



Submission to a GTA Technical Committee

Instructions

Please complete **all** sections of this form to ensure the Committee receives a clear indication of the issue and your recommended course of action.

Proposal from:

GTA Member name:

Contact details:

Date submitted: *sent, via email, to GTA at submissions@graintrade.org.au*

NOTE

Submissions will be published on the GTA website unless there is a request not to, based on confidentiality.

GTA publishes submissions:

1. to aid industry in understanding the issues on a particular topic; and
2. as a method for submitters to check that their submission has been received.

Issue - *outline what the issue is.*

Impact on Member Business - *detail how the issue affects the business operations of not just your business but other GTA members as well.*

Recommendation - *detail your recommendation to address the issue.*

Members who Support this Submission - *list other GTA members who support this submission. Insert their name and contact person with phone number.*

Cargill Australia Limited.

Submission – GTA Technical Guidance Document (TGD) No.4 Operating Standards for Pool Providers and the draft Pool Product Disclosure Guide (PPDG)

Cargill supports the sub-committee's efforts in reviewing the TGD and with drafting the PPDG. Cargill makes the following further comments and submissions;

TGD – Cargill feels the updated TGD effectively raises the minimum standard expected of pool operators and that GTA has addressed the primary concerns noted by ASIC in 2016 after ASIC reviewed and extended the class order exemption applicable to pool operators. In addition;

- The draft TGD strikes a balance between the industry's efforts to self-regulate pool operators whilst allowing operators to make available cost competitive grain marketing solutions to grain producers. Self-regulation is something the grains industry should seek to preserve as it promotes continued investment in grain marketing solutions. Further regulation will increase the cost of offering pool products and overtime is likely to reduce the number of products available to grain producers.
- TGD Clause 5(d) – In Cargill's opinion the audit of a pool should be completed prior to final payments being declared or paid. Completing an audit prior to finalisation provides pool participants with further confidence in final returns and payments and it reduces the likelihood of a pool operator needing to go back to participants to advise of errors or more importantly to seek financial recovery from participants. Auditing of pools prior to pool finalisation is a practice that is currently in place for all AWB Pool programs.

PPDG – Cargill supports the introduction of the PPDG and the short form template but makes the following suggestions;

- **When will Final Audit be Completed?** There is a potential for misinterpretation of this question. Possible answers could include; month of audit completion; prior to finalisation; post finalisation. Cargill suggests this question be redrafted.
- **Is there a potential for conflict between the pool manager and related entities?** Cargill suggests redrafting this question to allow pool operators to explain how conflicts are managed by the pool operator.
- **Are the pool assets owned in a separate entity from the pool manager's assets?** Cargill does not believe this question addresses a primary concern. Business structures may be vastly different and as such responses will vary and may not be easily comparable. Commercially, how an entity achieves separation of pool assets should not be of primary concern, rather, pool participants may gain comfort in understanding the steps taken by the pool operator to separately manage and account for pool assets.
- **Are the pool activities conducted separately from the pool managers activities?** Cargill considers this question to be broad and as such the interpretation and responses may not be comparable. For example; Cargill maintains separate inventory records for each pool, maintains separate accounting records for each pool, maintains hedge accounts for each

pool, maintain separate physical positions for each pool, etc. What will all of that mean to pool participants. Additionally, Cargill feels that if a pool operator manages a number of pools that it is also important to explain how the operator separates activities between the pools it manages.

- 30 words or less mandate – Cargill understands that information in the PPDG needs to be simple and succinct however there is a risk that limiting responses to 30 words or less may not be adequate to answer some questions. For example, ‘fees charged by the pool manager’ - this may include the management fee, however all pools would also have other charges that pool participants may incur, fees and interest that apply to finance options, charges related to ticket reprocessing, washout fees and charges, underwriting charges, delivery site based charges etc.

