



SUBMISSION

**Second round of consultation regarding
Grain Trade Australia review of Technical Guideline Document (TGD) No.4
Operating Standards for Pool Providers.**

August 2017

Grain Producers Australia

Grain Producers Australia (GPA) represents Australia's broadacre, grain, pulse and oilseed producers at the national level.

GPA was created to foster a strong, innovative, profitable, globally competitive and environmentally sustainable grains industry in Australia.

The objectives of GPA are to establish a strong independent national advocate for grain producers based on a rigorous and transparent policy development process; engage all sectors of the Australian grains industry to ensure operation of the most efficient and profitable grain supply chain; and facilitate a strategic approach to Research, Development and Extension intended to deliver sound commercial outcomes from industry research.

GPA has an industry leading policy council which is supported by the following State Farm Organisation (SFO) members including: VFF Grains Group, NSW Farmers Association, Agforce Grains, Grain Producers SA, TFGA, WAFF, WAGG along with 3 elected growers from the North, South & Western region of Australia. As such GPA has comprehensive National representation across the Australian production sector.

This submission is provided in general support of the previous submission made by Grain Producers Australia (Feb 2017) and the submissions made by our SFO members.

Introduction

Whilst some of GPA's concerns (raised in our submission February, 2017) and subsequent recommendations have been addressed, there are still concerns regarding the use of Estimated Pool Returns (EPRs) and the ability for EPRs to be potentially used to mislead pool participants into preferencing one product over another.

There is also still no genuine recourse for pool participants if a pool does not perform, nor will GTA commit to taking any action against members who breach the TGD. While GTA have proposed incorporating the GTA arbitration process, this does not provide any clearly defined penalties for non-compliance with the 'code'. Arbitration requires a grower to take action against a pool provider for some adverse impact. This is separate and distinct from a compliance regime around the code. That is, it is unclear who will monitor, investigate, and ultimately enforce the 'code'.

- The use of EPRs: to advertise the pools and options to require pool managers to publish information regarding any changes to EPRs
- Arbitration: legal rights are unclear
- Enforcement of the Code: the lack of enforcement is still of concern to the GPA.

There has been some movement on the areas of concern to GPA regarding clarity of fees being charged to growers, including the proposed development of a template to improve transparency and consistency of reporting. The lack of consistency because of lack of clear and consistent definitions within the GTA documents e.g. track pricing (net of all costs?) is an area that requires clarification in the TGD by GTA.

There are also still concerns regarding the use of an arbitration process in the event of a complete failure of a pool. GPA also believes there must be clarification regarding whether using arbitration would reduce growers ability to seek remedy under other legal options.

GPA recommendation 1 – Compulsory Product Disclosure Statement (PDS)

This has been addressed as far as being included in the current draft of the TDG as a “should” requirement, however GPA notes it is not a “must” which would be preferable.

So while it is a requirement of Pool Providers using the guidelines, given the guidelines are not enforceable it is questionable whether there are any penalties for breaching this requirement.

GPA Recommendation 2 - The Operating Standards for Pool Providers technical document should be renamed *Pool Provider Code of Practice*.

Not addressed. It remains a technical guidance document with no significant enforceability regardless of its position under the Industry Code of Practice. GPA recommends that GTA strongly consider the value of making it a Prescribed Industry Code under the provisions of the ACCC. This would give it stature and greater legitimacy through the ability to undertake enforcement action.

GPA recommendation 3 – GTA should set a standardised format for the quoting of Estimated Pool Returns.

There has been some amendment and discussion regarding the definition of EPR and the use of the EPR. Pool providers must clearly state the grounds upon which an EPR is estimated. Costs, fee and charges must be clearly defined and regularly updated at least fortnightly while the pool is open.

Where there has been a material or adverse change (reduction of more than 5%) the Pool Provider must update the information as soon as practicable. The pool provider must report on the performance of the pool and its performance against the EPR.

However, the onus still firmly remains on growers to understand the use of the EPR and that they are only estimates and therefore not to be relied upon as an indicator of pool performance.

GPA believes there is value in publishing equity positions in order to provide greater insight into whether the EPRs are realistic.

GPA ongoing concerns: *GPA do not support the use of EPRs as currently used, second option publishing the equity position (marked to market) and further accountability regarding the publishing of using EPRs.*

GPA Recommendation 4 - The organisations' compliance with their PDS should form part of the final pool audit and the results published.

Audit is covered in section 5. An independent auditor must be engaged no later than six months after the final pool payment to assess the performance of the pool and the performance of the pool provider against the TGD.

Any concerns regarding the performance of the pool will be dealt with through the GTA arbitration process. Failure to satisfy the audit or meet any corrective actions activates the GTA complaints process.

The Audit must assess whether the Pool provider has adhered to their PDS documents, and GPA remain concerned about the lack of accountability of GTA to ensure auditing and undertake reviews of their pool provider member's adherence to the TGD.

Ongoing GPA Concerns: There is no definition of "auditor" to determine the qualifications of the independent auditor to undertake the assessment.

No clarity regarding claw back provisions or what actions may be taken by GTA.

GPA Recommendation 5 - GPA supports stronger action by GTA to annually review and analyse pool provider performance against their PDS.

Included in the audit process but concerns regarding "auditor" remain.

GPA Recommendation 7 - Pool operators must have appropriate systems, processes, and governance in place to operate Pool

This has been addressed in part through the PDS and the audit process.

GPA Recommendation 8 - Pool Providers must mandatorily report EPR and Pool Equity on a weekly basis during harvest and on a monthly basis thereafter.

EPR reporting fortnightly and monthly after finalisation of contracting period.

Quarterly reporting of performance of the EPR versus performance of the pool.

Recommendation 9 - Pool providers must include details of related party transactions

GPA Recommendation 10 - Pool providers must demonstrate separation/ring-fencing of pool management, and accounts, within related party entities

Ring fencing provisions in the draft TGD are currently not explicit or stringent enough. In the first instance GPA consider that all pool providers should have clear demonstrated ring-fencing of management decisions, assets, and accounts. If there are any inter-company transactions or decision making then this must be explicit, recorded and auditable. Examples include managers making trading decisions on behalf of both a Pool book and cash

trading book; how sales are allocated to Pool versus cash; how shipping slots are allocated; any transactions between Pool and cash books.

GPA Recommendation 11 - Pool Providers must clearly identify grain and all transactions belonging to a pool at the time of the transaction.

The new document does not adequately address later party transactions eg sale of all pool grain through the cash arm of the company.

GPA Recommendation 12: Integrity of transaction allocations, assets and liabilities of a pool should form part of the final pool audit and the results published.

As per our concerns regarding the lack of adequate ring fencing provisions.

GPA Recommendation 13: Material Adverse Changes in relation to an EPR should mean a reduction of the last published EPR of more than 5%.

This has been addressed as far as reporting material adverse changes.

Conclusion

In conclusion GPA appreciate the Committees efforts to improve transparency and standardisation of terms and conditions, GPA, are however concerned regarding a number of key elements of the TGD such as compliance monitoring and lack of enforceability, as well as the enforceability and/or lack of transparency around related party dealings.

Yours Sincerely,



Andrew Weidemann
Chairman - Grain Producers Australia