

# NewsInGrain

ISSUE 8, DECEMBER 2011

## CHAIRMAN'S REPORT AGM 2011

### Challenges, cooperation & opportunities

The major **challenge** was harvesting a crop in the eastern states that was subjected to an ongoing rain event that delayed harvest and resulted in substantial tonnage being downgraded. Commercial pressure was then applied to the grain standards at receipt and application of qualities to contracts and the time of contract execution.



It would be fanciful to suggest that all this occurred to the complete satisfaction of all concerned. However, the fact that the various systems, be they logistical or commercial, did meet the challenge is a credit to the grain industry.

Getting this harvest in was not the only example of cross sector **cooperation**. During the year the industry demonstrated enormous maturity in reaching agreement to establish **Wheat Quality Australia**. WQA is a joint venture between the Grain Research and Development Corporation and Grain Trade Australia and has been tasked by the industry to continue the classification processes for Australian wheat. This process sets the foundation on which the quality of the Australian crop is built.

Another example of cooperation was the conduct of the **Joint AQIS/Grain Industry Export Certification Reform Program** which was chaired by the GTA CEO Mr Geoff Honey. This was an industry first with a Government department working with industry to improve the export certification processes. The reforms have been announced and, whilst it is early days, have met widespread support. The challenge will be the implementation and integration of the reforms into mainstream AQIS activities.

The **National Working Party on Grain Protection** continues to demonstrate the commitment to cross industry cooperation and GTA will continue to support their activities which ensure our grain is free of insects.

Closer to home, the **GTA Technical Committees** are the embodiment of cooperation. The Committees comprise cross sector industry specialists who are prepared to put their immediate commercial interests

to one side in their deliberations to provide the most contemporary commercial tools for the use of, not just Members, but the industry generally.

Industry individuals who participate as arbitrators add another dimension for being prepared to serve their industry in this capacity. Over the last year the capabilities of the GTA arbitration process has been challenged with a record number of active arbitrations.

The **GTA Strategic Direction 2011** document released during the Australian Grain Industry Conference details the opportunities for the industry and signals a shift in the modus operandi of GTA, in that not only will GTA develop the tools for commercial trade to occur, GTA will for the first time establish guidelines for their use. This is a major shift for GTA and is another demonstration of an industry focussed on demonstrating the preparedness and ability to self regulate.

When combined, the nature and breadth of GTA activities has resulted in attaining a high degree of credibility with government. GTA is now seen as a completely independent organisation not beholden to a sector or organisation.

Now, moving to matters under consideration today, your Board has elected and appointed representatives to provide the strategic outlook and governance for the organisation. At the 2011 AGM three of those Directors are retiring.

**Geoff Barker** joined the Board in 2003 and Chaired the Transport, Storage & Handling Committee. This enabled Geoff to apply his commercial talents to the development of the Location Differentials as we know them today. Location differentials underpin the Track Contract which is the cornerstone of the Australian grain trading complex. As the GTA Chairman in 2006, Geoff recognised the continuing and expanded role of GTA and the need for the organisation to have an independent Chairman.

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***We have moved,  
please update your records:***

**Office Address:** Suite 1, Level 10, 66 Hunter Street,  
Sydney NSW 2000

**Postal Address:** PO Box R1829, Royal Exchange  
NSW 1225, Australia

**Phone:** +61 2 9235 2155

**Fax:** +61 2 9235 0194

**Email:** [admin@graintrade.org.au](mailto:admin@graintrade.org.au)

The smooth transition to this situation is testament to his selfless contribution to our industry.

Recognising the need for greater industry self governance around aspects of grain contracts was the catalyst for **Mike Chaseling** to join the Board in 2007 and assume the role as Chairman of the Corporate Governance Committee. This Committee established strong links to the Australian Securities and Investment Commission and supplied guidance to Members who hold Australian Financial Service Licences. Strategically, Mike was able to provide valuable input and guidance as the organisation

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# CHAIRMAN'S REPORT AGM 2011

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expanded into activities required by Members in the trade facilitation role.

Merchant associations established GTA in 1991 and their ongoing involvement ensures the organisation enjoys a strong base of support with the mostly country based grain merchants in all states.

**Jim Riordan** joined the Board in 2006 and assumed Geoff Barker's role as Chair of the Transport, Storage & Handling Committee when Geoff became the Chair of GTA. Mindful of the enormous contribution that independent grain merchants make to the industry, he was always aware of the need for GTA to maintain a balance of views across all the industry sectors. He encouraged continual engagement of GTA with its stakeholders, a practise that guarantees the organisation will remain relevant, delivering member benefits and enjoying their support.

