

# NewsInGrain

ISSUE 5, NOVEMBER 2010

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## Chairman's Report at the AGM

**If there was a phrase that encapsulated GTA's performance in 2009/2010 it would be "continuing a tradition of being receptive to the needs of its members and the broader grain industry".**

The core tasks of GTA are the development of grain standards, contracts, trade rules and the conduct of a dispute resolution service. These key commercial resources underpin commercial activity across the Australian grain industry and ensure grain commerce occurs with the minimum of legislative oversight. The draft Productivity Commission Report into Export Wheat Arrangements is ample testimony to the success of the non legislative market based approach to grain marketing in Australia.

However, over the last 18 months, GTA has been called upon to fill gaps that have become apparent in a deregulated environment. Undoubtedly as the profile of GTA increases, GTA will be asked to provide increasing support to the grains industry in a variety of functions. GTA must be able to accommodate those activities that are directly aligned to the core activities.

In October 2009 the Minister announced the development of the AQIS Grains Ministerial Task Force to review the operations of the Australian Quarantine Inspection Service. Around 60% of the Australian crop is exported and hence, at some stage, exporters and AQIS have an interface to ensure export phytosanitary requirements are met. It is critical to the Australian economy that this interface operates as efficiently as possible. The Minister has made it abundantly clear that he expects real reforms to the export certification process not band aid solutions. GTA has taken a leadership role with the GTA CEO being elected as the Task Force Chairman.

There has been substantial industry discussion regarding quality and GTA is prepared to participate, however with many of the proposed functions, industry must be prepared to fund the activities.

A nil tolerance to live grain insects is a quality attribute of Australian grain that must be jealously guarded. In this regard, the quiet achievers of the Australian grain industry must be the National Working Party on Grain Protection. The members of the NWPGP volunteer their time to develop the strategies to protect Australia's stored grain. GTA pledges to continue to support the initiatives of the NWPGP via our role as the secretariat.

One of the remaining functions of an "industry good" nature previously financed via the national wheat pool process is wheat classification. It is pleasing

that, following industry consultation, this function will be ongoing. Whilst the final details are still to be determined, GTA looks forward to working with GRDC and the Wheat Classification Council to ensure that a classification process continues to meet the needs of the industry.

The activities noted above are just some of the examples of industry regulating itself to enhance the quality and reputation of Australian grain. An unresolved issue remains the establishment of a peak industry grains organisation. GTA encourages development of a "virtual" organisation where the Chairs and senior management of the various grain organisations would meet on an "as required basis" to be able to put forward an industry perspective, particularly to government. We do not believe that this organisation needs a permanent staff or office. However the one sector that is missing to complete the organisations present at the table is one that represents the Australian production sector. GTA, as a post farm gate organisation, needs a production sector "touch point" and at present we don't have one.

It is particularly pleasing to report that in 2010/2011, GTA will embark on a vastly increased workload in providing professional development courses. The GTA Board has approved a budget of \$150,000 over 12 months for this work. Professional development within the grains industry is critical to the career advancement of industry personnel and to ensure that members have access to the best training available.

Membership continues to increase as do cash reserves which are now at a point that allow the Board to invest surplus funds in projects such as professional development with confidence.

The ongoing attention to the core tasks and the preparedness of GTA to undertake new initiatives would not have been possible without the dedication of the full time staff and project managers. The efforts of our CEO, Geoff Honey and his team are noted with appreciation.

It is timely to remind ourselves that GTA is a voluntary trade organisation. We are totally reliant on the membership for financial support and direction, with the latter coming via the vast army of volunteers who are generous with their time and professional support whilst they sit on technical committees or act as arbitrators.

The Board and members owe these individuals a collective vote of thanks.