The GTA Sub-Committee is seeking industry consultation in several areas. Cargill makes the following submissions on these items:

a) Whether, or not, Estimated Pool Returns (EPRs) should be made available or published by Pool Providers while a Pool is open for contracting, and whether the TGD should specifically prohibit the availability or publication of EPRs while a Pool is open for contracting.

Cargill supports the publishing of EPRs during the contracting or entry period.

- EPRs exist because pool participants view these as one consideration when assessing the performance of a pool, in simple terms; where did the pool start and where did it finalise.
- EPRs are also used when participants assess their choice of payment options and compare harvest payment options to instalment or distribution based options that spread payments over time. Not publishing an EPR will mean that pool participants will not have this information at time of entry and this may lead to further confusion and exposes pool operators to further risks once EPRs become available.

Cargill understands the importance that pool participants place on EPRs and believe that the industry should continue to meet this need. Cargill also feels that the TGD has progressed significantly with regards to providing clearer definitions around EPRs and how they are set and managed. The industry should now let the TGD do what is intended and have confidence that pool operators will comply with the TGD and seek validation of conformance with the TGD through an independent audit of pool operators.

b) The time period upon which a final audit of a pool must be undertaken (and published) from the final payment of the Pool to Pool Participants.

Cargill maintains that pool audits should be completed in advance of final payment being paid to pool participants. Achieving this outcome will reduce the risk to participants that a pool operator may need to amend final pool payments.

Cargill also suggests that delaying a pool audit to a period well after finalisation will mean that pool participants may not have access to all relevant information to make an informed decision on whether to participate in the next pool program offered by the operator.

c) Whether or not the tonnage delivered into each Pool Product should be included in the Final Audit Report. The purpose of this would be to ascertain the relative significance of particular products and performance.

- Cargill does not support the publishing of delivered tonnage for each pool program as it considers this information commercially sensitive and of limited value in assessing performance.
- Regulated V self-regulated - Cargill offers many price risk management products that are regulated under the Corporations Act. Under these regulations there is no requirement for Cargill to publish sensitive tonnage information. As such Cargill feels that the including such a requirement in the TGD pushes beyond the intent of the TGD, however a pool operator may choose to publish tonnage information should they wish to do so.
- Cargill submits that including such a requirement may be putting smaller operators and new products at risk due to potential misconceptions around linking pool volumes to pool performance and it may discourage new entrants, further investment and innovation in the pool product space.
- Grain is sold through many channels and grain prices may be managed using many pricing tools. Publishing delivery tonnage for pools merely provides industry participants and competitors with insights into a segment of the market without a need also for these other industry participants to disclose tonnage information or volumes traded. For instance, grain purchased by trade, commodity swaps traded by banks or other grain industry participants.

d) Whether GTA Dispute Resolution and Arbitration processes be incorporated into the TGD and Pool Terms and Conditions (noting the Sub-Committee supports this)

Cargill supports this initiative.

e) Whether GTA Trade Rules be incorporated into the TGD and Pool Terms and Conditions. The Sub- Committee requests further guidance from Industry noting that many of the GTA Trade Rules may not be relevant to Pools and that Pool Providers own terms and conditions cater to specific “Trade” related issues around Pools.

Cargill does not support this initiative. GTA trade rules set a clear standard for trade to trade contracts. Pool operators have detailed terms and conditions that are specific to their respective programs and which differ significantly from trade to trade contracts.

In many cases GTA Trade Rules are not specific enough and fall short of capturing key terms that would ordinarily apply to a pool contract. A pool operates in much the same way as a managed fund with pool participants sharing in the risk and rewards of the program. As such pool contracts and terms clearly set out the relationship between a pool operator and a pool participants and where applicable the terms also deal with obligations that pool participants have to other participants.

The table below provides Cargill’s assessment of GTA trade rules and the application to Cargill managed pools.

