

Version No. 021

Grain Handling and Storage Act 1995

Act No. 45/1995

Version incorporating amendments as at 10 November 2004

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	1
3. Definitions	1
4. Crown to be bound	4
PART 2—THE AGREEMENT	5
5. Ratification	5
6. Implementation of State Agreement	5
7. Modification of law of Victoria	5
8. Variation of State Agreement	5
9. Enforcement of State Agreement	6
10. Specific performance	6
11. Payment of certain amounts from proceeds of sale	6
12. <i>Repealed</i>	7
PART 3—REGULATORY PROVISIONS	8
Division 1—General	8
13. Construction of Part	8
14. Objectives of the Commission	8
Division 2—Regulatory provisions	9
15. Powers in relation to price regulation	9
16. Access rules	11
17. Obligations of provider	11
18. Procedure if agreement cannot be reached	12
19. Application for general determination	15
20. <i>Repealed</i>	16
21. Hindering access	16
22. Financial records	17
23. Conduct of inquiries	17

<i>Section</i>	<i>Page</i>
23A. Commission may publish guidelines	19
24. Effect of facility ceasing to be a significant infrastructure facility	19
24A. Procedures and powers of the Commission	20
24B. Commission may give directions in relation to a dispute	21
24C. Confidentiality agreements	22
24D. Costs of the Commission	23
24E. Appeals	23
25. <i>Repealed</i>	25
Division 3—Licences	25
25A. Prohibition	25
25B. Exemptions	26
25C. Application for licence	26
25D. Grant or refusal of application	26
25E. Provisions relating to licences	27
25F. Specific licence conditions	28
25G. Determination of fees and charges	28
25H. Variation or revocation of licence	29
25I. Gazettal requirement	29
25J. Transfer of licence	30
25K. <i>Repealed</i>	31
PART 4—TRANSFER OF PROPERTY	32
26. Transfer of GEB property	32
27. Substitution of party to agreement	32
28. GEB instruments	32
29. Proceedings	33
30. Interests in land	33
31. Amendment of Register	33
32. Stamp duty	34
33. Substitution of party to agreement	34
34. Liabilities	34
PART 5—GENERAL	35
35. Construction and operation of works at Portland	35
36. Rights in respect of port facilities at Geelong	35
37. Validity of things done under this Act	36
PART 6—<i>Repealed</i>	37
38, 39. <i>Repealed</i>	37

<i>Section</i>	<i>Page</i>
SCHEDULES	38
SCHEDULE 1—The Agreement	38
SCHEDULE 2— <i>Repealed</i>	76
<hr/>	
ENDNOTES	77
1. General Information	77
2. Table of Amendments	78
3. Explanatory Details	79

Version No. 021

Grain Handling and Storage Act 1995

Act No. 45/1995

Version incorporating amendments as at 10 November 2004

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to make provision for the sale of certain assets of the Grain Elevators Board and to make provision for regulating the handling and storage of grain for export shipping at the Port of Geelong and the Port of Portland.

S. 1
amended by
No. 73/2003
s. 3.

2. Commencement

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 2 years beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

3. Definitions

In this Act—

"Commission" means the Essential Services Commission established under the **Essential Services Commission Act 2001**;

S. 3 def. of
"Commis
sion"
inserted by
No. 62/2001
s. 83(a).

*Grain Handling and Storage Act 1995**Act No. 45/1995*

Part 1—Preliminary

"Competition Principles Agreement" means the Competition Principles Agreement made on 11 April 1995 between the Commonwealth and all of the States and Territories of the Commonwealth;

"completion date" has the same meaning as in the State Agreement;

"direction" means the direction for transfer of assets given by the Treasurer to GEB on 19 May 1995 under section 9 of the **State Owned Enterprises Act 1992**;

"GEB" means the Grain Elevators Board constituted under the **Grain Elevators Act 1958**;

"GEB instrument" means an instrument (including a legislative instrument other than this Act) subsisting immediately before the completion date—

- (a) to which GEB was a party; or
- (b) that was given to or in favour of GEB; or
- or
- (c) that refers to GEB; or
- (d) under which—
 - (i) money is, or may become, payable to or by GEB; or
 - (ii) other property is to be, or may become liable to be, transferred to or by GEB;

"grain" means grains, oil seeds and pulses of all kinds, qualities and varieties including wheat, barley, oats, sorghum, maize and rice;

"instrument" includes a document and an oral agreement;

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 1—Preliminary

s. 3

"liabilities" means all liabilities, duties and obligations, whether actual, contingent or prospective;

* * * * *

S. 3 def. of "Office" repealed by No. 62/2001 s. 83(b).

"prescribed prices" means the charges under section 15(1)(c);

