Victorian Farmers Federation
Grains Group

DRAFT INDUSTRY DISCUSSION PAPER

Increasing Professionalism and Accountability of the Grains Industry

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Victorian Farmers Federation

Increasing Professionalism and Accountability of the Grains Industry

Licence + Guarantee Fund

1 Victorian Farmers Federation

The Victorian Farmers Federation (VFF) is one of the largest state farmer organisations in Australia, representing more than 10,000 members who live and work on more than 6,000 farm businesses situated across Victoria. The VFF Grains Commodity Group, through its elected Council, has the responsibility and autonomy to determine VFF policy regarding grains industry issues.

2 Executive Summary

VFF Grains Group supports the need for an open, efficient, and transparent market to promote competition in the grains industry. Recent insolvencies in the grains industry, especially in Victoria, have cost the state industry approximately $50 million. The VFF consider this initial net cost and the associated inefficiencies, not taking into consideration multiplier effects, to have wide ramifications for Victorian agriculture, sustainable productivity, and the broader economy. Such market failures demonstrate a very real need to increase the level of professionalism and accountability in the grain trade, which can only be achieved through the assistance of government to implement a form of industry self-funded self-regulation such as a licensing scheme.

Victorian farmers have little in the way of consumer and business protections or support, yet they are shouldering an unfair proportion of not only the supply chain costs, but a disproportionate level of the risks incurred by the industry as a whole. Standards need to be introduced to provide a more equitable balance for farmers, who incur not only production risk, market risk, price risk, and costs, but are also bearing the <u>capital risk of their counterparty's businesses</u>.

Precedents for licensing regimes exist in many other Australian industries and in our largest export competitors Canada and the United States. Together, Canada and the US have licensing and insurance schemes in more than 30 states and provinces and many of these have been operating for decades. While these models are not perfect, they act as a preventative measure to insolvencies occurring and therefore increase confidence within the industry. This has flow on benefits to wider industry as it provides assurance to lenders, growers, and traders, and improves general market liquidity and competition. The development of a grain trade licensing scheme in Victoria could involve engagement by industry, including grain producers and trade organisations, as well as build on the various strengths of existing schemes.

<u>Recommendation</u>:

That the State Minister for Agriculture investigate and facilitate a form of industry self-funded self-regulation such as a licensing scheme and guarantee fund

Solution = Grain Trade Licence (GTL) + Grain Trade Guarantee Fund (GTGF)

That the Government facilitate in conjunction with industry a licensing system for the grain trade incorporating accreditation of grain traders underwritten by a self-funded insurance scheme, similar to those existing in the US and other Australian industries

3 The Problem

3.1 Background

There have been a number of trade insolvencies and companies going into administration in the grains industry during 2013 and 2014. These have included:

- Mid West Milling
- One World Grain
- Convector Grain
- River City Grain Co
- Meeniyan Stockfeeds
- LGL Commodities Pty Ltd

These administrations and insolvencies have cost the industry in the order of $50 million and have placed a heavy financial and emotional burden on many producers, transporters, and other industry participants across Victoria, South Australia, and NSW.

3.2 The Costs of Insolvencies

Comments:

Costs of Grain Trade Insolvencies to the Victorian Economy include:

- Direct Costs: ~$50 million lost revenue

- Multiplier Cost to Economy: e.g. ~ $50m x 2.5 = $125m p.a.

- Economic Recovery Cost to Industry: ~ no. years gross production to recoup net revenue loss

- Emotional and Health Impacts

- Impact on Market Confidence - liquidity, borrowing costs

- Impact on Market Competition

The costs to the industry and community include not only the direct costs to creditors, but also the flow-on effects and hidden costs. These include:

- **Direct Financial Cost to Economy** – the cost to farmers, transport companies, grain traders, and finance providers etc. is quantified as up to $50m in net returns.
- **Multiplier Effect** – the multiplier effect of the original net loss is significant. If $50 million is not flowing into rural and regional economies in Victoria, this will result in further losses for regional communities and businesses that are larger than the original loss in revenue. For example, a simple multiplier of 2.5 suggests an impact of $125 million on the Victorian economy over roughly 18 months. Regardless of the multiplier used, the impact is clearly significant.
- **Economic Recovery** – the cost of economic recovery is in addition to the multiplier loss of revenue. It has been estimated that a farm business losing net dollar revenue will take approximately 5 years of gross farm production to recover the initial net loss. In other words, an annual insolvency event in the Victorian agriculture industry can take the affected farmers 5 years of production to recover the initial loss.