On behalf of the Board and Members of GTA, I thank Geoff, Mike and Jim for their integrity, dedication and constructive input.

The core philosophy of the original Members to serve the industry is ongoing with all the Committees and arbitration tribunals being Members. The industry owes all these people who are listed in the Annual Report a collective vote of thanks. Also I extend my thanks to the other Board Members and the GTA staff who have worked tirelessly to deliver the products and services demanded. The strong financial and Membership base is testimony to their efforts.

Finally I would like to make special mention of a milestone for GTA. It is 20 years since a group of innovative thinkers established GTA (formerly

NACMA) in Tamworth to facilitate trade across the Australian grain industry. Those present at the first meeting included:

- Mr Ian Brown – Rural Merchant Supply Assn
- Mr Mervyn May – QLD Produce Seed & Grain Merchant Assn
- Mr David Hancock – Grain & Feed Trade Assn Inc
- Miss Sue Kenny – Grain & Feed Trade Assn Inc
- Mr David Ward – Melbourne Corn Exchange
- Mr David Moore – Grain & Agricultural Commodities Assn of SA
- Mr John Ade – Australian Grain Exporters Assn
- Mr Max Perkins – Australian Grain Exporters Assn
- Mr Chris Kelly – Rural Merchant Supply Assn
- Mr George Hammond – Rural Merchant Supply Assn
- Mr Bryce Bell – Secretary

GTA's founding member organisations (it was an association of associations) included the:

- Australian Grain Exporters Association
- Grain & Agricultural Commodities Assn of SA
- Grain & Feed Trade Assn Inc
- Melbourne Corn Exchange
- QLD Produce Seed & Grain Merchant Assn
- Rural Merchant Supply Assn

Office bearers appointed at the first meeting:

- Chairman – Mr Ian Brown

- Vice Chairman – Mr John Ade
- Secretary – Mr Mervyn May



Mr Bryce Bell was appointed the Executive Director and served in this capacity until 2001. GTA operated with the efforts of an army of volunteers who participated in the Committees and later on in arbitrator roles. They did this at their own expense, a practice that GTA still follows today. Then, as now, Members continue to volunteer their services. This is a real strength to our organisation. To those individuals named above, all the others who worked behind the scenes and the founding organisations, your input is acknowledged.

The GTA 2011 Annual Report provides a comprehensive summary on the activities of GTA over the past 12 months and the GTA Strategic Direction 2011 document outlines our plans for the year ahead. Suffice to say we have some great opportunities before us as your Board commits to industry changes and growth which supports facilitation of trade across the sector.

We recognize that our involvement in matters such as personal development and training, Code of Conduct and certification of industry practices will be an integral part of our future role as the changes promoted by the Productivity Commission unfold and are implemented.

Finally, I thank the Board CEO and staff for their support and I look forward to another exciting year of growth and achievement.

**Tom Keene**  
25 October 2011

## New Board Appointments

### Mitchell Morison

Mitch Morison was recently appointed to the role of General Manager of Cargill Australia's Commercial & Risk Management business unit. Within the role, Mitch is responsible for overseeing the trading, risk management, sales execution and financial performance of Cargill's grain, oilseed, oils, pulses and protein meals activities within Australia.

Prior to his current role and before the acquisition of AWB's Commodity Management Division by Cargill Australia, Mitch managed the transformation of AWB's grains related business activities from the regulated 'Single Desk' wheat export operation into the largest national farm-gate originator, supply chain manager and exporter of Australian grains during the early years of export wheat market de-regulation. In addition during this time he was also responsible for managing AWB's trading activities in Geneva, Ukraine and India.

Mitch joined AWB in 1993. Between 2004 and 2007, he managed the AWB's Domestic Trading Division responsible for coordinating activities in AWB's Landmark agency businesses, covering grain acquisition, wool and livestock activities.

Mitch holds a Bachelor of Science (Agriculture) from the University of Western Australia and a Postgraduate Diploma in Agricultural Economics from the University of New England. He has held a range of AWB & industry related company directorships including Pulse Australia, Australian Wool Handlers and AWB GrainFlow and has travelled extensively across the Middle East and the Asian region to engage with buyers of Australian agricultural commodities.

### Michael Wood



Michael has been an active member of the Australian Grains Industry for over 20 years As Founding Manager in 1990 of Stockfeed Company James & Son (Australia), he established successful operations in Victoria, Tasmania, South Australia and Argentina.

Michael has embraced other grain industry roles, including ABB Victorian State Manager for 5 years and Grains Manager for International Malting Company in 2005-06.

