AUSTRALIAN COMPETITION & CONSUMER COMMISSION

Bulk grain ports monitoring report

2018–19

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Australian Competition and Consumer Commission
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Contents

Glossary and abbreviations

ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
ACCC	Australian Competition and Consumer Commission
ACF	Australian Crop Forecasters
Bulk exports	Grain loaded onto a ship for export. Does not include grain to be exported in a bag or container that is not capable of holding more than 50 tonnes of grain
Bulk shipments	Grain loaded onto a ship for either export or coastal shipment
Capacity	The total amount of grain in tonnes that can be loaded onto a ship during a shipping window, as determined by the port terminal service provider that owns or operates the port terminal facility
Coastal shipments	Shipments of bulk grain made between Australian ports
Department	Department of Agriculture—Commonwealth
East coast	New South Wales, Queensland and Victoria
Exporter	An entity seeking access to, or using, port terminal services for the purpose of exporting bulk grain
Grain usage	Refers to how a state's grain production supplies various markets. Grain can be consumed domestically, exported in bulk or by container, or transferred to other states
LTA	Long Term Agreement—an agreement entered into for long term capacity between a port terminal service provider and an exporter
Loading statement	A document produced by port terminal service providers pursuant to clause 7 of the Code which contains certain information about each ship scheduled to load grain via the port terminal service provider's port terminal facility. Commonly referred to as a 'shipping stem'
Other exporters	Exporters that fall outside of the top five exporters at a particular port over a specified period of time, as determined by export volumes
Peak shipping period	The period where demand for bulk grain shipment port terminal services is highest, typically from 1 February until 31 May
Percentage points	The unit of arithmetic difference between two percentages. For example, moving up from 10 per cent to 15 per cent is a five percentage point increase, but is an actual 50 per cent increase in what is being measured
Port terminal facility	A ship loader that is at a port and capable of handling bulk wheat, including an intake/receival facility, a grain storage facility, a weighing facility and a shipping belt
PTSP	Port terminal service provider—the owner or operator of a port terminal facility that is used, or is to be used, to provide a port terminal service
Shipment pace	The demand for bulk shipment port terminal services for each month in the Australian shipping year
Shipping year	The period from 1 October to 30 September the following year
Supply chain	A network between companies and their suppliers to produce and distribute grain. This includes upcountry grain storage and handling services, transportation of grain and port terminal services
The Code	The Port Terminal Access (Bulk Wheat) Code of Conduct
Vertically integrated	A company that operates at more than one stage of the supply chain

1. Key findings

1.1 Intensified drought conditions led to: Australia's lowest bulk grain exports since at least 2011-12, and increases in domestic demand and coastal shipments

Only 13.2 million tonnes of bulk grain were exported during the 2018–19 Australian shipping year (see table 1.1), by far Australia's lowest bulk exports since at least 2011–12 and 44 per cent below average.

Table 1.1: Bulk exports (mt) by state since 2014–15

	2014–15	2015–16	2016–17	2017–18	2018–19	Eight year average
Western Australia	11.88	11.40	13.91	11.50	10.91	12.06
South Australia	5.82	5.12	8.05	5.59	2.06	5.70
Victoria	1.57	1.11	3.98	2.20	0.15	2.64
New South Wales	1.15	1.70	3.80	0.50	0.01	2.08
Queensland	0.83	0.72	1.19	0.33	0.06	0.98
National	21.25	20.06	30.94	20.11	13.18	23.46

Source: PTSP loading statements; and Australian Crop Forecasters (ACF) Shipping stem and market share reports.

Low exports were the product of intensified drought conditions in South Australia and on Australia's east coast and Australia's lowest production since 2007–08. The 2018–19 shipping year demonstrated not only the variability of Australian grain production between years but also between states. For example:

- the combined production of Victoria, New South Wales and Queensland was 9.0 million tonnes (56 per cent below average)
- South Australia's production was 5.3 million tonnes (27 per cent below average)
- Western Australia's production was 17.7 million tonnes (15 per cent above average).

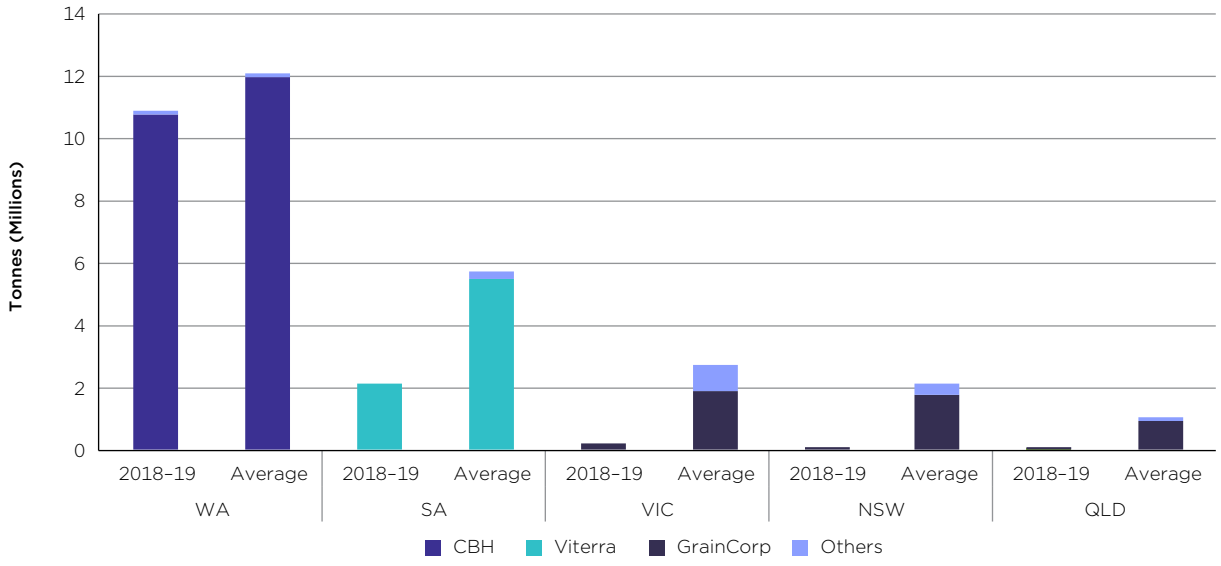
In addition to resulting in the virtual elimination of bulk grain exports from the east coast, these conditions also resulted in a 283 per cent increase in the amount of grain shipped from WA and SA to help meet the demands of east coast domestic markets. It also led to NSW importing 0.30 million tonnes of grain from Canada.[1]

1.2 Ninety-nine per cent of bulk grain export port terminal services were provided by CBH, Viterra and GrainCorp

Figure 1.1 compares bulk exports during the 2018–19 shipping year to the average over the last eight years. It also shows the proportions of exports undertaken by the various Port Terminal Service Providers (PTSPs).

1 Australian Crop Forecasters, Supply and Demand report.

Figure 1.1: Bulk grain exports by state and PTSP compared to eight year average, 2018–19



Source: PTSP loading statements; and ACF shipping stem and market share reports.

As shown in figure 1.1, almost all of the bulk grain export port terminal services provided during the 2018–19 shipping year were provided by Australia's three traditionally dominant, vertically integrated PTSPs. Specifically:

- CBH loaded 98 per cent of all grain exported in bulk from WA
- Viterra loaded 100 per cent of all grain exported in bulk from SA
- GrainCorp loaded 100 per cent of the small amount of grain exported from the east coast (0.22 million tonnes).

This year's numbers largely reflect the longer-term dominance of these PTSPs, particularly CBH and Viterra. Over the previous eight shipping years, for their relevant markets, CBH loaded 99 per cent of all grain exported in bulk, Viterra 97 per cent and GrainCorp 81 per cent.

While new PTSPs have emerged in each of Australia's grain exporting states and provided alternative pathways to market, in WA and SA they have not attracted substantial and consistent business. Specifically, since 2016–17 (when the most recent new entrants commenced operations):

- In WA, CBH's four facilities have loaded a combined 35.8 million tonnes for bulk export, while the WAPRES facility has loaded 0.54 million tonnes (i.e. 2 per cent).
- In SA, Viterra's six facilities have loaded 14.4 million tonnes for bulk export, the LINX and Semaphore facilities have combined to load 1.3 million tonnes (i.e. 8 per cent).
- On the east coast, GrainCorp's seven facilities have loaded 8.2 million tonnes for bulk export, the Emerald, Riordan, Newcastle Agri Terminal and Quattro's port facilities have combined to load 4.0 million tonnes (i.e. 31 per cent).

Given the ongoing dominance of CBH, Viterra and (in certain port zones) GrainCorp the ability of new entrants to disrupt markets, effectively constrain dominant PTSPs and to sustain their operations over the longer term remains unclear. It appears that in most port zones over the last year most exporters opted to use the port terminal facilities of established PTSPs. In some locations new entrant PTSPs did not export any grain.

1.3 Exporters reiterated concerns about fairness and transparency of access, queried the benefits of Long Term Agreements for third party exporters

This year the key concerns expressed by exporters regarding access to bulk grain export port terminal services related to the fairness and transparency of access and the questionable benefits of Long Term Agreements (LTAs) for third party exporters.

In relation to the fairness and transparency of access, exporter concerns did not relate to the outright denial of services but to the level of flexibility that they receive between the time they are allocated port capacity and the time that the services are provided. Notably, these concerns applied to exempt and non-exempt facilities, with exporters typically stating their view that the level of flexibility they receive is dependent on how a PTSP chooses to exercise its discretion, rather than decided by a specific obligation in the Port Terminal Access (Bulk Wheat) Code of Conduct (Code).

Specifically, some exporters expressed concerns about their inability to consistently amend and move bookings and how strictly they are required to adhere to port loading protocols. These exporters generally believe that trading arms of vertically integrated PTSPs are likely to receive greater flexibility to adjust their shipping plans when compared with other exporters. Exporters also believe that the trading arms of vertically integrated PTSPs may not be required to adhere as strictly to port loading protocols, though many noted that this was difficult to say with certainty on the basis of publically available information.

As per previous consultations, some PTSPs reiterated that they rarely receive complaints from exporters and that these concerns are typically resolved to the satisfaction of both parties. Some PTSPs also reiterated their concern that the Code (or an Australian Competition and Consumer Commission (ACCC) approved capacity allocation system) unreasonably limits their ability to provide flexibility to exporters.

Some exporters queried how significant and widespread the benefits of LTAs have been. These exporters typically noted that while LTAs inherently involve a balancing of the benefits of certainty of access and the risks of capacity forfeiture, the significant downturn in Australia's grain production had highlighted the risks of committing to substantial amounts of capacity in future years. Most exporters considered that third party exporter appetite for LTAs has reduced significantly since the first rounds of LTAs were offered.

Exporters who raised concerns noted that the existence of LTA capacity allocation processes currently put them in the difficult position of having to make risky long term commitments, or allow vertically integrated exporters to book up large portions of the shipping stem. Some exporters suggested that these systems advantage the trading arms of vertically integrated PTSPs, particularly where capacity forfeiture attracts a financial penalty. These exporters queried whether vertically integrated PTSPs enforce forfeiture penalties on their related businesses or if they do, whether the cost for a related business is the same as a third party exporter. These exporters suggested that the risks for third party exporters are much greater.

The ACCC notes that LTA capacity allocation systems approved by the ACCC were structured to ensure that exporters of all sizes would be able to secure long term capacity and take advantage of the LTA system's stated objective of providing certainty over access (for both PTSPs and exporters). The ACCC considers that feedback received in the course of this year's consultation process highlights the need for the ACCC to have the ability to review past approvals of capacity allocation systems.

1.4 Exporters and grower groups reiterated concerns about the: terms of upcountry storage and handling agreements, and costs and uncertainty associated with accessing their grain entitlements

Most exporters and grower groups continue to express concerns about terms and conditions of access to upcountry storage and handling services provided by vertically integrated PTSPs. Consistent with previous years, key concerns expressed were:

- the terms and conditions of upcountry storage and handling agreements appear heavily weighted in favour of the storage owner and that access seekers have limited or no ability to negotiate non-standard terms of access
- these agreements (which are not covered by the Code) allow PTSPs to deal with customer grain entitlements in a way that creates uncertainty and uncompensated costs. In particular:
  - site/stock swaps can create a variety of costs that are seldom if ever fully compensated under the terms of agreements (e.g. costs of transporting grain over longer distances, financial penalties for late delivery of grain and missed business opportunities associated with being unable to guarantee delivery)
  - grain blending often results in an outturn quality that is less than what the customer delivered.

1.5 The ACCC reiterates that several aspects of the Code need to be amended to ensure the effective regulation of monopoly or near monopoly port terminal service providers

On 12 December 2017 and 10 May 2018 the ACCC provided submissions to the Department of Agriculture's (Department) review of the Code.

These submissions presented the ACCC's views on why the Code is still necessary and the range of ways that the Code needs to be amended for it to effectively regulate PTSPs and allow the ACCC to efficiently and comprehensively investigate and enforce instances of non-compliance.

On 18 October 2018 the Department released its *Review of the wheat port access code of conduct* final report which, with the exception of the ACCC's proposal regarding access to upcountry storage and handling facilities, supported the ACCC's suggested amendments.

The Government's response to the review has yet to be released. The delayed implementation of the identified and necessary reforms means the issues discussed in the ACCC's submissions continue to impact the Code's effectiveness.

In particular, the ACCC wishes to reiterate that the Code should be amended to:

- **Clearly and comprehensively provide a right of access to Australian exporters irrespective of the grain type to be exported**—the ACCC is currently unable to effectively investigate all complaints about a PTSP denying fair and transparent access to services, including those that relate to bulk wheat.
- **Clarify several of the Code's reporting obligations**—reporting pursuant to these obligations currently provides an incomplete picture of port activities, ambiguity over what needs to be reported and means that the ACCC is limited in its ability to enforce instances of non-compliance.
- **Include civil penalty provisions and provide the ACCC with the ability to issue infringement notices for breaches of the Code**—the ACCC currently lacks an essential enforcement tool that can provide effective deterrence against breaches.
- **Provide the ACCC with the ability to review past capacity allocation system approvals**—the ACCC is currently unable to review whether a capacity allocation system is facilitating fair and transparent access, even in response to complaints from exporters that it is not.

1.6 About this report

The ACCC is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (Cth) and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians. We also regulate some national infrastructure services and monitor other markets where there is limited competition.

The ACCC Bulk grain ports monitoring report provides a consolidated information source about Australian bulk grain exports and competition for bulk grain export port terminal services at ports around Australia.

Why we prepare this report

This report is published to fulfil the ACCC's commitment to ongoing monitoring of access to bulk grain export port terminal facilities following its first decision to determine a PTSP to be an 'exempt service provider' under the Port Terminal Access (Bulk Wheat) Code of Conduct in 2015.

Ongoing public monitoring of access to bulk grain export port terminal facilities to ensure that the level of regulation applying to these facilities remains appropriate and also furthers the ACCC's broader objective of 'making markets work' for Australian consumers, including the users of these facilities.

To demonstrate the ACCC's ongoing interest in fair and transparent access to bulk grain export port terminal services and monitor the effect of ACCC exemptions

The Code regulates the conduct of PTSPs to ensure that 'exporters of bulk wheat have fair and transparent access to port terminal services'.[2]

A decision by the ACCC to 'exempt' a PTSP means that the PTSP does not have to comply with Parts 3 to 6 of the Code when providing services at a specified facility. Parts 3 to 6 of the Code contain the obligations that seek to ensure PTSPs provide access to services fairly and transparently. For example, non-exempt PTSPs are required to:

- not discriminate in favour of a related export business or hinder access in the course of providing services
- provide access in accordance with an ACCC-approved capacity allocation system
- resolve disputes in accordance with a Code-prescribed dispute resolution process.

In addition to making exemptions where it considers it appropriate, the ACCC also has the ability to revoke exemptions if it is 'satisfied that the reasons for granting the exemption no longer apply'.[3]

2 Port Terminal Access (Bulk Wheat) Code of Conduct, r. 2.

3 Code, r. 5(6).

The ACCC notes that if it were to observe concerning market trends or receive complaints about access to services at an exempt port, this could give the ACCC cause to review and potentially revoke an exemption.

Provide industry with the benefit of information provided to the ACCC

This report performs a number of 'industry good' functions, including providing industry with:

- analysis of the information that PTSPs publish pursuant to Code obligations
- a regular opportunity to raise issues with the ACCC in a structured forum
- a summary of stakeholder views on the key issues in bulk grain export supply chain.

In addition to providing a consolidated statement of the views being expressed by a range of stakeholders in the ACCC's annual consultation process, the introduction of a dedicated consultation findings chapter (chapter 5) was also motivated by the high degree of consistency in the concerns expressed to the ACCC over several years of regulating access to bulk grain export port terminal services.

Taking a structured approach to presenting these views allows for an easy comparison of these views over time and a clear indication of issues that industry would like to see resolved.

This summary of views provides a reference point for industry and may assist the discussion and resolution of issues. The ACCC also considers that it can help inform discussions about whether the regulation of access to bulk grain export port terminal services is still required, or whether the current regulatory solution remains fit for purpose.

How we do it

In order to maintain an awareness of trends in bulk grain export markets and the absence or presence of concerns about the fairness and transparency of access to bulk grain export port terminal services, the ACCC conducts annual data analysis and stakeholder consultation processes.

Data analysis

The ACCC uses data from a range of sources to examine trends across national and state markets. This includes:

- bulk grain export data sourced from PTSP loading statements, which allows the ACCC to monitor levels of competition between PTSPs, competition between access seekers and how constrained specific facilities are
- domestic consumption and container export data provided by Australian Crop Forecasters (ACF), which allow the ACCC to monitor the level of grain being supplied to non-bulk export markets
- production data sourced from the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), which provides the ACCC with a picture of how much grain was available to be sold into the various markets, including bulk export.

Consultation with interested parties

Each year the ACCC invites participants in Australia's bulk grain export supply chain to attend meetings and/or complete short stakeholder surveys.

While the ACCC seeks stakeholder views on a range of topics relating to the bulk grain export supply chain its key focus is seeking views from exporters on whether they have any concerns about the fairness or transparency of access to services, including at exempt ports. Concerns raised during this process may prompt the ACCC to revisit and potentially revoke an existing exemption.

These meetings are a vital part of this report's preparation and the ACCC again thanks stakeholders for their time and contributions.

2. The significance of the Code review recommendations being implemented as soon as is practicable

The ACCC considers that until the Department's recommendations are implemented, the Code's ability to ensure fair and transparent access for exporters and the ACCC's ability to enforce Code obligations is limited.

The ACCC notes that it supports the implementation of all of the Department's recommendations as soon as is practicable. Most of these recommendations respond directly to concerns raised by the ACCC in the course of the Code review process. These concerns remain current.

While the ACCC reiterates its support for all of its suggested changes, in this chapter the ACCC has chosen to highlight four areas of recommended change and to demonstrate the implications for industry of maintaining the status quo.

2.1 Investigations under the Code remain problematic, due to application uncertainty, an 'all grains' Code is required to allow the ACCC to investigate all complaints regarding access

The ACCC reiterates its view that the Code should be amended to be an 'all grains' Code that seeks to ensure fair and transparent access for bulk grain exporters, regardless of the type of grain that they intend to export at the point of seeking access.

2.1.1 The Code should seek to ensure that all exporters have fair and transparent access to port terminal services

The ACCC notes that exporters can at all times be denied fair and transparent access to bulk export port terminal services, not only when they are seeking access for the purpose of exporting bulk wheat. Accordingly, the ACCC considers that the Code's current remit represents an incomplete regulatory solution for the market problem.

On the basis of over 10 years regulating access to bulk grain export port terminal services the ACCC notes that exporter concerns regarding access to bulk export port terminal services generally relate to the fairness and transparency of access to *port terminal capacity*, rather than the fairness and transparency to access to port terminal capacity for the purpose of exporting a particular type of grain.

Accordingly, the ACCC considers that the Code should seek to ensure that exporters have fair and transparent access to port terminal services at all times not only when they are seeking access for the purpose of exporting bulk wheat.

Example—Access seekers who state their intention to export a non-wheat grain in bulk are not provided a right of access under the Code, the ACCC is not able to investigate their access complaints

Exporter A is a bulk grain export business that exports a variety of grains including wheat.

On 1 February 2020 Exporter A seeks access to capacity at a non-exempt port in April 2020 and advises PTSP A of its intention to export bulk wheat.

PTSP A must enter into an access agreement or enter into negotiations about the terms of an access agreement with Exporter A. The ACCC has the ability to investigate complaints about PTSP A denying or hindering access, or discriminating in favour of a related export business in the course of providing Exporter A services.

On 2 February 2020 Exporter A seeks access to capacity at a non-exempt port in April 2020 and advises that its intention is to export bulk barley.

PTSP A is not obliged to enter into an access agreement or enter into negotiations with Exporter A. The ACCC is not able to investigate complaints about PTSP A denying or hindering access, or discriminating in favour of a related export business in the course of providing Exporter A services.

The ACCC does not consider that there is a clear reason why in the above example Exporter A should have a right of access on 1 February 2020 but not on 2 February 2020 for identical services, provided by the same PTSP, by means of the same port terminal facility.

As per its observations from the Code review the ACCC notes that PTSPs capacity allocation systems typically do not distinguish between specific grains and that in practice, PTSPs typically provide access for all non-wheat grains. However, as demonstrated above, there is no enforcement recourse for exporters when their booking involves a non-wheat grain. The ACCC considers that it should be able to investigate all complaints by exporters concerning capacity allocation, irrespective of grain type.

2.1.2 Exporters are not always certain of the grain they intend to ship when seeking access, the Code's coverage of exporters 'seeking access for purpose of exporting bulk wheat' creates uncertainty over the Code's application and the ACCC's ability to investigate complaints

Industry practice of not necessarily knowing which grain they will export when seeking access to port capacity creates uncertainty over Code coverage.

As noted above, many of the Code's obligations that require the provision of fair access are tied to the definition of exporter:

> ***exporter*** *means an entity seeking access to, or using, port terminal services for the purpose of exporting bulk wheat.*

It is the ACCC's understanding that, with the exception of bookings for capacity in the near term, it is not uncommon for exporters to:

- not know the particular grain type they will be shipping at the time of seeking access, as capacity can be secured without nominating a grain type (particularly if seeking long term capacity)
- amend capacity bookings between the time of capacity booking and grain loading and change the grain to be shipped from wheat to a non-wheat grain or vice versa.

The Code's definition of 'exporter' combined with industry practice means that an access seeker's coverage under the Code can be unclear, may change at different stages of the access process and be decided arbitrarily depending on whether a 'placeholder' grain was listed by an exporter at the time of booking capacity.

Example—The ACCC's inability to effectively investigate complaints, including those that relate to bulk wheat exports (an exporter's request for access to services starting in and then falling out of the Code's coverage)

On 3 February 2020 Exporter A seeks access to a non-exempt port for a shipping slot in April 2020. Exporter A expresses its intention to export bulk wheat.

Exporter A is at this stage covered by the Code.

On 20 March 2020 Exporter A updates its booking to confirm that the shipping slot will now be used to export bulk barley.

Arguably, Exporter A is not covered by the Code from the time that it updates its booking to confirm its intention to ship a non-wheat grain. That is, the PTSP does not have to comply with the good faith, non-discrimination and no hindering clauses from this time until the time that the service is delivered.

Example—Code coverage decided arbitrarily

On 4 February 2020 Exporter A seeks access to a non-exempt port for a shipping slot in January 2021.

Exporter A does not know which grain will be shipped in this slot.

Whether or not Exporter A's access application is covered by the Code will depend on the 'placeholder' intention that it expresses in the booking process (if the process does not require Exporter A to express an intention or Exporter A neglected to express an intention, further uncertainty over the Code's application is created).

The ACCC considers that as currently drafted the Code's coverage of bulk wheat exports is unclear. The ACCC also considers that amending the Code to clearly and comprehensively cover all grains would allow the ACCC's investigations to focus on whether an access seeker has been denied fair and transparent access to services and not what an exporter's purpose for seeking access was at a particular point in time.

The uncertainty around the coverage of the Code may facilitate gaming by exporters, who have an incentive to list any grain they wish to be shipped as wheat in order to be covered by the Code, and PTSPs (who have an incentive to avoid regulatory oversight) nominate non-wheat grain bookings in an effort to avoid regulatory capture.

These practices may in turn distort the information available to the market about likely export activity within a port zone, reducing or negating the usefulness of reporting to industry.

Further, when seeking to work around Code obligations PTSPs can with confidence make changes that affect other exporters non-wheat bookings with much less risk of enforcement action.

2.2 Several of the Code's reporting obligations require amendment to ensure transparency over access to services

The ACCC considers that the Code's reporting obligations are intended to provide an important level of transparency about bulk grain export port terminal services.

However, as noted in the course of the Code review, the ACCC considers that several of the Code's reporting obligations are ambiguous and that reporting pursuant to these obligations differs between PTSPs. The ACCC also noted that in addition to the Code's current lack of penalty provisions, ambiguity in these obligations makes identifying and enforcing non-compliance difficult and inefficient.

To address these issues the ACCC recommended that:

- specific obligations should be amended to clarify the information being sought and the timeframes in which that information should be provided
- the ACCC should be able to issue infringement notices for non-compliance with the Code obligations.

The ACCC reiterates the importance of clarifying these obligations in this section and the importance of amending the Code to include penalty provisions in section 2.3.

2.2.1 The loading statement obligations should be amended to provide clarity of process and greater transparency for industry

The ACCC considers that ambiguity in the drafting of the loading statement obligation has led to PTSPs taking different approaches to complying with the obligation and less information being included in these documents over time.

Specifically, the Code requires PTSPs to provide a statement setting out the 'name of each ship (a *loading ship*) scheduled to load grain using the port terminal service'.[4]

In practice the ACCC has observed two different approaches to complying with this obligation.

Example—How two different interpretations of 'each ship scheduled to load grain' leads to two different kinds of loading statements

PTSP A interprets 'each ship scheduled to load grain' as the point at which it receives a capacity booking (i.e. when *a ship* is scheduled to load grain). PTSP A therefore:

- provides all of the information it can from the point of capacity booking (up to several months in advance for short-term allocations and multiple years for long-term allocations), including the name of the access seeker, the shipping window in which capacity was secured and the amount of capacity secured
- updates the statement with new information as it becomes available (i.e. when the vessel nomination process takes place, typically within a month of the booked slot, it confirms the name of the ship that will have grain loaded onto it, the grain to be exported, and updates estimated times of arrival and departure).

PTSP B interprets 'each ship scheduled to load grain' as that point at which it receives a vessel nomination (i.e. when the *specific ship* that will be used to load grain is received). PTSP B therefore:

- does not list any details of the booking from the point of capacity booking
- adds the booking to the loading statement at the point of vessel nomination.

In the ACCC's view, these interpretations lead to fundamentally different documents. Interpretation A (adding all capacity bookings to the statement and updating it as more information becomes available) operates as a 'forecast document' that provides industry with transparency over how a specific port terminal facility's capacity has been allocated.

Interpretation B leads to a document that only conveys information about shipments that will take place over the next 2–4 weeks and therefore does not provide a complete picture as to capacity allocated.

In the ACCC's view, the history of the loading statement obligation suggests that Interpretation A is the better interpretation. The wording of clause 7(1) of the Code was carried over from the 'Continuous Disclosure Rules' in the *Wheat Export Marketing Act* 2008 (Cth). The Continuous Disclosure Rules were amended as part of the *Wheat Export Marketing Amendment Act 2012* (Cth) which appears to confirm Interpretation A:

4 Code, r. 7.

> They must also publish on their website, a loading statement that includes information on each ship scheduled to load grain, as stated in subsections (4)(b) and (c) and this should be updated each business day. **As it is possible that the name of a ship may not be available at the time of booking, this subsection provides that the unique slot reference number that confirms the booking is the point of reference for the requirement to provide the necessary information, with the ship's name to be included, if available**. The loading statement must also be provided to the ACCC, each business day, in the manner and form approved by the ACCC.[5] [**emphasis added**]

While the ACCC considers that reporting from the point of booking rather than vessel nomination more closely aligns with the above, the ACCC reiterates its view that industry is best placed to decide the information that it considers valuable and the timeframes in which it is valuable to receive it.

Regardless of how the obligation is amended its clarification will facilitate greater transparency and (in combination with the availability of penalties for breaches of the Code) enhance the ACCC's ability to enforce non-compliance.

2.2.2 The 'expected capacity' obligation should be amended to provide for a clearer picture of a facility's capacity

While acknowledging that a port terminal facility's capacity is difficult to define with precision, the ACCC considers that a Code obligation requiring PTSPs to publish the 'expected capacity' of their facilities provides for useful transparency over the amount of capacity that a PTSP commits to providing.

The ACCC notes that as currently drafted, the Code requires non-exempt PTSPs to:

- on 1 August each year, publish the amount of capacity it reasonably expects will be available between 1 October and 30 September the following year
- update on at least a weekly basis the amount of capacity that is available.

However, as currently drafted it is not clear whether the Code obligation requires PTSPs to report on (for the relevant 12 month period):

- the total amount of capacity expected to be provided, including any capacity already allocated prior to publication (that is, a statement of all capacity expected to be provided over the coming year)
- the total amount of capacity that the PTSP expects to make available from the time of reporting (that is, a statement of the amount of capacity that remains to be allocated as at 1 August each year).

5 House of Representatives, *Wheat Export Marketing Amendment Bill 2012 Supplementary Explantory Memorandum*, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4783, viewed 6 December 2019.

Example—how a lack of clarity in clause 28 can lead to an incomplete picture of a facility's capacity

In 2020 PTSP A interprets clause 28 as requiring it to report on the total amount of capacity it expects to be available between 1 October 2020 and 30 September 2021.

On 1 August 2020 PTSP A publishes its expected capacity as 1 million tonnes, accounting for the 250 000 tonnes of LTA bookings it has already allocated and an additional 750 000 tonnes it expects to be able to provide.

In 2021 PTSP A interprets the clause as requiring it to report on the total amount of capacity it expects it will be able to provide between 1 October 2021 and 30 September 2022.

On 1 August 2021 PTSP A publishes its expected capacity as 750 000 tonnes. PTSP A again received 250 000 tonnes of LTA bookings but chooses to not reflect those tonnes in its estimate given, having already been allocated, this capacity is no longer 'available'.

The ACCC considers that due to the ambiguity in clause 28's drafting it is currently difficult to assess what the 'information required to be made available' is describing. To improve the usefulness of the information to industry and to provide greater transparency over a PTSP's current estimate of its facility's capacity (and willingness and ability to provide additional capacity) the ACCC recommended that the obligation should be amended to require the publication of (by shipping window):

- a facility's estimated **baseline capacity**—an estimate of the facility's total capacity, including any capacity that may have been already allocated
- cumulative total of **allocated capacity**—updated weekly to include additional bookings and moved or cancelled bookings
- **total additional capacity** releases—by window, specifying where additional capacity has been created
- **available capacity**—updated weekly to reflect the total capacity which remains available to be booked.

The ACCC notes that the success of the amendments will depend on the clarity of the revised obligations. The ACCC would welcome the opportunity to assist in the drafting of any revised obligations.

2.3 Unless the Code is amended to include civil penalty provisions, the ACCC will lack an enforcement tool that can provide an efficient and appropriately scaled response to non-compliance

The ACCC considers that for a mandatory industry Code to be effective, the consequences of breaching it must be sufficiently serious to incentivise compliance. Accordingly, the ACCC considers that breaches of the Code should be capable of attracting penalties and therefore supports the inclusion of civil penalty provisions in the Code.

The ACCC notes unless the Code is amended to include civil penalty provisions, the ACCC will continue to lack a credible, efficient and appropriately scaled enforcement response to non-compliance, in particular non-compliance with the Code's reporting obligations.

Examples—The ACCC's lack of an efficient and appropriately scaled response to non-compliance with the Code's reporting obligations

PTSP A owns and operates a port terminal facility that is used infrequently. Accordingly, PTSP A only has cause to update its loading statement a small number of times each year.

In the course of monitoring PTSP A's loading statement updates the ACCC observes that when it does update the statement it is clear that PTSP A should have been updating it more frequently (e.g. updates sometimes indicate that a shipment had been booked and loaded since the statement was last updated).

PTSP B is a new entrant PTSP that commences providing bulk grain export port terminal services in January 2020. Despite multiple requests for PTSP B to publish its loading statement, PTSP B does not commence public reporting of its shipments until May 2020.

In both of these scenarios the ACCC's only options in response to non-compliance by PTSPs are to simply encourage the PTSP to comply or initiate legal proceedings for breach of a mandatory industry Code.

The ACCC considers that the above examples demonstrate that the ACCC currently lacks a key tool as the Code's enforcement agency. In the ACCC's view, initiating legal proceedings for non-compliance with the Code's reporting obligations does not provide for the most timely and cost efficient method of achieving an outcome, particularly in circumstances where a breach of these obligations can be clear and objective (i.e. a PTSP has not published or provided a loading statement).

The ACCC considers that the ACCC having the ability to issue infringement notices will incentivise compliance with the Code's obligations and provide the ACCC with the ability to respond to non-compliance in a timely manner.

2.4 The ACCC requires the ability to review capacity allocation systems approvals in order to ensure that they facilitate the allocation of capacity fairly and transparently

The ACCC considers that to ensure capacity allocation systems are facilitating fair and transparent access to port terminal services the ACCC should have the ability to review prior approvals of these systems in specific circumstances.

In its first submission to the Code review the ACCC noted that the ability to review approvals of capacity allocation systems would be consistent with:

- the ACCC's ability to review prior determinations of exempt service provider status
- the ACCC's *de facto* ability to review capacity allocation systems under the previous Part IIIA access undertaking regime (i.e. undertakings had a defined length and the ACCC had the ability to consider the appropriateness of existing capacity allocation systems when deciding whether to accept a new undertaking or an extension to an existing undertaking).

In its second submission to the Code review the ACCC noted that the ACCC's ability to revoke a capacity allocation system could be modelled on the ACCC's ability to revoke exemptions (that is, if the reasons for making the decision no longer apply).

The ACCC notes that in the case of both exemption determinations and capacity allocation system approvals the ACCC conducts these assessments on the basis of available information (including views provided by stakeholders in consultation). The ACCC also notes that a PTSP or a capacity allocation system may not operate as envisaged by the ACCC at the time of making an exemption determination or a capacity allocation system approval.

The ACCC supports its ability under the Code to reduce what it considers to be unnecessary regulation through exemptions in part because it has the ability to reinstate that regulation if it considers that an exempt PTSP subsequently denies fair and transparent access to port terminal services.

Accordingly, the ACCC supports amendments to the Code that would provide it with the ability to review and if appropriate revoke a capacity allocation system approval, if it considers that it is not facilitating fair and transparent access for exporters.

Example—Inability of ACCC to review capacity allocation system approvals

The ACCC approves a capacity allocation system that allows the PTSP to enter into LTAs with exporters. The ACCC, taking into account views expressed by exporters in consultation, considers that the LTA component of the capacity allocation system provides certainty to exporters and PTSPs while still ensuring that exporters of various sizes will be able to secure capacity (that is, able to take on the risks of entering into an LTA or being able to meet their business needs through short-term capacity allocations).

Over time the ACCC receives complaints that the LTA capacity allocation system is not operating as anticipated, that the risks of entering into substantial LTAs were too great for third party exporters and that practically only vertically integrated exporters were benefiting from the system.

Currently the ACCC has no ability to review the operation of this system and exporter concerns would only be addressed if the PTSP chooses to make changes to its system.

The ACCC notes that ideally the ACCC would not have to use this ability, or only have to use it on rare occasions. However, the ACCC considers that an ability to review and if appropriate revoke a capacity allocation system approval is an important counterbalance to its approval power. This would ensure that capacity allocation systems remain appropriate and that PTSPs may be incentivised to make voluntary amendments to capacity allocation systems in response to customer feedback.

2.5 Stakeholders remain concerned about the price and non-price terms of upcountry storage and handling agreements

In its second submission to the Code Review the ACCC suggested that the Department should consider extending the application of certain provisions in the Code to the upcountry storage and handling facilities of non-exempt PTSPs.

The ACCC made this proposal in recognition of the strong and consistent concerns expressed by exporters and grower groups in each of the consultation processes for this report.

The ACCC acknowledges that stakeholders ultimately did not support the ACCC's specific proposal and that several grower groups instead advocated for upcountry issues to form part of a broader grain supply chain market inquiry. The ACCC also acknowledges that the Code Review Taskforce ultimately did not support the ACCC's proposal and instead recommended that Grain Trade Australia (GTA) engage with storage operators and exporters to establish or confirm industry expectations in relation to costs arising from site swaps.

The ACCC notes that exporters and grower groups largely reiterated their concerns regarding access to upcountry storage and handling facilities and the terms of upcountry storage and handling agreements in the consultation process for this report. These stakeholders conveyed a general impression that the terms of these agreements and the willingness of the storage providers to negotiate non-standard terms had not improved over the last year, or appreciably in recent years. These specific concerns are restated in brief in section 5.4.

The ACCC will follow GTA's engagement with storage providers and access seekers with interest.

3. Contacting the ACCC about issues in the bulk grain export supply chain

The ACCC invites industry to raise concerns about issues relating to the bulk grain export supply chain.

3.1 Concerns regarding access to port terminal services for the purpose of exporting bulk wheat

For questions or concerns that relate to access to port terminal services for the purpose of exporting bulk wheat, please contact the ACCC's Infrastructure Regulation Division:

- Katie Young, Director, Infrastructure & Access—Access & Pricing Branch (03 9290 6980).

3.2 Concerns about other types of misconduct in the agriculture industry

The ACCC's Agriculture Unit was established to examine competition and unfair trading issues in agricultural supply chains with a view to improving enforcement and compliance with the *Competition and Consumer Act 2010* (the Act) across the agriculture sector.

