Application for Exemption from the Port Terminal (Bulk Wheat) Code of Conduct

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Executive Summary

Patrick is seeking exemption for its proposed operations in South Australia from Parts 3-6 of the Port Terminal Access (Bulk Wheat) Code of Conduct 2014 (“The Code”).

The problem the Code is designed to address is the potential for monopolist behaviour by grain export terminal operators with associated wheat export businesses to the detriment of other exporters.

Patrick is not the target of the regulation, that is, it is not a terminal operator with an associated wheat export business. Indeed, Patrick is providing entry and competition into a market dominated by a single player. Thus Patrick is part of the solution, ie competitive entry, and not the problem that the Code is designed to address.

Obligation in Parts 3-6 of the Code from which Patrick seeks exemption contain onerous requirements. These requirements, if they have to be complied with, are costly, limit flexibility and will provide a disincentive for small scale entry such as that planned by Patrick. As a result of these factors Patrick meets the criteria for an exemption when taking into account the matters set out in Clause 5.3 of the Code.

Grain in South Australia

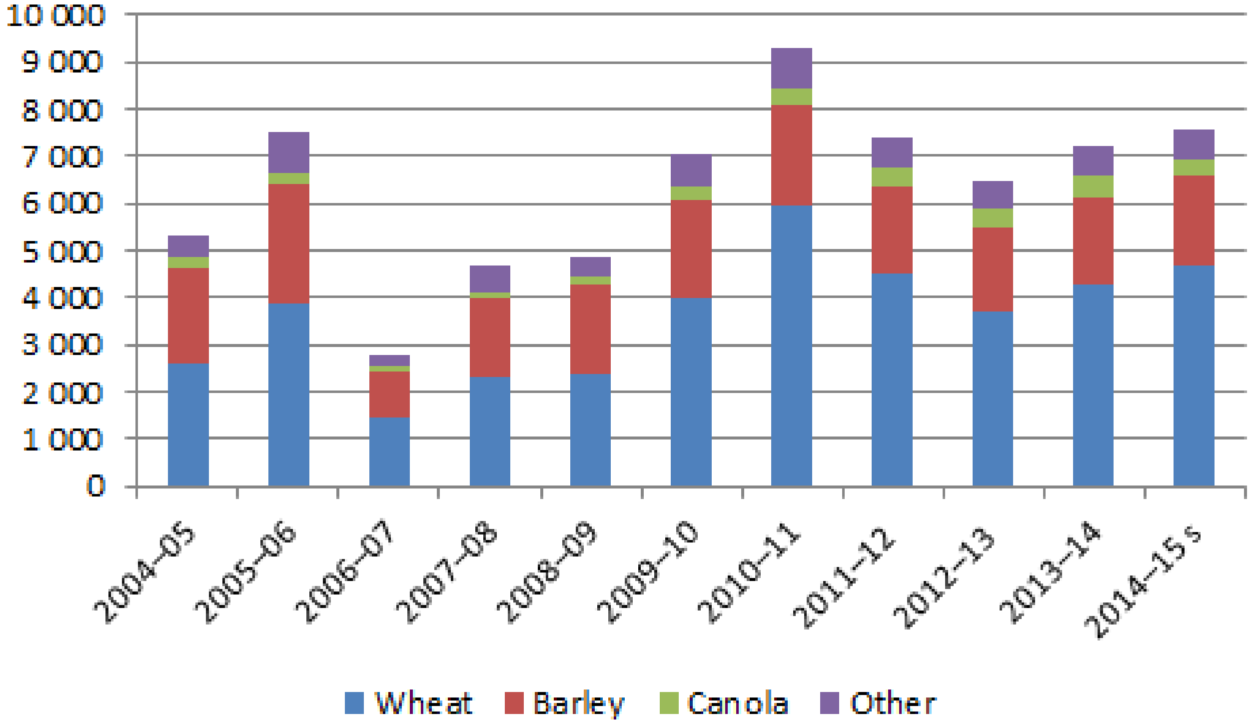
Australia produces around 35 million tonnes of grain annually. Of this total around 10 million tonnes is consumed domestically. Thus Australia exports around 25 million tonnes of grain making it is one of the top four grain exporting nations in the world.[1] South Australian grain production makes up on average 18% of Australia’s total grain production.