Michael is presently the Trading and Logistics Manager for Rural Logic (Australia). Michael has

been an active committee member of GIAV since 2006 and is currently the Vice President.

### Matthew Rutter



Matt has more than 13 years experience in the Australia grain industry, most recently taking on the role of General Manager of Origination for Gavlion to oversee the company's grain accumulation, pricing, pooling and trading activities. Prior to taking on this position Matt was the Head of Trading for the CBH Group and in previous roles has managed some of the country's largest wheat, canola, protein and oilseed books.

Matt's expertise is in grain and futures trading, price risk management, international and domestic grain marketing and grower pricing product development and implementation. Matt holds a Bachelor's degree in Agribusiness with honors, a graduate diploma in Applied Finance and Investment, is Chairman of the not-for-profit Volunteering Western Australia and has travelled to every continent promoting Australian grain.

# APPOINTMENT OF NEW GTA BOARD AND COMMITTEES

The election of Directors to the GTA Board were held at the GTA AGM, Tuesday 25 October 2011.

## Directors who retired by rotation and did not seek re-election:

Mr Geoff Barker, Cargill, Ordinary Level 'A' director.

Mr Michael Chaseling, Emerald Group, Ordinary Level 'B' director.

Mr Jim Riordan, GIAV, Merchant Association director.

## Election of new Directors:

Mr Mitchell Morison was elected as the newly appointed Ordinary Level 'A' director.

Mr Matthew Rutter was elected as the newly appointed Ordinary Level 'B' director.

Mr Michael Wood was elected as the newly appointed Merchant Association director.

## As a result of the GTA Election of Directors, GTA's board of directors for 2011/2012 is as follows:

Director	Member Organisation	Category
Tom Keene	GTA Chairman	Special Qualifications
Geoff Farnsworth	Macpherson and Kelley Lawyers	Special Qualifications
Malcolm Finlayson	Finesse Solutions	Special Qualifications
Geoff Nalder	Grain Producer, Victoria	Special Qualifications
Helen Harvey	Australian Brokerage International	Special Qualifications
Neil Johns	GrainCorp Operations	Level A
Mitchell Morison	Cargill	Level A
Robert Parkes	Ridley Agri-Products	Level B
Matthew Rutter	Gavilon Australia	Level B
Chris Kelly	KM & WM Kelly	Level C
Phillip Holmes	Queensland Agricultural Merchants	Merchant Association
John Orr	Premium Grain Handlers	Merchant Association
Michael Wood	Rural Logic Australia	Merchant Association

Appointment of Board Committees				
Audit & Finance	Business Development	GTA Dispute Resolution	Governance	Membership
Malcolm Finlayson (Chair) Chris Kelly Tom Keene	Neil Johns (Chair) Malcolm Finlayson John Orr	Geoff Farnsworth (Chair) Phil Holmes Matt Rutter	Tom Keene (Chair) Chris Kelly Geoff Farnsworth	Chris Kelly (Chair) John Orr Michael Wood Helen Harvey Geoff Nalder

Commerce	Organisation
Phillip Holmes - Chair	Old Ag Merchants
James Maw	Glencore
Daniel Miller	Gavilon
Brett Stevenson	Market Check
Harry Notaras	GrainCorp
Darryl Borlase	Elders Toepfer
Mark Neo	CBH
Adam Chilcott	Viterra
Geoff Farnsworth	Macpherson & Kelley
Jamie Smith	Grain Producers Aust.
Dougal Hunter	ASX
Mark McKay	Grain Growers Limited

Trade & Market Access	Organisation
Mitchell Morison - Chair	Cargill
Rosemary Richards	Aust. Grain Exporters Assn.
Caroline Rhodes	Viterra
Pat Wilson	GrainCorp
Narelle Moore	CBH
Adrian Reginato	Cargill
David Hudson	SGA
Bill Murray	BMC
Nick Goddard	AOF
Paula Fitzgerald	Grain Growers Limited
Andrew Weidemann	Grain Producers Aust.

