

NewsInGrain

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The Future of Australia's Wheat Export Market

The Impact of the *Wheat Export Marketing Amendment Bill 2012*



Tom Keene and Minister for Agriculture Hon Senator Joe Ludwig

On 21 March 2012, the Australian Government published the long awaited explanatory memorandum for the *Wheat Export Marketing Amendment Bill 2012* (the "Bill"). The Bill is the second phase of Australia's efforts to deregulate the bulk wheat export market. The continuing aim is to ensure transparent access to port terminal facilities and competition within the industry. The origins of the first phase can be traced back to 2008 with the publication of the *Wheat Export Marketing Act 2008* (Cth), the establishment of Wheat Exports Australia ("WEA"), as administrators of the regime and of the Wheat Export Accreditation Scheme ("Scheme") giving traders a means to export wheat when gaining accreditation.

The Scheme is still heavily regulated, and was always seen as an arrangement which would be revisited once wheat export marketing was sufficiently established, robust and contestable. Amid uncertainty as to what new arrangements would take the place of the Scheme, Australia's Productivity Commission (the "Commission") launched an inquiry into the operation and effectiveness of Australia's bulk wheat export marketing arrangements. Their findings were published in October 2010. The Bill now implements the Commission's key recommendations in respect of wheat export marketing arrangements and underscores a bright future for Australia's bulk wheat export market.

The Bill will implement some of the Commission's recommendations by stages, to transition the wheat export industry to full deregulation. The key changes to note are:

1. The abolition of the Scheme on 30 September 2012. Once abolished, there will be no new or existing accreditations, subject to a continued requirement for providers of grain port terminal services to pass the "access test" as a condition for exporting wheat until 30 September 2014.
2. The removal of the Wheat Export Charge on 30 September 2012.
3. The abolition of the "access test" after 30 September 2014 provided that a voluntary code of conduct is established as an alternative. The code of conduct is required to be consistent with key Australian Competition & Consumer Commission ("ACCC") guidelines for developing codes of conduct. The code is likely to have similar disclosure rules to those in the current system.
4. Repeal of the Wheat Exports Marketing Act 2008 on 1 October 2014, conditional on the approval of a voluntary code of conduct by the Minister before this date.

Access tests

From 1 October 2012, port terminal operators (and any associated entity of the provider of port terminal services) must satisfy an "access test". The Bill introduces a continuous obligation to comply with the "access test" during a period of 12 months "beginning on the day of the export of the wheat." (section 7(3) of the Bill). The drafting of this section is unclear and may be tightened before the Bill is passed. It is probably intended to mean a period of 12 months beginning on the day of the first occurrence of export by that entity after 1 October 2012.

1. To meet the "access test" exporters must:
2. Comply with the continuous disclosure rules which require a port terminal service provider to publish details of their policies and

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procedures for managing the port terminal service on their website and provide a loading statement to the ACCC on a daily basis.

Have in place a formal access undertaking pursuant to Part IIIA of the *Competition and Consumer Act 2010* (Cth) (previously the *Trade Practices Act 1974* (Cth)). Exporters who have access undertakings in place with the ACCC under the current framework will continue to do so.

The obligation for continuous compliance with the access test will be waived if there is a period of more

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Foodbank Wheat Donation Program

GTA members and Foodbank are working together to help those Australians in need.

Hunger is traditionally associated with third world countries but Australia is not immune. Each year two million Australians, or 1 in 10, require food assistance – around half of them are children.

It's not just traditionally vulnerable people, such as the homeless and unemployed, who are at risk but also the elderly, single parents and the working poor. Over 14% of the Australian population live in poverty and are susceptible to "sudden bill shock" leaving no money for food.

What is Foodbank?

Foodbank is a non-denominational, non-profit organisation and is the largest hunger relief organisation in Australia. Foodbank acts as the conduit between industry's donations and the welfare sector's needs. Foodbank is a national organisation with distribution centres in all state capitals, the NT and nine regional centres (approximately 20,000 sqm of warehousing). We operate with a staff of 90 employees and over 3,500 volunteers.

Last year 21 million kg of food and groceries were distributed to welfare agencies through Foodbank. The food rescued by Foodbank feeds on average 75,000 people a day. Unfortunately, this did not meet the demand of the welfare agencies and we estimate that the actual demand is for 50 million kg.

