

Agribusiness Alert

Have the seeds of change been planted for the oversight of grain pools?

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The evolution of the wheat industry in Australia is gathering pace. The Wheat Industry Advisory Taskforce, established last year to examine a range of issues across the wheat export supply chain, has released its second report entitled *Grain Pools as Financial Products*.

The report looks into grain commodity pools, a marketing product that allows individual grain growers to pool some or all of their production in order to achieve the benefits of scale and to access otherwise unavailable markets. The Taskforce recognises that, in recent years, there have been concerns within the industry about the operation of grain pools, particularly in relation to the significant discrepancies between the pools' estimated and final returns.

Taskforce Findings

1. While grain pools are generally considered as a managed investment scheme, a class order provides an exemption to operators from having to comply with all relevant aspects of the *Corporations Act 2001*.
2. Growers should familiarise themselves with the written terms and conditions offered by any pool provider to be certain of the risks and benefits associated with pool participation before entering a pool.

Taskforce Recommendations

1. The onus should remain with growers to assess the risk of pools and pool operators.
2. The class order should remain in place until its planned review and the remaining time be used to assess the effectiveness of Australian Grain Industry Code of Practice.
3. In order to provide a greater level of risk assurance for participants and direction for pool operators, Grain Trade Australia should work with industry representative groups to further develop and refine the Australian Grain Industry Code of Practice, as it relates to the operation of pools.

Despite the recommendation that grain pool operators remain exempt from the managed investment scheme regulatory regime, we believe this is likely to be the subject of further consideration. A number of reviews that will again call into consideration the oversight of grain pools will occur in the coming years and wheat industry stakeholders should keep an eye on the following:

- Grain Trade Australia has stated that the Australian Grain Industry Code of Practice – Management of Grain within the Australian Grain Supply Chain will become mandatory for all GTA ordinary or post farm gate members from 1 July 2014 onwards. Organisations that are not members of GTA will be encouraged to become Code signatories.
- In light of the Taskforce's recommendations, the Code of Practice may be further strengthened to increase the level of clarity and risk assurance for operators and

participants. Other penalties for breach of the Code of Practice besides expulsion from GTA may be considered.

- The class order which provides the exemption from the managed investment scheme regime will expire in 2016. The Australian Securities and Investments Commission plans to undertake a review of the class order within the next 3 years and that will provide an opportunity for submissions from industry participants.
- A potential solution to increase the rigour of the Code of Practice in the long term may be a co-regulation arrangement between ASIC and an ASIC-approved industry organisation which would take on a “lead regulator” role. However, the Taskforce notes that such an organisation with the necessary expertise would need to be identified and the financial costs of this model would need to be met by the industry.

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