**Tom Keene**  
Chairman

# Changes to the GTA Board

At the GTA AGM held in Perth on 26 October 2010, **Mr. John Orr** of Premium Grain Handlers WA was elected as a Director representing Merchant Associations. The Chairman Tom Keene said:

*"I would like to note that Mr Orr's nomination has come from the Rural Marketing and Supply Association, the NSW Merchant Association member of GTA. This is a clear demonstration of the unity and national character of GTA."*

Mr. Orr has been involved with the Western Australian grain trade for many years and was previously Chairman of NACMA WA. John has interests in Premium Grain Handlers, a container packing and grain trading operation based in Fremantle, Thompson & Redwood Stockfeeds, Bio John Animal Health and Lovett's, a birdseed business based in Victoria.

**Mr Patrick Haire**, previously a Director from the Merchant Association category, retired after 7 years on the GTA Board. The Chairman noted:



**John Orr**

*"Patrick has been a Director of GTA and the Chairman of the Commerce Committee since October 2003. In this time the industry has undergone major structural change which necessitated the development or*



**Tom Keene & Patrick Haire**

*alteration to contracting terms. Patrick has been instrumental in ensuring that the commercial needs of industry have been met and the members and the Board owe him a collective vote of thanks.*

## GTA Adopts a New Constitution

**During the AGM held in Perth on the 26 October 2010, the GTA membership adopted a new constitution. The new constitution clarifies the director nomination and election process. The changes also align the constitution with current law and corporate governance practice.**

The new constitution does not result in any material change to the way the Company is operated.

The key constitutional changes include the categorisation of the current class of "Ordinary" Membership into three levels, being Level A Ordinary Members, Level B Ordinary Members and Level C Ordinary Members.

Under the new constitution the maximum number of directors has been reduced from 20 to 16, with the elected directors consisting of:

- Level A Ordinary Members – 2 Directors
- Level B Ordinary Members – 2 Directors
- Level C Ordinary Members – 1 Director
- Merchant Association Members – 3 Directors

A copy of the new constitution is available on GTA's website. Full details of the changes are contained in Member Update 29 of 10 – Adoption of a new GTA Constitution.

## Professional Development Program

**GTA's objective is to offer targeted, practical courses for people involved at all stages along the grain value chain – from producers to exporters.**

Following deregulation, the Australian grain market has become more sophisticated, complex and risky. In response to these changes, Grain Trade Australia has developed a series of courses for grain growers, merchants and traders to meet their expanding educational demands.

During 2010 GTA has seen an increased participation rate within the Professional Development Program (50% since 2009) amounting to over 400 participants.

The Certificate in Professional Grain Trading has attracted particular interest among students at Curtin University in WA.

GTA has allocated over \$150,000 for further enhancement of the Professional Development Programs, including:

- Understanding Grain Markets
- Grain Accounting
- Export Contracts, Documentation & Chartering
- GTA Arbitrator Training
- Grain Merchandising

All GTA Courses are accredited and have been developed to competency standards recognised by the Australian National Training Information Service.

**The calendar of courses for 2011 will be released in December 2010 and will be available on the GTA website.**



# Wheat Quality Australia

## A new era for wheat classification in Australia

**Wheat Quality Australia** (WQA) is an initiative between Grains Research Development Corporation (GRDC) and Grain Trade Australia (GTA), on behalf of the Australian grain industry. It proposes the establishment of an industry driven service to ensure a rigorous and transparent wheat classification system.

Following direction from the Federal Government and as an outcome of the Wheat Industry Expert Group (WIEG) report, a transitional arrangement was set in place 1 July 2008 where GRDC was to fund the Wheat Classification Council (WCC) and the Variety Classification Panel (VCP) till 30 December 2010.

During this period the grain industry (wheat breeders to end users) was to determine if the functions of the WCC and VCP required ongoing support. If so, the industry needed to ensure this outcome.

