



30 January 2015

GIAV Submission to the ACCC Issues Paper on regulation of Victorian port terminals

Executive Summary

The Australian Competition and Consumer Commission is seeking views on whether to reduce regulation at Victorian wheat port terminals under the new mandatory Code on bulk wheat terminal access. The Code, which is administered by the ACCC, aims to ensure that exporters have fair and transparent access to terminal facilities.

GrainCorp and Emerald have lodged exemption applications for their respective ports and the ACCC is assessing these exemption applications. The GIAV provides this submission in response to the exemptions sought by both GrainCorp and Emerald.

GIAV submits that the grain export sector will be better supported by reduced regulation and lower compliance costs. Local and international experience suggests that market forces will be placed to manage the competing interests of port terminal operators and bulk wheat exporters. There are however some reports which terminal operators currently provide under the mandatory Code which are valued by the grain industry. GIAV submits that the ACCC should consider retaining these reports within Part 2, which is the ongoing mandatory component.

Background to GIAV

The Grain Industry Association of Victoria has a long and proud history of representing the post farm gate sector of the Victorian grain industry since 1917. Our 70 member companies are involved in all facets of the grain industry, operating diverse and often integrated businesses, which include production, transport, storage, brokering, trading, milling and export of cereal grain, pulses and oilseeds.

While there are some small differences of opinion within the grain sector on these issues, the opinions expressed in this submission reflect the general views of our Management Committee and membership.

Summary of GIAV Submission on regulation of port terminals

Code Component	Code Requirement of port terminal operators	Exceptions sought by GrainCorp and Emerald	GIAV Response
Part 1	General provisions about the Code	None	N/A
Part 2	To deal with exporters in good faith, publish a port loading statement and policies and procedures for managing demand for their services, and make current standard terms and reference prices for each port terminal facility publically available on their website	None	A revised Code retains the shipping stem reports, and incorporates an additional obligation to provide the shipping capacity reports
Part 3	Not to discriminate in favour of itself or its trading business or hinder third party exporters' access to port terminal services	Full exemption	Full exemption
	To enter into an access agreement or negotiate the terms of an access agreement with an exporter to provide services if an exporter has applied to enter into an access agreement and certain criteria are satisfied	Full exemption	Full exemption
	To deal with disputes during negotiation via specified dispute resolution processes including mediation and arbitration	Full exemption	Full exemption
Part 4	To have, publish and comply with a port loading protocol which includes an ACCC approved capacity allocation system	Full exemption	Full exemption
Part 5	To regularly publish expected capacity, stock information and key performance indicators.	Full exemption	Retain the shipping capacity reports under a revised Part 2 of the Code
Part 6	Retaining records such as access agreements and variations to those agreements	Full exemption	Full exemption

Comments to ACCC Issues Paper

While GIAV does not have the resources to fully address the 38 questions raised in the ACCC Issues Paper, the Association would like to contribute to this important review and provide the following comments. These comments are to be taken as our response to the exemptions sought by GrainCorp and Emerald.

Port operations

The GIAV considers that bulk wheat exporters have been able to access port services. These services are available with excess capacity and little constraint.

Current regulations

It is the view of the GIAV that if companies are prepared to invest heavily into port infrastructure, the legitimate business interests of the companies need to be taken into account.

The shipping stem information (referred to as Port Loading Statement in the Code), which is currently provided under the mandatory Clause 7 in Part 2 of the Code, is highly valued by the grains industry. Industry's ready access to this report is not intended to change. This report provides valuable data to underpin fundamental supply and demand analysis for grain traders and should not be removed.

The current regulations prevent port terminal operators negotiating with wheat exporters in confidence. These negotiations can include low cost arrangements, which favour long term and high volume shipping programs. By removing the ability of terminal operators to negotiate such arrangements, supply chain efficiency is bound in high cost regulation.

Access to terminal services

Due to the excess capacity of bulk shipping terminals, the GIAV contends that wheat exporters would be able to negotiate and secure reasonable access to Victorian port terminal services if GrainCorp and Emerald did not need to comply with Parts 3 - 6 of the Code.

This would be the case even though these port operators were:

- no longer subject to the non-discrimination and no hindering provision
- no longer subject to the dispute resolution process provided for under the Code
- to have full discretion over capacity allocation systems and not require ACCC approval of the type or operation of the system
- not required to publish stocks information and key performance indicators

There is one exception to the removal of all components of Part 5 of the Code. The GIAV submits that the shipping capacity reports, which are required under Part 5 Clause 28 of the Code, should be retained. These are freely available on the GrainCorp (see example below) and Emerald websites currently and are highly valued by the grain trade. These reports provide a fast and efficient way to monitor the availability of shipping slot by month by port terminal.

Grain traders understand that the capacities as displayed in the reports are a guide and liable to change. But if a third party exporter wishes to dispute any removal of access to a particular shipping slot, that is not readily explained in a subsequent shipping stem report, that the terminal operator will be required to provide evidence that the slot has been reasonably booked by another exporter.