To bring concerns about misconduct in the agriculture industry to the attention of the Agriculture Unit, please:

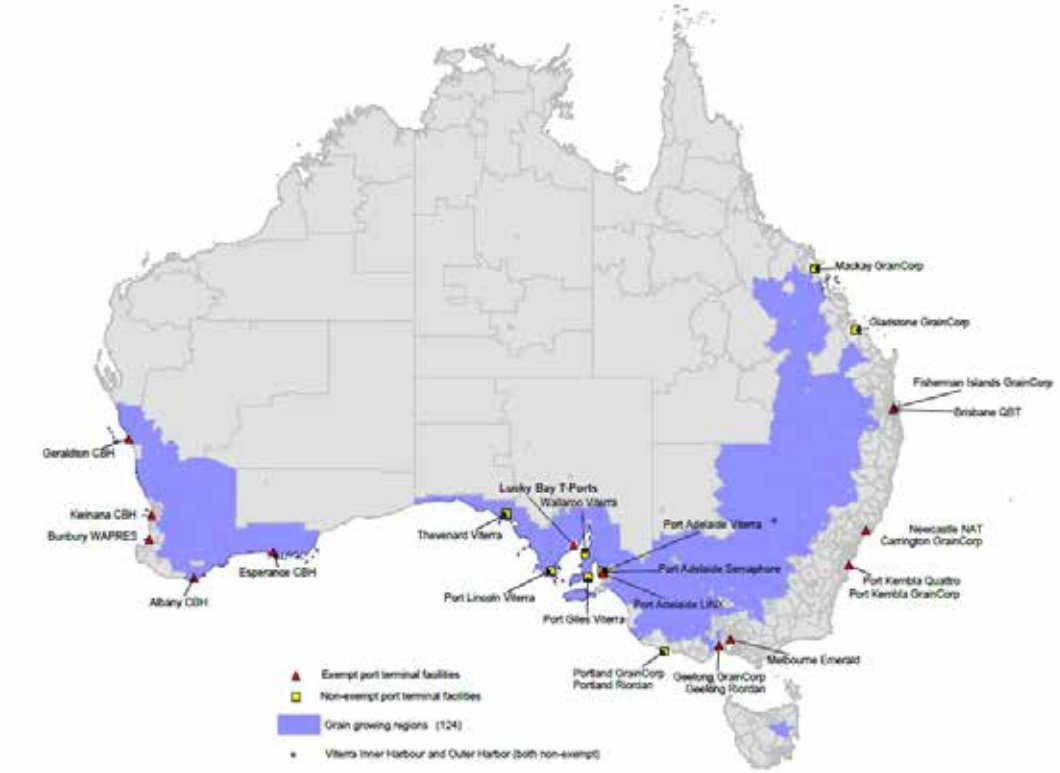
- make a report using our reporting form (you can make a report anonymously, however this may limit our ability to follow up matters with you), or
- contact Agricultureunit@accc.gov.au.

For general questions or concerns about issues in the agriculture industry please contact the ACCC's Infocentre on 1300 302 502 or via the ACCC website.

4. Port terminal facilities and exemptions

Figure 4.1 shows Australia's typical grain production areas, and the location of all bulk grain export port terminal facilities.

Figure 4.1: Map of Australia's bulk grain export terminals and grain growing regions



Source: Australian Bureau of Statistics (ABS), 7121.0—Agricultural Commodities, Australia, 2015–16 SA2 data, and company websites.

One of the ACCC's specific roles under the Code is to assess applications made by PTSPs for 'exempt service provider' status. Exempt service providers are not required to comply with Parts 3 to 6 of the Code in the course of providing services via a specified facility or facilities.

The PTSP generally submits an application to the ACCC to initiate the exemption assessment and the facility will remain non-exempt during the assessment process. As the exemption applies to a specified facility a PTSP may operate both exempt and non-exempt facilities, as is the case for GrainCorp.

In determining whether it is appropriate to grant an exemption, the ACCC must have regard to the matters listed in subclause 5(3) of the Code. The ACCC may also, and generally does, conduct consultations with stakeholders to inform these assessments.

Since 2014, the ACCC has granted exempt service provider status in relation to 11 facilities and decided against granting exempt status at one (GrainCorp Portland).[6]

On 17 November 2014 the Minister for Agriculture granted CBH exempt service provider status at each of its four port terminal facilities in WA based on CBH's cooperative status.

6 On 23 August 2019 the ACCC released a final position stating its intention to grant an exemption to T-Ports Pty Ltd in relation to a facility at Lucky Bay, once that facility is capable handling bulk wheat and thus covered by the Code (on T-Ports' current estimate, early 2020).

Table 4.1 below sets out the exemption status of each port terminal facility currently operating in Australia. Not all PTSPs have applied for an exemption for all of their facilities.

Table 4.1: Port terminal facilities in Australia (by state)

State	Facilities and PTSPs	Exemption Status
WA	Albany CBH	Exempt (17 November 2014)*
	Esperance CBH	Exempt (17 November 2014)*
	Geraldton CBH	Exempt (17 November 2014)*
	Kwinana CBH	Exempt (17 November 2014)*
	Bunbury WA Plantation Resources (WAPRES)	Exempt (24 September 2015)
SA	Inner Harbour Viterra	Exemption application submitted on 9 August 2019, under assessment
	Outer Harbor Viterra	Exemption application submitted on 9 August 2019, under assessment
	Port Giles Viterra	Exemption application submitted on 9 August 2019, under assessment
	Port Lincoln Viterra	Exemption application submitted on 9 August 2019, under assessment
	Thevenard Viterra	Exemption application submitted on 9 August 2019, under assessment
	Wallaroo Viterra	Exemption application submitted on 9 August 2019, under assessment
	Lucky Bay T-Ports	Final position proposing to exempt 23 August 2019
	Port Adelaide Cargill	Exemption application submitted on 30 October 2019, under assessment
	Port Adelaide LINX (previously BAPS and Patrick)	Exempt (11 October 2017)
	Port Adelaide Semaphore	Exempt (27 July 2017)
Victoria	Portland GrainCorp	Exemption not granted (25 June 2015), second exemption application submitted on 7 February 2019, under assessment
	Geelong GrainCorp	Exempt (25 June 2015)
	Geelong Riordan Grains (Riordan)	Exempt (29 May 2017)
	Portland Riordan	Exemption application submitted on 4 October 2018, under assessment
	Melbourne Emerald Grain (Emerald)	Exempt (25 June 2015)
NSW	Carrington[7] GrainCorp	Exempt (1 October 2014)
	Port Kembla Quattro Ports (Quattro)	Exempt (1 April 2016)
	Newcastle Agri Terminal (NAT)	Exempt (30 July 2015)
	Port Kembla GrainCorp	Exempt (1 April 2016)
Qld	Fisherman Islands[8] GrainCorp	Exempt (24 September 2015)
	Gladstone GrainCorp	No exemption application submitted
	Mackay GrainCorp	No exemption application submitted
	Brisbane Qld Bulk Terminals (QBT)	Exempt (24 September 2015)

Note: * CBH was granted an exemption at all four of its port terminals, due to its cooperative status, by the Minister for Agriculture on 17 November 2014.

7 Located at Port of Newcastle.

8 Located at Port of Brisbane.

5. Consultation findings

This section provides a summary of the most common views expressed by stakeholders in the course of the consultation process for this report. The ACCC met with PTSPs, exporters and grain grower groups from each of the grain exporting states, attending a total of 22 meetings.

The ACCC notes that the views presented in this section are de-identified and summarised at a high level. While the ACCC would prefer to provide specific examples of complaints and concerns, many stakeholders (including all exporters) agree to participate in the consultation process on the condition that their specific views will be treated confidentially. Exporters typically state that making public complaints will (or could) damage their commercial relationships with the PTSPs that, despite the emergence of levels of competition in parts of Australia, they are required to do business with.

Many of these exporters have noted that they are not and cannot be certain that making complaints publically will necessarily lead to less favourable treatment, but note that capacity allocation processes provide PTSPs with large amounts of discretion, and that they prefer to 'err on the side of caution' when managing their commercial relationships.

The ACCC acknowledges comments from PTSPs that they should be made aware of the concerns being raised about them, that they be provided the opportunity to respond to these concerns and that their position be reflected in the report. The ACCC notes that most PTSPs have observed that the concerns summarised in this report do not align with their experience. That is, most PTSPs observe that they receive relatively few complaints each year and that these complaints are almost always resolved quickly to the mutual satisfaction of both parties.

On balance, the ACCC considers that there is benefit in providing, to the greatest extent possible, transparency over the views and concerns being expressed to the ACCC while also providing PTSP views on these concerns for balance.

The ACCC considers that providing a high level summary of stakeholder views provides a useful indication of issues in the bulk grain export supply chain and the extent to which these issues are being addressed over time. The ACCC considers that providing a consolidated statement of these views may provide the impetus for industry participants to discuss and resolve such issues.

5.1 Exporters again raised concerns about fair and transparent access to services in SA and WA, raised new concerns about the benefits of LTAs for third party exporters

Each year the ACCC's consultation process focuses on securing exporter views on the fairness and transparency of their access to bulk grain export port terminal services.

The ACCC has observed there are a range of factors that contribute to the strength of a PTSP's incentives to provide fair and transparent access to exporters. The ACCC notes that all PTSPs have an underlying incentive to attract customers to use their (in most cases) fixed cost infrastructure, but that the strength of that incentive can vary depending on a range of factors including:

- the level of demand for its services
- the level of competitive constraint provided by competing PTSPs
- whether the PTSP has a related trading arm.

In relation to the level of demand for access to bulk grain export port terminal services, table 5.1 illustrates that, with the exception of WA, the level of demand has declined substantially over the last two years.

Table 5.1: Bulk exports (mt) by state since 2015–16

	2015–16	2016–17	2017–18	2018–19	Eight year average
Western Australia	11.40	13.91	11.50	10.91	12.06
South Australia	5.12	8.05	5.59	2.06	5.70
Victoria	1.11	3.98	2.20	0.15	2.64
New South Wales	1.70	3.80	0.50	0.01	2.08
Queensland	0.72	1.19	0.33	0.06	0.98
East coast Total	3.53	8.98	3.03	0.22	5.70
National Total	20.06	30.94	20.11	13.18	23.46

Source: PTSP loading statements; and ACF Shipping stem and market share report.

Table 5.1 also illustrates that there were virtually no exports from Australia's east coast during the 2018–19 shipping year and significantly reduced exports during the 2017–18 shipping year. Exporters have therefore either not sought access on the east coast or were likely able to secure access at the time of their choosing and on terms and conditions favourable to them (noting that PTSPs will have strong incentives to provide fair and transparent services in times of little or no demand).

Exporters have therefore either had no views or positive views about access on the east coast over the last two years. Accordingly, views in this section relate to access to services in WA and SA.

5.1.1 Exporters continue to express concerns about the fairness and transparency of their access to port terminal services, particularly an inability to secure the flexible delivery of services at both exempt and non-exempt facilities

The shipping process for an exporter can unfold over many months, if not years. Exporters must first reach agreement on terms with a PTSP, seek capacity via various allocation processes, and once a booking is secured they may need to make certain adjustments before nominating the vessel and loading the grain.

Exporter views on the fairness and transparency of access to services in SA and WA in the 2018–19 shipping year were similar to those expressed last year, specifically:

- **no concerns were raised about specific short-term capacity allocation processes in 2018–19** (while not able to necessarily secure access at the times and ports that they desired, exporters were generally able to secure an amount of capacity that met their needs)
- **concerns were raised about an inability to secure flexibility in the post capacity allocation, pre-execution phase of access** (exporters repeated their concerns about their inability to secure flexibility in the delivery of services at both exempt and non-exempt facilities, in particular flexibility to move bookings)
- **concerns were raised about transparency of capacity allocation, and whether third party exporter requests for flexibility are treated the same as requests made by the PTSPs trading arm** (while having no specific complaints about capacity allocation processes, some exporters noted that it can be difficult for them to assess how their requests for flexibility are treated compared to requests made by the PTSPs own trading arm, some exporters noted that PTSPs have incentives to preference their trading arms and likely do).

Non-exempt PTSPs again reiterated their position that the Code places an unreasonable limitation on their ability to provide services flexibly. These PTSPs noted that they are often required to decline an exporter's request because of the rules in their port loading protocols. Some of these PTSPs commented that they had not considered seeking approval from the ACCC to vary their protocols to allow for more flexibility in their system due to concerns about the length of the assessment process.

On the level of inflexibility created by the Code and capacity allocation processes, exporters typically expressed the view that requests for flexibility are typically denied because the PTSP has chosen to not

exercise a discretion in their favour (i.e. not due to a Code or port loading protocol obligation). These exporters were also likely to express the view that PTSPs were more likely to exercise their discretion in favour of their trading arms than third party exporters.

ACCC view

The ACCC notes that views expressed by exporters in consultation meetings for this report about the fairness and transparency of their access to services have been consistent. Specifically:

- there is limited flexibility in the delivery of services in CBH and Viterra systems and that the trading arms of vertically integrated PTSPs are afforded greater flexibility than third party exporters
- there is a comparatively higher level of flexibility in the delivery of services on the east coast (including pre drought years).

The ACCC notes that PTSPs have also been consistent in their views about how capacity is being allocated and the veracity of the views being provided by exporters to the ACCC. Specifically, non-exempt PTSPs note that they receive few complaints about inflexibility and that when they have to deny requests for flexibility, this is typically due to a clause in their port loading protocol (specifically, the capacity allocation system that was approved by the ACCC). In relation to the views of non-exempt PTSPs regarding inflexibility imposed by the Code, the ACCC has sought further information from PTSPs regarding the specific Code obligations or port loading protocol clauses that are directly causing the inflexibility and examples of access seekers deciding against acquiring their services on account of these obligations or clauses. The ACCC has not received any specific examples from PTSPs.

The ACCC notes that capacity allocation systems are intended to facilitate fair and transparent allocation of port terminal capacity. When the ACCC approves a capacity allocation system it does so on the basis of available information (including views of access seekers) at the point of assessment. In the event that an approved capacity allocation system (or particular aspects) have not operated as anticipated or are, in the view of both PTSPs and exporters, imposing unreasonable and unnecessary inflexibility, the ACCC invites PTSPs with non-exempt facilities to seek amendments to their systems. The ACCC notes that it has not received any applications from PTSPs to amend a capacity allocation system in the interest of increasing its flexibility.

The ACCC also notes that PTSPs have publically raised concerns about the time taken to negotiate amendments in the past (most notably, CBH's and Viterra's LTAs). The ACCC notes that these processes involved comprehensive assessments of new capacity allocation systems which, in the case of LTAs, were seeking to lock in market shares for multiple years. The ACCC in those instances was also required to assess information provided by a number of stakeholders with divergent views and at times suspend the assessment of an application to gather further information (or accept the withdrawal and await re-lodgement of an application).

If a non-exempt PTSP and its exporter customers consider that a capacity allocation system (or particular aspects of a capacity allocation system) is unnecessarily limiting a PTSPs flexibility and the specific clauses of the system can be identified, the ACCC considers that amendments to these clauses should be able to be assessed efficiently.

5.1.2 Exporters expressed concerns about LTA capacity systems structurally advantaging vertically integrated exporters

LTAs were introduced with broad in-principle support from both PTSPs and exporters. Most stakeholders considered that the introduction of LTAs would provide PTSPs with greater certainty over the use of their infrastructure (thus encouraging investment) and exporters with greater certainty over access to port terminal capacity (which would assist their development of commercial relationships).

In meetings for this report most exporters observed that the anticipated benefits of LTAs had not been realised, that most exporters who entered into LTAs appeared to have incurred losses, and that the only exporters likely to entertain substantial LTA commitments in the future are the vertically integrated trading arms of PTSPs.

Exporters noted that while the previous two years had in many respects represented a 'worst case scenario' for those with long term commitments, it had highlighted the inherent risks associated with committing to long term capacity in circumstances of variable grain production.

Some exporters also clarified that their concerns did not relate to particular LTA capacity allocation processes, but rather that LTA capacity allocation systems potentially advantage the trading arms of vertically integrated PTSPs. That is, while all exporters have the same ability to nominate and secure LTA capacity under current arrangements, the risks for third party exporters (i.e. the financial burden of a third party exporter paying penalties for forfeiture) is much greater than for a vertically integrated trading arm. Some exporters noted that LTA capacity allocation systems potentially put them in a difficult situation of either taking on significant risk (much greater in real terms than the PTSP's trading arm) or not participating in LTA processes (which would allow the PTSP's trading arm to acquire substantial parts of future shipping stems).

ACCC view

In its assessment of LTA capacity allocation systems the ACCC acknowledged the potential benefits of LTAs but also noted the risks for third-party exporters due to the 'take-or-pay' nature of the agreements. Accordingly, after considering the views of stakeholders the ACCC approved capacity allocation systems that sought to ensure that smaller and medium scale exporters could access LTAs, while also reserving an appropriate amount of capacity for exporters who were unwilling or unable to commit to the risks associated with LTAs.

On the basis of the views expressed by exporters this year the ACCC considers that third party exporter appetite for LTAs will be substantially reduced at least until production increases and stabilises or PTSPs build more flexibility into LTA offerings (particularly in relation to capacity forfeiture).

Unless or until exporter confidence in grain supply increases or PTSPs adjust their LTA agreements to provide more flexibility, there is some chance that the vast majority of benefits associated with LTAs will flow only to the trading arms of vertically integrated PTSPs and may disadvantage third party exporters.

The ACCC also notes that stakeholder views on how LTA capacity allocation systems have operated in practice highlights why it is appropriate for the ACCC to have the ability to revisit past capacity allocation system approvals, noting markets continue to evolve and exporters' capacity to participate in the market will change over time.

5.1.3 Exporters and grower groups reiterated their calls for improved transparency over allocation of bulk grain export port terminal services through amendments to the Code's reporting obligations

As was the case last year, exporters and grower groups expressed strong support for improvements to the Code's reporting obligations. In summary:

- almost all exporters and grower groups considered that reporting should be standardised
- some stakeholders raised concerns that not all PTSPs are updating their loading statement documents in a timely fashion
- some stakeholders expressed support for breaches of reporting obligations being capable of attracting penalties
- while there was broad support among exporters and grower groups for the loading statement obligation, some stakeholders noted improved transparency over upcoming port activity may not be a positive development for all exporters or PTSPs (i.e. accurate public statements about how much capacity an exporter has committed to and the grain they intend to export may negatively impact their ability to negotiate with growers and other grain traders on price).
- some PTSPs noted that they would likely continue to publish a version of the shipping stem if the Code were to be repealed, others said they would not.

ACCC view

The ACCC notes that stakeholders (in particular grower groups) continue to support the presence of a level of transparency over how the capacity of Australia's port terminal facilities are being allocated.

The ACCC reiterates its view that several of the Code's reporting obligations need to be clarified and that breaches of these obligations should be capable of attracting penalties. It also reiterates its view that industry is best placed to decide how these obligations should be clarified and therefore supports the Code Review Taskforce's recommendation that industry could be consulted further prior to their amendment.

5.1.4 Several grower groups reiterated their view that the ACCC should revoke (or at least specifically review) exemptions

Some grower groups reiterated their position that the ACCC should specifically review the appropriateness of ACCC exemptions, particularly those relating to GrainCorp's facilities on the east coast.

ACCC view

The ACCC notes that in last year's report it stated that it would consider in future years whether to initiate a formal review of particular existing exemptions.

The ACCC also notes that for the second year in a row there was little or no access sought at the majority of facilities exempted by the ACCC and that therefore no concerns have been raised by exporters about the fairness and transparency of access to these facilities.

The ACCC notes that it will continue to monitor services provided via exempt facilities and annually ask exporters whether they have any concerns about the fairness and transparency of their access to exempt (and non-exempt) facilities.

5.2 Intensification of drought conditions in all states other than WA led to increased domestic demand and increased coastal shipments

Most stakeholders noted that the intensification of drought conditions on Australia's east coast had led to high domestic prices for grain and an increase in the amount of grain moved within Australia, in particular via coastal shipments.

5.2.1 Increased domestic demand led to higher domestic prices, mixed views on the extent to which domestic markets will impact Australia's exportable surpluses in the future

Stakeholders expressed mixed views as to whether higher domestic grain prices and increased demand for grain on the east coast was a product of drought conditions, or also indicative of a longer-term trend toward greater proportions of grain production being consumed domestically. There were two general points of view expressed on this topic.

Most stakeholders considered that the increased demand and increased movement of grain to the east coast was a response to the high prices being offered and that these higher prices were a direct result of the drought conditions on the east coast. These stakeholders noted that in typical years, the east coast of Australia will not be priced competitively with international markets.

These stakeholders also typically noted that the increase in demand for grain domestically will likely continue to increase broadly in line with population growth and that the extent and duration of the growth in demand for Australian meat products (and accordingly demand for feed grain) is not clear.

Other stakeholders however considered that higher domestic prices and domestic consumption likely represented a long term shift in the proportion of Australian grain that is consumed domestically. These stakeholders said that in addition to a steady increase in demand due to population growth, global demand for Australian beef and lamb will continue to be strong and continue to grow. Stakeholders also noted that the increased demand in these areas will very likely outpace any improvements in Australia's ability to produce grain, meaning more internal transfers of grain within Australia and smaller exportable surpluses.

ACCC view

The ACCC acknowledges the diverging views on the extent to which domestic demand for grain will impact Australia's exportable surplus.

The ACCC notes that domestic consumption levels (discussed further in chapter 6) appear to indicate that consumption continues to increase steadily, with above-trend increases in New South Wales and in particular Queensland over the last two years.

The ACCC will continue to monitor trends in domestic consumption and levels of demand for bulk grain export port terminal services.

5.2.2 High demand/prices for grain on the east coast led to a significant increase in coastal shipments, stakeholders reported coastal shipments were facilitated with few issues

Given the significant increase of coastal shipments from 0.92 million tonnes in the 2017–18 shipping year to 3.52 million tonnes in the 2018–19 shipping year, the ACCC asked stakeholders whether they had any concerns about how these services were provided and whether they had any impact on their access to bulk grain export port terminal services.

Stakeholders reported no significant issues with the allocation or delivery of services for coastal shipments and typically commented that industry had responded positively to the task of shipping grain within Australia. Some PTSPs noted that there were some practical challenges associated with receiving coastal shipments, most notably dust control. These PTSPs noted that they could invest in infrastructure that could make the receival process more efficient but that given future demand for coastal shipments is uncertain, such investments would be unlikely to be economically prudent.

ACCC view

The ACCC notes that coastal shipments are facilitated by PTSPs using the same port terminal facilities used for bulk grain exports. Accordingly, the ACCC considers that the delivery of port terminal services for coastal shipments could in practice impact an exporter's ability to secure port terminal services for the purpose of bulk grain exports.

The ACCC notes that it does not receive data for internal movements of grain from west to east and that there is limited data available on this within the market. Furthermore, the coverage of the Code with respect to coastal shipping (and the collection of data around coastal shipping) is an area the ACCC is considering further.

The ACCC will therefore continue to monitor coastal shipments and seek views about the extent to which they are impacting access for the purpose of exporting bulk grain.

5.3 Stakeholders reiterated concerns about the efficiency of rail for grain transport, noted increased concerns about the long term economic viability of rail networks

Stakeholders reiterated previous concerns about the efficiency of rail networks and expressed an increased level of concern about the ongoing financial viability of certain east coast networks.

Most stakeholders acknowledged that transport by rail continues to represent the most efficient method of transporting grain over longer distances and that despite an increase in on-farm storage and direct to destination deliveries, rail still has an important role to play particularly during years where the export task is higher.

However many stakeholders noted their ongoing concerns about the practical limitations being placed on the delivery of efficient rail services, in particular due to:

- the physical condition of specific rail networks (in this process, comments received related to networks in Victoria, New South Wales and Queensland) limiting the speed of movements
- the lack of effective co-ordination of train movements, particularly alongside competing rail users, causing substantial delays.

This year stakeholders also expressed general concerns about the financial viability of certain Australian rail networks. Stakeholders noted that most rail users were either reducing or contemplating a reduction in their long term rail 'take or pay contracts'[9] or opting not to renew their agreements.[10] These stakeholders noted that many of these lines already suffer from a lack of investment and queried whether there was any prospect of improvements as customers become less willing to financially commit to these networks through long term 'take or pay' contracts.

Some stakeholders queried whether industry had fully contemplated the costs and benefits associated with increases in on-farm storage and road movements. All of these stakeholders noted that on-farm storage delivered significant benefits for growers and increased options for the industry overall. However these stakeholders queried whether the externalities of increased road movements has been addressed, in particular the impact on road quality.

ACCC view

The ACCC acknowledges the views expressed and will continue to seek views on the extent to which transport networks are impacting bulk grain exports.

9 Financial Review, *GrainCorp counts cost of take-or pay rail contracts and small harvest*, 11 May 2019, https://www.afr.com/companies/graincorp-counts-cost-of-takeorpay-rail-contracts-and-small-harvest-20180511-h0zy18, viewed 6 December 2019.

10 ABC News, *Viterra to transition to road transport for movement of all grain on Eyre Peninsula*, 26 February 2019, https://www.abc.net.au/news/rural/2019-02-26/viterra-to-switch-from-rail-to-road-eyre-peninsula/10850900, viewed 6 December 2019.

5.4 Stakeholders continue to express a range of concerns about terms of upcountry storage and handling agreements and an inability to negotiate non-standard terms of access

As noted in previous reports, for as long as the ACCC has been involved in the regulation of access to port terminal facilities, stakeholders have expressed strong and consistent concerns about upcountry storage and handling agreements, and access to and outturn from upcountry storage and handling facilities.

This year most exporters and grower groups reiterated their concerns about the terms of upcountry storage and handling agreements, including an inability to negotiate non-standard terms of access, and the costs and uncertainty associated with outturning grain from notional entitlement systems.

The ACCC notes that concerns about access to upcountry services and the impact of market power along the supply chain have a long history. For example, in 2008 the Senate Standing Committee on Rural and Regional Affairs and Transport noted:

> The committee notes that regulation of access to infrastructure at the point of delivery is at least as significant to growers and potential exporters as access to port infrastructure. The committee considers that all bulk handling and storage facilities owned by an accredited exporter should be subject to the same access requirements. The committee favours the application of a consistent set of access arrangements and considers that further consideration must be given to the specific issues raised during this inquiry regarding access to 'upcountry' facilities.[11]

Ultimately Government considered that the need for regulatory intervention at that time was not clear but that the situation should be monitored:

> If the highest level of regulation were to be imposed on the more than 500 upcountry [197 of which are in WA] facilities, there is no doubt that this would create increased compliance costs which would almost certainly be directly passed back to growers.
>
> The government will, therefore, continue to monitor the ability of exporters to access upcountry storage facilities.
>
> Let me say here, if any problems are identified then the government will take steps to remedy the situation including, if necessary, the development of a code of conduct.[12]

The majority of the concerns expressed in this year's consultation process were the same as those expressed last year. Of those who did raise concerns, most were inclined to simply note past experiences and that there has been little improvement or change. For completeness, key concerns are reiterated in brief below.

5.4.1 Exporters and grower groups continue to express a range of concerns about the terms of upcountry storage and handling agreements

Exporters and grower groups reiterated a range of concerns about upcountry storage and handling agreements and issues associated with notional entitlement systems.

Lack of certainty about location of grain outturn (site swaps)

Some stakeholders reiterated their concerns about the implications of site swaps including:

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11 The Senate Standing Committee on Rural and Regional Affairs and Transport, *Inquiry into the Wheat Export Marketing Bill 2008 and Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, 30 April 2008, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Completed_inquiries/2008-10/wheat_2008/index, viewed 6 December 2019, p. 56.

12 House of Representatives, Votes and Proceedings, Hansard, Thursday 29 May 2009, pp. 76–77.

- **inadequate compensation for additional freight costs**—compensation clauses seldom if ever fully compensate the customer for the additional costs associated with transporting grain over greater distances
- **no compensation for costs incurred at port due to delays caused by a swap**—site swaps can mean that a customer's grain entitlement is sent further away from port, possibly to a site with a slower load rate than the site the entitlement was delivered to. In addition to creating additional freight costs, transporting grain over greater distances can also result in penalties for delays in getting grain to port.

Lack of certainty about the quality of grain entitlements (blending/comingling)

Some stakeholders reiterated their concern that the quality of grain they put into a storage system is typically higher than the grain entitlement that they are outturned (even if within a specification) and that it is likely that the bulk handler was taking the better quality grain.

No ability to negotiate non-standard terms of access upcountry

Some stakeholders also reiterated their concern that there is essentially no ability to negotiate with vertically integrated storage and handling providers. These stakeholders noted that essentially they are required to sign agreements that are problematic or not secure services.

ACCC view

The ACCC notes that stakeholders who reiterated their concerns about upcountry storage and handling services also expressed frustration that the situation remains the same and resignation that the costs and uncertainty associated with storing grain in large storage networks were essentially the 'costs of doing business'.

The long-standing and widespread nature of these concerns informed the ACCC's decision in the course of the Code review to propose extending aspects of the Code upcountry. The ACCC notes that this specific proposal ultimately received limited support. In particular, grower groups that had consistently expressed concerns about access upcountry questioned whether the ACCC's proposal would adequately address all concerns and whether it could produce unintended consequences. Several grower groups submitted that upcountry issues should be more comprehensively considered as part of a broader grains market inquiry and that solutions be formulated on the basis of the information gathered in that process.

The ACCC notes that the Code Review also did not recommend extending the Code to apply to access to upcountry storage and handling services:

> Despite there being a foreseeable risk of a vertically integrated PTSP operating its upcountry network to disadvantage competing exporters with anti-competitive behaviour, the review did not find evidence of such practices. Consequently, the review has concluded—with some caution—to not recommend extending the code to include upcountry infrastructure at this time.[13]

13 Department of Agriculture and Water Resources Wheat Port Code Review Taskforce, *Wheat Port Code Review Taskforce*, 18 October 2018, https://haveyoursay.agriculture.gov.au/review-of-the-wheat-port-code/documents, viewed 6 December 2019, p. xii.

And recommended:

> **Recommendation 12**
>
> That Grain Trade Australia take the lead in engaging with open-access upcountry storage operators and third-party exporters to establish and/or confirm industry standards and expectations in relation to the reconciliation of freight differentials and other costs arising from site swaps. If, despite action by industry, new evidence emerges of a PTSP using its market power to intentionally and unreasonably restrict fair and transparent access to grain for export through operation of its upcountry storage and handling network, the need for intervention, including regulation, should be considered.[14]

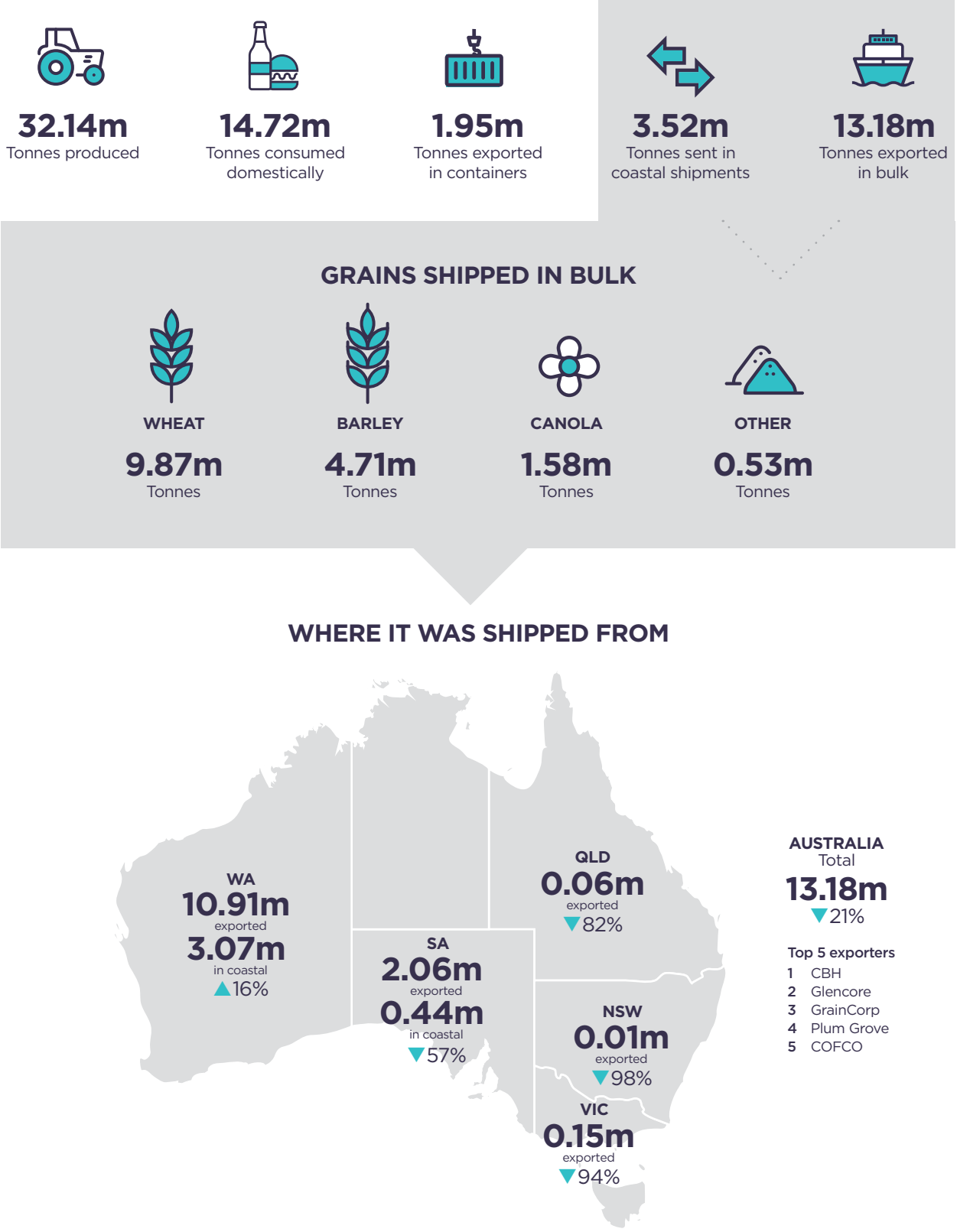
The ACCC considers that the increase in on-farm storage may provide further incentives for commercial storage providers to better meet the needs of their customers. However, on the basis of the views expressed by stakeholders over several years and reiterated in the consultation process for this report, it appears that the anticipated and actual increases in on-farm storage (and at times reduced utilisation of commercial storage facilities) have thus far done little to drive changes to storage and handling agreements or the willingness of storage providers to negotiate on terms of access.

The ACCC will follow any engagement by GTA with storage providers and access seekers with interest.

14 Department of Agriculture and Water Resources Wheat Port Code Review Taskforce, *Wheat Port Code Review Taskforce,* 18 October 2018, https://haveyoursay.agriculture.gov.au/review-of-the-wheat-port-code/documents, viewed 6 December 2019, p. xii.

6. National figures

Figure 6.1: Australia key results in 2018–19



Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191; PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

This chapter provides a summary of the 2018–19 shipping year at a national level and analyses trends in the amount of grain:

- produced
- shipped in bulk
- consumed domestically
- shipped coastally
- exported in containers.

Terminology: 'shipments' versus 'exports'

The ACCC also would like to highlight the differentiation between 'shipments' and 'exports' in the National, WA, SA and Victoria chapters of this report.

As noted in previous chapters of this report, the last two shipping years has seen grain shipped from WA, SA and Victoria to drought-affected areas on the east coast to satisfy domestic demand. Although these shipments are not exports they are services provided via the same port terminal facilities used to facilitate bulk grain exports. Accordingly, the use of these facilities for coastal shipments impacts on the utilisation of these facilities and the amount and timing of capacity available for bulk exports.

The ACCC therefore considers it appropriate to analyse and report on the utilisation of port terminal facilities for both coastal shipments and bulk exports and seeks to provide clarity over how facilities are being used by using the following differentiation:

- **exports** refer only to shipments of grain overseas by a PTSP, exporter, or state
- **shipments** refer to the combination of coastal shipments and exports performed by a PTSP, exporter, or state.

Capacity utilisation

Throughout the state chapters the ACCC presents various charts and tables which relate to port capacity and capacity utilisation. The capacity estimates used in this report are sourced from either 'expected capacity' reports published by PTSPs or from capacity estimates provided by PTSPs to the ACCC as part of an application for exempt service provider status under the Code.

In addition, we note that PTSPs can and do at certain times offer more than their stated level of capacity. Capacity utilisation is discussed further in the Appendix (see section 12.1.2).

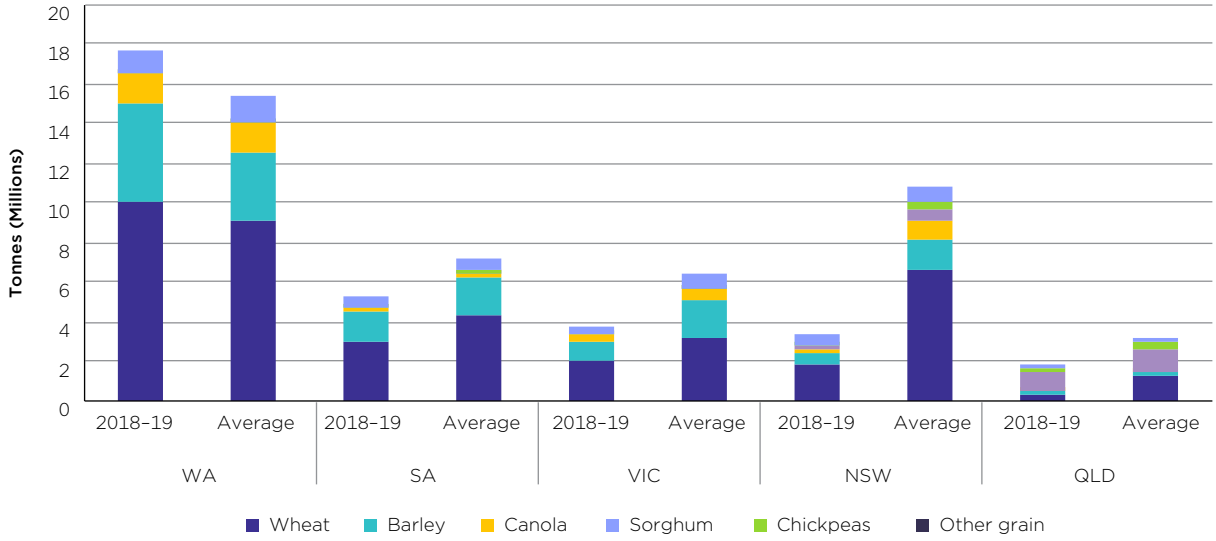
6.1 Production was significantly below average in all states except for WA due to intensified drought conditions

Grain production across the states significantly influences activity in the bulk grain export/shipment market. The level of production (and carryover from the previous shipping year) determines the amount of grain that is able to be supplied to Australian domestic markets and exported either in bulk or in containers.

Nationally, just 32.1 million tonnes of grain was produced in 2018–19, down 20 per cent from the drought stricken 2017–18 season and 25 per cent below the eight year average of 43.1 million tonnes.

Australia's low production in the 2018–19 shipping year was due to intensified drought conditions in all states except WA. In the 2017–18 season drought conditions predominantly impacted New South Wales and Queensland but in 2018–19 also impacted Victoria and SA.

Figure 6.2: National grain production by state, 2018–19 compared to eight year average



Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191.
Notes: s 2018–19 figures are ABARES estimates which are subject to revision.