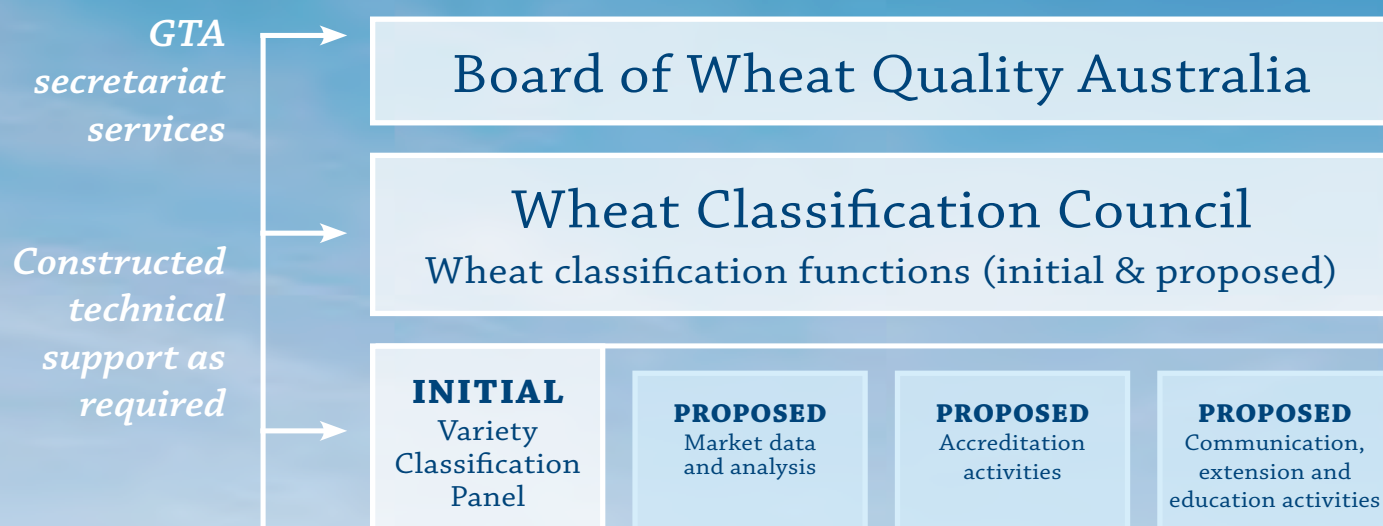
GRDC and GTA have developed a model for Wheat Quality Australia to meet the needs of the industry. This includes:

- assuming the activities currently undertaken by the Wheat Classification Council and the Varietal Classification Panel under one entity;
- ensuring the industry has a sustainable wheat classification system that works to improve the value of Australian wheat for producers, marketers,

processors and customers to enhance the competitiveness of the Australian wheat industry;

- aligning the structure and funding of the Wheat Classification Council and the Variety Classification Panel to closely reflect the needs of Australia's wheat customers, domestic and international.

In the first 12 months of operation Wheat Quality Australia will develop a strategic plan detailing the ongoing operations of the company.



# GRAIN BIODIVERSITY DECLARATION FOR CANOLA EXPORTS TO EUROPE NEW REQUIREMENTS AS OF JANUARY 2011

The European Union recently approved Directive 2009/28/EC ensuring all raw materials destined for use in the production of European biofuel has not been produced on land of a high biodiversity value.

The specific requirement outlined by the European Union states: "Biofuels and bioliquids ....shall not be made from raw material obtained from land (which was regarded as being of) high biodiversity value .... in or after January 2008..."

Within the directive, land of "high biodiversity value" is defined as land being;

- forest and other wooded land of native vegetation; or
- land designated for natural protection or for the protection of threatened or endangered species; or
- highly biodiverse grassland; or
- areas of high carbon stock, namely;
  - wetlands
  - continuously forested areas
  - land over 1ha with trees greater than 5 metres, or likely to reach such a height.

This decision prompted Grain Trade Australia (GTA), in conjunction with the Australian Oilseeds Federation (AOF) and the Australian Grain Exporters Association, to develop a grower declaration known as Grain Biodiversity Declaration.

Exporters, who are purchasing canola that could be destined for the European Union, may include the Grain Biodiversity Declaration or similar company documentation in the special conditions of their contract.