Historically, most of the food distributed through Foodbank has been packaged grocery product that has been donated because it is surplus to the manufacturer's supply chain (e.g. short coded). However, often key staple items are not

in constant supply and Foodbank has had to find sustainable supply solutions for these items.

The Collaborative Supply Program was developed to help find sustainable supply solutions for these key staple items. Collaborative Supply Programs involve stakeholders in the production of a product (primary producer, manufacturer, ingredients, packaging, storage & transport) contributing to the program. A manufacturer commits to donate production time and we then seek to have the input ingredients, packaging and transport donated.

Welfare agency need

Foodbank supports over 2,500 welfare agencies with approximately 35% of these located in rural Australia (e.g. Salvation Army, St Vincent de Paul, UnitingCare, Smith Family, Red Cross, Mission Australia, Wesley Mission & hundreds of smaller church and community groups).



A recent survey conducted across all the welfare agencies supported by Foodbank revealed that essential, wheat based staple items such as bread, cereal and pasta are in the highest demand. To meet this demand annually, Foodbank estimates that it requires:

Bread - 1,000,000 kg per year
Cereal - 1,200,000 kg per year
Pasta - 800,000 kg per year
Flour - 400,000 kg per year

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than 12 months between any relevant exports of bulk wheat. Notwithstanding the above exception, from 1 October 2012, those providers required to pass the test must do so continuously from the time of their first export until the abolition of the access test on 30 September 2014. A failure to do so is a contravention of section 8(1) carrying a civil penalty. There is a defence of "special circumstances". The continuous compliance obligation is also intended to reduce the opportunity for port terminal service providers, or associated entities to change their legal entities to avoid the access test applying at successive ports.

Notably from 1 October 2012, decisions regarding exemptions from the access test for special circumstances will be made by the Department of Agriculture, Fisheries and Forestry.

Reporting requirements

The final date for exporters who are accredited under the Scheme to submit transitional reports and compliance reports previously required under the regime is 30 October 2012.

Impact of changes

The second phase of deregulation will bring to an end the special treatment of wheat as a protected export commodity, assuming that a voluntary code of conduct for port access can be achieved.

It is intended to promote further competition in the industry and reduce compliance costs.

The Bill is intended to have a positive impact on trading, favouring increased competition between buyers, diversity of products and further empowering growers in respect

of sale of their product. At the same time, an industry without a special regime for port access may carry greater execution risk and uncertainty.

The successful implementation of the second phase of deregulation is however still heavily contingent upon an Industry Code of Conduct in regard to port terminal access.

Conclusion

Port terminal access will continue to be a critical issue for the wheat export industry in Australia. A workable industry code of practice may turn out to be the ultimate test of the success of the second stage of deregulation.

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Restructuring of the International Grain Trade Coalition

Grain Trade Australia has been a member of the International Grain Trade Coalition (IGTC) since 2006. In October 2011, the GTA CEO, Geoff Honey was appointed as the Chair of an IGTC Task Force to develop a Business Plan to move the IGTC from a part time honorary secretariat, provided by the Canadian Grains Council, to a full time secretariat that is independently funded and resourced.

The successful implementation of the Business Plan will ensure the long term viability of a global grain trade organisation that represents the trading activities of grain traders operating in all the major export and import markets.

The Plan will be finalised at the next IGTC Meeting in June 2012 with implementation planned for the last quarter of 2012.