Standards	Organisation
Robert Parkes - Chair	Ridley Agri-Products
Vince Moroney	CBH
Jeanette Marszal	Viterra
Adrian Reginato	Cargill
Pat Wilson	GrainCorp
Dai Suter	George Weston Foods
Natalie Maguire	CBH
Geoff Clatworthy	Inghams
Michael Schaefer	Grain Producers Aust.
Wayne McKay	NSW Farmers Association

Transport, Storage & Ports	Organisation
Matt Rutter - Chair	Gavilon
Brett Reid	Gavilon
Ben Raisbeck	Glen Core
Jim Riordan	Riordan Grain
Josh Taylor	Elders Toepfer
Zsolt Szilassy	Viterra
David Ginns	GrainCorp
Jock Carter	Newcastle Agri-Terminal
Matthew Kelly	Kelly & Sons
Mark O'Brien	George Weston Foods
Peter Tuohy	VFF
Philip Wilsdon	Grain Producers Aust.
Antony Borgese	Cargill



# MANAGING INSOLVENCY IN THE GRAIN INDUSTRY

Prepared by Malcolm Finlayson,  
Director of Finesse Solutions Pty Ltd

## Insolvency – Before and After

**Insolvencies occur frequently in the grain industry and businesses need to prepare for them. The best preparation is to attempt to avoid dealing with counterparties that are likely to enter insolvency but even with the best preparation it is likely that you will have to deal with an insolvent counterparty. This paper is meant to be a brief guide to a before and after situation with insolvencies.**

### What is insolvency?

There are two primary definitions of insolvency:

1. inability to meet liabilities as they fall due;
2. shortfall of assets to liabilities.

The first is the more commonly used expression of insolvency but both are relevant. Unless there is support from another party the second definition will lead to an occurrence of the first.

We will focus on the first as this is the most commonly used cause of an insolvency event. This tends not to be a short-term incident but an inability to meet obligations over an extended period. Being unable to meet creditor liabilities for one day due to cash timing is not an event of insolvency but it is cause for concern. Insolvencies are slightly different between companies and individuals. This paper is restricted to company insolvencies.

An event of insolvency can also occur if the company is wound up or applied to be wound up. Other than the previously mentioned conditions, this usually occurs to cease trading or restructure when there has been full provision for liabilities and so it is not a risk.

### What is the result of insolvency?

The following are some of the possible results of insolvency:

- once an insolvency occurs contracts enter into automatic default and although a financial obligation remains the obligations under the contract may change dramatically, depending on the terms of the contract;
- directors and officers of the insolvent entity may face civil and criminal action as a result of the insolvency;
- creditors of the business have different orders of priority in regard to subsequent payments from the entity;
- a different party takes control of the business and large costs are incurred;
- payments to suppliers prior to the insolvency event may be forcibly repaid to the entity;
- usually a great length of time passes before the affairs of the entity are resolved.

Insolvencies are unpleasant experiences for all parties and best avoided if possible. It is very rare to be an unsecured creditor to an insolvent business and receive full recovery of your claim.

### Primary risks in a grain insolvency

There are two main risks in a grain insolvency – delivery risk and market exposure risk.

The delivery risk is the loss of product that has been delivered to the counterparty. It is the value of the receivable.

The other, less obvious, risk is the market position created by the loss of the contract. Usually this is the long or short that occurs in your position for the market movement in price from the original contract price to the market price where you close the position out.

The first risk is obvious each day from review of your receivables but the second is not as obvious unless you run a counterparty position report. A counterparty position report shows the exposure you have on all counterparty contracts against the current market. It shows the risk you bear if they were to default on their contract obligations.

### Counterparty dependency

Your risk with a default is not just with your customers. The delivery risk lies with customers but the market exposure risk is with suppliers, customers and other counterparties. Your ability to meet trade obligations are not reliant solely on the suppliers and customers but on all the counterparties involved in the delivery pathway.

Some are obvious such as freight companies or storage companies, but others such as financiers require broader thinking. You need to evaluate your risk to all counterparties and include it in your management processes.

### Reducing risk

There are many methods of reducing insolvency risk. Some examples are:

- **Elimination** – only sell cash before delivery and only contract for immediate delivery. This may reduce your ability to make money in trading.
- **Evaluation** – investigate the viability of your counterparties and gain greater comfort that your risk is low. Look at the strength of their balance sheet, look at their length of time in business, look at their record of profitability, look at their management/ownership professional reputation and talk to parties that deal with them.
- **Risk mitigation** – these are any actions you can take to limit the risk you are prepared to accept with a counterparty. They include credit limits, trading limits, credit insurance, retention

of title clauses, personal guarantees, types of payment instruments (such as Letter of Credit, bill for collections, etc), counterparty insurance and offsetting positions. Include the GTA Trade Rules and contract clauses relating to insolvency in your contracts.

- **Ongoing measurement** – don't set and forget. Actively monitor your counterparties and watch for signs of concern. Are they paying late? Are they increasing their payment terms? Are insurers reluctant to cover them? Do they refuse to release current information on their businesses? Are other suppliers refusing to deal with them? Watch and take action or at least return to your evaluation process. If you are becoming uncomfortable with a counterparty start taking some action to mitigate ongoing risk.

