers is offset by its inability to access other forms of finance open to private firms, such as equity capital.
- 7.55 The Review Group gave some attention to the appropriateness of using vesting powers as a mechanism for raising compulsory charges for industry service purposes. Other approaches for raising compulsory charges can have constitutional problems (i.e., the excise issue), which could potentially be avoided by the use of vesting.
- 7.56 For example, the current Authorised Buyer fee arrangements illustrate the potential to use vesting as a means of raising revenue. Provided entry to the market (i.e., registration as an Authorised Buyer) is not subject to significant impediments, an arrangement of this nature should have only a small impact on the operation of the market.
- 7.57 Vesting, however, can be a substantial restriction on competition and is usually only utilised when seeking to address structural characteristics of markets. There are therefore questions about the appropriateness of using this approach to raise revenue for industry service functions.
- 7.58 If vesting is considered to be the most efficient way of raising industry levies, or if vesting is already in place for other reasons and its use as a levying mechanism is incidental to those purposes, consideration could be given to its use. Under these circumstances, it would be important to ensure that its use for levying purposes was clearly distinguished from its other purposes. This could possibly be achieved by the adoption of an appropriate constraint on the use of the power.

7.59 The Review Group was advised by NSW Agriculture that a possible alternative mechanism for raising compulsory charges is through an industry services committee arrangement under the new *NSW Agricultural Industry Services Act 1998*. This Act provides for the establishment of committees with compulsory charge powers, which provide services to primary producers, processors, packers and traders. A committee can be formed to provide services such as market intelligence, generic promotion, research, and pest and disease control. The provisions of the Act ensure that arrangements are only put in place that comply with Competition Policy principles and that any compulsory charges levied are, as far as possible, secure from constitutional challenge.

7.60 Attractions of the approach adopted under the *NSW Agricultural Industry Services Act 1998* are that committees:

- are established only if the affected producers (their constituents) agree through a poll;
- are strongly and directly accountable to their constituents; and
- must each year seek the approval of their constituents for proposed compulsory charges.

7.60 The services currently provided by the Board are of a nature (i.e., related to marketing) that the privatised body would continue to deliver them and fund them through retained earnings. The majority of the Review Group (excluding the NSW Farmers' Association and Grains Board representatives) concluded that if growers subsequently (post privatisation) decided that they needed further services which would pass a market failure (net public benefit) test, they could seek the establishment of an arrangement under the *NSW Agricultural Industry Services Act 1998*.

7.61 The NSW Farmers' Association and Grains Board representatives had serious reservations about the usefulness of this Act for state-wide arrangements of the type envisaged and were only prepared to support this conclusion in the event that the NSW Government did not accept their recommendations to retain the Board and its existing vesting powers.

7.62 Given that the Board's reserves are the property of growers, the Review Group was in agreement that growers should have a significant input into any decision regarding their further build-up and future use. A majority view was that at the same time as growers are approached to decide the future use of their reserves and other assets of the Board, they could also identify:

- the industry services which they are prepared to compulsorily fund; and
- the preferred provider of those services, which could be the committee itself or a body such as the privatised Board under contract to the committee.

7.60 To avoid unnecessary costs being imposed on producers, the majority of the Review Group agreed that the joint NSW Government/industry Working Group recommended to be established in Chapter 6, should develop an 'Industry Services Strategy' and growers should be provided with the opportunity to vote on the Strategy as part of the poll on the future of the Board. The NSW Farmers' Association and Grains Board

representatives were of the view that in preference to taking a poll the views of growers should be determined by some other means.

RECOMMENDATIONS

7.63 **Recommendation 23a:**

The Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group recommend that the Working Group develop an 'Industry Services Strategy' and that NSW coarse grains and oilseeds growers be provided with the opportunity to vote for or against the strategy as part of a poll on the issue of whether to privatise the Board.

7.64 **Recommendation 23b:**

The NSW Farmers' Association and Grains Board members of the Review Group (two of the eight members) oppose in principle the process outlined in Recommendation 23a but, if it is to proceed, recommend that rather than taking a poll, NSW coarse grains and oilseeds growers be consulted on the matter by an alternative means to be determined by the Minister in consultation with the Working Group.

7.65 **Recommendation 24:**

The Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group further recommend that any non-marketing industry services which growers agree should be funded through a compulsory charge on themselves should be provided - either directly or under contract with a body such as the privatised Board - by a committee constituted under the NSW Agricultural Industry Services Act 1998 (or a similar regulatory arrangement)

7.66 The key recommendations in this Report on future institutional arrangements for coarse grains and oilseeds marketing and the future of the NSW Grains Board are summarised in Table 7.2.

Table 7.2: Summary of Main Recommendations on Institutional Arrangements and the Future of the NSW Grains Board

Recommendation	Review Group Member Support
A national single desk for barley exports be established.	All Review Group members.
Failing a national single desk being established, a new NSW statutory authority be established which administers single desk export powers through licensing arrangements, but does not itself trade in commodities.	All Review Group members, except for the NSWGB member.
Membership of the new the authority to comprise a NSW Government representative (Chair), two non-growers with relevant professional expertise and	
- two or	AGEA, RMSA, NSWFA and all four NSW Government members.
- three (in the event that such an authority is established).	NSWGB member.
grain growers, with Ministerial discretion as to the selection process.	
The new authority to be funded by charges:	
- against the organisation(s) to which export licences are granted; or	AGEA, RMSA and all four NSW Government members.
- on all NSW barley (and other vested grain) sales.	NSWFA and NSWGB members.
Growers to be given the option of privatising the Board, with a proposal to be developed by a joint NSW Government and industry Working Group.	All Review Group members.
If the decision is to privatise:	
- the new legislative and corporate arrangements to commence as soon as possible after 1 September 2000;	All Review Group members.
- the privatised Board to be guaranteed sole export rights to commodities and markets controlled by the new authority for 3-5 years;	All Review Group members.
- growers to decide whether compulsory charges should be used to raise equity and/or for the delivery of non-marketing industry services and, if so, the nature and duration (not beyond 31 August 2005) of any such charges.	All Review Group members.
If the decision is to not privatise, the assets of the Board to be liquidated and returned to growers in a manner and to a schedule determined by the Working Group.	All Review Group members, except for the NSWGB member.
The Working Group to consult with growers in developing its proposals, with the consultation process:	
- to include a poll; or	AGEA, RMSA and all four NSW Government members.
- to not include a poll.	NSWFA and NSWGB members.
Working Group to be appointed by and at the discretion of the Minister for Agriculture, but to comprise at least one representative of each of the NSWFA, NSWGB and NSW Agriculture.	All Review Group members.

8. LIST OF RECOMMENDATIONS

Recommendation 1: (paragraph 3.42, page 18)

The Review Group recommends that the purpose of the NSW Grain Marketing Act 1991, or any alternative legislation that may be introduced, be defined to make it clear that the outcome the NSW Government seeks is to achieve net public benefits by addressing identified failures in markets for NSW coarse grains and oilseeds.

Recommendation 2: (paragraph 4.66, page 31)

Further to Recommendation 1, should the current legislative arrangements continue, or alternative statutory marketing arrangements be introduced, the Review Group recommends that the objectives of such intervention in the marketing of NSW coarse grains and oilseeds should relate to:

- (i) countering market power abuse by domestic purchasers of these commodities, but only where it is demonstrated that such abuse occurs (or has the strong potential to occur) and cannot effectively be addressed by recourse to the Trade Practices Act 1974; and*
- (ii) exploiting opportunities to obtain market power premiums in export markets and access to restricted markets for these commodities, but only where extraction of such price premiums or market access is demonstrated to be dependent on intervention by the NSW Government.*

Recommendation 3a: (paragraph 5.234, page 74)

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the existing power to establish and maintain a system of compulsory acquisition in relation to grain sorghum, oats, canola, safflower, sunflower, linseed or soybean produced in NSW, whether those commodities are to be traded within or outside Australia, be removed in accordance with the time frame established in Recommendation 15.

Recommendation 3b: (paragraph 5.235, page 74)

It is recommended by the NSW Grains Board and NSW Farmers' Association members of the Review Group (two of the eight members) that vesting of NSW grain sorghum, oats, canola, safflower, sunflower, linseed and soybean, as it currently exists, be retained and be subject to a further review within five years time, i.e., by 31 August 2004.

Recommendation 4a: (paragraph 5.236, page 74)

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the existing power to establish and maintain a system of compulsory acquisition in relation to feed and malting barley produced in NSW, where those commodities are to be traded within Australia, be deregulated in accordance with the time frame established in Recommendation 15.

Recommendation 5a: (paragraph 5.237, page 74)

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group:

- (i) that the power to establish and maintain a 'single desk' for NSW feed and malting barley to overseas markets where market power or access premiums can be demonstrated and government intervention is required to gain those premiums (namely, feed and malting barley exports to Japan), be retained; and*
- (ii) that ongoing retention of this power be subject to a further net public benefit review within five years time, i.e., by 31 August 2004, and every five years subsequently if retained.*

Recommendation 5b: (paragraph 5.238, page 75)

It is recommended by the NSW Government members of the Review Group (four of the eight members):

- (i) that in addition to the markets captured at Recommendation 5a(i), the power to establish and maintain a 'single desk' for NSW malting barley exported to China also be retained;*
- (ii) that ongoing retention of this power be subject to a further net public benefit review within five years time, i.e., by 31 August 2004, and every five years subsequently if retained; and*
- (iii) that, subject to Recommendation 11, the power to establish and maintain a 'single desk' for exports of NSW feed and malting barley to overseas markets other than those covered by (i) above, be removed in accordance with the time frame established in Recommendation 15.*

Recommendation 5c: (paragraph 5.239, page 75)

It is recommended by the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. members of the Review Group (two of the eight members) that the power to establish and maintain a 'single desk' for exports of NSW feed and malting barley to overseas markets other than those captured at Recommendation 5a(i) be removed in accordance with the time frame established in Recommendation 15.

Recommendation 4b/5d: (paragraph 5.240, page 75)

It is recommended by the NSW Grains Board and NSW Farmers' Association members of the Review Group (two of the eight members) that vesting of NSW feed and malting barley, as it currently exists, be retained and be subject to a further review within five years time, i.e., by 31 August 2004.

Recommendation 6: (paragraph 5.241, page 75)

It is recommended by the Review Group that the unused power to fix wholesale prices for grades, classes and descriptions of vested commodities, be repealed immediately.

Recommendation 7: (paragraph 5.242, page 75)

It is recommended by the Review Group that the unused powers to:

- *process commodities or manufacture products from commodities; and*
- *act as a purchasing agent for farm inputs (equipment, machinery, seed, fertiliser etc.),*

be removed immediately, provided that so doing would not prevent the NSW Grains Board, or any statutory body that may replace the Board, from undertaking these function at some stage in the future.

Recommendation 8: (paragraph 6.57, page 85)

It is recommended by the Review Group that the NSW Government approach the Commonwealth Government in relation to the possible establishment of a national single desk for Australian barley exports.

Recommendation 9: (paragraph 6.58, page 85)

Should the NSW Government consider it inappropriate or unnecessary to approach the Commonwealth on the matter of a national single desk for barley exports, or should the Commonwealth be unwilling to implement such an arrangement, it is recommended by the Review Group (excluding the NSW Farmers' Association and Grains Board representatives) that pursuant to Recommendation 5 (whichever of 5a, 5b, 5c or 5d is adopted) a new NSW statutory Authority be established with the functions of:

- *administering single desk exports of NSW barley;*
- *managing and licensing requests to export NSW barley to markets under the single desk restriction;*
- *monitoring the use and effectiveness of the monopoly powers in delivering industry and public benefits; and*
- *accounting to the NSW Government and industry on the performance of its functions.*

Recommendation 10: (paragraph 6.59, page 85)

Pursuant to acceptance of Recommendation 9, the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group recommend that the power of the new Authority extend to the control of exports of barley from NSW by the issuing of licences to export feed or malting barley to specified overseas markets.

Recommendation 11: (paragraph 6.60, page 85)

It is recommended by the Review Group that the issue of whether or not it is practically possible to implement the type of export control described in Recommendation 10 be referred to a joint industry/government Working Group (see Recommendation 19). If it is determined that it is not feasible in practice to differentiate between export markets for the purpose of single desk marketing, it is further recommended:

- (i) *by the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. members (two of the eight members), that Recommendation 9 not be accepted and that the power to establish and maintain an export single desk for NSW barley be removed subsequent to the 1999/2000 harvest but no later than 31 August 2000; and*

- (ii) *by the NSW Government members (four of the eight members), that the power of the new Authority extend to the control of all exports of NSW barley.*

Recommendation 12: (paragraph 6.61, page 86)

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that should the NSW Government not accept the majority recommendation to deregulate the export of coarse grains and oilseeds other than barley, and decide to retain export powers over these other commodities, the principles in Recommendations 9, 10, and 11 should apply equally to the wider set of commodities.

Recommendation 13a: (paragraph 6.62, page 86)

Pursuant to acceptance of Recommendation 9, it is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the new Authority be funded by charges against the organisation or organisations to whom export licences are granted.

Recommendation 13b: (paragraph 6.63, page 86)

While opposed to the establishment of a grain export authority, it is recommended by the NSW Farmers' Association and NSW Grains Board members of the Review Group (two of the eight members) that in the event that such a grain export Authority is established, it should be funded through compulsory charges on all NSW barley and other vested grain sales

Recommendation 14: (paragraph 6.64, page 86)

Pursuant to acceptance of the principle (embodied in Recommendation 9) of separating the Board's current statutory and commercial functions, it is recommended by the Review Group that NSW grain growers be given the option of privatising the NSW Grains Board and:

- (i) *should this option be taken up, that the privatised Board be guaranteed sole export rights to commodities and markets controlled by the new Authority for an initial three to five year period; or*
- (ii) *should this option not be taken up, that the assets of the Board be liquidated and returned to growers as soon as possible but in a manner and to a schedule determined by the joint industry/Government Working Group described in Recommendation 19. NB. The Grains Board representative was opposed to any option which involved the liquidation of the Board being considered.*

Recommendation 15a: (paragraph 6.99, page 92)

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the following time steps apply to implementation of the majority recommendations for reform to the existing NSW coarse grain and oilseeds marketing arrangements (excluding domestic sales of malting barley):

- *that the power to compulsorily acquire and establish a single desk for export sales of oats, grain sorghum, safflower, sunflower, linseed and soybean continue through the upcoming 1999/2000 harvest, but be removed by no later than 31 August 2000;*

- *that the power to compulsorily acquire and establish a single desk for export sales of canola be removed no later than 31 August 2001 conditional upon an export authorisation scheme being introduced between 31 August 2000 and 31 August 2001. The scheme would involve:*
 - *allowing private traders to purchase canola from growers for the purpose of exporting subject solely to the payment of a pre-determined 'authorised buyer' fee to the Board; and*
 - *the Minister for Agriculture setting the fee based on the advice of the Board and industry (capped at \$5/tonne).*
- *that the power to compulsorily acquire and establish a single desk for domestic sales of all commodities currently vested in the Board, except malting barley, be removed as soon as possible but no later than 31 August 2000; and*
- *that regulation of export sales of feed and malting barley, subject to the outcome of Recommendation 11, be retained and reviewed within five years, ie., by 31 August 2004 (in accordance with National Competition Policy guidelines and NSW policy on regulation reviews).*

Recommendation 15b: (paragraph 6.97, page 92)

With respect to domestic sales of malting barley:

- *the Australian Grain Exporters Association and Rural Marketing and Supply Association Inc. members of the Review Group (two of the eight members), recommend that the power to compulsorily acquire and establish a single desk continue through the upcoming 1999/2000 harvest, but be removed by no later than 31 August 2000; whereas*
- *the Government members (four of the eight members) recommend that the single desk continue through to include the 2000/01 harvest and be removed by no later than 31 August 2001 conditional upon an authorisation scheme being introduced between 31 August 2000 and 31 August 2001. The scheme would involve:*
 - *allowing private traders and domestic users to purchase barley from growers for the purpose of domestic trading and use, subject solely to the payment of a pre-determined authorised buyer fee to the Board; and*
 - *the Minister for Agriculture setting the fee based on the advice of the Board and industry (capped at \$5/tonne).*

Recommendation 16: (paragraph 6.99, page 93)

It is recommended by the Review Group that NSW coarse grain and oilseeds growers be consulted on their wishes regarding privatising or winding-up the NSW Grains Board.

Recommendation 17a: (paragraph 6.100, page 93)

Pursuant to Recommendation 16, it is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the consultation process involve the conduct of a grower poll on all the relevant issues, and that a joint industry/NSW Government Working Group be established to undertake the tasks in the draft Terms of Reference at Appendix 8.

Recommendation 17b: (paragraph 6.101, page 93)

Pursuant to Recommendation 16, it is recommended by the NSW Farmers' Association and Grains Board members of the Review Group (two of the eight members) that the joint industry/NSW Government Working Group referred to in Recommendation 17a be formed to

undertake the tasks in the draft Terms of Reference at Appendix 8, but that the consultation process not involve the conduct of a grower poll, but an alternative mechanism to be determined by the Minister in consultation with the Working Group.

Recommendation 18: (paragraph 6.102, page 93)

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group that the grower poll cover at least the following:

- *whether the NSW Grains Board should be privatised or the equity fund and other assets of the Board be liquidated and distributed back to growers;*
- *whether compulsory grower charges should be continued/introduced for the purposes of raising equity;*
- *if so, which grains should be subject to such compulsory charges, for how long (but not beyond 31 August 2005) and the quantum of the charges; and*
- *the mechanism by which these charges should be levied (eg., constrained vesting),*

with other details to be determined by the Working Group within the bounds of the Terms of Reference shown at Appendix 8.

Recommendation 19: (paragraph 6.103, page 95)

It is recommended by the Review Group that the Working Group be appointed by the Minister for Agriculture in consultation with the NSW Farmers' Association, the NSW Grains Board and NSW Agriculture, and include at least one representative of each of those organisations. However, the full membership of the Working Party should be subject to Ministerial discretion.

Recommendation 20: (paragraph 6.104, page 95)

It is recommended by the Review Group that the Working Group be required to complete its activity by 31 August 2000, so as to facilitate new legislative and corporate arrangements being in place as soon as possible after 1 September 2000.

Recommendation 21a: (paragraph 6.131, page 100)

It is recommended by the Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group, in order to maximise flexibility with respect to representation on the NSW Grains Board and Consultative Committee should the current arrangements continue:

- *that the NSW Farmers' Association have no formal exclusive role in relation to nominating representatives to the NSW Grains Board Selection Committee or the Consultative Committee; and*
- *that the enabling legislation simply detail the number and mix of government, industry and community group representatives, and the appropriate mix of skills, with Ministerial discretion as to the selection process(es) to be followed.*

Recommendation 21b: (paragraph 6.132, page 100)

Should the current statutory arrangement continue, it is recommended by the NSW Farmers' Association and Grains Board members of the Review Group (two of the eight members) that

the existing role of NSW Farmers' Association in relation to nominating representatives to the NSW Grains Board Selection Committee and the Consultative Committee also continue.

Recommendation 22a: (paragraph 6.133, page 100)

It is recommended by all Review Group members excepting the NSW Grains Board member that membership of the new export Authority, should it be established, comprise a NSW Government representative (who will chair the Authority), two grain growers, and two non-growers with expertise in any of international trade in agricultural commodities or other agribusiness, commerce, corporate management, or administration of statutory powers, with Ministerial discretion as to the selection process(es) to be followed.

Recommendation 22b: (paragraph 6.134, page 100)

While completely opposed to the establishment of a grain export Authority, it is recommended by the NSW Grains Board member of the Review Group that membership of the new export Authority, should it be established, comprise an additional grain grower member to those specified in Recommendation 22a, ie., three grain grower members rather than two.

Recommendation 23a: (paragraph 7.63, page 113)

The Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group recommend that the Working Group develop an 'Industry Services Strategy' and that NSW coarse grains and oilseeds growers be provided with the opportunity to vote for or against the strategy as part of a poll on the issue of whether to privatise the Board.

Recommendation 23b: (paragraph 7.64, page 113)

The NSW Farmers' Association and Grains Board members of the Review Group (two of the eight members) oppose in principle the process outlined in Recommendation 23a but, if it is to proceed, recommend that rather than taking a poll, NSW coarse grains and oilseeds growers be consulted on the matter by an alternative means to be determined by the Minister in consultation with the Working Group.