Growers will need to familiarise themselves with the Grain Biodiversity Declaration prior to signing it. Growers should note that the Grain Biodiversity Declaration asks them to specify whether they are prepared to participate in an audit process. Growers should contact their buyer for more information in regard to the audit process, if required.

## Ministerial Task Force (MTF)

The Ministerial Task Force (MTF) is currently seeking final comment from industry on the proposed options for an alternative service delivery model.

The proposed service delivery model, recommends expanding and strengthening the role of AQIS Approved Inspectors (AAIs).

AAI's may be employed by packers, bulk handlers or a third party such as superintend organisations .

The new model will give business greater flexibility and control over timeliness of inspections:

- they will not have to be dependent on the arrival of AQIS inspectors, and;
- they will permit the provision of vessel inspection prior to berthing.

Importantly, AQIS will continue to provide sampling, inspection and regulatory services to exporters who do not wish to use AAI's.

If this model is acceptable to industry, it is proposed that AQIS will provide training, advice and support in the transition to this new model. Legislative amendments will also be required.



# Australia's End Point Royalty Collection System giving the Australian Grain Industry a Competitive Edge

Over the past century, variety improvement has played a pivotal role in the success of the Australian grains industry. In the late 19th century, William Farrer set out to solve two pressing problems of Australian wheat varieties; leaf-rust susceptibility and poor baking quality. The release of his rust-resistant variety Federation in 1903 earned him the title “Father of the Australian wheat industry”. His work typifies much of the efforts of plant breeders since then – the hard yards of solving agronomic and disease problems, while maintaining and improving grain quality, all aimed at keeping grain production and marketing financially viable. The new molecular technologies have given breeders powerful tools which plant breeders hope will substantially improve the rate of genetic gain for both production and quality traits, ensuring a future for the industry.

In Australia, up until the early 1990s, new crop varieties were provided to growers via public breeding programs at virtually no cost to the industry. As has happened throughout the developed world, governments have divested their breeding and crop improvement investments.

Due mainly to divestments of State Governments, and the response by GRDC, grower groups and the global seed businesses, state-based and university breeding programs have now largely been replaced by a much fewer number of privately owned, or mix of public and privately owned, breeding companies. These new companies rely on royalty revenues as their major source of income to grow and develop their proprietary breeding businesses. More than ever, innovative plant genetics and technologies should be valued by the industry in much the same way as fertilizer, chemicals and other input costs. An effective, efficient and equitable royalty revenue collection system is essential to support ongoing crop improvement in this country

In Australia legislative changes to the *Plant Breeders Rights (PBR) Act* in 1994 allowed variety owners to apply an end point royalty to the grain produced from nominated PBR-protected varieties as a means of collecting revenue to be reinvested in their plant breeding programs. Australian grower organizations and GRDC supported the introduction of an End Point Royalty (EPR) collection system. The EPR collection model was preferred in Australia over the seed based royalty collection model used in other developed grain producing countries for several reasons: grain growers in Australia using retained seed to plant in excess of 95% of the crop each year making the use of a seed royalty scheme unviable for major crops, hybrid crops being the exception;

1. Australian grain growers have had a strong culture of variety declaration at delivery;
2. the existence, at that time, of monopoly grain marketing arrangements for wheat and barley supported the efficient collection of end point royalties (EPR's) at the first point of grain sale;
3. through this model, breeders and growers share the risks as breeders' income is directly linked to the level of variety performance and grower satisfaction, overlaid of course by seasonal conditions;
4. this model introduced a competitive business culture to plant breeding where breeding

organizations would compete for market share by developing and commercialising attractive varieties that improve grower returns

In 1996 the first EPR wheat variety, Goldmark, was released. Over the proceeding 14 years, more than 200 wheat, barley, oats, triticale, pulse and canola varieties bearing an EPR have been released onto the Australian market. Approximately 70% of the Australian wheat harvest in 2009/10 was made up of EPR bearing varieties, which is an indication of the success of proprietary or “EPR” varieties since 1996.