Table 6.1: National grain production by state, 2011–12 to 2018–19 and 2019–20 forecast (mt)

	National	WA	SA	Vic	NSW	Qld
2011–12	48.4	16.6	7.4	7.4	13.0	4.0
2012–13	40.7	11.2	6.5	6.9	12.2	3.9
2013–14	43.6	16.5	7.2	6.8	10.4	2.5
2014–15	41.9	14.7	7.4	5.2	11.3	3.3
2015–16	39.9	14.2	6.1	3.6	12.4	3.5
2016–17	58.1	17.8	10.7	9.6	16.1	3.9
2017–18	40.1	14.5	7.0	7.7	8.3	2.5
2018–19 s	32.1	17.7	5.3	3.8	3.3	1.9
2019–20 f	35.3	14.4	6.6	7.0	5.4	1.8
Average	43.1	15.4	7.2	6.4	10.9	3.2

Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191.
Notes: s 2018–19 figures are ABARES estimates which are subject to revision. f 2019–20 figures are ABARES forecasts.

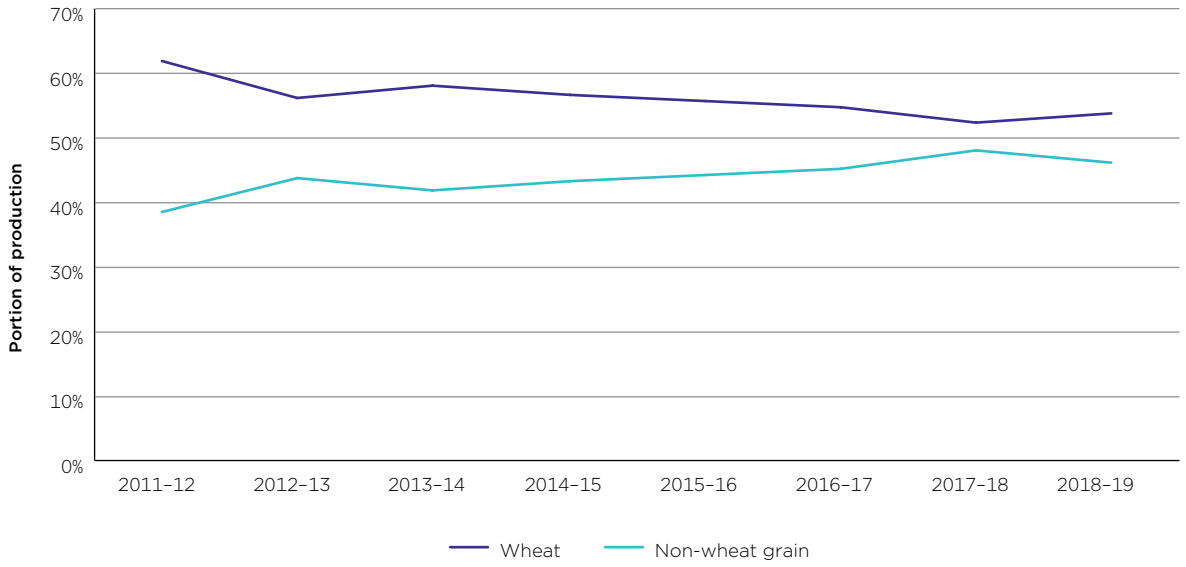
Figure 6.2 and table 6.1 show the extent to which the drought negatively impacted production in all states other than WA:

- NSW saw the most significant decline, with production dropping 59 percent from its drought-affected 2017–18 result, 69 per cent below average.
- Queensland's production declined 26 percent and was 41 per cent below average.
- Victoria, after enjoying a 21 per cent above average harvest in 2017–18, saw its production fall 51 per cent, which was 40 per cent below average.
- Poor growing conditions also expanded into several regions across SA resulting in a 25 per cent decline in production, which was 27 per cent below average.
- WA was the lone exception to the poor growing conditions, producing a harvest 15 per cent above average and more grain than all other grain-growing states combined.

Table 6.1 shows that nationally there is expected to be a slight uptick in production in the 2019–20 season, though this is still predicted to be 18 per cent below average levels.

Notably, Victoria is expected to bounce back from the 2018–19 drought and produce a harvest 10 per cent above average, though NSW and Queensland are still predicted to produce harvests well below average.

Figure 6.3: Trend in wheat and non-wheat grain production, 2011–12 to 2018–19



Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191.
Notes: s 2018–19 figures are ABARES estimates which are subject to revision.

As can be seen in figure 6.3 wheat remained the largest crop in Australia, contributing 54 per cent of total grain production in 2018–19. Figure 6.3 also shows that until this past season wheat production, which represented 62 per cent of total grain production in 2011–12, has steadily been decreasing. This uptick in the portion of wheat in 2018–19 was largely driven by WA, which experienced a 32 per cent increase in wheat production, compared to an 11 per cent increase in production of other grains from the 2017–18 season.

Table 6.2 below shows that WA accounted for over half of Australia's total grain production. WA production represented 55 per cent of overall national production, significantly above WA's average portion of production of 36 per cent.

The poor growing conditions in NSW were a major contributor to the overall lack of national production with NSW producing just 10 per cent of production, compared to their average of 25 per cent.

Table 6.2: Portion of total grain production by state, 2011–12 to 2018–19 including 2019–20 forecast

	WA	SA	Vic	NSW	Qld
2011–12	34%	15%	15%	27%	8%
2012–13	28%	16%	17%	30%	9%
2013–14	38%	17%	16%	24%	6%
2014–15	35%	18%	12%	27%	8%
2015–16	36%	15%	9%	31%	9%
2016–17	31%	18%	16%	28%	7%
2017–18	36%	18%	19%	21%	6%
2018–19 s	55%	16%	12%	10%	6%
2019–20 f	41%	19%	20%	15%	5%
Average	36%	17%	15%	25%	7%

Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191.

Notes: s 2018–19 figures are ABARES estimates which are subject to revision. f 2019–20 figures are ABARES forecasts.

6.2 Bulk shipments were significantly below average in all states other than WA

Australia's lowest production year since 2007–08 translated into Australia's lowest bulk shipments[15] since at least 2011–12.

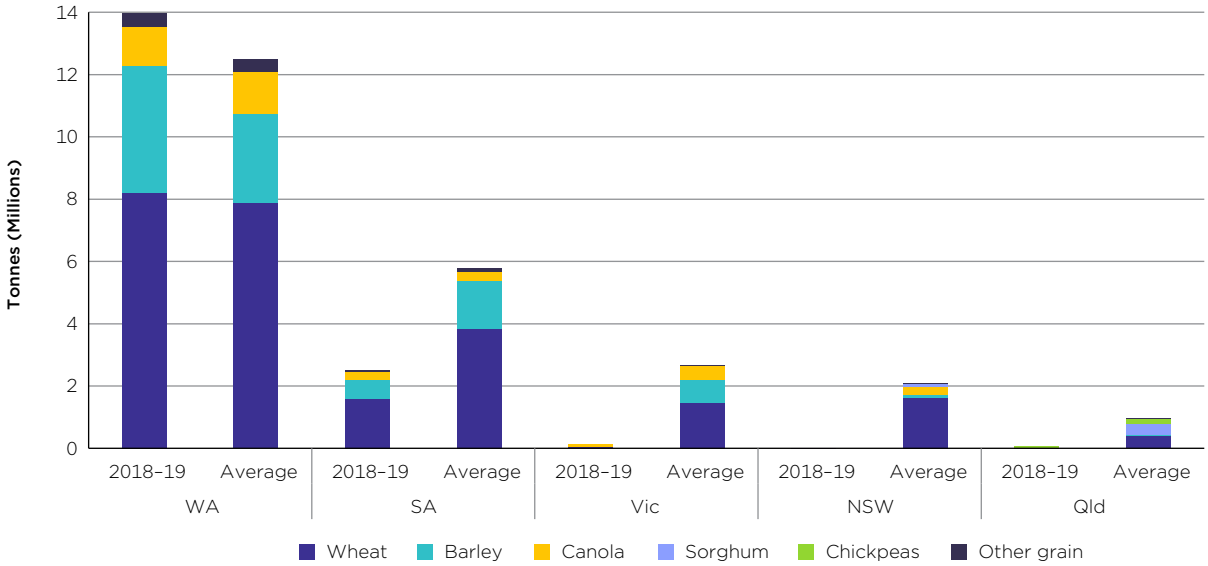
Australia shipped 16.7 million tonnes of grain in bulk during the 2018–19 shipping year, a 21 per cent decrease from the 2017–18 shipping year and 30 per cent below the eight year average of 24.0 million tonnes.

As can be seen below from figure 6.4 and table 6.3:

- WA accounted for 84 per cent of all shipments, contributing 14.0 million of the 16.7 million tonnes shipped (on average WA will ship 52 per cent of Australia's grain).
- SA, Australia's second largest bulk shipper of grain, shipped 2.5 million tonnes of grain, which was 57 per cent below average.
- Victoria, NSW and Queensland combined to ship only 0.22 million tonnes compared to their combined average of 5.7 million.

15 All bulk shipment figures are inclusive of coastal shipments throughout the National, WA, SA and Vic state chapters.

Figure 6.4: Bulk grain shipments by state and commodity, 2018–19 compared to eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

Table 6.3: Bulk shipments of grain by state, 2011–12 to 2018–19 (mt)

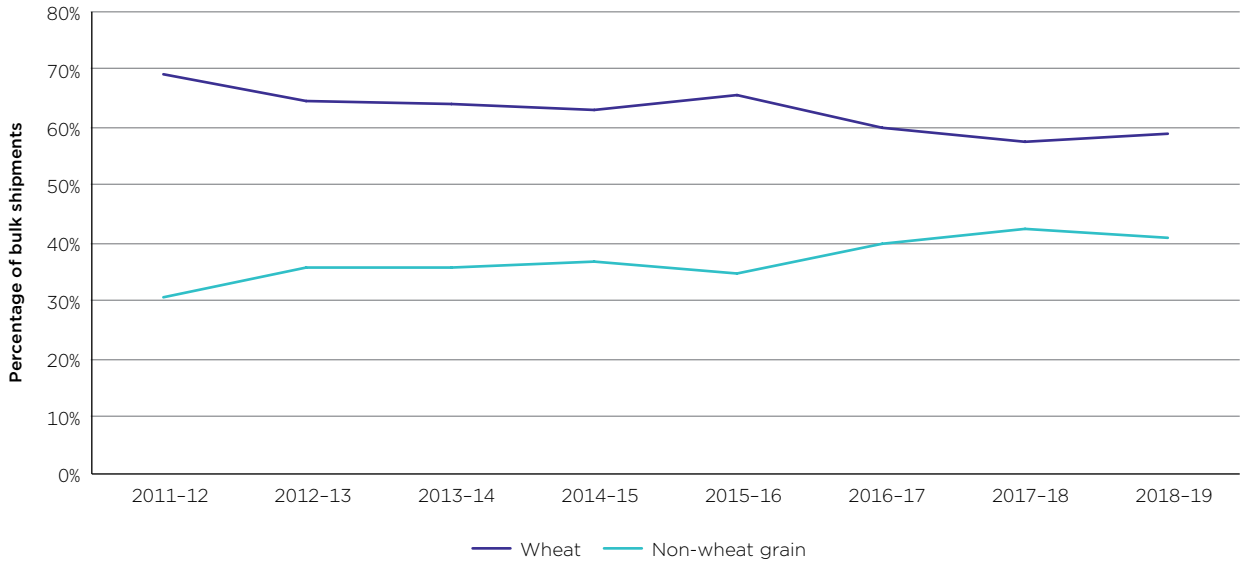
	National	WA	SA	Vic	NSW	Qld
2011–12	30.6	11.5	7.3	4.8	4.6	2.4
2012–13	26.0	11.1	5.3	4.3	3.4	1.9
2013–14	25.6	14.2	6.4	3.1	1.4	0.4
2014–15	21.3	11.9	5.8	1.6	1.1	0.8
2015–16	20.1	11.4	5.1	1.1	1.7	0.7
2016–17	30.9	13.9	8.1	4.0	3.8	1.2
2017–18	21.0	12.0	5.9	2.3	0.5	0.3
2018–19	16.7	14.0	2.5	0.15	0.01	0.06
Average	24.0	12.5	5.8	2.7	2.1	1.0

Source: PTSP loading statements; and ACF Shipping stem and market share report.

Similar to production trends and as shown in figure 6.5, the proportion of Australian bulk shipments involving non-wheat grains has typically trended up from 31 per cent in 2011–12 to 41 per cent in 2018–19. The 2018–19 shipping year did however see a slight reversal of this trend with non-wheat grains making up 42 per cent of total bulk shipments in the 2017–18 shipping year.

The significant and increasing proportion of non-wheat bulk shipments was noted by the ACCC in the course of the Code review as a reason why the Code should clearly and comprehensively apply to all grains.

Figure 6.5: Wheat and non-wheat grain bulk shipments as proportion of total shipments, 2011–12 to 2018–19



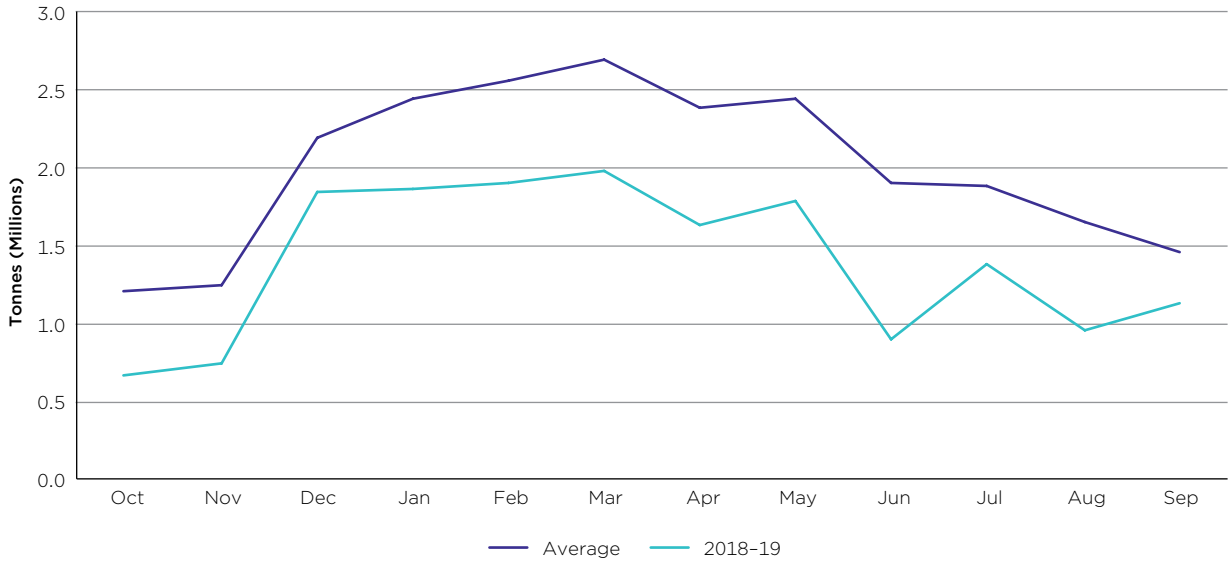
Source: PTSP loading statements; and ACF Shipping stem and market share report.

6.2.1 Shipment pace was well below average in 2018–19

Shipment pace illustrates the monthly spread of bulk grain shipments. Demand for port terminal services is highest during periods where the international price for grain is highest. While peak shipping periods can vary between states overall demand is typically highest between February and May. As can be seen in figure 6.6, shipment pace in the 2018–19 shipping year was largely consistent with the average albeit at a lower level, particularly during the peak shipping period.

This year's shipment pace was predominantly driven by WA which accounted for 84 per cent of Australia's total shipments.

Figure 6.6: Bulk shipment volumes by month, 2018–19 compared to eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

6.3 Domestic consumption marginally increased

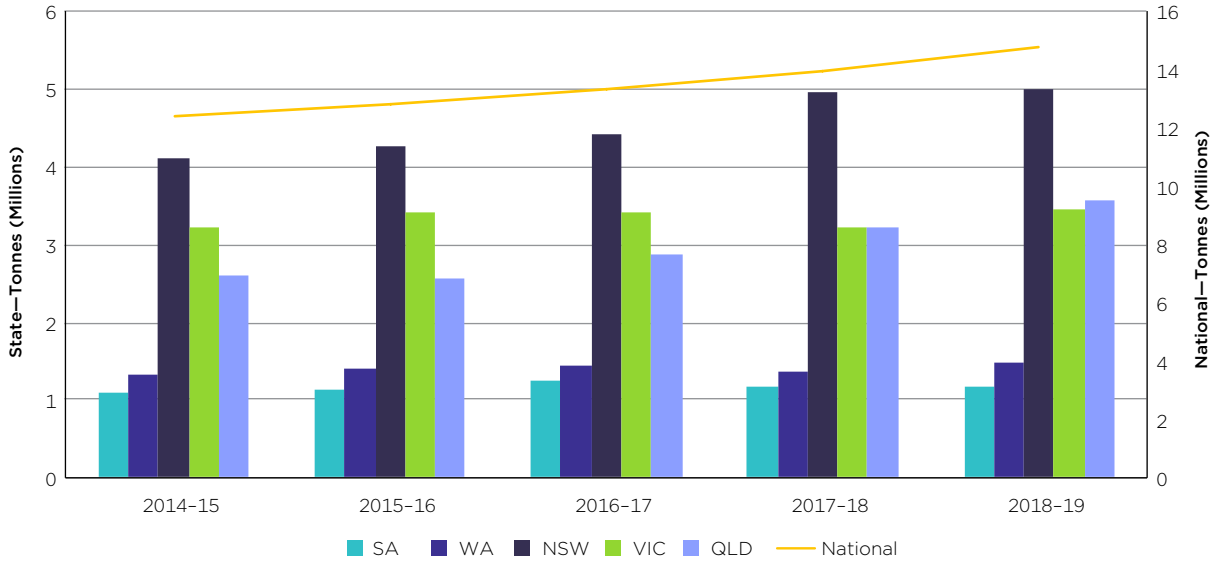
Domestic consumption impacts the amount of grain that is available for export. Australia's domestic markets are sometimes said to have 'first call' on grain, with the amount of grain remaining after demand in these markets has been satisfied referred to as the 'exportable surplus'. Domestic consumption is generally fairly stable, but has been steadily increasing over time.

Figure 6.7 shows domestic demand grew to over 14 million tonnes in the 2018–19 shipping year, an increase of 5 per cent from 2017–18. Domestic consumption in NSW (which saw a significant increase of 12 per cent in the 2017–18 shipping year) and SA remained relatively stable this season, however Victoria, WA and Queensland experienced growth of 7, 9 and 11 per cent respectively.

As noted in section 5.2 stakeholder opinions differed as to whether the higher levels of domestic consumption in NSW and Queensland over the past two seasons reflect a temporary increase in response to drought, or are indicative of a permanent increase. The ACCC notes that the data shows there has been an increase in the growth of domestic consumption, however it does not provide any indication as to whether this increase in growth is permanent or temporary.

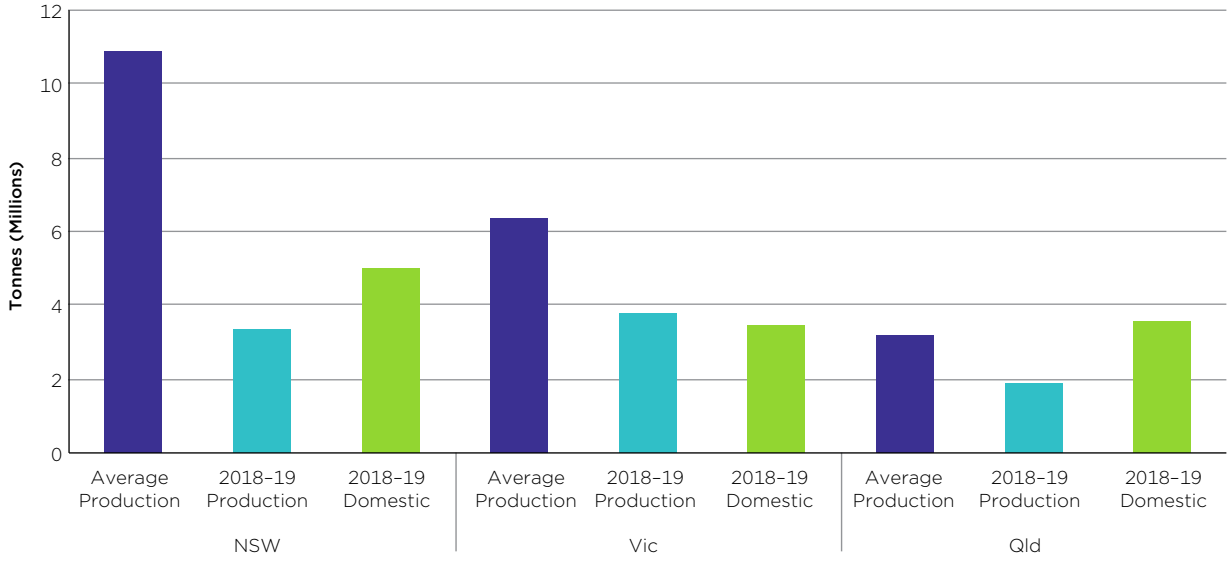
Low production years in east coast states meant that domestic consumption exceeded production in both NSW and Queensland (as shown below in figure 6.8). As discussed further in section 6.4 coastal shipments and land based transfers were consequently required from WA and SA to help meet east coast domestic demand.

Figure 6.7: Domestic consumption of grain by state, 2014–15 to 2018–19



Source: ACF, Supply and Demand report.

Figure 6.8: East coast production compared to domestic demand



Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191; ACF, Supply and Demand report.

6.4 Coastal shipments from WA and SA increased significantly to help meet east coast domestic demand

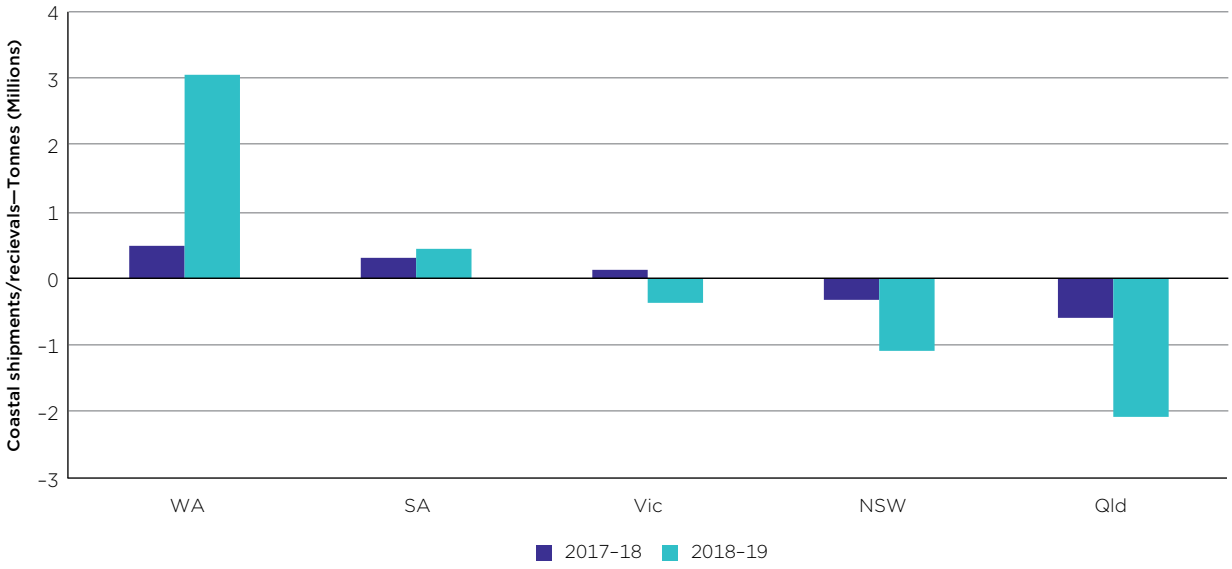
The intensification of drought conditions in the 2018–19 shipping year led to coastal shipments of grain more than doubling in response to increased east coast domestic demand.

As illustrated by figure 6.9, coastal shipments of grain from WA and SA to the drought affected east coast increased 283 per cent from 0.9 million tonnes in the 2017–18 shipping year to 3.5 million tonnes in the 2018–19 shipping year.

As shown in figure 6.9, WA performed 3.1 million tonnes or 87 percent of these coastal shipments, while SA facilitated the other 0.4 million tonnes (13 percent).

Figure 6.9 also shows that Victoria, which experienced a good production year in the 2017–18 shipping year (21 percent above average), performed 0.1 million tonnes of coastal shipments to NSW and Queensland in 2017–18, but received 0.4 million tonnes of grain via coastal shipment during the 2018–19 shipping year.

Figure 6.9: Net balance of coastal shipments by state, 2017–18 and 2018–19



Source: PTSP loading statements; and ACF Shipping stem and market share report.

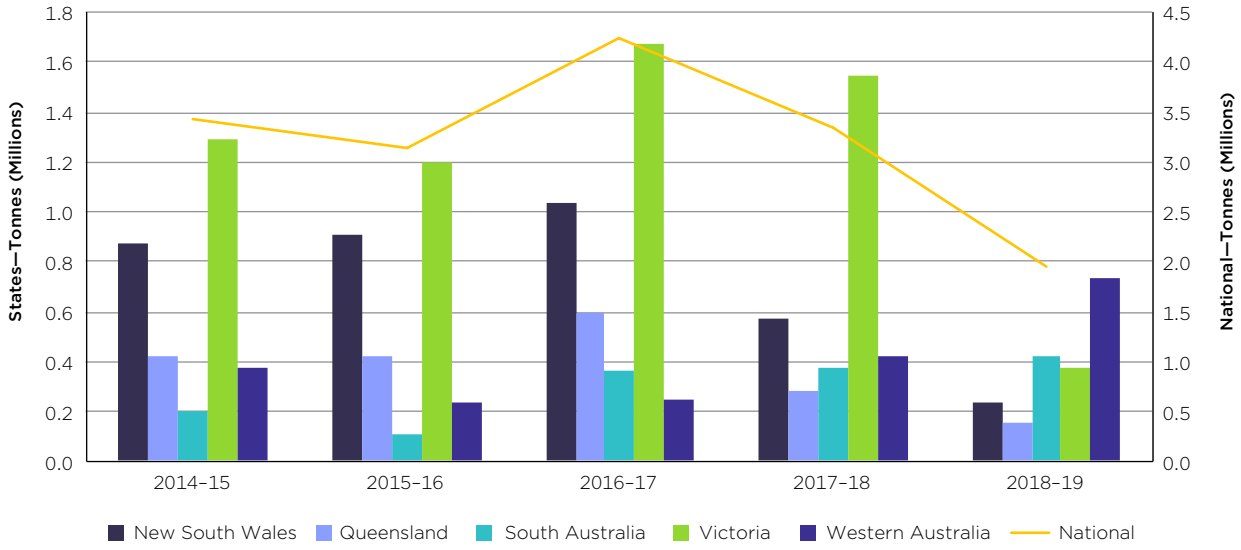
Notes: Positive values represent outgoing coastal shipments, and negative values represent incoming coastal shipments.

6.5 Containerised exports also declined significantly

Grain can be exported in bulk or in containers. While containerised grain exports are not a direct substitute for bulk grain exports they may provide a viable alternative export path for some growing regions, niche and high quality products and for particular destinations. Containers are also generally considered to have first call on export grain. The ACCC notes that the shipment of some higher value commodity types are more likely to be in containers, such as oilseeds or particular wheat grades.

National containerised grain exports declined from 3.3 million tonnes in the 2017–18 shipping year to 1.9 million tonnes in the 2018–19 shipping year, a decrease of 42 per cent. The significant reduction in national containerised exports is attributable to drought conditions impacting the east coast states, which on average combine to perform 77 per cent of total container exports. On average the east coast will export 2.3 million tonnes in containers each shipping year, however in the 2018–19 shipping year the east coast only shipped 0.8 million tonnes via containers.

Figure 6.10: Containerised exports of grain by state, 2014–15 to 2018–19



Source: ACF, Export report.

Figure 6.10 shows that for the 2018–19 shipping year:

- The 1.40 million tonne drop off in national containerised exports was predominantly driven by the decline in Victoria's exports. Victoria exported 1.55 million tonnes via containers in the 2017–18 shipping year compared to 0.37 million tonnes in the 2018–19 shipping year, a 76 per cent decline.
- NSW and Queensland also experienced a further decline in container exports in the 2018–19 shipping year, exporting just 0.23 and 0.16 million tonnes respectively. These totals represent a 75 and 67 per cent decrease from average pre-drought levels in NSW and Queensland, respectively.
- WA exported 0.74 million tonnes of grain via containers, a 75 per cent increase over the 2017–18 shipping year.
- SA experienced a small rise in container exports from 0.37 million tonnes in the 2017–18 shipping year to 0.42 million tonnes in the 2018–19 shipping year.

Table 6.4 shows that containers generally account for around 12 to 14 per cent of total grain exports nationally. The proportion of exports via container varies significantly across the states, with containers on average accounting for 40 per cent of Victoria's grain shipments and only 3 per cent of WA's shipments.

Table 6.4 also shows there were large increases in the proportion of grain being exported in containers in all states except WA. This however was due to a vast reduction in bulk shipments from these states as opposed to large increases in containerised exports (as discussed above).

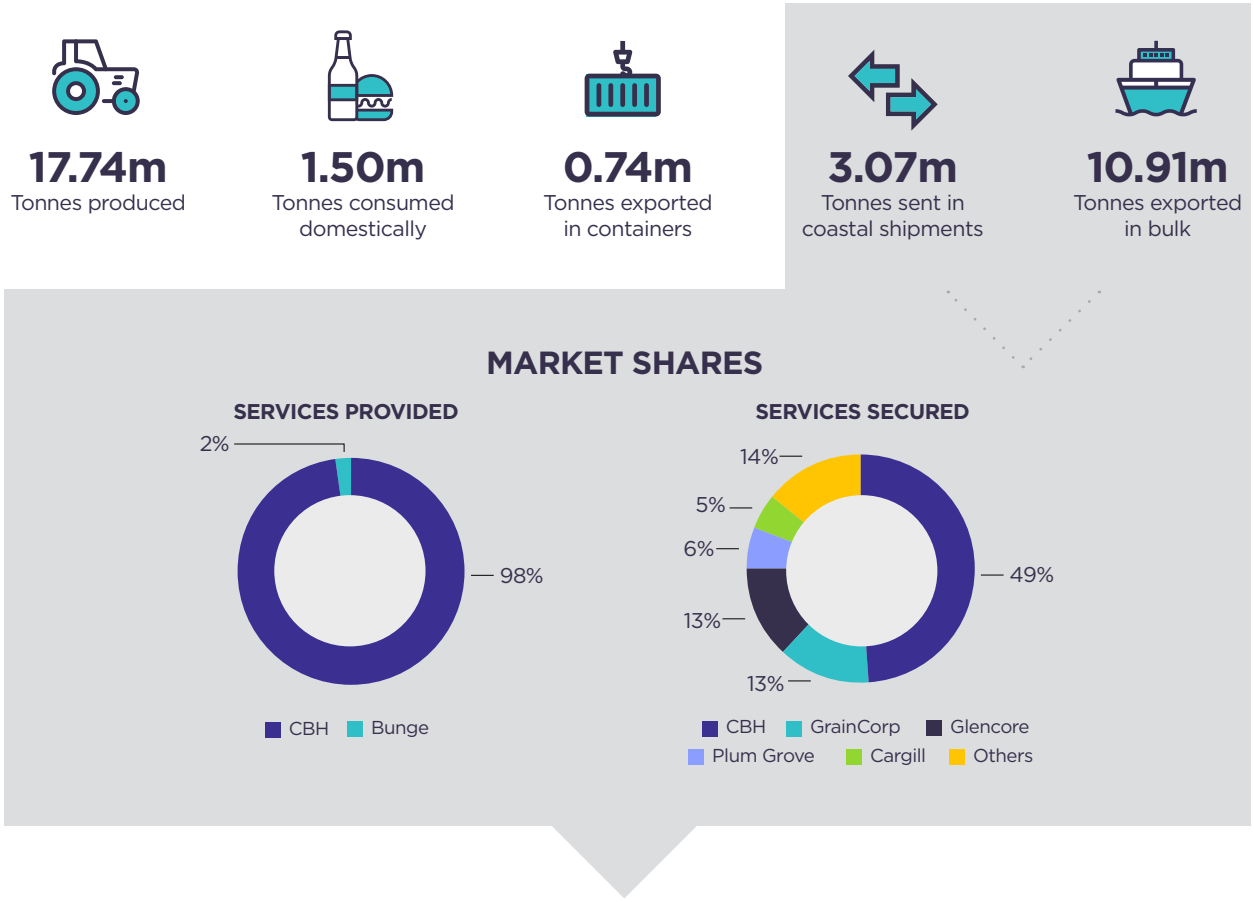
Table 6.4: Proportion of shipments in bulk and container by state, 2014–15 to 2018–19

		WA	SA	Vic	NSW	Qld	Total
2014–15	Bulk	97%	97%	55%	57%	66%	86%
	Containers	3%	3%	45%	43%	34%	14%
2015–16	Bulk	98%	98%	48%	65%	63%	86%
	Containers	2%	2%	52%	35%	37%	14%
2016–17	Bulk	98%	96%	70%	79%	67%	88%
	Containers	2%	4%	30%	21%	33%	12%
2017–18	Bulk	97%	94%	60%	47%	53%	86%
	Containers	3%	6%	40%	53%	47%	14%
2018–19	Bulk	95%	86%	28%	4%	27%	90%
	Containers	5%	14%	72%	96%	73%	10%
Average	Bulk	97%	95%	60%	66%	62%	87%
	Containers	3%	5%	40%	34%	38%	13%

Source: PTSP loading statements; ACF Shipping stem and market share report; and ACF, Export report.

7. Western Australia

Figure 7.1: Western Australia key results in 2018–19



Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191; PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

7.1 Overview of Western Australia

WA typically produces and ships more grain than any of the other states, being responsible for 36 per cent of total production and 52 per cent of total bulk shipments since 2011–12.

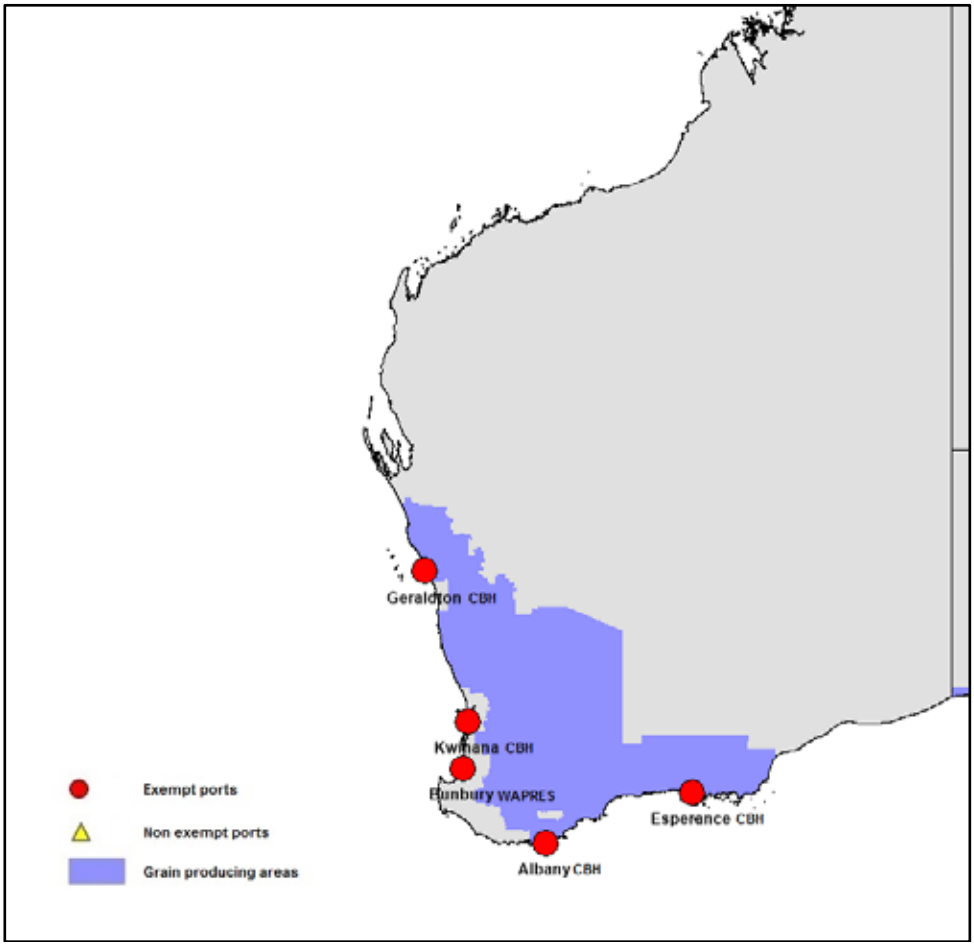
WA has on average over the last five shipping years the second lowest level of domestic consumption (in absolute tonnage) in Australia, with SA being the lowest.

WA has five bulk export port facilities. CBH operates four of these facilities, which are located at Albany, Esperance, Geraldton and Kwinana. WAPRES operates a port terminal facility located at Bunbury (see figure 7.2). Kwinana consistently ships the most bulk grain of any port in Australia. Generally, WA's shipment levels are less volatile than the eastern states.

Table 7.1 shows that CBH continues to be the dominant bulk shipment service provider in WA, with 98 per cent of WA's bulk grain shipments going through CBH's port facilities in the 2018–19 shipping year. WAPRES' facility at Bunbury is only utilised by Bunge and has a much smaller throughput than each of CBH's ports, accounting for only 2 per cent of throughput since they commenced operations in 2015–16.

All of WA's bulk export port terminal facilities are exempt from the Code. CBH received an exemption for each of its facilities from the Minister for Agriculture in 2014, while WAPRES' facility was exempted by the ACCC in 2015.

Figure 7.2: Map of WA port terminal facilities and grain growing regions



Source: ABS, 7121.0—Agricultural Commodities, Australia, 2015–16 SA2 data, and company websites.