Recommendation 24: (paragraph 7.65, page 113)

The Australian Grain Exporters Association, Rural Marketing and Supply Association Inc. and the four NSW Government members of the Review Group further recommend that any non-marketing industry services which growers agree should be funded through a compulsory charge on themselves should be provided - either directly or under contract with a body such as the privatised Board - by a committee constituted under the NSW Agricultural Industry Services Act 1998 (or a similar regulatory arrangement)

APPENDIX 1**TERMS OF REFERENCE****REVIEW OF THE NSW GRAIN MARKETING ACT 1991**

1. The review of the *NSW Grain Marketing Act 1991* shall be conducted in accordance with the principles for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:
 - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation can only be achieved by restricting competition.
2. Without limiting the scope of the review, the review is to:
 - (a) clarify the objectives of the legislation, and their continuing appropriateness;
 - (b) identify the nature of the restrictive effects on competition;
 - (c) analyse the likely effect of any identified restriction on competition on the economy generally;
 - (d) assess and balance the costs and benefits of the restrictions identified; and
 - (e) consider alternative means for achieving the same result, including non-legislative approaches.
3. When considering the matters in (2), the review should also:
 - (a) identify any issues of market failure which need to be, or are being addressed by the legislation; and
 - (b) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974 (Cth)* and NSW Competition Code.
4. The review shall consider and take account of relevant regulatory schemes in other Australian jurisdictions, and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions.
5. The review shall consult with and take submissions from farmers, grain buyers, grain agents and other interested parties.
6. The Review Group shall report to the Minister for Agriculture.

APPENDIX 2**SUBMISSIONS TO THE REVIEW**

1	Mr D R	Scott	"West End"	DELUNGRA NSW
2	Mr G	Hardie	NSW Farmers' Association	TALLIMBA NSW
3	Mr Roger	Fountain	Agralink Pty Ltd	WINDSOR NSW
4	Mr DJ & BE	Charles	"Stoneleigh"	GRONG GRONG NSW
5	Mr LR	Nisbett	Nisbett & Co	KAMARAH NSW
6	Mr R J	Esdaile	The University of Sydney	MOREE NSW
7	Mr Jack	Schmidt	Riverina Stock Feeds Pty Ltd	LEETON NSW
8	Mr Mike	O'Hare	"Yirragunji"	BECKOM NSW
9	Mr Geoff	West	The West Pastoral Co P/L	WEST WYALONG NSW
10	Mr Neil	Norman	"Telephone Gate"	JERILDERIE NSW
11	Mr H L & J R	Hart	"Fairfield"	TALLIMBA NSW
12	Mr D C	Hopwood	"Woodlands"	BOREE CREEK NSW
13	Mr Phil	O'Hare	"Greendale"	BECKOM NSW
14	Mr Tony	Cogswell	Lachlan Commodities Pty Ltd	FORBES NSW
15	Mr RJ & J	Crerar	"Merrylands"	CONDOBOLIN NSW
16	Mr Ian	Munro	NSW Farmers	RANKINS SPRINGS NSW
17	Mr Daniel	Wheeler	Agrigrain	NARROMINE NSW
18	Mr Sam	Gourley	"Eurowie"	EDGEROI NSW
19	Mr Bob	Samson	Wilga Run	LAKE CARGELLICO NSW
20	Mr B J	Alty	"Flixton"	MERRIWAGGA NSW
21	Ms Peggy	Woods	Booroola Partnership	BOGGABILLA NSW
22	Mr Kevin	Ballinger	NSW Farmers	DELUNGRA NSW
23	Mr R J	Lewis	"Gorman Springs"	WARIALDA NSW
24	Mr L V	Hosking	Sydney Futures Exchange Ltd	SYDNEY NSW
25	Mr Tony	Kelly	The Ranch	DELUNGRA NSW
26	Mr Michael	Dunn	Glen Owen	DELUNGRA NSW
27	Mr Alwyn	Prentive	"Alkira"	DELUNGRA NSW
28	Mr S C	Trotter	G & C Cornell Agrtrade	LOCKHART NSW
29	Mr Ian	Fraser	Joe White Maltings Limited	COLLINGWOOD VIC
30	Mr G O	Cross	78 Euchie Street	PEAK HILL NSW
31	Mr R & R	Nisbet	"Allambie"	KAMARAH NSW
32	Mr Peter	Luelf	"Malonga Park"	RANKINS SPRINGS NSW
33	Mr Eric	McKenzie	No Address Given	
34	Mr Lawrence	Higgins	"Mamari"	MERRIWAGGA NSW
35	Mr Robert	Groat	Wandella Enterprises	RANKINS SPRINGS NSW
36	Mr Terry J	Brabin	B F B Pty Limited	TEMORA NSW
37	Ms Mollee	Norrie	50 Villarette Avenue	NARRABRI NSW
38	Mr Barwon	Staggs	"Linden"	GILGANDRA NSW
39	Mrs Kathy	Maslin	NSW Farmers	BECKOM NSW
40	Mr Brian	Flanagan	Marne Street	MERRIWAGGA NSW
41	Mr John D	Fitzgerald	Krui Plains	MOREE NSW
42	Mr Robert	Muirhead	No Address Given	
43	Mr John	Reilly	"Miner Lea"	GIRRAL NSW
44	Mr G A	McKenzie	No Address Given	
45	Mr Ian	McFadyen	"Wilga Park"	LAKE CARGELLICO NSW
46	Ms Anne	Coffey	NSW Farmers' Association	CONDOBOLIN NSW
47	Mr Stewart	Thomson	MT Jillett Partnership	BECKOM NSW
48	Mr Errol	Hoskinson	"Fernleigh"	UNGARIE NSW
49	Mr Grant	Chambers	Kawarrah	QUIRINDI NSW
50	Mr Paul	Gruber	"Corella"	TAMBAR SPRINGS NSW

51	Mr	Gordon	Hall	Mallee-Vale Farming Co.	BECKOM NSW
52	Mr	BJ & MC	Freeman	"Marickfield"	EDGEROI NSW
53	Mr	John	Begg	AGEA	RED HILL VIC
54	Mr	Geoff	Manchee	Leverton Pastoral Company	MOREE NSW
55	Mr	Garry	Lane	The Falls Homestead	DUBBO NSW
56	Mr	Paul	Burkinshaw	Arajoel-Kywong Co-Operative	LOCKHART NSW
57	Mr	N	Burton Taylor	Bypass Stockfeeds	BARADINE NSW
58	Mr	Mark	Dwyer	No Address Given	RANKINS SPRINGS NSW
59	Mr	Greg	Rowland	"Bridgellah"	BARADINE NSW
60	Mr	Peter	Dampney	"Junefield"	NARRABRI NSW
61	Mr	Tom	Howard	Walgett Special One Co-op	WALGETT NSW
62	Mr	G E O	Martin	Prime Wheat Association Ltd	DUBBO NSW
63	Mr	Shane	Trotter	RMSA	ORANGE NSW
64	Mr	W R	Parsons	"Elibank"	RANKINS SPRINGS NSW
65	Mr	N	Burton Taylor	Hillgrove Pastoral Co	BOOROWA NSW
66	Mr	Edward	Holtsbaum	"Nowley"	SPRING RIDGE NSW
67	Mr	RB	Walker	"Keera"	EDGEROI NSW
68	Mr	Stephen	Rossiter	NSW Farmers Association	UNGARIE NSW
69	Mr	Mark	Dwyer	NSW Farmers Association	RANKINS SPRINGS NSW
70	Mr	Kevin	Roberts	ALFA Feed Commodities	SYDNEY NSW
71	Mr	Brett	Stevenson	AgRisk Management Pty Ltd	ROYAL EXCHANGE NSW
73	Mr	Wallace	Charles	RMB 439	GRONG GRONG NSW
74	Mr	Ken	Langley	"Midgeon Park"	NARRANDERA NSW
75	Mr	Jim	Shady	"Illoura"	COROBIMILLA NSW
76	Ms	Janis	Wright	Brixton Park	BOREE CREEK NSW
77	Mr	Ross	Marsh	5 Kooba Street	GRIFFITH NSW
78	Mr	D W	Broad	"Lismoyle"	NARRANDERA NSW
79	Mr	B R	Broad	No Address Given	GRONG GRONG NSW
80	Mr	Bruce	Charles	RMB 1A	GRONG GRONG NSW
81	Mr	Ian	Charles	"Grena"	GRONG GRONG NSW
82	Mr	David	Limbrick	"Wilga Vale"	GRONG GRONG NSW
83	Mr	Bill	Craze	Box 165	NARRANDERA NSW
84	Mr	Leo	Delahunty	Dirt Management Pty Ltd	HORSHAM VIC
85	Mr	Andrew	Davidson	No Address Given	
86	Mr	Andrew	Inglis	GRDC	KINGSTON ACT
87	Mr	Angelo	Di Petta	Barrett Burston Malting	RICHMOND VIC
88	Mr	Ian	Munro	"The Brae"	RANKINS SPRINGS NSW
89	Mr	Matthew	Kelly	KM & WM Kelly & Sons	FINLEY NSW
90	Mr	Ian	Donges	NSW Farmers Association	SYDNEY NSW
91	Mr	Don	Hubbard	NSWGB Consultative Com	SYDNEY NSW
92	Mr	Andrew A	Nicholls	PO Box 24	GOOLGOWI NSW
93	Mr	George	Cronin	"Verbeena"	Grogin Via TEMORA NSW
94	Mr	Murray	Rogers	AWB Limited	MELBOURNE VIC
95	Mr	Michael	Pallett	Cargill Australia Ltd	MELBOURNE VIC
96	Mr	John	Melbourne	"Noonameena"	NARRABRI NSW
97	Mr	A C K	McAllister	"Warra Park"	DENILQUIN NSW
98	Dr	Vivien	Kite	Stock Feed Manufacturers'	NORTH SYDNEY NSW
99	Mr	Ian	Munro	Prime Wheat Association	RANKINS SPRINGS NSW
100	Mr	Stephen	Rix	Public Interest Advocacy Centre	SYDNEY NSW
101	Mr	Noel	Ridly	"Cornella"	WEST WYALONG NSW
102	Mr	Brian	Vial	North Dale Pty Ltd	MOULAMEIN NSW
103	Mr	Mark	Hoskinson	Fernleigh Pastoral Company	KIKOIRA NSW

APPENDIX 3**OVERVIEW OF THE AUSTRALIAN AND NSW GRAINS INDUSTRIES****INTRODUCTION**

Australia is both a significant producer and exporter of cereals, coarse grains and oilseeds. Annual coarse grain production in Australia is approximately 9-10 million tonnes. World production of coarse grains is approximately 800-900 million tonnes (ABARE 1997, *Australian Commodity Statistics*, AGPS, Canberra). The Australian industry is heavily dependant on international trade, exporting around 80 per cent of the wheat crop, 50-70 per cent of the barley crop and smaller percentages of other coarse grains, grain legumes and oilseeds. The domestic market is primarily comprised of the human food, brewing and stockfeed markets.

THE AUSTRALIAN GRAINS AND OILSEEDS INDUSTRIES**Production**

Annual production of selected coarse grains and oilseeds at a national and state level is shown in Table A3.1. Barley is Australia's second largest crop after wheat, with approximately 3 million hectares sown annually, producing approximately 5 million tonnes of grain at an average yield of about 1.7 tonnes per hectare.

NSW barley production accounts for approximately 16-18 per cent of total Australian production, while Victoria and South Australia jointly account for approximately 60 per cent of national production.

Approximately 30-50 per cent of barley production is used within Australia, and of this about 83 per cent is used for stockfeed, 11 per cent for human consumption and the remainder is held as stocks by the marketing authorities. Exported barley is primarily for stockfeed purposes, but also for malting.

Oats is the third largest crop sown in Australia. It is mainly grown in southern NSW, Victoria, South Australia and Western Australia. Approximately 1.6 million tonnes is produced annually on an area of about 1.1 million hectares. Approximately 85 per cent of the crop is used within Australia, of which approximately 90 per cent is consumed as stockfeed, 6 per cent is used for human consumption and 4 per cent for seed. Limited quantities are exported for feed, with quantities depending on availability and export markets (AWB internet homepage 1997).

Grain sorghum is the next largest grain crop. The area sown to sorghum normally totals approximately 0.5 million hectares, with production at about 1.0 million tonnes and yields averaging 1.9 tonnes per hectare. Grain sorghum production is heavily concentrated in Queensland and northern NSW. About 85 per cent of the sorghum crop is used within Australia, principally for stock feed. The remainder of the crop, depending on availability and international markets, is exported (AWB internet homepage 1997).

Table A3.1: Annual Production of Coarse Grains and Oilseeds in Australia

	1990/91 kt	1991/92 kt	1992/93 kt	1993/94 kt	1994/95 kt	1995/96 kt	1996/97 kt ^p	1997/98 kt
BARLEY								
New South Wales	822	749	1,044	1,310	291	1,074	1,483	1,159
South Australia	1,506	1,882	1,855	2,229	1,159	1,851	1,923	2,004
Victoria	651	898	1,116	1,733	448	1,342	1,189	894
Western Australia	742	900	1,061	1,381	915	1,323	1,635	1,744
Queensland	361	70	285	262	73	195	429	234
<i>Australia</i>	<i>4,108</i>	<i>4,531</i>	<i>5,396</i>	<i>6,956</i>	<i>2,913</i>	<i>5,823</i>	<i>6,694</i>	<i>6,065</i>
OATS								
New South Wales	538	579	761	613	197	711	610	503
South Australia	148	172	165	136	87	162	162	151
Victoria	301	300	404	364	201	392	313	329
Western Australia	497	614	578	516	425	585	568	575
<i>Australia</i>	<i>1,530</i>	<i>1,690</i>	<i>1,937</i>	<i>1,651</i>	<i>924</i>	<i>1,875</i>	<i>1,698</i>	<i>1,583</i>
SORGHUM								
New South Wales	187	398	229	228	347	472	395	437
Queensland	558	1045	315	852	916	1,116	809	620
<i>Australia</i>	<i>747</i>	<i>1443</i>	<i>546</i>	<i>1,082</i>	<i>1,272</i>	<i>1,555</i>	<i>1,212</i>	<i>1,065</i>
CANOLA								
New South Wales	82	118	133	193	73	272	340	310
South Australia	6	10	10	18	26	48	53	81
Victoria	10	27	24	47	57	120	141	181
Western Australia	2	15	12	47	108	117	108	288
<i>Australia</i>	<i>98</i>	<i>170</i>	<i>178</i>	<i>305</i>	<i>264</i>	<i>557</i>	<i>642</i>	<i>860</i>
SOYBEANS								
New South Wales	26	29	28	48	17	21	51	69
Queensland	34	32	18	29	8	19	24	20
<i>Australia</i>	<i>62</i>	<i>63</i>	<i>49</i>	<i>81</i>	<i>28</i>	<i>44</i>	<i>82</i>	<i>93</i>
SAFFLOWER								
New South Wales	2	6	6	11	2	6	3	5
South Australia	2	6	5	10	4	3	4	3
Victoria	4	12	12	24	8	17	16	10
Queensland	2	2	1	0	0	0	0	2
<i>Australia</i>	<i>11</i>	<i>26</i>	<i>23</i>	<i>45</i>	<i>15</i>	<i>30</i>	<i>23</i>	<i>19</i>
LINSEED								
New South Wales	1.1	1.7	2.0	2.2	1.5	2.0	1.9	1.6
South Australia	0.3	1.4	0.6	2.5	1.6	0	0.4	0.6
Victoria	2.1	1.3	1.0	3.3	2.1	8.0	3.0	2.5
Western Australia	0.1	0.2	0.1	0.7	0.3	2.3	0.7	0.8
Queensland	0.5	0.8	0.1	0.1	0.4	0.4	0.8	0.6
<i>Australia</i>	<i>4.1</i>	<i>5.4</i>	<i>3.9</i>	<i>8.8</i>	<i>5.9</i>	<i>12.7</i>	<i>6.8</i>	<i>6.0</i>
SUNFLOWER SEED								
New South Wales	59	38	10	48	54	39	64	25
Queensland	88	43	17	52	56	27	95	66
<i>Australia</i>	<i>152</i>	<i>84</i>	<i>50</i>	<i>105</i>	<i>112</i>	<i>69</i>	<i>163</i>	<i>98</i>

Source: ABARE (1997, 1998), *Australian Commodity Statistics*; p = preliminary; na = not available; Note: State totals may not add to national totals due to rounding errors. ABARE production estimates current as at 18 February 1998.

Between 40-50 per cent of Australia's annual canola crop is produced in NSW, with significant production also in Western Australia and Victoria. South Australia produces approximately 7-8 per cent of the total crop and there is no significant production in the other states. NSW produced 272,300 and 340,000 tonnes of canola in 1995/96 and 1996/97, respectively.

Linseed is primarily produced in Victoria, but overall annual production is small relative to other oilseed crops. Safflower seed is also primarily produced in Victoria, with smaller quantities produced in NSW and South Australia.

Production of soybeans has increased annually over the last five years. Soybeans are produced primarily in NSW and Queensland, with NSW producing approximately 60 per cent of the crop in 1996-97. Sunflower seed is produced nearly exclusively in Queensland and NSW. The State which produces the most sunflower seed varies from year to year.

In total, NSW produces between 50-56 per cent of annual oilseed production in Australia, followed by Queensland, with 20-25 per cent of total tonnage.

The Marketing of Australian Grains and an Overview of Relevant Regulation

The Australian grains industry, and particularly the marketing of grains, has been characterised by numerous regulatory and institutional arrangements relative to other commodities. These arrangements have concentrated on export marketing because of the high level of dependence of the major commodities on export markets.

The Australian Wheat Board (AWB) is solely responsible for the export of Australia's wheat production. The AWB is a statutory marketing authority established under Federal Government legislation with State Government enabling legislation.

Apart from wheat, other grains produced in Australia do not come under Federal legislative control. All other statutory marketing arrangements in grains and oilseeds are State based. Most States within Australia have statutory marketing boards governing the marketing of certain grains within that State. Two authorities operate in New South Wales, while Western Australia, Queensland, South Australia and Victoria have one each. State arrangements include specific grain marketing boards or co-operatives. A major role of these organisations is in export control, although they have wider functions and powers.

Barley

The barley industry is currently the most regulated of the non-wheat grain industries.

Barley produced in South Australia and Victoria is subject to compulsory acquisition and is marketed by the Australian Barley Board (ABB). In the case of malting barley, growers can, however, sell non-mainstream varieties directly to domestic maltsters with payments made through the ABB. In this case, the maltsters have a licence issued by the ABB, within which is a deed of arrangement which specifies the varieties a maltster may not purchase directly (the mainstream or common varieties generally, although they may vary from maltster to maltster).

A permit system applies for stock feed purposes and the ABB does not play a role in contract negotiations.

As an outcome of the recent Competition Policy review of the ABB, the Victorian and South Australian Governments have proposed that the ABB be replaced by a commercial entity, and that the domestic feed barley market be deregulated in the coming season and the domestic malting barley market by next season. Single desk export arrangements for barley are proposed to remain in place only until 30 June 2001. From that date, there will be no state-based statutory marketing arrangements for grains or oilseeds in Victoria and South Australia.

The NSW Grains Board has vesting powers over malting and feed barley. Maltsters and growers can enter into direct arrangements if the end-users obtain a licence from the Board. In addition, an authorised buyer system operates for feed barley in NSW.

In Queensland, Grainco has vesting powers over malting barley. Growers can make contracts with maltsters, with payments being made through Grainco. Grainco also has vesting powers over feed barley. Feed permits are issued with the authority of Grainco.

In Western Australia, the Grain Pool of WA has vesting powers over malting and feed barley. A limited permit system exists for growers of malting barley.

Oats

Oats are traded freely in all States except South Australia where both export and domestic sales are controlled by the ABB through compulsory acquisition, and in NSW, where exports are handled by the Grains Board. The Board currently divests its powers over oats, for the domestic market, to enable free trading by licensed grain merchants, subject to levy payments. It is proposed that the oats market in South Australia be totally deregulated in mid-1999.

Sorghum

In Central Queensland, Grainco has acquisition powers over sorghum, however, sorghum from Central Queensland is effectively traded freely on both export and domestic markets. In Southern Queensland sorghum for both the export and domestic markets is traded freely.

In NSW the Board has vesting powers over sorghum. The Board currently handles all sorghum exports but divests sorghum on the domestic market to enable authorised buyers to trade sorghum freely, again subject to a levy payment.