### Who can be involved in the insolvency?

When company insolvency occurs there are three types of parties that may become involved in the management of the business. They have different powers and obligations.

**Administrators** – are usually appointed by the entity's board of directors to prevent the entity trading while insolvent. The administrator will assume the running of the business and incur debts in its own right. It will attempt to maximise the return for all creditors.

**Receivers** – are appointed by secured creditors and will attempt to maximise the return for secured creditors. Secured creditors have priority over unsecured creditors and so the receiver has priority over administrators. Often an administrator and a receiver are concurrently appointed to an insolvency.

**Liquidators** – are appointed once the creditors determine that a business is incapable of being sustainable and must be liquidated. The liquidator has the power to recover preferential payments to creditors and pursue directors and officers for losses if the business was trading while insolvent.

**The creditor committee** – is a small group of creditors that are appointed by the creditors to advise the administrator/liquidator during the administration or liquidation. It is important for the knowledge of the grain Trade Rules and business practices to be passed across to the administrator, particularly if the administrator does not have experience in the grain industry.

### What you need to do if a counterparty is insolvent

GTA has a number of contract clauses and Trade Rules that cover insolvency. Make sure you are familiar with the ground rules.

1. **Find out.** If you hear a rumour of insolvency find out. The sooner you know the sooner you can begin reducing your exposure. Talk to the company or check with the ASIC website to see if an administrator has been appointed. If you have received a communication from

the company or administrator, read it carefully. The date you become aware of an insolvency is important!

2. **Correct your position.** The loss of a contract will create a market position for you. Although you have a right of washing out the contract, the price you use may not be the price you achieve in the market. Sometimes a major player's insolvency may dramatically move the market price and a day's difference could be enormously expensive. If you are running a MTM reporting system, perform your washout and remove the old contract from your position reporting to correctly state your exposure.
3. **Calculate your washout.** This is the difference in the market price to the contract price on the day following either: (i) the day of notice from the administrator or the day you first became aware of the insolvency event; or (ii) the day of the event of insolvency. The market price used needs to be for the same commodity for the same delivery period and for the same delivery point. I strongly recommend that your supporting documentation for the washout has all of these characteristics being identical, even if it is more effort for your preparation of the support. The washout invoice is not subject to GST as it is a financial instrument and it can be in your favour or the insolvent party's.
4. **Submit your claim.** The administrator will have a form that you need to complete that substantiates your claim as a creditor. Your receivables, including washout invoices, are part of the supporting documentation. I encourage you to include the invoices themselves, proof of delivery and copies of the signed contracts. Proof of the market prices on the day of washout is also essential. Most people use a broker confirmation of the market prices.
5. **Attend meetings.** Under sec 436E(2) of the Corporations Act, the first creditor meeting must be held within five business days after appointment of the administrator and there must be two day's notice. This is the only effective opportunity to replace an administrator with someone better qualified. It is also a valuable source of knowledge of what is going on. It also allows you to see what other counterparties may have ripple effects from an insolvency event.
6. **Try to get an expert on the creditor committee.** The creditor committee is an inexpensive means of helping the administrator to understand what happens in the business and how to improve the chance of recovering funds. It is a complicated process and often administrators have no, or little, experience in the grain industry. They may not be aware of issues that can dramatically alter the distributions that can be achieved.

7. **Continue to pursue.** After the administrator has been appointed and meetings held it is important to continue to work on your risk. As a minimum continue to liaise with the administrator regularly. Do you have any of your mitigation steps that you need to work on? Are you taking steps to recover costs from any personal guarantees?

### The GTA Insolvency Trade Rules

Rule 17.6 is the GTA insolvency default clause.

Section 1 defines an insolvency event. It covers the situations previously discussed as well as broader coverage, including an application for court appointment of controller/administrator, a secured creditor taking possession of the asset and similar items.

Section 2 refers to the notification of default and the trigger of the date for fair value of the washout. Written notice should be given within two days of the event of insolvency. If written notice is received within the period the fair value date is the day after notice, otherwise the non-defaulting party has the option of the day after notice was received or the day after the event of insolvency.

Fair value is clarified in rules 17.7 through to 17.10.

Refresh yourselves with the rules any time an insolvency event arises.

### Current issues in insolvency

Some companies include a right of offset clause in all of their contracts. This permits a legal right to offset liabilities and receivables in normal business activity and also in case of insolvency. This is established in law. Although it has not been tested in law, it is the usual practice for administrators to allow the offset of liabilities and assets, as it speeds up the payment process for the net amount.

