



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 (TDG) 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 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~~ Pool Participants 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 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 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, Track ~~or free on board~~ ~~excl of~~ GST

The EPR must be quoted at Track level and explicitly define what costs, fees and charges are included ~~and excluded~~ and be quoted Net of all charges in the published figure.

Commented [DA1]: What happens if GTA Members do not adhere? Is their membership revoked?

Commented [DA2]: Should this point be better under section 1.2

Commented [DA3]: What are the minimum standards a pool provider must adhere to, for a Potential Pool Participant can conduct due diligence?

Commented [DA4]: Are the T&Cs the Product Disclosure Guide/ Contract (see later comments)

Commented [PO5]: Tighten up, include what costs are in/out

Commented [DA6]: Must be quoted Track as per paragraph below

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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 original published EPR of more than 5%.

2.4 Pool

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 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 taken 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.

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 Guaranteed Pool Return (GPR)

Means the guaranteed payment (\$A/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, port or free on board.

2.11 Underwriting

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 amount. Consequently, the Pool Participant shall have no further debt or liability to the Pool Provider (or

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Commented [PO7]: 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 [DA8]: At the time of contracting. The MAC should be advised ASAP. Does a MAC of 5% become the Guaranteed minimum payment? Is this a trigger for arbitration?

Commented [PO9]: 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 [SG10]: If varies more than 5% then GTA agrees in breach of Australian Consumer Law Unfair Contract Terms

Commented [PO11]: Check using the word pool in the definition of a pool. "All activities

Commented [DA12]: Would need an: ABN, responsible person, legal entity, constitution/trust deed

Commented [DA13]: Does this limit liability of a favourable arbitration by a pool participant to the assets of the pool and not the pool provider

Commented [PO14]: This defn to be read in conjunction with cl 2.k

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 [SG16]: Guaranteed

Commented [SG17]: Any allowance for late indicative or variable pricing of grain held in Pool means Pool Provider breaches contract with Grower to trigger Australian Consumer Law - Unfair contract terms

Commented [DA18]: What is the "legality/ ethicality" of a non underwritten pool when compared to the Claw back provision on the Murray Goulburn milk contracts that were being investigated by the ACCC?

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 Terms and Conditions 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 arm's length 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.**
- ~~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.** 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.** 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 [PO19]: S912.A.corp law

Commented [SG20]: Operators of grain pools are exempt from all managed investment scheme provisions of the Corporations Act 2001 (Act) but should get caught by Australian Consumer Law - Unfair Contract Terms

Commented [PO21]: This def to be read with the 2nd defn of ring fencing in Cl 6.

Commented [PO22]: 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

4 Estimated Pool Return (EPR)

- a) An EPR is not a Guaranteed Pool Return (GPR)
- 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) 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 is 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 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)
- g) 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. 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 [PO23]: Perhaps this statement could fit in the PDS area

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 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. 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 [PO24]: 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 [PO25]: Included to ensure records are kept on a timely basis

Commented [PO26]:

Commented [PO27]: 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 [PO28]: Should this be broader - ie publish on its website (most seem to)

Commented [PO29]: Refenced from ASIC RG168

Commented [DA30]: Needs to be a reference to the ACCC Unfair contract terms <https://www.accc.gov.au/business/business-rights-protections/unfair-contract-terms>

Is the PPDG a contract or guide. It should be a contract

Commented [PO31]: Need to determine the degree to which this shall apply

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 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;
 - d) promote product comparison;
 - e) highlight important information or make it apparent; and
 - f) have regard to customer's needs.
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. 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)
 - iv. Regions location where the pool will operate
 - c. Key benefits
 - d. Key risks
 - 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. 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.
 - vii. Pool payments such 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. Incorporate GTA Trade Rules and Arbitration and Dispute Resolution rules and procedures into the Pool Terms and Conditions, specifically stating 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 arbitration". The clause should also include details of how the process is managed internally by the pool provider.

h.i.

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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 forward looking statement based on a number of hypothetical assumptions. 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 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:

- 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

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- 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/>
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END .

GPA