- **Emotional and Health Impacts** – the emotional and physical stress placed on business people and their families such as farmers, transport operators, and grain traders cannot be quantified, nor should it or the associated health costs be underestimated.

- **Undermining Market Confidence** – insolvencies impact the whole market, undermining market confidence, market liquidity, and market efficiency.

- **Impact on Competition** – undermined confidence can lead to reduced competition as growers 'flock' to the major grain trading houses, and can also result in higher risk premiums being charged by financiers and insurers.

In short, grain trade insolvencies have a detrimental effect across the market, industry, and broader community as a whole.

3.3 Limited Regulation and Oversight

Comments:

"you only need a laptop and mobile phone to be a grain trader"

There are no enforceable standards or oversights that exist in the cash grain trade

Most other industries, professions, and trades have standards, oversight or regulation

There is no capital backing requirement behind traders who buy grain

There is no regulation of traders who borrow against a farmer's grain contract to then make payment to the farmer

As clearly articulated by farmers at various grower meetings in recent months, the problem can be summed with a few comments:

- *"you only need a laptop and mobile phone to be a grain trader"*
- *"why is it the grower that's always left picking up the bill?"*
- *"why should traders not be licenced? They are dealing in millions of dollars of growers money"*
- *"why do traders need to have an AFSL to trade in futures or other financial instruments - but need nothing to trade in cash grain worth just as much money?"*
- *"why does every profession require a form of licence, builders, electricians, plumbers, motor car dealers, but not grain traders?"*

As these comments summarise, there are no real standards or oversights that exist in the cash grain trade, yet other industries have significant oversight or regulation. There is a distinct lack of any enforceable industry standards. Examples that exist in other industries include:

- Minimum qualifications
- Minimum operating standards
- Capital adequacy requirements or ratios
- Licensing
- An oversight body, association or regulator with enforceable powers
- A guarantee fund or insurance scheme

4 What about the PPSA?

<u>Comments</u>:

> ***"We only react in Australia after the house has burnt down"***
>
> ***"The PPSA is not worth the paper it is written on"***

The PPSA is not a preventative measure but <u>may</u> increase a grower's right as a secured creditor to the remaining assets of an insolvent company (if any)

This assumes the grower has a grain contract that allows registration of a valid PMSI – many grain contracts do <u>not</u> enable the grower to properly register

The United States has licensing systems in addition to PPSA type legislation

The Personal Property Securities Act 2009 (PPSA), in theory, allows sellers of goods the ability to retain title to the product and the proceeds of sale of goods pending payment by registering a Purchase Money Security Interest (PMSI). In the case of insolvency a properly registered PMSI has a superior priority to most other security interests, in effect making the PMSI holder a secured creditor with priority over unsecured creditors.

However, the PMSI has a number of shortcomings, especially in the grains industry:

- In a number of instances grain trade contracts do not enable growers to retain title – therefore voiding the PMSI.
- While on face-value a PMSI is arguably relatively easy to register online, it is understood that in reality even minor coding 'errors' will render a PMSI invalid, yet the online system does not advise the registrant that the PMSI has been incorrectly lodged.
- Assuming a PMSI has been correctly lodged, and is valid with retention of title, it appears that in the case where physical grain has been out-turned to a third party the grower does not retain a claim over the stock or payment for the grain, but simply becomes a secured creditor and must stand in line with other secured creditors, such as banks, to try and recover funds from any remaining assets of the company.

In conclusion, and possibly most importantly, the PMSI is not a preventative measure to trade insolvencies. In the case of insolvency it <u>may</u> increase a grower's status from unsecured to secured creditor, but does not prevent the insolvency event from occurring in the first place and is no guarantee of payment for grain or recovery of funds.

5 Why not just do your 'due diligence'?

<u>Comments</u>:

"How can you do due diligence when even the banks, traders, everyone is getting burnt??"