ELEVATION CAPACITY AVAILABLE															
As At Thursday, 22 January 2015															
Year	Month	Mackay		Gladstone		Fisherman Islands		Carrington		Port Kembla		Geelong		Portland	
2014/15	January	50,000	Y	50,000	Y	150,000	Y	165,000	Y	190,000	Y	35,000	Y	100,000	Y
	February	50,000	Y	50,000	Y	150,000	Y	100,000	Y	79,000	Y	52,600	Y	38,000	Y
	March	40,000	Y	40,000	Y	75,500	Y	135,000	Y	30,000	Y		N	10,000	Y
	April	50,000	Y	50,000	Y	110,000	Y	154,000	Y		N		N		N
	May	30,000	Y	50,000	Y	100,000	Y	190,000	Y		N		N		N
	June		N		N	80,000	Y	197,000	Y	600	Y		N	40,000	Y
	July		N		N	150,000	Y	170,000	Y	154,500	Y	95,950	Y	23,000	Y
	August		N		N	150,000	Y	200,000	Y	190,000	Y	250,000	Y	70,000	Y
	September		N		N	150,000	Y	200,000	Y	250,000	Y	250,000	Y	80,000	Y

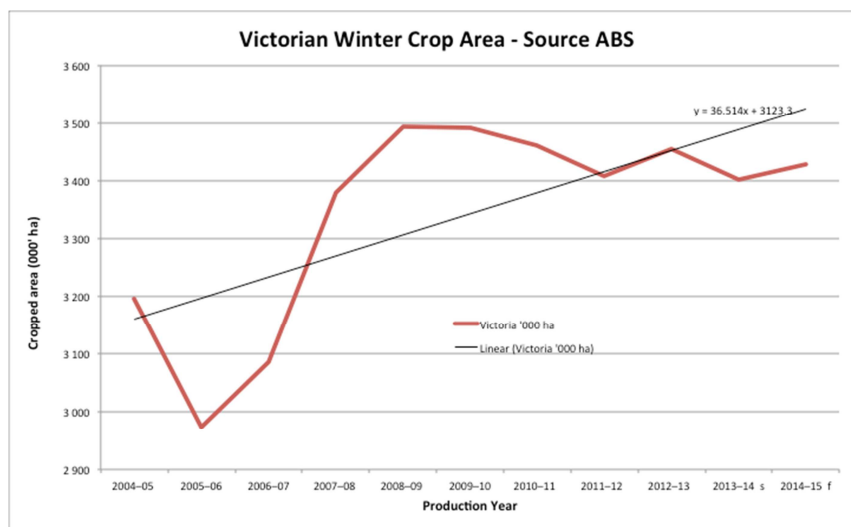
As these shipping capacity reports are at present subject to the non-mandatory Part 5 component of the Code, the GIAV submits that this requirement be made mandatory. Port terminal operators should be obligated under a revised Part 2 of the Code to maintain the existing the shipping capacity reports of Clause 28.

Competition for services

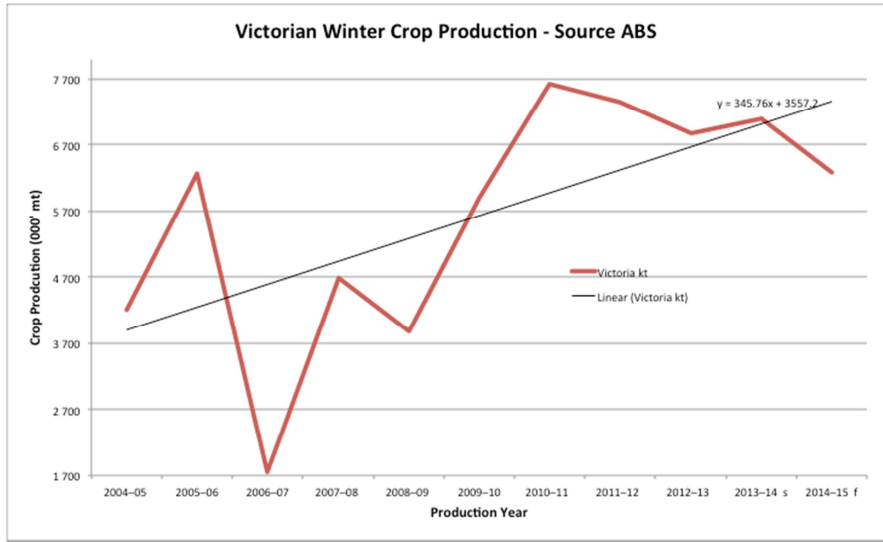
Currently port terminal operators have a strong vested interest to maintain fair access arrangements with third party exporters. This is due to the:

- Direct and viable competition between GrainCorp’s Geelong and Emerald’s Melbourne terminals
- Direct and viable competition between both GrainCorp’s and Emerald’s terminals and the proposed Bunge terminal
- The less direct yet still viable competition between GrainCorp’s **Portland** and Emerald’s Melbourne terminals
- The over capacity of shipping capacity within Victoria and
- The cross border competition with the Viterra ports in South Australia and GrainCorp in Port Kembla

The Victorian winter cropped area 10-year trendline shows the cropped area growing at 1 per cent per year.



Production is also expanding at 4.7 per cent per year.



Despite this growth, expansions in bulk port terminal capacity, domestic demand and container exports will ensure operators will have a strong incentive to provide competitive access for third party exporters.

Upstream competition, Upcountry handling and Transportation

The GIAV agrees with the submissions made by GrainCorp and Emerald, which relate to the competition between each other's terminals as well as that with the domestic market, upcountry handling, transport, containerization and interstate export terminals.