A recent National Competition Policy review of statutory marketing arrangements in Qld recommended various reforms to the arrangements for sorghum and these changes have subsequently been agreed to by the Queensland Cabinet, however, no reforms have yet been legislated.

Oilseeds

More than half of Australia's canola crop is produced in NSW, with significant production in Victoria, South Australia and Western Australia. In Western Australia marketing of canola is controlled by the Grain Pool of Western Australia, while in NSW the Board has vesting

powers over oilseeds. Currently it has divested oilseeds allowing canola and other oilseeds to be traded freely domestically, through the authorised buyer system and subject to the payment of a levy, however export controls have remained in place.

In NSW, sunflower, safflower and linseed are subject to the same controls as canola, where domestic sales may be made through authorised buyers. Export sales of those oilseeds are however limited to the Board. In Western Australia, the Grain Pool is the sole exporter of linseed and canola.

Sunflowers are also grown extensively in Queensland. However, Queensland has not instituted statutory marketing arrangements and seed is freely traded both domestically and internationally.

No other oilseeds produced in Australia are subject to statutory marketing controls.

Other Grains and Legumes

Maize, triticale, field peas, faba beans and chickpeas are marketed freely in all States of Australia by merchants, traders or individual growers.

The Grain Pool of Western Australia is the sole marketing authority on the domestic and export markets for lupins produced in Western Australia. In other States the marketing of lupins is unrestricted.

All rice grown in NSW is vested with the Rice Marketing Board of New South Wales which has appointed the Ricegrowers' Co-operative Limited as its sole authorised buyer.

INTERNATIONAL TRADE IN COARSE GRAINS AND OILSEEDS

Overview

The international grain trade has traditionally been subject to significant government intervention relative to most other agricultural products.

The European Union (EU) and the USA have maintained trade and domestic production support policies which have significantly altered world production and trade in grains. The primary effect of policies in both countries has been to increase domestic production above that likely to be produced under a free trade or unsupported system.

In 1985, the USA adopted the Export Enhancement Program (EEP) while the EU maintained the Common Agricultural Policy (CAP). However as a result of the 1986-94 General Agreement on Tariffs and Trade (GATT) Uruguay Round trade discussions, some trade liberalisation has been achieved, although a number of market, sanitary and phytosanitary barriers still prohibit free international trade.

The Uruguay Round led to the creation of the World Trade Organisation (WTO) in 1995. The WTO has been involved in settling trade disputes and continues to oversee the

implementation of the agreements reached in the Uruguay Round. This includes overseeing the Agreement on Sanitary and Phytosanitary Measures (SPS). This Agreement builds on previous GATT rules to restrict the use of unjustified sanitary and phytosanitary measures for the purpose of trade protection. Australia is a signatory to this agreement. As well as trade agreements under the WTO, Australia is also a signatory to a number of bilateral and multilateral trade agreements to improve access to export markets.

Although both the European Union and the USA have recently put in place or initiated agricultural market reforms, essentially winding back assistance and decoupling farm assistance from production, which will likely impact on world grain production and hence, world grain prices, their implementation is a staged process and there is still potential for selective use of export subsidies to adversely affect export prices:

- In the USA, the *Federal Agricultural Improvement and Reform Act of 1996* (the "Farm Bill 1995"), signed into law in April 1996, makes significant changes in long-standing agricultural policies. The Act provides income support and commodity loans to landowners and agricultural producers for crop years 1996 through to 2002, while changing the income support system that had been used in some form from 1974 to 1995. The previous income support system, based on established (target) prices and deficiency payments, has been replaced by a series of annual payments the level of which are unrelated to current market prices or production levels. Most acreage use restrictions under the previous arrangements have not been continued, so grain, cotton, and rice producers will have almost complete flexibility to produce any crop on their land and still receive income support and loan benefits.
- In the EU, crops - including grains, oilseeds, and protein crops such as pulses - are subject to a system of price support, export subsidy and a land set-aside program of 5 per cent of area. Sugar, dairy products and beef are subject to price support, export subsidies, and some direct payments to producers. On 16 July, 1997, the European Commission released documents outlining the "Agenda 2000" program. Agenda 2000 comprises the Commission's proposals for reformed agricultural policies, as well as numerous other policies. It has not yet been agreed on by the member nations (agreement was expected on various aspects by late 1997), but proposed changes for cereals, oilseeds and protein crops include changes which would reduce intervention stocks and prices (in 2000) for cereals, avoid the routine use of export subsidies and simplify the current support system.

New multilateral trade negotiations will start in 1999 as a follow-up to the Uruguay Round. The 1999 negotiations are intended to continue forward the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reforms. This means further reforms in - or possibly the elimination - of export subsidies; and further reduction in trade distorting domestic supports, or movements towards decoupled support.

The significance of the gains made at the Uruguay Round can easily be understated but both the EU and US continue to abide by agreements as a result of these negotiations.

The primary achievement of the Uruguay Round was to restrain the use of agricultural export subsidies. They required a reduction in export subsidies of 36 per cent over a six year period for developed countries and 24 per cent over ten years for developing countries. The volume of subsidised exports must also be reduced by 21 per cent.

Another major achievement was to improve the access to domestic markets. The agreement called for average tariff reductions of 36 per cent over six years for developed countries and 24 per cent over ten years for developing countries.

Following the Uruguay Round the US has undergone significant agricultural policy reform which decoupled production from direct support.

It is important for Australian agriculture that the WTO continues to achieve its longer term goals of substantial reforms in the 1999 Round, through which Australia can gain greater market access.

The Australian Grains Industry

The Australian grains industry, with exports estimated to be 75 per cent of total annual grain production, is widely influenced by international trade conditions. Australia produces approximately two per cent of total world grain production (approximately 3-4 per cent of total wheat production and 1 per cent of total coarse grain production), but produces approximately 10-12 per cent of all grain traded internationally (approximately 15 per cent of wheat and 5 per cent of coarse grains).

Australia is a net exporter of oilseeds and exports small quantities of oil, but is a net importer of combined oilseeds, vegetable oils and meals.

Table A3.2: World Barley Trade, By Region And Country

	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98
	mt	mt	mt	mt	mt	mt	mt	mt
Imports								
China	0.9	1.0	0.6	1.3	1.3	1.4	2.0	1.5
Eastern Europe	1.3	0.1	1.5	1.5	0.8	0.6	0.9	0.2
European Union	5.8	5.6	5.0	3.5	4.2	6.8	5.5	5.0
Former Soviet Union	6.5	5.9	na	na	1.7	1.4	0.8	0.9
Russia	b	b	2.3	0.4	0.6	0.8	0.3	0.3
Ukraine	b	b	0.3	0.0	0.0	0.0	0.0	0.0
Japan	1.5	1.5	1.7	1.7	1.8	1.5	1.6	1.6
Saudi Arabia	4.5	6.8	3.9	4.5	3.0	2.9	5.5	4.5
Exports								
Australia	2.9	2.5	3.1	4.1	1.5	4.0	4.3	3.3
Canada	4.7	3.3	2.5	3.6	2.9	2.6	3.4	2.6
European Union	14.0	14.5	12.1	10.0	9.5	8.7	12.2	8.4
United States	1.8	2.1	1.7	1.4	1.4	1.4	0.7	1.6
Total	25.7	24.4	22.6	21.4	19.6	19.1	22.4	20.0

p = preliminary (Source: ABARE, *Australian Commodity Statistics*, 1998)

The Volume of Grains Traded Internationally

Wheat is the grain most internationally traded, followed by coarse grains (corn, barley, oats and sorghum). Australia is the world's fourth largest exporter of wheat, after the USA, Canada and the EU. In 1996-97, approximately 19 million tonnes of wheat and 4 million tonnes of coarse grains were exported from Australia (ABARE 1997, *Australian Commodity Statistics*). Smaller volumes of oilseeds, legumes and rice are also traded internationally.

Australia is the second largest exporter of barley after the EU. Canada is also a significant exporter. The largest market, based on volume, for Australian feed barley is Saudi Arabia and the largest market for malting barley is China (Tables A3.2 and A3.3).

Data relating specifically to malting barley are difficult to obtain, however, The Boston Consulting Group report on the Australian malting barley industry³¹ reports that,

“Australia is one of a relatively small group of malting barley producers that is heavily reliant on exports in an increasingly competitive global market. Australia has relatively few major competitors, the most important being Canada and the European Community.”(p5)

“Argentina, Uruguay and the United States are smaller players in a concentrated international group of suppliers. ...Although Canada's and Australia's shares tend to seesaw, depending on the relative sizes of their harvests, Australia usually supplies between 25 per cent and 45 per cent of the world's import malting barley needs.” (p59)

Global trade in canola is usually between 3 and 4 million tonnes each year. Canola is generally traded for oil and meal extraction. Oilseed crushing on the export market is dominated by the USA, Canada and European countries among the major producing countries, while Japan dominates oilseed importation.

Canada is currently the largest exporter of canola seed with annual production of up to 7 million tonnes, domestic usage of 3-4 million tonnes and export surpluses up to 4 million tonnes. Australia is the second largest canola exporter, but according to ABARE data has total annual exports amounting to less than 10 per cent of Canada's (283,000 tonnes in 1996/97).

The meal from canola accounts for about 60 per cent of the canola by volume. Canola meal is an energy source for livestock feeding and therefore competes with feed grains such as barley, wheat and corn. The main exporting countries are Canada, the EU and Australia.

Estimated Australian canola production and usage in 1997/98, are shown in Table A3.4.

31 Boston Consulting Group (1994) (referenced in Footnote 22, p59).

Table A3.3: Australian Exports Of Barley, By Destination

	1990/91 kt	1991/92 kt	1992/93 kt	1993/94 kt	1994/95 kt	1995/96 kt	1996/97 ^P kt ^P
Feed Barley							
Asia							
Japan	394	510	442	na	na	na	na
Taiwan	165	174	131	na	na	na	na
Middle East							
Kuwait	0	98	63	na	na	na	na
Oman	80	47	64	na	na	na	na
Qatar	21	46	13	na	na	na	na
Saudi Arabia	181	157	497	na	na	na	na
United Arab Emirates	141	146	140	na	na	na	na
Other	473	15	278	2126	na	na	
Total	1455	1193	1628	2126	875	1451	2043
<i>(value, \$m)</i>	<i>193</i>	<i>169</i>	<i>243</i>	<i>257</i>	<i>110</i>	<i>317</i>	<i>372</i>
Malting Barley							
Asia							
China	713	385	400	na	na	na	na
Japan	0	24	101	na	na	na	na
South Korea	48	62	45	na	na	na	na
Taiwan	63	51	59	na	na	na	na
Europe	32	0	0	na	na	na	na
South America							
Brazil	32	89	24	na	na	na	na
Chile	10	20	10	na	na	na	na
Colombia	13	25	26	na	na	na	na
Ecuador	5	10	12	na	na	na	na
Peru	52	38	49	na	na	na	na
Other	43	67	98	1,515	na	na	na
Total	1,011	771	824	1,515	1,155	1,579	1,874
<i>(value, \$m)</i>	<i>163</i>	<i>128</i>	<i>162</i>	<i>247</i>	<i>187</i>	<i>394</i>	<i>443</i>
Malt							
Brazil	11	21	7	10	11	21	21
Japan	154	135	135	119	116	119	130
Philippines	82	88	83	98	105	86	86
Total	359	342	301	304	321	343	378
<i>- barley equiv.</i>	<i>431</i>	<i>411</i>	<i>362</i>	<i>365</i>	<i>386</i>	<i>411</i>	<i>430</i>
<i>(value, \$m)</i>	<i>142</i>	<i>124</i>	<i>118</i>	<i>117</i>	<i>107</i>	<i>156</i>	<i>184</i>
Total barley exports	2,895	2,374	2,713	4,006	2,416	3,441	4,360
<i>(value, \$m)</i>	<i>498</i>	<i>421</i>	<i>522</i>	<i>621</i>	<i>403</i>	<i>867</i>	<i>989</i>

Source: ABARE, *Australian Commodity Statistics* 1996; 1997; p = preliminary

Table A3.4: Estimated Australian Canola Production and Usage - 1997/98

	'000t	%
Australian total production	900	100
Domestic usage	330	37
Exports to:		
Bangladesh	80	9
Pakistan	-	
Mexico	20	2
Europe	100	11
China	120	13
Japan	250	28

Source: *Canola News* No. 62, October 1998, Canola Association of Australia.

THE NSW GRAINS INDUSTRY

Grain growers in NSW produced 12.5 million tonnes of grains and oilseeds in 1996-97. The main grain crop grown in New South Wales is wheat. The second most important crop in terms of value and volume is barley. Typically feed barley is produced in the north of the State while malting barley is produced in the southern half of the State. Oats are predominantly produced in NSW, Western Australia and Victoria, while grain sorghum is mainly produced in NSW and Queensland.

Barley is principally used for malting and brewing, health foods, and livestock feed. Sorghum is used in commercial stockfeed and by feedlots. Oats are used in stockfeed, for milling and by the bloodstock industry. Oilseeds (including canola, sunflowers and soybeans) are used in food products, and the by-products are used in the manufacture of stockfeed.

The handling, storage and transport of grain in NSW has been primarily carried out by the private sector since 1992, when the NSW Government sold GrainCorp to the Prime Wheat Association.

As discussed in Chapter 4, the Board has maintained its single desk export policy over all vested grains (barley, oilseeds, sorghum and oats), and operated a single desk in the domestic market for malting barley. Apart from malting barley, all other vested grains have been openly traded (via the Authorised Buyer system and levy payments) on the Australian domestic market. The volumes traded by the Board and the authorised buyers are shown in Table A3.5.

Both malting barley and feed barley are exported from NSW. The largest market for feed barley from the Board is Japan, followed by Saudi Arabia. The domestic malt houses require the barley variety Schooner for around 80 per cent of all domestic brewing. China, the largest single market for NSW malting barley (see Table A3.4), also prefers the Schooner variety, which makes up 80 per cent of its imports of Australian barley. Malt derived from barley is also exported from NSW, however the Board does not have vesting power over malt.

Table A3.5: The NSWGB and Authorised Buyer Sales of Coarse Grains and Oilseeds

Grain Sales	91/92 Tonnes	92/93 Tonnes	93/94 Tonnes	94/95 Tonnes	95/96 Tonnes	96/97 Tonnes	97/98 Tonnes
NSWGB^a							
Barley	241,822	571,800	512,000	280,730	823,945	971,491	511,702
Sorghum	31,150	27,000	55,000	30,340	105,998	75,056	66,913
Oilseeds	8,150	39,950	45,000	25,500	129,242	163,073	193,387
Oats	500	3,227	6,500	7,470	9,252	7,493	7,412
NSWGB Total	281,622	641,977	618,500	344,130	1,068,437	1,217,113	779,414
Authorised Buyers^b							
Barley	347,903	468,641	740,884	151,332	465,110	463,859	652,327
Sorghum	199,403	277,270	207,178	243,431	425,648	372,807	390,393
Oilseeds	196,005	270,705	50,013	108,251	320,439	278,193	432,204
Oats	74,338	184,239	221,176	67,112	152,156	181,974	100,934
Authorised Buyers Total	817,648	1,200,855	1,219,251	570,126	1,363,353	1,296,833	1,575,858
Total Grains	1,099,270	1,842,832	1,837,751	914,256	2,431,790	2,513,946	2,355,272

^a The total grain sales by the NSW Grains Board includes sales of grain purchased directly from farmers and also grain purchased from other traders. Some of this grain may be produced outside NSW. Source: NSW Grains Board Annual Report 1997. ^b Source: NSW Grains Board 1998.

Table A3.6: The NSWGB Sales of NSW Malting Barley

Sales Destination	91/92 Tonnes	92/93 Tonnes	93/94 Tonnes	94/95 Tonnes	95/96 Tonnes	96/97 Tonnes	97/98 Tonnes
Domestic	204,022	203,945	201,000	100,716	178,013	175,000	194,900
China	24,150	172,000	96,000	-	219,804	546,000	90,500
Peru *	13,650	13,650	-	-	-	-	-
Taiwan	-	10,000	-	-	-	-	-
Chile	-	-	-	-	-	-	-
Japan**	-	40,000	18,000	-	-	-	20,600
Total	241,822	439,595	315,000	100,716	397,907	721,000	306,000

* Non-NSW grain was exported to Peru. ** This figure may include some feed barley as well. Source: NSW Grains Board Annual Report 1997, 1998.

Table A3.7: The NSWGB and Authorised Buyer Sales of Oats, Oilseeds*, Feed Barley and Grain Sorghum

Sales	91/92	92/93	93/94	94/95	95/96	96/97	97/98
	Tonnes	Tonnes	Tonnes	Tonnes	Tonnes	Tonnes	Tonnes
Oats							
NSWGB Domestic	500	3,227	6,500	7,470	9,252	7,493	7,412
Authorised Buyers	74,438	184,239	221,176	67,112	152,156	181,974	100,934
Total Oats	74,838	187,466	227,676	74,582	161,408	189,467	108,346
Oilseeds							
NSWGB Export	8,950	30,000	40,000	23,000	110,000	124,043	104,960
NSWGB Domestic	-	9,950	5,000	2,500	19,242	39,030	88,427
<i>Sub Total</i>	<i>8,950</i>	<i>39,950</i>	<i>45,000</i>	<i>25,500</i>	<i>129,242</i>	<i>163,073</i>	<i>193,387</i>
Authorised Buyers	196,005	270,705	50,013	108,251	320,439	278,193	432,204
Total Oilseeds	204,955	310,655	95,013	133,751	449,681	441,266	625,591
Feed Barley							
NSWGB:							
Japan	20,000	20,000	42,000	20,000	119,076	82,400	82,400
Saudi Arabia	-	-	-	-	108,780	78,222	-
Kuwait	-	-	-	-	11,550	-	-
Iran	-	73,500	-	-	-	-	-
Taiwan	-	-	33,000	-	35,200	-	-
Other	-	2,000	2,000	-	-	-	-
Domestic	-	36,700	120,000	160,020	151,432	89,869	123,302
<i>Total</i>	<i>20,000</i>	<i>132,200</i>	<i>197,000</i>	<i>180,020</i>	<i>426,038</i>	<i>250,491</i>	<i>205,702</i>
Authorised Buyers	347,903	468,641	740,884	151,332	465,111	463,859	652,327
Total Feed Barley	367,903	600,841	937,984	331,352	891,149	714,350	858,029
Grain Sorghum							
NSWGB:							
Japan	16,000	-	33,000	-	31,500	-	-
Other Export	-	500	-	-	-	-	5,000
Domestic	15,150	26,500	22,000	30,430	74,498	75,056	61,913
<i>Sub Total</i>	<i>31,150</i>	<i>27,000</i>	<i>55,000</i>	<i>30,430</i>	<i>105,998</i>	<i>75,056</i>	<i>61,913</i>
Authorised Buyers	199,403	277,270	207,178	243,431	425,648	372,807	390,395
Total Grain Sorghum	230,553	304,270	262,178	273,861	531,646	447,863	457,308

* Oilseeds = Canola, Soybeans, Sunflowers, Safflower. Source: NSW Grains Board Annual Report 1997, 1998.

APPENDIX 4

**RECOMMENDATIONS OF THE
REVIEW OF NSW MARKETING BOARDS: THE COARSE GRAINS
AND OILSEEDS MARKETING BOARDS
(NSW Agriculture and Fisheries, Orange, April 1990)**

Regulatory Change

1. Remove vesting powers or strongly constrain the circumstances under which they can be used to acquire the crop.
2. Constrain the power to collect a compulsory levy to non-trading, i.e., industry service functions such as provision of information, market development and promotion, and research, except to the extent a compulsory levy may be desirable to build a reserve fund for trading purposes.
3. If such a levy is collected to build a reserve fund for trading purposes it should be almost identical to the current wheat finance levy, i.e.,
 - It should be a revolving fund
 - Growers should have an annually stated equity in the fund which is tradeable.

However

- Its introduction should be subject to a simple majority vote by growers.
 - The continued existence of the levy, its level and the uses to which it can be put should be voted on annually by growers at an AGM of the board concerned. Voting at such an AGM should be by a single majority vote with voting entitlements according to existing equity in the fund.
4. The industry service functions should be financed by a marketing order.
 5. Separate provision should be made for the continued collection of an oilseeds levy to repay the past debts of the Oilseeds Board to the NSW Government and the ANZ bank.
 6. While ever there is a maintenance of vesting powers or compulsory levies then the arrangement should be regularly reviewed and the onus of proof should be on those who support it to show why the powers should continue to exist.
 7. If vesting and use of compulsory levies for trading must stay then, except as covered under recommendations 2 and 3, there should be no amalgamation of boards.
 8. Reviews concerning vesting and compulsory levies should be public, should at least examine the economic efficiency and distributive effects (who wins and who loses) of the regulatory arrangement as well as the management efficiency of the board, the results

should be published and the availability of the report should be publicised in both urban and rural press.