Table 7.1: WA port terminal facility market share of grain throughput

Port	Percentage share of throughput 2018–19	Percentage share of throughput since 2011–12	Percentage share of throughput since 2015–16*
Albany CBH	17%	21%	19%
Bunbury WAPRES	2%	1%	2%
Esperance CBH	16%	17%	19%
Geraldton CBH	21%	18%	19%
Kwinana CBH	44%	43%	42%
CBH Total:	98%	99%	98%
Others Total:	2%	1%	2%

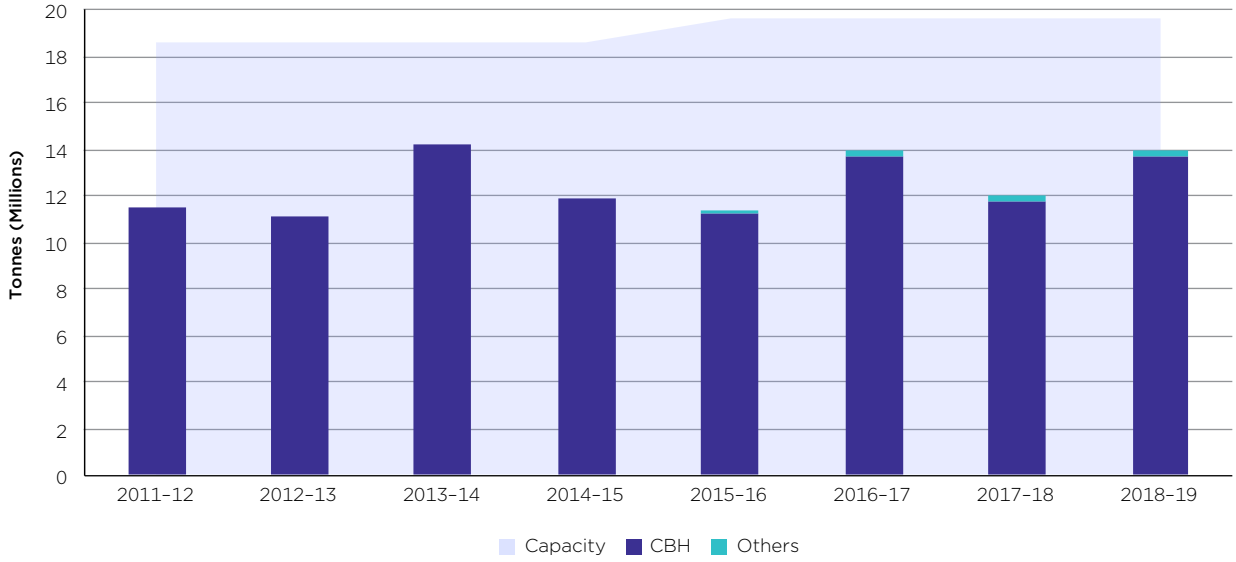
Source: PTSP loading statements; and ACF Shipping stem and market share report.

Notes: *The Bunbury WAPRES facility commenced operations during the 2015–16 season.

Figures 7.3 and 7.4 below show the continued dominance of CBH as a provider of services both across the whole year and during the peak period.

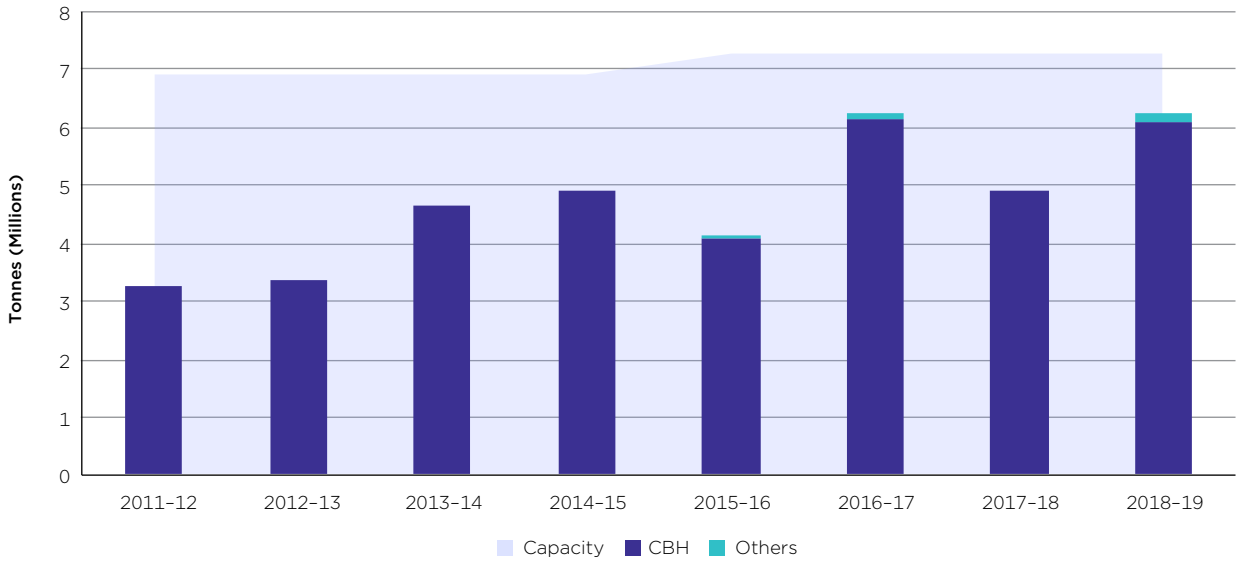
Figure 7.4 also suggests that there may be some capacity constraints at port during peak periods in high throughput years. The ACCC notes the increase in WA port terminal capacity in 2015–16 was due to WAPRES's Bunbury facility commencing operations.

Figure 7.3: Grain loaded by PTSP in WA



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Figure 7.4: Grain loaded during the peak period by PTSP in WA



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

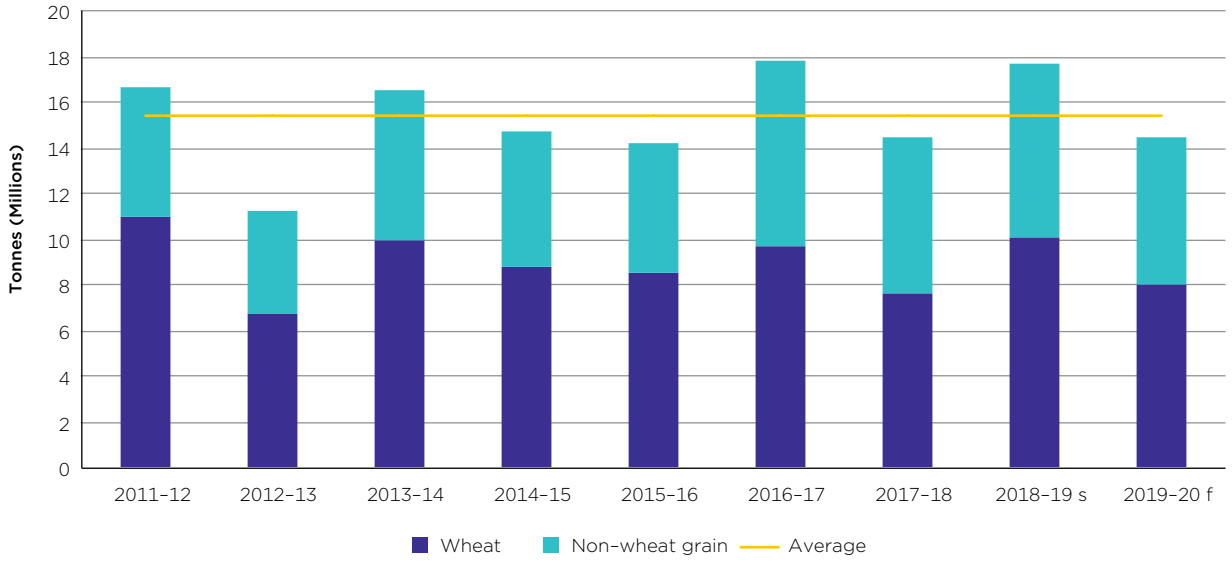
7.2 Key observations for WA in 2018–19

7.2.1 Production

WA was the only state in Australia that had above average production in 2018–19. The ACCC also makes the following observations about WA's production in 2018–19 (see figure 7.5):

- WA produced 17.7 million tonnes of grain, which is WA's second largest harvest since ABARES began collecting data in the 1989–90 season, behind only the bumper 2016–17 harvest of 17.8 million tonnes.
- Production was 15 per cent above WA's average of 15.4 million tonnes and 22 per cent above 2017–18.
- In 2019–20 WA is expected to produce 14.4 million tonnes, which would be 6 per cent below average.

Figure 7.5: WA annual grain production compared to eight year average, 2011–12 to 2018–19, and 2019–20 forecast

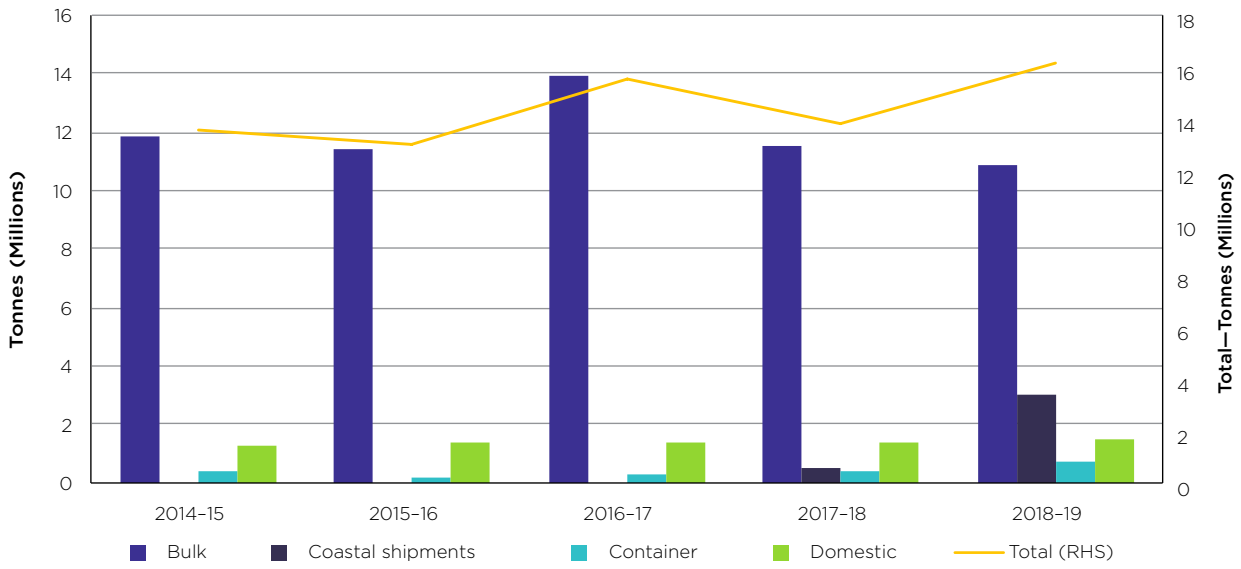


Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191.

Notes: s 2018–19 figures are ABARES estimates which are subject to revision. f 2019–20 figures are ABARES forecasts.

7.2.2 Grain usage

Figure 7.6: WA's grain usage, 2014–15 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

The ACCC makes the following observations about WA's grain usage in the 2018–19 shipping year (see figure 7.6):

- Domestic consumption increased by 9 per cent to 1.50 million tonnes.
- Domestic consumption represented 9 per cent of WA's grain usage, which is consistent with WA's average (10 per cent).
- Consistent with WA's typical usage profile, the remaining 91 per cent of grain usage was shipments[16], with 95 per cent of those shipments being in bulk (13.98 million tonnes) and 5 per cent by container (0.74 million tonnes).
- Total bulk and container shipments were 4 per cent higher than during the bumper 2016–17 shipping year and 18 per cent higher than 2017–18.
- WA sent 3.1 million tonnes of grain to NSW and Queensland via coastal shipments. These coastal shipments, which began in June 2018, have been driven by demand for feed grain in NSW and Queensland that could not be met within those states due to drought conditions.
- WA exported 0.74 million tonnes of grain via containers, 83 per cent above the average of 0.40 million tonnes.

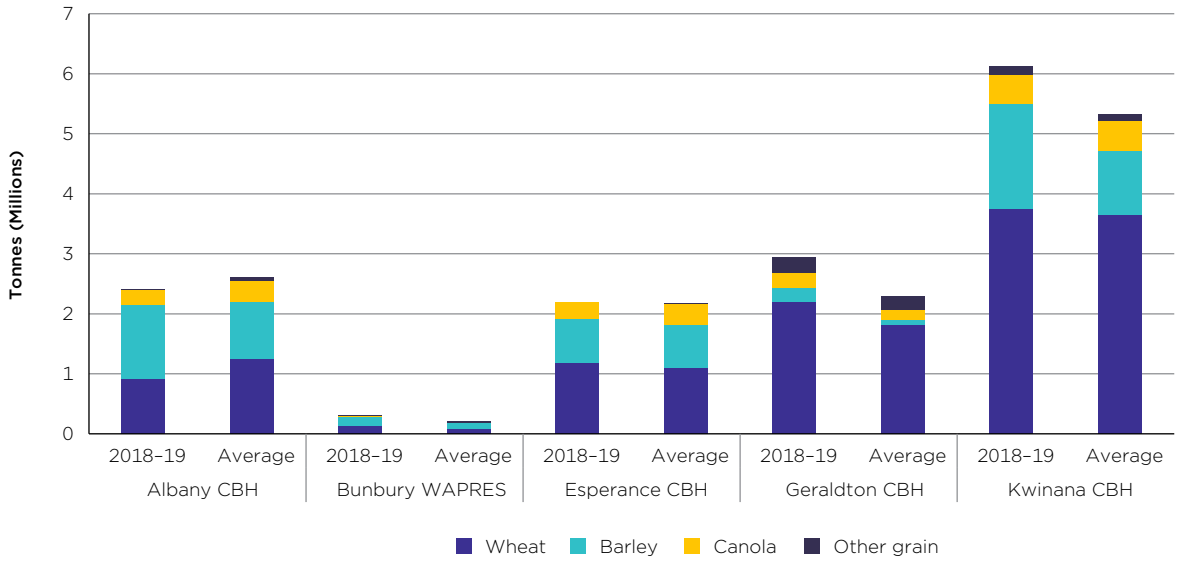
16 All bulk shipment figures are inclusive of coastal shipments throughout the WA state chapter.

7.2.3 Bulk shipments

Figure 7.7 below shows the amount of grain that was shipped in bulk from each WA port in the 2018–19 shipping year compared to the average. It also illustrates that, with the exception of Albany, all WA port terminal facilities operated above their average levels of utilisation. The ACCC also makes the following observations about bulk shipments from WA in the 2018–19 shipping year:

- WA shipped 14.0 million tonnes in bulk (12 per cent above average).
- Kwinana shipped 6.1 million tonnes in bulk (15 per cent above average), and 2.9 million tonnes were shipped in bulk from Geraldton (29 per cent above average).
- Albany shipped 2.4 million tonnes in bulk (8 per cent below average).
- The 0.3 million tonnes of grain shipped in bulk from Bunbury represented just 2 per cent of all WA bulk shipments.

Figure 7.7: Bulk shipments by port and commodity type, 2018–19 and eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

7.2.4 Market share

Market share data provides an indication of the general level of competition and access seeker participation in individual markets. The ACCC makes the following observations about access seeker market shares at WA port terminal facilities in the 2018–19 shipping year (see table 7.2):

- While CBH's market share as an access seeker declined 5 percentage points to 49 per cent, CBH (in terms of tonnage) still shipped 10 per cent above its average and 16 per cent more than the 2017–18 shipping year.
- GrainCorp continued to increase its shipping operations in WA, shipping 1.8 million tonnes of grain (0.7 million tonnes in coastal shipments), a 77 per cent increase over the last shipping year.
- The total number of access seekers who shipped grain from WA in the 2018–19 shipping year remained constant at 13. The ACCC notes that Plum Grove, which was WA's sixth largest exporter over the last eight shipping years, announced they would be exiting the WA and Australian markets due in part to high domestic prices and foreign competition.[17]

Table 7.2: WA bulk shipment market share, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
CBH	45%	46%	56%	50%	47%	45%	54%	49%
Glencore	21%	15%	14%	15%	12%	15%	13%	13%
Cargill	12%	12%	8%	5%	6%	4%	3%	5%
GrainCorp	0%	0%	3%	4%	7%	8%	9%	13%
Emerald	8%	7%	6%	6%	4%	4%	4%	3%
Others	14%	20%	13%	19%	24%	23%	19%	17%
Number of exporters	13	15	12	13	14	14	13	13

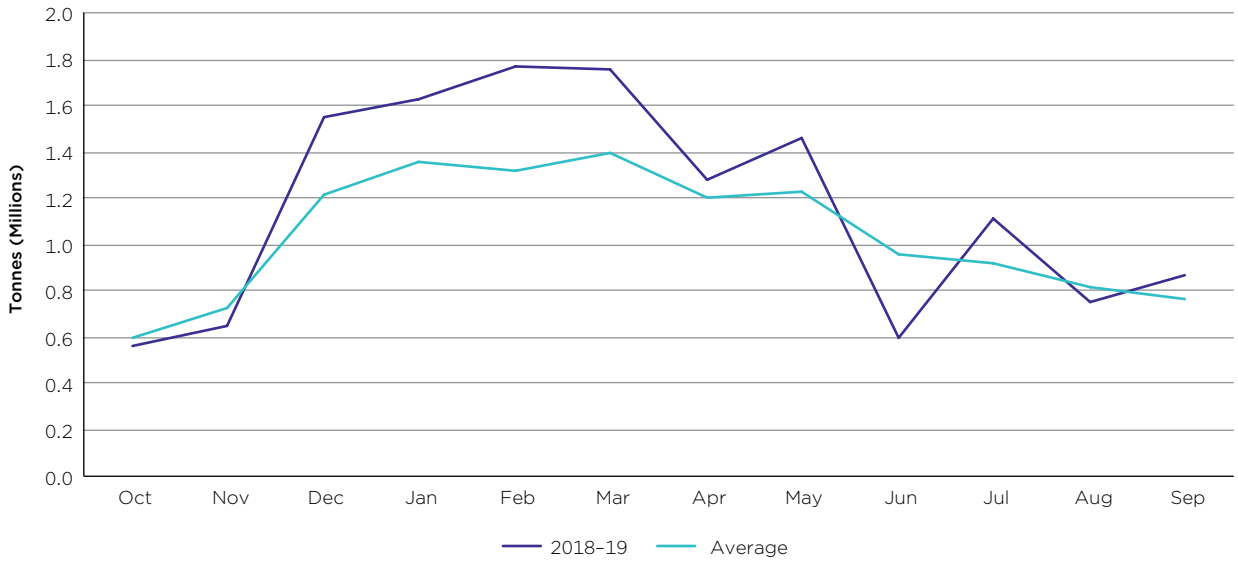
Source: PTSP loading statements; and ACF Shipping stem and market share report.

17 Plum Grove, Plum Grove Public Announcement 25th October 2019, https://www.plumgrove.com.au/media/plum-grove-public-announcement-25th-october-2019/, viewed 27 October 2019.

7.2.5 Shipment pace

Figure 7.8 shows that WA's bulk shipments were generally higher than average across the 2018–19 shipping year, including each of WA's 'peak shipping period' months of December to May.

Figure 7.8: WA bulk grain shipments by month, 2018–19 compared to eight year average



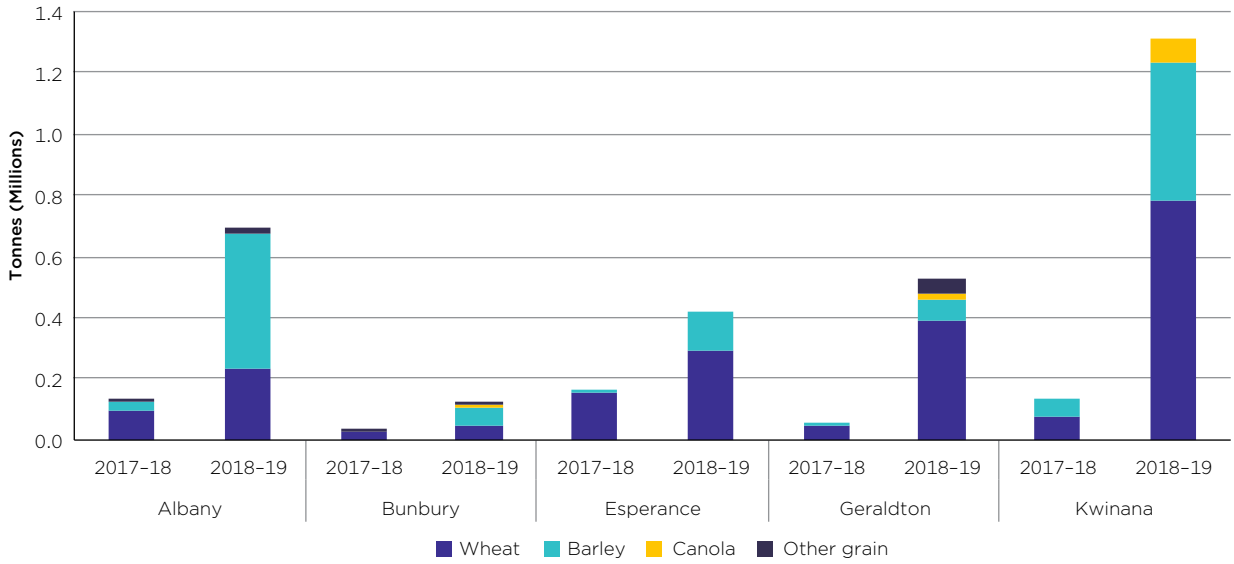
Source: PTSP loading statements; and ACF Shipping stem and market share report.

7.2.6 Coastal shipments

The intensified east coast drought led to the amount of grain being shipped from WA to the east coast increasing significantly from 0.5 million tonnes in the 2017–18 shipping year to 3.1 million tonnes in the 2018–19 shipping year. This substantial increase in coastal shipments is shown below in figure 7.9.

Of the 2018–19 coastal shipments 1.7 million tonnes were received in Queensland, 1.0 million tonnes were received in NSW, and 0.4 million tonnes were received in Victoria.

Figure 7.9: Coastal shipments by port in WA, 2017–18 and 2018–19



Source: PTSP loading statements; and ACF Shipping stem and market share report.

7.3 Port by port analysis

The following section examines how each of WA's port terminal facilities were used in the 2018–19 shipping year and analyses notable trends over time. The ACCC analyses the following at an individual port terminal facility level to provide an understanding of the level of competition in specific port zones:

- Shipment volumes and capacity utilisation figures are analysed to assess levels of demand for services, capacity constraints and the strength of the relevant PTSP's incentive to provide fair and transparent access.
- The type of grain shipped is analysed to identify any trends or changes in the level of shipments of specific grains.
- Market shares are analysed to assess how many exporters were able to access a specific facility and the extent to which the number is changing over time. While a reduction in the number of exporters securing access at a port terminal facility does not necessarily demonstrate that a PTSP is denying access, it may give the ACCC cause to seek further information from exporters about why the number of exporters securing access to a facility is declining.

7.3.1 WA capacity utilisation

Table 7.3 shows the yearly and peak period levels of capacity utilisation for each of the WA port terminal facilities in the 2018–19 shipping year and how it compares to average levels of utilisation. It shows that all facilities saw above-average utilisation during the peak period and (with the exception of Albany) over the whole shipping year.

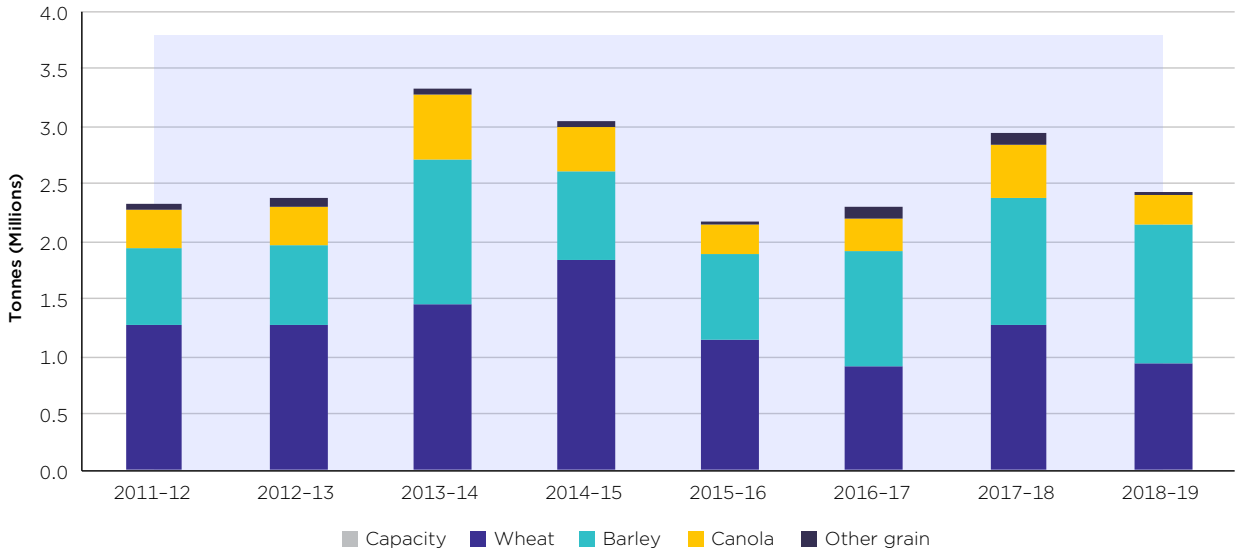
Table 7.3: Peak and yearly capacity utilisation by port, 2018–19 compared to eight year average

Port	Peak capacity utilisation		Yearly capacity utilisation	
	2018–19	Average	2018–19	Average
Albany CBH	71%	64%	63%	69%
Esperance CBH	79%	67%	65%	65%
Geraldton CBH	91%	62%	82%	64%
Kwinana CBH	100%	72%	78%	68%
Bunbury WAPRES	47%	21%	31%	22%

Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

7.3.2 Non-wheat shipments from Albany were higher than wheat shipments for the third year in a row

Figure 7.10: Capacity utilisation by commodity at Albany, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Table 7.4: Exporter market share at Albany, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
CBH	59%	55%	66%	60%	54%	52%	63%	61%
Glencore	18%	11%	14%	9%	11%	16%	7%	13%
Cargill	12%	12%	6%	6%	7%	1%	2%	3%
GrainCorp	0%	0%	5%	5%	6%	11%	6%	10%
Emerald	4%	5%	5%	4%	3%	4%	5%	0%
Others	8%	17%	5%	17%	19%	15%	18%	12%
Number of exporters	6	8	8	12	10	9	10	10

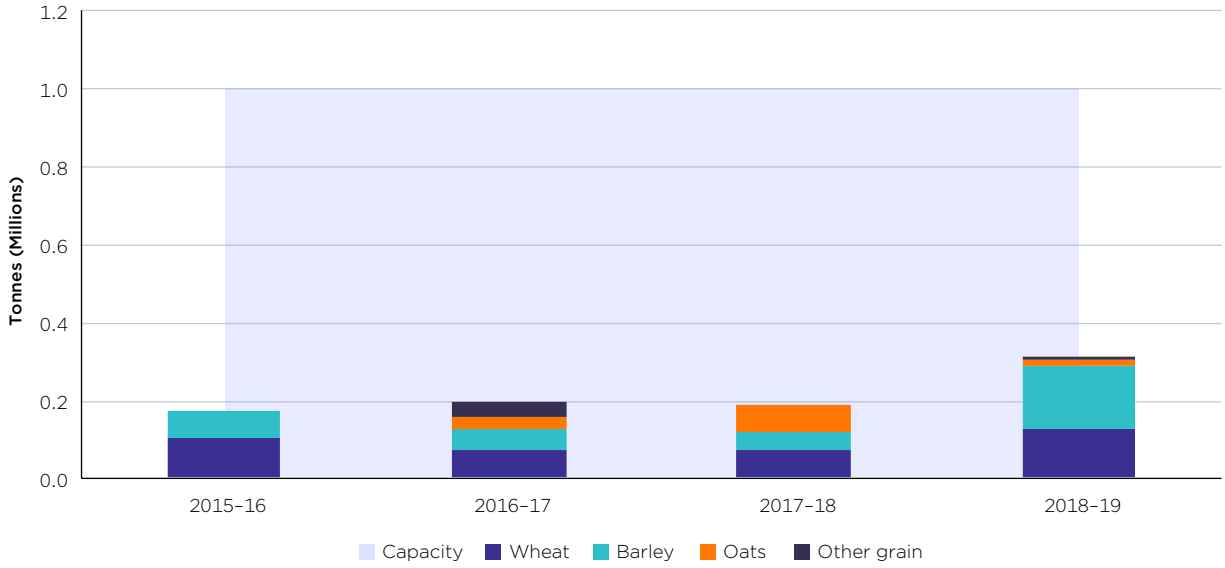
Source: PTSP loading statements; and ACF Shipping stem and market share report.

The ACCC makes the following observations about bulk shipments from Albany during the 2018–19 shipping year:

- Overall shipments declined by 0.5 million tonnes, but were broadly consistent with Albany's average of 2.6 million tonnes (see figure 7.10).
- Wheat shipments declined by 26 per cent and barley shipments increased by 9 per cent.
- For the third year in a row Albany shipped more non-wheat grains than wheat.
- CBH as an exporter experienced a two percentage point decrease in market share to 61 per cent, however recorded its third highest share over the eight year period analysed (see table 7.4).

7.3.3 Despite high WA production and bulk shipments, capacity utilisation at WAPRES' Bunbury facility remained low; Bunge remains its only user

Figure 7.11: Capacity utilisation by commodity at Bunbury, 2015–16 to 2018–19



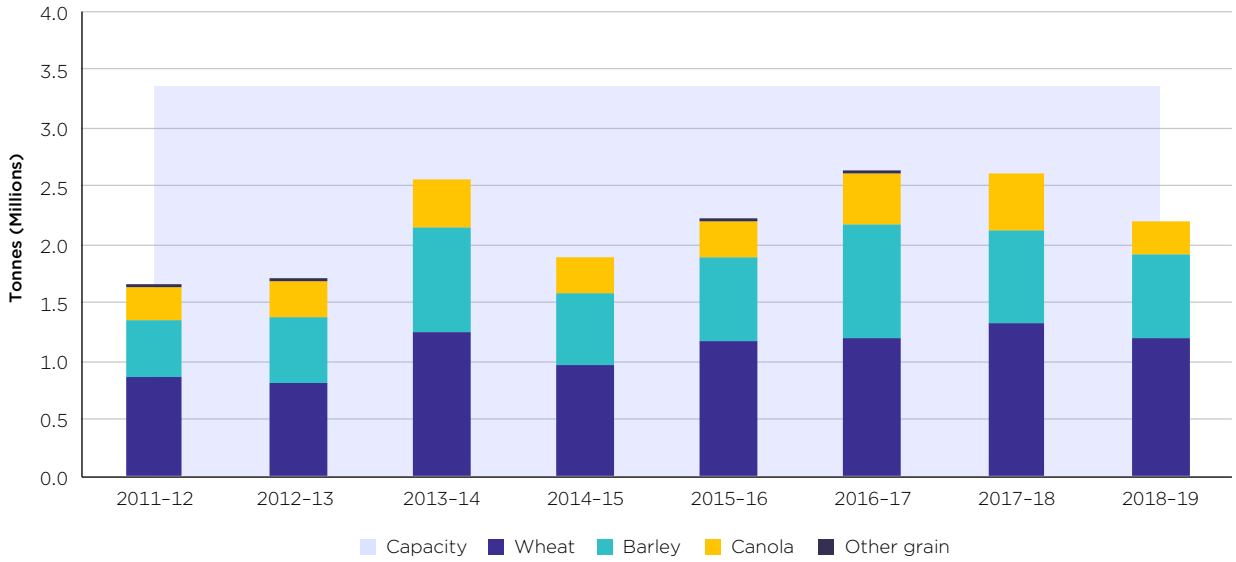
Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

The ACCC makes the following observations about WAPRES' facility at Bunbury:

- Despite increased usage in the 2018–19 shipping year (see figure 7.11) Bunbury remains the port terminal facility with the lowest capacity utilisation in WA (see table 7.3).
- Due to site limitations third party access to WAPRES' ship loader can only be facilitated using grain storage conveyor equipment owned and operated by Bunge.
- Despite being the only competitor to CBH, WAPRES' Bunbury facility has been unable to expand its export profile or customer base with Bunge still the only exporter to have used the facility.

7.3.4 Overall bulk shipments from Esperance declined, CBH, Glencore and GrainCorp acquired 87 per cent of all services

Figure 7.12: Capacity utilisation by commodity at Esperance, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Table 7.5: Exporter market share at Esperance, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
CBH	51%	73%	60%	55%	60%	56%	46%	51%
Glencore	26%	10%	24%	22%	11%	13%	17%	14%
GrainCorp	0%	0%	5%	10%	7%	8%	18%	22%
Plum Grove	1%	0%	3%	4%	6%	6%	12%	3%
ADM	2%	2%	2%	8%	8%	4%	3%	4%
Others	21%	15%	5%	1%	7%	13%	4%	6%
Number of exporters	8	8	7	6	8	9	8	7

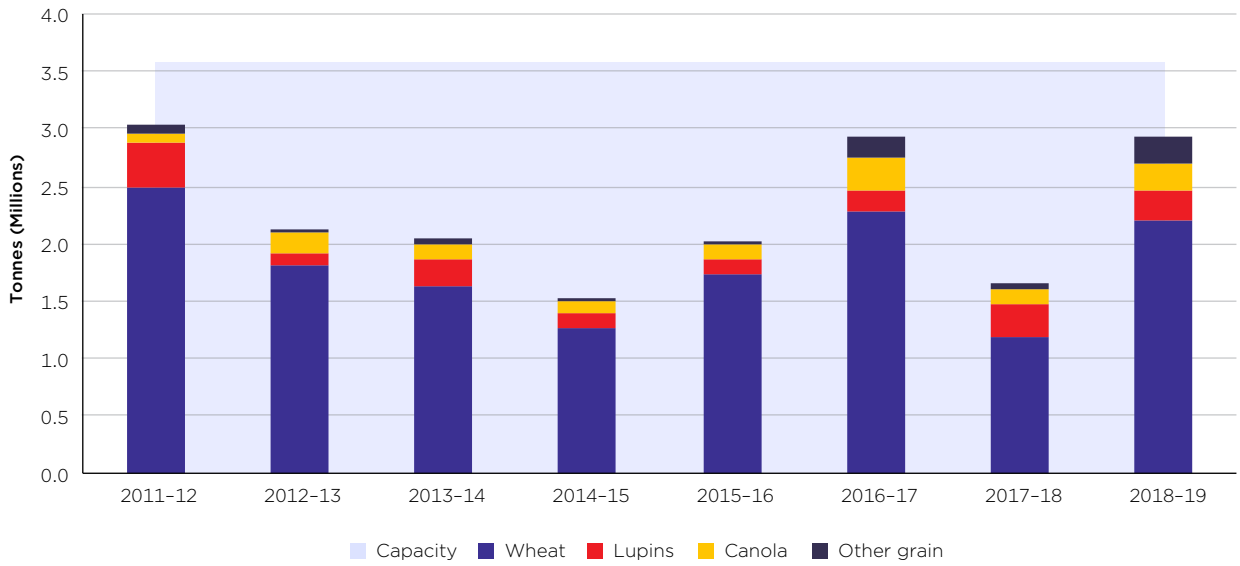
Source: PTSP loading statements; and ACF Shipping stem and market share report.

The ACCC makes the following observations about CBH's facility at Esperance during the 2018–19 shipping year:

- Shipments declined 16 per cent but were consistent with average levels (see figure 7.12).
- Capacity utilisation in the peak period dropped from 89 cent in the 2017–18 shipping year to 79 per cent, which was 12 percentage points above average (see table 7.3).
- CBH's market share at Esperance rose from 46 per cent in the 2017–18 shipping year to 51 per cent but was still below CBH's average Esperance market share of 56 per cent (see table 7.5).
- Glencore and GrainCorp continue to have large market shares at Esperance, and in combination with CBH, the top three access seekers at Esperance secured 87 percent of all services provided.

7.3.5 Geraldton bulk shipments exceeded bumper 2016–17 levels

Figure 7.13: Capacity utilisation by commodity at Geraldton, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Table 7.6: Exporter market share at Geraldton, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
CBH	38%	35%	50%	34%	42%	37%	53%	44%
Glencore	17%	14%	12%	12%	10%	11%	15%	12%
Cargill	16%	22%	12%	14%	9%	6%	7%	8%
Emerald	14%	6%	12%	20%	7%	8%	6%	5%
GrainCorp	0%	0%	2%	3%	12%	15%	11%	19%
Others	16%	23%	12%	16%	20%	24%	9%	13%
Number of exporters	10	10	9	10	10	10	7	8

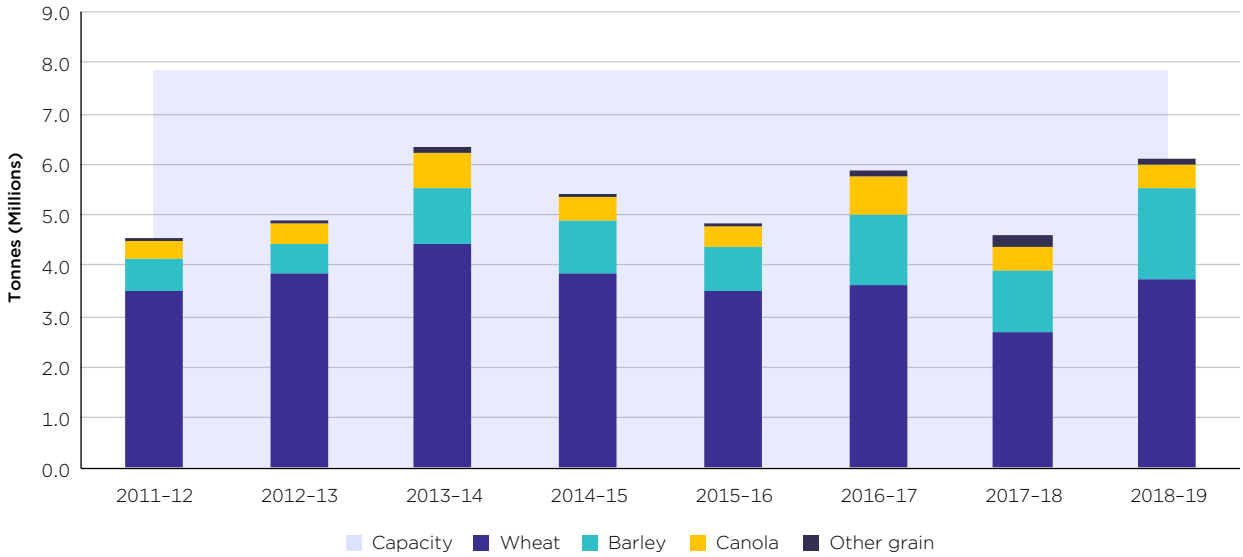
Source: PTSP loading statements; and ACF Shipping stem and market share report

The ACCC makes the following observations about CBH's facility at Geraldton during the 2018–19 shipping year:

- Total shipments of 2.94 million tonnes were slightly above shipment levels in WA's bumper 2016–17 shipping year (2.92 million tonnes).
- Shipments from Geraldton are the most variable of the WA port terminal facilities and figure 7.13 shows that during shipments increased by 78 per cent on the back of increased wheat shipments (which increased 84 per cent).
- As with shipment levels, capacity utilisation levels at Geraldton are also highly variable. This season 91 per cent of peak capacity was utilised (see table 7.3), up from 42 per cent in the 2017–18 shipping year's peak period.
- CBH has its lowest market share as an exporter at Geraldton, securing on average 41 per cent of services, compared to an average of 51 per cent at CBH's other WA facilities.

