



Australian Grain Industry – Code of Practice Technical Guideline Document

No. 4 OPERATING STANDARDS FOR POOL PROVIDERS

**Compiled on behalf of the Australian Grain Industry by:
Grain Trade Australia**

Version 1.1
Revised September 2017

Australian Grain Industry – Code of Practice

<http://www.graintrade.org.au/node/670>

Technical Guideline Document

No. 4 Operating Standards for Pool Providers

Version Control

Date	Version	Amendments
July 2013	1.0	Original document development
April 2017	1.1	Revised by Pools Sub-Committee (GTA Commerce Committee)
July 2017	1.1a	Draft for Industry Consultation via GTA Member Update
September 2017	1.1b	Revised Version – Approved by GTA Board

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1 Preamble

1.1 Pool Providers

- a) The purpose and objective of this Technical Guideline Document (TGD) is to establish base operating standards in the grains industry for Pool Providers offering Pool Products. This is to ensure a high level of integrity for the Grains Industry and GTA Members in the Industry, including the Pool Providers. This is an important part of the grain industry self-regulatory framework, developed by GTA including the Australian Grains Industry Code of Practice and endorsed by GTA Members.
- b) GTA requires that its members adhere to this TGD when offering grain commodity pools to their clients as per Section 2.7.4 of the Australian Grains Industry Code of Practice (COP).
- c) Adherence to the COP is a mandatory requirement for GTA Members.

1.2 Potential Pool Participants

- d) GTA encourages all potential clients of any GTA members' pools to conduct an initial assessment of the capabilities of the Pool Provider. Before committing to enter into a contract as a Pool Participant, a potential customer should satisfy themselves that a Pool Provider has in place:
 - the appropriate skills,
 - payment systems,
 - risk systems and procedures,
 - governance and compliance protocols,
 - policies and resourcesto manage the Pools that they offer and that they are regularly reviewed to evaluate the currency of their application. Potential Pool Participants should seek information relating to each of the above components before entering into a contract.
- a) Potential Pool Participants should also be fully aware of the terms of the contract and understand the aims of the Pool Provider for each pool product on offer. Ensuring that a Pool Provider's marketing and pricing strategy for a particular Pool and the associated policies accord with the expectations of a potential Pool Participant is an important assessment that should occur before a contract is entered into.
- b) Potential Pool Participants should read the terms and conditions and any other risk or product disclosure documents or information of any Pool product offered by a Pool Provider that the Potential Pool Participant may contract or deliver to.

2 Definitions

2.1 Broker / Agent

The terms "Broker" and "Agent" shall have the same meaning as per the GTA Trade Rules as available on the GTA website <http://www.graintrade.org.au/>

2.2 Free In Store (FIS)

The term “Free In Store” or “FIS” shall have the same meaning as per the GTA Trade Rules as available on the GTA website <http://www.graintrade.org.au/>

2.3 GTA Arbitration and Dispute Resolution Rules

Means the GTA Arbitration and Dispute Resolution Rules as at the date of the commencement of any Arbitration, and available from GTA (www.graintrade.org.au)

2.4 Material Adverse Change

In relation to an EPR means a reduction of the current published EPR of more than 5%.

2.5 Pool

Means a grouping of grain treated collectively by a **Pool Provider** for the purposes of marketing grain, grouped according to time of delivery, location, quality, grade or variety of grain or such other matters as determined by the **Pool Provider**. Sales and outcomes from other activities such as (but limited to) hedging and other risk management activities, are made in respect of each **Pool** and profits (and losses) are shared between the **Pool Participants**.

2.6 Pool Management Services

Means the provision of services in managing a **Pool** on behalf of **Pool Participants** by the **Pool Provider** or other service providers nominated by the Pool Provider.

2.7 Pool Provider

Means a commercial organisation conducting a **Pool** for the benefit of **Pool Participants**.

2.8 Pool Participant(s)

Is a person or organisation that provides grain or commits to provide grain to a **Pool**.

2.9 Pool Return

Means the financial return paid to **Pool Participants** net of all costs, fees and charges including Pool Provider charges at a designated price basing point, i.e. country silo, port, track or **free in store** (“FIS”) excl of GST

2.9.1 Estimated Pool Return (EPR)

Means an estimate of the **Pool Return** in \$/t excl of GST provided by the **Pool Provider** to **Pool Participants**.