9. The current exemption of boards from the provisions of the Trade Practices Act should be removed.
10. With removal of vesting powers and the exemption from Trade Practices Act provisions plus constraining of the power to collect compulsory levies to certain industry service functions then the boards would effectively be voluntary growers organisations.

Under these circumstances the final responsibility for decisions on appropriate grower organisations should therefore be passed back to growers. If all such regulations are not removed then the government should retain a say in what is done.

11. The ownership of assets currently held by boards should be clarified and explicitly stated in the Act as being owned by growers.
12. A mechanism should be provided under the Act for facilitating restructuring of the boards into alternative types of voluntary organisations subject to grower wishes as expressed through peak grower organisations and/or polls.

Organisational Change

13. Growers should have the ultimate choice as to the organisation or organisations they want and the operational scope of these organisations. However, we would recommend that any organisation:
 - (i) Be commercially oriented in all facets and avoid undertaking any activity which is not likely to return a profit or which runs a significant risk of making the organisation insolvent or bankrupt.
 - (ii) Operate and account for trading functions separate from pooling operations.
 - (iii) Aim to maximise profits on trading operations.
 - (iv) Aim to raise sufficient reserves to allow them to effectively trade.
 - (v) Be large enough to raise sufficient reserves to achieve effective economies of size to employ management and staff of high calibre and specialist skills.
 - (vi) Have a coverage of marketing functions and grains which allows the organisation to carry out each efficiently and achieve economies of scope between them.
 - (vii) Be structured in such a way that decisions taken by the organisation with respect to trading and pooling activities are solely based on commercial judgements and that:
 - Management and staff have appropriate incentives so that they are rewarded for successful commercial decision making.

- Staff are employed on the basis of their commercial skills alone and their contracts are terminated if they do not perform adequately on that basis.
 - Growers are offered a choice of marketing methods with an alternative sharing of risks between grower and organisation including pooling, where this is commercially viable, as well as cash trading and alternative forward contracts.
- (i) Put in place prudent risk management procedures in which the board of the organisation identifies:
- The risk level it is prepared to accept and the corresponding attitude of the banker.
 - The expected price and inventory risk it faces in trading any particular parcel of grain.
 - The decision rules on setting pool first advances, and pool closure which the management of the organisation should follow.
14. Growers should adopt the following options:
- (i) Amalgamating the NSW Barley Board and the Oats Board with the Australian Barley Board (ABB) (but without the power to vest) which would eventually become part of a national Barley Board, if one is set up.
 - (ii) Abolishing the Grain Sorghum and Oilseeds Board allowing their trading activities to be taken on by the AWB and the ABB.
 - (iii) Set up a NSW Grain Marketing Organisation to provide information (including the conduct of GEM and other activities of the Grain Sorghum Board), conduct market research, development and promotion where appropriate, organise, fund and encourage a grower education programme in grain marketing and the like.

Additional Government Services and Highlighting Existing Services

15. A NSW Grain Marketing Association should be set up to initiate and co-ordinate programmes in grain marketing information, grain marketing education and assistance in setting up voluntary grower organisations. It would also engage in market development and promotion if desired by growers and industry, particularly for new grains. This body would have broad industry representation including growers, traders, end users and some government representations. It would operate a marketing order to collect a compulsory levy for these purposes but would also be financed hopefully by industry sponsorship.
16. The services of NSW Agriculture & Fisheries in collecting and disseminating grain marketing information should be improved and promoted particularly those concerning alternative grain marketing strategies, changes in end user quality and other requirements, costs of grain storage and trucking etc. (A Department review is currently being undertaken concerning marketing intelligence services and its findings will soon be released.)

17. A short course in grain marketing for growers should be initiated to be offered by agricultural colleges and universities, to be paid for by growers individually, but subsidised by government and the NSW Grain Marketing Association.
18. Promotion should be given to the advisory services and financial assistance concerning the choice and setting up of appropriate business structures currently available from Business and Consumer Affairs, Registry of Co-operatives.

Further Investigations

19. Investigations should be undertaken by the Oilseeds Board or the Grain Marketing Association if set-up, or some other suitable body into the substitutability of oilseeds in end use.
20. The Commonwealth Government should investigate further the desirability of:
 - (i) Grade standardisation by Government in the grain industry;
 - (ii) Licensing of grain traders by Government as a means of increasing the confidence of market participants in grain trading and the quality of grain marketing information.
 - (iii) The likelihood of cash and future contracts developing in Australia and ways to encourage this.
 - (iv) Requiring compulsory declaration of information concerning grain stocks to the Australian Bureau of Statistics.

APPENDIX 5**PRINCIPAL POWERS OF THE NSW GRAIN MARKETING ACT 1991****DEFINITIONS**

3. (1) In this Act:

"coarse grains" means barley, oats and grain sorghum;

"commodity" means: (a) coarse grains; or (b) oilseeds;

"marketing" includes buying, selling, financing, collecting, cleaning, grading, packing, treating, carrying, storing, warehousing, rehandling, distributing (by wholesale or retail), delivering and promoting;

"oilseeds" means sunflower, canola, safflower, linseed or soybeans;

"producer" means: (a) a person by whom, or on whose behalf, a commodity is grown or produced for sale; and
(b) if a commodity is grown or produced by a partnership or under a share-farming agreement, each of the partners or each of the parties to that agreement;

CONSTITUTION OF THE BOARD

5. (1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Grains Board.

MEMBERSHIP OF THE BOARD

6. (1) The Board is to consist of:

(a) the Managing Director of the Board; and (b) 6 part-time members appointed by the Governor.

6. (2) The part-time members are to be persons nominated by the Selection Committee and of those members:

(a) at least 4 must be producers; and (b) at least 2 must have qualifications in one or more of the fields of finance, marketing, economics, accountancy or law.

The current Board, with the exception of the Managing Director, were appointed by the Minister for a term of four years, expiring 30 June 1999. The current Board members are Mr Athol Roberts (Chairman), Mr Malcolm Health (Deputy Chairman), Mr Graham Lawrence (Managing Director), Mr Ron Paice, Mr John Love, Mr Graham Peart and Mr Martin Nixon.

The Chairman and Deputy Chairman are elected by the Board. The Managing Director is appointed by the Board.

CONSTITUTION OF GRAIN MARKETING CONSULTATIVE COMMITTEE

10. There is constituted by this Act the Grain Marketing Consultative Committee.

FUNCTIONS OF THE CONSULTATIVE COMMITTEE

11. (1) The Consultative Committee has the functions imposed on it by or under this or any other Act.

11. (2) In particular, the Consultative Committee is:

- (a) to make recommendations to the Board in relation to any refusal by the Board to grant, or decision to revoke, an exemption under section 46; and
- (b) to conduct a review, every 4 years, of the Board's actions in this regard during the preceding 4 years and to make recommendations to the Board as to the actions to be taken by the Board in the following 4 years; and
- (c) to make recommendations to the Board with respect to the operations generally of the Board.

MEMBERSHIP OF THE CONSULTATIVE COMMITTEE

12. (1) The Consultative Committee is to consist of:

- (a) 4 members appointed by the Minister from a panel of at least 6 persons nominated by the New South Wales Farmers' Association; and (b) the Director.

12. (2) A member of the Board is not eligible to be appointed as a member of the Consultative Committee.

The Committee is to make recommendations to the Board in relation to exemptions from vesting (granted under Section 46); conduct a review of the Board's decisions on exemptions every four years and make recommendations to the Board on future exemption decisions to be taken by the Board in the following four years; and to generally make recommendations on the operations of the Board.

The Consultative Committee is a five member group which consists of:

- four members appointed by the Minister from a panel of at least six persons nominated by the NSW Farmers' Association; and
- the Director-General of NSW Agriculture or his nominee (currently Mr Scott Davenport).

The GMCC currently comprises Mr D Hubbard (Chairman), Mr G Cross, Mr R Davidson, Mr G West and Mr S Davenport.

GENERAL FUNCTIONS OF THE BOARD

32. The Board may do all things necessary for or incidental to achieving the purpose of improving the marketing of coarse grains and oilseeds in New South Wales.

FUNCTIONS RELATING TO THE MARKETING OF THE COMMODITY

33. The Board may market or arrange for the marketing of a commodity vested in or delivered or to be delivered to it, and do all acts, matters and things necessary or expedient to exercise those functions.

VOLUNTARY DELIVERIES OF THE COMMODITY

34. (1) The Board may arrange with a producer of a commodity produced or to be produced within New South Wales (being a part of the commodity that is not vested in the Board) for the delivery of any of that commodity during such period and on such terms and conditions as the Board thinks fit.

BOARD MAY DEAL IN THE COMMODITY

35. (1) In this section, "commodity" includes a primary product that, if produced in New South Wales, would answer the description of the commodity.
35. (2) The Board may purchase the commodity for the purpose of: (a) marketing or using it; or (b) providing the commodity for consumption within New South Wales, whether or not during periods of shortage, and may market, use or provide the commodity accordingly.

GRADES AND WHOLESALE PRICES OF THE COMMODITY

36. The Board may:(a) establish grades, classes or descriptions of a commodity; and (b) fix the price at which a grade, class or description of a commodity may be sold by wholesale.

The Act requires that payments to producers for any commodity, of the same quality or grade, delivered to the Board during such periods determined by the Board should be made at a uniform rate. The Board has the power to establish grades, classes and descriptions.

The rate is to be based on the proceeds of the sale of the commodity and such other matters as the Board may determine. In determining payment rates, the Board may make suitable deductions for:

- expenditure incurred in marketing, returning, destroying or otherwise disposing of the commodity;
- the costs, charges and expenses incurred by the Board in the administration, by the Board, of this Act; and

- any reserves created by the Board; and
- any other matters that are, in the opinion of the Board, relevant or that are prescribed.

The Board operates a number of pools for segregated grades and classes of grain. The Act allows for exceptions to this provision. The Board also offers a range of other marketing and payment options, including cash trading and futures contracts. The Board pays bonuses and differential payments based on quality for malting barley, canola and milling wheat.

The Board's powers extend to the setting of wholesale prices for vested products and enable it to undertake manufacturing and processing of commodities being marketed by it. However, the Board does not currently use these powers.

MANUFACTURING AND PROCESSING OF THE COMMODITY

37. (1) The Board may, with the approval of the Minister, and subject to any conditions for the time being approved by the Minister:
- (a) establish and conduct processing or manufacturing facilities for a commodity, for use by the Board or by others; and
 - (b) process any of the commodity or manufacture products from or based on the commodity; and
 - (c) market any of the products so processed or products so manufactured or any by-products resulting from any such processing or manufacturing.

APPOINTMENT OF AUTHORISED AGENTS

39. (1) The Board may, by order in writing, appoint any person to be an authorised agent to act as the Board's agent for the purpose of exercising, in such circumstances as may be specified in the order, such of the functions of the Board as may be so specified.

APPOINTMENT OF AUTHORISED BUYERS

40. (1) The Board may, by order in writing, appoint any person to be an authorised buyer.
40. (2) An authorised buyer is, subject to and in accordance with the order appointing the person, authorised to purchase, on the authorised buyer's own account, from a producer of the commodity or any other person any of the commodity which that producer or other person is entitled to sell.

The Board uses its powers to operate an authorised buyer scheme. Currently the Board allows all vested commodities, except malting barley, to be traded domestically under authorised buyer arrangements. Private grain traders or end-users may become authorised by applying to the Board and paying a fee. The Board has the discretion not to authorise a particular buyer and these powers are invoked if the Board feels that authorising the buyer would not be in the best interests of the producers of grain.

Every authorised buyer must deduct \$1.50 per tonne from the payment made to a grower and credit those funds to the Board with the growers registration number.

MISCELLANEOUS FUNCTIONS

43. (1) The Board may:
- (a) make such arrangements as it considers necessary with regard to sales of the commodity or any other product with which the Board is associated for export or for consignment to other countries or other parts of Australia; and
 - (b) enter into insurance contracts relating to the commodity or any other product with which the Board is associated; and
 - (c) promote and encourage the use, sale or consumption of the commodity or any other product with which the Board is associated; and
 - (d) establish and maintain laboratories and carry out research and make investigations into matters relating to the commodity and any other product with which the Board is associated (including chemical, physical, bacteriological and economic research and investigations); and
 - (e) devise and initiate as far as may be practicable improved methods of producing, marketing and using the commodity and any other product with which the Board is associated; and
 - (f) devise and initiate as far as may be practicable means to prevent or eliminate wasteful, unnecessary or unhygienic methods, practices, costs or charges in connection with producing, marketing or using the commodity and any other product with which the Board is associated; and
 - (g) enter into agreements for the use (within New South Wales or elsewhere) of any trade mark of which it is, or is entitled to be, registered as proprietor; and
 - (h) publish reports, information and advice concerning the producing, marketing or use of the commodity or any other product with which the Board is associated.
43. (2) Without limiting any other of its functions, the Board may:
- (a) enter into agreements with any person for or in connection with its functions, including agreements for the carrying out of works or the performance of services or the supply of goods or materials in connection with any of its functions; and
 - (b) enter into agreements with any person for the use of any of the equipment, machinery or facilities of the Board for a purpose not itself otherwise connected with the functions of the Board.

VESTING OF COMMODITY IN BOARD

45. (1) If a product has been declared a commodity the Governor, by proclamation, may:
- (a) declare:
 - (i) that the commodity is, on the date of publication of the proclamation in the Gazette or on and from a later date specified in the proclamation or on fulfilment of such conditions as are specified in the proclamation, to be divested from the producers of the commodity and become absolutely vested in and be the property of the Board; and
 - (ii) that on any of the commodity coming into existence within a time specified in the proclamation or in any subsequent proclamation it is to become absolutely vested in and be the property of the Board; and
 - (b) make such further provision as will enable the Board effectively to obtain possession of the commodity as owner and to deal with the commodity as may be deemed necessary or convenient in order to give full effect to the objects and purposes for which the Board is constituted.
45. (2) On the date of publication of the proclamation under subsection (1), or on and from the date specified in the proclamation, or on fulfilment of the conditions specified in the proclamation, the commodity is absolutely vested in and is the property of the Board.

If a product has been declared a commodity, the Governor may proclaim that the commodity is to be divested from producers and become absolutely vested in and be the property of the Board.

The Act makes it an offence for a producer to supply, sell or deliver any of the commodities vested in the Board, to a person other than the Board, or its authorised agents or buyers.

The Board must accept a vested commodity that was grown in NSW, provided that it conforms to the applicable standards of quality or grade and which is delivered to it in accordance with the Act.

EXEMPTION BY BOARD

46. (1) The Board may, in such manner, in such cases and on such terms and conditions as it thinks fit or as are prescribed, exempt (either generally or in any particular case or class of cases) from the operation of section 45 (Vesting of commodity in Board):
- (a) such small producers of the commodity as the Board thinks fit; and
 - (b) sales of the commodity directly from producers to consumers, processors, merchants or retail vendors; and

- (c) such portion of the commodity as the producer may require for the producer's own use for food for the producer's family or livestock, or for seed, or for other prescribed purposes; and
- (d) such other sales and purchases or receipts of the commodity as may be prescribed.

CONSULTATION WITH CONSULTATIVE COMMITTEE CONCERNING COMPULSORY ACQUISITION

47. The Board is to make arrangements with the Consultative Committee for consultations between the two bodies before it refuses to grant, or revokes, an exemption from the operation of section 45.

The Board, following consultation with the GMCC, may exempt (and revoke such exemption,) the following from the vesting of a commodity in the Board:

- small producers of the commodity;
- sales of the commodity directly from producers to consumers, processors, merchants or retail vendors; and
- that portion of the commodity that the producer requires for the producer's family or livestock, or for seed.

Exemptions currently granted include an exemption for maltsters purchasing malting barley of specified varieties. Specifically, exempt varieties are those considered to be experimental, where the total volume traded is low, and in those situations where malting companies own the plant variety rights to a particular type of barley.

DELIVERY OF COMMODITY

50. (1) The commodity vested in the Board by section 45 (2) is (unless the producer has been granted an exemption under section 46) to be delivered by the producers to the Board, or an authorised agent or authorised buyer, at or within such times, at such places, and in such manner as the Board may by public notice or in a particular case in writing direct, or as may be prescribed by regulation.
50. (2) A producer who supplies, sells or delivers any of the commodity vested in the Board by section 45 (2) to a person other than the Board, or an authorised agent or authorised buyer, is guilty of an offence against this Act.
50. (3) A person:
- (a) who buys or receives any of the commodity that is supplied, sold or delivered in contravention of subsection (2); or

- (b) who buys by wholesale any of the commodity at a price other than the price fixed in respect of the commodity by the Board, is guilty of an offence against this Act.

RESERVES

62. The Board may create and use such reserves as it considers necessary or expedient for the purposes of this Act.

Subsequent to the 1991 review, the Board has been financially self supporting and operates in a commercial manner. The Board uses commercial credit to facilitate its accumulation and trading activities.

Current financial reserves held by the Board are to the value of \$21 million. The accumulation of reserves has been through the Authorised Buyer fee of \$1.50 a tonne paid to the Board, and trading profits.

STRATEGIC PLANS

72. (1) Within 12 months after the commencement of this section, the Board must submit to the Minister a plan of its intended operations during the following 5 years.
72. (2) The Board is to review the plan of operations each year and submit a revised plan to the Minister with the annual report it is required to submit under the Annual Reports (Statutory Bodies) Act 1984.
72. (3) A plan of operations may include indicators against which the performance of the Board may be measured.

APPENDIX 6**RECENT REVIEWS IN OTHER JURISDICTIONS****THE REVIEW OF THE VICTORIAN AND SOUTH AUSTRALIAN BARLEY MARKETING ACT 1993**

The *Barley Marketing Act 1993* in South Australia and Victoria constitutes the Australian Barley Board (ABB) and, through acquisition powers, gives it the exclusive right to market barley grown in these states, and oats in South Australia.

The objective of the legislation is to provide effective and efficient marketing services and to maximise net returns to growers who deliver to pools of the ABB. The 1993 Act maintains the single desk for exports, but provides some flexibility in domestic marketing - particularly for feed barley.

In 1997 a Review of these arrangements was conducted to meet the requirements of the Competition Principles Agreement. The Review recommended significant reforms of the current arrangements.

Malting Barley

The Review found no evidence of price premiums from export markets for malting barley. Analysis of ABB contract sales data (fob basis) from 1985-86 revealed that prices received from the Chinese market have been below prices received from other markets over the last five years.

The Review found that the ABB has achieved market power on the domestic market. Prices for malting barley purchased by maltsters for domestic malt have been around \$17 per tonne higher on average than export prices (fob basis) and domestic prices of malting barley for export malt have been somewhat above world prices (\$1.50 per tonne higher on average). It was estimated that in both cases the 'premium' was partially offset by higher costs of servicing domestic maltsters and the overall estimate was a transfer from domestic maltsters to growers of less than \$2 million.

Feed Barley

The Review found the ABB receives slightly higher prices from the United Arab Emirates (UAE) than from other 'non-discriminatory' markets but this is due to factors other than market power. The Japanese market returned higher prices than other markets because of the unique nature of the Japanese market which allocates individual quota to suppliers, set by the Japanese Food Agency (JFA). The Review found that the market for feed barley is highly competitive and there are significant substitution possibilities with other grains and other suppliers. Apart from the special case of Japan there is no evidence of the ABB extracting premiums from international feed barley markets through market power. The ABB's main market power appears to have come from being able to divert supplies from domestic to export markets thereby raising domestic prices.

Buyer and supplier power and export subsidies

The Review found that:

- there is no case for maintaining a single desk to countervail the buying power of foreign central buying agencies;
- export subsidies have been scaled down and a single desk does not provide the means to counteract these subsidies; and
- there is little likelihood of monopolistic behaviour under deregulation on the part of grain traders, domestic buyers such as maltsters, or providers of marketing services that warrant countervailing action from a single desk and if any such behaviour arose it should be dealt with through existing anti-competitive legislation.