GTA introduced retention of title in most contracts within the last few years. Retention of title has much legal history but the process for the GTA clause has not been tested yet. The administrator of Grain Partners is in the process of applying for a court interpretation of the current clauses.

### Conclusion

The process through an insolvency is complicated, painful and slow. As shown there are steps you can take to enhance your position in the event of an insolvency but it is likely to be an interruption to your business from a management point of view, even if you largely recover your losses.

The most efficient process you can have is to try and avoid potential insolvencies, but in my experience you cannot eliminate them without dramatically restricting your trading ability.

At least now you are better armed to respond when the situation arises.

# The National Residue Survey

## What is the National Residue Survey?

The National Residue Survey (NRS) is part of an Australian Government and industry strategy to minimise chemical residues and environmental contaminants in Australian food products. NRS supports Australia's food industry and primary producers by facilitating access to key export markets and confirming Australia's status as a producer of clean food. NRS programs encourage good agricultural practices, help to identify potential problems, and indicate where follow-up action is needed.

Residues can be present in food either through natural circumstances or as a consequence of agricultural or industrial activities. NRS currently tests for residues of pesticides, veterinary medicines and environmental contaminants in 21 animal products including meat products, honey, eggs, wild-caught fish and aquaculture products; 21 grains, pulses and oilseeds; and 6 horticultural products including apples, onions and citrus fruit.

Originally established in 1961 following concerns about pesticide residues in exported meat, NRS is largely industry-funded through levies on the animal and plant products that are tested. NRS testing includes random and targeted programs. All NRS programs are underpinned by an ISO 9001:2008 quality management system.

### Export Grains

The bulk export grains program is a collaboration between the NRS and companies involved in grain exports. The export container and bagged grain random residue monitoring program began in 2004 following an industry recommendation arising from the 2003 comprehensive program review.

The grains program has been part of NRS random residue testing programs since the early 1960s, and since 1993 has been funded by a 0.015% ad valorem NRS levy on 21 tradeable grains.

### Sampling

Approximately 3000–5000 export grain samples are collected and analysed each year. NRS arranges for bulk export grain samples to be collected from the loaded holds of each ship to which bulk export grain is being out-turned at the 17 grain export terminals located throughout Australia. Samples are collected using automatic sampling equipment in accordance with NRS procedures and protocols. For containerised or bagged export grain, samples are collected from the grain packing sites during packing. All samples are sent to NRS-contracted laboratories for analytical testing and sample information is sent to NRS for entry into the database.

### Grains testing results

Residue testing results over the past decade indicate a high degree of compliance with Australian Standards. These results demonstrate that the Australian grain industry uses in-crop and post-harvest agricultural chemicals according to good agricultural practice, and assures customers of the excellent residue and contaminant status of Australian grains.

COMMODITY	BULK EXPORT SAMPLES	CONTAINER EXPORT SAMPLES
Wheat	2338	554
Barley	569	61
Sorghum	76	11
Other cereals	8	23
Oilseeds	219	18
Pulses	92	154
<b>Total</b>	<b>3302</b>	<b>821</b>

### Chemical screen

The chemical screens for analysing pesticide residues in grain are developed in consultation with industry, taking into account registered chemicals and chemical residue profiles. The chemical groups covered in the grains program are a multi-residue

screen (insecticides, post-harvest grain protectants, fungicides, herbicides, and insect growth regulators), additional herbicide screen, environmental contaminants (heavy metals), fumigants and dithiocarbamates.

### Testing and Trace back

Samples are tested against an agreed chemical screen that is designed to meet market requirements. If a sample is found to contain a residue above the Australian Standard, a trace back investigation is undertaken to establish the cause. The responsible state or territory agency then provides advice to the producer to prevent recurrence. In more serious circumstances regulatory action may also be taken.

All trace back activities and findings are reported to NRS. This feedback is important in highlighting potential problems (such as inappropriate chemical use) and improving farm practices. Where appropriate, trace back information is also forwarded to industry and government authorities for consideration. Trace back information may also be forwarded to the Australian Pesticides and Veterinary Medicines Authority for consideration during its chemical review processes.

### Laboratory performance

Residue testing is conducted by several laboratories under contract with NRS. Laboratories are proficiency tested to ensure the validity of analytical results. NRS is an accredited provider of proficiency testing schemes. The NRS proficiency testing system is recognised within the laboratory community as meeting internationally accepted standards to establish the technical competence of participating laboratories.