Deregulation of wheat export marketing in 2007, and of other major grains, and the subsequent significant increase in the numbers of individual grain buyers had the potential to severely impact the efficiency and effectiveness of EPR collection system and ultimately the future of variety improvement in Australia. In response to this elevated risk,

and owners of key patents in the new molecular technologies, in Australia's three major wheat breeding companies (Syngenta Seeds, initially with AWB Ltd and now with Pacific Seeds, in LongReach Plant Breeders; Limagrain in Australian Grain Technologies and Monsanto in Intergrain).

In North and South America the introduction of Genetically Modified (GM) corn and soybean has revolutionized their grains industries. The rate of growth in productivity in these crops has far exceeded all others particularly displacing wheat (not GM). While the GM traits each offer a specific value to growers, such as reduced insecticide use (BT) or seeding date flexibility (Roundup Ready), it was not the initial varieties themselves which produced this increase in productivity. Rather it was the value capture system that is inherent in the GM hybrid corn and soybean production systems.

“ *The rate of growth in productivity in these crops has far exceeded all others particularly displacing wheat* ”

Australia's leading major plant breeding companies, licensed seed companies and other grain industry representatives including GRDC and GTA formed an EPR industry group to address the threat.

This industry group has engaged the support of Australian grain traders across the country and together we have been able to standardize a number of the licenses and agreements that support the EPR collection system in Australia. Most of Australia's major grain traders, approaching fifty, have recognized the importance of EPRs to the future of our grains industry and have agreed to support the EPR Collection system. This has led to significant improvements in the effectiveness and efficiency of the EPR Collection System in Australia which is now regarded as a model for the rest of the world. The success of Australia's EPR Collection system in attracting investment in crop improvement to deliver Australia a competitive edge can be demonstrated by the recent investments made by three leading global seed companies,

These crops generated significant income for breeders from royalties that has in turn been re-invested in breeding and technologies which have greatly enhanced these crop species' rates of genetic gain and productivity growth. This example illustrates the importance to Australia of having an effective and efficient value capture mechanism in EPRs that can be applied to both GM and non GM crops.

All participants of the Australian grain industry are beginning to understand their reliance on technology to maintain and improve their terms of trade against other grain producing countries in a highly competitive international market. They recognise to achieve this they need to support Australia's EPR Collection System.

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**Denis McGrath (Seedwise Pty Ltd) on behalf of EPR Steering Committee. Thank you for the contribution of Tony Kent. For further enquiries please contact Denis McGrath on 0408 688478 or [denis@agviservices.com](mailto:denis@agviservices.com)**



DR. JIM PEACOCK – OPINION PIECE:

# *The Gene Revolution – GM crops and farming reality*

**The time has come for all sectors of Australia's grain industry, from farm to shop, to get on top of GM technology, urges Australia's former Chief Scientist, Dr Jim Peacock.**

Our Green Revolution is near spent. The enormous and lasting gains made in crop yield through conventional plant breeding, mechanisation, crop protection and clever agronomy are slowing.

But the next era for mainstream broadacre farming is already here, it might well be called the Gene Revolution.

More than 95% of Australia's near 400,000 hectare cotton crop this summer consists of GM varieties. And in only the 3rd year of commercial production, there are some 133,300 hectares of GM canola in NSW, Victoria and WA this spring – an estimated 9% of the total canola crop.

What else is coming over the hill? Well, you name it ... GM research underway in Australia covers: papaya, pineapple, sugarcane, grapevines, carnations, rice, white clover, wheat, Indian mustard, bananas, barley, perennial ryegrass, tall fescue, corn and roses. Most work is focusing on key traits which lessen production risks and underpin yield.

The big-ticket item, GM wheat, is just 7 or more years away. Clearly, our farmers and their advisors, and the supply chain all the way through to customers and consumers, now need to start appreciating the GM reality, and separate myth from fact.