The Net Public Benefit Test

The Review found that when premiums are calculated correctly, costs to other parts of the economy are taken into account and uncertainty is included, the results indicate a net loss to the nation of from this legislation of around \$8.5 million and that if costs of pooling are added, the net costs would be higher. Therefore, the result is a net loss to the nation from maintaining restrictions to competition.

Recommendations

In summary the Reviews recommendations are:

- the domestic market for feed barley in South Australia and Victoria be formally deregulated;
- the domestic market for malting barley in Victoria and South Australia be deregulated;
- the ABB retain its single desk for export barley sales, for the shortest practicable transition period; and
- the oats market in South Australia be deregulated by removing oats from a new barley marketing act in South Australia.

The Decision of the Victorian and South Australian Governments

The Victorian and South Australian Governments have proposed that the ABB be replaced by a commercial entity, and that barley marketing be deregulated. The Bill amending the South Australia *Barley Marketing Act* passed the House of Assembly in March 1999 and was scheduled for the Legislative Council in May 1999. It was passed by the Legislative Council in June 1999.

Restructure of the ABB into grower-owned companies has been undertaken by a working group of representatives from grower organisations in South Australia and Victoria, the ABB and the Governments of South Australia and Victoria. The outcomes of this group are in the amended legislation. Briefly, two companies will be formed - a holding company and an export subsidiary. The holding company will have shares, representing the ABB's reserve, issued to growers who have been delivering grain to the ABB pools and thus contributing to the reserve.

The holding company will be involved in domestic trading of barley and trade in other grains, as well as providing financing and other services to the export subsidiary. The principal objective of the holding company will be to provide returns to shareholders. The export subsidiary will be wholly owned and operate under corporations law, and will have statutory marketing powers for barley “...for use other than in Australia” (i.e., the export single desk). The objective of this export subsidiary will be maximising returns to growers participating in the export pool.

The existing single desk for export barley is provided for in the amended legislation until 2001. Before that time there will be an opportunity to examine how the arrangement with grower-owned companies has worked and to determine what arrangements to put in place.

In summary, the amendments to the *Barley Marketing Act*, which will also be adopted in Victoria, will:

- (a) deregulate the domestic malting barley market effective in the 1999/2000 season (the domestic feed barley market was deregulated in the 1998/98 season);
- (b) deregulate all oats markets effective in the 1999/2000 season (barley and oats were the only grains included in the original South Australian legislation, and only barley was in the original Victorian legislation);
- (c) transfer the business (assets, liabilities and staff) of the ABB to two grower-owned successor companies as of 1 July 1999;
- (d) initiate a process for distributing shares in the holding company to growers;
- (e) as of 1 July 1999, confer on the export subsidiary export marketing authority similar to that currently held by the ABB;
- (f) allow export of barley in bags and containers holding less than 50 tonnes by concerns other than ABB grain Export Ltd;
- (g) apply the authorities of the export subsidiary until and including the season ending 30 June 2001; and
- (h) dissolve the ABB and Barley Marketing Consultative Committee as of 1 July 1999.

THE REVIEW OF THE GRAINS INDUSTRY IN QUEENSLAND

A Final Report of the ‘review of statutory marketing arrangements for grain in Queensland was released in June 1995. The principles of Competition Policy were considered during this review, however, an additional review to comply with the NCP was carried out in 1997. The recommendations of this review have been accepted by Cabinet. In the legislation there was a sunset clause of 30 June 1998. This has been extended to 30 June 1999 to enable all of the recommended amendments to the legislation to be possible.

The major recommendations of the review were:

- all vesting powers for domestic grains to be deregulated (includes deleting Central Queensland Sorghum);
- on the advice of JFA, the single desk selling of export barley to be maintained for 5 years, subject to changes in inter-state controls; and

- the export of wheat powers to be maintained subject to the national AWB review in 1999.

REVIEW OF THE WESTERN AUSTRALIAN GRAIN POOL

In March 1995 a review of the WA grains industry was announced by the Minister for Primary Industries and Fisheries. This review was overseen by a Ministerial Steering Committee. The Committee reported in January 1996. The Centre for International Economics (CIE) undertook economics research for the Committee. The Committee's report contains a number of unanimous and majority recommendations. The principal recommendations were:

1. Domestic Market Unanimous recommendation - Trading of prescribed grains and grain value-adding products within Australia should be completely deregulated by the start of the 1996-97 season.

2. Export Market- Unanimous recommendation - The export trade in grain value-added products should be completely deregulated by the start of the 1996-97 season.

Unanimous recommendation - Linseed should cease to be a prescribed grain, so that the export as well as the domestic trade in linseed would be deregulated by the start of the 1996-97 season.

Majority recommendation - Exports of prescribed grains in containers or bags should be deregulated by the start of the 1996-97 season.

Majority recommendation - Exports of prescribed grains to destinations other than designated core markets of the Grain Pool should be deregulated from the start of the 1997-98 season.

Majority recommendation - Canola should cease to be a prescribed grain so that the export as well as the domestic trade in canola would be deregulated by the start of the 1996-97 season.

Various other recommendations were made on operational, planning and accountability aspects of the Grains Pool.

APPENDIX 7**GRAIN MARKETING ACT SECOND READING SPEECH****GRAIN MARKETING BILL**

Bill introduced and read a first time.

Second Reading

Mr Armstrong (Lachlan), Minister for Agriculture and Rural Affairs [12.20]: I move:

That this bill be now read a second time.

The principal object of this legislation is to establish the New South Wales Grains Board as the single statutory authority responsible for the marketing of coarse grains and oilseeds in New South Wales. It will provide for the dissolution of the four marketing boards responsible for the marketing of barley, oats, oilseed and grain sorghum. Though many provisions of the bill are based on provisions found in the Marketing of Primary Products Act 1983, the need for a new and separate legislative framework was recognised by all parties involved in the consultation leading up to the introduction of the bill to create a single, stronger body that was more likely to influence the marketing environment than a number of smaller authorities. The powers, functions and operations of the proposed Grains Board will differ significantly from the model for marketing authorities provided under the Marketing of Primary Products Act 1983, in that the board will have constrained powers of vesting for commodities in that its power for compulsory acquisition can only be exercised after consultation with the committee established under the Act to review the grain marketing system; members of the Grains Board will be appointed after recommendation by a selection committee, rather than by election; and a more effective process of monitoring and accountability will be implemented.

Before describing for the benefit of honourable members the main features of the bill, I should like to speak briefly about its background. On 3rd August, 1989, I announced that a review would be undertaken of the various agricultural marketing boards established under the Marketing of Primary Products Act 1983. The impetus for this review came from several sources - internal and external. Internally, some of the marketing boards were experiencing severe financial problems, which prompted questions about their operations and performance criteria. In 1989 the Grain Sorghum Board and the Oilseeds Marketing Board were under the direction of an administrator, and in March 1990 an administrator was appointed to the Oats Marketing Board. Among external influences upon the review were increasing demands for less government intervention and reduced regulation, which was seen to cause inefficiencies in the commercial marketing of primary products. The hallmark of this legislation is that it provides the legislative framework for a marketing authority to operate in a commercial manner and to continue to be financially self-supporting. The restructuring of the four marketing boards will place New South Wales in the forefront of developing marketing expertise for coarse grains and oilseeds. The industry will benefit considerably from this concentration of marketing expertise.

The goal of restructuring is to establish in the long term a national coarse grains board. In October 1990 I wrote to Mr Kerin, the Federal Minister for Primary Industries and Energy, seeking his agreement to this proposal. Pending the establishment of a national board, this legislation has been prepared and its policy and principles have been endorsed unanimously by the New South Wales Farmers Association following an exhaustive industry consultation conducted by the New South Wales Department of Agriculture and Fisheries. The unanimity of the Farmers Association reflects the overall perception of grain producers right across the State that the four existing marketing boards responsible for barley, oats, oilseeds and grain sorghum should be replaced by a single marketing authority. The de facto merger of the operations and administrations of the oilseeds and grain sorghum marketing boards has demonstrated beyond all reasonable doubt that further savings can be made by merging all the existing boards into a single operation. It would provide producers with a stronger organisation for the promotion and marketing of their grain. A single body covering all grains would become better informed and be able to provide a more broadly-based market advisory service to producers.

I wish now to comment on the main features of the selection process provided for in part 2 of the bill. The New South Wales Grains Board will be constituted as a body corporate and will not for any purpose represent the Crown. Such a provision is meant to reinforce the fact that a statutory marketing authority is a body established at the request of producers to act on their behalf, and is not an initiative of government. It will be financed by the industry, either through statutory levies or from the sale of produce. Seven members will be appointed to the board, one of whom will be the managing director - a person selected and employed by the board. The other six members will be part-time members nominated by the selection committee. To secure the services of the best possible persons for selection to the board, as well as to ensure that the interests of primary producers statewide are represented, at least four members must be primary producers and at least two members must have qualifications in finance, marketing, economics, accountancy or law. A selection committee, comprising five persons appointed by the Minister, will be established to nominate suitable persons to be members of the Board. Though one of the selection committee persons will be nominated by the Minister to act as chairperson, the other four will be appointed from a panel of not less than six persons to be nominated by the New South Wales Farmers Association.

The legislation will establish a consultative committee to make recommendations to the board in relation to certain exemptions from compulsory acquisition of commodities vested in the board, to review the use of exemption powers after four years of operation, and to assist the general operations of the board. The committee will comprise of four members appointed by the Minister from a panel of persons nominated by the New South Wales Farmers Association, and an ex officio member, being the director of marketing in the Department of Agriculture and Fisheries. The bill provides for other primary products to be added to or removed from the control of the board following a petition and poll of producers and a ministerial recommendation to the Governor. Other administrative and miscellaneous provisions of the bill reflect similar provisions included already in the Marketing of Primary Products Act 1983.

Part 3 makes provision to empower the board to do all things necessary to achieve the purposes of improving the marketing of coarse grains and oilseeds. The board has power to provide a full range of commercially viable marketing options for grain producers. Thus, utilising the provisions for investment and borrowing powers under part 5, the board's range

of financial options will include pooling, case trading, futures, and an electronic marketing system. Part 4, which deals with the vesting of commodities, will empower the board to issue exemptions. The board may refuse or revoke an exemption only after reviewing it with the consultative committee. A commodity vested in the board is to be delivered to the board unless an exemption has been granted. Any commodity not accepted by the board is to be re-vested in the producer. Part 6 provides for regular review of the operations of the board. These provisions will achieve significant improvements in all aspects of public accountability by comparison with the provisions of the Marketing of Primary Products Act 1983. The Government has to provide the legislative framework to ensure that the board's autonomous operations are conducted in an effective and efficient manner.

Measures to ensure greater public accountability include annual reporting by the board, regular monitoring reviews by the director of marketing of the Department of Agriculture and Fisheries, a provision for management audits, and a requirement for at least one annual public meeting to be held. Within the savings and transitional provisions of the bill provision is made to ensure that the assets and liabilities, if any, of the four existing marketing boards are transferred to the Grains Board at the time of dissolution of each board. As a preliminary measure only the Government will guarantee a loan of up to \$3.6 million to the new board. This is to enable the board to become established and cover operational and overhead expenses. The board will not be permitted to use these funds for trading purposes. The guarantee will continue for two years and must be repaid within five years. I emphasise that this is only a start-up measure similar to financial guarantees made available to the four existing boards when they commenced operations.

Provision will be made also for the winding up and dissolution of the four boards. The members of the old boards will cease to hold office but will be eligible to be nominated to the new board. The staff of the various boards, at the time of their dissolution, will transfer automatically to the new board with the same rights and entitlements they had previously. This includes staff who were employed by the Oats Board on its liquidation on 1st February 1991. This legislation recognises the importance of appropriate marketing arrangements, based on efficiency and competitiveness, that maximise the market power of primary producers. It recognises also that some marketing arrangements must be supported by regulation in some form to correct imbalances in market power, and that the interests of coarse grains and oilseeds producers in this state are best served by a single, strong marketing authority. I commend the bill.

Debate adjourned on motion by Mr Amery.

Source: NSW Parliament (1991), Legislative Assembly, 18 April 1991, 2525-2528.

APPENDIX 8**DRAFT TERMS OF REFERENCE FOR A
JOINT NSW GOVERNMENT/INDUSTRY WORKING GROUP ON
PRIVATISING THE NSW GRAINS BOARD****Purpose of the Working Group**

The Working Group is established out of the Competition Policy review of the *NSW Grain Marketing Act 1991*, to develop a proposal to either privatise or liquidate the NSW Grains Board, to consider equity and viability issues and consult with NSW coarse grains and oilseeds growers in developing the proposal, and to consider and, if appropriate, develop and put to growers a proposal concerning the delivery and funding of non-marketing industry services.

Composition

The Working Group is appointed by the Minister for Agriculture in consultation with the NSW Farmers' Association, the NSW Grains Board and NSW Agriculture and at the discretion of the Minister includes, but is not limited to, at least one member of each of these organisations and any other organisation(s) the Minister may see fit.

Tasks

- (a) To develop and present to NSW coarse grains and oilseeds growers for their approval a proposal to on the one hand privatise or on the other hand liquidate, the NSW Grains Board.
- (b) To consult with NSW coarse grains and oilseeds growers in developing the proposal.
- (c) To, in developing the proposal to privatise the Board, give explicit consideration to:
 - (i) equity and viability issues;
 - (ii) company structure and distribution of shares;
 - (iii) voting rights; and
 - (iv) other matters that would normally be dealt with in a prospectus of this nature.
- (d) To, in addition to those matters at (c), give consideration to the need to introduce/continue compulsory grower charges for the purpose of raising equity and, if charges for this purpose are considered necessary:
 - (i) which coarse grains and/or oilseeds should be subject to such charges;
 - (ii) the quantum of such charges;
 - (iii) the period over which such charges should be levied (but not beyond 31 August 2005); and
 - (iv) the means by which the charges should be levied (eg., constrained vesting).
- (e) To, in developing the proposal to liquidate the Board, give explicit consideration to:

- (i) the most appropriate timing and means of disposal of the Board's non-cash assets; and
 - (ii) distributional issues, including determining the beneficiaries of the liquidation and their respective shares.
- (f) To identify any non-marketing industry services which NSW coarse grains and/or oilseeds growers may desire to fund and have provided to them under a compulsory charge arrangement and, if any such services are identified, develop a proposal for the delivery of the services consistent with the requirements of the *Agricultural Industry Services Act 1998*.
- (g) To consult with NSW coarse grains and oilseeds growers to determine their collective view on the proposals developed in relation to (c), (d), (e) and (f).
- (h) To, if the consultation at (g) is to be by means of a grower poll, give consideration to and advise the Minister on:
- (i) whether the poll should be on a grain by grain basis (i.e., each grain industry voting separately on future arrangements in regard to that specific grain); or
 - (ii) whether it should be on a commodity group basis, with barley being one group, canola being another, and the other vested commodities bundled together as a third group; or
 - (iii) whether it should be taken on some other industry grouping; or
 - (iv) whether the poll should be taken on a whole of industry basis, i.e., all coarse grain and oilseed growers together voting on a single proposal; and
 - (v) whether there should be weighted (and if so on what basis) or one-man-one-vote voting.
- (i) To, in addition to the above, consider and advise the Minister on the practical feasibility of attempting to regulate exports of feed and malting barley to specified, rather than all, overseas markets.

Time Frame

The Working Group is to complete its tasks, including the grower consultation processes, by 31 August 2000, so as to facilitate new legislative and corporate arrangements being in place as soon as possible after 1 September 2000.

APPENDIX 9**TECHNICAL APPENDIX - NSW AGRICULTURE RESEARCH****INTRODUCTION**

A Research Team was established within NSW Agriculture to support the review of the legislation establishing the NSW Grains Board. The Board provided the Research Team with data on all of its trading activity since the date of establishment. These data were provided on a confidential basis and were not made available to the Review Group.

The data as provided often included, for each shipment, a number of separate parcels of grain. These all had the same price but related to different tonnages which together made up a shipment identified by destination (country) and purchaser. For analysis purposes, these individual parcels were amalgamated together at the one price. This was considered a better representation of the data for analytical purposes, although this did reduce the total number of data points.

These data, together with data from other sources, were used to conduct a number of empirical analyses to determine, on a grain by grain and market by market basis, whether the statutory powers of the Board enabled it to effectively exercise market power (i.e., price discriminate). The techniques applied included a theoretical exploration of market power after Holloway (1991)³², and the so-called ‘Carter analysis’ and ‘CIE Model’.

CARTER ANALYSIS

The Carter analysis is named after Professor Colin Carter, an agricultural economist who has conducted extensive research into the domestic and global market for Canadian barley.³³ Carter analysis involves the use of regression analysis to compare prices in markets over time, to determine if the marketer can set different prices across markets.

It is important to recognise that this technique, and econometric techniques in general, can only test for the possible existence of price premiums through testing for statistically significant price differences in different markets. They cannot provide information on why any such price differences exist:

“One of the difficulties with many models, the Carter model included, is that it is not possible to directly impute causality. It is possible that factors other than the ability to price discriminate may cause differences in prices between markets to be observed. The capture of rents from trade distortions, such as import quotas in the case of Japan, is an

32 Holloway, G.J. (1991), ‘The farm/retail price spread in an imperfectly competitive food industry’, *American Journal of Agricultural Economics* Nov, 979-989.

33 A seminal paper in this regard is C. A. Carter (1993), ‘The economics of a single North American barley market’, *Canadian Journal of Agricultural Economics* 41(3), 243-255.

example. Other factors such as differences in quality and services may have an impact.”³⁴

However, if the analysis is robust and price differences between markets are found not to exist, this is conclusive evidence that the marketer cannot price discriminate (i.e., has no market power).

The Research Team attempted Carter analyses of the Board’s sales of feed and malting barley and canola. The results are reported in the attached *NSW Grain Marketing Act Government Review: Research Team Report*.

THE CIE MODEL

The Centre for International Economics (CIE) developed an economic model to assist it in estimating the benefits and costs of the legislation establishing the Australian Barley Board (CIE 1997, *Review of the Victorian and South Australian Barley Marketing Act 1993*, Final Report prepared for the Department of Natural Resources and Environment, Victoria, and Primary Industries South Australia). The premise of the CIE model is that the body under review can price discriminate between markets and will act to maximise revenues through price discrimination.

The practical market conditions that must exist for an organisation to obtain price discrimination premiums are:

- there are markets with different demand elasticities into which an organisation can sell;
- that the organisation can control the amount of product going on to these different markets, and keep the markets separated so that other traders cannot do the same; and
- that the organisation knows the differences in demand elasticities and can therefore allocate product so that revenues from sales to all markets can be maximised.

Modelling Framework

The steps in the CIE model framework are as follows:

- Step 1: Assumption - the body under review can price discriminate between markets and the marketer has perfect knowledge of the demand characteristics in different markets and uses this information to maximise revenues.
- Step 2: Take the price discrimination formula (which reflects the conditions for prices and elasticities of demand for individual markets which must hold true if price discrimination is to occur and revenues are maximised through discriminatory behaviour) and solve the formula for all demand elasticities, except the elasticity in the ‘first’ market which is randomly selected (prices are actual average prices from the contract data).

³⁴ MacAulay, T.G. and Richards, R. (1997), Models for the analysis of barley marketing, Contributed Paper to the 41st Annual Conference of the Australian Agricultural and Resource Economics Society, Pan Pacific Hotel, Broadbeach, Queensland, 21-24 January.

- Step 3 This step is repeated a number of times (selecting different ‘first’ market elasticities at random), until the set of elasticities which yield the maximum price premium possible is identified.
- Step 4: Using the demand elasticities generated (assuming elasticities exist under which the maximum possible premium is obtained), and the average price and quantity in each market since the marketer has operated, a single export price can then be estimated which is market clearing (quantity produced equals quantity sold). This is then considered the ‘free market’ price - the price which would exist if the marketer did not engage in price discrimination behaviour.
- Step 5: The estimated free market price is then compared to the actual average price received by the marketer, with differences between the two indicating premiums or discounts. The quantities traded in a competitive market (without price discrimination) are also estimated.
- Step 6: To calculate the value of the relevant changes (from a free market to intervention situation) in the producer surplus, consumer surplus and the deadweight loss from resource allocation, the CIE model yields information on the revenues in each market in the competitive and intervention case. The difference between the intervention and the ‘competitive’ revenues provides an estimate of the potential producer and consumer gains and losses from the Board’s activities.

How Valid is the Use of the CIE Model?