"Is a farmer supposed to have a professional credit risk department?"

"Is a farmer expected to have better daily market knowledge than grain traders?"

It has become clear in the recent spate of insolvencies that banks, traders, transporters, and producers are all losing money as the result of insolvencies in the industry.

If professional institutions with full-time professional credit risk departments are losing money, how is a farmer – who would be considered relatively unsophisticated in terms of credit risk management – expected to do the same level of due diligence as a bank? Banks' lending practices have also been brought into question in recent press reports. See, for example: "NAB's grain pain", The Weekly Times, 4th June 2014, p.16.

In addition, if professional grain traders – who trade in the market on a daily basis – are losing money, again how are growers expected to have the same or better market knowledge than the trade?

Clearly there are failures in the market, from which no amount of education or 'due diligence' is able to protect growers. While education and due diligence have their place in good business practice, they are not the solution to this problem.

6 What do other countries do in the grain trade?

Australia's two largest export competitors in the grain trade, the United States and Canada, do have licensing arrangements and insurance funds protecting growers.

<u>Comments</u>:

The United States and Canada have Licensing and Insurance schemes in addition to PPSA

Growers in Illinois now only sell grain to companies holding a Grain Dealer's Licence and/or Grain Warehousing Licence

Across the USA 30 other states have created similar grain insurance funds

The United States is Australia's largest export competitor in the grains industry. It is also arguably the largest deregulated grain market in the world, with well-developed domestic markets, export markets, and futures exchanges. The US has a number of remedies to improve industry and grower security.

6.1 The Uniform Commercial Code = PPSR

Interestingly, the United States' Uniform Commercial Code (UCC) has been the basis for the Personal Property Securities legislation in Canada, New Zealand, and most recently Australia, with the Personal Properties Securities Register (PPSR).

Generally, the priority of secured parties and security interests are governed by legislation based on a 'registration' system whereby priority is determined according to the timing of each registration of a security interest. Of significance for Australia is that Purchase Money Security Interests (security for payment of goods/product supplied) are given super priority over other first-in-time secured creditors (provided that administrative processes are followed correctly).

In addition to PPSR, the US has a number of other protections specifically tailored to payment security for growers/farmers.

6.2 Licensing and Insurance

6.2.1 Case Study – Illinois Grain Code[1,2]

In the 1970s and early 1980s, a number of country elevator insolvencies resulted in significant losses to Illinois grain producers. In response, the Illinois Grain Insurance Fund Act was passed by the State House and Senate in 1983, with extensive support from the county Farm Bureau (the representative organisation for farmers and growers). Since the 1980s, approximately 30 other states across the USA have created similar grain insurance funds.

Grain transactions in Illinois are now governed by the state Grain Code, which is administered by the Illinois Department of Agriculture (IDA), and growers only sell to companies holding the relevant licence. The licensing scheme has been in operation since the Grain Dealers Act was passed in 1967 (this Act was later repealed and the licensing scheme was incorporated into the Grain Code). IDA is responsible for licensing grain dealers and warehouses, which includes conducting a review of their records at least once per year. Individuals and growers can check whether a dealer or warehouse is licensed through the IDA's online database and search tool.[3]

The Grain Insurance Fund is also administered through IDA.[4] The Insurance Fund provides a guarantee for producers that they will be compensated for grain sold to or stored with state-licensed grain dealers or warehousemen even if that licensee becomes insolvent. The Fund is financed by licensed Illinois grain dealers/sellers, warehouses, and lenders.[5] In the event of insolvency, IDA liquidates grain assets to repay creditors (if this is insufficient to repay debts, monies from the

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[1] Uchtmann, D. and Endres, A. 2008, 'Illinois Grain Insurance Fund: Protecting Farmers if an Elevator Fails,' Issues Brief, *University of Illinois* (URL: http://farmdoc.illinois.edu/legal/articles/ALTBs/ALTB_08-05/ALTB_08-05.pdf)

[2] Dowell, J. 2006, 'Developing Insurance Protection for Stored Grain,' *Journal of the ASFMRA* (URL: http://www.asfmra.org/wp-content/uploads/2014/06/247_Dowell.pdf)