## **FACT 1:**

GM science will be essential for our food security in the decades ahead. It is estimated that the number of humans on the planet will rise from 6 billion in 2000 to near 9 billion in 2050, and food demand will rise by 70% (Source: FAO).

## **FACT 2:**

Globally, farmers and supply-chains are going with GM; in 2009, 134 million hectares of GM crops were planted in 26 countries representing an 80-fold increase since 1996 when GM crops were first commercialised. There were 2 million new adopters last year.

## **FACT 3:**

It is estimated that biotech related gains in corn, soybean & canola had delivered an extra 14 million tonnes of production since 1996. And it has all been successfully traded.

## **FACT 4:**

Farmers who use GM technology appreciate that GM R&D businesses simply need a return on their long-term investments. Remember, much GM work is by public-private collaboration, and these bodies can only protect their IP through patents and fund their work via royalties. It is how innovation is incentivized. It is standard practice. And market forces ensure the pricing of the technology to farmers is realistic.

## **FACT 5:**

The costs of doing the R&D and bringing a variety to market are huge: Monsanto alone spends \$1.1bn per year (\$3 million a day) in research. Multiply that figure 10-fold or more for the global GM R&D effort.

Perhaps the biggest misguided myth is around 'safety'. Those who have a different view of mainstream farming reality continue to raise questions about GM science and GM crop safety, and refer to studies which purport to have discovered something harmful about GM.

## **FACT 6:**

Such studies have, without exception, been discredited by the weight of mainstream scientific evidence, opinion and peer review, and by recognised regulatory agencies around the world.

## **FACT 7:**

Major scientific and health organizations, and regulatory bodies, have endorsed the safety of approved GM crops to human health and the environment.

In Australia, we are regulatory leaders. We have an excellent, world-class system that is purposely designed to pick-up anomalies and look for any potential problem. Human health and environmental safety is the first priority. Why would it be anything other than that? Indeed, GM crops are subjected to incredible scrutiny, whereas 'conventional' crops receive relatively less.

For example, our record started with *Gossypium* sp. When we started work with cotton (*Gossypium pima*) in the early 1990's to develop GM varieties, we knew that there were some native Australian



**Dr Jim Peacock, Fellow in CSIRO and Australia's Chief Scientist from March 2006-August 2008.**

In 1994, he was made a Companion of the Order of Australia for outstanding service to science, particularly in the field of molecular biology and to science education. Dr Peacock is a Fellow of the Australian Academy of Science, Fellow of The Royal Society of London, the Australian Academy of Technological Sciences and Engineering, a Foreign Associate of the US National Academy of Sciences and a Foreign Fellow of the Indian National Science Academy.

Dr Peacock is a strong advocate for the integration of science and global business. He drives innovative communication efforts to inform the general public as to the outcomes and value of modern science.

*Gossypium* plant species. We were rightly required to conduct thousands of tests to analyse every possible facet of potential transfer of genetic material from the new GM varieties to the native plants.

The point is that we had to do the work, and the system proved that there were no risks. If the extent and comprehensive-ness of the safety analyses was seen and understood by the public, people would not give a second thought to approved GM varieties.

## **FACT 8:**

Over the years billions of meals have been made and consumed that contain one or more GM crop ingredients or whole foods.

While GM canola and cottonseed oils are pure oil – they contain no proteins – even if they did, they'd be broken down into basic amino-acids. It happens every meal: just think of what was for dinner last night!

In our gut all proteins, starches and fats/oils that are in lettuce, carrots, potatoes, pumpkin, tomatoes, corn, soybeans and canola dairy products, beef, lamb, chicken or fish are all broken down into the basic biochemical building blocks, and no genetic material becomes incorporated into our genes!

The reality of today's farming is that scientists are working for the betterment of society and GM crops are simply the next major agricultural technology.