S. 3 def. of "prescribed prices" substituted by No. 73/2003 s. 4(2)(a).

"prescribed services" means the services declared to be prescribed services under section 15(1)(b);

S. 3 def. of "prescribed services" amended by No. 73/2003 s. 4(2)(b).

"property" means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

"provider", in relation to a prescribed service, means the owner or operator of the significant infrastructure facility that is used, or is to be used, to provide the prescribed service;

S. 3 def. of "provider" inserted by No. 73/2003 s. 4(1).

"purchaser" means Vicgrain Operations Limited A.C.N. 069 291 532;

"regulated industry" means the industry declared under section 15(1)(a);

"rights" means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 1—Preliminary

s. 4

S. 3 def. of
"significant
infrastructure
facility"
substituted by
No. 73/2003
s. 4(2)(c).

Victorian Legislation and Parliamentary Documents

"significant infrastructure facility" means a facility within the meaning of section 16(1);

"State Agreement" means the agreement a copy of which is set out in Schedule 1 and, if that agreement is varied, that agreement as varied and in force for the time being;

"subsidiary" means GEBCO Pty Ltd A.C.N. 068 777 524;

"transferred property" means property, rights and liabilities that, under the State Agreement and Part 4 have vested in, or become liabilities of, the Purchaser.

4. Crown to be bound

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—THE AGREEMENT

5. Ratification

The agreement, a copy of which is set out in Schedule 1, is ratified and approved.

6. Implementation of State Agreement

- (1) The implementation of the State Agreement is authorised.
- (2) The Government of Victoria, the Ministers, instrumentalities of the State and all bodies created by or under an Act for a public purpose, including municipal councils, are authorised, empowered and required to do all things necessary or expedient to carry out, and give full effect to, the State Agreement.
- (3) A person must not do anything that interferes with the operation or implementation of the State Agreement or the ability of the parties to the State Agreement to exercise rights, or discharge duties or obligations, under the State Agreement.

7. Modification of law of Victoria

If a provision of the State Agreement is inconsistent with a provision of the law of Victoria, the provision of the State Agreement prevails and the provision of the law of Victoria is, to the extent of the inconsistency, modified accordingly.

8. Variation of State Agreement

- (1) The parties to the State Agreement may from time to time by agreement in writing and in accordance with the terms of the State Agreement add to, or substitute for, cancel or vary all or any of the provisions of the State Agreement.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 2—The Agreement

s. 9

- (2) The Minister must cause a copy of an agreement under sub-section (1) to be laid before each House of the Parliament within 6 sitting days of the House next following the making of the agreement.
- (3) An agreement under this section may be revoked wholly or in part by resolution of either House of the Parliament passed within 6 sitting days of the House after a copy of the agreement is laid before that House.
- (4) Unless the agreement is revoked under this section, an agreement under this section comes into force on the expiration of the period within which it could have been revoked.

9. Enforcement of State Agreement

The State Agreement may be enforced only by or on behalf of the State or another party to it or a successor or assign of another party.

10. Specific performance

For the avoidance of doubt, it is declared that section 23(1) of the **Crown Proceedings Act 1958** authorises the granting and enforcement of a decree of specific performance against the Crown in respect of the obligations of the State under the State Agreement.

11. Payment of certain amounts from proceeds of sale

- (1) The Treasurer may, from the proceeds of sale, repay, discharge or satisfy GEB liabilities and the Consolidated Fund is hereby to the necessary extent appropriated accordingly.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 2—The Agreement

s. 11

(2) In this section—

"GEB liabilities" means all liabilities of—

- (a) GEB in respect of financial accommodation obtained, or financial arrangements entered into, by GEB; and
- (b) the Treasury Corporation of Victoria in respect of liabilities in respect of financial accommodation obtained, or financial arrangements, entered into, by GEB.

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S. 12
repealed by
No. 4/1996
s. 134(5) (as
amended by
No. 82/1996
s. 78(b)).

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 13

Pt 3
(Heading)
amended by
No. 62/2001
s. 83(c).

Pt 3 Div. 1
(Heading)
inserted by
No. 62/2001
s. 85(2).

S. 13
amended by
No. 62/2001
s. 83(d).

S. 14
amended by
No. 62/2001
s. 83(e).

PART 3—REGULATORY PROVISIONS

Division 1—General

13. Construction of Part

This Part is relevant legislation for the purposes of the **Essential Services Commission Act 2001**.

