



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

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Australian Grain Industry – Code of Practice

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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 GTA Commerce Committee

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1 Preamble

1.1 Pool Providers

- a) The purpose and objective of this Technical Guideline Document (~~TGDG~~) 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 ~~TG~~~~Technical Guideline Document~~ 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.
- 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 resources

to 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.

1.2 Potential Pool Participants

- 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 ~~T~~~~erms~~ and ~~C~~~~onditions~~ 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 ~~EPR (Estimated Pool Return)-or-EPR~~

The financial return that Pool Participants can expect net of all Pool Provider charges at a designated price basing point, i.e. country silo, port, ~~T~~~~rack~~ or free on board excl of GST

The EPR must ~~also~~ be quoted at ~~T~~~~rack~~ or ~~track equivalent~~ level and explicitly define what costs, fees and charges are included and excluded in the published figure.

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Commented [PO1]: Tighten up, include what costs are in/out

Commented [PS2]: Above definition allows for other pricing points, quoting track is in addition.

Commented [PS3]: Will Track be a defined term?

2.2 ESR (Estimated Silo Return)

An EPR quoted at up country silo level. It shall be the EPR (ie quoted at Track level) less the applicable freight and any other costs for the respective silo.

2.3 Material Adverse Change

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

2.4 Pool

~~Means Refers to~~ a grouping of grain treated collectively by a Pool Provider ~~as a Pool~~ for the purposes of buying 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 from the grain~~ Pool and profits (and losses) are shared between the Pool Participants.

2.5 Pool Provider

Means a commercial organisation that derives a financial advantage from conducting a Pool for the benefit of Pool Participants.

2.6 Pool Participant(s)

Is a person or organisation that provides grain to a Pool.

2.7 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.

2.8 Ring Fencing of Assets

~~The~~ 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.~~

2.9 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, ~~and the fiduciary responsibility is prioritised to Pool Participants at all times.~~

2.10 GPR (Guaranteed Pool Return) ~~(GPR)~~

Means the guaranteed payment (\$/t) (incl or 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~~, port or free on board.

2.11 Underwritten returning

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 from the Pool be less than the Underwritten

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Commented [PS4]: Definition broad enough. If ESR is published/ quoted and the provider has obligations to disclose all costs, any concerns about what is included or not should be dealt with before entry into a pool.

Commented [PO5]: Does this allow for all possible scenarios, eg any regional prem/disc that may apply for say local demand points..which may get included in some silo returns (not quite the full pooling concept, but has been known to happen).

Commented [PO6]: Qtn for Committee - should this be "original" or "latest/most recent" EPR. How would this work (practicability) in highly volatile daily markets which will occur?

Commented [PS7]: Current published covers any risk more appropriately, ie published EPRs should never be greater than 5% of current estimates.

Commented [PO8]: Check using the word pool in the definition of a pool. "All activities

Commented [PO9]: This defn to be read in conjunction with cl 2.k

Commented [PO10]: Qtn: Is this definition practical given issues such as grain commingling, PPSR, Corp Law?

This definition is very high, and not reflective of broad industry practice..do will Industry move to this level or will mean Industry will create new terms (eg "SecureFence" etc), which will defeat the purpose, and also mean ongoing defining of new terms. Alternate approach to create "buckets" for market to fit within

Commented [PS11]: Deleted text implies an obligation on the Pool Participant, suggest removal to avoid any unintended confusion

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. Pool Providers may charge a fee to provide Underwriting. Any such fee must be disclosed in the ~~T~~erms and ~~C~~onditions and/or other relevant documentation.

2.12 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/>

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 Clause 2 of the TGD, ensure such terms and related activities as used in Pool arrangements comply with the definitions as per Clause ~~Error! Reference source not found.4~~
- ~~j) If using the term "Ring Fencing" or similar term, ensure such Pool arrangements meet the Ring Fencing definition as per clause Error! Reference source not found.1.1 below.~~
- ~~k) If using the term "Underwriting" or similar term, ensure such Pool arrangements meet the Underwriting definition as per clause Error! Reference source not found.1.1 below~~
- ~~l) remain responsible for any out-sourced activities or services.~~
- m) If using the term Ring Fencing (in respect of assets) or Ring Fencing of Assets, as defined in the terms, ~~describe~~ and explain how the Means taken by the Pool Operator protects the Pool Participants from any administration or liquidation ~~proceedings~~ or actions should the Pool Provider become insolvent. ~~The explanation should include the degree to which the Means are expected or likely to be effective.~~

Commented [PO12]: S912.A.corp law

Commented [PS13]: Reasonable is difficult to assess and may differ significantly between operators. Upfront disclosure is the important point.

Commented [PO14]: This def to be read with the 2nd defn of ring fencing in Cl 6.

Commented [PO15]: Qtn: Is this definition practical given issues such as grain commingling, PPSR, Corp Law?

This definition is very high, and not reflective of broad industry practice...do will Industry move to this level or will mean Industry will create new terms (eg "SecureFence" etc), which will defeat the purpose, and also mean ongoing defining of new terms. Alternate approach to create "buckets" for market to fit within

Commented [PS16]: Comment on P015 definition should remain at a high level as written. Suggest removing these words as any explanation would need to be simple enough for non legal people to understand, some legal structures will be complex to explain out.

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 2.1

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- c) Where a Pool Provider posts an ~~Estimated Pool Return~~ (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 isare 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~~Operators 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 website at least fortnightly from 1 November to 28th February of the crop production year (ie the harvest period) and otherwise at least monthly.
- 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 on a Net EPR basis.
- 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 website and the expected date of the next EPR revision.