Agrifood Awareness Australia Limited (AFAA) is an industry initiative, established to increase public awareness of, and encourage informed debate and decision-making about gene technology. AFAA is committed to providing quality, factual, science-based information on the use of gene technology in agriculture to allow for informed decisions. AFAA works broadly across the agriculture sector. The organisation has three founding members – CropLife Australia, Grains Research and Development Corporation and the National Farmers' Federation – and our activities are also supported by the sugar industry, the Grain Growers Association and through a project partnership with the red meat industry.

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August 2010.

# OBSERVATIONS OF AN ARBITRATION ADMINISTRATOR

The following observations were noted during the conduct of the Dispute Resolution Service for 2009/2010.

## ISSUE 1

There has been a significant increase in the number of arbitrations where the Respondent has challenged the jurisdiction of GTA to hear the matter. The argument is the GTA Trade Rules and/or Dispute Resolution Rules have not been expressly incorporated into the contract under dispute. In many cases it appears that the Respondent is anticipating that, if successful, that the dispute will dissolve.

### The experience

- These issues are ultimately resolved but not before substantial expenditure by both parties in legal fees.
- GTA in the vast majority of cases, is given jurisdiction by the courts or the arbitration panel. Therefore, all that has occurred is additional fees and a delay to the process.
- Claimants do not abandon disputes if they fail in their selection of GTA jurisdiction but are prepared to argue their case in another jurisdiction, i.e. a court process.

### Template clauses to be used to expressly incorporate the GTA Trade Rules and/or Dispute Resolution Rules:

#### GTA Trade Rules

*"This contract expressly incorporates the GTA Trade Rules [or standard GTA contract reference] and Dispute Resolution Rules in force at the time of this contract."*

#### GTA dispute Resolution Service

*"Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the GTA Dispute Resolution Rules in force at the time of contract."*

## ISSUE 2

Many involved in arbitration nominate an arbitrator from the same sector as their organisation, anticipating this will give them an advantage.

### The experience

- A move by Claimants to nominating arbitrators from the same sector as the Respondent. This is a significant endorsement of the DRS process and in particular the high degree of impartiality afforded by the arbitrators to their duties.

## ISSUE 3

Arbitrations involving producers are historically initiated by buyers.

### The experience

- In the majority of arbitrations this still occurs, however producers have initiated a number of arbitrations, which is a vote of confidence in the impartiality and legal rigor of the process.

## ISSUE 4

Approximately 25% of arbitrations are not challenged as Respondents believe that by none participation that the dispute will not proceed.

### The experience

- Increasingly Respondents are joining the arbitration after filing of the Claimant's submission as they acknowledge that the Claimant is determined to proceed. In many cases, these arbitrations are commercially settled.

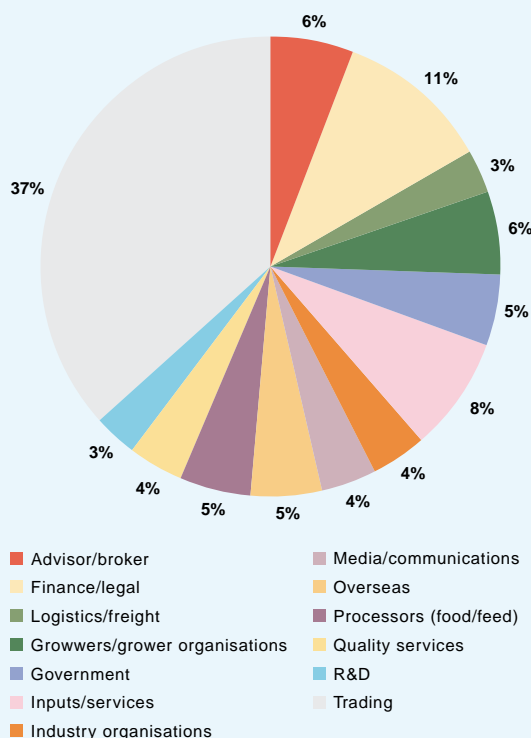
# Australian Grains Industry Conference

**The 2010 Australian Grains Industry Conference was highly successful. The conference has continued to build its attendances each year from around 220 in 1999 to the current level of over 800. The industry dinner set a new benchmark with 700 people attending.**

This year's program was built around the theme of Australian Grains Industry: Prospering in face of global economic, environmental and social change. The program focused on the response of the grains industry to the recently deregulated wheat market and to challenges from global economic, environmental and social changes.