[3] 'Licensed Grain Dealer / Warehouse Look-up,' Bureau of Warehouses, *Illinois Department of Agriculture* (URL: http://www.agr.state.il.us/warehouses/warehouselookup.php)

[4] 'Grain Warehouses / AG Coops,' 2014, *Illinois Department of Agriculture* (URL: http://www.agr.state.il.us/grain-warehouses/)

[5] 'Illinois Grain Code Information,' 2001, *Illinois Department of Agriculture* (URL: http://www.agr.state.il.us/warehouses/graincode.html)

Insurance Fund may be used). Depending on the type of sale, length of payment period, and other requirements, losses may be fully covered or covered at a rate of 85 percent.

The Illinois Grain Insurance Corporation and Grain Insurance Fund underwent review in 2003 to address several issues and improve operational efficiency, and the Grain Code was subsequently amended. Outcomes and learnings from these reviews could be incorporated into a Victorian grain trade licensing scheme (further discussed in Section 8.1).

6.2.2 Other US States and Canada

Comments:

The United States and Canada are our largest grain export competitors

The US is arguably the largest deregulated domestic, export, and futures grain market in the world

In excess of 30 states in the United States and Canada have a form of grain licensing and insurance

As mentioned there are in excess of 30 states in the US that have licensing regimes and insurance schemes designed to protect grain producers. Canada, our other major export competitor, has several grain licensing and insurance schemes at the provincial level, as well as a national system (this is discussed further in Section 8.1). The US Association of Grain Regulatory Officials (AGRO) provides the following summary[6] of current US and Canadian producer protections:

State	Utilizes AGRO EDI Standards	Oversees Grain Warehouse Statutes	Oversees Grain Dealer Statutes	Type of Producer Protection
Alabama	No	Yes	Yes	Bond/Surety
Arkansas	No	Yes	No	Bond/Surety
Colorado	Yes	Yes	Yes	Bond/Surety
District of Columbia	No	Yes	No	Bond/Surety
Georgia	No	Yes	Yes	Bond/Surety
Idaho	Yes	Yes	Yes	Indemnity Fund/Insurance

[6] 'State & Province Laws,' *Association of Grain Regulatory Officials* (URL: http://www.agroonline.org/laws/state-laws.htm#)

Illinois	Yes	Yes	Yes	Indemnity Fund/Insurance
Indiana	Yes	Yes	Yes	Indemnity Fund/Insurance
Iowa	Yes	Yes	Yes	Indemnity Fund/Insurance
Kansas	Yes	Yes	No	Bond/Surety
Kentucky	Yes	Yes	Yes	Indemnity Fund/Insurance
Louisiana	No	Yes	Yes	Indemnity Fund/Insurance
Maryland	No	Yes	No	Bond/Surety
Michigan	Yes	Yes	Yes	Indemnity Fund/Insurance
Minnesota	Yes	Yes	Yes	Bond/Surety
Mississippi	No	Yes	Yes	Bond/Surety
Missouri	Yes	Yes	Yes	Bond/Surety
Montana	No	Yes	Yes	Bond/Surety
Nebraska	No	Yes	Yes	Bond/Surety
New York	No	Yes	Yes	Indemnity Fund/Insurance
North Dakota	Yes	Yes	Yes	Indemnity & Bond
Ohio	Yes	Yes	Yes	Indemnity Fund/Insurance

Oklahoma	No	Yes	No	Indemnity & Bond
South Carolina	No	Yes	Yes	Indemnity Fund/Insurance
South Dakota	Yes	Yes	Yes	Bond/Surety
Tennessee	No	Yes	Yes	Indemnity Fund/Insurance
Texas	Yes	Yes	No	Bond/Surety
Virginia	No	Yes	Yes	Bond/Surety
Washington	No	Yes	Yes	Indemnity Fund/Insurance
Wisconsin	Yes	Yes	Yes	Indemnity Fund/Insurance
Wyoming	Yes	Yes	No	Bond/Surety
Canadian Province	**Utilizes AGRO EDI Standards**	**Oversees Grain Warehouse Statutes**	**Oversees Grain Dealer Statutes**	**Type of Producer Protection:**
Manitoba	No	Yes	No	Bond/Surety
Ontario	No	Yes	Yes	Indemnity Fund/Insurance