14. Objectives of the Commission

The objectives of the Commission in relation to the regulated industry are—

- (a) to promote competition in the storage and handling of grain;
- (b) to protect the interests of users of the grain handling and storage facilities in terms of price by ensuring that charges across users and classes of services are fair and reasonable;
- (c) to ensure users and classes of users have fair and reasonable access for grain to the port facilities whilst having regard to the competitiveness and efficiency of the regulated industry.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 15

Division 2—Regulatory provisions

Pt 3 Div. 2
(Heading)
inserted by
No. 62/2001
s. 85(3).

15. Powers in relation to price regulation

- | | |
|---|--|
| <p>(1) For the purposes of Part 3 of the Essential Services Commission Act 2001—</p> <p style="margin-left: 20px;">(a) the industry of facilitating the export shipping of grain is a regulated industry;</p> <p style="margin-left: 20px;">(b) the services provided, in respect of the regulated industry, in the Port of Geelong and the Port of Portland of receiving, moving, inspecting, testing, stock control (including marshalling, storing and management), weighing, elevating and loading grain are prescribed services;</p> <p style="margin-left: 20px;">(c) the charges for the prescribed services under paragraph (b) are prescribed prices.</p> | <p>S. 15(1)
amended by
No. 62/2001
s. 83(d).</p> <p>S. 15(1)(b)
substituted by
No. 73/2003
s. 5(1).</p> <p>S. 15(1)(c)
substituted by
No. 73/2003
s. 5(1).</p> |
| <p>(2) In making a determination in respect of prescribed prices, the Commission must, in addition to the matters referred to in section 33(3) of the Essential Services Commission Act 2001, have regard to—</p> <p style="margin-left: 20px;">(a) changes in the Consumer Price Index;</p> <p style="margin-left: 20px;">(b) changes in the provision of prescribed services;</p> <p style="margin-left: 20px;">(c) changes in the total cost of providing prescribed services;</p> <p style="margin-left: 20px;">(d) the costs of any new investment in the regulated industry to facilitate the provision of prescribed services.</p> | <p>S. 15(2)
amended by
Nos 62/2001
s. 83(f),
11/2002
s. 3(Sch. 1
item 30.1).</p> |

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 15

- (3) A change in the Consumer Price Index means the percentage calculated to two decimal places in accordance with the formula—

$$\frac{A - B}{B} \times \frac{100}{1}$$

where—

"A" is the consumer price index number for the quarter prior to the quarter in which the determination is to be made;

"B" is the consumer price index number for the quarter ending 30 September 1994;

"Consumer Price Index" means the all groups consumer price index number for Melbourne published quarterly by the Australian Bureau of Statistics.

- (4) The Commission may only make a determination in respect of prescribed prices under this section with the approval of the Minister administering this Part following an inquiry under sub-section (7) or under section 41 of the **Essential Services Commission Act 2001**.
- (5) Sub-section (4) does not apply to a determination of the Commission under section 18, 19 or 21 that includes the setting of prescribed prices.
- (6) An approval under sub-section (4) operates until it is revoked by the Minister administering this Part.
- (7) The Commission may, after consultation with the Minister administering the **Essential Services Commission Act 2001**, conduct an inquiry under section 40 of that Act, if the Commission considers an inquiry is necessary or desirable for the purpose of deciding whether to seek approval under sub-section (4) to make a determination in respect of prescribed prices.

S. 15(4)
inserted by
No. 73/2003
s. 5(2).

S. 15(5)
inserted by
No. 73/2003
s. 5(2).

S. 15(6)
inserted by
No. 73/2003
s. 5(2).

S. 15(7)
inserted by
No. 73/2003
s. 5(2).

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 16

16. Access rules

- | | |
|---|---|
| <p>(1) Unless the Commission otherwise determines in accordance with Part 3 of the Essential Services Commission Act 2001, a facility used in the provision of prescribed services is a significant infrastructure facility and is to be regulated in accordance with the Competition Principles Agreement.</p> | <p>S. 16(1)
amended by
Nos 62/2001
s. 83(e),
75/2004
s. 58(1).</p> |
| <p>(2) It is hereby declared that it is necessary to provide for access to prescribed services because—</p> <p style="margin-left: 20px;">(a) it is not economically feasible to duplicate the prescribed services; and</p> <p style="margin-left: 20px;">(b) access to the prescribed services is necessary in order to permit effective competition in the grain market; and</p> <p style="margin-left: 20px;">(c) the safe use of the prescribed services by persons seeking access can be ensured at an economically feasible cost.</p> | <p>S. 16(2)(b)
amended by
No. 73/2003
s. 6.</p> |
| <p>(3) The Commission must not determine for the purposes of sub-section (1) that all facilities used in the provision of prescribed services in the Port of Geelong or the Port of Portland have ceased to be significant infrastructure facilities.</p> | <p>S. 16(3)
inserted by
No. 75/2004
s. 58(2).</p> |