The **EPR** must also be quoted at Track or track equivalent level for East Coast and SA or FIS for WA and net of all costs, management fees, any other fees (including estimates of any costs and fees) where possible, otherwise explicitly define what costs, fees and charges are included and excluded in the published figure.

2.9.2 Estimated Silo Return (ESR)

Means an **Estimated Pool Return** quoted at up country silo level. It shall be the **EPR** (ie quoted at Track level on East Coast/SA, or FIS level in WA) less the applicable freight and any other costs for the respective silo.

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2.9.3 Final Pool Return (FPR)

Means a final **Pool Return** in \$/t exclusive of GST provided by the **Pool Provider** to **Pool Participants**.

The **FPR** must also be quoted at Track or track equivalent level for East Coast and SA or FIS for WA and net of all costs, management fees, any other fees (including estimates of any costs and fees) where possible, otherwise explicitly define what costs, fees and charges are included and excluded in the published figure.

2.9.4 Final Silo Return (FSR)

Means a **Final Pool Return** quoted at up country silo level. It shall be the FPR (ie quoted at Track level on East Coast/SA, or FIS level in WA) less the applicable freight and any other costs for the respective silo.

2.9.5 Guaranteed Pool Return (GPR)

Means the guaranteed minimum payment (\$/t) (excl GST) the **Pool Provider** will pay **Pool Participants** net of all Pool Provider charges at a designated price basing point, i.e. country silo, track, **free in store** ("FIS") excl of GST. A **GPR** is in effect a guaranteed minimum **FPR**.

2.9.6 Underwritten Return

Means the guarantee by a **Pool Provider** that a payment or loan made to a **Pool Participant**, if nominated as "Underwritten", is non-recourse should the subsequent proceeds, of **Final Pool Return** from the **Pool** be less than the Underwritten amount. Consequently, the **Pool Participant** shall have no further debt or liability to the **Pool Provider** (or associated provider) with respect of the Underwritten amount and that the **Pool Provider** guarantees the **FPR** paid to the **Pool Participant** will not be less than the Underwritten return.

Pool Providers may charge a fee to provide Underwriting. Any such fee must be disclosed in the terms and conditions and/or other relevant documentation

2.10 Ring Fencing of Assets

Means the activities undertaken by the **Pool Provider** to quarantine or separate pool participants net assets, and equity from the assets and liabilities of the **Pool Provider** for the purpose of protecting the **Pool Participants** net assets, and equity from any administration or liquidation proceedings or actions should the **Pool Provider** become insolvent or be subject to administration or liquidation proceedings

This should include, where possible, the identity and Australian Business Number (ABN) of the entity holding the pool assets, and the identity and ABN of the provider of **Pool Management Services**.

2.11 Ring Fencing of Activities

Means the clear identification of grain belonging to a **Pool** and the separation of **Pool** assets and liabilities from other **Pools** and that of the **Pool Provider**. The fiduciary responsibility should be prioritised to **Pool Participants** at all times.

2.12 Track

The term "Track" shall have the same meaning as per the GTA Trade Rules as available on the GTA website <http://www.graintrade.org.au/>

3 Duties of a Pool Provider

When operating a **Pool**, a **Pool Provider** must:

- a) act with honesty and integrity;
- b) do all things necessary to ensure the Pool Products are provided efficiently, honestly and fairly
- c) exercise reasonable care and diligence;
- d) act in the best interests of the **Pool Participants** and, if there is a conflict between the **Pool Participants'** interests and the Pool Provider's interests, give priority to the **Pool Participants'** interest;
- e) ensure that any costs or fees resulting in the **Pool Provider** receiving a financial benefit from the Pool are disclosed;
- f) not make use of information acquired through being the **Pool Provider** to gain an improper advantage for itself or another person or cause detriment to the **Pool Participants**;
- g) ensure there is adequate and appropriate **Ring Fencing of Activities** (as per defined terms) including clear identification of grain belonging to a **Pool** and the separation of Pool assets and liabilities from other Pools and that of the **Pool Provider**; and
- h) ensure that any related party dealing resulting in the **Pool Provider** receiving a financial benefit from the **Pool** is reasonable in the circumstances and at on arm's length terms and disclosed to the Pool Participant.
- i) Where using, any terms defined in Section 2 of the TGD, ensure such terms and related activities as used in **Pool** arrangements comply with the definitions as per Clause 2
- j) Incorporate GTA **Arbitration and Dispute Resolution rules** into the Pool terms and conditions
- k) Have a Pool Product Disclosure Guide (PPDG) for their Pool Product/s that meets the requirements of Section 6 of the TGD.