Laboratories are selected through the Australian Government tendering process on the basis of their proficiency, accreditation and value for money. Current laboratory contracts began on 1 July 2011 and will run to 30 June 2014.

### International maximum residue limits

NRS maintains international maximum residue limit tables for countries that are major export markets for Australian primary produce. These tables can be found on the NRS website.

This article was supplied courtesy of the Australian Government, Department of Agriculture, Fisheries and Forestry.

Year	BULK		CONTAINER	
	Samples	Compliance (%)	Samples	Compliance (%)
2000-01	4559	99.9		
2001-02	4436	100		
2002-03	3233	100		
2003-04	3822	100		
2004-05	3659	99.9	77	100
2005-06	2953	100	89	100
2006-07	2085	100	168	100
2007-08	2055	100	565	99.6
2008-09	2621	100	391	98.2
2009-10	2673	99.8	827	98.3
2010-11	3302	99.8	821	98.9



# AUSTRALIAN STANDARD® AS2628 – 2010 SEALED GRAIN-STORAGE SILOS

## Sealing requirements for insect control

Phosphine fumigation is commonly used to control insect pests in grain. The grains industry should retain this product in order to deliver insect and residue-free grain. Alternatives to phosphine are more expensive, more difficult to use, and some are less acceptable to markets.

The future availability and effectiveness of phosphine as a grain treatment is under threat on two fronts:

- (a) Insect resistance to phosphine is being found more frequently—all stages of the resistant insects can survive fumigation in unsealed silos.
- (b) If phosphine's good-safety record is not upheld, it could be withdrawn from some uses, including on-farm use.

The continued use of phosphine is vital to growers and others in the grains industry. It is the fumigation treatment preferred by most markets and no other treatment is as cost effective and easy to apply; however, insects resistant to phosphine are being found with increasing frequency. Using phosphine in unsealed silos will not kill all insects and will only lead to further selection of resistant insect strains. The use of sealed silos for effective fumigation is a key issue if phosphine is to be kept as a useful and active product in the long term.

Fumigation in a sealed silo passing a pressure test keeps the phosphine concentration high for long enough to control all known resistant insects. A silo sealed to the standards required of phosphine treatment has the additional advantages that it may help protect fumigated grain from reinfestation and that it is available for treatment by carbon dioxide as used for "organic grain". Where air inflow is incorporated (aeration) for grain conditioning during storage, a screen mesh should be used on air inlets and outlets to retain the integrity of the silos' insect-proof seal.

## New GTA Members

GTA would like to welcome to the Membership the following organisations in the 2011/2012 financial year.

Applicant Name	Membership category
Allied Grain Pty Ltd	Broker Medium
XLD Grain Pty Ltd	Level C
Grain Producers Aust	Industry Assoc
McCauley Dalton	Level C
Aust Grain Growers Co-Op	Level C
Fay Grain	Level C
Adams Australia Pty Ltd	Level C
Independent Grain Handlers P/L	Level C



## GTA Welcomes Ms Denise Rodrigues

**GTA would like to welcome  
Ms Denise Rodrigues to our team.**

Over the last three months Denise has provided GTA with assistance, on a temporary basis, where she has proven to be an invaluable addition to the GTA office. On the 14 November Denise accepted an offer to join GTA in a full time position as GTA Administration Assistant.

Denise was born and lived in the picturesque state of Goa, India. Upon graduation from Goa University, majoring in Business Management and graduated in Commerce, she made her way to Australia, settling in Perth in 2005.

Denise later moved to Sydney to further her career. She is currently completing her Certificate III in Business Administration.

# RECENT AWARDS AT ARBITRATION

Member Update –  
Arbitration Award

## Arbitration number: 13 –

Date of Issue: November 2007

Interim Award published 9 February 2007

Final Award published 1 November 2007  
(following determination of Appeal)

**Claimant:** Grain Seller Pty Ltd (Sellers) (In Liquidation) &  
**Respondent:** Grain Buyer Pty Ltd (Buyers)

### ARBITRATORS

- Mark O'Brien, arbitrator nominated by Claimant
- Ron Storey, arbitrator nominated by Respondent
- Michael Chaseling, arbitrator nominated by NACMA and Committee Chairman

### CLAIM

The Claimant went into liquidation and pursuant to the Trade Rules sought the fair market price of the defaulted contracts. The Respondent disputed that the Trade Rules permitted an insolvent party to receive payment for contracts that it defaulted on by the insolvency event. The Respondent alleged that the Claimant's insolvency clause applied.

### DETAILS

- The Claimant entered into 6 contracts with the Respondent for the sale of grain.
- The Claimant went into liquidation prior to the contracts being discharged.