7.3.6 Capacity utilisation at Kwinana increased to its highest level since 2013–14

Figure 7.14: Capacity utilisation by commodity at Kwinana, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Table 7.7: Exporter market share at Kwinana, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
CBH	41%	36%	50%	48%	43%	43%	55%	48%
Glencore	25%	18%	11%	16%	14%	19%	13%	14%
Cargill	11%	11%	10%	4%	7%	6%	3%	6%
Emerald	6%	11%	7%	6%	6%	4%	4%	4%
Plum Grove	0%	3%	1%	6%	10%	9%	6%	7%
Others	17%	21%	20%	20%	21%	19%	19%	21%
Number of exporters	11	14	11	13	13	12	12	11

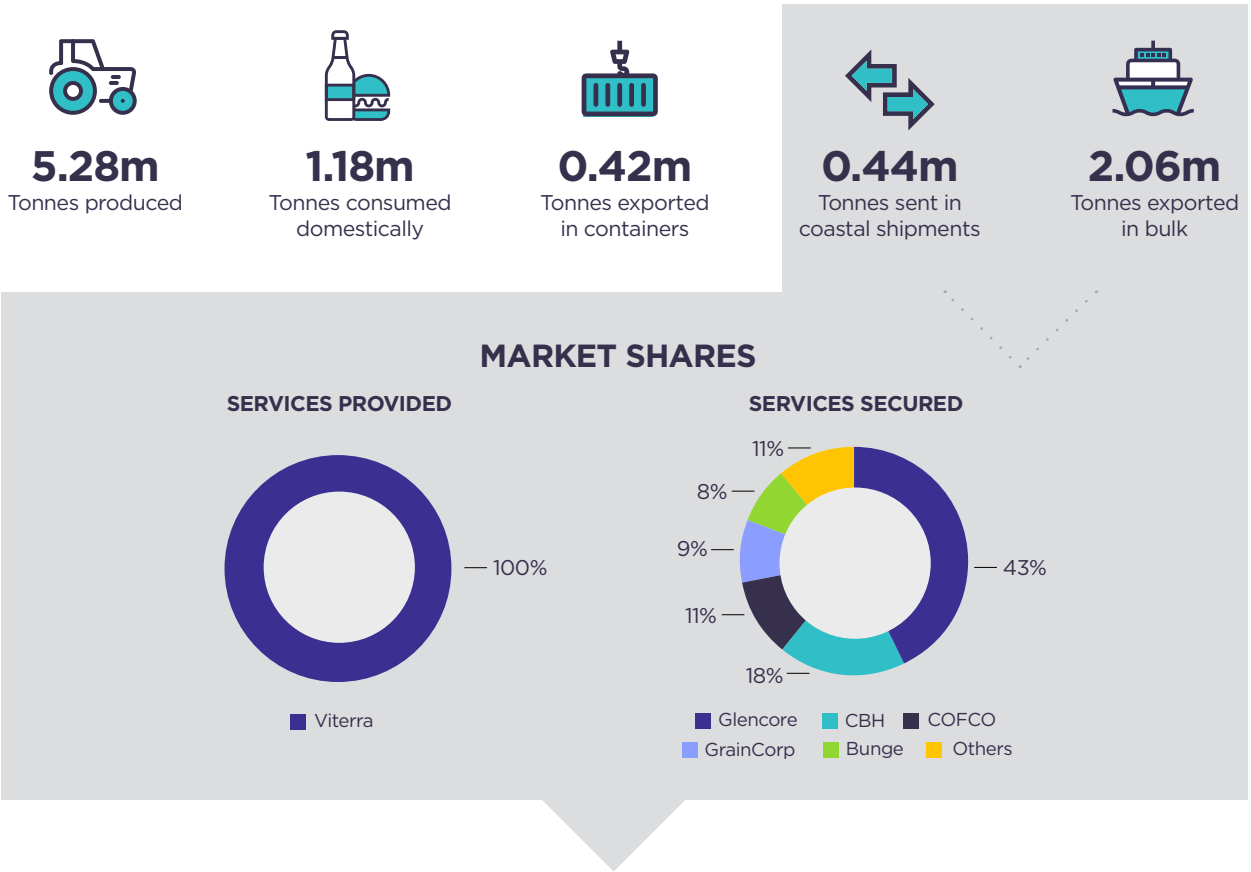
Source: PTSP loading statements; and ACF Shipping stem and market share report.

The ACCC makes the following observations about CBH's facility at Kwinana in the 2018–19 shipping year:

- Kwinana continues to be Australia's highest volume bulk shipment facility, facilitating 6.1 million tonnes of shipments (see figure 7.14) and accounting for 37 per cent of total Australian bulk shipments.
- Shipments increased by 32 percent and were 15 per cent above the Kwinana average of 5.3 million tonnes.
- CBH's market share as an exporter declined from 55 per cent to 48 percent, slightly above its average of 46 per cent (see table 7.7).
- Peak capacity utilisation increased from 67 per cent in the 2017–18 shipping year to 100 per cent (see table 7.3).

8. South Australia

Figure 8.1: South Australia key results in 2018–19



Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191; PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

8.1 Overview of South Australia

SA has the highest number of bulk grain export port terminal facilities in Australia (eight) and a strong bulk shipment focus. On average, bulk shipments make up 79 per cent of SA's grain usage.

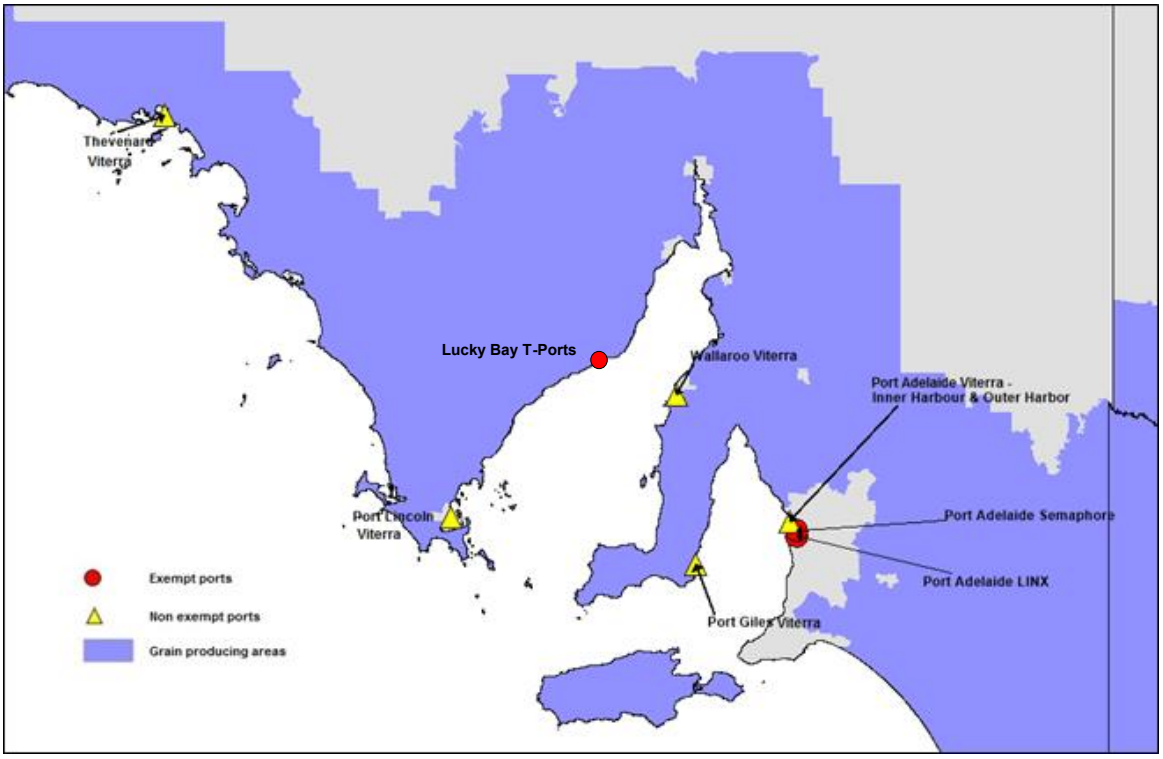
SA on average produces around 7.2 million tonnes of grain (third highest of any state) of which around 4.2 million tonnes is wheat and 3 million tonnes is other grain (mostly barley). Compared to other states SA typically has low levels of domestic consumption (17 per cent) and containerised exports (4 per cent).

Four of SA's eight port terminal facilities are located at Port Adelaide (Inner Harbour—Viterra, Outer Harbor—Viterra, Berth 29—LINX, and Osborne—Semaphore Container Services). SA's other four facilities are located at Port Lincoln, Thevenard, Wallaroo and Port Giles (all operated by Viterra).

The ACCC understands that T-Ports is close to finalising construction of a new bulk grain export port terminal facility at Lucky Bay (see figure 8.2) and will likely be in a position to provide bulk grain export port terminal services in early 2020. The ACCC also understands that T-Ports intends to develop a second facility at Wallaroo with construction to commence in 2020 for a service start date in 2021.[18]

The ACCC also notes that Cargill Australia intends to export bulk grain from Port Adelaide via a mobile ship loader that it will own and operate. Previously LINX provided port terminal services to Cargill via a mobile ship loader owned and operated by LINX.

Figure 8.2: Map of SA port terminal facilities and grain growing regions



Source: ABS, 7121.0—Agricultural Commodities, Australia, 2015–16 SA2 data, and company websites.

LINX and Semaphore have provided bulk grain export port terminal services at Port Adelaide since 2015–16 and 2016–17 respectively, though Viterra remains the dominant PTSP in SA. Table 8.1 illustrates that Viterra loaded all grain shipped in bulk from SA in the 2018–19 shipping year, and has loaded 92 per cent of all grain shipped from SA since 2016–17 (which was the first shipping year both LINX and Semaphore were in operation). Table 8.1 below provides further breakdowns of PTSP market shares.

18 T-Ports, *Wallaroo project*, 24 April 2019, https://tports.com/wallaroo/, viewed 11 November 2019.

Table 8.1: SA port terminal facility market share of grain throughput

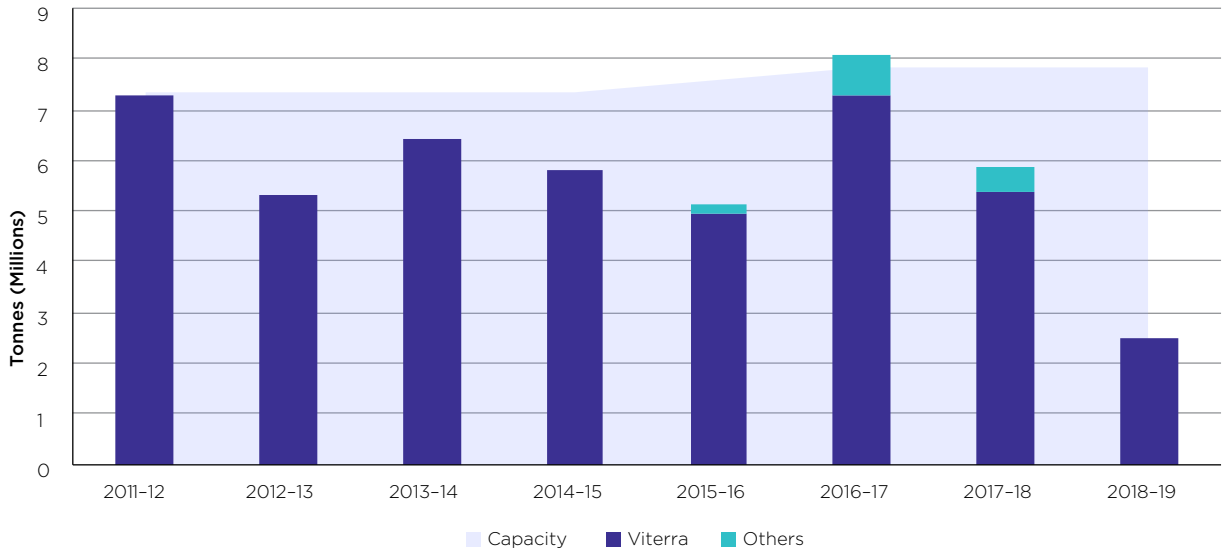
Port	Percentage share of throughput 2018–19	Percentage share of throughput since 2011–12	Percentage share of throughput since 2016–17*
Port Adelaide LINX	0%	2%	4%
Port Adelaide Semaphore	0%	1%	4%
Port Adelaide Viterra	10%	36%	32%
Port Giles Viterra	14%	12%	12%
Port Lincoln Viterra	63%	33%	34%
Thevenard Viterra	9%	6%	5%
Wallaroo Viterra	5%	10%	9%
Viterra Total:	100%	97%	92%
Others Total:	0%	3%	8%

Source: PTSP loading statements; and ACF Shipping stem and market share report.

Note: * Port Adelaide LINX began operations in 2015–16 and Port Adelaide Semaphore began operations in 2016–17.

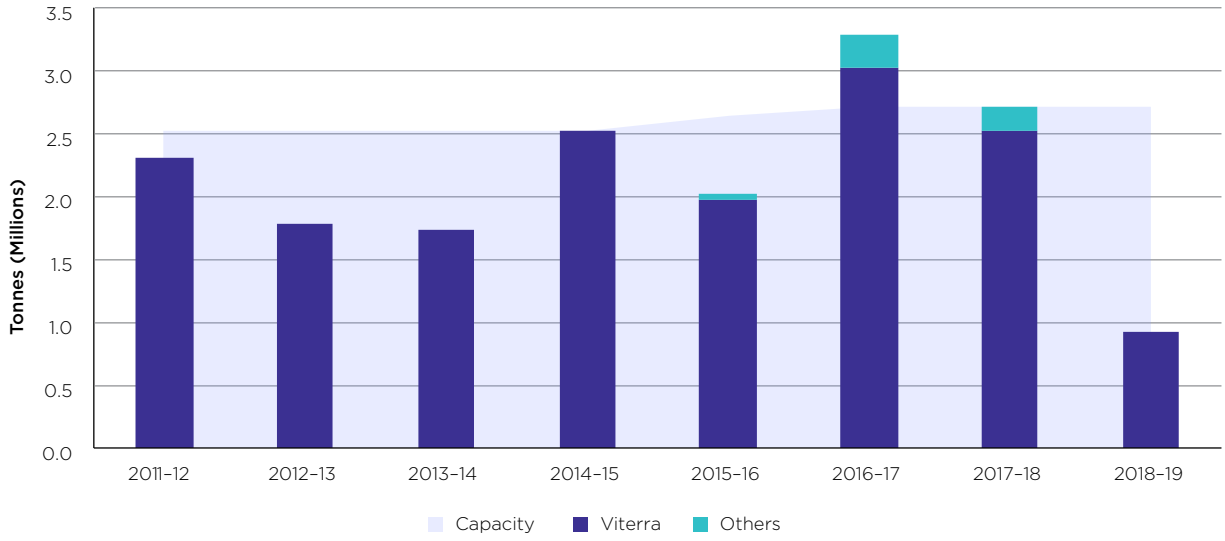
Figures 8.3 and 8.4 further illustrate that Viterra's dominance as a PTSP applies during both peak periods and over entire shipping years. Figures 8.3 and 8.4 also indicate that there may be capacity constraints in SA during high output years, particularly during the peak period. The ACCC notes that the increase in SA port capacity from 2015–16 is attributable to the arrival of LINX and Semaphore in 2015–16 and 2016–17 respectively.

Figure 8.3: Grain loaded by PTSP in SA



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Figure 8.4: Grain loaded during the peak period by PTSP in SA



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

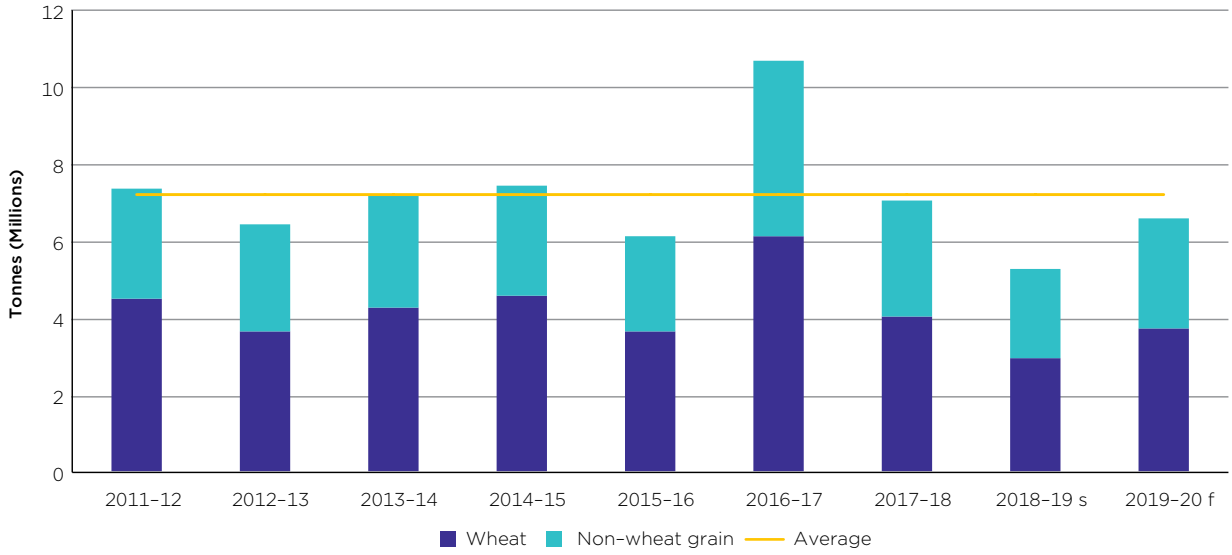
8.2 Key observations for SA in 2018–19

8.2.1 Production

SA grain production in 2018–19 was the lowest it has been since the 2008–09 season. The ACCC also makes the following observations about SA's production in the 2018–19 shipping year (see figure 8.5):

- SA produced 5.3 million tonnes of grain, 27 per cent below the eight year average.
- The upward trend in non-wheat grain production continued with 43 percent of production over the last three seasons (2016–17 to 2018–19) being non-wheat grains compared to 40 percent over the prior five seasons (2011–12 to 2015–16).
- SA production is forecast to rebound to 6.6 million tonnes in the 2019–20 season; however, this would still be 8 per cent below average.

Figure 8.5: SA annual grain production compared to eight year average, 2011–12 to 2018–19, and 2019–20 forecast

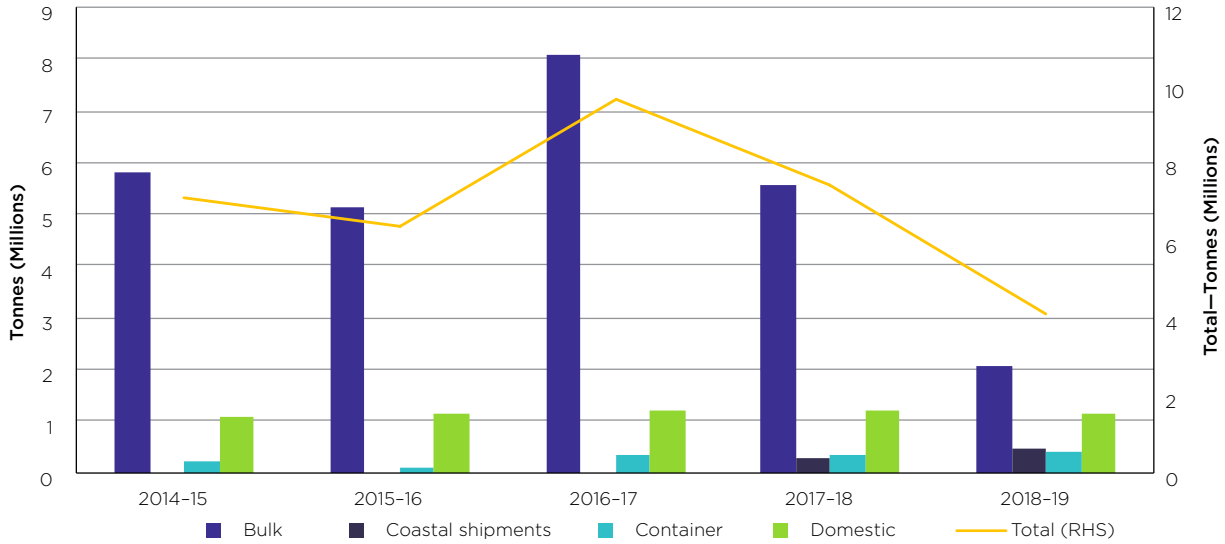


Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191.

Notes: s 2018–19 figures are ABARES estimates which are subject to revision. f 2019–20 figures are ABARES forecasts.

8.2.2 Grain usage

Figure 8.6: SA grain usage, 2014–15 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

The ACCC makes the following observations about SA's grain usage in the 2018–19 shipping year (see figure 8.6):

- Bulk shipments[19] from SA's eight port terminal facilities declined significantly from 5.9 million tonnes to 2.5 million tonnes, a decline of 57 per cent.
- Coastal shipments increased from 0.30 to 0.44 million tonnes, an increase of 49 per cent. Coastal shipments from SA were predominantly loaded at Port Lincoln (0.32 of the 0.44 million tonnes) and were received at Brisbane, Newcastle and Port Kembla.
- Container exports increased from 0.37 to 0.42 million tonnes (12 per cent increase), while domestic consumption marginally decreased from 1.19 to 1.18 million tonnes.

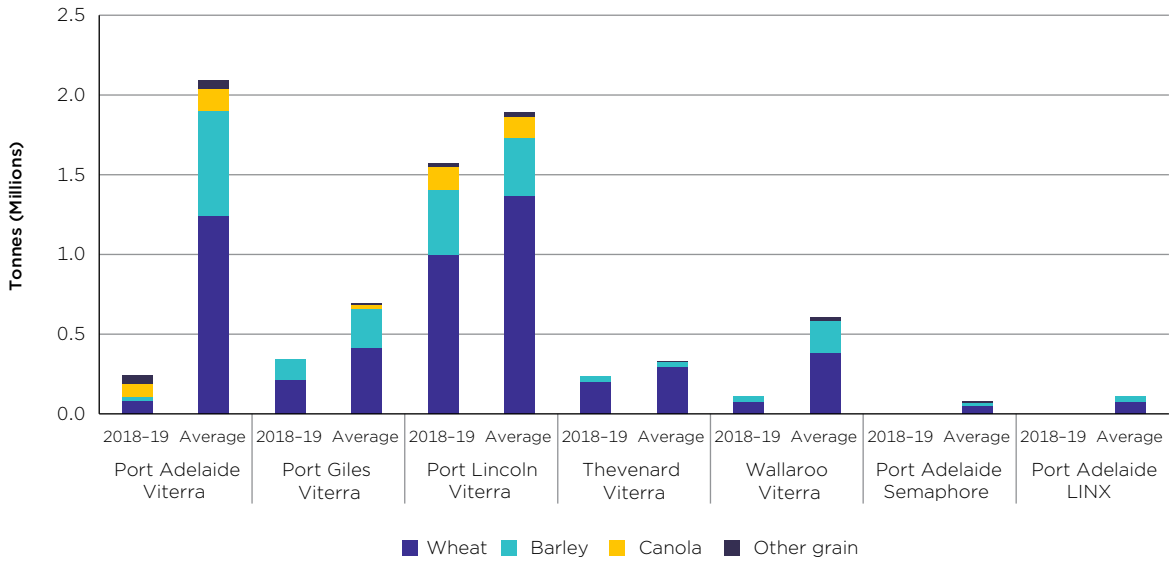
8.2.3 Bulk shipments

Figure 8.7 below shows the amount of grain that was shipped in bulk from each SA port terminal facility in the 2018–19 shipping year and compares it to the average amounts loaded over the last eight shipping years.

SA's lowest grain production season since 2008–09 translated into significantly below average bulk shipments from SA port terminal facilities. The ACCC makes the following observations about bulk grain shipments from SA during the 2018–19 shipping year:

- Viterra's Port Adelaide (88 per cent below average), Wallaroo (81 per cent below average) and Port Giles facilities (51 per cent below average) all operated well below average utilisation
- Viterra's Port Lincoln (17 per cent below average) and Thevenard (28 per cent below average) facilities also operated below average levels of utilisation
- newer entrant PTSPs LINX and Semaphore were not utilised.

Figure 8.7: Bulk shipments by port and commodity type, 2018–19 and eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

19 All bulk shipment figures are inclusive of coastal shipments throughout the SA state chapter.

8.2.4 Market share

As noted in section 7.2.4, market share data provides an indication of the general level of competition and access seeker participation in individual markets. The ACCC makes the following observations about access seeker market shares at SA port terminal facilities in the 2018–19 shipping year (see table 8.2):

- As is typically the case in low production years, an overall reduction in demand for Viterra's services corresponded in an increase in the market share of its trading arm, Glencore. Glencore's market share increased from 36 per cent to 43 per cent, its highest market share since the 2012–13 shipping year.
- CBH, SA's second highest exporter over the previous eight shipping years, also increased its market share, rising from 12 to 18 per cent of total shipments.
- The number of access seekers who acquired services was 10 compared with 14 in the 2017–18 shipping year.

Table 8.2: SA bulk shipment market share, 2011–12 to 2018–19

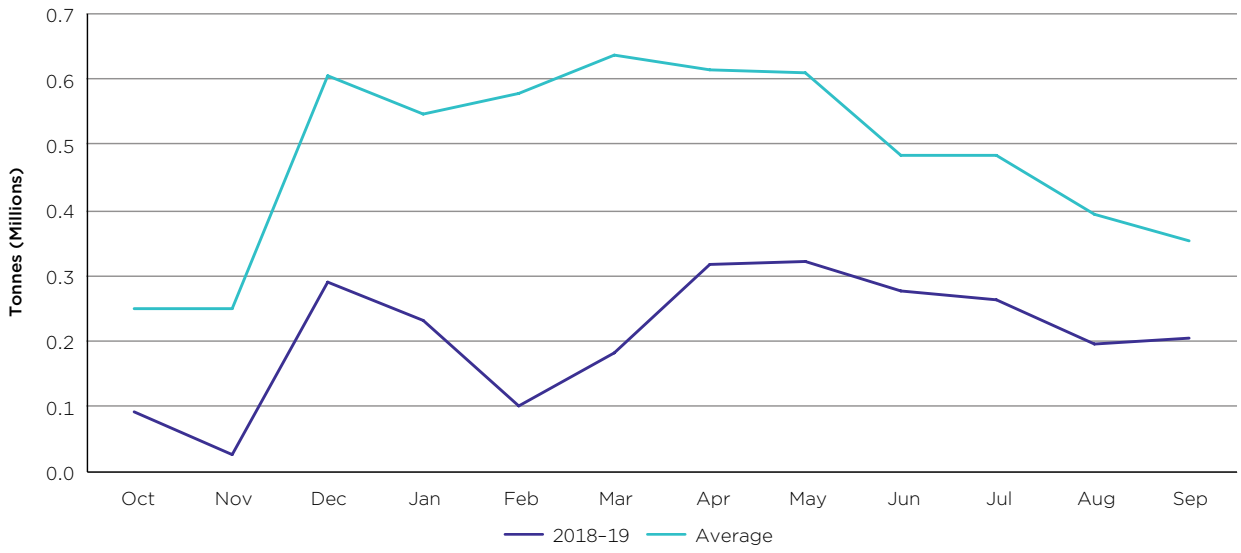
	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
Glencore	44%	45%	36%	30%	41%	42%	36%	43%
CBH	6%	13%	13%	13%	14%	12%	12%	18%
Cargill	20%	10%	12%	16%	7%	8%	6%	2%
ADM	13%	11%	12%	6%	7%	8%	6%	5%
Bunge	3%	5%	5%	3%	9%	6%	10%	8%
Others	14%	15%	21%	31%	22%	24%	29%	24%
Number of exporters	12	13	16	18	12	11	14	10

Source: PTSP loading statements; and ACF Shipping stem and market share report.

8.2.5 Shipment pace

Figure 8.8 shows that SA's shipment pace during the 2018–19 shipping year was significantly below average across all months.

Figure 8.8: SA bulk grain shipments by month, 2018–19 compared to eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

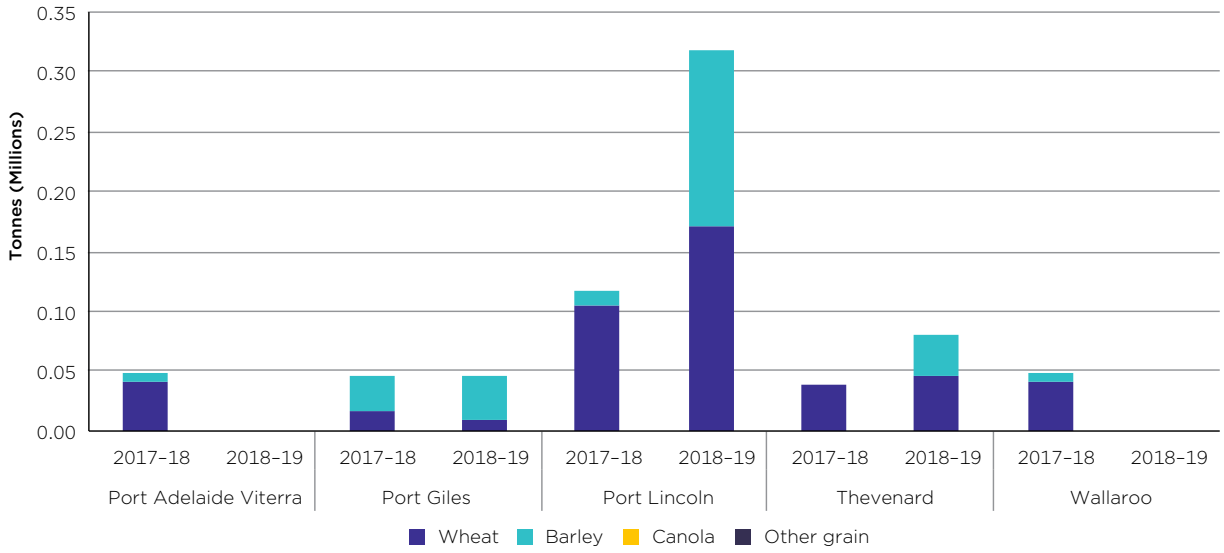
8.2.6 Coastal shipments

Coastal shipments from SA increased from 0.30 million tonnes in the 2017–18 shipping year to 0.44 million tonnes in the 2018–19 shipping year. Of the 2018–19 coastal shipments, 0.37 million tonnes were received in Brisbane with the balance received at Newcastle and Port Kembla.

As can be seen in figure 8.9:

- The majority of SA's coastal shipments in the 2017–18 and 2018–19 shipping years were loaded at Port Lincoln.
- While all of Viterra's facilities were used to facilitate coastal shipments in the 2017–18 shipping year, only Port Lincoln, Thevenard and Port Giles loaded coastal shipments in the 2018–19 shipping year.
- Both LINX's and Semaphore's Port Adelaide facilities did not load any coastal shipments in the 2017–18 or 2018–19 shipping years.

Figure 8.9: Coastal shipments by port in SA, 2017–18 and 2018–19



Source: PTSP loading statements; and ACF Shipping stem and market share report.

8.3 Port by port analysis

As noted in section 8.2, the ACCC's port by port analysis sections examines how a state's port terminal facilities were used in the most recent shipping year and analyses notable trends over time. The ACCC considers that this analysis provides an understanding of the level of competition in specific port zones.

Further details on how the ACCC conducts this analysis can be found in section 7.3.

8.3.1 SA capacity utilisation

Table 8.3 shows that during the 2018–19 shipping year the utilisation of all SA port terminal facilities (with the exception of Port Lincoln) was generally well below average during the peak shipping period and the shipping year overall.

The ACCC notes that the capacity figures used for Viterra's facilities in this report are inconsistent with the capacity figures provided by Viterra in its application for exempt service provider status.[20] Viterra has since provided the ACCC with updated capacity figures in the course of the exemption assessment process, which have subsequently been used in this report.

Table 8.3: Peak and yearly capacity utilisation by port, 2018–19 compared to eight year average

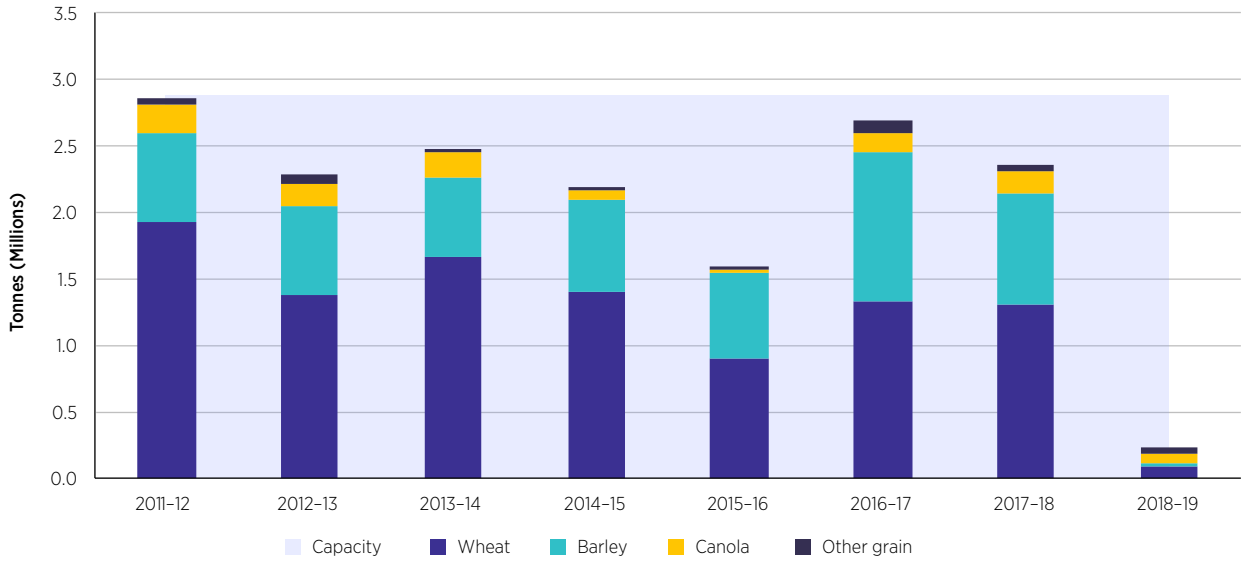
Port	Peak capacity utilisation		Yearly capacity utilisation	
	2018–19	Average	2018–19	Average
Port Adelaide Viterra	10%	80%	8%	73%
Port Giles Viterra	35%	74%	36%	72%
Port Lincoln Viterra	85%	94%	74%	89%
Thevenard Viterra	29%	56%	35%	48%
Wallaroo Viterra	10%	99%	17%	90%
Port Adelaide LINX	0%	73%	0%	71%
Port Adelaide Semaphore	0%	107%	0%	96%

Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

20 Information related to Viterra's exemption application can be found on the ACCC's website here: https://www.accc.gov.au/regulated-infrastructure/wheat-export/wheat-export-projects/viterra-wheat-port-exemption-assessment/exemption-application-issues-paper.

8.3.2 Bulk shipments from Viterra's Port Adelaide facilities declined substantially, were 88 per cent below average

Figure 8.10: Capacity utilisation by commodity at Viterra Port Adelaide, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Table 8.4: Exporter market share at Viterra Port Adelaide, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
Glencore	48%	49%	35%	34%	52%	55%	44%	52%
CBH	6%	16%	14%	10%	18%	15%	15%	0%
ADM	14%	12%	11%	6%	5%	7%	5%	0%
Cargill	15%	3%	8%	19%	0%	0%	2%	0%
Bunge	2%	3%	10%	5%	6%	7%	13%	7%
Others	14%	17%	22%	25%	19%	15%	21%	40%
Number of exporters	10	11	13	13	9	8	11	6

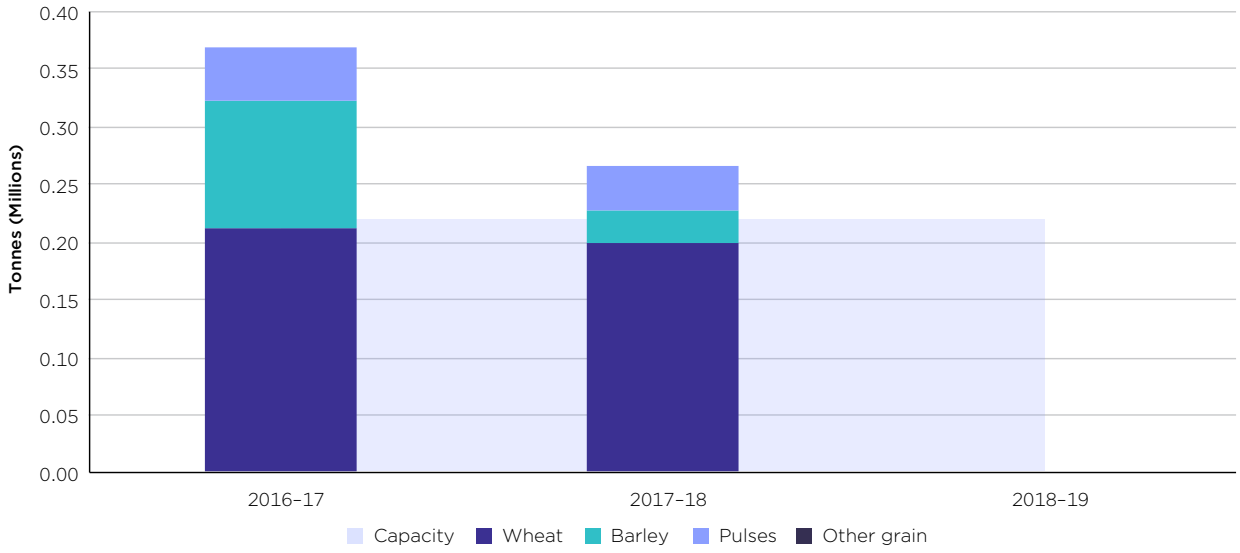
Source: PTSP loading statements; and ACF Shipping stem and market share report.