The CIE model was developed to assess the cost and benefits arising from the activities of the Australian Barley Board (ABB). The ABB is a more extensive exporter of both feed and malting barley and is more export orientated. Because of the greater volume of barley to be sold into export markets, it has a larger number of markets for both feed and malt barley than does the NSWGB. The methodology may therefore be less suited to an assessment of the NSWGB’s activities than the ABB’s activities because:

- the starting assumption, that the body under review can price discriminate between markets and acts as a price discriminating monopolist, may more accurately describe the more export orientated and large turn-over ABB;
- the relatively larger number of international markets sold into by the ABB could enable the competitive market price estimated from their data to more accurately reflect true ‘world’ competitive market prices; and
- the NSWGB chooses not to sell into some markets.

Concerns have also been expressed about the way price elasticities are calculated. The elasticities are derived on the basis of the prices received by the NSWGB, and therefore do not necessarily reflect the overall elasticity of the particular country. However, they do reflect the price elasticity faced by the Board in each of those markets, which is that which determines the Board’s ability to obtain market power premiums.

The Research Team conducted a CIE analysis of the Board's sales of malting barley. The results are reported in the attached *NSW Grain Marketing Act Government Review: Research Team Report*.

ATTACHMENT

**NSW Grain Marketing Act Government Review:
Research Team Report**

A price discrimination analysis of malting barley in NSW

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NSW GRAIN MARKETING ACT GOVERNMENT REVIEW: RESEARCH TEAM REPORT

INTRODUCTION

The *NSW Grain Marketing Act (1991)* authorises vesting of certain coarse grains and oilseeds in the NSW Grains Board and grants rights to single desk selling by the Board. These powers can be considered as restrictions to competition, and they have implications for grain production, processing and end-user markets.

This legislation, and the associated restrictions to competition, are being assessed by a Review Group which comprises representatives of the NSW Government and the NSW coarse grains and oilseeds industry (NSW Farmers' Association, the NSW Grains Board, the Rural Marketing and Supply Association Inc., the Australian Grain Exporters Association, NSW Treasury, NSW Agriculture and The Cabinet Office). The Review is being assisted by a Research Team from within NSW Agriculture. All parties to the Review agreed to use the Research Team to conduct technical research for the Review.

The Review is being conducted in accordance with the principles for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the review from that Agreement is that legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restrictions to the community as a whole outweigh the costs; and
- (b) the objectives of the legislation can only be achieved by restricting competition.

The Research Team has attempted to qualitatively and quantitatively test the impacts of the activities of the NSW Grains Board (the Board) within this framework. It has attempted to determine the net public benefits or costs from the operations of the Act, through the Board, which rely on restrictions to competition to derive benefits to producers and/or others in the relevant industries. The results of the research are presented in this and other papers, and form part of the Final Report of the Review Group to be presented to the NSW Minister for Agriculture.

To test in a quantitative sense the impact of the Board (and its vesting and single desk selling powers) a number of issues have been addressed. These include the possible types of premiums that can be derived from an organisation such as the Board, and whether these types of premiums relate to the powers given under the Act. There is also the issue of the costs of the Board's operations and whether these costs are 'large' in some relative sense. It is the benefits and costs arising from the restrictions to competition given under the Act that are relevant for this Review.

There is also the need to assess what data are available for analysis, and whether the analysis can be successfully carried out. Alternative types of analysis, and their advantages and limitations, have been considered.

TYPES OF PRICE PREMIUMS

There are potentially three different types of price premium that could be obtained by a seller or marketer of a product (Meyers Strategy Group (1996)):

- (1) a ‘competitive’ price premium, which reflects the normal pricing activities of suppliers attempting to achieve the highest possible price in a market and/or gain a sale over a competitor. This is often achieved via product attributes (apart from price) and provision of other services associated with the product, and gaining such a premium does not require single desk selling powers;
- (2) a ‘price discrimination’ premium, resulting from the ability of a supplier to price discriminate by customer, place or over time. The ability to price discriminate between markets (or ‘price to market’) is dependent on the existence of some market power (vesting and single desk arrangements are commonly associated with market power and price discrimination premiums); and
- (3) a ‘market restriction’ premium, which may be generated as a result of intervention by governments in a market through use of quotas, tariffs, subsidies or taxes.

Competitive price premiums are the result of ‘good marketing’ and can be derived by any large competitive marketer without the need for regulatory restrictions. For this reason, competitive price premiums (if they are achieved) are not relevant as gains within the Competition Principles Agreement guidelines.

An example of a market restriction premium is the Japanese market for feed barley. The premium is derived for NSW barley growers through the Board’s ability to gain a share of the higher-priced quota imports allocated by the Japanese Food Authority (JFA). It would appear that this premium does not arise from restrictions to competition, but rather from the fact that the Board is a ‘government instrumentality’. Therefore, to the extent that market access is restricted to statutory authorities, this type of premium is relevant to the Review.

Restrictions on competition may create the capacity to generate price discrimination premiums from export markets, which can potentially gain benefits for grain and oilseeds producers and the community generally.

The Board, in its submission to the Review Group, quotes economic benefits estimated by the Meyers Strategy Group (1996) associated with price premiums of \$2.63 per tonne and a ‘market mix’ benefit of \$7.08 per tonne in 1996. However, these figures relate to premiums that do not arise as a result of regulatory restrictions to competition, but instead relate to normal business activities that any large efficient trader or marketer could undertake in the absence of single desk regulation.

The following sections of the report focus on price discrimination and the measurement of price discrimination premiums.

THEORY OF PRICE DISCRIMINATION

In a competitive market, price is determined by the interaction of aggregate supply and aggregate demand, and the same price is charged to different customers after accounting for transport costs, storage costs etc. Nothing the individual firm does can influence the price it receives for its product: each firm is a 'price taker'. In an imperfect market characterised by price discrimination, the firm is large enough to exert some market power, and quantities can be allocated across markets so that different prices are charged to different customers after accounting for the costs of transportation.

There are two critical assumptions underlying the ability to price discriminate across markets. First, markets must be separated in space, time, form or some other dimension, and this separation must be able to be maintained so that there is no possibility of arbitrage across different markets. Second, there must be different demand relations (different price elasticities of demand) in the different markets so that the relationship between prices and marginal revenues is different in the different markets.

If these two assumptions hold, then a supplier with market power can increase revenue by restricting supplies so that marginal revenues are equated across markets as well as with the marginal cost of production. This optimisation rule can be used to maximise profit to the supplier. Because the demand relations are different in the different markets, equating marginal revenues means that different prices are received in the different markets. Prices are higher in those markets where the exporter faces relatively inelastic demand. So a supplier, such as a central selling agency with market power may be able to achieve price premiums in some markets which are sufficient to increase overall returns to the industry.

In relation to malting barley, the major export markets are separated by long distances and these markets may have different price elasticities of demand for NSW barley, which may reflect unique product attributes such as malting quality. On the NSW domestic market, the Board operates as a single desk seller of NSW malting barley so that arbitrage possibilities within that market are limited to interstate product.

It should be noted that prices may differ across markets for reasons other than market power, such as differences in quality, other services bundled with the product such as credit or quality assurances, or differences in transport costs. When attempting to measure the extent of market power premiums, the product being compared should be as similarly defined as possible in each of the markets being studied.

The simple price discrimination case (of two markets) is illustrated diagrammatically in Figure 1. In market (A), demand is more elastic (more price responsive) than in market (B).

P, Q

From an initial situation, representing initial prices and quantities, transferring

an amount of product ($Q_1 - Q_0$) from market (A) to market (B) means that price rises

by ($P_1 - P_0$) in (A) and falls by ($P_0 - P_2$) in (B). Total revenue gained by producers can be increased in this case if the differences in price response are large enough to offset any costs of the operation and no other marketer can enter market (A) and bid away some of the price premium.

TESTING FOR PRICE DISCRIMINATION

For there to be conclusive evidence of price discrimination, two types of conditions must be met, these may be termed necessary and sufficient conditions. The necessary conditions relate to differences in demand elasticities faced by exporters between markets and the ability of the Board to separate markets and control the flow of product onto at least one of the markets. The sufficient conditions then rely on these market factors and determine whether there is evidence of price differences of the type (and direction) that would indicate that price discrimination may be occurring.

In general the degree of market power determines whether a seller into a market can use this power to raise the price received above the marginal cost of production. If demand is downward-sloping (i.e., demand is not perfectly elastic) and if the seller has a significant market share, then gaining price premiums may be possible. If the necessary and sufficient conditions both hold, then the subsequent question for this Review becomes one of measuring the effects of price discrimination on producers and end-users/consumers and determining the net gain or loss to society from these arrangements.

Conditions necessary for price discrimination

Differences in demand elasticities faced by exporters between markets

The price-responsiveness or elasticity of demand faced by exporters is considered to differ between markets due to a number of factors. For a competitive market, where the actions of the particular seller have no impact on the price received, the price is given and demand is said to be perfectly elastic. In a market where the actions of a seller have a significant impact on price (i.e., the seller is a price ‘setter’), demand is said to be price-responsive and demand slopes down when plotted in price-quantity space: at a lower price more will be demanded than at a higher price (as shown in Figure 1). The degree of price-responsiveness (or elasticity) is important in terms of total revenue from changes in sales volumes.

The concept of market power is based on the idea that when making output (quantity produced and/or sold) decisions, firms form beliefs about the extent to which their decisions affect the quantity decisions of other firms, and therefore the overall industry price. So:

- if the price in a particular market depends on the quantity sold into that market (i.e., that demand slopes down); and
- if the seller has a relatively significant market share;

then the theory set out in Holloway (1991) explains that the (dominant) seller can achieve a higher price (over and above its marginal costs) because of its market power. In technical terms, the necessary conditions for trade in this case come down to the equation

$$P(1 - \frac{\theta}{\eta}) = MC \tag{1}$$

where P = price
 MC = marginal cost of production

η = demand elasticity in the market

θ = an index of competition within an industry (basically the market share of the particular seller)

θ

Note that if θ is zero or insignificant, then $P = MC$ which is the competitive market outcome. For example, if the market share is 25 per cent and the demand elasticity is -10, then (1) is:

$$P(1 - 0.25/10) = MC, \text{ or}$$

$$P = 1.026 MC.$$

That is, the price is raised less than 3 per cent above marginal cost due to market power. The potential size of the increase in price as market power and demand elasticity vary is shown in the table below.

Percentage increase in price over marginal cost

due to market power

		Demand elasticity		
		-2	-5	-10
θ	Market share	1%	1	0
		10%	5	2
		50%	33	11
		100%	100	25
			1	5
			1	11

η

η

θ

In the table, a demand elasticity (η) of -5 and a market share (θ) of 50 per cent gives an 11 per cent increase in price above marginal costs.

Demand is considered to be less elastic if the product is an essential item and there are few substitutes available for the product being supplied, or if there are few other suppliers of the product. For example, the demand for malting barley in the NSW market is thought to be relatively inelastic because there are no substitutes available within NSW, and barley transported in from other states (as happened in 1994) may have different characteristics in the malting process. Because the Board is a single desk seller of NSW malting barley, there are no other sellers into this domestic market within the bounds of import and export price parity.

In contrast, on export markets there are other sources of supply that maltsters can use and so the demand elasticity is thought to be greater in an absolute sense. Evidence in support of these differences in price responsiveness is provided in the Meyers Strategy Group (1996) report to the NSW Grains Board. In that report, a spatial equilibrium analysis was conducted for world barley trade. The elasticities of demand used in that analysis were -10 (China), -6 (Taiwan), -4 (Japan), -21 (Saudi Arabia), -10 (Other Middle East), -6 (US) and -1 (Rest of World). These are in line with the expectations above.

Sales of feed barley and canola to China, Japan, Bangladesh and other countries might be expected to be relatively elastic - perhaps in the order of -6 to -10 from these figures. Therefore the scope for price increases due to market power by the NSW Grains Board would appear to be small and to depend on market share.

For feed barley, the Board's sales to Japan in 1996/97 were about 3 per cent of total imports to that country. Similarly, confidential data on the Board's export sales of canola indicate that the 'average' quantity exported by the Board to Japan over the last few years has been a very small proportion of total imports. The same observation applies to the Board's other major

canola export markets, China and Bangladesh. Therefore, from the figures in the table, observed market shares for feed barley and canola and the estimated demand elasticities for these commodities in the Board's main export markets, it does not appear likely that the Board has significant market power capacity in these markets. It is hence unlikely that the Board is able to gain a market power (price discrimination) premium for either of these commodities.

A potential counter to this conclusion would be if it could be demonstrated that the general market conditions described above do not apply to the Board (eg., because it exported a product that had unique attributes which differentiated it from that available from other Australian States such that it faced relatively inelastic demand in particular export markets).

Domestic market control and single desk selling

The types of markets in which the NSW Grains Board operates can be divided into three for the purposes of this analysis. The alternative types of operation by the Board within different markets are:

- (1) as a single desk seller on the domestic and export(s) markets (this may allow price discrimination between the domestic and export markets and/or across export markets); and
- (2) as a single desk seller on an export market, but allowing an authorised buyer system to operate on the domestic market. As with feed barley into Japan this may involve market restrictions, but price discrimination may also occur across export markets.

The existence of an authorised buyer system, which operates domestically for some grains, means that the Board does not control the amount going on to the domestic market for those grains. Authorised buyers can buy an unrestricted amount of grain from producers. Consequently, the Board has no capacity to reduce the quantity of grain sold into the domestic market and hence raise the domestic price.

Therefore, the necessary conditions for price discrimination indicate that there is likely little capacity for price discrimination in the domestic market for grains where the authorised buyer system operates. Operation as a single desk seller on the domestic market is a necessary (but not sufficient) condition for price discrimination to be practiced in that market.

Evidence of price differences

The sufficient condition to be met for price discrimination is that prices must differ substantially between markets. The results of tests for price differences between markets are presented in the next sections.

Data

The Board provided confidential sales data (commodity, grade, date, destination, FOB price (\$AUS), tonnage) which were used to test for price differences between country of destination. These data were for the years 1992 to 1998 for malting barley, feed barley and

canola. The data were for the same product going into the different markets (eg., ML1 for malting barley), it was therefore assumed that the product going into different markets (as measured by grade) was the same. The number of sales observations available was 165 for malting barley, 1,527 for feed barley and 334 for canola.

Sales to Japan and China were the result of the Board’s selling activities where the destination was known. Sales to other export markets were to grain traders and other companies and were made on an FOB/open destination basis. Sales to these other markets were amalgamated into an ‘Other Market’ category (with no control over the market to which these sales were made the Board could not of course exercise any form of market power to raise prices).

Domestic sales data were estimated by the Board on an FOB basis, by adding to the contract rate estimates of fobbing and freight costs. These costs differ according to grains and estimated transport distances, and were detailed using information from Graincorp and other industry sources. This process put the domestic prices on an equivalent basis to the export prices and ensured the comparison of ‘apples with apples’.

Statistical analysis of price differences between markets

The analysis involved using an econometric technique to determine whether, for each commodity, there was any evidence of statistically significant differences between prices achieved by the Board between the markets to which it sold that commodity. This approach was used by Carter (1993) in analysing the Canadian Wheat Board single desk selling. Griffith *et al.* (1995) also used it in analysing the NSW rice industry.

The data were for a seven year period, and because prices trend up and down with changes in market conditions over time, year effects were removed before the market price comparisons were made. This was achieved by the use of dummy variables in a regression equation which effectively separated the year (or time) effects from the country effects in explaining prices achieved by the Board. This enabled comparison of prices of the subject commodities at different points in time.

Industry representatives on the Review Group indicated that due to substantial price volatility over time, the use of an annual time step was a shortcoming in the analysis. This problem could not be avoided, however, as there were insufficient data to maintain adequate degrees of freedom using a shorter time period.

The model used to test pricing to market by the Board was:

$$P_{it} = \beta_0 + \beta_1 X_{it} + \beta_2 Y_{it} + \beta_3 Z_{it} + \beta_4 W_{it} + \beta_5 V_{it} + \beta_6 U_{it} + \beta_7 T_{it} + \beta_8 S_{it} + \beta_9 R_{it} + \beta_{10} Q_{it} + \beta_{11} P_{it} + \beta_{12} O_{it} + \beta_{13} N_{it} + \beta_{14} M_{it} + \beta_{15} L_{it} + \beta_{16} K_{it} + \beta_{17} J_{it} + \beta_{18} I_{it} + \beta_{19} H_{it} + \beta_{20} G_{it} + \beta_{21} F_{it} + \beta_{22} E_{it} + \beta_{23} D_{it} + \beta_{24} C_{it} + \beta_{25} B_{it} + \beta_{26} A_{it} + \beta_{27} \text{Year}_t + \beta_{28} \text{Country}_i + \beta_{29} \text{Market}_i + \beta_{30} \text{Time}_t \tag{1}$$

where:

- P_{it} is the FOB (\$AUST) price of the commodity in market i and time period t ;

- α is the intercept variable;

- D_i are dummy variables to capture the market effect (i from 1 to $n-1$, where n is the number of different markets being studied, one of the markets is the base or default);

- T_t are dummy variables to capture the year effect (t from 1 to $k-1$, where k is the number of different years for which data are available, one of the years is the base or default);

- β_i and γ_t are coefficients on the dummy variables; and

- μ_{it} is the error term.

The β_i coefficients measure the market effects and the γ_t coefficients the time effects.

The null hypothesis was that there is a single competitive market for the sales of the given commodity by the Board. After accounting for the common level of price that would be achieved in each period by the T variables, this implies that price equals marginal cost and prices are equal across markets. If prices are the same in all markets there should be no market

effect, i.e., all $\beta_i = 0$. If prices are the same across all time periods, all

$$\gamma_t = 0.$$

The alternative hypothesis is of an imperfect market involving price discrimination. If some

$\beta_i \neq 0$ and the price is higher in the less elastic market, then price discrimination can occur and price premiums may be obtained.

The standard Carter model includes exchange rate effects as a possible determinant of differences in prices across export markets. It should be remembered, however, that if exchange rate effects are evident this implies a non-competitive market when FOB prices are used as the basis for comparison. If the market for the particular commodity was competitive, exchange rates differences would be exactly reflected in the FOB prices. It should be noted also that most previous analyses have used monthly data to test for price differentials, and it is much more likely that markets will not be in equilibrium (competitive) in the short run than in the long run (such as when annual data are used).

The Board has advised that it consciously considers exchange rates when negotiating sales on certain export markets. On this basis, exchange rate effects were tested in the analysis. For each sale date the rate of exchange of the AUS\$ to the US dollar, Japanese yen and Chinese renminbi were obtained from the Reserve Bank of Australia *Bulletin*. The US\$ was used as a proxy for the exchange rates of countries in the Other market category. It was used as an indicator of Australian rates versus the rest of the world because many contracts are written in US\$.

Results of statistical analysis

The estimated coefficients from this analysis were considered by the Board to be of a commercially sensitive nature and are not provided in this Report. The diagnostic statistics are, however, provided in Tables 1, 2 and 3. The results are discussed by grain type in general terms in the following sections.

Malting barley results

Over its history, the Board has mainly sold malting barley to the Domestic and China markets: the number of sales to other markets has been very low.

**Table 1: Malting Barley Price Regression Results
Market and Year Effects**

Variable	Estimated coefficient	t statistic	Significance at 5%
Intercept	confidential	61.7	S
China	confidential	-2.6	S
Other	confidential	-2.4	S
1992	confidential	-0.1	NS
1994	confidential	-6.9	S
1995	confidential	6.0	S
1996	confidential	4.2	S
1997	confidential	5.5	S
1998	confidential	2.8	S
Adjusted	0.44		
R^2			
F statistic	17.2 (S)		
Standard errors are heteroskedastic-consistent			

S = significant at 5%
NS = not significant at 5%

The Carter analysis indicated that there was a statistically significant price difference between the prices the Board received in the Chinese and Domestic markets, with the price in the domestic market being significantly higher. These results indicated the possibility of price discrimination occurring. The data available were insufficient to categorically determine whether or not the Board could discriminate between export markets. This result was after the effects of year of sale (which were quite significant in most years) were accounted for (see Table 1).

Exchange rate effects were not significant in this analysis.

Feed barley results

Historically, the Board has sold feed barley to three main markets - Domestic, Japan and Other. Overall, the Carter analysis did not provide evidence of statistically significant price differences between these markets. There is evidence of significant year effects, and the Japanese and Chinese exchange rates are also significant, however there was no demonstrated market effect (see Table 2).

There were very few sales observations, however, and these results were not considered to be sufficiently robust or stable to allow reliable conclusions to be drawn on this matter.