### MAJOR FINDINGS

The Committee:

- Agreed that where a broker's note has been issued it is primary evidence of the contract between the parties.
- Trade Rule 17.6 permits an insolvent party to recover the fair market price of a contract that it defaulted on due to insolvency.

### AWARD

- The Committee held that the NACMA Trade Rules applied and the Claimant was entitled to close out the contracts and as the contracts were in the Respondent's favour, the Respondent must pay the difference between the contract price and the Fair Market Price.

### IMPORTANT POINTS

- If you do not wish Rule 17.6 to apply to your contract in the event of an insolvency, the contract must clearly state and exclude this Rule in the contractual documentation.

Member Update –  
Arbitration Appeal Award

## Arbitration number: 32 – Published on 8 September 2007

Date of Issue: May 2009

**Appellant:** Grain Buyer Pty Ltd (Buyers) &  
**Appellee:** Grain Seller Pty Ltd (Sellers) (In Liquidation)

### ARBITRATORS

- Greg Carroll
- Graeme Dillon
- Andrew Wilsdon
- Phil Holmes
- Gerard Langtry, arbitrator nominated by NACMA and Committee Chairman

### CLAIM

Appeal from Arbitration No. 13 Interim Award on the basis that the Arbitration Committee had incorrectly determined that Clause 12(b) was in conflict with Trade Rule 17; had incorrectly interpreted Trade Rule 17 following an insolvency event. The Appellant also considered that Trade Rule 17.6(2) was invalid and that the use of the term 'in the money' was inappropriate.

### DETAILS

- The Appellee entered into 6 contracts with the Respondent for the sale of grain.
- The Appellee went into liquidation prior to the contracts being discharged.
- The AC held that the Appellant was liable to pay the fair market price of the closed out contracts pursuant to Rule 17.6.
- The Appellant appealed that finding.

### AWARD

- Appeal was dismissed.

### MAJOR FINDINGS

The Committee:

- Agreed that the phrase 'in the money' was a commonly understood term in the grain industry;
- Agreed that the parties intended that the broker's note would prevail over any conflicts between the contractual documents;
- Agreed that the subsequent contract confirmations did not alter the terms of the brokers notes;
- Held that the AC had correctly interpreted Rule 17.6.

### IMPORTANT POINTS

- If you do not wish Rule 17.6 to apply to your contract in the event of an insolvency, the contract must clearly exclude this Rule in the contractual documentation.

Member Update –  
Arbitration Award

## Arbitration number: 31 – issued on 29 January 2008

Date of Issue: 21 March 2008

**Claimant:** Grain Buyer Pty Ltd (Buyers) &  
**Respondent:** Grain Seller Pty Ltd (Sellers)

### ARBITRATORS

- Mr Michael Weller, arbitrator nominated by Claimant
- Mr Cameron Pratt, arbitrator nominated by Respondent
- Mr Henry Wells, arbitrator nominated by NACMA and Committee Chairman

### CLAIM

The Claimant claims an order for performance or damages for the non-delivery of grain. The Respondent alleges that the Claimant repudiated the contract when it rejected the transfer of grain.

### DETAILS

- The Claimant entered into two separate track contracts, with different brokers, to purchase 4000 tonnes of feed barley for delivery December 2006 to January 2007. The delivery point was Port Kembla basis less NACMA location differential. The Claimant thought the contracts were Natural Port Terminal Contracts not track contracts.
- The Respondent transferred the grain on 30 January 2007 by electronic online title transfer. The grain was transferred from a number of sites across New South Wales from the Port Kembla zone and the Newcastle zone.
- On the 30 January 2007 the Claimant rejected the transfer of sites not in the Port Kembla zone.
- On 31 January 2007 the Respondent called the Claimant in default of the contract and elected to cancel those portions of the contract in accordance with Trade Rule 17.
- On 1 February 2007 the Claimant called the Respondent in default of the contract.

### AWARD

- The claim was denied the Respondent was awarded its costs of the arbitration and legal fees.

### MAJOR FINDINGS

The Committee:

- Held that the Claimant's honest but erroneous conduct should not override the breach of contract. A breach going to the heart of the contract where time is of the essence and delivery due to expire in a matter of hours, given the potentially onerous consequences of not accepting the rejection as repudiation, the Respondent was not acting inappropriately.
- The onus is on the rejecting party to be sure of its contractual position and assess whether the rejection is appropriate.

### IMPORTANT POINTS

- Ensure that before a transfer of grain is rejected that you check the contract details and confirm whether that is an option under the terms of the contract.