4 Estimated Pool Return (EPR)

- a) An EPR is not a Guaranteed Pool Return (GPR) or an Underwritten Return
- b) The term **EPR** is as defined in clause 2.9.1
- c) Where a Pool Provider posts an **EPR** (or similar terminology and including an ESR) for a Pool, that **EPR** will be a fair and reasoned estimate that the Pool Provider will be able to justify to Pool Participants at the time it is posted.
- d) The Pool Provider must:
 - o clearly state the grounds for any forward-looking **EPR** published.
 - o include a statement that **EPRs** are ONLY estimates and are NOT to be relied upon as an accurate predictor for pool performance.
- e) For the purposes of this TGD, and to ensure a simple comparison can be made, **Pool Providers** who publish **EPRs** must quote the respective **EPR** at Track level and clearly and explicitly define what costs, fees and charges (including management fees) are included and excluded in the published figure.
- f) The **EPR** will be regularly updated via a posting on the **Pool Providers** public website at least fortnightly while the Pool is open for contracting, and otherwise at least monthly.

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- g) Where there is a Material Adverse Change to the **EPR**, the **Pool Provider** will update the **EPR** as soon as practicable.
- h) The **EPR** will be published for each grade, payment method and port terminal and meet the definition of **EPR** defined in clause 2.9.1.
- i) Where the **EPR** is published, it will also include, where practicable, the date of when the **EPR** was last revised.
- j) As a minimum the date of the most recent revision of an **EPR** will be published on the **Pool Providers** public website and the expected date of the next **EPR** revision.

5 Reporting and Audit of Pool

- a) In addition to any requirements in Section 4 of the TGD, during the term of the **Pool**, the **Pool Provider** will publish and deliver to **Pool Participants**, at least quarterly, reports concerning the performance and operation of the **Pool**. Where there is a Material Adverse Change to the **EPR** of a **Pool**, the **Pool Provider** will report on the reasons for the change.
- b) The **Pool Provider** will publish on its public website the history of the **EPR** during the life of the **Pool**.
- c) The **Pool Provider** will ensure timely and adequate records of the **Pool's** operations are kept and prepare separate accounting records for each **Pool** adhering to appropriate accounting principles and standards. In relation to related party transactions, the **Pool Provider** will maintain timely accounting records detailing the value and time of such transactions.
- d) Before or following final payment of a **Pool**, and no later than 6 months of the final payment of a **Pool**, the **Pool Provider** will:
 - engage an independent auditor to audit:
 - the accounting records of the **Pool**;
 - the **Pool Provider's** compliance with its duties under this TGD (to the extent it is practically possible) and by extent the Code of Practice (COP)
 - the **Pool Provider** has complied with the requirements and definitions of the TGD, and specifically the definitions of **FPR**, **GPR** and **Underwriting**.
 - Satisfaction that no further funds are owed to any **Pool Participant**.
 - The **Pool Provider** has:
 - the appropriate skills,
 - payment systems,
 - risk systems and procedures,
 - governance and compliance protocols,
 - policies and resources
 - to manage the **Pools** in Accordance with the TGD and the Australian Grains Industry Code of Practice
 - the **Pool Provider's** compliance with the terms and conditions of the **Pool**; and

- publish and deliver the findings of the auditor to **Pool Participants** and publish the auditor's report on its public website.
- e) Failure to satisfy an audit or meet any corrective actions noted in a final audit will be grounds for a complaint as per the Australian Grains Industry Code of Practice and activate the GTA complaints handling process and procedures.