17. Obligations of provider

- | | |
|---|--|
| <p>(1) The provider must provide access to the prescribed services on fair and reasonable terms and conditions.</p> | <p>S. 17(1)
substituted by
No. 73/2003
s. 7(2).</p> |
| <p>(2) A condition that other services must be acquired in order to have access to prescribed services is not a reasonable term or condition.</p> | <p>S. 17(2)
amended by
No. 73/2003
s. 7(3).</p> |

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 18

S. 17(3)
amended by
No. 73/2003
s. 7(4).

S. 17(3)(b)
amended by
Nos 62/2001
s. 83(e),
75/2004 s. 59.

S. 17(4)
amended by
No. 73/2003
s. 7(5).

S. 17(4)(d)
amended by
No. 73/2003
s. 7(6).

Victorian Legislation and Parliamentary Documents

- (3) The provider must—
- (a) use all reasonable endeavours to meet the requirements of persons seeking access; and
 - (b) make a formal proposal of terms and conditions for access within 20 working days of receiving a request or within such reasonable lesser period as is decided by the Commission.
- (4) The terms and conditions of access may vary according to the actual and opportunity costs to the provider having regard to—
- (a) the particular commodity;
 - (b) the volume of the commodity;
 - (c) the period of time during which access is required;
 - (d) the level of demand for the prescribed services.
- (5) The terms and conditions of access must not vary according to the identity of the person seeking access.
- (6) A term or condition which contravenes subsection (2) or (5) is void.

18. Procedure if agreement cannot be reached

- (1) A person seeking access to prescribed services may apply in writing to the Commission for the making of a determination under Part 3 of the **Essential Services Commission Act 2001** specifying the terms and conditions on which access is to be provided if—
- (a) the provider and the person seeking access cannot agree on the terms and conditions on which access is to be provided; or

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 18

(b) the provider has failed to make a formal proposal under section 17(3)(b) within the time period set out in that section.

(2) The Commission must within 15 days of receiving an application under sub-section (1) give notice in writing to the person making the application or to any other person from whom the Commission is entitled to require information or a document under the **Essential Services Commission Act 2001**, specifying any information or document that the Commission requires the person to give so that the Commission can make, or refuse to make, a determination.

S. 18(2) amended by Nos 62/2001 s. 83(e), 11/2002 s. 3(Sch. 1 item 30.2), substituted by No. 73/2003 s. 8(1).

(3) The Commission must not make a determination if the Commission considers that the making of a determination would substantially impede the existing right of access of another person unless that person has been given an opportunity to make a submission to the Commission in respect of the application.

S. 18(3) amended by No. 62/2001 s. 83(e).

(3A) Without limiting any other powers of the Commission, the Commission may refuse to make a determination if—

S. 18(3A) inserted by No. 73/2003 s. 8(2).

(a) the Commission considers that the application is trivial or vexatious; or

(b) the Commission is satisfied that—

(i) the provider has complied with the obligations under section 17; and

(ii) the terms and conditions of access being offered by the provider do not constitute a taking advantage of a substantial degree of market power in the provision of the prescribed services; and

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 18

S. 18(3B)
inserted by
No. 73/2003
s. 8(2).

S. 18(4)
amended by
No. 62/2001
s. 83(e).

S. 18(4A)
inserted by
No. 73/2003
s. 8(3).

S. 18(5)
amended by
No. 62/2001
s. 83(e).

S. 18(6)
amended by
No. 62/2001
s. 83(e),
substituted by
No. 73/2003
s. 8(4).

- (iii) having regard to the objectives of the Commission under section 14 and under the **Essential Services Commission Act 2001** and to any other matter that the Commission considers relevant, it is appropriate to refuse to make a determination.
- (3B) A person who is aggrieved by a decision of the Commission to refuse to make a determination under this section, may appeal as if that decision was a determination for the purposes of section 55(1)(c) of the **Essential Services Commission Act 2001**.
- (4) In making a determination the Commission must consider the matters specified in paragraphs (i) and (j) of clause 6(4) of the Competition Principles Agreement.
- (4A) In making a determination the Commission may require the provider to extend, or to permit the extension of, the facility used to provide a prescribed service, subject to the matters specified in paragraph (j) of clause 6(4) of the Competition Principles Agreement.
- (5) A person who is bound by a determination may apply in writing to the Commission for the amendment or revocation of the determination on the ground that there has been a material change in circumstances.
- (6) In determining an access dispute under this section, the Commission must act as quickly as proper consideration of the dispute allows, having regard to the need to carefully investigate all matters affecting the merits and fair settlement of the dispute.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 19

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S. 18(7)
amended by
No. 62/2001
s. 83(e),
repealed by
No. 73/2003
s. 8(5).