7 Licensing in other Australian industries

Comments:

Occupational and business licensing is part of everyday life in Australia

Nearly all occupations, professions and businesses in Australia have to abide by some form of licensing, qualifications, and/or regulation

7.1 Licensing Occupations

Occupational licensing is part of everyday life in Australia, and is common to most vocations and professions. An occupational licence is any form of regulation that restricts entry to an occupation or profession to people who meet requirements stipulated by a regulatory authority. There are numerous examples of everyday occupations that have some form of licensing requirements. These include:

- Property agents, valuers and conveyancers
- Pest and weed controllers
- Stock and station agents
- Carpenters, joiners, builders and bricklayers
- Plumbers and gasfitters
- Electricians, electrical fitters, cable jointers, lineworkers and electrical contractors
- Air conditioning and refrigeration mechanics, automotive gas installers
- Land transport occupations (including driving instructors, passenger vehicle drivers and drivers transporting bulk dangerous goods and explosives)
- Motor vehicle repairers
- Maritime occupations
- Gaming occupations
- Shotfirers and pyrotechnicians

Industry regulators in each state and territory oversee compliance with industry occupational licensing requirements. These regulators manage and monitor the application of these requirements, stipulating whether workers need to obtain a licence in order to work in their chosen industry. The Council of Australia Governments (COAG) has recognised how the state-by-state nature of occupational licensing impacts on workforce mobility and has introduced a system of Mutual Recognition to reduce regulatory burden for industry and business.[7]

7.2 Australian Financial Services (AFS) Licence

Numerous other professions require licensing, from health through to finance. Examples of financial professions that require licences include the insurance, banking, and superannuation industries. The Australian Prudential Regulation Authority (APRA) is the prudential regulator of banks, insurance

[7] 'Mutual recognition of Goods and Occupations,' *Council of Australian Governments* (URL: http://www.coag.gov.au/mutual_recognition)

companies and superannuation funds, credit unions etc.[8] An AFS licence is required to conduct a financial services business, and is required to enable the licensee to:

- provide financial product advice to clients;
- deal in a financial product;
- make a market for a financial product;
- operate a registered scheme;
- provide a custodial or depository service; or
- provide traditional trustee company services.

The Australian Securities and Investments Commission (ASIC) assesses licence applications and considers whether the applicant:

- is competent to carry on the kind of financial services business specified in the application;
- has sufficient financial resources to carry on the proposed business – unless regulated by the Australian Prudential Regulation Authority (APRA); and
- can meet the other obligations of an AFS licensee.

ASIC grants licences if a business shows it can meet basic standards such as training, compliance, insurance and dispute resolution. The business is then responsible for maintaining these standards.

7.3 Victorian Business Licensing Authority

Other Australian industries have analogous models that could be adopted in the grains industry. The Victorian licensing system is administered by the Business Licensing Authority (BLA), an independent regulator within the Victorian Government's Justice portfolio; it operates under the Business Licensing Authority Act 1998. The BLA provides licences to businesses that need one to operate lawfully,[9] including conveyancers, estate agents, motor car traders, and travel agents. Individuals can search the online Public Register to check whether a person, company or partnership is licensed or registered.[10]

The Business Licensing Act 1998 requires that the Governor in Council appoints BLA members, who must be legal practitioners with at least five years' experience. The BLA Registrar and staff from the Licensing branch of Consumer Affairs Victoria also support the BLA's work. Members of the BLA make decisions about licence and registration applications, based on information collected from the applicant, other statutory agencies and general inquiries.

The BLA's roles include:

- determining licence-related applications for relevant occupations and businesses;
- providing information about licensing and registration criteria and procedures;
- maintaining accessible public registers of all registrants and licensees;
- imposing and reviewing conditions and restrictions on new and existing licensees and registrants as appropriate; and

[8] 'AFS Licensing,' 01/07/2014, *Australian Securities and Investment Commission* (URL: http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Licensing)

[9] 'Business Licensing Authority,' 17/07/2014, *Consumer Affairs Victoria* (URL: http://www.consumer.vic.gov.au/businesses/business-licensing-authority)

[10] 'Registration/Licence Search,' Public Register, *Business Licensing Authority* (URL: http://publicregister.sbcit.com.au/)

- referring matters to the Director of Consumer Affairs Victoria or Victoria Police for investigation.