Over the last eleven years South Australia has produced on average 6.4m tonnes of grain a year (see Figure 1). However, due to variation in climatic conditions there is a significant variation in annual production with the lowest year being 2006/07 producing 2.8m tonnes and the highest production year being 2010/11 with 9.3m tonnes. The largest proportion of the South Australian

[1] Regulatory Impact Statement. Early Assessment document. Mandatory Code for grain Export terminals June 2014.

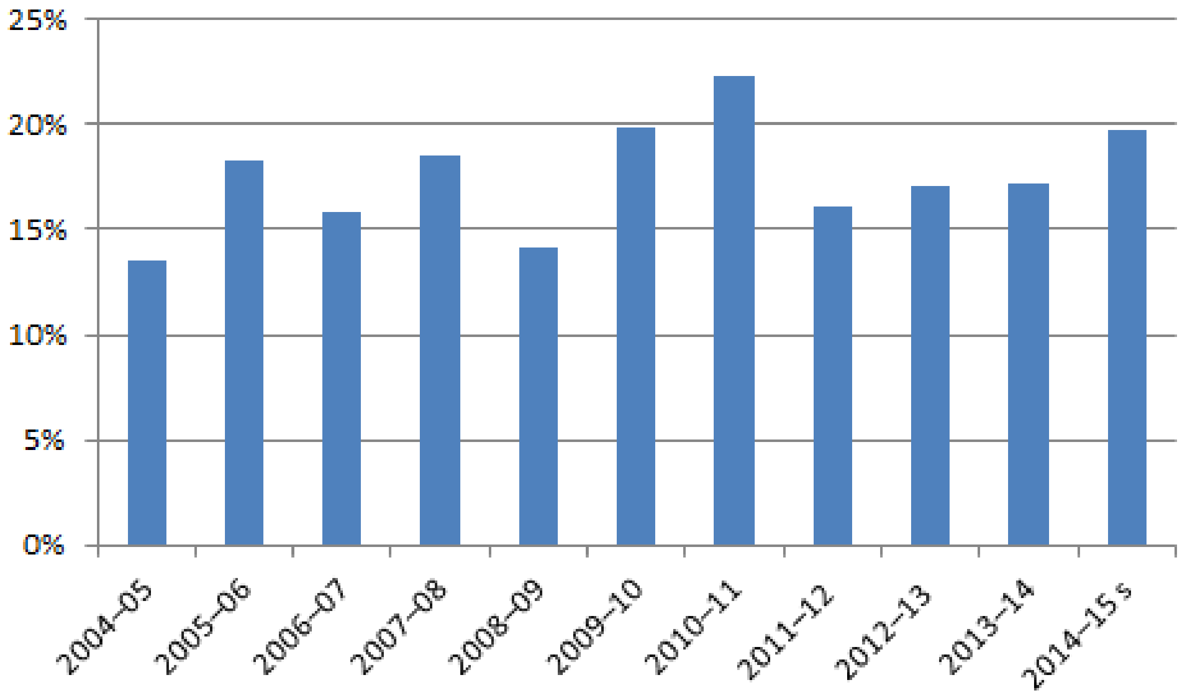
crop is wheat followed by barley and canola.

Figure 1: South Australian Grain Production 2004/05 to 2014/15 (kt)



Source: ABARES Australian Crop Report Dec 2015. s=ABARES estimate

Figure 2: South Australian Share of Australian Grain Production 2004/5 to 2014/15



Source: ABARES Australian Crop Report Dec 2015. s=ABARES estimate

South Australia exports a larger proportion of its grain production than most Australian States. South Australia exports around 85-95% of grain production annually. This is similar to Western Australia but significantly more than Victoria, Queensland and NSW which export approximately 50%.[2]

South Australian production areas are clustered around the coast (**Figure 3**) and as a result South Australia has the shortest distance to port of any state in Australia (**Figure 4**). It is estimated that around 50% of the volume is delivered to port by road and 50% by rail.[3]

[2] Australian Export Grains Innovation Centre, (2014) 'The cost of Australia's bulk grain export supply chains. An Information Paper p 10
[3] Australian Export Grains Innovation Centre, (2014) p 17

Figure 3: South Australian Grain Productions Areas[4]