6. Pool Product Disclosure Guide

1. The Pool Provider should make available on its public website and to all **Pool Participants** a Pool Product Disclosure Guide (PPDG). The guide should form part of the terms and conditions of the Pool.
2. The basic guiding principles of the PPDG is that disclosure should:
 - a) be timely;
 - b) be relevant and complete;
 - c) provide enough information so as to allow a potential **Pool Participant** to understand the Pool product the **Pool Provider** is offering;
 - d) promote product comparison;
 - e) highlight important information or make it apparent; and
 - f) have regard to general needs of **Pool Participants**
3. The PPDG should summarise the key information, including, but not limited to:
 - a. Information about the **Pool Provider** and any associated entities, including any provider of **Pool Management Services** or Pool related services. This includes the specific entity or entities providing **Pool Management Services** and the functional role of each entity.
 - b. Purpose and Objectives of the Pool product, including, but not limited to;
 - i. the length of time the pool will operate;
 - ii. details of any specific selling strategy/schedule;
 - iii. details of which hedges the pool may use (if any); and
 - iv. the regions and locations where the pool will operate;
 - c. Key benefits of the Pool product
 - d. Key risks of the Pool product
 - e. Costs including all fees, charges, and potential for any change
 - f. The expected time frame for the audit of the Final Pool Return as per Section 5 and publication of the audit report
 - g. Important Points or Considerations
 - h. Key Terms (specifically addressing, but not limited to);
 - i. **Ring Fencing of Assets** (including a description of how it is practically managed);
 - ii. **Ring Fencing of Activities** (including a description of how it is practically managed);
 - iii. Underwriting (if not provided, then this should be stated clearly);
 - iv. **EPRs** if provided, including clearly outlining the assumption used to generate the **EPRs**;

- v. any freight or location differentials used to convert the pool returns and EPRs back to a site based level;
 - vi. timing and method of pool payments available including clear details of any interest charged to pool participants; and
 - vii. Pool payments such as early contracting bonuses and quality payments made to select **Pool Participants** and the impact such payments may have on other **Pool Participants'** returns; and
- i. Incorporate GTA **Arbitration and Dispute Resolution** rules into the **Pool** terms and conditions, specifically stating the whether the Pool product “*expressly incorporates the GTA Arbitration and Dispute Resolution Rules in force at the commencement of the arbitration*”. The clause should also include details of how the process is managed internally by the **Pool Provider**.
4. The recommended format for a **PPDG** should:
 - a. be no longer than [8] A4 pages;
 - b. use a minimum of 9 point font (except for names, addresses, ABN, ACN and AFSL details which may be 8 point font); and
 - c. use headings and a contents page.

7. General Principles

7.1 Statements about future matters

A statement about any future matter is misleading or deceptive if the maker does not have reasonable grounds for making it. However it is recognised that **EPRs** will by definition be a forward looking statement based on a number of hypothetical assumptions assessed at timing of setting or updating an **EPR**. The **Pool Providers** are required to clearly state the assumptions for any **EPRs** provided, including the risk that the **EPRs** may not be achieved.

7.2 Statements about past performance

Care should be taken when showing past performance information including, in particular, giving consideration to any misleading or deceptive representation that may arise from:

- a) past performance information (e.g. does the information need to be updated, including by means of a supplementary update?);
- b) the periods for which past performance information is shown (e.g. different sub-periods in the life of any past performance information may produce entirely different past performance figures);
- c) the use of hypothetical or reconstructed past performance figures;
- d) changes in the state of the market such that returns in the short to medium term are likely to be significantly less than the past performance being quoted; and
- e) changes in the method or mechanism by which the investment strategy is implemented (e.g. appointment of a new **Pool Provider** or provider of **Pool Management Services**).

A statement about past performance should be accompanied by a prominent warning that past performance is not necessarily a guide to future performance.

7.3 Disclaimers

To be effective disclaimers about statements should be of sufficient prominence to clearly counterbalance the effect of any misrepresentation that may have been made. A disclaimer should generally be able to be seen and understood by those who otherwise might be misled.

7.4 Assessing misleading and deceptive conduct

When assessing whether a **PPDG** may appear to be misleading or deceptive, particular attention should be noted to:

- a) statements about future matters such as forecasts (noting such statements should have clearly stated grounds for why they are made);
- b) statements of opinion (they should be formed honestly and reasonably);
- c) the likely overall impression of the **PPDG**;
- d) the use of illustrations or examples to highlight an aspect of the disclosure being provided;
- e) the use of disclaimers;
- f) ambiguous statements;
- g) whether statements draw inaccurate, unfair or inappropriate comparisons;
- h) the currency of information; and
- i) how information is set out and the prominence given to particular pieces of information.

8 Review

This TGD shall be subject to periodic review by the GTA Commerce Committee or a delegated sub-committee. Upon completion of periodic reviews, the TGD shall be submitted for approval by the GTA Board.

9 References

- GTA Code of Practice
- GTA Arbitration and Dispute Resolution Rules

END.