7.3.1 Case Study – Victorian Motor Car Traders

Victorian motor car traders are subject to Licensing by the BLA under the Motor Car Traders Act 1986. The Motor Car Traders Guarantee Fund[11] meets the cost of successful claims made by persons who have suffered a loss if a motor car trader fails to comply with certain conditions of the Motor Car Traders Act 1986 and the regulation of motor car trading (to protect the Victorian public). Money for the fund comes from motor car traders' licensing fees, and penalties paid for breaches of the Motor Car Traders Act 1986. Claims for compensation from the fund are heard by the Motor Car Traders Claims Committee. A claim can be considered if a consumer buys a motor car and it appears that the trader has not:

- complied with warranty provisions;
- transferred a clear title to the car;
- paid the purchase price to a consumer if the consumer has sold a car to the trader, or paid another person on the consumer's behalf, such as a finance company;
- passed on transfer, registration fees or stamp duty to VicRoads;
- provided a Roadworthy Certificate or other documents necessary;
- passed on money paid as a premium or purchase price for an insurance policy or warranty;
- satisfied a court order or an order from the Victorian Civil and Administrative Tribunal;
- refunded the purchase price or a deposit following cancellation of a contract; or
- delivered the motor car after receiving payment of the purchase price.

The fund will seek to recover any amount paid out against the licensee. If the licensee is a company or partnership, the fund will seek reimbursement from the company directors or partners, as the case may be.

8 A Solution = Grain Trade Licence + Grain Trade Guarantee Fund?

Comments:

Grain Trade Licence (GTL) + Grain Trade Guarantee Fund (GTGF)?

8.1 GTL + GTGF

Clearly the Victorian and Australian grains industry needs to improve its professionalism and accountability in line with domestic and international precedents. There are possibly a number of avenues to address this issue, including the potential for a 'Grain Trade Licence' (GTL) combined with a 'Grain Trade Guarantee Fund' (GTGF).

Potential requirements of such a licensing scheme could include a range of preventative measures aimed at both 'lifting the bar' of professional standards and providing ongoing monitoring and

[11] 'Motor Car Traders Guarantee Fund,' 22/08/2013, *Consumer Affairs Victoria* (URL: http://www.consumer.vic.gov.au/businesses/licensed-businesses/motor-car-traders/motor-car-traders-guarantee-fund)

assurance to protect all party's interests. These need not be overly onerous but, based on precedent from domestic and international licensing schemes, could include:

- Minimum qualifications
- 'Fit and proper person test'
- Minimum operating standards
- Capital adequacy requirements
- Funds held in Trust
- An oversight body for registration and monitoring (e.g. BLA)
- An associated guarantee fund or insurance scheme

Other details and criteria could be established in conjunction with grower representative bodies and the trade. Additionally, there is significant material – including knowledge of strengths and weaknesses – from existing grains licensing schemes that could be used in developing a Victorian GTL + GTGF.

Exclusions from the requirement to hold a licence could be established based on minimum trade turnover threshold. Incorporating such a threshold assists in defining genuine trade organisations and excluding what would be considered minor farm-gate trade. For example, the Michigan Grain Dealers Act 1939 defines a grain dealer as:

> "a person engaged in the business of receiving, buying, exchanging, selling, or storing farm produce in this state. The term includes a farm produce trucker, grain merchandiser, or processor. The term does not include a person solely engaged in 1 of the following:
>
> (i) Selling farm produce produced by the person.
>
> (ii) Buying farm produce in a cash sale to feed the person's livestock or poultry.
>
> (iii) If the person handled less than 30,000 bushels of farm produce in the person's preceding fiscal year and in the person's current fiscal year, buying farm produce in a cash sale.
>
> (iv) Purchasing farm produce from a person other than the grower or producer of the farm produce in a cash sale.
>
> (v) Contracting for land or services to produce seed for sowing or propagation."[12]