The ACCC makes the following observations about Viterra's Port Adelaide facilities during the 2018–19 shipping year:

- Traditionally SA's highest volume facilities (load an average of 2.1 million tonnes of grain for bulk shipment per year), Viterra's Inner Harbour and Outer Harbor facilities saw a decline of 88 per cent to only 0.24 million tonnes (see figure 8.10).
- The number of exporters who used Viterra's Port Adelaide facilities declined from 11 to 6 (see table 8.4).

8.3.3 There were no bulk grain shipments from Semaphore's Port Adelaide facility in the 2018–19 shipping year

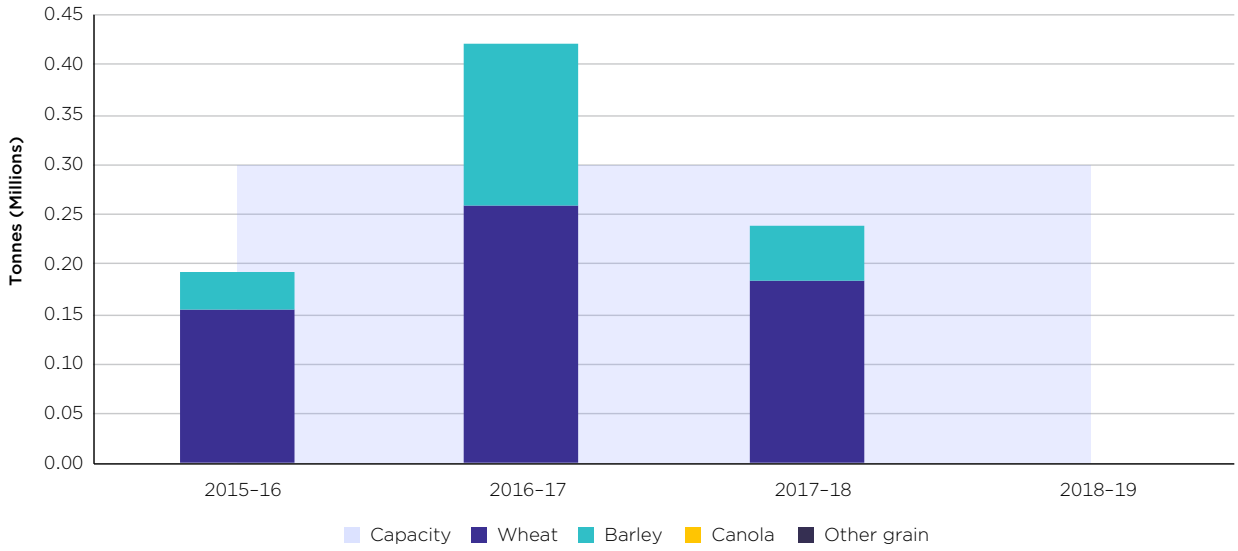
Figure 8.11: Capacity utilisation by commodity at Semaphore Port Adelaide, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

8.3.4 There were no bulk grain shipments from LINX's Port Adelaide facility in the 2018–19 shipping year

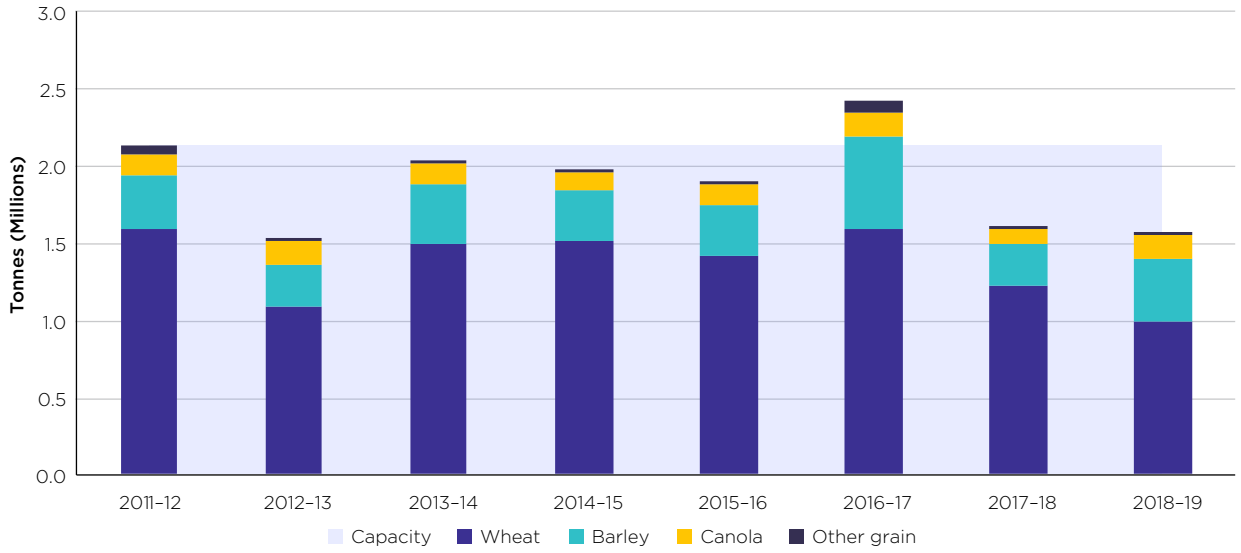
Figure 8.12: Capacity utilisation by commodity at LINX Port Adelaide, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

8.3.5 Despite significant reductions in overall bulk grain shipments from SA, shipments from Port Lincoln were just 17 per cent below average

Figure 8.13: Capacity utilisation by commodity at Viterra Port Lincoln, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Table 8.5: Exporter market share at Viterra Port Lincoln, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
Glencore	45%	46%	41%	33%	45%	41%	32%	37%
CBH	7%	10%	14%	19%	16%	15%	12%	23%
Cargill	25%	15%	14%	14%	5%	7%	5%	1%
ADM	7%	5%	11%	3%	6%	11%	9%	4%
COFCO	0%	0%	0%	1%	12%	12%	15%	12%
Others	17%	25%	21%	32%	17%	14%	26%	22%
Number of exporters	6	9	11	15	10	9	12	10

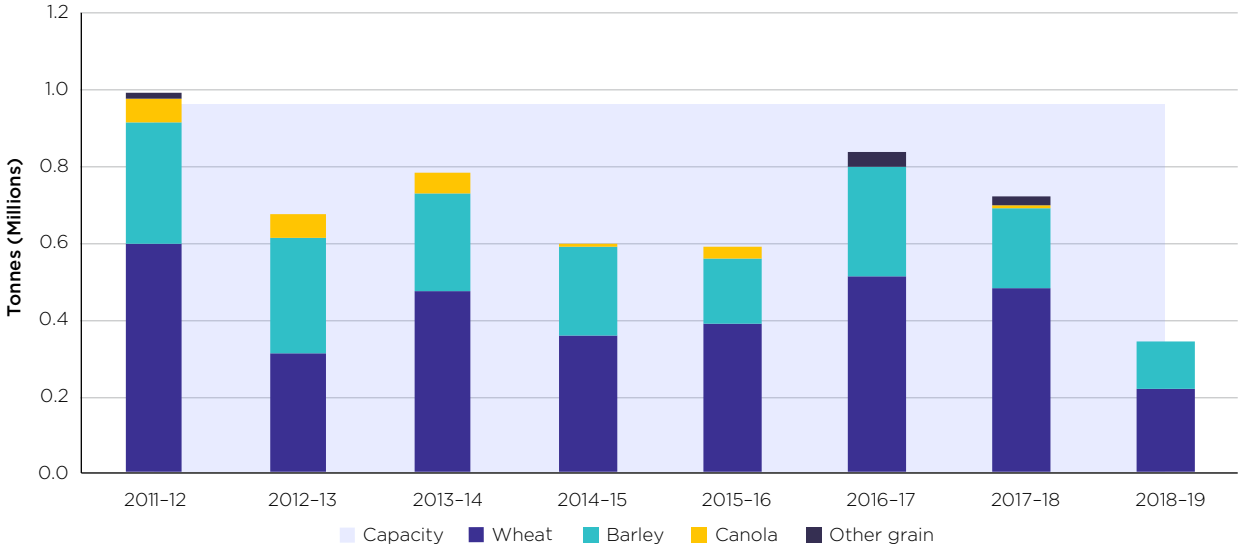
Source: PTSP loading statements; and ACF Shipping stem and market share report.

The ACCC makes the following observations about the utilisation of Viterra's Port Lincoln facility during the 2018–19 shipping year:

- Viterra's Port Lincoln facility was the only SA facility that operated close to its average utilisation (1.6 million tonnes shipped, only a 2 per cent decline and 17 per cent below average (see figure 8.13)).
- While overall capacity utilisation at Port Lincoln was similar to 2017–18 levels, peak period utilisation declined 19 percentage points and was 9 percentage points below average (see table 8.3).
- Table 8.5 shows a total of 10 exporter's secured capacity at Port Lincoln, declining from 12 in the 2017–18 shipping year.

8.3.6 Port Giles bulk shipments declined by over half

Figure 8.14: Capacity utilisation by commodity at Viterra Port Giles, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Table 8.6: Exporter market share at Viterra Port Giles, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
Glencore	28%	50%	41%	30%	39%	42%	38%	57%
Cargill	26%	14%	20%	21%	9%	4%	0%	8%
Bunge	13%	8%	8%	0%	19%	13%	14%	22%
ADM	18%	16%	11%	9%	4%	9%	0%	0%
CBH	4%	13%	4%	12%	10%	9%	15%	12%
Others	11%	0%	17%	28%	18%	24%	33%	2%
Number of exporters	10	5	6	8	9	9	6	5

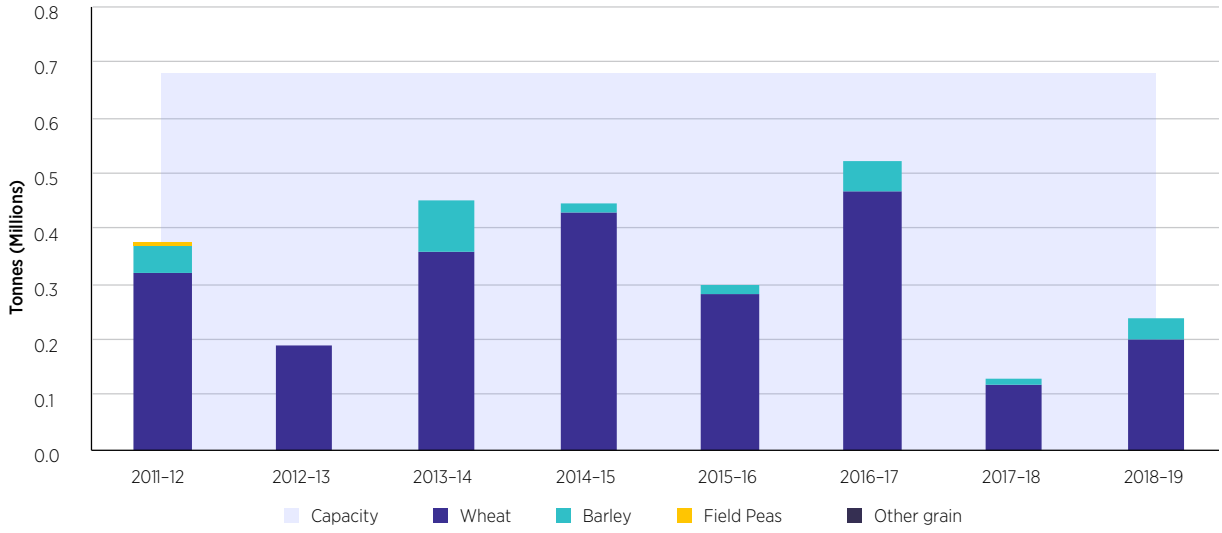
Source: PTSP loading statements; and ACF Shipping stem and market share report.

The ACCC makes the following observations about the utilisation of Viterra's Port Giles facility during the 2018–19 shipping year:

- Figure 8.14 shows bulk shipments of grain declined from 0.72 million tonnes to 0.34 million tonnes, the lowest amount over the last eight shipping years and 51 per cent below average.
- While bulk shipments were substantially reduced, the number of exporters that used the Port Giles facility declined only slightly from six to five (see table 8.6).

8.3.7 Shipments from Thevenard increased, but were still 28 percent below average

Figure 8.15: Capacity utilisation by commodity at Viterra Thevenard, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Table 8.7: Exporter market share at Viterra Thevenard, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
Glencore	28%	0%	40%	25%	10%	27%	23%	39%
ADM	24%	27%	10%	11%	30%	23%	46%	27%
Emerald	30%	22%	23%	17%	0%	0%	0%	0%
Cargill	12%	39%	9%	8%	7%	0%	0%	0%
COFCO	0%	0%	0%	5%	13%	17%	0%	19%
Others	5%	12%	18%	34%	39%	34%	31%	16%
Number of exporters	5	4	6	10	8	5	4	5

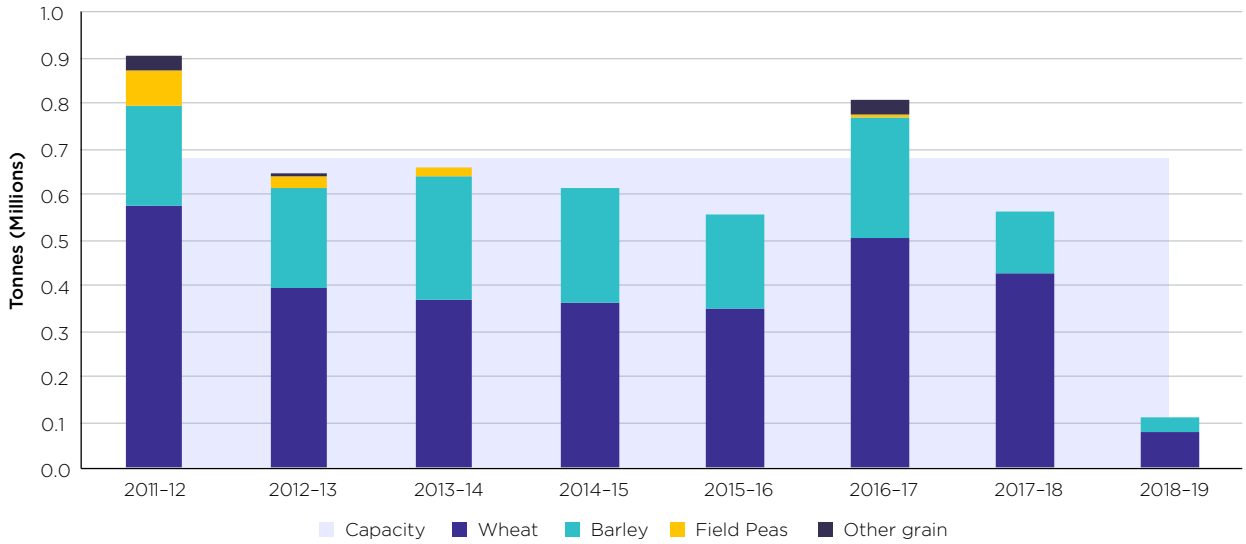
Source: PTSP loading statements; and ACF Shipping stem and market share report.

The ACCC makes the following observation about the utilisation of Viterra's Thevenard facility during the 2018–19 shipping year:

- Shipments increased to 0.24 million tonnes in the 2018–19 shipping year, up from 0.13 million tonnes shipped last season, but were still 28 per cent below average (see figure 8.15).
- Table 8.7 shows that Glencore's market share increased 16 percentage points.

8.3.8 Shipments from Wallaroo declined significantly and were 81 per cent below average

Figure 8.16: Capacity utilisation by commodity at Viterra Wallaroo, 2011–12 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Table 8.8: Exporter market share at Viterra Wallaroo, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
Glencore	51%	41%	12%	12%	30%	48%	40%	78%
CBH	8%	12%	18%	15%	10%	16%	8%	22%
Bunge	7%	13%	0%	10%	19%	16%	18%	0%
ADM	9%	9%	24%	14%	8%	3%	8%	0%
Cargill	21%	13%	18%	17%	0%	0%	0%	0%
Others	4%	12%	28%	33%	33%	17%	26%	0%
Number of exporters	7	8	10	11	7	7	8	2

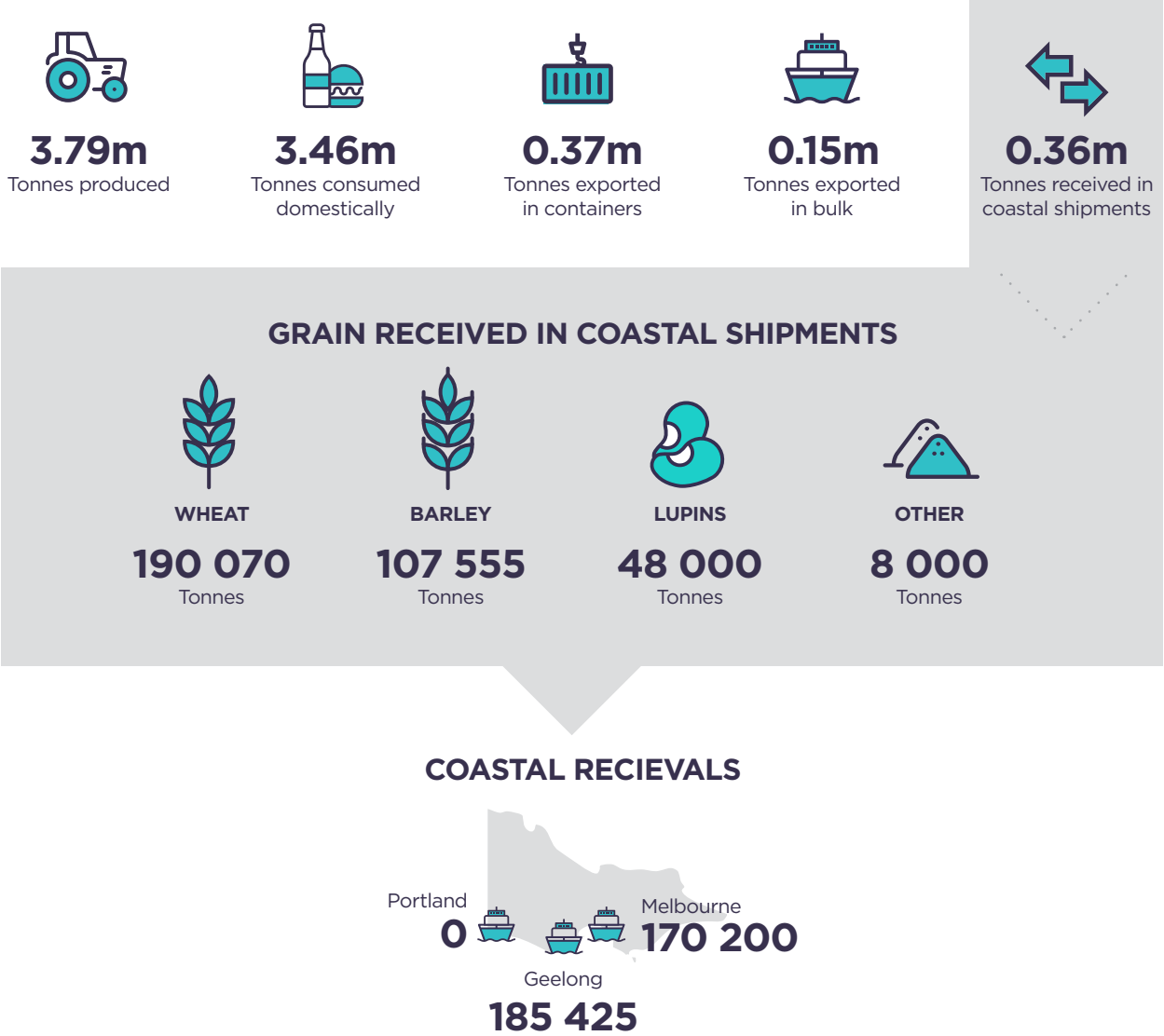
Source: PTSP loading statements; and ACF Shipping stem and market share report.

The ACCC makes the following observations about the utilisation of Viterra's Wallaroo facility during the 2018–19 shipping year:

- Bulk grain shipments declined from 0.56 million tonnes to 0.11 million tonnes, an 81 per cent reduction (figure 8.16).
- Glencore and CBH were the only two exporters to use the facility (table 8.8).

9. Victoria

Figure 9.1: Victoria key results in 2018–19



Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191; PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

9.1 Overview of Victoria

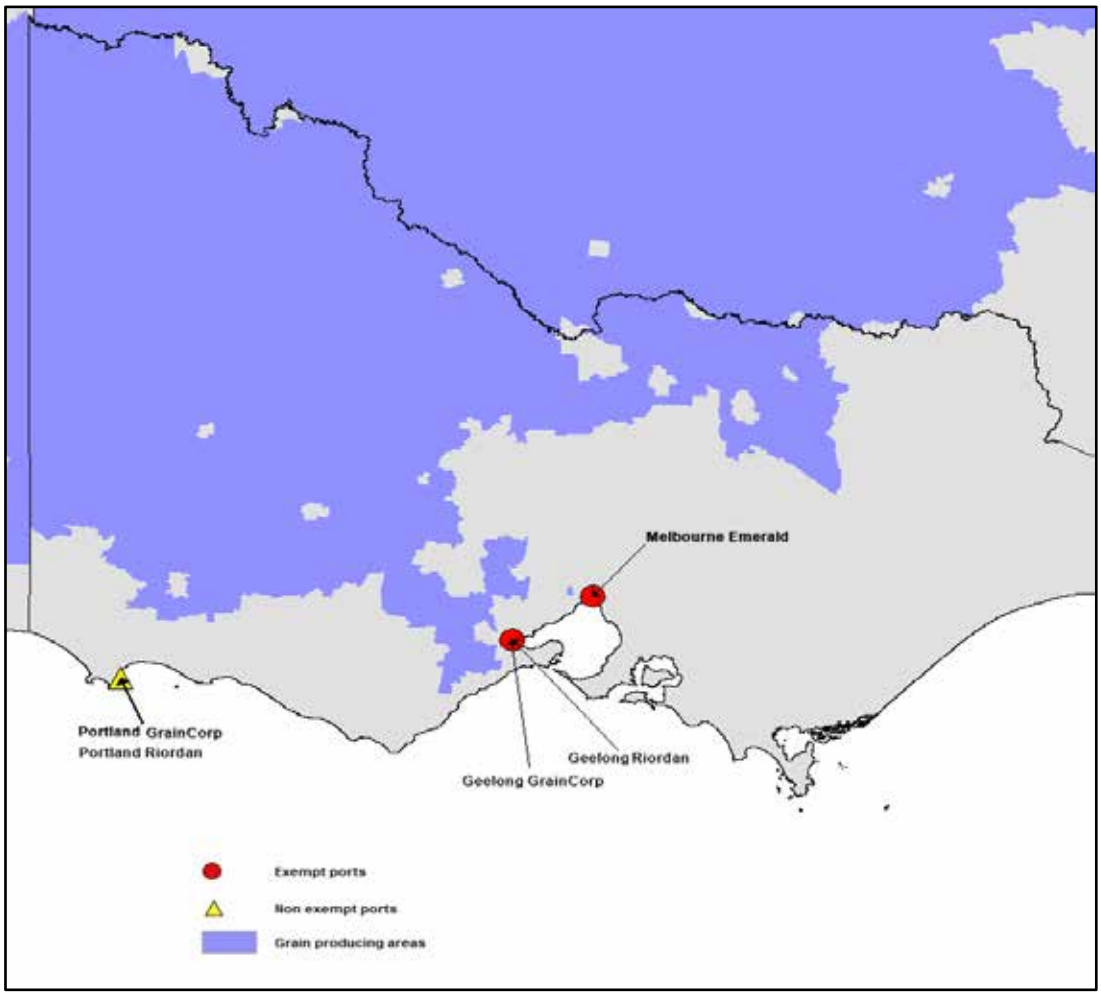
Victoria produces 6.4 million tonnes of grain on average each year with wheat being Victoria's largest crop, making up 50 per cent of its production over the last eight years.

Victoria is Australia's third biggest shipper of bulk grain (11 per cent of national exports) and largest container exporter (40 per cent of national exports). Victoria also consumes the second largest amount of domestic grain (accounting for 25 per cent of national consumption).

Victoria has four bulk export port terminal facilities. GrainCorp operates facilities at Geelong and Portland, Emerald operates a facility at Melbourne and Riordan operates a mobile ship loading facility that moves between Geelong and Portland.

GrainCorp has been the dominant PTSP in Victoria, facilitating 72 per cent of all exports since 2011–12 (table 9.1).

Figure 9.2: Map of Victorian port terminal facilities and grain growing regions



Source: ABS, 7121.0—Agricultural Commodities, Australia, 2015–16 SA2 data, and company websites.

Note: Riordan operates at either Portland or Geelong at any given time.

Table 9.1: Victoria port terminal facility market share of grain throughput

Port	Percentage share of throughput 2018–19	Percentage share of throughput since 2011–12	Percentage share of throughput since 2016–17*
Geelong Riordan	0%	2%	6%
Portland Riordan	0%	0%	1%
Geelong GrainCorp	100%	56%	59%
Melbourne Emerald	0%	26%	24%
Portland GrainCorp	0%	15%	10%
GrainCorp Total:	100%	72%	69%
Others Total:	0%	28%	31%

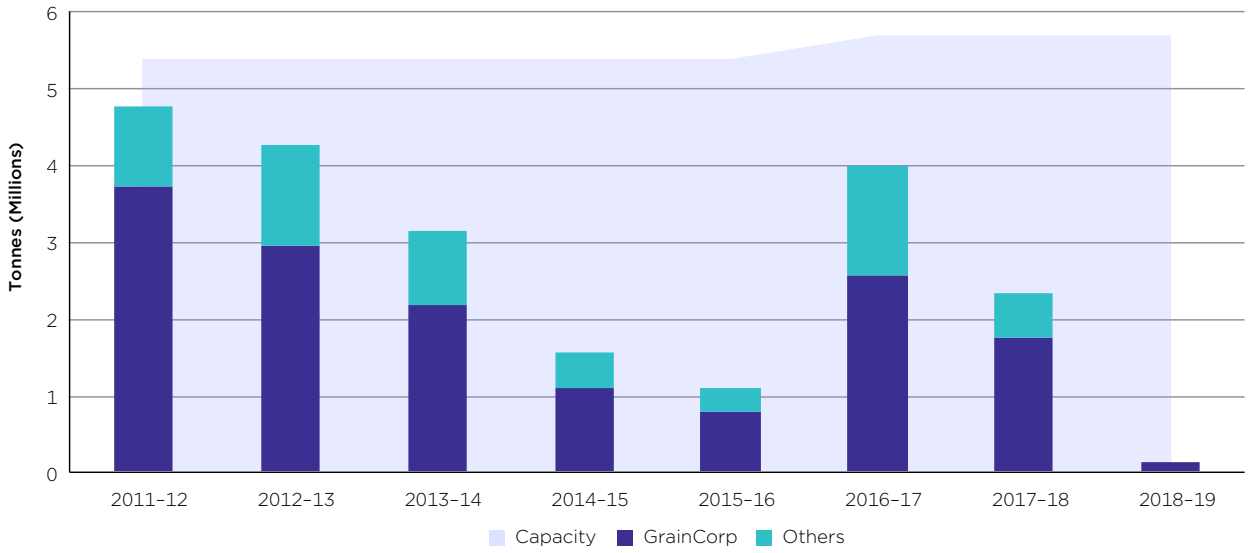
Source: PTSP loading statements; and ACF Shipping stem and market share report.

Notes: * Riordan began operations with their mobile ship loader in the 2016–17 season.

Table 9.1 also shows that GrainCorp's Geelong facility performed all of the bulk grain export shipments from Victoria in the 2018–19 shipping year, however, as figures 9.3 and 9.4 below demonstrate, exports from Victoria were minimal.

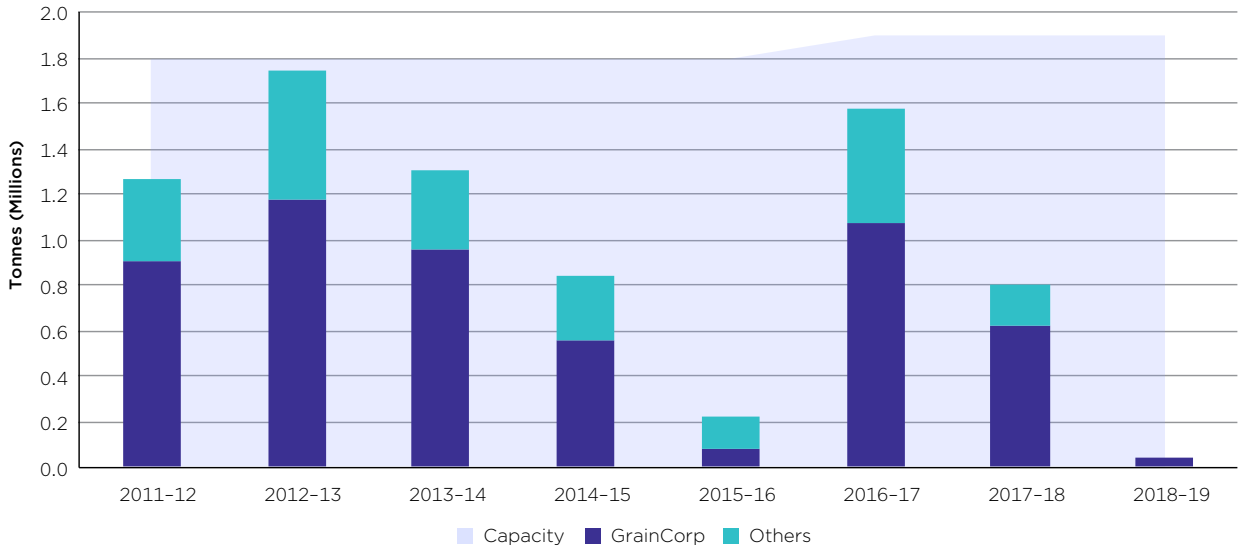
Figures 9.3 and 9.4 also show that with the exception of 2016–17, overall capacity (and to a lesser extent, peak period capacity) utilisation has been relatively low at Victorian ports since the 2013–14 shipping year. The ACCC notes the increase in Victoria's port terminal capacity in 2016–17 was due to Riordan commencing operations with their mobile ship loader.

Figure 9.3: Grain loaded by PTSP in Victoria



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Figure 9.4: Grain loaded during the peak period by PTSP in Victoria



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

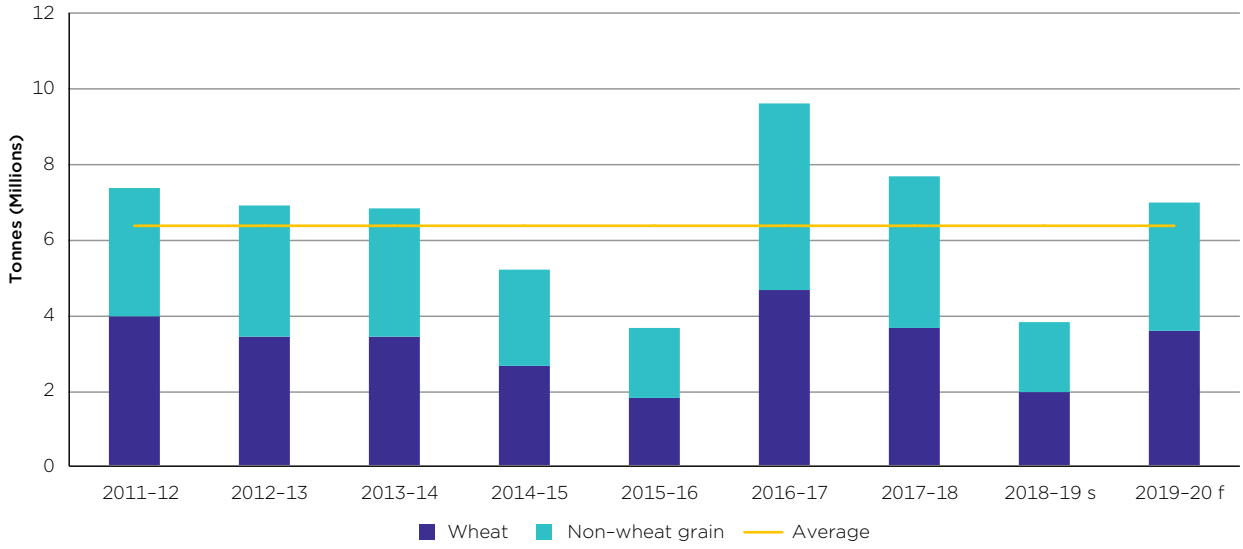
9.2 Key observations for Victoria in 2018–19

9.2.1 Production

After two of the highest production seasons in Victoria's history, production declined by over half and fell to its second lowest level in the last 12 seasons. The ACCC also makes the following observations about Victorian grain production in 2018–19 shipping year (see figure 9.5):

- Victoria produced 3.8 million tonnes of grain, as noted the second lowest level in the last 12 seasons.
- Production declined by 51 per cent from the previous year and was 40 per cent below the eight year average of 6.4 million tonnes.
- Production is forecast to increase to 7.0 million tonnes in 2019–20, which would be 10 per cent above average levels.

Figure 9.5: Victorian annual grain production compared to eight year average, 2011–12 to 2018–19, and 2019–20 forecast

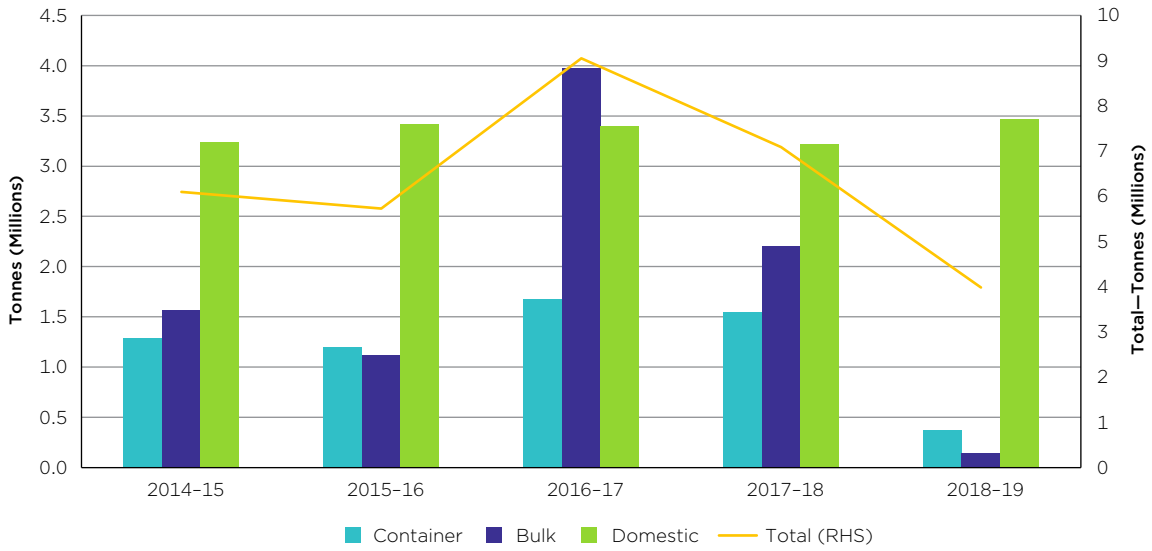


Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191.

Notes: s 2018–19 figures are ABARES estimates which are subject to revision. f 2019–20 figures are ABARES forecasts.

9.2.2 Grain usage

Figure 9.6: Victoria's grain usage, 2014–15 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

The ACCC makes the following observations about Victoria's grain usage (see figure 9.6):

- Victoria's domestic consumption volumes have been relatively stable over the last five shipping years (between 3.2 and 3.5 million tonnes).
- Victoria's production in 2018–19 fell by 51 per cent to 3.8 million tonnes, while domestic consumption in Victoria increased by seven per cent to 3.5 million tonnes (which is three per cent above the five year average). This meant that Victoria's 'exportable surplus' was almost completely eliminated.
- There were only three bulk export shipments out of Victoria, with GrainCorp (PTSP) loading 0.15 million tonnes of wheat and canola for GrainCorp (exporter) and Cargill at its Geelong facility. Bulk exports from Victoria declined 94 per cent and were 94 per cent below average over the last eight shipping years.

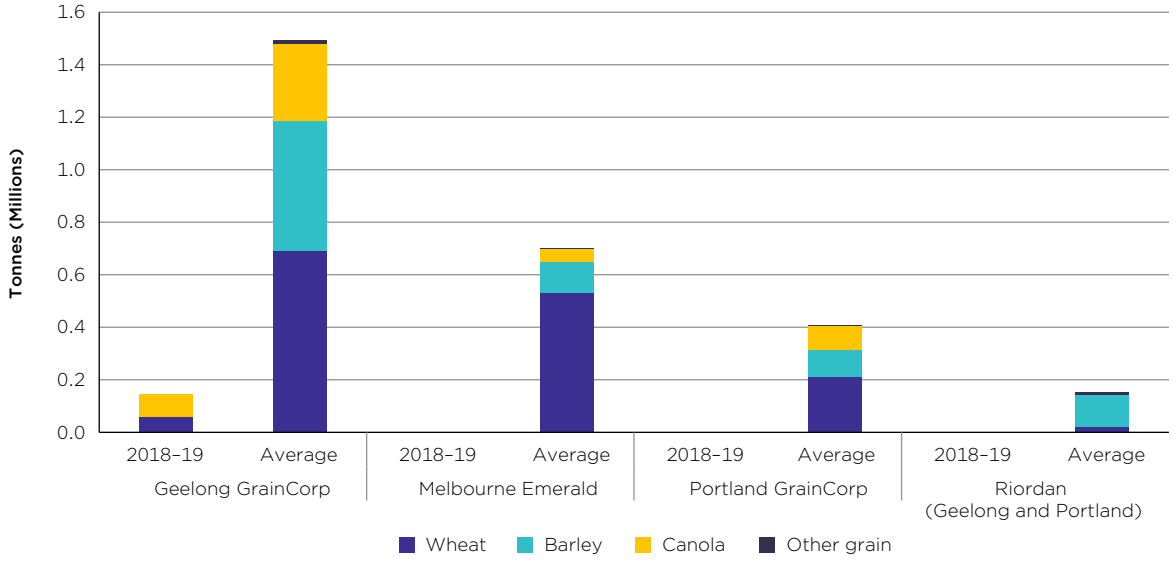
- Victoria also has one of Australia's largest and most stable containerised export markets, however, in the 2018–19 shipping year only 0.37 million tonnes were exported via containers (69 per cent below average).