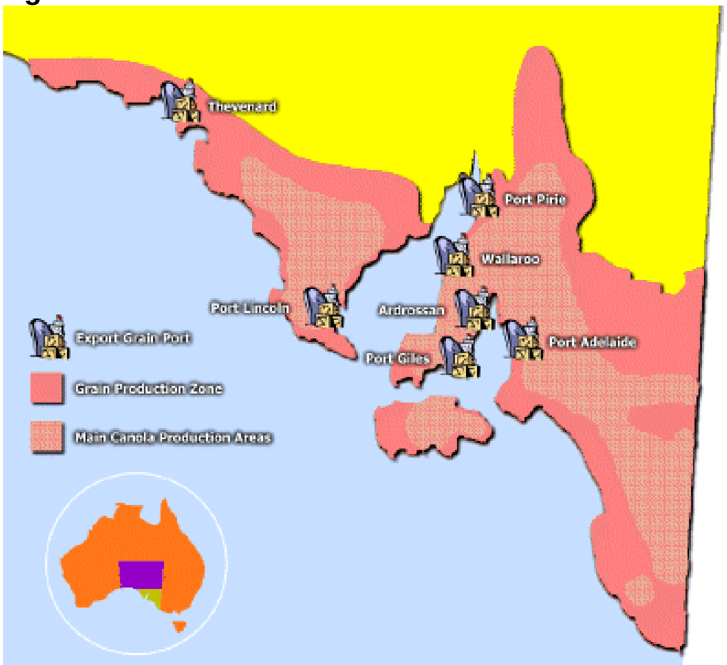
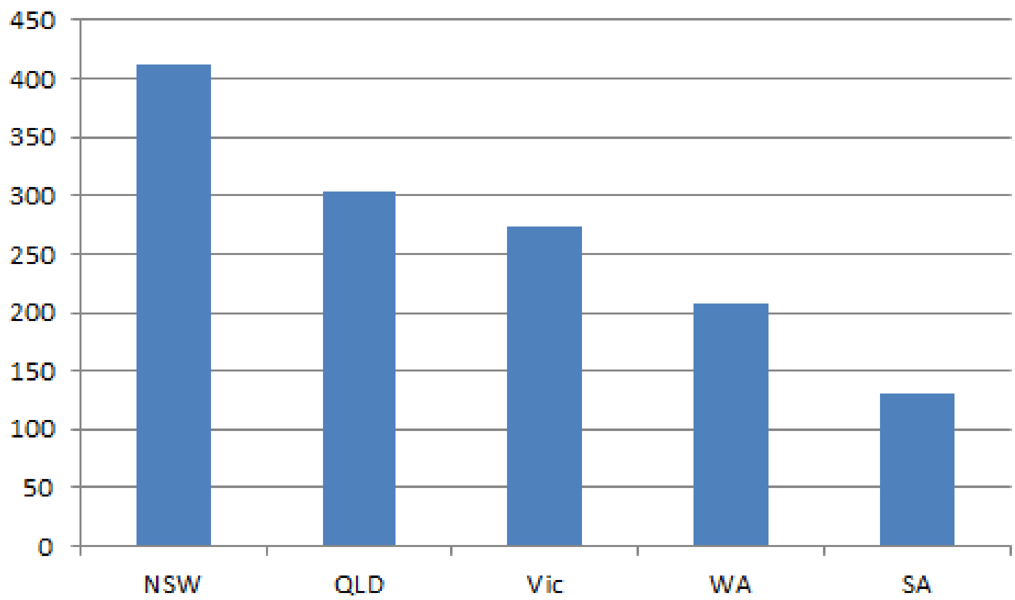


Figure 4: Median Distance Bin to Port (Km)