19. Application for general determination

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|--|--|
| <p>(1) The provider may apply in writing to the Commission for the making of a determination under Part 3 of the Essential Services Commission Act 2001 specifying the terms and conditions on which access to prescribed services is to be provided for the period specified in the determination.</p> | <p>S. 19(1)
amended by
Nos 62/2001
s. 83(d)(e),
73/2003
s. 9(1)(a)(b).</p> |
| <p>(2) The Commission must within 20 days of receiving an application under sub-section (1) give notice in writing to the provider specifying any information or document that the Commission requires the provider to give so that the Commission can make a determination.</p> | <p>S. 19(2)
amended by
No. 62/2001
s. 83(e),
substituted by
No. 73/2003
s. 9(2).</p> |
| <p>(3) The Commission must determine an application under this section within 90 days of receiving the application excluding the period of time between the day on which notice is given under sub-section (2) and the day on which the required information is received by the Commission.</p> | <p>S. 19(3)
amended by
No. 62/2001
s. 83(e).</p> |
| <p>(4) The costs of the Commission in making a determination under this section are to be paid by the provider.</p> | <p>S. 19(4)
amended by
Nos 62/2001
s. 83(e),
73/2003
s. 9(3).</p> |
| <p>(5) Section 18 does not apply while a determination is in force under this section unless the Commission decides that the determination does not deal with the matters that are in dispute.</p> | <p>S. 19(5)
amended by
Nos 62/2001
s. 83(e),
75/2004 s. 60.</p> |

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 21

S. 20
amended by
No. 62/2001
s. 83(e),
repealed by
No. 73/2003
s. 10.

S. 21(1)
substituted by
No. 73/2003
s. 11(1).

S. 21(2)
amended by
Nos 62/2001
s. 83(e)(g),
73/2003
s. 11(2).

S. 21(2A)
inserted by
No. 73/2003
s. 11(3).

S. 21(3)
amended by
No. 62/2001
s. 83(e).

S. 21(3A)
inserted by
No. 73/2003
s. 11(4).

Victorian Legislation and Parliamentary Documents

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21. Hindering access

- (1) The provider or any person having access to the prescribed services must not engage in conduct having a purpose of hindering access to the prescribed services by any other person in the exercise of a reasonable right of access.
- (2) A person who considers that his or her right of access to prescribed services has been hindered in contravention of sub-section (1) may apply in writing to the Commission for the making of a determination in accordance with section 34 of the **Essential Services Commission Act 2001**.
- (2A) The Commission must within 15 days of receiving an application under sub-section (1) give notice in writing to the person making the application or to any other person from whom the Commission is entitled to require information or a document under the **Essential Services Commission Act 2001**, specifying any information or document that the Commission requires the person to give so that the Commission can make, or refuse to make, a determination.
- (3) If the Commission determines that there has been a contravention of sub-section (1), the Commission may make a determination that the person is entitled to access on such terms and conditions as are specified in the determination.
- (3A) Without limiting any other powers of the Commission, the Commission may refuse to make a determination if it considers that the application is trivial or vexatious.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 22

22. Financial records

- | | |
|---|--|
| (1) The provider must keep financial records in respect of the prescribed services which are separate from other aspects of any business conducted by the provider. | S. 22(1)
substituted by
No. 73/2003
s. 12(1). |
| (2) The provider must make the financial records available to the Commission when requested to do so by notice in writing given by the Commission. | S. 22(2)
amended by
Nos 62/2001
s. 83(e),
73/2003
s. 12(2). |
| (3) Part 4 of the Essential Services Commission Act 2001 applies to financial records kept for the purposes of this section. | S. 22(3)
amended by
No. 62/2001
s. 83(h). |

23. Conduct of inquiries

- | | |
|--|--|
| (1) The Commission must, not later than 30 June 2006, conduct and complete an inquiry under the Essential Services Commission Act 2001 to make a recommendation to the Minister administering the Essential Services Commission Act 2001 as to whether or not a facility has ceased to be a significant infrastructure facility or has become a significant infrastructure facility. | S. 23
substituted by
No. 62/2001
s. 84. |
| (2) The Commission must, not later than 30 June 2006, conduct and complete an inquiry under the Essential Services Commission Act 2001 to make a recommendation to the Minister administering the Essential Services Commission Act 2001 as to whether or not a facility has ceased to be a significant infrastructure facility or has become a significant infrastructure facility. | S. 23(1)
amended by
No. 73/2003
s. 13(1). |
| (2) If the Minister administering the Essential Services Commission Act 2001 has determined that a facility is or continues to be a significant infrastructure facility, the Commission must conduct a further inquiry under the Essential Services Commission Act 2001 before the expiry of each subsequent period of 5 years commencing from the date that the last inquiry commenced, to make a recommendation to the Minister administering the Essential Services Commission Act 2001 as to whether or not a | S. 23(2)
amended by
No. 73/2003
s. 13(2). |

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 23

facility has ceased to be a significant infrastructure facility or has become a significant infrastructure facility.