Major points of the Business Plan

- The International Grain Trade Coalition (IGTC) was formed in 2001 and is an unincorporated coalition of 23 national and international non-profit trade associations and councils, who collectively have more than 8,000 members.
- IGTC provides advice to governments on the impacts of policy decisions on commercial requirements and economies of the world's food, feed and processing industries. The primary focus of the IGTC has been avoiding disruptions in the international trade of grain, oilseeds, pulses and derived products associated with the integration of agricultural biotechnology in global food and feed supply chains, more specifically implementation of the Cartagena Protocol on Biosafety and asynchronous approvals of GMO events.
- To do so, IGTC endeavours to provide for a regulatory environment supportive of such international trade. IGTC is currently focused on achieving its purpose and goal by encouraging governments to develop commercially acceptable regulatory trade policies. The IGTC achieves its purpose through:
 - Bringing together and collaboration between international organisations globally
 - Developing common positions on key issues impacting the global grain trade which are in line with IGTC's strategic goals
 - Outreaching those positions through advocacy, education and guidance to members
 - Influencing Government and other relevant stakeholders and international organisations.
- The stakeholders include large multinational trading companies, government/regulatory bodies (FAO, IPPC, Codex, etc), financial services industry, life-science companies (CropLife International), and end-users. These stakeholders benefit from the work done by IGTC.
- It is important to note that IGTC is the only global association of associations in the grains industry. Many of IGTC's members provide advocacy at a national /regional level, rather than the global level. Currently, IGTC is undertaking major activity on the following files/projects:
 - Biosafety Protocol and its impacts on the international trade of grain;
 - Dialogue with biotechnology providers to ensure appropriate commercialisation processes are adopted; and
 - Development of Low Level Presence (LLP) policies by importing and exporting countries and accompanying outreach programs.

Port Access Voluntary Code of Conduct

Representatives of the wheat export marketing industry have come together to develop a Port Access Voluntary Code of Conduct as the bulk wheat export marketing industry transitions to full deregulation.

In accordance with the Wheat Export Marketing Bill 2012, which implements the Australian Government response to the Productivity Commission inquiry into Wheat Export Marketing Arrangements, the requirement for port terminal operators to pass an Access Test as a condition for exporting bulk wheat will cease on 30 September 2014 if an approved code of conduct is in place.

The Bill has been introduced into Parliament by the Australian Government and will transition the wheat export market to full deregulation.

If the legislation is passed, from 1 October 2014 access to port terminal services will be governed by a

non-prescribed voluntary industry code of conduct (the Code) and complemented by general competition law. Recognising the need to coordinate industry to develop a Code, Grain Trade Australia (GTA) in its capacity as the secretariat, has formed a Code Development Committee (CDC).

The CDC consists of established port owner/operators, Australian Grain Exporters Association (AGEA), Grain Producers Australia (GPA), National Farmers' Federation (NFF) and GTA. GTA Chairman, Mr Tom Keene, has been appointed as the Chairman of the CDC.

The CDC will develop the Port Access Voluntary Code of Conduct for Australian Bulk Wheat Shipments for the approval of the Minister for Agriculture, Fisheries and Forestry, the Hon. Joe Ludwig.

"The successful implementation of the Code will

require the participation of infrastructure owners which will ensure coverage of all grain export terminals in Australia in meeting the Codes objectives," Mr Keene said.

The CDC will undertake a thorough examination of issues relating to the current port access requirements and will liaise closely with key stakeholders, the Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Competition and Consumer Commission (ACCC) throughout the development process.

"The Code must be consistent with ACCC guidelines for developing effective voluntary codes of conduct and include continuous disclosure rules," Mr Keene said.

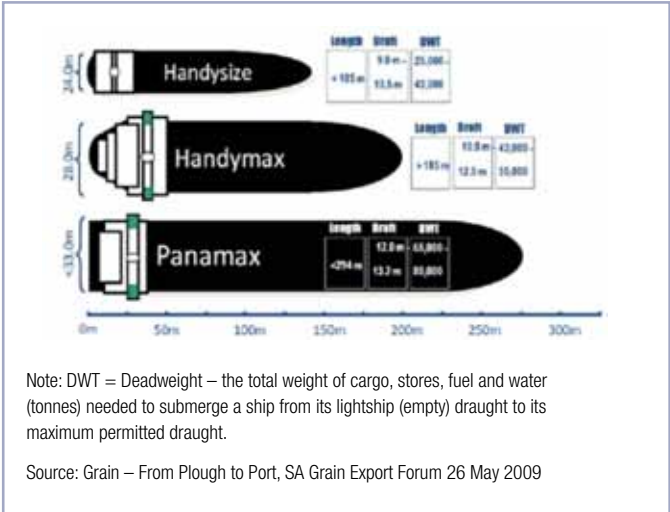
"The Code will ensure that Australian grain producers will enjoy competition with exporters and surety of access to port facilities."

Bulk wheat shipments from Australia

Supply chain cost savings are essential to maintain competitiveness in ever more efficient global wheat markets. A key factor in Australia’s ability to reduce supply chain costs is access to ‘fit for purpose’ cargo ships. Australia has strict phytosanitary controls (DAFF Bio-Security) in place to ensure that Australia’s wheat meets the destination country’s phytosanitary requirements.