9.2.3 Bulk shipments

As noted above, and below in figure 9.7, there were only three bulk export shipments (totalling 0.15 million tonnes) out of Victoria in the 2018–19 shipping year. These consisted of two shipments of canola (combined 0.09 million tonnes) and one of wheat (0.06 million tonnes). All three of these shipments were exported out of GrainCorp's Geelong facility.

Total Victorian bulk grain shipments[21] were therefore significantly below the eight year average of 2.7 million tonnes.

Figure 9.7: Bulk shipments by port and commodity type, 2018–19 and eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

9.2.4 Market share

GrainCorp (two shipments) and Cargill (one shipment) were the only two exporters to secure access in the 2018–19 shipping year in Victoria.

For completeness, table 9.2 illustrates access seeker market shares since the 2011–12 shipping year. The ACCC will observe how the market reacts once grain production improves.

21 Victoria performed a small amount of coastal shipments in the 2017–18 season. Accordingly, all shipment averages are inclusive of these coastal shipments.

Table 9.2: Victoria bulk shipment market share, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
GrainCorp	20%	16%	33%	39%	41%	26%	55%	68%
Emerald	12%	17%	21%	12%	22%	27%	15%	0%
Cargill	25%	19%	16%	17%	9%	13%	10%	32%
Glencore	23%	16%	10%	5%	4%	7%	3%	0%
ADM	5%	10%	9%	14%	2%	7%	1%	0%
Others	14%	20%	10%	12%	21%	21%	16%	0%
Number of exporters	10	11	10	9	9	11	9	2

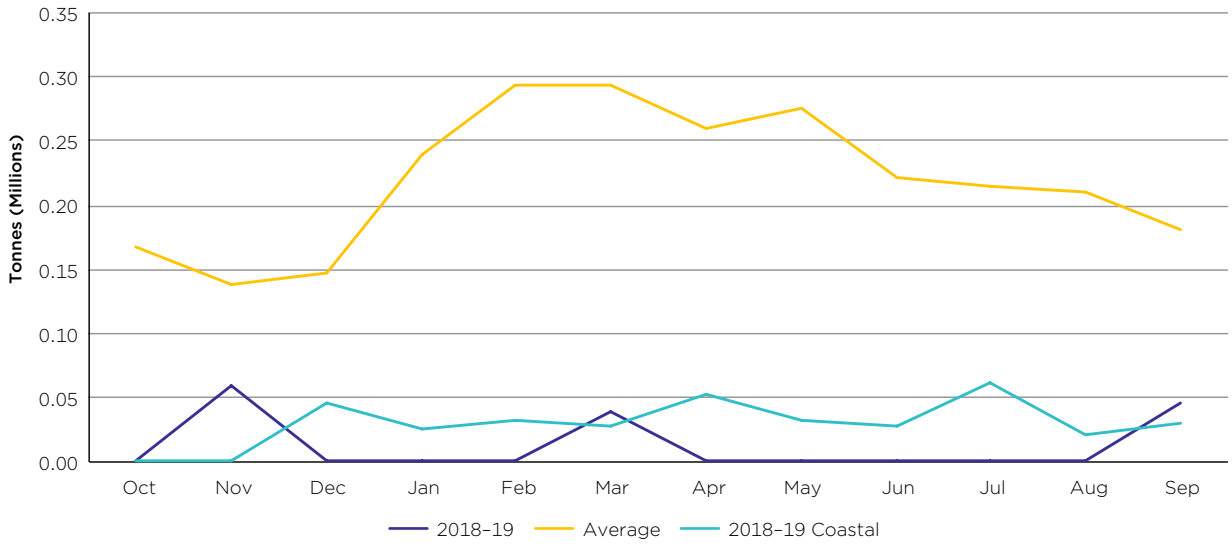
Source: PTSP loading statements; and ACF Shipping stem and market share report.

9.2.5 Shipment and coastal receivals pace

As is the case with exporter market shares, the ACCC notes that there is little to observe regarding the pace of exports from Victoria in the 2018–19 shipping year, other than to note that the three shipments of grain, all of which were exported from GrainCorp's Geelong facility, were exported in November 2018, March 2019 and September 2019.

Figure 9.8 therefore focuses on the pace of coastal shipment **receivals** at Victoria's ports which were low, but at a consistent level between November 2018 and September 2019.

Figure 9.8: Victorian bulk grain shipments and coastal shipment receivals by month, 2018–19 compared to eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

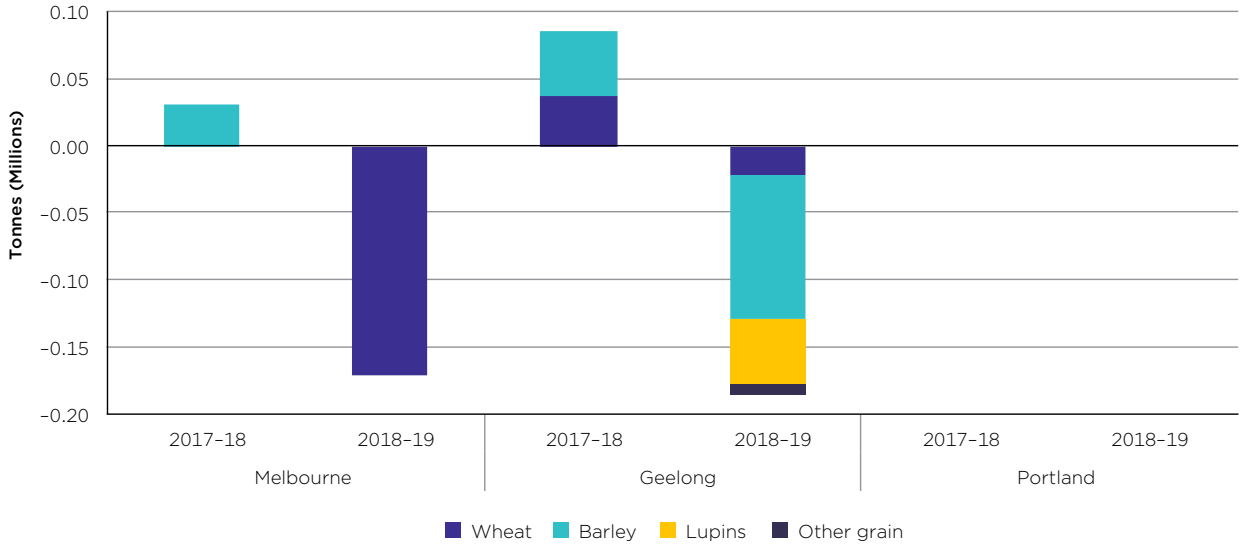
9.2.6 Coastal shipments

After 0.12 million tonnes of grain were shipped from Victoria to NSW and Queensland in the 2017–18 shipping year, Victorian ports received 0.36 million tonnes of grain in the 2018–19 shipping year, all from WA.

Figure 9.9 below shows the breakdown of coastal shipments in the 2017–18 and 2018–19 shipping years by port and commodity. The ACCC makes the following observations about coastal shipment receivals in Victoria during the 2018–19 shipping year:

- Melbourne received 0.17 million tonnes of wheat, after sending out 0.03 million tonnes of barley in the last shipping year.
- Geelong received 0.19 million tonnes of grain (0.11 million tonnes of which was barley), after sending out a total of 0.09 million tonnes of grain, comprised entirely of wheat and barley, in the 2017–18 shipping year.
- Portland has not sent or received any coastal shipments over the last two shipping years.

Figure 9.9: Coastal shipments and receivals by port in Victoria, 2017–18 and 2018–19



Source: PTSP loading statements; and ACF Shipping stem and market share report.

Notes: Positive values represent outgoing coastal shipments, and negative values represent incoming coastal shipments.

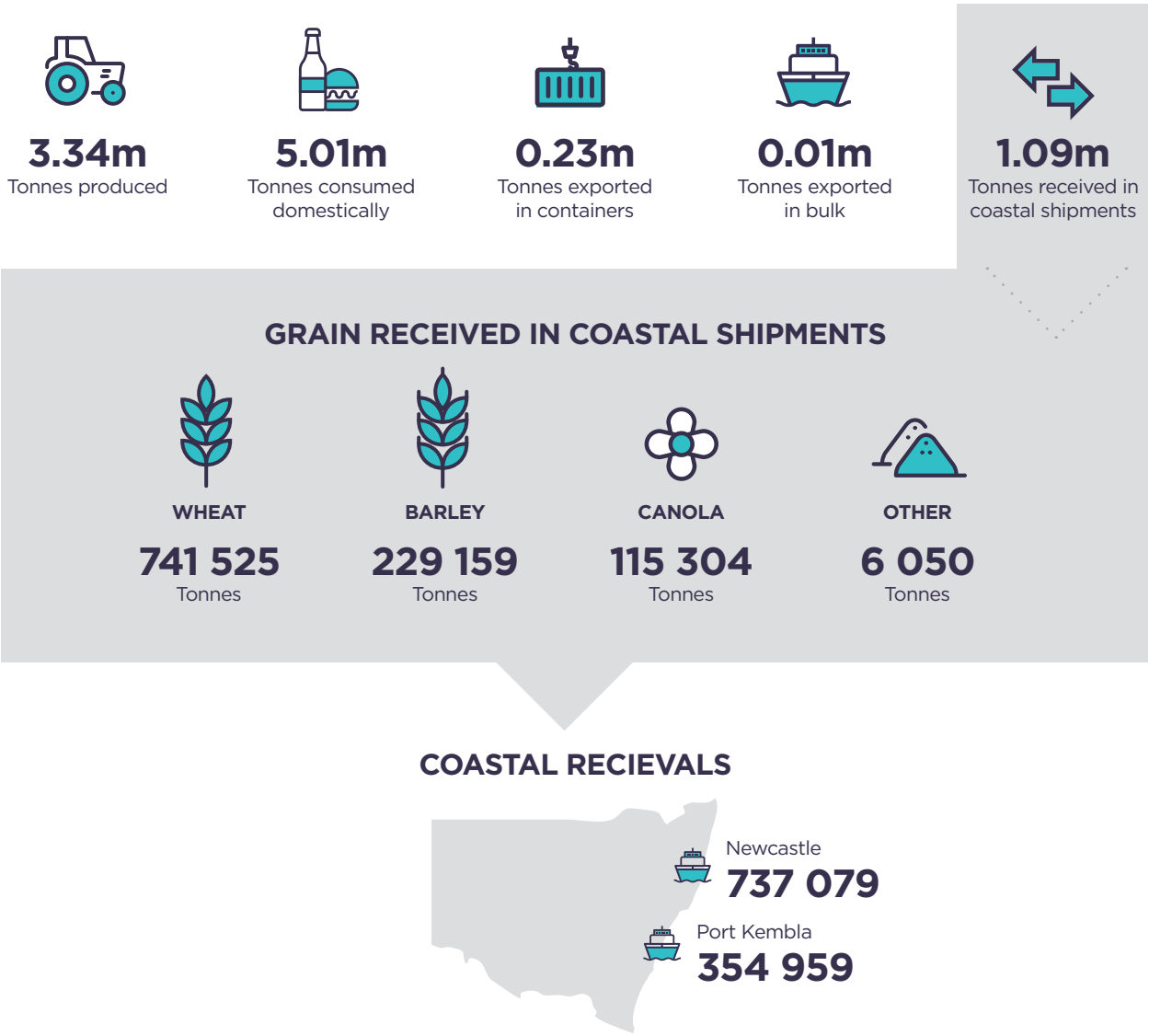
9.3 Port by port analysis

As noted earlier in this chapter there were only 0.06 million tonnes of wheat and 0.09 million tonnes of barley exported in bulk from Victoria in the 2018–19 shipping year.

Accordingly, the ACCC does not have the ability to conduct a meaningful port by port analysis for Victoria this year.

10. New South Wales

Figure 10.1: New South Wales key results in 2018–19



Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191; PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

10.1 Overview of New South Wales

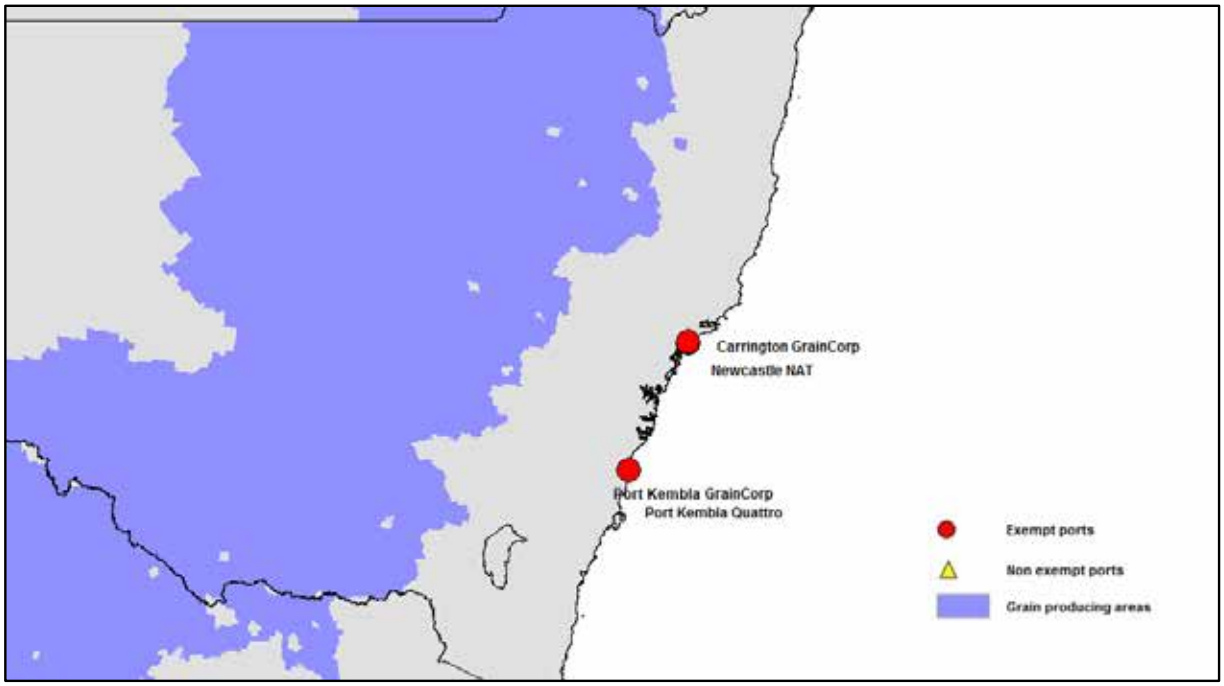
NSW is, on average, Australia's second largest producer of grain (behind only WA) producing 10.9 million tonnes per year, 25 per cent of national output.

NSW is Australia's largest consumer of domestic grain, consuming around 4.6 million tonnes per year (representing 34 per cent of national consumption). NSW is also Australia's second smallest bulk grain shipment state (Queensland is the lowest), but second highest containerised export state (behind Victoria).

Three port terminal service providers currently operate in NSW. GrainCorp operates port terminal facilities at Carrington (Newcastle) and Port Kembla, Newcastle Agri Terminal (NAT) operates a facility at Newcastle, and Quattro operates a facility at Port Kembla.

Table 10.1 below shows that GrainCorp has remained the largest PTSP in NSW since the 2015–16 shipping year, when Quattro and NAT began operations, facilitating 59 per cent of all throughput in the interim.

Figure 10.2: Map of NSW port terminal facilities and grain growing regions



Source: ABS, 7121.0—Agricultural Commodities, Australia, 2015–16 SA2 data, and company websites.

Table 10.1: NSW port terminal facility market share of grain throughput

Port	Percentage share of throughput 2018–19	Percentage share of throughput since 2011–12	Percentage share of throughput since 2015–16*
Port Kembla Quattro	0%	5%	14%
Carrington GrainCorp	100%	32%	27%
Newcastle NAT	0%	10%	26%
Port Kembla GrainCorp	0%	53%	32%
GrainCorp Total:	100%	85%	59%
Others Total:	0%	15%	41%

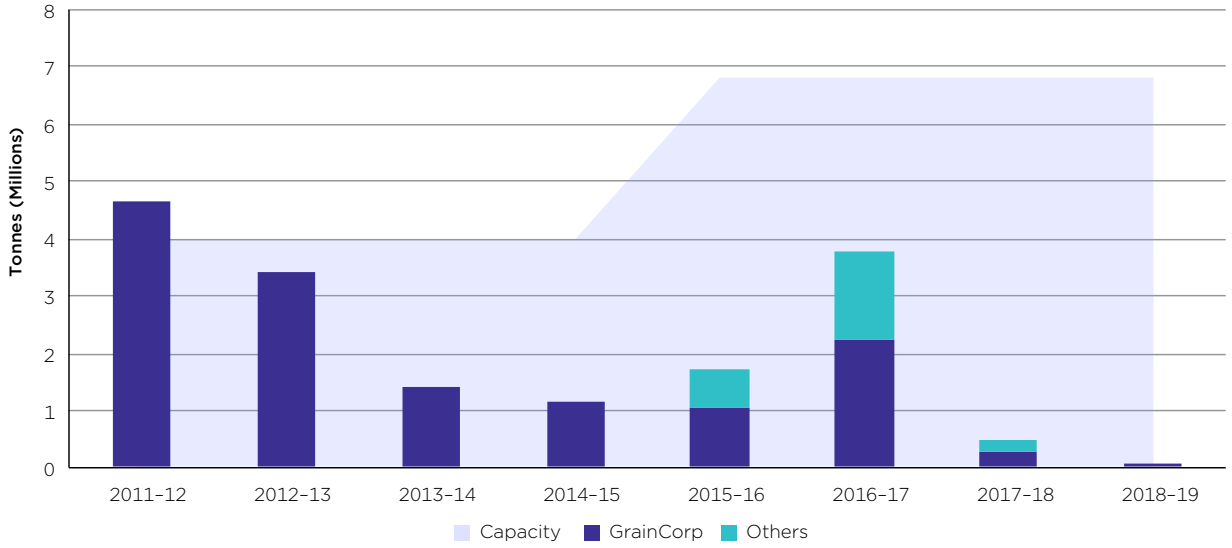
Source: PTSP loading statements; and ACF Shipping stem and market share report.
Note: * Port Kembla Quattro and Newcastle NAT began operations in 2015–16.

Table 10.1 also shows that GrainCorp's Carrington facility performed all NSW's small amount of shipments during the 2018–19 shipping year (see figure 10.3).

Figures 10.3 and 10.4 demonstrate the extent to which drought conditions have impacted exports over the last two shipping years. They also show that prior to the drought, including during the bumper 2016–17 harvest, the introduction of NAT and Quattro has meant that there has been ample excess port terminal capacity in NSW.

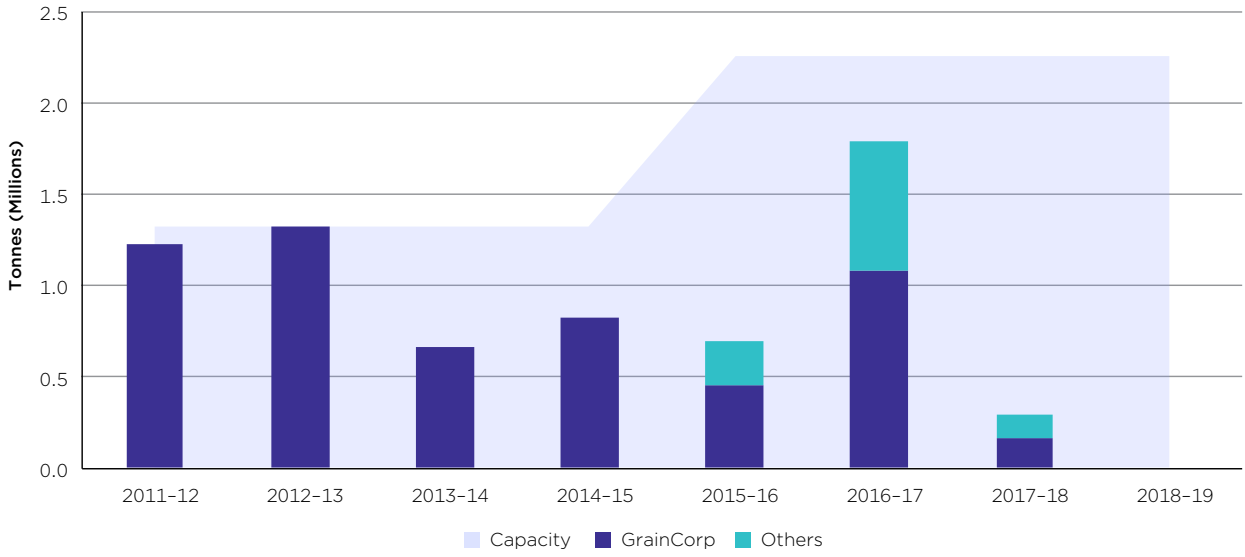
The ACCC also notes the increase in NSW's port terminal capacity in the 2015–16 shipping year was due to NAT's Newcastle and Quattro's Port Kembla facilities commencing operations.

Figure 10.3: Grain loaded by PTSP in NSW



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Figure 10.4: Grain loaded during the peak period by PTSP in NSW



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

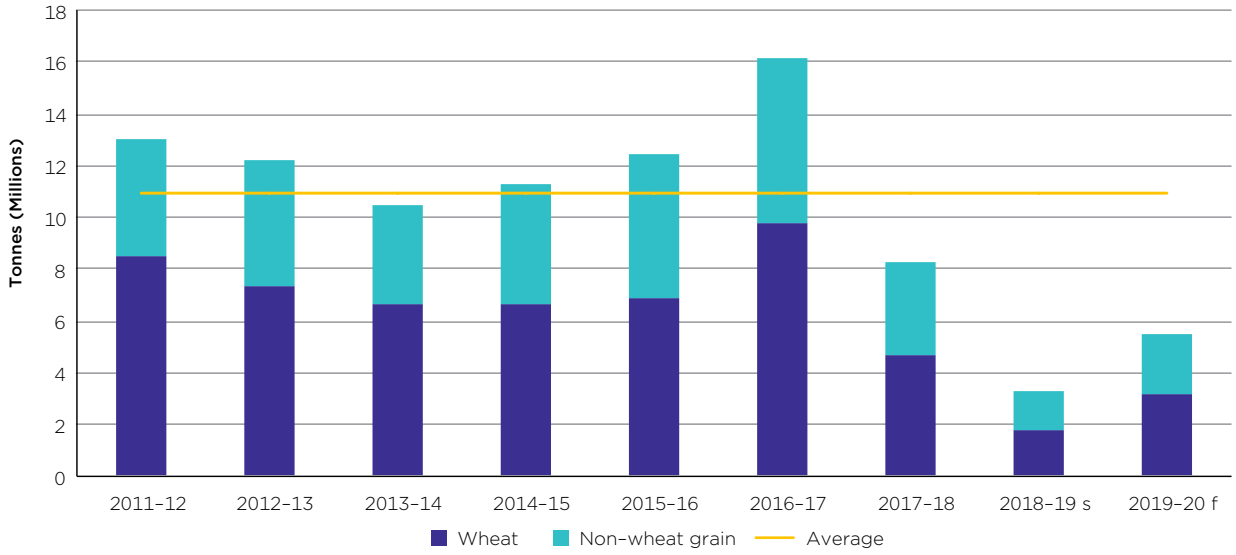
10.2 Key observations for NSW in 2018–19

10.2.1 Production

Figure 10.5 below shows the impact that drought conditions have had on crop production in the last two seasons. The ACCC makes the following observations about NSW production in 2018–19:

- Grain production was just 3.3 million tonnes, 69 per cent below the average of 10.9 million tonnes and less than half of what was produced in the drought-affected 2017–18 season.
- Production was at its lowest level since 1994–95.
- NSW production is expected to increase in the 2019–20 season to 5.4 million tonnes, though this would still be 50 per cent below average.

Figure 10.5: NSW annual grain production compared to eight year average, 2011–12 to 2018–19, and 2019–20 forecast

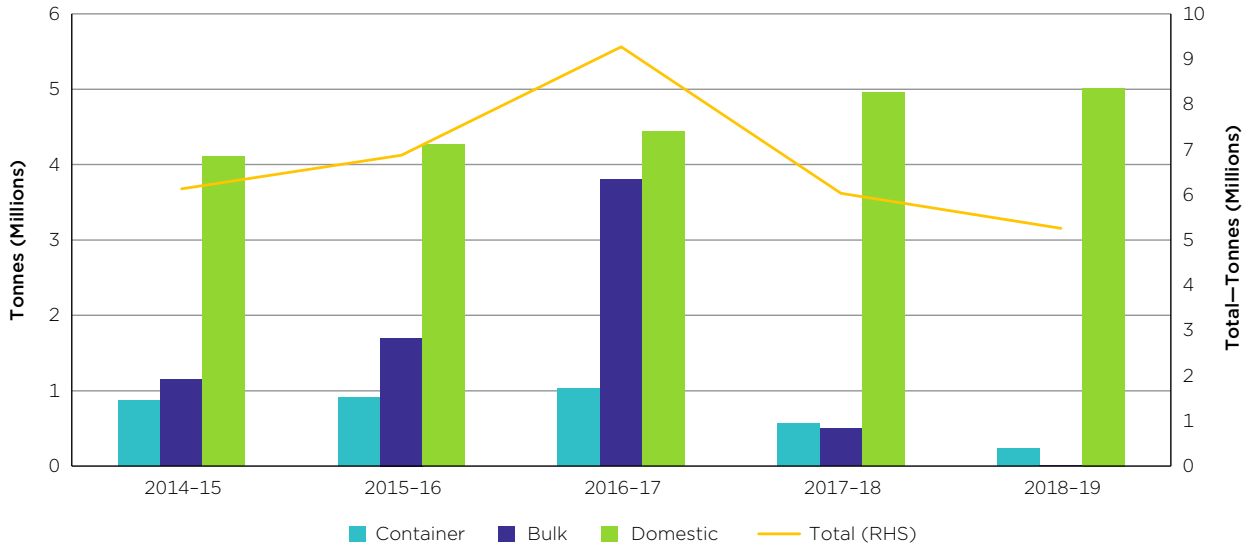


Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191.

Notes: s 2018–19 figures are ABARES estimates which are subject to revision. f 2019–20 figures are ABARES forecasts.

10.2.2 Grain usage

Figure 10.6: NSW's grain usage, 2014–15 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

The ACCC makes the following observations about NSW's grain usage during the 2018–19 shipping year (see figure 10.6):

- Domestic demand increased slightly to just over 5 million tonnes, while production fell significantly from 8.3 to 3.3 million tonnes, necessitating an increase in the amount of grain sourced from other states and from overseas (0.30 million tonnes of wheat was imported from Canada[22]).
- NSW exported 0.23 million tonnes of grain via container, which is 68 per cent below the average of 0.72 million tonnes.

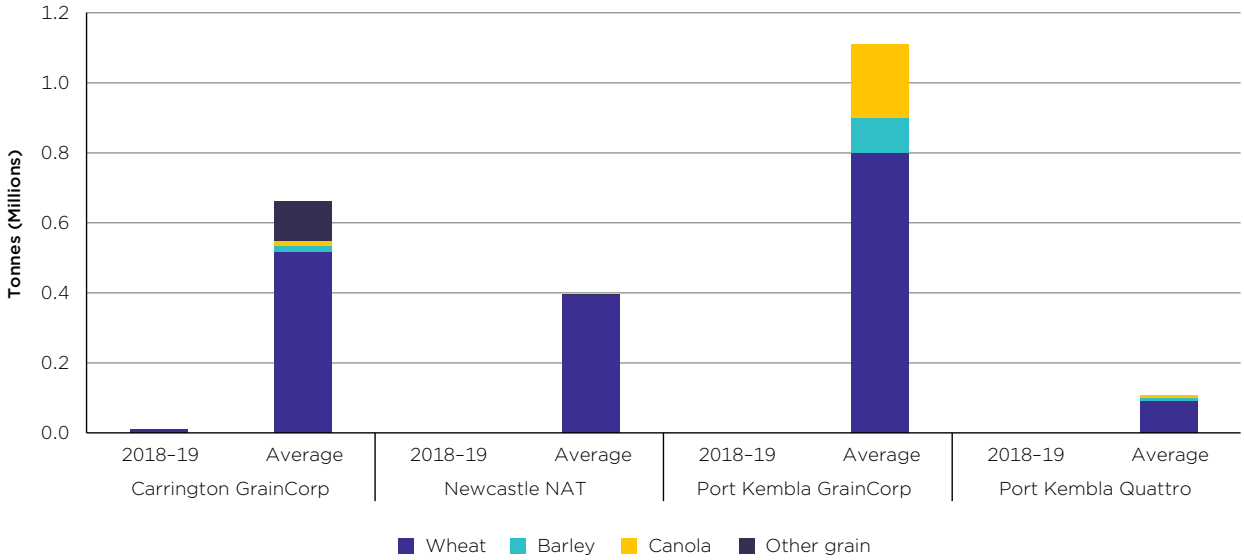
22 Australian Crop Forecasters, Supply and Demand report.

10.2.3 Bulk exports

The only bulk shipment of grain from NSW during the 2018–19 shipping year was a single 10 000 tonne shipment of wheat from GrainCorp's Carrington facility (see figure 10.7 below).

For context, NSW has exported an average of 2.1 million tonnes of grain in bulk over the last eight shipping years.

Figure 10.7: Bulk exports by port and commodity type, 2018–19 and eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

10.2.4 Exporter market share

Given that there was only one bulk shipment of grain from NSW during the 2018–19 shipping year, the ACCC notes that there is nothing to observe regarding exporter market shares this year.

For completeness, table 10.2 illustrates exporter market shares since the 2011–12 shipping year. The ACCC will observe how the market reacts once grain production improves.

Table 10.2: NSW bulk export market share, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
GrainCorp	47%	43%	50%	36%	31%	18%	36%	100%
Cargill	25%	33%	33%	16%	8%	16%	9%	0%
Glencore	20%	15%	10%	16%	6%	13%	8%	0%
COFCO	1%	3%	1%	16%	15%	22%	0%	0%
ADM	1%	4%	4%	10%	8%	4%	6%	0%
Others	6%	1%	1%	6%	32%	26%	41%	0%
Number of exporters	9	8	6	7	12	10	7	1

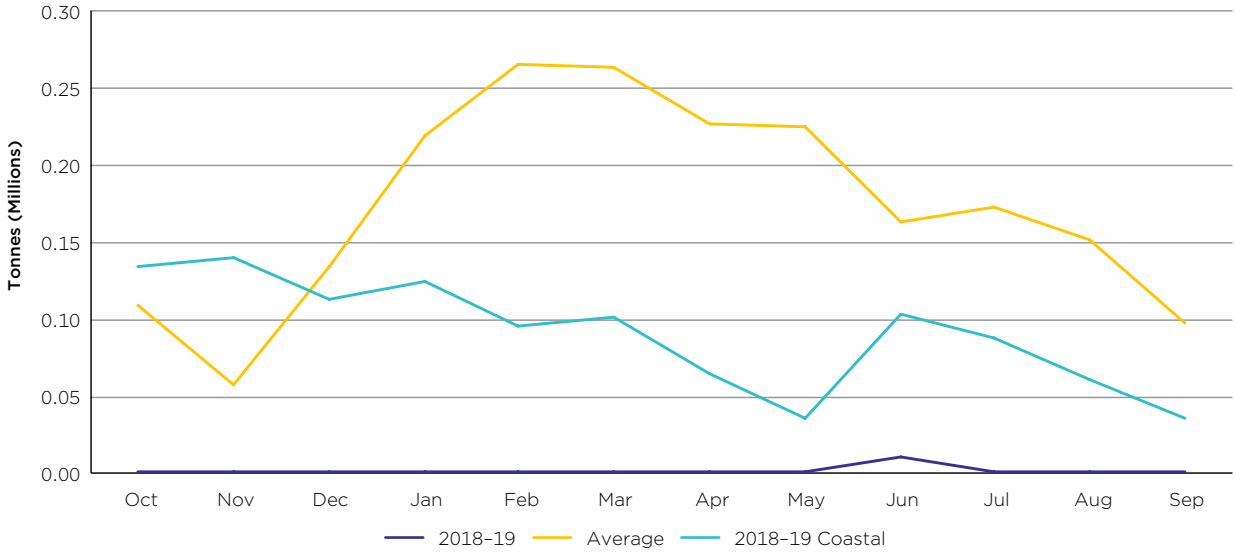
Source: PTSP loading statements; and ACF Shipping stem and market share report.

10.2.5 Export and coastal shipment receivals pace

As is the case with exporter market shares, the ACCC notes that there is little to observe regarding the pace of exports from NSW in the 2018–19 shipping year, other than to note that the single shipment took place in June 2019.

Figure 10.8 therefore focuses on the pace of coastal shipment **receivals** which was low but consistent throughout the year.

Figure 10.8: NSW bulk grain exports and coastal shipment receivals by month, 2018–19 compared to eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

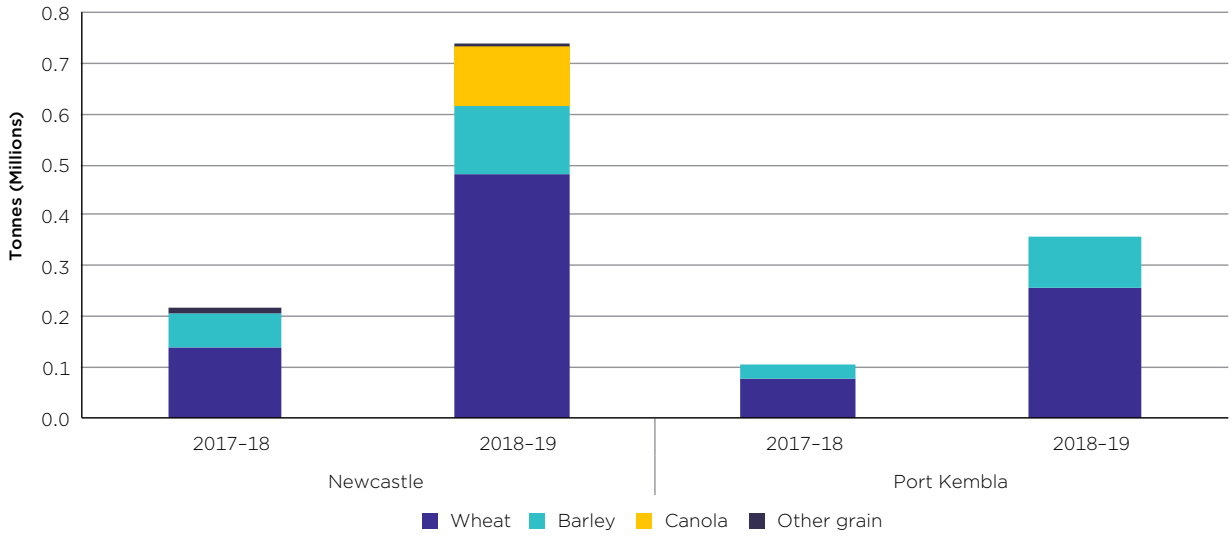
10.2.6 Coastal shipments

Figure 10.9 shows that NSW's receival of coastal shipments increased significantly in the 2018–19 shipping year in response to intensified drought conditions that not only eliminated NSW's 'exportable surplus' but left many domestic markets under-supplied.

In response, a total of 1.09 million tonnes of coastal shipments were received in NSW. The ACCC also notes that during the 2018–19 shipping year:

- Newcastle received 0.74 million tonnes of grain (65 per cent wheat), up from 0.22 million tonnes in the 2017–18 shipping year.
- Port Kembla received 0.35 million tonnes of grain (73 per cent wheat and 27 per cent barley), up from 0.11 million tonnes in the 2017–18 shipping year.

Figure 10.9: Coastal shipment receivals by port in NSW, 2017–18 and 2018–19



Source: PTSP loading statements; and ACF Shipping stem and market share report.

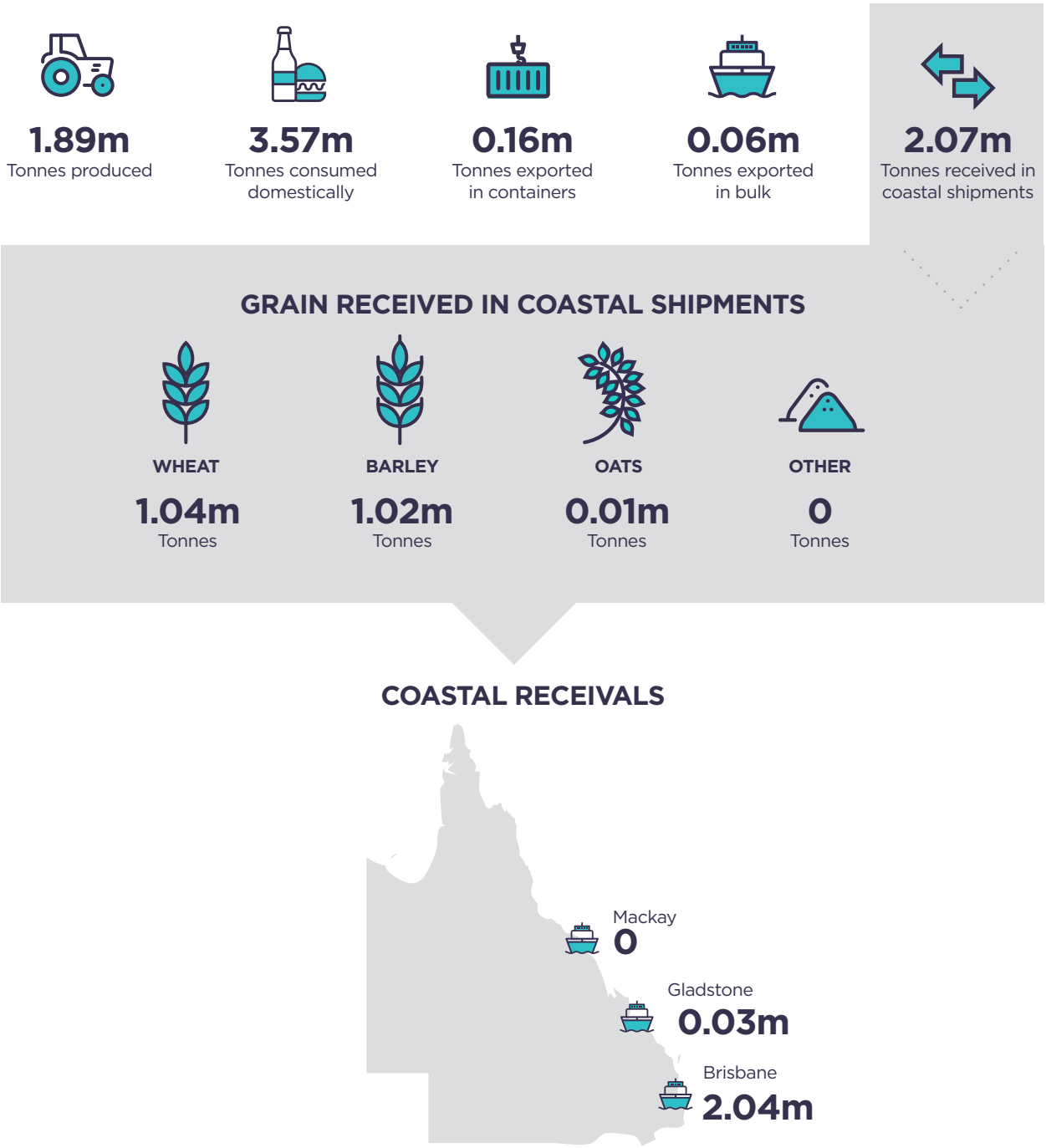
10.3 Port by port analysis

As noted earlier in this chapter, there was only one shipment of bulk grain from NSW in the 2018–19 shipping year (10 000 tonnes of wheat were exported by GrainCorp out of GrainCorp's Carrington facility).