Commented [PO17]: Perhaps this statement could fit in the PDS area

Formatted: No bullets or numbering

Commented [PS18]: What is Net EPR? Is this defined? Does it need to be defined?

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 ensure timely and adequate records of the Pool's operations are kept and prepare separate accounting records for each Pool adhering ~~to requirements of an accredited external auditor 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.
- c) Before or following closure of a Pool, and no later than three months of the final payment of a Pool, the Pool Provider will:
 - o 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's compliance with the terms and conditions of the Pool; and
 - o publish and deliver the findings of the auditor to Pool Participants and publish the auditor's report on its website.

Commented [PO19]: Q for Committee - Is this frequency ok? How does this line up with Frequency of S4. ie should it be the same as S4?

Commented [PS20]: Frequency is OK

Commented [PS21]: Performance. If there is no requirement to disclose a performance metric or measure, what is an Pool Provide reporting?

Commented [PS22]: It is not for auditors to set accounting policies.

Commented [PO23]: Included to ensure records are kept on a timely basis

Commented [PO24]:

Commented [PO25]: Committee to consider this time period. Should it be prior to final pool or a specific period that is less than 6 months (eg 1-3 months)... committee agreed to 3 mths.. Naming of Auditor?? Not agreed

Commented [PS26]: Cargill supports 'prior to final payment'. There is no commercial reason why this should not be possible.

Commented [PO27]: Should this be broader - ie publish on its website (most seem to)

Commented [PS28]: Clause Ok as written, should publish a report.

Commented [PO29]: Refenced from ASIC RG168

Commented [PO30]: Need to determine the degree to which this shall apply

Commented [PS31]: Suggested wording attempts to join to two documents together and combined they represent the T&Cs - this is in place of potentially need to duplicate terms between two documents.

6. Pool Product Disclosure Guide

1. The Pool Provider should make available to all Pool Participants a Pool Product Disclosure Guide (PPDG). The guide should form part of the ~~include all key~~ terms and conditions of the Pool.
2. The basic guiding principles of the PPDG is that disclosure should:

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- a) be timely;
 - b) be relevant and complete;
 - c) ~~promote product understanding~~ 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 customer's needs~~, have regard to general needs of Pool Participants
3. The PPDG ~~may seek guidance from the Short Form PDS format as described by ASIC, in that the document~~ 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 L~~length of time the pool will operate;
 - ii. ~~D~~etails of any specific selling strategy/schedule;
 - iii. ~~D~~etails of which hedges the pool may use (if any); ~~and~~
 - iv. ~~the R~~egions ~~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. Important Points or Considerations
 - g. 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. ~~A~~ny freight or location differentials used to convert the pool returns and EPRs back to a site based level;
 - vi. ~~T~~iming 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
 - h. ~~how incorporate~~ GTA Trade Rules and Arbitration and Dispute Resolution rules ~~are incorporated into the and procedures into the Pool T~~erms and ~~C~~onditions, specifically stating the ~~whether the~~ Pool product "expressly incorporates the GTA Trade Rules in force at the date of contract and the GTA Dispute Resolution Rules in force at the commencement of the

Commented [PS32]: This will be difficult to achieve. Pool Providers may prepare a PPDG however unless template will be very difficult to compare.

Commented [PS33]: This cuts to essence of licenced financial products and all the regulatory requirements the Pool providers have been exempted from. To leave this in infers that a Pool Provider needs to consider the personal needs of each Pool Participant, i.e require tailoring a PPDG for each Pool Participant.

Commented [PS34]: Cargill's concern. Recommend the TGD repeats only the specific disclosure requirements of a short form PDS which the GTA believes should apply to Pool Providers rather than cross referring to the disclosure required under a Short Form PDS. Removing a reference to ASIC means the Pool Providers do not need to understand the requirements of the Corps Act or Regs in order to adhere to the TGD.

Commented [PS35]: Cargill is not preventing other Pool Providers from adopting GTA Trade rules in the context of Pool contracts however this should not be enforced on Pool Providers. In Cargill's opinion, the GTA Trade Rules and general in nature and in many cases; not specific enough to the arrangements offered through Pool products. Trade Rules would not provide pool participants with any added benefit or protection.

Cargill also notes other recent regulatory changes in the area of consumer contracts, specifically unfair contracts, and which would generally apply to all farmer/ Pool Provider contracts and which bring these contracts into the oversight of ACCC. This we suggest provides appropriate oversight, adequate controls and provides pool participants with additional protection. If GTA feels that a specific component of Trade Rules should be enforced as a minimum then we suggest referencing the specific clause.

Cargill does support that Pool Providers must adopt GTA trades rules as a minimum standard. They should be allowed to go further if they choose but a minimum standard should set.

arbitration". The clause should also include details of how the process is managed internally by the ~~p~~Pool ~~p~~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.

Commented [PS36]: Cargill proposed wording to pick up further guidance with regards to PPDG template without a need to reference short form PDS.

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 ~~p~~Pool ~~p~~Provider or ~~p~~Pool manager).

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:

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- 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 References

- GTA Code of Practice
- GTA Trade Rules
- GTA Arbitration and Dispute Resolution Rules
- ~~ASIC, RG 168 – PDS~~
- ~~ASIC RG146 – Staff~~
- ~~<http://asic.gov.au/for-finance-professionals/afs-licensees/your-ongoing-afs-licence-obligations/your-afs-licence-obligations-explained/>~~
-

END .

Commented [PS37]: Cargill recommends removing references to regulatory standards or guides. Voluntarily preparing a document similar to a PDS or other disclosure document required by Part 7.9 of the Corporations Act may cause ASIC to re-consider the necessity of parts of the relief provided under the specific ASIC class order.