There are three main types of cargo vessel used to export Australian bulk wheat; Handysize, Handymax and Panamax, which are described below. Capesize vessels are also used for very large cargoes (80,000–160,000 tonnes) of dry bulk goods including grains, however they are not typically used in Australia because of port facility restrictions.

Handymax was the predominant vessel size utilised to export Australia’s crop, as can be seen in the table.



Australia's bulk wheat crop exported by bulk vessel type in 2010/11	
BULK VESSEL TYPE	NUMBER OF SHIPS
Handysize	101
Handymax	192
Panamax	144
TOTAL	437

Source: WEA analysis



GRAIN TRADE AUSTRALIA (GTA) IS CURRENTLY IN THE PROCESS OF UPDATING THE TRADE RULES.

The Trade Rules are now approximately 15 years old, and have been subject to limited ad hoc reviews in that time.

The Rules have served the Trade well over the years. From time to time, largely as a result of arbitrations, we have received feedback from lawyers who are often looking at the Rules for the first time. The general effect of their comments is that the rules are “loose” and not sufficiently formal, as you would expect from a

contract (of which they become part). For example, the Rules contain statements of “good practice”. While this is useful guidance for the Trade, it is probably not appropriate that it be incorporated into a contract. The Rules also lack a meaningful definition section.

The intention of the review is not to change the effect of the Rules, nor to change the way they operate. The review is only intended to separate out those

parts of the Rules which shouldn’t be incorporated into a contract; take out those parts which aren’t being used and probably won’t be used, and add a definition section.

A draft of the updated GTA Trade Rules can be found on the GTA website.

Wheat Stocks and Exports Information Supplied by the Australia Bureau of Statistics

One of the Wheat Industry Export Group (WIEG) findings during the transition to a deregulated market in 2008 was that wheat market information should be funded by the Department of Agriculture, Fisheries and Forestry (DAFF) until 30 June 2011. After this time it was determined that industry should fund this ongoing cost and as part of the transition from Government funding to industry funding an independent review into the provision of the current wheat market information was conducted by GHD, commissioned by DAFF and managed by Grain Growers Limited (GGL).

An Industry Roundtable was then held on Wednesday 3 August 2011 to allow industry to review the independent report. The Industry Roundtable was convened by Grain Growers and independently facilitated. The outcome of the Industry Roundtable

was the establishment of an industry Steering Committee comprised of representatives from across the grains industry supply chain who then reviewed the potential industry funding models and arrangements as suggested through the Industry Roundtable to ensure the smooth transition of wheat market information, in particular bulk handler stocks to ensure accurate and continual data for the 2011/12 opening stocks.

The outcome from the Steering Committee was a GRDC and Grain Growers co-funded arrangement for the Wheat Export Sales Survey (WESS) and the Grain Handler Stock Survey (GHSS) to be conducted through ABS. The new arrangement did not include the Wheat Use Survey and Coverage Survey, as this was deemed to have minimal change on a monthly basis and provided an additional cost to the industry

of approximately \$511, 000. In addition to this the \$150, 000 ABARES publishing fee did not continue as the WESS and GHSS data is made publicly available via the ABS website.

The current arrangement with ABS is in place from 1 October 2011 until 30 September 2012. Grain Growers and GRDC will be working closely with ABS from February 2012 to review current survey processes to ensure the grains industry is receiving timely information, return on their investment and with reduced interference to the industry from their participation in the project. In line with this, Grain Growers and GRDC will be reviewing the longer term investment in wheat market information and will work with the industry to ensure the ongoing delivery of wheat market information to the benefit of the entire grains industry value chain.

Formation of a Grain Futures - Industry Working Group (GFIWG)

The goal of GTA is to create an operating environment for the commercial grain industry that is efficient, effective and transparent. These attributes provide the foundation for the Australian value chain and its members to participate in the growth of the global grains industry.

Domestic grain futures contracts

To hedge the movement in global grain prices, the Australian grain trade utilises futures contracts listed:

- primarily on US futures exchanges; and
- on the Australian Securities Exchange (ASX).