Similarly, caps on the collection of funds for the GTGF could be incorporated into the scheme, as in some funds in the United States, to ensure a stable level of funding is maintained. For example, this is seen in Ohio, where legislation was passed in 2013 that requires the balance of the state Grain Indemnity Fund to remain within the bounds of a $10 million minimum and $15 million maximum.[13]

[12] Section 285.62, Grain Dealers Act (Excerpt), Act 141 of 1939, *State of Michigan* (URL: http://www.legislature.mi.gov/(S(3yxhosza02cbas45hpysja55))/mileg.aspx?page=getObject&objectName=mcl-285-62)

[13] 'The Ohio Indemnity Fund Protects Farmers,' 20/03/2014, *Ohio Department of Agriculture* (URL: http://www.agri.ohio.gov/divs/plant/indemnity.htm)

This threshold was raised from a minimum of $8 million and maximum of $10 million[14] in response to changes in commodity prices. When the Fund is below the $10 million threshold, assessments are collected.

Reviews and audits of several North American licensing and insurance schemes provide important insights for developing an effective and robust scheme in Victoria. In 2001, the involuntary bankruptcy of a large grain dealer/warehouse in Illinois left the Grain Insurance Fund in deficit, requiring emergency legislation and a transfer of funds from the General Assembly. The Grain Code was subsequently amended, and reviews into the Illinois Grain Insurance Corporation,[17] the regulation of grain dealers and warehousemen, and the administration of the Illinois Grain Insurance Fund[18] were undertaken. The majority of recommendations from these reviews were adopted by IDA, and key features of the strengthened system include:

- Coordination of the licence application and review system – including a centralised database, background checks for managers of newly licensed entities, licence applications reviewed by more than one employee, and an annual review of each licensed grain dealer and warehouse (following standardised guidelines).
- Transparent and standardised guidelines for corrective action when required – ensuring dealers and warehousemen are aware of the guidelines and when a licence can be suspended, revoked, or no longer renewed.
- Ongoing monitoring of reviewers' potential conflict of interest.
- Periodic evaluation of the Insurance Fund's capacity to pay eligible claims – although a GTL + GTGF reduces the risk of insolvencies, they cannot be prevented; the impact of increasingly large licensees (which means fewer licensed entities supporting the Fund), changing commodity prices, and the changing scope of claims coverage should be monitored to ensure the Fund can fulfil its directive.

In response to a number of insolvencies in 2009, an audit of the Missouri Grain Regulatory Services program recommended a more rigorous and systematic implementation of the licensing and review schemes, estimating that more than $11 million in losses could have been saved had procedures been followed in accordance with existing regulations.[19]

Finally, recent amendments to the Canada Grain Act offer an alternative model of producer payment protection within the licensing program, one based on insurance rather than security.[20] These amendments were raised as part of the Jobs and Growth Act 2012, but have not yet been implemented. They are intended to address a number of concerns, including:

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[14] 'Ohio grain indemnity legislation signed into law,' *Ohio's Country Journal* (URL: http://ocj.com/2013/07/ohio-grain-indemnity-legislation-signed-into-law/)

[17] 'Review of Illinois Grain Insurance Corporation,' year ended 30/06/2003, *Illinois Legislative Audit Commission* (URL: http://www.ilga.gov/commission/lac/audits/ag_grain_ins03.PDF)

[18] 'Management Audit: Regulation of Grain Dealers and Warehousemen and the Administration of the Grain Insurance Fund, December 2003, *Illinois Legislative Audit Commission* (URL: http://www.ilga.gov/commission/lac/audits/Graindealers2003.pdf)

[19] State Auditor's Report into the Department of Agriculture's Grain Regulatory Services Program, August 2010, (URL: http://investigatemidwest.wpengine.netdna-cdn.com/files/2011/06/aug2010_grain_regulatory_service.pdf)

[20] 'Regulations Amending the Canada Grain Regulations: Regulatory Impact Analysis Statement,' 05/10/2013, *Canada Gazette*, (URL: http://www.gazette.gc.ca/rp-pr/p1/2013/2013-10-05/html/reg1-eng.html)

- the strict reporting requirements and associated costs for licensees;
- the significant administrative and financial burden for the Canadian Grains Commission (the implementing agency);
- the high volume of security shortfalls (leading to a time lag for information and security assessments);
- and producers' due diligence.