Canola results

There are three major markets for the Board's sales of canola - Domestic, Japan and China, although sales to China are relatively low in number. There have been a small number of sales to Other international markets.

**Table 2: Feed Barley Price Regression Results
Market and Year Effects**

Variable	Estimated coefficient	t statistic	Significance at 5%
Intercept	confidential	113.4	S
Japan	confidential	-1.8	NS
Other	confidential	-1.3	NS
1992	confidential	-1.8	NS
1994	confidential	-4.8	S
1995	confidential	44.7	S
1996	confidential	28.8	S
1997	confidential	9.0	S
1998	confidential	8.5	S
Adjusted	0.70		
R^2			
F statistic	454.1 (S)		

S = significant at 5%

NS = not significant at 5%

**Table 3
Canola Price Regression Results
Market and Year Effects**

Variable	Estimated coefficient	t statistic	Significance at 5%
Intercept	confidential	110.8	S
Japan	confidential	2.0	S
China	confidential	0.1	NS
Other	confidential	1.95	S
1992	confidential	-3.5	S
1993	confidential	-3.7	S
1994	confidential	-5.0	S
1996	confidential	-4.4	S
1997	confidential	-4.1	S

1998	confidential	-2.6	S
Adjusted	0.14		
R^2			
F statistic	6.8 (S)		

S = significant at 5%

NS = not significant at 5%

The results of the Carter analysis were that there is some evidence of a price effect in the Japanese and Other markets compared to the Domestic market. The Domestic market price is significantly lower than prices in those markets over the period (see Table 3). The year effects are also significant, as are the exchange rate effects for the three currencies tested.

The overall explanatory power of the estimated equation is however, very low, indicating that other factors which have not been accounted for more substantially explain the level of canola prices. For example, the canola industry worldwide has seen remarkable growth in recent years, with demand being particularly strong in countries such as Japan because of increasing health consciousness and awareness. Demand growth in export markets at a greater rate than in the domestic market could explain the price relativities.

Summary of statistical results

The outcome from the statistical analysis is that there is strong evidence of price differences across malting barley markets from the Board's selling activities (Domestic higher than China). For feed barley and canola the results are less robust, so no firm conclusions can be drawn.

When combined with the conditions considered necessary for price discrimination (i.e., differences in demand elasticities and the ability to control the domestic (NSW) market via single desk selling) this result indicates that price discrimination may be occurring for malting barley. In relation to this commodity, the requisite next step was therefore to measure the costs and benefits to affected parties. The important consideration in evaluating these effects is to compare the current or actual situation with what would occur without the restrictions to competition enabled by the Act.

EVALUATING THE EFFECTS OF PRICE DISCRIMINATION

The Estimated Model

This analysis is conducted as an illustration of the types and orders of magnitude of impacts that might arise from removing the restrictions to competition that operate in the malting barley market.

From Figure 1, if price discrimination was not being practiced then the law of one price would operate. This means that for a homogeneous commodity, the quantities sold into different markets would be determined solely by market supply and demand factors, and that there would be one price that clears all markets. If this price can be estimated then producer revenues and consumer/end-user impacts from removing the competition restriction can be valued by comparing the different price/quantity relationships that prevail under the differing sets of market conditions. That is, the aim of the analysis is to estimate prices and quantities traded in a perfectly competitive market (i.e., in the absence of price discrimination) for comparison with the current case. In theory, the methodology developed in CIE (1997) allows this to be undertaken.

A number of assumptions need to be made in this process (CIE 1997, Appendix D):

- price differences observed in different markets reflect differences in the demand characteristics of those markets, i.e., they reflect differences in the demand functions of these markets;
- these demand functions take the form

$$D_i = \alpha_i P_i^{\beta_i}, \text{ where} \tag{2}$$

D_i is the quantity demanded in market i

P_i is the price in market i

α_i is a scaling parameter, and

β_i is the elasticity of demand in market i (a negative number);

- the single desk seller takes advantage of these differences in price responsiveness and optimises the returns from a given crop by controlling sales (and therefore prices) to a given market; and
- price differences across markets are therefore a result of this optimising behaviour of a single desk seller.

Under these assumptions, the returns from a given crop will be maximised when the following condition holds:

$$\frac{P_i}{P_j} = \frac{1 + \beta_j}{1 + \beta_i} \tag{3}$$

Here i and j represent any two markets and β_j is the elasticity of demand in market j . This implies that relatively higher prices should be charged where demand is relatively more inelastic, i.e., where it is more price-responsive. This condition further implies that the Board is maximising returns to growers.

Using the Board’s confidential information provided on prices and quantities sold in various markets (and averaging the price and quantity data over the last seven years), this condition permits the calculation of the demand elasticities. Initially calibrating the model by setting

β_1 at a level consistent with expectations and evidence, condition (3) can be used

to estimate β_2 . Then the other β ’s can be calculated, and using (2)

α ’s can be calculated from average price and quantity figures derived from

the Board’s data. In choosing β_1 , the value that maximises the premium defined above is searched for iteratively.

In the absence of a single desk seller there will be one competitive price (P_c) for the products sold. This can be found using the demand functions specified in (2) by solving:

$$\sum_i (Q_i^B / P_c) = Q \quad (4)$$

Here Q is the total supply of malting barley. This equation is solved using an iterative

procedure. The difference between P_c and the average return $(\sum_i S_i P_c) / Q$,

where S_i (sales to market i), represents a gain to producers from single desk selling arrangements.

While the premium determined here represents a gain to producers, its effect on consumers or end-users must also be considered. Restriction of supply to the domestic (more price-

responsive) market means that the domestic price is higher than the competitive price, so domestic end-users are worse off. This loss is calculated as the area under the demand curve between the two prices and represents the consumer surplus loss due to single desk selling arrangements. This is illustrated in Figure 2.

The observed prices under the current (price discrimination) arrangements are

$$P_d$$

and P_e . Using assumptions about the demand elasticities in each market and

equation (3), the equilibrium price P_c is calculated.

The effects of price discrimination (compared to no-restrictions-to-competition) can be seen from the diagram. In the domestic market, producers gain the dotted area shown, which is a higher unit price for the quantity sold. This quantity is less than it would be under the no restrictions scenario. Producers lose the hatched area indicated, being the amount transferred to the export market at the no-restrictions-to-competition price. Consumers lose their willingness-to-pay (as shown by the demand curve) being the area under the demand curve

between the two prices (P_d less P_c).

On the export market, the areas of interest to NSW are the producer loss in the market (horizontal dashed area, representing less sold but at a higher prices) and the producer gain (the dotted area, representing more sold at a lower price).

Adding up all these areas gives a net gain or loss to NSW society which accounts for impacts on both producers and end-users/consumers. The equations in (2), (3) and (4), together with observed average prices and quantities, were incorporated into a spreadsheet model and the model solved.

Price Discrimination Analysis Results

The results are presented below. Because of the assumptions used in the equations, and the averaged nature of the price and quantity figures, the results cannot be considered to be exact or precise in a statistical sense. In discussing these results, it therefore must be remembered that it is the orders of magnitude and the signs of the aggregate effects that are most important, rather than the absolute values estimated.

A number of sensitivity analyses have been conducted and these are also important in interpreting the results.

The economic analysis of price discrimination in malting barley has shown that the operations of the Board have delivered a small net benefit to producers. Compared to the current situation of restrictions to competition granted under legislation, there are gains on export markets and losses on domestic markets from changes in quantities that would prevail if there were no restrictions to competition.

The analysis also shows that the Board price discriminates between domestic and export markets and, as a result, prices on the domestic market are higher. This means that processors of malting barley pay a higher price, resulting in a net cost to them.

An example of the results is shown below for an initial demand elasticity in China of -10 (which was the value quoted in Appendix III of the Meyers Strategy Group (1996) report):

Net gain to producers	\$0.206 million per annum.
Processor (consumer) loss	\$1.235 million per annum.
Net cost	\$1.029 million per annum.

Sensitivity analysis

A number of sensitivity analyses were conducted on the price discrimination results.

The result above was based on the assumption that the Board knows the values of export demand elasticities and uses that knowledge to maximise returns to growers. Two cases for sensitivity analysis were conducted. The first involved removing the assumed perfect knowledge of demand elasticities while still maintaining the optimising condition. The second involved removing both the assumptions of perfect knowledge of demand elasticities and of maximising behaviour.

Changing Demand Elasticities

To test the effect of varying the demand elasticity in the Chinese market, an analysis of the above result was conducted for different levels of initial Chinese demand elasticity, between the values of -1.2 and -20. Over this range, the estimated price premium, the overall producer gain and the consumer loss all varied, however, the overall net loss was very stable - changing from only \$1.028 to \$1.034 million per annum.

A test was also conducted of the impact on net costs/benefits of assuming that the Board was a price taker (i.e., facing an infinite demand elasticity) on the world market (i.e., if

P_c equals P_e in Figure 2). Under this scenario, which appears to more closely reflect global market conditions, gains to NSW producers rise to approximately \$1.01 million, which is a direct transfer from purchasers, and the net social loss reduces to a very small amount (estimated at about \$22,000 per annum).

Changing the Assumption of Maximising Gains to Growers

The other area of investigation of the sensitivity of the results (to assumptions made for the CIE analysis) involved relaxing condition (3). This implies that the Board does not know the size of demand elasticities in markets and, further, that it does not know the relationships between elasticities and prices in order to be able to maximise revenues from price discrimination.

The @RISK (Palisade Corporation 1995) program was used to conduct this analysis. In this approach, the demand elasticities in the export and domestic markets were varied according to a uniform distribution with bounds of -10 and -1. The simulations were performed for 1,000 iterations and the results compiled into a probability distribution function. This is presented in Figure 3.

Through this analysis, the single point net gain to NSW result estimated and discussed above (a loss of \$1.029 million per annum) is shown to lie in a distribution of possible outcomes ranging from -\$2.066 million to -\$341,000 per annum. This result suggests that the Board is unlikely to ever gain a net (positive) benefit for the NSW economy as a whole from price discrimination in malting barley markets.

Discussion of Price Discrimination Results

A number of points can be made about these results.

- First, they are illustrative and should be interpreted as indicating broad measures of costs and benefits.
- Second, they are initially derived assuming the equilibrium condition (3) holds, which implies that the Board has perfect knowledge of demand elasticities in different markets. Because of the uncertain and changing nature of international markets it is likely that this condition does not hold at all times. In this case, the benefits and costs estimated from the equilibrium condition are likely to overestimate the size of any benefits to producers. A sensitivity analysis of relaxing condition (3) using risk analysis showed that the range of public benefit outcomes is not likely to ever include a net public benefit.
- Third, the processor cost incorporates the value of services (eg., storage, delivery) provided by the Board as well as market power premiums. There are other factors that could be counted in evaluating this figure, including price and quality risk management. In other words, there may be a number of services by the Board included in the price paid by the processors that are not provided to buyers on the export market. If this is the case, then the assumption underlying the analysis, i.e., that the same commodity is sold on each market, might not be fully met. If so, then the price paid by processors

(P_d) is likely to be higher than the price for a product sold on the export market. Therefore the losses to end-users/consumers identified in this analysis may be overstated.

- Fourth, this net cost at the first point of consumption from the Board's activity represents less than one per cent of the value of the malting barley crop in 1996/97. Therefore the size of the net cost identified is not large in a relative sense.

CONCLUSIONS

This analysis has attempted to lay out the basis for assessing gains from restrictions to competition contained in the *NSW Grain Marketing Act 1991* and to derive some broad indicators of the costs and benefits to the various parties affected by the operations of the NSW Grains Board.

The analysis of price differences indicated that malting barley prices on the domestic market were greater than on export markets, suggesting the possibility of price discrimination.

Price discrimination provides net benefits to producers by increasing the overall returns from selling into the different markets. In part, these benefits are derived from increased export sales, and in part by extracting transfers from domestic purchasers of their commodity through higher domestic prices. Increased export returns are a benefit to the NSW/Australian economy for the purposes of a net public benefit test. Transfers between producers and purchasers (eg., processors) do not, however, represent a gain or loss to the economy as a whole and hence do not count in this test.

Price discrimination also gives rise to resource allocation inefficiency costs represented as losses to domestic purchasers which are not transferred to producers. These 'dead weight' losses are counted as costs in the net public benefit test.

Using the theoretical relationship between prices and demand elasticities for maximising returns to producers embodied in the CIE model, an upper bound for the net costs to society (about \$1 million per annum) was estimated. This is an estimate of the cost to the NSW economy as a whole from providing benefits to NSW malting barley growers (estimated at \$0.2 million per annum) through the domestic and export single desk power granted under the Act and utilised by the Board.

Under an alternative, more realistic scenario, while there were still significant transfers from domestic purchasers to producers (estimated at \$1 million per year), estimated annual net losses to the NSW economy from the combined single desk arrangement, were found to be negligible.

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Figure 1

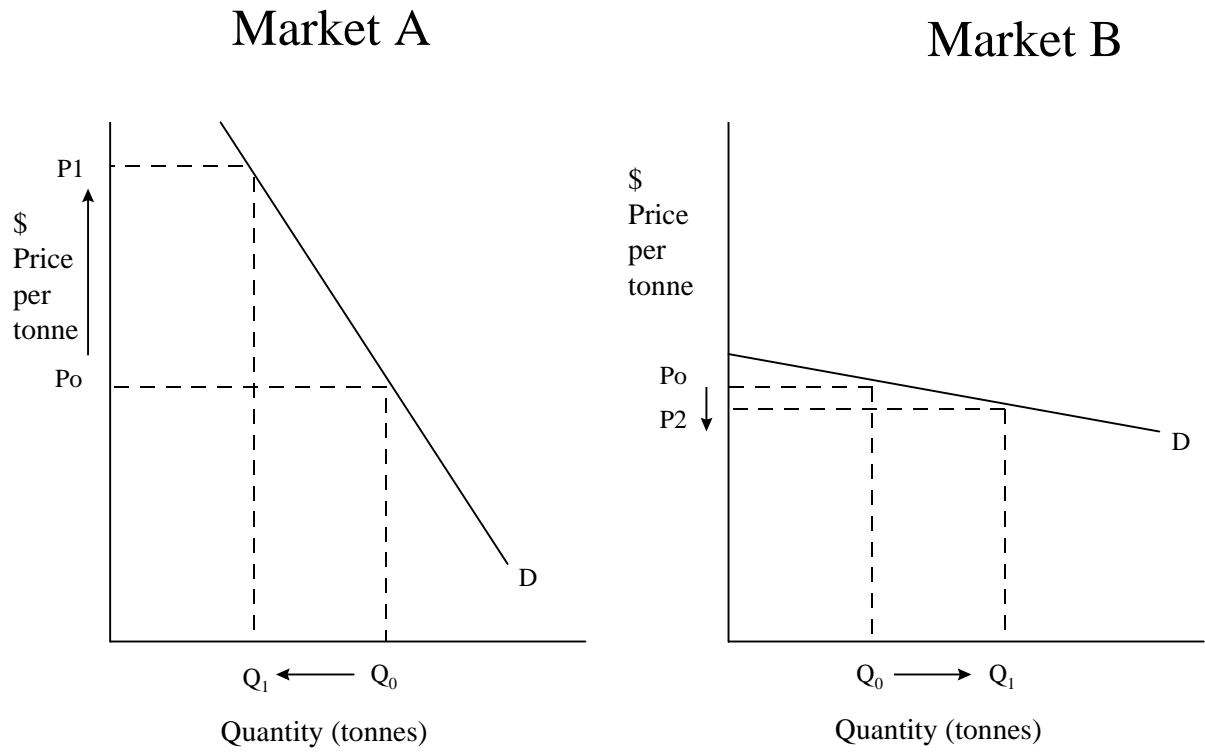


Figure 2

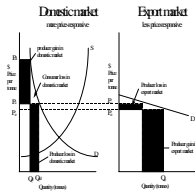
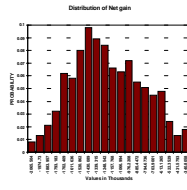


Figure 3



APPENDIX 10

**REVIEW OF THE NSW GRAIN
MARKETING ACT 1991**

REVIEW SUBMISSION SUMMARY*

NSW Grains Board

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* Submission based on NSW Grains Board Confidential Submission and Presentation to the Review Group in July 1998.

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1 BACKGROUND AND SUBMISSION STRUCTURE

1.1 BACKGROUND

The New South Wales Grains Board (NSWGB) was established in 1991 when four marketing boards (three were insolvent at the time) were amalgamated. It operates under the NSW Grain Marketing Act, 1991 (GMA). The Act was established at a time when SMA's were made more accountable, given a wider range of responsibilities and greater economic responsibility than the older style SMA's of the past.

The current review of the GMA is being conducted under National Competition Policy (NCP) and the Competition Principles Agreements, endorsed by members of the Council of Australian Governments (COAG).

The Agreement requires that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs, and that the objectives of the legislation require that competition be restricted. COAG also agreed that other matters are also to be taken into account including the following that are of relevance to this review:

- Government legislation and policies relating to ecologically sustainable development;
- economic and regional development, including employment and investment growth;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

1.2 SUBMISSION STRUCTURE

The full NSWGB submission was based on; reviews and relevant studies and surveys conducted by, or on, the NSW Grains Board or industry; stakeholder and customer information; the NSWGB knowledge and experience in the domestic and international markets; industry data sources; and various reference documents.

The NSW Grains Board Submission and presentation to the Review of the Grain Marketing Act, 1991 of NSW, (GMA) under the National Competition Policy (NCP) guidelines and Issues Paper *was confidential*. It contained some commercially sensitive information.

The NSW Grains Board has been given the opportunity to provide a submission based on the original for inclusion as an appendix to the final report.

The summary submission structure covers the major issues to be considered by the Review group as outlined in the Issues Paper prepared by the NSW Government (May 1998) as included in the NSWGB presentation.

2 NSW GRAINS INDUSTRY – THE FACTS

2.1 THE NSW GRAINS BOARD OPERATES IN A COMPLEX ENVIRONMENT

NSW produces approximately 2 to 3.0 million tonnes of coarse grain and oilseeds worth about \$540 million, with production growing at around 3.8% per annum. The growth is due to increases in yield and acreage, the latter an illustration that growers have confidence in the arrangements currently in place for these grains. Approximately 30% of NSW coarse grain and 50 % of oilseed production is exported by the NSWGB each year since 1995/96 and this percentage has been increasing in barley and oilseeds since its establishment.

Australia, and NSW, competes in the international marketplace against USA and EU protectionist policies. The international market is characterised by high levels of government financial support to growers through production and other income subsidies and through export subsidies. For example the USDA made an EEP allocated to 1.5 MMT of malting barley in 1998, while the EU offered restitutions of up to A\$100/tonne equivalent to dump excess grain onto world markets.

The Canadian Wheat Board, (CWB) has a single desk for wheat and barley exports and operates under numerous Government support mechanisms in marketing.

The Australian grain industry has done well under regulation. World class operations have been achieved giving many selling choices to growers who have shown that they can and do exercise these choices. The structure of our grain marketing arrangements have been targeted by our overseas competitors as one giving our producers an advantage presumably due to better marketing systems, better market share and prices. It also provides a dedicated promotion and market development service to NSW producers.

2.2 NSW SINGLE DESK MARKETING SERVES MANY PURPOSES

Regulation, in particular single desk selling, continues to serve growers, their community and the industry well. As mentioned above it provides choices and an orderly system to counter many of the imbalances of the environment growers need to operate in. In particular it provides the following:

- Maximises returns to NSW grain growers via strengthened organised bargaining and market development and promotion. All traders have a profit motive and as international trading companies increase market share in Australia more of the profits will be transferred to foreign shareholders rather than remaining in the Australian or local NSW economy;
- Countervailing powers in a corrupt and failing international market;
- Local marketing strength with loyalty to NSW origin grain and growers;
- Market access to premium markets with central buying agencies eg Japan;
- An organisation with sufficient critical mass (ie the NSWGB) to provide a range of services to growers and buyers as well as establishing credibility in the financial market;

- Addresses the imbalance between many small sellers and a few large buyers on the domestic and export markets for several coarse grains and oilseeds;
- Grower confidence by offering payment options to better manage cash flow and reliability (security of payment);
- Receiver of last resort for vested grain;
- A system to assist industry and the community on issues relative to safety and sustainability; and
- A more reliable system for collating statistics and collecting levies and industry reserve fees.

2.3 REVIEW PROCESS

The review process provides the opportunity to audit performance, identify strengths and weakness of the current system and make adjustments. This enables the industry to refine practices while still maintaining control of the destiny of the NSW coarse grains and oilseeds industry.