The ASX currently has the following futures contracts listed:

- WA Wheat (WK)
- NSW Wheat (VW)
- Eastern Australia Feed Barley (UB)
- Australian Sorghum (US)
- Eastern Australia Canola (VC)

The development and / or promotion of a liquid grain futures contract(s) that is domiciled in Australia would have the following advantages:

- negates need to hedge currency;

- reduction in basis risk;
- futures trading in real time; and
- contract(s) based on specific Australian based quality grades for various grain types.

However, the use of the current Australian based contracts by industry is hindered by:

- Lack of liquidity.
- Concerns by customers of the alignment of contract specifications to trade requirements.
- Insecurity by the trade over financial implications arising from an insolvent event, i.e. the loss of confidence arising from the insolvency of a brokerage organisation.

Formation - Grain Futures – Industry Working Group

Therefore, the GTA Board has determined it is in the interests of the members of GTA and the broader grains industry to the Grain Futures – Industry Working Group. Major stakeholders will be represented on the Committee and submissions will be sought from GTA members. Members of GFIWG must be GTA members. Representatives of government agencies and related organisations may be invited to attend Committee meetings, as observers and provide advice where necessary and deemed appropriate by the Committee.

Role of the Grains Futures – Industry Working Group

The GFIWG is established to develop and promote grain futures contracts that are domiciled on Australian exchanges.

The GFIWG will give consideration to issues that include but are not limited to:

- Review the current Australian based futures contracts to ensure they reflect the contemporary needs of the Australian grain industry.
- Provide recommendations to futures providers to ensure their contracts are contemporary in nature
- Engage with potential proponents of Australian based grain futures contracts as required.
- Engage with ASIC as the industry regulator to ensure the legislative and futures exchange rules regarding insolvency of a broker are appropriate and widely understood.
- Advise GTA and its members on education activities in relation to grain futures.

Members with an interest in grain futures should look out for communications from the GFIWG especially calls for submissions.

NATIONAL WORKING PARTY ON GRAIN PROTECTION (NWPGP) 2012 ANNUAL CONFERENCE

PROUDLY HOSTED BY GRAIN TRADE AUSTRALIA (GTA)

The National Working Party for Grain Protection invites you to attend its 2012 Annual Conference at the Rydges Hotel, Melbourne, 30-31 May 2012.

The National Working Party on Grain Protection (NWPGP) is the industry body responsible for providing management and leadership to industry in the areas of post harvest storage, chemical use, market requirements and chemical regulations. The NWPGP conference is an open forum for all grain industry participants, facilitated by Grain Trade Australia (GTA)

Each year the NWPGP invites the grain industry to participate in its Annual Conference. During the Conference, participants are updated and will be involved in discussion about the latest research and developments in the area of post harvest storage, chemical use, market requirements and regulations.

The Conference typically covers areas of national and international regulation across a wide range of industry sectors and provides key research updates on topics such as entomology, insect infestation, grain protectants, fumigants, physical control methodology, pesticide residue violations, market requirements, application technology, extension, and technical relationships with domestic customers.



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GTA Calender of Upcoming Events

Date 2012	Program	Event	Venue
Wed, May 02	One day	GTA Trade Rules & Contracts	VIC - Melbourne-Cliftons, 440 Collins Street, Melbourne
Thurs, May 03	One day	GTA Dispute Resolution Service & Arbitration	VIC - Melbourne - Cliftons, 440 Collins Street, Melbourne
Fri, May 04	One day	GTA Trade Rules & Contracts	VIC - Melbourne-Cliftons, 440 Collins Street, Melbourne
Tues, May 15	One day	Grain Accounting	NSW - Sydney - Cliftons, 190 – 200 George Street Sydney
Wed, May 30 / 31	Two days	National Working Party on Grain Protection	VIC - Melbourne - Rydges Hotel Exhibition Street, Melbourne
Thurs, July 05 / 06	Two days	Grain Merchandising	WA - Perth - Cliftons, Parmelia House, 191 St. Georges Tce, Perth
Thurs, June 07 / 08	Two days	Grain Merchandising	VIC - Melbourne - Cliftons, 440 Collins Street, Melbourne
Tues, June 26	One day	Grain Accounting	VIC - Melbourne - Cliftons, 440 Collins Street, Melbourne
Thurs, June 21 / 22	Two days	Grain Merchandising	SA - Adelaide - Cliftons , 80 King William Street, Adelaide