- (3) Despite anything to the contrary in the **Essential Services Commission Act 2001**, the following applies to an inquiry conducted under this section—
- (a) the Commission must publish notice of the inquiry in a daily newspaper generally circulating in Victoria;
 - (b) the notice must specify—
 - (i) the purposes of the inquiry;
 - (ii) the period during which the inquiry is to be held;
 - (iii) the period within which members of the public may make submissions;
 - (iv) the form in which submissions may be made;
 - (v) details of public hearings;
 - (vi) the matters about which the Commission is seeking submissions or intends to consider during public hearings;
 - (c) the Commission must send a copy of the notice to such persons engaged in the regulated industry and other persons or bodies that the Commission considers should be notified.
- (4) If a provision of Part 5 of the **Essential Services Commission Act 2001** is inconsistent with this Part, this Part prevails.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 23A

23A. Commission may publish guidelines

S. 23A
inserted by
No. 73/2003
s. 14.

- (1) For the purposes of section 13 of the **Essential Services Commission Act 2001**, the Commission—
 - (a) must publish guidelines in relation to the matters the Commission may take into account in deciding to refuse to make a determination under section 18;
 - (b) may publish guidelines in relation to—
 - (i) the form and content of a formal proposal which a provider must make under section 17(3)(b); and
 - (ii) the making of an order for payment of the Commission's costs under section 24D; and
 - (iii) any other matter in connection with the exercise of its powers under sections 18, 19 and 21.
- (2) Guidelines under this section are not binding on the Commission.

24. Effect of facility ceasing to be a significant infrastructure facility

S. 24
substituted by
Nos 62/2001
s. 84, 73/2003
s. 15.

If the Minister administering the **Essential Services Commission Act 2001**, after considering a recommendation of the Commission, determines that a facility has ceased to be a significant infrastructure facility—

- (a) subject to paragraph (b), an existing determination made by the Commission (including a price determination under section 33 of the **Essential Services Commission Act 2001**) in respect of prescribed services to which the facility relates, is revoked from the date specified by that Minister; and

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 24A

- (b) an existing price determination made by the Commission, in respect of prescribed services to which the facility does not relate, continues to operate.

24A. Procedures and powers of the Commission

- (1) For the purposes of section 11(2) of the **Essential Services Commission Act 2001**, the Commission, in making, or considering whether to make, a determination under Division 2—
- (a) is not bound by the rules of evidence or any forms, practices or procedures applicable to courts of record, except to the extent that it adopts those rules, forms, practices or procedures;
- (b) may inform itself on any matter relevant to the application as it considers appropriate, including by commissioning expert reports;
- (c) may, subject to the limitations contained in sections 18, 19 and 21, conduct its investigations in any manner it considers appropriate.
- (2) At any time prior to the making of a determination the Commission may allow the withdrawal of the application by the party seeking a determination.
- (3) A determination made under Division 2 is a determination for the purposes of the **Essential Services Commission Act 2001**.
- (4) The making of, or refusal to make, a determination under Division 2 is not an arbitration for the purposes of the **Commercial Arbitration Act 1984**.
- (5) Except as provided in sub-sections (6) and (7), sections 37 and 38 of the **Essential Services Commission Act 2001** apply to this Act.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 24B

- (6) Section 37(4) of the **Essential Services Commission Act 2001** does not apply to a requirement made under section 24B(1).
- (7) Section 38 of the **Essential Services Commission Act 2001** only applies to information or a document required under section 24B(1)(a) if the Commission proposes to disclose the information or document to a person who is not identified by the Commission under section 24B(1)(a).

24B. Commission may give directions in relation to a dispute

S. 24B
 inserted by
 No. 73/2003
 s. 16.

- (1) The Commission, for the purposes of facilitating negotiations or determining a dispute under Division 2, may require a person who is or was a party to the dispute to do, or refrain from doing, something, including—
 - (a) requiring a person to give relevant information or a document to one or more other persons identified by the Commission, and a copy to the Commission, subject to section 24C;
 - (b) requiring a person to carry out reasonable research or investigations in order to obtain relevant information;
 - (c) prohibiting a person from imposing, or seeking to impose, an unreasonable procedural condition on the person's participation in negotiations;
 - (d) requiring a person to respond in writing to another person's proposal or request in relation to the time and place of a meeting;
 - (e) requiring a person, or a representative of a person, to attend a mediation conference.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 24C

- (2) For the purposes of sub-section (1)(c) "an unreasonable procedural condition" includes a requirement by one party that the other party or parties to the dispute must not disclose to the Commission information or a document provided in the course of negotiations.
- (3) A person must not, without lawful excuse, disobey a requirement of the Commission made under this section.

