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28 January 2020

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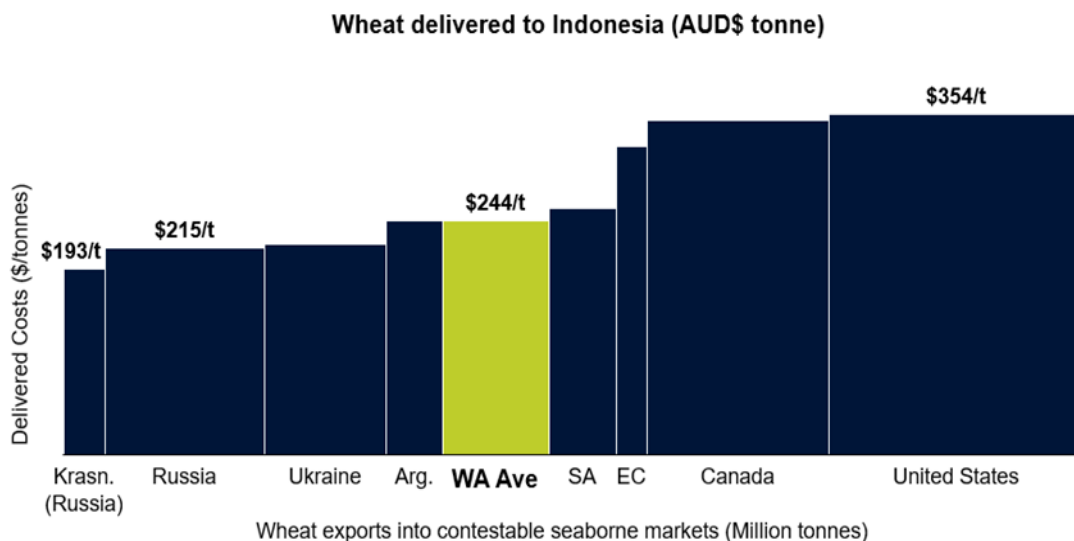
### **Environmental Protection Act 1986 amendments consultation**

1. This letter sets out feedback from Co-operative Bulk Handling Limited (**CBH**) to the Department of Water and Environmental Regulation (**Department**) in relation to its discussion paper entitled "*Modernising the Environmental Protection Act*" (**Discussion Paper**) and Exposure Draft Bill (**Draft Bill**) which were released for public comment on 28 October 2019.
2. As explained in more detail below:
  - a. CBH is supportive of efforts to improve processes, including removing duplication of Commonwealth and State Government environmental assessments and approvals;
  - b. CBH is cautious about the proposed introduction of fees and cost-recovery, particularly in the absence of details about the precise circumstances which would attract additional fees, and the quantum of those fees; and
  - c. CBH is concerned about changes to the regulation of licences for "prescribed premises" (to the extent that it would change the current approach and lead to increased regulatory compliance charges or inefficiencies to the grains industry), and proposals to regulate and minimise the use of environmental offsets.

### **CBH – Background**

3. CBH is Australia's largest co-operative and a leader in the Australian grains industry.
4. Established in 1933, CBH operates a large and complex supply chain in regional WA that receives and transports the vast majority of the State's annual grain harvest from approximately 150 upcountry receival points via rail and road to one of four ports – Esperance, Albany, Kwinana and Geraldton – for export to interstate and international markets.
5. The WA grains industry is the largest agricultural sector in WA and the 4th largest export industry overall, with CBH's 3,900 grain grower members producing an average of 14.7 million tonnes of grain annually and contributing almost \$4 billion to the State economy each year.
6. Unlike the Eastern States, nearly all of the grain produced by WA growers (approximately 90%) is exported to international markets, primarily to South East and North Asia. Australian grain exporters are price-takers in these international markets.

7. WA grain has historically had an advantage in these markets due to its geographical proximity, in particular to South East Asia, and because of the quality and consistency of its grain.
8. However, despite these advantages, the international competitiveness of WA growers is currently under significant threat, primarily because of the relatively recent rise in supply from lower-cost alternative grain origins like the Black Sea region (primarily including Russia and the Ukraine).
9. Importantly, the Black Sea region benefits from much higher yields than WA (on average, up to 6 tonnes per hectare in the Krasnodar district in Russia, compared with an average of 2 tonnes per hectare in WA), and can produce significantly higher exportable surplus volumes (over 100 million tonnes per year, compared to about 14 million tonnes, respectively).
10. By way of example, those factors allow wheat - WA's largest volume grain commodity - from alternative origins to be delivered into what has historically been WA's main (and closest) contestable market, Indonesia, at a much lower price:



**Figure 2: Cost curve depicting cost of delivering a tonne of wheat into Indonesia from various origins**

11. As can be seen, it is currently up to A\$51 per tonne more expensive for WA grain growers to grow and land wheat into this key export market than their competitors, despite WA's comparative geographical proximity. That margin will be exacerbated, and consequently the competitiveness of WA wheat into this market will continue to decline, if the gap between WA and other origins on the left-hand side of the curve increases.
12. In CBH's view, it is therefore critical that domestic settings in WA are appropriate in order to keep downward pressure on grain production costs – including via regulatory compliance costs and efficiencies – to ensure that WA growers remain competitive in international markets.

## **Key areas of reform in the EP Act**

### ***Bilateral agreements with the Commonwealth***

13. With a continuing increase in the State's average annual grain production, CBH's primary exposure to the EP Act is through applying for clearing permits for new or expanded up-country receival sites.

14. Applications for clearing permits have also become increasingly important as CBH pursues its Network Strategy which focusses CBH's maintenance and capital investment on the core 100 sites that receive over 90% of the annual crop.
15. In that context, CBH supports the proposed efforts to improve bilateral assessments and remove duplication with Federal processes. While CBH's involvement to date with bilateral assessments is limited and ongoing, the experience has been positive and will likely lead to decreased assessment times.
16. However, CBH is cautious about proposed amendments to allow fees to be charged in connection with bilateral agreements in connection with clearing permits. As set out above, given the highly competitive nature of the global grain market, even small changes in supply chain fees – including indirect costs like those associated with environmental approvals – can impact the international competitiveness of WA grain growers.
17. CBH would therefore welcome the opportunity to comment on those proposed amendments, particularly the circumstances in which fees will be charged and their quantum, as the details emerge.

#### ***Environmental monitoring programs***

18. CBH notes that amendments are also proposed to the EP Act to enable cost recovery from industry for key state environmental monitoring programs that assess cumulative industry impacts on health and environment.
19. While acknowledging the importance of environmental monitoring programs, CBH is again cautious at the potential breadth of the proposed amendments and would welcome the opportunity to provide further comment on the details as they emerge, particularly on what is considered to be a key state environmental monitoring program, and the quantum of any industry cost recovery.

#### ***Licences***

20. The Draft Bill proposes to substantially replace the existing Part V Division 3 of the EP Act.
21. The current approach regulates works and emissions under a licence system based on whether they occur on “prescribed premises”, as that term is defined in Schedule 1 of the *Environmental Protection Regulations 1987 (WA)* (**EP Regulations**). However, the Draft Bill proposes to shift to the regulation of “prescribed activities” rather than “prescribed premises”.
22. The Discussion Paper notes that consequential amendments to the current “prescribed premises” categories in Schedule 1 of the EP Regulations will prescribe both an activity and a threshold level which, if met, will trigger a requirement for a licence.
23. Relevantly for CBH's operations, Category 58 of Schedule 1 currently provides that a “prescribed premises” includes:

“Bulk material loading or unloading: premises on which clinker, coal, ore, ore concentrate or and other bulk granular material (other than salt) is loaded onto or unloaded from vessels by an open materials loading system”.
24. Historically, products such as grain have not been required to be regulated under a licence, because of legal advice the Department has advised it has received on the

nature of “bulk granular material” in current Category 58 of the EP Regulations.<sup>1</sup> Other products, such as petroleum, fertilisers, general cargo, stockfeed and livestock have also not been found to fall within Category 58.

25. Understandably, therefore, CBH would be concerned if Category 58 was expanded to include “grains” as part of the consequential amendments of moving to “prescribed activities”.
26. In CBH’s view, there is no clear reason why grains (and other non-mining products) should be included in Category 58 (or in a new standalone category) given there has been no evidence of market failure. While acknowledging that there are occasionally grain dust exceedances to the Port Authority monitors, there are a very low number of resultant complaints from the public. For example, in the most recent SPA annual air quality report for the Port of Esperance it was noted that there were no complaints in relation to dust or air quality received in relation to the operations of the port<sup>2</sup> (similarly, there were no complaints in the previous report).
27. Further, CBH has been proactively addressing dust control at its ports without being covered by the current regulations. For example, CBH has sophisticated dust extraction systems at all of its ports, has put in place dust monitoring regimes at its Kwinana and Albany Grain Terminals (Esperance and Geraldton Ports are independently monitored by the relevant Port Authority), and has installed dust controls at our terminals (such as covered conveyors, and baffles over discharge grids).
28. Notwithstanding, if grains were ultimately included as a “prescribed activity” and required to be covered by a licence, it would inevitably require additional regulatory compliance costs and inefficiencies. In addition, that would be significantly exacerbated if the requirement for a licence were not restricted to the loading and unloading of vessels (as is currently the case with Category 58) and resulted in an expansion to include not only CBH’s four (4) ports, but also its 150 up-country receival points. Finally, it would be further exacerbated if licence conditions included operational restrictions (such as throttled throughput limits, and restricted operating hours), rather than dust monitoring and engineering requirements.
29. For these reasons, if the Department does consider including grains as a prescribed activity, CBH would request the opportunity to provide further feedback.