A Victorian model could learn from these challenges, and ensure the costs and requirements for stakeholders were reasonable and proportionate. As discussed in Section 5, producer education and due diligence have their place in good business practice, and would complement a GTL + GTGF model to ensure increased professionalism throughout the industry supply chain. Additionally, it is important that the trade and growers are engaged in the process of development to ensure stakeholders' views are adequately reflected in the scheme.

8.2 Trade Engagement

Comments:

The trade and growers should be engaged in developing relevant standards and criteria

Independence and enforceability are seen by producers as key criteria to an effective system

Non-binding voluntary codes of conduct are considered ineffectual

Industry, including grain producers and trade organisations, such as the Grain Industry Association of Victorian (GIAV) and Grain Trade Australia (GTA), could be engaged in developing appropriate industry qualifications and operating standards, in addition to citing other Australian industries and our international competitors.

In fact, trade organisations offer industry-based qualifications and membership that could be incorporated as potential requirements into a licensing regime.

It should be stated however that independence and enforceability are seen by producers as key criteria to an effective system. Further, non-binding voluntary codes of conduct are considered ineffectual in delivering any genuine industry change or accountability. A licensing regime could provide the means for an enforceable industry regime.

8.3 Benefits of Grains Licensing and Insurance Funds

Benefits of Grains Licensing and Insurance Funds:

- Protects ownership of grain in warehouse for growers and trade

- Protects grower payments for grain

- Secures payments for growers, local communities, industry, and the economy

- In US secures 'warehouse receipt' market

- Improves market security and liquidity

- Provides reassurance to banks and financiers lending against stock as collateral – potentially resulting in more competitive interest rates

Taking into account the challenges discussed above, and the various models of licensing and insurance currently operating across Canada and the United States, the VFF identifies a range of benefits that result from Grain Trade Licensing and Insurance Funds, including:

a) Benefits to Producers and Economy

- Protects the financial interests of grain inventories held in third party storage
- Protects the financial interests of grain producers' accounts receivables for grain related payments
- Strengthens the financial balance sheet of grain inventory assets
- Protects the financial interests of the state's grain producers and the communities where they reside. That is, protects the trickle-down effect in local economies, since the underlying value of a producer's crop inventories in third party storage is guaranteed

b) Benefits for the Secondary Market

- Protects the financial interests of grain inventories held in third party storage (this extends to warehouse receipts issued by the storing warehouse)
- Strengthens the financial balance sheet of grain inventory assets

c) Benefits for Financiers and Banks

- The insurance fund offers reassurance for lending institutions as well, since grain receipts issued by grain warehousemen are often used by banks as collateral. Therefore producers, warehouse licences and secondary market participants can more effectively borrow money to operate their businesses
- Strengthens the financial balance sheet of grain inventory assets
- Banks and financiers have a higher confidence level knowing there is an insurance fund, increasing their willingness to lend to the industry

8.4 Implementation of the GTL + GTGF

A GTL and GTGF scheme could readily be implemented under the Business Licensing Authority in Victoria. Industry funding for the GTGF could be collected as licensing fees imposed on the licenced bodies and ultimately collected from growers as is done in similar schemes in the United States by the licenced traders.

8.4.1 Other Australian states

It is understood that other states could choose to adopt similar legislation as that in Victoria, and that parties registered under Victorian legislation could be recognised in other states under the Mutual Recognition Agreement (MRA).[21] The MRA covers all occupations for which some form of legislation-based registration, certification, licensing, approval, admission or other form of authorisation is required by individuals in order to practise legally their occupation. COAG would play a key role in developing and implementing a co-ordinated state-based grain trade licensing system, which would be recognised under the MRA.

The VFF is calling on the Victorian Government to take the lead on establishing a licensing regime as it has done on other key national issues crucial to agriculture, such as the National Livestock Identification Scheme.

[21] 'Mutual Recognition Agreement,' 11/05/1992, *Council of Australian Governments* (URL: http://www.coag.gov.au/node/39)