Penalty: 60 penalty units.

24C. Confidentiality agreements

- (1) This section applies if—
 - (a) the Commission makes a requirement under section 24B(1)(a); and
 - (b) the person in control or possession of the information or document ("the disclosing party") notifies the Commission in writing that the information or document is of a confidential or commercially-sensitive nature; and
 - (c) the Commission notifies the person that the information or document must still be provided in accordance with section 24B(1)(a).
- (2) If, under sub-section (1)(c), the Commission notifies the disclosing party that the information or document must still be provided in accordance with section 24B(1)(a), the disclosing party may require the person receiving the information or document ("the receiving party") to enter into a confidentiality agreement.
- (3) The terms of a confidentiality agreement may be proposed by the disclosing party and those terms must be promptly notified to the Commission and to the receiving party.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 24D

- (4) If the Commission considers that the terms of the proposed confidentiality agreement are unreasonable, the Commission may decide to amend or delete those terms or substitute other terms.

24D. Costs of the Commission

S. 24D
 inserted by
 No. 73/2003
 s. 16.

- (1) In this section, "**Commission's costs**" means the total amount of the costs and expenses of the Commission that are incurred or are likely to be incurred by the Commission in the exercise of its powers for or in connection with the making of, or refusal to make, a determination under Division 2.
- (2) The Commission may make an order in relation to the payment of the Commission's costs—
- (a) after making, or refusing to make, a determination; or
- (b) if, at any time prior to the Commission making a determination or refusing to make a determination in relation to a dispute under Division 2, a person withdraws the application for a determination.
- (3) In making an order under sub-section (2) the Commission may require each party to bear different proportions of the Commission's costs.
- (4) An order for costs under this section is a debt due to the Commission.
- (5) Subject to this section, each party to a dispute under Division 2 is to bear its own costs.

24E. Appeals

S. 24E
 inserted by
 No. 73/2003
 s. 16.

- (1) A person who is aggrieved by a requirement of the Commission under section 24B(1)(a) or a decision of the Commission under section 24C(4) may appeal against that requirement or decision.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 24E

-
- (2) An appeal may only be made on the ground that—
 - (a) the requirement or decision was not made in accordance with the law; or
 - (b) the requirement or decision is unreasonable having regard to all relevant circumstances.
 - (3) The person must lodge notice of the appeal with the Commission within 7 working days after the person is given notice of the requirement or decision.
 - (4) On the hearing of an appeal under this section, the Commission bears the onus of establishing that—
 - (a) the requirement or decision was made in accordance with the law; and
 - (b) the requirement or decision is reasonable having regard to all relevant circumstances.
 - (5) Sections 56 to 59 of the **Essential Services Commission Act 2001** apply to an appeal under this section.
 - (6) For the purposes of sub-section (5)—
 - (a) section 56 of the **Essential Services Commission Act 2001** applies as if paragraph (b) formed part of sub-section (7) of that section;
 - (b) in the case of an appeal under section 24E(1)—
 - (i) may affirm, cancel or modify the requirement made under section 24B(1)(a);
 - (ii) may affirm, cancel or modify the terms of a confidentiality agreement decided by the Commission under section 24C(4);
-

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 25A

- (iii) may remit the matter back to the Commission to be dealt with in accordance with the decision and recommendations (if any) of the appeal panel;
- (iv) the appeal must be heard and decided within 7 working days of the appeal panel being constituted or, if the appeal panel requires further time, within a further period not exceeding 7 working days;

* * * * *

S. 25 repealed by No. 62/2001 s. 84.

Division 3—Licences

Pt 3 Div. 3 (Heading and ss 25A–25K) inserted by No. 62/2001 s. 85(1).

25A. Prohibition

S. 25A inserted by No. 62/2001 s. 85(1).

A person who is the provider of prescribed services must not engage in the provision of prescribed services unless the person—

- (a) is the holder of a licence authorising the provision of the relevant prescribed services; or
- (b) is exempted from the requirement to obtain a licence in respect of the provision of the relevant prescribed services.