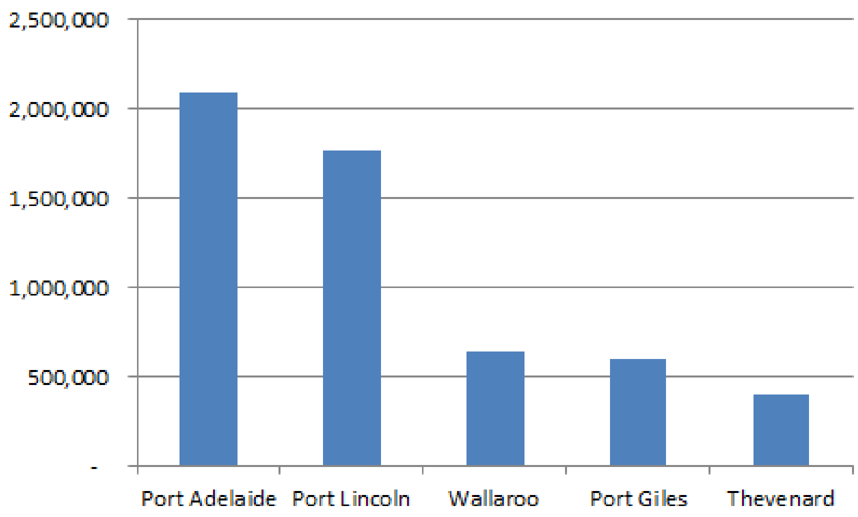
Source: Australian Export Grains Innovation Centre, (2014) p 17

[4] http://www.regional.org.au/

Viterra (owned by Glencore) is the dominant, vertically integrated player in South Australia grain. Viterra has an integrated supply chain including storage sites, ports and exporting and marketing businesses. Viterra: [5]

- owns all the bulk wheat port loading facilities in South Australia at Port Adelaide (outer and inner harbours), Port Giles, Wallaroo, Port Lincoln and Thevanard. The relative importance of these ports is shown in Figure 5.
- owns 93 receival sites including 3 in Victoria.
- has 100% of grain port throughput (prior to Patrick's entry).
- handles approximately 80% of the grain produced in South Australia.
- exports around 45% of the South Australian grain.

Figure 5: Export Bulk Grain By Port Tonnes Calendar Year 2014



Source: Flinders Ports (2014)

Given the market structure it is not surprising that supply chain costs in South Australia are high:

[5] Australian Export Grains Innovation Centre, (2014)

- South Australia has the second highest post farm gate costs per tonne of wheat in Australia[6]; and
- The cost of using Viterra in 13/14 was 18% higher than CBH and 6% higher than GrainCorp.[7]

Patrick's Operations

Patrick currently provides general stevedoring services to various industries at Flinders Ports common user wharf facilities in Adelaide.

Patrick has an agreement in place to stevedore wheat at Port Adelaide for Cargill. [*Confidential information deleted*] Patrick expects to load approximately 225,000 tonnes per year [*Confidential information deleted*] which equates to around 8-10 ships a year. This represents about 3.5% of the average annual South Australian grain production meaning Viterra will still handle approximately 97% of the South Australian grain port throughput [*Confidential information deleted*].

Patrick uses Berth 29 for these operations as shown in Figure 6. Patrick has a non exclusive stevedore licence in place with Flinders Ports which includes Berth 29 [*Confidential information deleted*]. The grain will be trucked directly to the hopper on Berth 29. The operational approach is new for South Australia. The vessels will be loaded using Patrick labour, Cargill's hopper and Patrick's ship loader.

All vessel nomination, berth booking and port charge payment is made by Cargill under their agreements with Flinders as port operator.

[6] Australian Export Grains Innovation Centre, (2014) p 7

[7] Comparison bundle includes receival, storage for 3 months, freight and port costs. Source Australian Export Grains Innovation Centre, (2014) p 34

Figure 6: Patrick's Operations

It has been an extended process to get to the point where Cargill was prepared to enter into an agreement with Patrick and Flinders Ports accepted the operational approach. Four trials were conducted during 2015, the first one in January to prove up the approach both to the customer and to Flinders Ports. During the trials there have been numerous modifications to equipment and operations processes that have lead to the current service offering and contractual arrangement with Cargill. Until these changes were made and equipment tested and Flinders Ports requests satisfied, it was unknown as to whether ship loader operations would be deemed viable, or if Cargill would revert to exclusively using Viterra (the only option previously available). During the trial process Flinders Port have made numerous requests regarding operations approvals, reporting and monitoring particularly around dust. Patrick was unable to apply for exemption from the Wheat Code until the operational and contractual arrangements with Cargill's were finalised. These arrangements were finalised with Cargill signing the contracts on the 6th January 2016 only five days in advance of the first ship the customer wanted Patrick to stevedore.