The conference hosted a number of high profile international and domestic speakers across topics of how well Australian grains are positioned to meet customer demands; implications of globalisation and consolidation; and adapting to social change.

Delegates represented a large part of the commercial grains industry supply chain, growers and grower organisations, government, research and technical services, the finance and legal sector and a number of overseas participants, mainly traders/customers from the Asian region.





# Arbitration Awards

## Arbitration No.128 Notice to Members

**Date of Issue:** 15 April 2010  
**Claimant:** Commodity Seller  
**&**  
**Respondent:** Commodity Buyer

### Arbitration Committee (AC)

Mr. David Dossor, Arbitrator appointed by GTA.  
This arbitration was conducted as a Fast Track arbitration and hence has only one arbitrator nominated by GTA and approved by the parties.

### Claim

The dispute concerns determination of the validity of a contract and the subsequent repudiation of the contract under which the Claimant sold grain to the Respondent.

### Issue for determination

1. Did GTA have jurisdiction to hear the matter?  
To determine this issue, point 2 needs to be resolved.
2. Was a contract in existence?
3. If a contract was in existence, was it repudiated?

### Details

The Claimant submits it entered into a verbal contract which was subsequently confirmed by a Contract Confirmation faxed the same day. The Respondent claimed they did not receive the fax from the Claimant.

The Respondent at a later date flatly denied the existence of the contract and indicated there would be no performance against the Contract.

### Award findings

The Respondent says no contract existed and accordingly, there is no repudiation. In addition, the Respondent says that because there was no contract that, therefore, GTA has no jurisdiction.

In evidence of the existence of a contract, the Claimant relied on:

- A prior course of dealing with the Respondent;
- Diary notes of the broker on the day of contract;
- Diary notes of the seller on the day of contract;
- Fax records of day of contract.

The decision that a contract was in existence was based on the "balance of probabilities" that the Claimant and Respondent did contract on the terms contained in the Claimants sale Contract Confirmation.

Given the existence of the contract, the next issue for determination by the Arbitrator was whether there was repudiation of the contract? This was resolved by reference to remarks made by the Respondent to the Claimant (which were not denied), that as there was no contract, there would be no performance.  
*"A blunt denial that a contract exists, along with non performance, is a classic example of repudiation of the contract...."*

### Award

The Claimant was successful and the Sole Arbitrator made the following Final Award:

4. That the Respondent pay the Claimant \$20,000;
5. That the Respondent indemnify the Claimant in respect of fees paid to GTA by payment of \$2000.

## Arbitration No.148 Notice to Members

**Date of Issue:** 30 September 2010  
**Claimant:** Commodity Buyer  
**&**  
**Respondent:** Commodity Seller

### Arbitration Committee (AC)

Phil Holmes - nominated by GTA  
This arbitration was conducted as a Fast Track arbitration and hence has only one arbitrator nominated by GTA and approved by the parties.

### Claim

This dispute relates to the non delivery of grain against a contract. A invoice to "washout" the contract was not paid. The issues which fall for determination are:

- Was the Claimant entitled to "wash" the contract out given an apparent change to the delivery point that was agreed at the time the contract was entered into and the delivery point nominated by the buyer in their grain movement order.

### Details

The Claimant requested delivery to a site that was not agreed in the initial contract deliberations. The Respondent did not agree to the changed location and the contract was not delivered against.

### Award findings

The Arbitrator found that:

- The Respondent was not required to deliver to the alternative site.

### Award

The Claimant was unsuccessful and instructed to pay the Respondent's arbitration fees.