Rule 1.0	APPLICATION OF RULES	Not applicable.
Rule 2.0	ENTIRE AGREEMENTS AND VARIATION	There are far too many variations that would apply to pool operators and as such not practical to seek to agreement to all variations.
Rule 3.0	BROKERAGE	Not relevant to Pool Operators, business not contracted via a broker.

Rule 4.0	TIME	Very general term which is dealt with more specifically in pool terms and conditions.
Rule 5.0	QUANTITY	As per pool terms, many pools do limit contract minimums to 100 tonnes however there are no limits on much of pool tonnes that are committed to pools via electronic ticket management systems provided by all major storage operators, i.e. a pool participant transfers tickets to the pool operator and does not need to split tickets to round to nearest 100 tonnes.
Rule 6.0	QUANTITY TOLERANCE	Not applicable, mandating tolerance may inadvertently impact a pools risk to market exposures and in turn expose other pool participants to additional risk.
Rule 7.0	WEIGHTS	Not applicable, farmer transfer grain in accordance to their ticket entitlement which is established at time of delivery into storage operator.
Rule 8.0	QUALITY	Not applicable, quality determined in accordance with Industry/ Storage Operator process and procedures at time of delivery. Pools operators are transferred tickets at the location it was first delivered.
Rule 9.0	SELLERS' WARRANTIES	Not applicable. Grower deliver grain into a comingled system and as such hold warranties and obligations at point of delivery, not at point of sale or transfer to a pool operator.
Rule 10.0	CERTIFICATES	Not applicable to pools. Weights and qualities are as per ticket entitlement and subsequent transfer to a pool.
Rule 11.0	BUSINESS DAYS	Applicable, not material and dealt with in terms and conditions
Rule 12.0	TIME OF DELIVERY OR SHIPMENT	Not applicable. Pool Contracts clearly state a delivery period where this is applicable.
Rule 13.0	CONVEYANCE AND DELIVERY INSTRUCTIONS	Not applicable as drafted, note industry practice of ticket transfer from farmer to a pool operator.
Rule 14.0	OWNERSHIP AND PASSING OF TITLE	Clause 14(3) may apply if redrafted. However, pool terms and conditions would state this more clearly.
Rule 15.0	REJECTION	Largely not applicable. Do to the nature in which grain it transferred into pools, pool operators must retain the right to set their own terms for rejecting grain.
Rule 16.0	FINALITY	Not applicable.
Rule 17.0	DEFAULT	Trade based drafting not applicable to pools. Pool terms and conditions include default clause which seek to ensure the pool is left in a no loss position. This is important for pool operators since any loss in a pool due to a farmer's default will be borne by other pool participants. A pool participant

		delivering into a pool should not hold any exposure to another defaulting pool participant.
Rule 18.0	CIRCLE TRADES	Not applicable.
Rule 19.0	PAYMENT	Not applicable. Pool operators provide participants with various payment options which are outlined in their terms and conditions
Rule 20.0	NOTICES	Pool operator terms and conditions extend beyond trade rules and cover communication between the parties more generally and regulatory requirements in relation to communication and privacy.
Rule 21.0	FORCE MAJEURE	Force majeure clauses appearing in pool terms and conditions are generally drafted to allow for greater negotiation between pool operator and pool participants and clauses are typically applied for the benefit of pool participants.
Rule 22.0	EXPERT DETERMINATION	Unless an arbitration matter is present, it would not be appropriate to adopt an expert determination clause in a pool contract since all pool participants enter a pool under the same terms and conditions. Any expert determination will likely impact all contracts between the pool operator and pool participants.
Rule 23.0	ARBITRATION	Not acceptable. It is not for GTA to limit the avenues available to pool operators or pool participants. Cargill agrees that GTA Dispute Resolution Rules should be provided to participants as an avenue should they choose this approach however terms and conditions should not be limited to this avenue.
Rule 24.0	CHOICE OF LAW	Not acceptable as pool operators are incorporated in all grain producing states and should be permitted to choose to be governed by any law they consider appropriate.