New GTA Members

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

Applicant Name	Membership category
Southern Cotton Pty Ltd	Level C
Primal Foods Group	Corporate - Small
Roty Grain Store	Level C
Ausrealt International Pty Ltd	Level C
Australian Growers Direct Pty Ltd	Level C
Grain Direct Australia	Level C
United World Enterprises Pty Ltd	Level C
NewCastle Agri Terminal Pty Ltd	Level C
Southern Ag Grain	Level C



RECENT AWARDS AT ARBITRATION

Arbitration number: 51 –

Date of Issue: February 2009

Claimant: Buyer (Trader in liquidation)

Respondent: Seller (Trader)

Arbitration Committee (AC)

- Gerard Langtry, grain merchant, nominated by the Claimant;
- Ron Storey, grain industry consultant, nominated by the Respondent;
- Alan Winney, grain merchant, Arbitration Committee Chairman, appointed by NACMA.

CLAIM

This dispute relates to the NACMA requirements when calling a contract in default and the effect of a subsequent insolvency if the contract is still in existence ("the Contract.") The claim was for \$365,973.44.

AWARD

Final Award:

- The Claim was denied.
- The Claimant is to pay the Respondent's Arbitration Fee of \$6,700
- The Claimant shall pay the Respondent's costs on a party and party basis, and expenses including relevant fees payable to NACMA.

Arbitration numbers: 108 & 144 –

Date of Issue: March 2012

Claimant: Seller (Producer)

Respondent: Buyer (Trader)

ARBITRATION COMMITTEE (AC)

- Mr Bob Watters, the Tribunal Chair appointed by GTA
- Mr Henry Wells
- Mr Harry Notaras

ORAL HEARING

- Arbitration 108 and 144 were heard concurrently as the issues to be determined were common across both arbitrations.
- There were multiple Claimants and one Respondent.
- The oral hearing lasted three days.

CLAIM

This dispute relates primarily to:

- poor contract construction, in particular identification of the parties involved;
- alleged repudiation of contracts;
- buyer claiming delivered product outside of specifications at variance to Rule 16 Finality; and
- non payment of delivered product.

MAJOR ISSUE FOR RESOLUTION

- Once product is delivered and accepted without reservation, title to the product changes to the buyer. Payment is then due.
- In this arbitration, the buyer claimed that sometime after delivery, that the product did not meet specifications and that therefore they did not have to pay for the product. Refer Rule 16 Finality

AWARD

The Tribunal made the following final award:

- The Respondent is to pay to the Claimants the sum of \$791,919 in respect of delivered tonnage of chickpeas.
- The Respondent is to pay \$245,147 in respect of interest payable on the amount relating to the delivered tonnage of chickpeas.
- The Respondent is to reimburse the Claimants for arbitration and legal costs in the sum of \$547,112.

Arbitration number: 159 –

Date of Issue: August 2011

Claimant: Producer seller

Respondent: Trader buyer

ARBITRATION COMMITTEE (AC)

- Mr Guy Allen, nominated by the Claimant;
- Mr Gerard McMullen, nominated by the Respondent;
- Mr Peter Flottmann, Chairman appointed by GTA.

CLAIM

At issue in this dispute is:

- the question of the performance of a contract and consequence of breach.
- relying on assessment of quality after delivery to discount the contract price.

The claim was for \$186,001.

AWARD EXTRACT

"It is incumbent on both parties, the Buyer in particular, to assess the quality and condition of delivered grain promptly and so advise the Seller. It puts the Seller at a massive disadvantage if the Buyer only notifies the Seller well after delivery of any concerns as to quality or condition."

AWARD

Final Award:

- The Claim is allowed in the sum of \$97,616.66 payable by the Respondent to the Claimant immediately.
- The Respondent shall pay interest on the damages at the rate of 8.75% per annum from 21 June 2010, being the date on which it made the payment of \$96,626.25.
- The Respondent shall indemnify the Claimant in respect of any fees paid by the Claimant to GTA in relation to this arbitration.
- The Respondent shall pay the Claimant's legal costs on a party and party basis. The parties are directed to attempt to settle costs between them within the next 14 days, failing which the costs shall be assessed by the Supreme Court of New South Wales in accordance with section 33B(5) of the Commercial Arbitration Act (NSW) 2010.