Figure 7 shows Cargill's Grain Flow sites in South Australia. The source of grain Patrick will stevedore will be from these Grain Flow sites (95%) with the balance out of Viterra's storage. The majority of the grain for the Patrick service will be sourced from the Mallala and Crystal Brook sites. If Patrick wasn't stevedoring this grain it would go out through Viterra in Port Adelaide.

Figure 7: Grain Flow Sites in South Australia

The operational approach, namely the use of a mobile ship loader with no on site storage, does not lend itself to scalability. While there is some scope for Patrick to move additional tonnes there are constraints around the availability of the ship loader and the availability of Berth 29 particularly given seasonality of grain movements. Berth 29 is a shared products berth primarily used for bulk products including Mineral Sands, Sulphur, Zinc and Copper concentrates as well as Scrap Metal.

Patrick is open to providing these services to other customers but this would be subject to: the availability of the ship loader; the availability of Berth 29 and the customer being able to supply hopper equipment that is compatible with Patrick's ship loader and meets Flinders Ports' requirements particularly in relation to dust control.

Matters to be considered by the ACCC

The problem the wheat code is designed to address is the potential for monopolist behaviour by grain export terminal operators with associated wheat export businesses to the detriment of other exporters.[8]

The stated objective of the government intervention was

> *'… to create a regulatory environment conducive to the operation of an efficient, competitive and profitable bulk wheat exporting industry, and reduce the potential for monopolistic behavior. The government is also committed to reducing unnecessary regulatory burden to encourage greater investment, more innovation and improved productivity in agriculture.'*[9]

Patrick is not the target of the regulation, ie it is not a terminal operator with an associated wheat export business. Indeed, Patrick is providing entry and competition into a market dominated by a single player. Thus Patrick is part of the solution, ie competitive entry, and not the problem that the code is designed to address.

Obligation in Parts 3-6 of the Code from which Patrick seeks exemption, contain onerous requirements including:

- access and non discrimination provisions;
- developing a dispute resolution mechanism;
- capacity allocation system;
- publishing available capacity;

[8] Regulatory Impact Statement. Early Assessment document. Mandatory Code for grain Export terminals June 2014 p 4

[9] Ibid.

- publishing KPIs;
- publishing stock information; and
- record keeping obligations.

These obligations, if they are required to be complied with, are costly, limit flexibility and will provide a disincentive for small scale entry such as that planned by Patrick. Given Patrick's position as a new entrant without any market power breaking down a monopoly, there is no public benefit from Patrick complying with these obligations. As noted in the quote in the previous page the government is looking to reduce unnecessary burden of regulation – approving Patrick's exemption will be consistent with this objective.

Clause 5 of Part I of the Code sets out the matters that the ACCC must have regard to when determining an Exemption application. The Table below deals with each of these matters in turn.

Matter	Comment
The legitimate business interest of Patrick as the port terminal service provider	Granting the exemptions will reduce Patrick's costs and improve its flexibility in meeting customer demands and encourage small scale entry into the grain supply chain.
The public interest, including the public interest in having competition in markets	By reducing the regulatory burden on Patrick this will encourage small scale entry and increase competition in the delivery of services in the wheat supply chain.
The interests of exporters who may require access to port terminal services	By reducing the regulatory burden on Patrick this will encourage small scale entry allowing exporters to benefit from increased choice of service provider and the increased service quality and price constraints that competition provide.
The likelihood that exporter of bulk wheat will have fair and transparent access to port terminal services	By reducing the regulatory burden on Patrick this will encourage small scale entry and increase competition in the delivery of services in the wheat supply chain. This improves the choices for the exporter and will result in fair access to port terminal services.
The promotion of the economically efficient operation and use of the port terminal facility	By reducing the regulatory burden on Patrick this will encourage small scale entry and increase competition in the delivery of services in the wheat supply chain. This increased competition will encourage efficient operation and use of the terminal facilities.
The promotion of efficient investment in port terminal facilities.	By reducing the regulatory burden on Patrick this will encourage small scale entry and increase competition in the delivery of services in the wheat supply chain. This increased competition will encourage efficient investment in terminal facilities.
Whether the port terminal service provider is an exporter or an associated entity of an exporter	Patrick is not a wheat exporter or an associated entity of a wheat exporter
Whether there is already an exempt service provider within the grain catchment area for the port concerned	Patrick is not aware of an exempt service provider in the SA grain catchment area