Accordingly, the ACCC does not have the ability to conduct a meaningful port by port analysis for NSW this year.

11. Queensland

Figure 11.1: Queensland key results in 2018–19



Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191; PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

11.1 Overview of Queensland

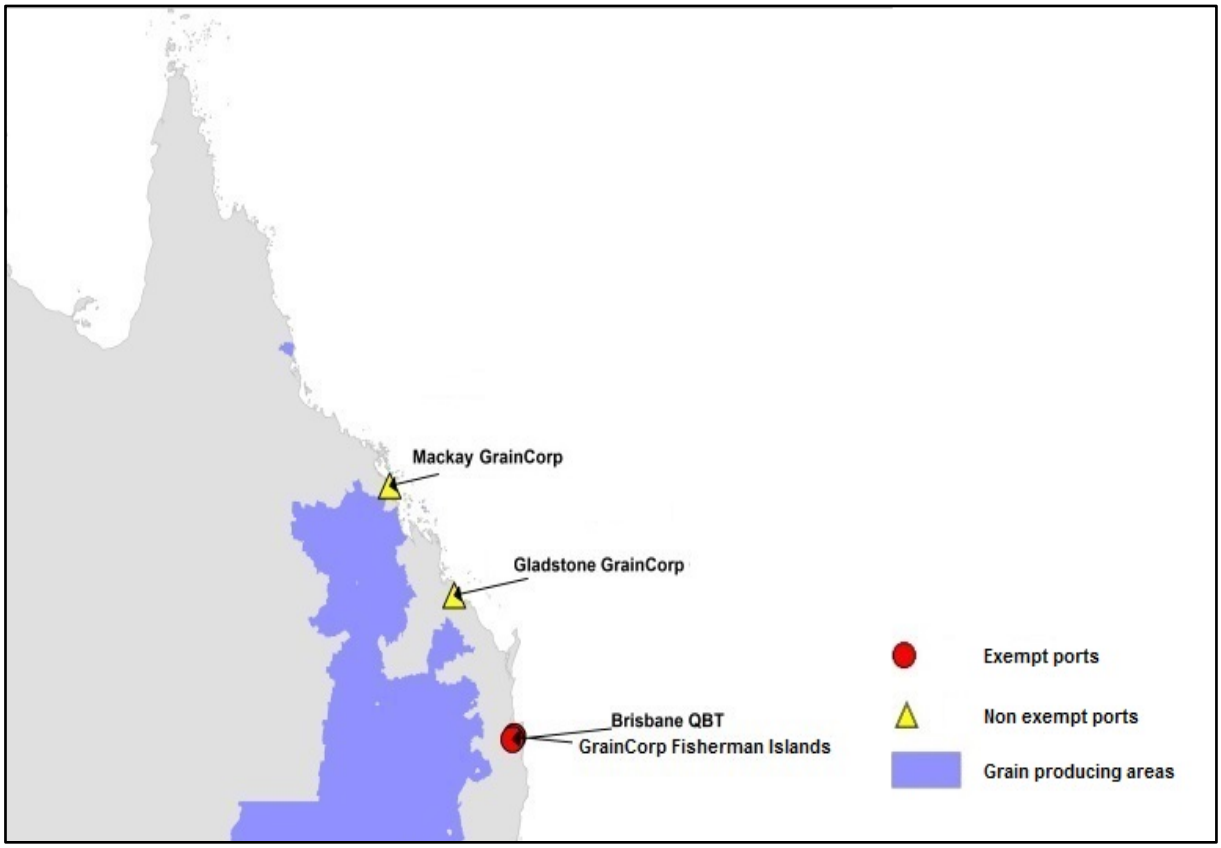
Queensland is Australia's smallest producer of grain, and produces on average 3.2 million tonnes of grain each year (37 and 36 per cent of which is wheat and sorghum respectively). It is also Australia's largest producer of chickpeas and sorghum.

Queensland is also Australia's smallest bulk exporter of grain and on average exports 1.0 million tonnes of grain per year, which is just 4 per cent of Australia's total bulk shipments. Over the last eight years, Queensland has contributed on average 91 and 78 per cent of Australia's bulk exports of chickpeas and sorghum respectively.

Queensland is a large domestic consumption state, usually third to NSW and Victoria (but second in 2018–19). Domestic consumption accounts for a very large proportion of the state's grain usage (on average 75 per cent).

Queensland has four bulk grain export port terminal facilities. GrainCorp operates facilities at Fisherman Islands (Port of Brisbane), Mackay and Gladstone, while Queensland Bulk Terminals operates a facility at Brisbane. GrainCorp remains the dominant bulk export service provider in Queensland with 87 per cent of bulk exports going through GrainCorp facilities since the beginning of the 2015–16 shipping year (as seen in table 11.1).

Figure 11.2: Map of Queensland port terminal facilities and grain growing regions



Source: ABS, 7121.0—Agricultural Commodities, Australia, 2015–16 SA2 data, and company websites.

Table 11.1: Queensland port terminal facility market share of grain throughput

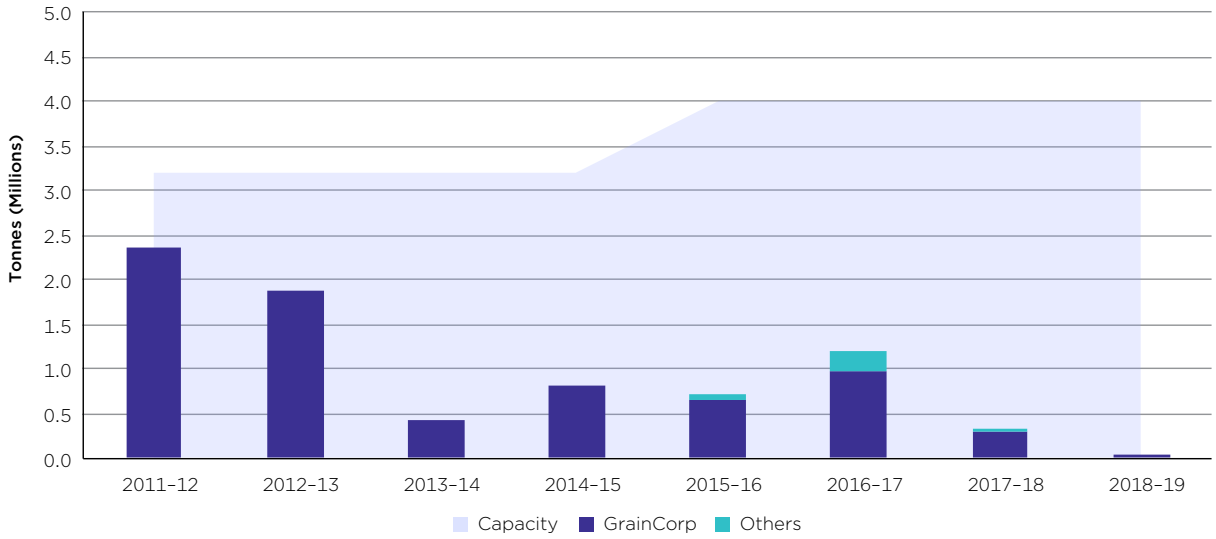
Port	Percentage share of throughput 2018–19	Percentage share of throughput since 2011–12	Percentage share of throughput since 2015–16*
Brisbane QBT	0%	4%	13%
Fisherman Islands GrainCorp	32%	55%	50%
Gladstone GrainCorp	35%	19%	20%
Mackay GrainCorp	32%	22%	17%
GrainCorp Total:	100%	96%	87%
Others Total:	0%	4%	13%

Source: PTSP loading statements; and ACF Shipping stem and market share report.

Note: * Brisbane QBT began handling bulk grain for export in 2011 and has been regulated under the Code since 2015-16.

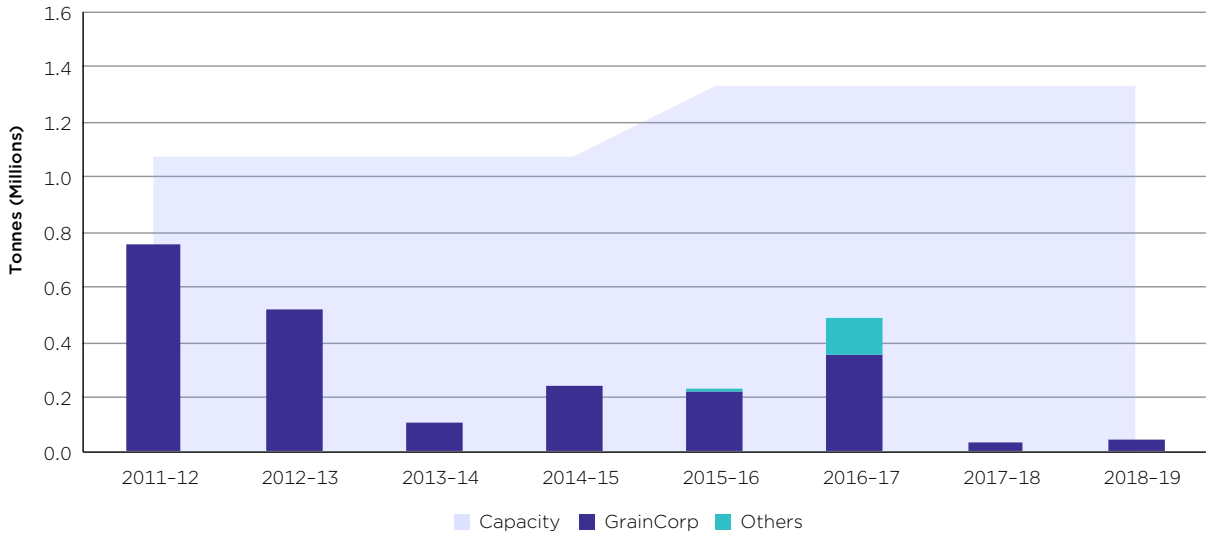
Figures 11.3 and 11.4 both demonstrate the extent to which drought conditions have impacted exports from Queensland over the last two shipping years. They also show that prior to the drought, including during the bumper 2016–17 harvest, there has been significant amounts of excess capacity in Queensland throughout the whole year, as well as during the peak period.

Figure 11.3: Grain loaded by PTSP in Queensland



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

Figure 11.4: Grain loaded during the peak period by PTSP in Queensland



Source: PTSP loading statements; ACF Shipping stem and market share report; and PTSP provided/published capacity statements and capacity data.

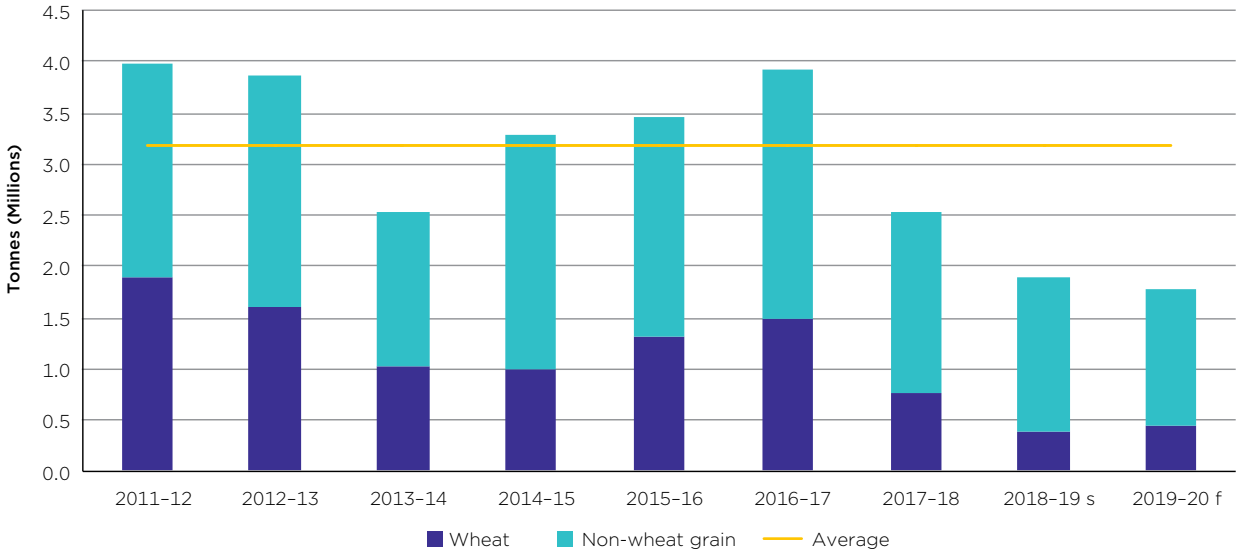
11.2 Key observations for Queensland in 2018–19

11.2.1 Production

Figure 11.5 below shows the impact that drought conditions have had on crop production during the last two seasons. The ACCC makes the following observations about Queensland's production in the 2018–19 shipping year:

- Grain production fell to 1.9 million tonnes, 41 percent below the average of 3.2 million tonnes and a 26 per cent decline on the drought-affected 2017–18 shipping year.
- Production was at its lowest level since the 1994–95 shipping year.
- Queensland production is expected to decrease another 6 per cent in the 2019–20 shipping year to 1.8 million tonnes.

Figure 11.5: Queensland annual grain production compared to eight year average, 2011–12 to 2018–19, and 2019–20 forecast

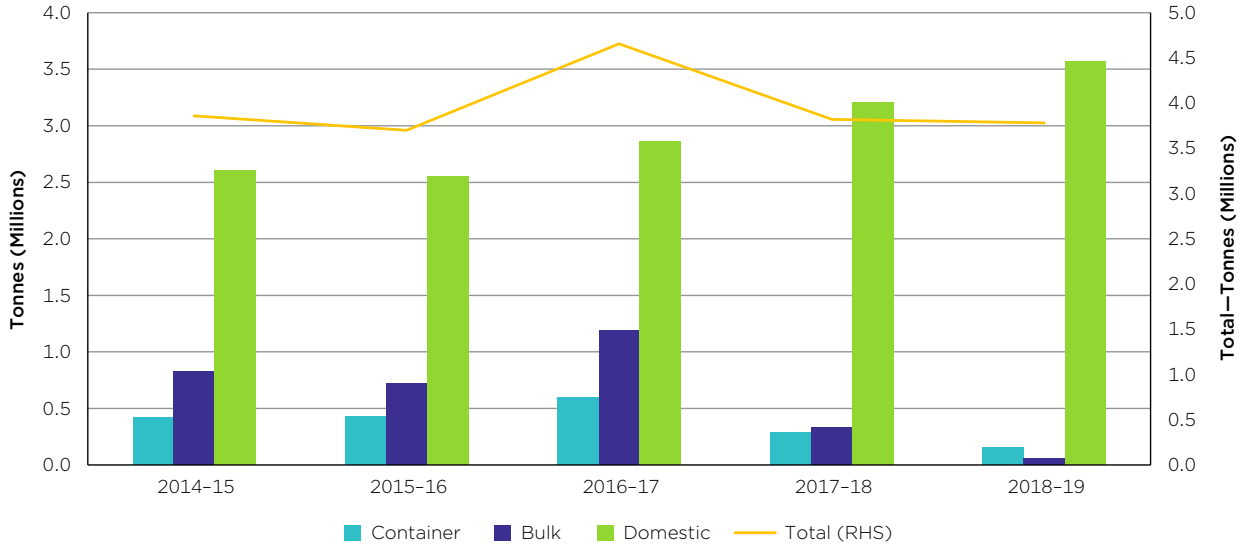


Source: ABARES, State data underpinning: Australia crop report: September 2019 No. 191.

Notes: s 2018–19 figures are ABARES estimates which are subject to revision. f 2019–20 figures are ABARES forecasts.

11.2.2 Grain usage

Figure 11.6: Queensland's grain usage, 2014–15 to 2018–19



Source: PTSP loading statements; ACF Shipping stem and market share report; ACF, Export report; and ACF, Supply and Demand report.

The ACCC makes the following observations about Queensland's grain usage (see figure 11.6):

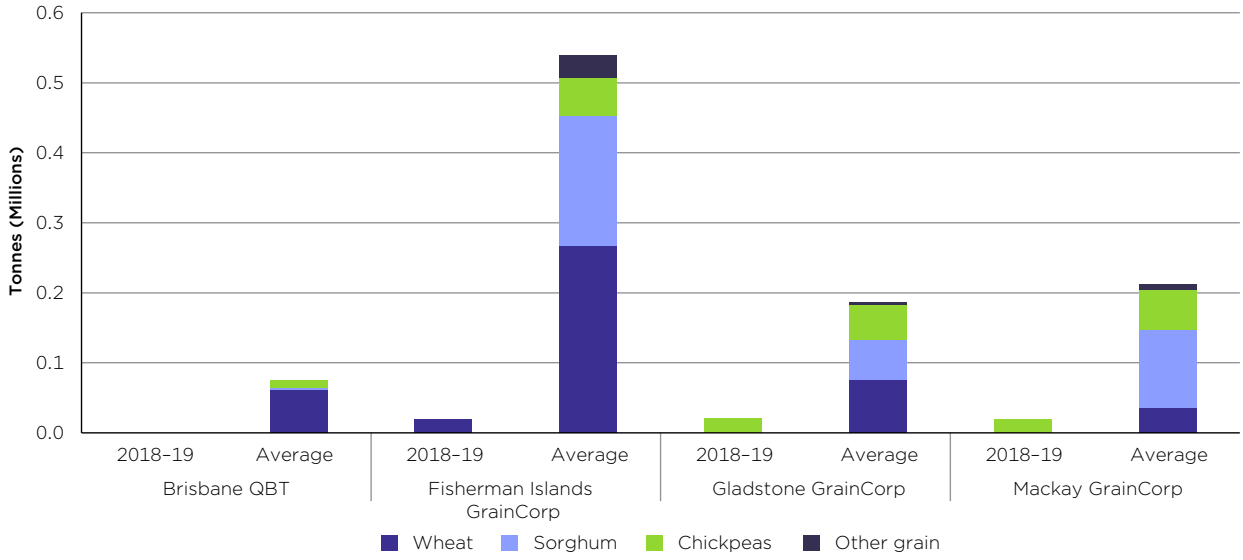
- Domestic demand was 3.6 million tonnes, and given that there were only 1.9 million tonnes of grain produced in the 2018–19 shipping year, Queensland was required to source grain from other states via both coastal shipment and land based transfers in order to meet this demand.
- Domestic demand has risen by 0.70 million tonnes (24 per cent) since the 2016–17 shipping year.
- Queensland exported 0.16 million tonnes via container this shipping year, which is 58 per cent below the average of 0.38 million tonnes.

11.2.3 Bulk exports

Queensland facilitated the bulk export of just 0.06 million tonnes of grain during the 2018–19 shipping year, which is 94 per cent below the average of 0.98 million tonnes. The significantly reduced level of exports is shown below in figure 11.7.

Of the 0.06 million tonnes exported, 0.02 million tonnes was wheat and the remaining 0.04 million tonnes was chickpeas.

Figure 11.7: Bulk exports by port and commodity type, 2018–19 and eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

11.2.4 Exporter market share

The ACCC notes that the nine bulk shipments performed in the 2018–19 shipping year were split between eight different exporters, as shown in table 11.2 below.

For completeness, table 11.2 also illustrates exporter market shares since the 2011–12 shipping year and shows that compared to other states, Queensland typically has an even spread of shipments performed amongst exporters.

Table 11.2: Queensland bulk export market share, 2011–12 to 2018–19

	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
COFCO	15%	20%	46%	40%	27%	21%	37%	23%
GrainCorp	14%	25%	27%	20%	49%	19%	12%	3%
Glencore	16%	20%	13%	15%	0%	20%	19%	7%
Cargill	15%	13%	0%	8%	0%	2%	0%	0%
Emerald	9%	7%	0%	10%	14%	0%	0%	19%
Others	31%	15%	14%	7%	10%	38%	31%	48%
Number of exporters	13	11	6	6	5	10	10	8

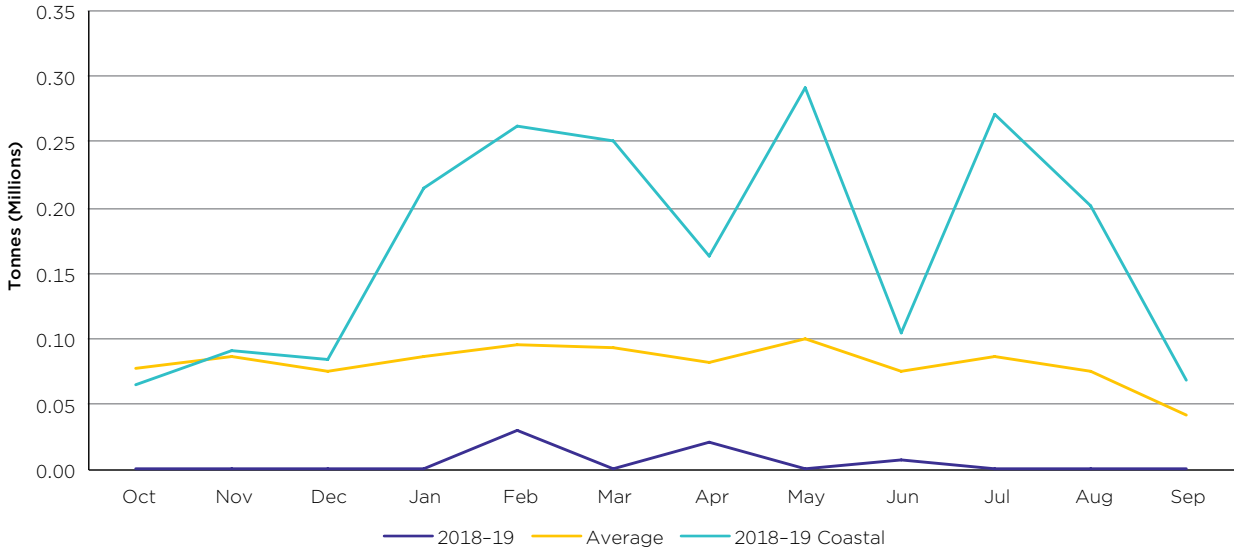
Source: PTSP loading statements; and ACF Shipping stem and market share report.

11.2.5 Export and coastal shipment receivals pace

The ACCC notes that there is little to observe regarding the pace of bulk exports from Queensland in the 2018–19 shipping year.

Figure 11.8 therefore focuses on the pace of coastal shipment **receivals** which exceeded typical export pace throughout all months except October. This shows that although very little was exported from Queensland, ports were still highly utilised.

Figure 11.8: Queensland bulk grain exports and coastal shipment receivals by month, 2018–19 compared to eight year average



Source: PTSP loading statements; and ACF Shipping stem and market share report.

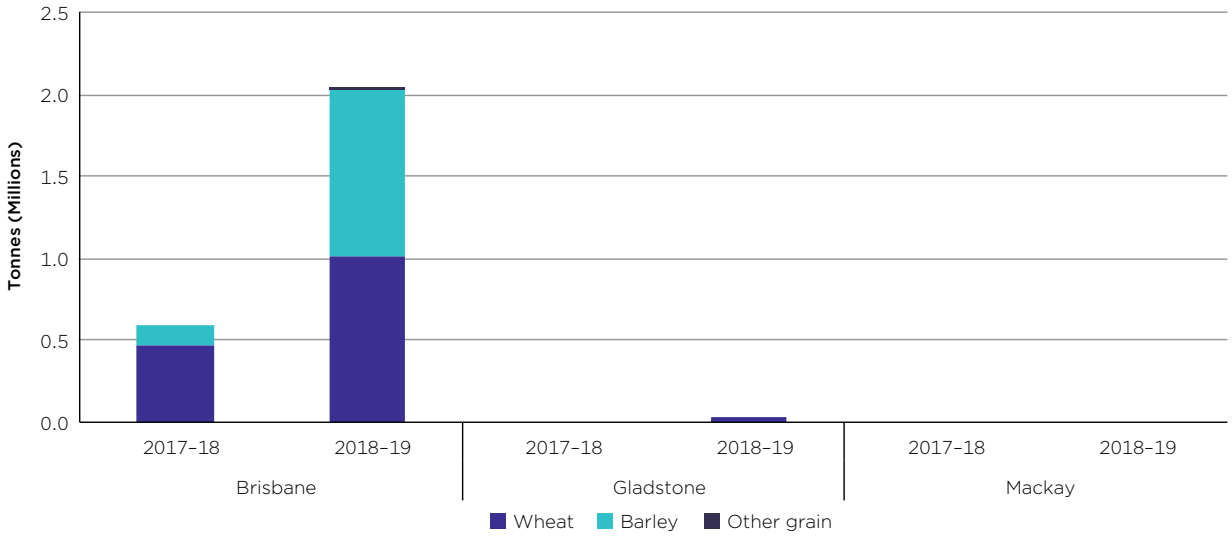
11.2.6 Coastal shipments

Queensland received 2.07 million tonnes of coastal shipments in the 2018–19 shipping year, a significant increase from 0.59 million tonnes during the previous shipping year. These coastal shipments were in response to drought conditions that not only eliminated Queensland's 'exportable surplus' but left many domestic markets under-supplied.

As can be seen from figure 11.9, almost all coastal shipments to Queensland in the 2018–19 shipping year were received at Brisbane. The ACCC also notes regarding coastal shipments to Queensland that:

- of the 2.07 million tonnes of coastal recievals in Queensland 2.04 million tonnes of this was received at Brisbane, with the remaining 0.03 million tonnes received at Gladstone
- wheat and barley each made up over 1 million tonnes of the coastal recievals at Brisbane.

Figure 11.9: Coastal shipment receivals by port in Queensland, 2017–18 and 2018–19



Source: PTSP loading statements; and ACF Shipping stem and market share report.

11.3 Port by port analysis

As noted earlier in this chapter there was only 0.06 million tonnes of grain exported in bulk from Queensland in 2018–19.

Accordingly, the ACCC does not have the ability to conduct a meaningful port by port analysis for Queensland this year.

12. Appendix: Explanatory notes

12.1 Data

Market share and bulk export data in this report are sourced from the loading statements produced by PTSPs pursuant to the Code. These are forward looking documents and are not necessarily updated to reflect tonnages actually loaded. Accordingly, the data in this report is indicative only.

The ACCC also uses data from various other sources including:

- ABARES production data
- ACF shipping stem data
- ACF container and bulk export data estimates (collated from ABS Home Affairs data)
- ACF supply and demand data (sourced from a combination of ABS and ACF estimates).

The ABARES production data for the 2018–19 season used in this report are estimates only, and are subject to further revision. For example ABARES' 2017–18 wheat estimates, which were used in the ACCC's 2017–18 monitoring report were revised down from 21.2 to 20.9 million tonnes since last year's report.

What time period do we refer to for our production figures?

The 2018–19 production season relates to grain grown during 2018 and typically harvested in late calendar 2018. However, for some regions and certain grain types (typically the summer crop of sorghum), harvest is in early 2019. For example, for wheat, the harvest of the 2018–19 crop was in late 2018, and for sorghum, the harvest of the 2018–19 crop was in early 2019.

What time period is the shipping year data from?

Unless otherwise stated references to a year refer to the shipping year for wheat, which is from 1 October 2018 to 30 September 2019.

12.1.1 Terminology: 'shipments' versus 'exports'

The last two shipping years grain has been shipped from WA, SA and Victoria to drought-affected areas on the east coast to satisfy domestic demand. Although these shipments are not exports they are services provided via the same port terminal facilities used to facilitate bulk grain exports. Accordingly, the use of these facilities for coastal shipments impacts on the utilisation of these facilities and the amount and timing of capacity available for bulk exports.

Subsequently the ACCC differentiates the use of the terms 'shipments' and 'exports' for the purposes of this report as follows:

- **exports** refer to overseas exports and do not include coastal shipment activities performed by a PTSP, exporter, or state
- **shipments** refer to the combination of coastal shipments and overseas exports performed by a PTSP, exporter, or state.

12.1.2 Capacity utilisation

The capacity of non-exempt port terminal facilities is estimated using capacity figures published by PTSPs. In the case of exempt port terminals, or port terminals that are currently under review for exemption, capacity is estimated on the basis of information provided by PTSPs in the course of the ACCC's exemption assessments.

The ACCC has used the most recent capacity figure that each PTSP has provided in an exemption application or that has been published by the PTSP. This single capacity figure for each port is used

for each of the eight seasons analysed. Therefore given some exemption applications were submitted five years ago their capacity figures in this report may not be representative of current capacity levels as these PTSPs may have upgraded their facility. Conversely, if a PTSP has recently provided a capacity estimate of their facilities than this report may overestimate capacity in past seasons, if these facilities have been upgraded over time.

In addition, the ACCC notes that PTSPs can and do at certain times offer more than their stated level of capacity.

The ACCC therefore notes that all capacity estimates in this report are indicative figures only and may not necessarily reflect the true capacity of a given port in a given shipping year.

Furthermore, a port terminal facility may have spare capacity over the year as a whole but still may be capacity constrained during the peak shipping period (which is defined in this report as 1 February to 31 May). When capacity figures are provided on a yearly basis the peak period capacity estimates in this report are estimated by dividing the full year's release of capacity by three, and may therefore not reflect the true amount of capacity released.

Some PTSPs provide capacity estimates on a bi-monthly basis (as opposed to a yearly basis). When this is the case the ACCC is able to ascertain how much capacity was released over specific months, as opposed to assuming capacity is released evenly throughout the whole year. The ACCC has used bi-monthly capacity figures to determine peak period capacity when available.

12.1.3 Figures and charts

As explained above, the data in this report is subject to change and is the best available as the report was being developed. Consequently, all data is indicative only.

The below subsections provide further explanation to some of the charts and figures provided throughout this report.

Averages

Averages referred to in this report depend on the data sources as below:

- Production and export/shipment averages refer to an eight year average calculated between, and inclusive of, the 2011–12 and 2018–19 shipping years.
- Container and domestic averages refer to a five year average calculated between, and inclusive of, the 2014–15 and 2018–19 shipping years.

'Other grains' category

In order to provide a snapshot of the top three commodities in each state in this report, the total sum of exports by commodity from the past eight seasons was calculated and commodity types were ranked accordingly. Commodities that fell outside this top three for each state have been grouped together as 'other grain'.

The top three commodity types in this report are typically some combination of wheat, barley, canola, sorghum, or chickpeas. The 'other grain' category is usually made up of faba beans, field peas, lentils, lupins and triticale.

'Other' exporter category

In order to provide a snapshot of the top five exporters at each port and state in this report, the total sum of shipments by exporters from the past eight seasons was calculated and exporters were ranked accordingly. Exporters which fell outside this top five have been grouped together by port/state into 'others'. This means that while an exporter that is grouped into 'others' could be a top five exporter at a port terminal facility in a particular shipping year, this does not mean that it is a top five exporter over the entire period analysed (2011–12 to 2018–19).

Exporter ownership changes

For comparability across years, we group exporters that have undergone ownership changes into their parent company/current company name (see table 12.1). For example COFCO's market share includes the historic exports of Nidera, Noble and PentAg.

Table 12.1: Parent company names

Previous name	Recorded in this report as
Pentag, Noble and Nidera	COFCO
Joe White Malting	Glencore prior to November 2013 and Cargill thereafter
Barrett Burston	GrainCorp
Viterra	Glencore
Aus Durum Co	Grain Trend

12.1.4 Grain usage

In this report, the term 'grain usage' is used in order to provide an overview of how a state uses its grain. Grain can be consumed domestically, exported in bulk, or exported by container. This report is not intended to provide balance sheet type information of all grain going into and out of a particular state (which would consider interstate transfers and grain carried in from the previous shipping year).

We report production and usage in the area where it occurs. For example, if grain produced in SA is transferred to Queensland for domestic purposes, this grain is counted as production in SA and domestic use in Queensland. Accordingly, grain usage may exceed production in states that have received grain from other states or appear lower than expected in states, which transfer large amounts of grain interstate.

12.1.5 Coastal shipments

Throughout the report the ACCC discusses coastal shipments both from the perspective of where they were shipped to and from. In terms of coastal shipments recievals the ACCC notes that the Code does not require PTSPs to publish information regarding grain receivals, nor destination of shipments, and accordingly the ACCC does not have visibility over which PTSPs received these shipments.

The ACF shipping stem data does however record the destination of shipments. Therefore, while the ACCC does not have access to specific port by port recieval data it does have access to data on a 'destination' basis. This means the ACCC is able to ascertain the destination to which grain is delivered, but not the specific terminal. For example, the ACCC is able to see that Newcastle received 0.74 million tonnes of coastal shipments during the 2018–19 shipping year, but are unable to distinguish if these shipments were received at the Newcastle NAT or Carrington GrainCorp facility.

In contrast, the ACCC does receive terminal specific data on where coastal shipments originated, as these shipments are reported as per usual in the loading statement.

12.1.6 Maps

Data sources used to produce the maps in this report are:

- Australian Bureau of Statistics (ABS) digital boundaries, 2011 Statistical Area 2 boundaries
- ABS published dataset 7121.0 Agricultural Commodities, Australia 2015–16 which provides estimates of the production levels and land use for 2015–16
- Publicly available information as to the general location of port terminal facilities.

Production areas shown on the maps in this report are used to illustrate Australia's general grain productions areas (by Statistical Area 2 boundaries) and do not necessarily represent the growing regions from a specific season, which may differ from those shown.

12.2 The Code

The ACCC has had a role in the regulation of Australia's bulk grain export port terminals since 2009, when it accepted the first round of port terminal services access undertakings from CBH, Viterra and GrainCorp. These undertakings were lodged with the ACCC pursuant to an obligation under the *Wheat Export Marketing Act 2008* (Cth).

On 19 September 2014, the Minister for Agriculture announced that the Code, a mandatory Code prescribed under the *Competition and Consumer Act 2010* (Cth) (CCA), would replace the undertaking based regime.

12.2.1 Provisions of the Code

The Code came into effect on 30 September 2014. It regulates the conduct of all PTSPs that provide bulk wheat export port terminal services.

The Code has six Parts, key features of which are as follows:

- Part 1—Preliminary—includes the Code's purpose, definitions, scope
- Part 2—General obligations of PTSPs—includes obligations on PTSPs and exporters to deal in good faith, and requires PTSPs to publish a loading statement, policies and procedures for managing demand for services, standard terms and reference prices
- Part 3—Access to port terminal services provided by a PTSP—includes obligations on PTSPs to enter into an access agreement or negotiate the terms of one with an exporter, not discriminate in favour of itself or an associated entity or hinder an exporter's access and to use specified dispute resolution processes
- Part 4—Port loading protocols of PTSPs—requires PTSPs to have a port loading protocol and for that protocol to include a capacity allocation system
- Part 5—Port terminal service provider to publish certain information—requires PTSPs to publish information on expected capacity, key performance indicators and information about stock held at port
- Part 6—Record keeping—requires PTSPs to maintain records of access agreements and variations to agreements, records of disputes and records on services acquired by exporters.

12.2.2 ACCC roles under the Code

The ACCC has a number of roles under the Code, including:

- monitoring compliance with the Code as well as investigating alleged breaches and (if necessary) enforcing compliance with the Code
- assessing and approving capacity allocation systems
- assessing whether a PTSP should be granted 'exempt service provider' status (and, if appropriate, revoking that status).

We monitor compliance with the Code and investigate potential breaches

The ACCC monitors, investigates and enforces compliance with the Code's obligations (set out above at 12.2.1).

During the Code review (discussed in chapter 2), we advocated for the introduction of penalty provisions into the Code to provide more effective deterrence and strengthen our enforcement ability.

We assess capacity allocation systems of non-exempt service providers

The Code requires non-exempt PTSPs to have a port loading protocol[23] and for that port loading protocol to include a capacity allocation system.[24] Clause 3 of the Code defines a capacity allocation system as:

> a system that a port terminal service provider uses to allocate, to exporters, capacity of a port terminal facility owned or operated by the provider.

A PTSP may vary its port loading protocol.[25] If the proposed variation is to a capacity allocation system of a non-exempt PTSP, the approval of the varied system by the ACCC is required.[26]

In deciding whether to approve a PTSPs capacity allocation system, the ACCC must have regard to a list of matters set out at subclause 25(3) of the Code.

The Code requires the ACCC to publish guidelines relating to its process for approving capacity allocation systems.[27] These guidelines are available on the ACCC website.[28]

If a non-exempt PTSP does not have an approved allocation system in place, it can only allocate capacity six months in advance.

We can determine PTSPs to be exempt service providers

Clause 5 of the Code states that the ACCC can determine that a PTSP is an 'exempt service provider' of services at a specified port terminal facility.[29] If a PTSP is determined an exempt service provider at a specified facility, it does not have to comply with Parts 3 to 6 of the Code when providing services at that facility.

Clause 5 of the Code requires that in making an exempt service provider determination, the ACCC must have regard to 10 specific matters.[30] It also states that the ACCC may revoke a determination to exempt if, having regard to those 10 specific matters, it is satisfied that the reasons for granting the exemption no longer apply.[31]

The Code requires the ACCC to publish guidelines relating to its process for making and revoking determinations.[32] These guidelines are available on the ACCC website.[33]

The status of PTSPs under the Code and further comments on the exemptions is at chapter 3 of this report.

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23 *Port Terminal Access (Bulk Wheat) Code of Conduct*, r. 24(1).

24 Code, r. 25(1).

25 Code, r. 27(1).

26 Code, r. 27(2).

27 Code, r. 25(6).

28 ACCC, Guidelines on the ACCC's process for approving capacity allocation systems, October 2014. Available at: https://www.accc.gov.au/publications/process-guidelines-for-approving-capacity-allocation-systems.

29 Code, r. 5(2).

30 Code, r. 5(3).

31 Code, r. 5(6).

32 Code, r. 5(9).

33 ACCC, Guidelines on the ACCC's process for making and revoking exemption determinations, October 2014. Available at: https://www.accc.gov.au/publications/process-guidelines-for-making-revoking-exemption-determinations.

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