### **Enforcement**

30. The Discussion Paper proposes expanded powers for inspectors to require production of information and to compel persons to answer questions. The Paper also proposes an increase to a range of penalties and offences under the EP Act.
31. While supportive of these changes in principle, it seems appropriate to CBH that - as in other regulatory regimes - it is also made clear that persons are not required to provide information covered by legal professional privilege, and there is an entitlement to be represented by a lawyer when a person is compelled to answer questions by an inspector.

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<sup>1</sup> See, for example, the licence for the Mid-West Ports Authority for the Port of Geraldton: [file:///C:/Users/patond/Downloads/10071\\_10070\\_9356\\_4275Geraldtonport\\_1%20\(1\).pdf](file:///C:/Users/patond/Downloads/10071_10070_9356_4275Geraldtonport_1%20(1).pdf) (at page 4 of the Decision Document) and the licence for the Southern Ports Authority for the Port of Bunbury: [file:///C:/Users/patond/Downloads/10214\\_10213\\_8863\\_8862\\_8181\\_7447\\_L6744-1996-12\\_1f.pdf](file:///C:/Users/patond/Downloads/10214_10213_8863_8862_8181_7447_L6744-1996-12_1f.pdf) (at page 3 of the Decision Document)

<sup>2</sup> See page 47: [https://www.southernports.com.au/sites/default/files/2019-09/Annual%20AQ%20Oct%202017\\_Sept2018%20part%201.pdf](https://www.southernports.com.au/sites/default/files/2019-09/Annual%20AQ%20Oct%202017_Sept2018%20part%201.pdf)

## **Further issues for consideration**

### ***Offsets***

32. The Discussion Paper proposes that the EPA's policies and guidelines be amended to regulate and minimise the use of offsets and make explicit the circumstances under which they can be applied.
33. CBH has used environmental offsets in the past when applying for clearing permits for receival site expansions.
34. CBH is supportive of efforts to make explicit the circumstances under which offsets can be applied. For example, it would be useful to have more clarity on what constitutes an acceptable offset in certain circumstances – for example, a financial contribution, an alternative site development, or both. It would also be beneficial for industry to have direction on whether bio-banking (where a large tract of off-set land can be used to draw-down for clearing at a number of smaller sites) is seen as a viable option, and the circumstances in which it could be used.
35. Otherwise, CBH is concerned about proposals to minimise the use of offsets. Offsets are an important option for industry when seeking clearing permits, and minimising their use will inhibit growth and increase costs and delays to important projects. It is not clear from the Discussion Paper what, if anything, is proposed to replace offsets.
36. CBH is also concerned about the lack of certainty for industry given that the proposal suggests that changes will be brought about by amendments made to EPA policies and guidelines, rather than through the EP Act and/or Regulations.

### ***Clearing of native vegetation***

37. The Discussion Paper proposes that the clearing provisions should be moved to a standalone part of the EP Act, or to a purpose-specific native vegetation Act.
38. In CBH's view, it is not clearly articulated in the Discussion Paper why consideration of these alternative arrangements is required.
39. As a statement of principle however, the clearing provisions of the EP Act should be flexible enough to deal with applications on clearing of native vegetation based on objective assessments of the bio-diversity of the specific area the subject of the proposed permit, rather than having a different approach for general regions - like the Wheatbelt or Perth/Bunbury metropolitan area.
40. If this proposal were to be pursued, CBH seeks the opportunity to provide further feedback given CBH's extensive operations in the Wheatbelt region

## **Conclusion**

41. We are grateful for the opportunity to provide feedback to the Discussion Paper and Draft Bill and ask that you contact our Government & Industry Relations Manager, Mr David Paton, should there be anything further you require.

Yours sincerely

**FOR: CO-OPERATIVE BULK HANDLING**



**BEN MACNAMARA**  
**General Manager - Operations**