2.4 THE NSWGB STAKEHOLDERS & CLIENTS

The grain industry is made up of, and serviced by, many parties. These include; producers; storage, handling and freight providers; scientists, plant breeders and agronomists; brokers and traders; domestic and international processors and buyers; financiers; and all services in relation to quality, safety and research. The NSWGB has developed relationships and partnerships with many of these parties.

Over 12,500 growers have delivered grain to the Board over the past 7 years on at least one occasion and round 6,000 growers deal with the Board every year. The Board also operates an Authorised Buyer (AB) Scheme. Under this arrangement buyers are authorised to freely purchase vested grains from growers. Growers, via the Authorised Buyer, pay a fee of \$1.50 per tonne to the Board on all AB transactions, to contribute in part to the reserves necessary to ensure NSW grains and oilseeds are successfully marketed.

The Board sells to a large number of domestic coarse grain and oilseeds customers of varying sizes. It has also regularly exported barley and canola to many destinations including Japan, China and the sub continent. The Board also exports sorghum, oats and sunflowers from time to time when domestic surpluses occur.

3 OBJECTIVES OF THE GRAIN MARKETING ACT 1991.

3.1 THE OBJECTIVES OF THE ACT

The objectives of the Act literally mean that the NSWGB is responsible - **to do all things necessary and incidental to improving the marketing of coarse grain and oilseeds in NSW.**

In the second reading speech of the bill it states that “. .the need for a new and separate legislative framework was recognised. . to create a single, strong body that was more likely to influence the marketing environment than a number of smaller authorities.”

3.2 “MARKETING” IS SEEN AS:-

(Relating to all thing necessary and incidental to improving the product and or service of grains and oilseeds covered under the Act)

- Assessing the product to the fullest so as to understand its strengths, weaknesses and opportunities
- Assessing factors relative to improving or overcoming its weaknesses
- Assessing how well it is or can be adapted for a market
- Assessing the market for which it is intended or needed
- Assessing alternative or competitive products and their threats to the products being marketed
- Assessing the production/supply situation
- Assessing the demand situation
- Assessing the logistics of collection, storage, transport, packaging and quality
- Assessing branding, advertising, pricing, sales and delivery arrangements
- And from all these assessments capturing the greatest possible value and benefit from the supply and purchase of the product. This recognises both the supplier and user (customer) needs to enable both parties to capture maximum value from NSW product for NSW and the regional community.

3.3 VALUE ADD AND VALUE CAPTURE

Marketing grain and oilseeds from a large geographic area and a large number of small suppliers tend to be costly and ineffective unless the bulking process achieves economy of scale. There is a need for classification, grading and segregation. **This process will add value only if it is capable of accurate alignment to end user requirements.**

Grain commodity bulk handlers are in the business of maximising storage space use and minimising the storage used per tonne of grain. They are not in the business of grain marketing.

3.4 DISCIPLINE WITH FLEXIBILITY

Under the Act, ownership of grain and oilseeds is vested in the NSWGB (ie barley, oats, sorghum, canola, soybeans, sunflower, linseed, and safflower). The Act does however provide ample flexibility for the divesting of any or all of the marketing of the grain via industry consultation (eg. Consultative Committee), along with responsibility to ensure better marketing. Since its inception all but malting barley has been divested for domestic market purposes.

3.4.1 Domestic Feed Grains.

In the case of domestic feed grains, where growers can easily switch between end users, growers have requested divesting of marketing. This has been accommodated under the GMA.

The objectives in the Act allow for the NSWGB to be a strong participant in the market place - while also providing for freely available competition to all other participants on the domestic market.

The NSWGB's participation is at no cost to the taxpayer and no inconvenience to the growers or, end users.

The NSWGB's participation does not restrict any trader from delivering sorghum or oats to any export market so long as they pay the ruling export market rate, and source it through the NSW Grains Board, as the growers export market agent.

Without the single desk powers the NSWGB has insufficient financial power to positively compete in the domestic market, or to provide market development and promotion of NSW product. Without vesting the NSWGB would at best be "just another opportunistic trader", exploiting the weaker players in the market.

3.4.2 Malting Barley.

In the case of malting barley the market is concentrated with only two domestic buyers/processors and 4,000 to 7,000 regular producers in NSW. These processors do not compete with each other in all regions as one is in the north (Tamworth) and the other in the southern central region (Sydney). Traders would contend that with their entry into the market, there would be added competition. They would be operating in the same market limited to the same number of processors and therefore would not increase any real competition on the demand side, but rather "play" in the middle at a potential extra cost to both grower and end user.

Australia, and NSW, has successfully established world class domestic and export markets for malting barley and malt under regulatory provisions with vesting. Up to 800,000 tonnes of barley is malted in Australia annually, the majority of which is marketed overseas.

3.4.3 Canola

One private international trading and food/feed processor, Cargill, dominates Oilseed processing in Australia with about 95% of Australian capacity. They have recently commissioned a new crushing facility in NSW at Newcastle (250,000 tonne seed crushing capacity) and own other facilities at Narrabri and Moree. They also dominate oilseed crushing in Queensland and Victoria. By contrast the other oilseed crushers in NSW have very small plants all handling less than 10,000 tonnes of canola each, with a total capacity of about 30,000 tonnes, or 5% of NSW total capacity.

Canola therefore is similar to malting barley in that there are thousands of growers with one major domestic end user.

Attempts by other companies to establish large competing crushing plants have all failed. (The most recent was a Chinese/Australian 100,000 tonne joint venture at Narrandera.)

There is one industry participant capable of totally dominating seed, oil and meal prices in Australia, with no other single competitor strong enough to do anything but follow Cargill's policies in the sale of crude oil and meal.

Add to this, the fact that Cargill is also very dominant in oilseed trading and crushing in USA, and the international trade, its potential to influence the market and unfairly exercise market power is even greater.

However at no cost to the taxpayer and with the ability to compete via the GMA, the NSWGB is capable of increasing the chance of true competition to Cargill. Even though the NSWGB allows free domestic trade in NSW canola at all times, its very existence acts as an important benchmark against which to measure Cargill's market action.

By maintaining sole export powers the NSWGB provides some market leverage for NSW growers; while never denying overseas customers access to NSW canola, as long as the buyer or the buyers agent meets the world market price, and surplus stocks are available.

In 1991-1993 before the NSWGB became an active participant, trading in the domestic canola market, its research showed that Cargill, then the buyer of almost all canola seed, was consistently bidding prices some \$5-\$15 a tonne below export parity. Almost immediately the NSWGB commenced trading, Cargill's bids lifted to "export parity". NSWGB canola bids to growers are equal to or better than its competitors in neighbouring, deregulated, Victoria on the majority of the crop.

With Cargill so dominant in the marketplace it is not generally possible for the NSWGB to force domestic prices above export parity, while export surpluses exists.

As canola production increases it becomes a **core income-earning crop for growers**. Production growth over the past 9 years has been over 750% while percentage of revenue growth has been even more spectacular. This is due to the higher value of canola compared to barley or wheat (around \$375 versus \$125 to \$135 per tonne).

Supply is increasing in response to the strong world demand. As with all other grains periods of oversupply and depressed prices will occur. NSW growers will be fully exposed to these fluctuations. The presence of a dedicated marketer will be important particularly in times of market downturn and high volatility for all industry participants to remain confident in the local industry.

As farm management and ecological sustainability becomes more sophisticated and critical for long-term survival, an integrated farm management program is essential. Realistic and reliable information is needed to make sound planting decisions. Growers need confidence in the marketing of the crops that they choose to plant in their rotation program. Barley and wheat, the two other major other rotation crops have, and should continue to have, single desk export marketing arrangements in place. This is most likely to continue while overseas market corruption via subsidies etc exists.

3.5 MARKET FAILURE

On the export market, Australian growers face many forms of market failure eg: USA and EU grain is all produced and/or placed on world markets below the cost of production, due to a range of government payments and subsidies to their producers and traders.

Even without subsidies, most of the main international grain trade is conducted and/or dominated by International Trading Houses based in USA, Europe or Japan where they receive government assistance not available to the Australian industry. This encourages them towards grain and seed from origins other than Australia and interferes with the free marketing of Australian produce.

The issue of **TRANSFER PRICING** (or profit transfer from Australia to their overseas HQ by multinational processing companies) to minimise tax etc in Australia is of constant concern to Australian Governments. Under deregulated arrangements the ability of the Australian community to capture any part of the value being transferred away from our community is expected to be less and under any change away from the current form of regulation

Australia's Tradeable volume of grain at some 25 million tonnes, compared with USA and EU at over 300 million tonnes each and Canada at 65 million, does not appear sufficient for Australian based Traders to set up in the same way as those Head Quatered in the USA and EU.

Removal of Statutory Authorities such as the NSWGB would inevitably result in one or more of the USA or EU based trading houses **EXTENDING** their operations in Australia. With their financial power and current world dominance they would inevitably reduce the market strength of NSW (Australia's) grain producers on the world market.

The grain farmers of USA and EU have not been able to survive this century without government subsidies and assistance. There is very little support available to Australian producers. Marketing legislation provides some order and countervailing power to the market for Australian grain marketing – domestic and export – at no cost to governments.

And despite promises by USA and EU that they would reduce their market interventionist subsidy packages, Australian growers could not afford to be first to remove present single desk market discipline - because history has shown that USA & EU never can be trusted to stick to their word. **Even as recently as the 1st July 1998 USDA announced a new EEP package of 16.2 MMT wheat and 1.5 MMT malting barley for 1998/99.**

Despite claims by USA, EU and the World Trade Organisation (WTO), that world trade should be liberalised, and Australia should reform, the facts are that our barley growers are struggling as a result of EU export subsidies up to \$112 a tonne, at present.

3.6 RESEARCH, DEVELOPMENT, PROMOTION & LEADERSHIP

History has shown that for long term effective sustainable agricultural industries discipline must exist in areas such as:

- Research levy collection;
- Market research, development and promotion; and
- Food safety and hygiene.

The Act provides for such discipline and the **market development and product promotion** success of vested grains eg. barley in NSW, pulses in WA and canola in NSW and WA, serve as illustrations.

Promotion entails and deals with:

- Advertising benefits/strengths of each grade of each commodity
- Training/informing producers and clients of same
- Demonstrating benefits of our products to clients.
- Demonstrating ways to better process our products for increased profitability eg. writing “Better Malting” manuals in foreign languages.
- Establishing overseas Representative Offices (eg China)
- Bringing overseas clients to Australia to study our farming, logistics, plant development, and quality control systems
- And generally building their confidence in our products versus those of our competitors

These are not services and functions traditionally carried out by traders. For example in the USA the Government and growers fund and manage market promotion and development at a cost of billions of dollars, to their taxpayers.

Because the NSWGB owns the vested product (on behalf of NSW producers) and is not merely a trader of optional origin grain, it must guarantee and be responsible for the support of vested grains. The NSWGB has taken a leadership role in this regard and has a track record in this field eg. China and Japan. This also extends to other regions as export surpluses become more reliably available.

3.6.1 Continuity of Supply

Left in the hands of the private trade (or export deregulation which is effectively the same thing due to the loss of financial power to accumulate the crop) customers of NSW grains would be exposed to switching from one origin to another. This will be based on the traders lowest cost option with no, or little, loyalty to one supplier. Australian growers would be unique in that all their overseas competitors would be supported with market development and promotional activities paid for jointly by growers and taxpayers.

Private traders would expect the growers to hold stock on-farm if required. This would expose the grain to insects, fungus etc, which lowers the quality of the grain. On farm chemical treatments are also less environmentally safe.

3.6.2 Product Improvement

Another aspect of promotion involves increasing the awareness of producers of the quality needs of customers; and seeking an ongoing improvement in their product and its presentation to the market.

For example the NSWGB runs annual competitions amongst growers to focus on the need for world best barley and canola; and offers incentives including overseas educational tours cash and certificates in a very public ceremony each year - “The Better Malting” and “Good Oil” Canola awards. This is unique.

A quality differential payment system for barley and canola operates in Australia, varying payments to growers within and between grades to signal to growers the ideal quality characteristics in their grain for customer purposes.

3.7 SINGLE STRONG BODY

The intention of the amalgamation of the four marketing boards under the Act was to establish a “single strong body more likely to influence the market environment”.

The effectiveness of an organisation to:

- value add and value capture;
- provide discipline with flexibility; and
- counter market failure for an industry

will depend greatly on its size and recognised status in the markets it operates.

With single desk powers the NSWGB has achieved the critical mass needed to deliver all the functions/services as defined under marketing (see 3.2). It can also raise the capital it requires to run its business, including financing of pools, at very competitive rates under existing legislation.

3.8 OBJECTIVES OF FUTURE LEGISLATION

The following are some of the issues that need to be addressed and appropriately reflected in any revised objectives of the future grain marketing legislation:

- The international market place with its ongoing corruption, government funded grower income subsidies and export enhancement programs;
- Correcting/countervailing domestic market failure;
- The need for a strong, large and loyal NSW grain and oilseeds marketer;
- Ability for industry and Government to scrutinise the process of marketing;
- Industry growth, confidence and reliability; and
- Securing the price premiums available in international markets for NSW grains and returning it to NSW growers and rural communities.

It is significant to realise that no grower representative forum or survey has ever voted to oppose the current Act. In fact every survey and conference debate has always had a majority supporting all current powers, with majorities of up to 85% on canola and barley.

4 THE ACT PROVIDES PUBLIC BENEFITS & REMAINS RELEVANT

4.1 PUBLIC BENEFITS PROVIDED BY THE ACT

The NSWGB has many stakeholders, clients and service providers (see 2.4). It has a pivotal role as coordinator, provider and/or initiator of many activities that benefit growers, the rural community and the public. These include:

- **Information and statistics** are collected by the NSWGB and used by researchers, commercial participants and other groups
- **Promotion and development of NSW products** to differentiate it from other origin products is achieved by the NSWGB. The GMA provides for such promotion at minimal cost to each individual vendor (grower) and ensures maximum returns for investment into public plant breeding services.
- **Industries prosper** when supported by regulatory marketing. Proven examples include lupins in WA and canola in WA and NSW.
- **Co-ordination of logistics** brings economies of scale to bulk handling and freight providers reducing storage, handling and transport costs.
- **Quality standards and control co-ordination** is more efficiently executed through single desk sellers. The **Meyer Strategy Group** study (1996) of major international grain importers placed Australian grain above all other origins in wide range of quality and food safety criteria.
- **Borrowing costs are minimised.** The GMA (at no cost to the community) provides for a single desk seller, the NSWGB to establish borrowing facilities at up to 5% below grower rates and passes this saving to growers.
- **Support to value added export product** through assurance of quantity and quality of malting barley has benefited the export of malt out of Australia.

4.2 INDUSTRY ARRANGEMENTS REMAIN RELEVANT

The GMA is 7 years old. The NSWGB, its powers, responsibilities, accountability and reporting to industry and Government reflected the social, political, technological and legal environment at the time, and continues to show net benefits.

Changes in many of these operating environments have put additional emphasis on the need for a single desk seller with vesting powers. These include:

- **Changes in the social environment** continue to disadvantage rural communities. The population is aging with the average age of grain growers increasing to about 57. Country towns, and services to rural communities, are declining.

The average farm is increasing in size yet farmers bargaining powers have not. Few if any futures markets are genuinely available to Australian grain producers to manage price risk. Those that are available are generally too complex, user-unfriendly and pose their own perceived risk to growers.

- **Political changes** in the international market are progressing slowly. The USA and EU continue to subsidise agriculture to the tune of billions of dollars. The WTO talk about trade liberalisation, but while they target import tariffs and entry barriers, export or production subsidies show little signs of substantial change in the near future.

Importation of barley is still regulated in Japan and no official evidence of any change. China recently deregulated barley imports. This has made it a more difficult trading environment and puts greater emphasis on the need for a GMA to continue to supply NSW barley to China.

- **Technological changes** have brought many improvements to the industry and its growers. Access to, and the relevance of, many of these improvements vary by sector and between growers. Physical grain still has to be accumulated, priced and paid for, stored, transported, and quality assessed and marketed.

Objective testing for grain quality is an example of a technological innovation introduced by the NSWGB under the GMA.

4.3 VESTING POWERS CRITICAL TO DELIVER BENEFITS

The NSWGB's core activities require vesting for it to maximise its effectiveness, efficiency and attain the critical mass to continue to deliver value to growers, customers and the community. Included in these activities are:

- Accumulation of coarse grains and oilseeds
- Marketing
- Funding at harvest to take long positions of vested grains
- Act as receiver of last resort

It is vesting which has provided the insurance necessary for many industry activities including:

- the grower to plant with confidence;
- the NSWGB to market NSW grains with confidence;
- the NSWGB Bankers to finance our Pools and Trading Positions;
- the traders to have confidence when contracting with the NSWGB;
- the Grain Storage operators to construct new and improved grain handling facilities and know that they will be paid for their services
- the Rural Merchants to build and operate their storages and ancillary marketing services; etc

4.4 *MARKETING AUTHORITIES RESERVE FUND – LEVY OR AUTHORISED BUYER FEE*

The NSWGB build up its reserves over the past 7 years from retained earning from marketing, other commercial activities and the Authorised Buyers Fee of \$1.50 per tonne collected from growers (under 1% of sales value).

The fee was originally established to operate service for the industry and the establishment of reserves necessary to meet the objectives under the GMA. The AWB collects 2% and the ABB 1% levy for its reserve fund.

5 A SINGLE DESK EARNS PREMIUMS FOR AUSTRALIA – PREMIUM PRICE AND SERVICE

5.1 A COMMODITY PREMIUM

Domestic maltsters have in the past supported the domestic single desk valuing the service and security the system delivers. The NSWGB achieves a premium in price as payment for the extra services provided and risk taken when marketing to domestic maltsters.

Under NCP it is necessary to identify and quantify costs or benefits to consumers (ie the community) or regulation. **The cost of malting barley is less than 0.8% of the price of the finished product (beer). There is no evidence that savings in the cost of raw materials, in particular less than .07 cents in a glass of beer, would reduce retail prices to the consumer.**

A successful export malt industry operates out of Australia. This could only have been achieved if profitable to the processor, which includes competitively, priced barley, being available, for malting and marketing into fiercely competitive world markets.

Barley export to Japan ie feed, food and malt barley purchased under the Japan Food Agency from the NSWGB earn premiums. These are only available to Statutory Boards. The JFA “accredits” individual Japanese Trading Houses to represent separate Marketing Boards in Australia. The NSWGB has developed beneficial trading relationships for other grain exports to Japan. These include **sorghum and canola**.

There is more than one “price” for the same quality of grain on the international market as buyers willingness and ability to pay vary. **Further export premiums are earned by the NSWGB by selling grain, surplus to the domestic market, into the highest priced export markets.** This together with the market development and customer service provided by the NSWGB adds value to NSW growers grain. **The full value is then returned to growers and the rural community they are members of, by their NSWGB.**

Another major service to the coarse grain industry is the removal of surplus vested grain to domestic market requirements by the NSWGB. This arguably saves market failure for other non-vested grain.

5.2 A COMMUNITY PREMIUM

The grower as a customer and stakeholder of the NSWGB receives more extensive services from the NSWGB than from any one trader. For example it offers extensive services to growers in relation to flexible pooling and cash arrangements, payment options, information, product promotion and a grower voice. These add value to the grower community through increased confidence in the industry (eg. -increased investment, production, information etc) and profits returned to NSW growers and rural communities.

The high-risk profile of farming in Australia makes it unattractive for investors to “own the farm”. They own the value-added down stream activities and leave the highest risk activity to the Australian farmer to manage.

The NSWGB has a stake in the future of the NSW grains and oilseeds industries and is in a better position to lead the local industry on environmental issues. Through long term marketing arrangements and relationships it is in a better position to manage short-term supply/demand and quality fluctuations with its customers.

The NSWGB has a regional structure with offices in Toowoomba, Tamworth, Parkes, Berrigan and Moree through which extensive services are provided to growers. With the expertise at head office and the regional offices the NSWGB reduces industry cost (eg. finance, storage & transport etc), minimises risk and provides strong leadership. The NSWGB reduces industry costs through volume discounts and reduced financial costs. It adds further value by maximising value of small parcels of niche product and blending benefits growers and customers.

Customer and grower surveys indicate strong support for the NSWGB and the services it delivers to growers. The NSWGB represents grower interests and provides a grower perspective on important issues to a range of audiences.