Penalty: 100 penalty units and 10 penalty units for each day after the day on which a notice of contravention of this subsection is served on the person by the Commission.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 25B

S. 25B
inserted by
No. 62/2001
s. 85(1).

S. 25B(4)
amended by
No. 75/2004
s. 61.

S. 25C
inserted by
No. 62/2001
s. 85(1).

S. 25C(2)
amended by
No. 75/2004
s. 62.

S. 25D
(Heading)
amended by
No. 75/2004
s. 63(1).

S. 25D
inserted by
No. 62/2001
s. 85(1).

25B. Exemptions

- (1) The Governor in Council may by Order in Council published in the Government Gazette exempt a person from the requirement to obtain a licence in respect of the provision of the prescribed services specified in the Order in Council.
- (2) An exemption may be of general or specific application.
- (3) An exemption is subject to such terms, conditions and limitations as are specified in the Order in Council.
- (4) An Order under sub-section (1) may confer powers and functions on, and leave any matter to be decided by, the Commission.

25C. Application for licence

- (1) A person may apply to the Commission for the issue of a licence authorising the provision of the prescribed services specified in the application.
- (2) An application must be in a form approved by the Commission and be accompanied by such documents as may be required by the Commission.
- (3) An application must be accompanied by the application fee (if any) fixed by the Commission.

25D. Grant or refusal of application

- (1) Subject to sub-section (2), the Commission may grant or refuse an application for the issue of a licence for any reason the Commission considers appropriate, having regard to the objectives specified in section 14.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 25E

- (2) The Commission must not grant an application for the issue of a licence unless the Commission is satisfied that the applicant has the capacity to comply with the conditions of the licence.
- (3) The Commission must publish a notice in a daily newspaper generally circulating in Victoria—
 - (a) specifying that an application for a licence in respect of the provision of the relevant prescribed services has been lodged with the Commission by the person specified in the notice; and
 - (b) inviting interested persons to make submissions to the Commission in respect of the application within the period and in the manner specified in the notice.
- (4) Subject to this section, the Commission may decide the procedures that are to apply in respect of the issue of licences.
- (5) The Commission must notify an applicant in writing of its decision to grant or refuse to grant the application and, in the case of a decision to refuse to grant the application, of the reasons for its decision.

S. 25D(4)
amended by
No. 75/2004
s. 63(2).

25E. Provisions relating to licences

S. 25E
inserted by
No. 62/2001
s. 85(1).

- (1) A licence is to be issued for such term (if any) as is decided by the Commission and is specified in the licence.
- (2) A licence is subject to such conditions as are decided by the Commission.

S. 25E(1)
amended by
No. 75/2004
s. 64.

S. 25E(2)
amended by
No. 75/2004
s. 64.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 25F

S. 25F
inserted by
No. 62/2001
s. 85(1).

25F. Specific licence conditions

Without limiting the generality of section 25E, the conditions on a licence may include provisions—

- (a) requiring the licensee to pay specified fees and charges in respect of the licence to the Commission;
- (b) requiring the licensee to enter into agreements on specified terms or on terms of a specified type;
- (c) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles;
- (d) requiring the licensee to comply with any relevant determination in respect of prescribed services;
- (e) specifying procedures for variation or revocation of the licence;
- (f) requiring the licensee to provide, in the manner and form decided by the Commission, such information as the Commission may from time to time require.

S. 25F(f)
amended by
No. 75/2004
s. 65.

25G. Determination of fees and charges

The fees and charges to be specified in respect of a licence for the purposes of section 25F(a) are to be determined by the Minister administering the **Essential Services Commission Act 2001**—

- (a) in consultation with the Minister administering this Part; and
- (b) having regard to the total amount of the costs and expenses of the Commission that are incurred or are likely to be incurred by the Commission in the exercise of its powers for or in connection with the performance of its

S. 25G
inserted by
No. 62/2001
s. 85(1).

S. 25G(a)
amended by
No. 73/2003
s. 17.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 25H

functions and the achievement of its objectives in relation to the regulated industry.

25H. Variation or revocation of licence

S. 25H
 inserted by
 No. 62/2001
 s. 85(1).

- (1) A licence or the licence conditions may be varied—
 - (a) in accordance with the procedures specified in the licence conditions; or
 - (b) by agreement between the Commission and the licensee; or
 - (c) by a notice in accordance with subsection (2) served on the licensee.
- (2) The Commission must not vary a licence or the licence conditions by a notice unless—
 - (a) the Commission is satisfied that the variation is necessary having regard to the objectives specified in section 14; and
 - (b) the Commission has given the licensee an opportunity to make representations on the matter.
- (3) The Commission may revoke a licence in accordance with the procedures specified in the licence conditions.

25I. Gazettal requirement

S. 25I
 inserted by
 No. 62/2001
 s. 85(1).

The Commission must ensure that—

- (a) notice of the grant of a licence including—
 - (i) the name of the licensee;
 - (ii) the term of the licence;
 - (iii) the place where a copy of the licence may be inspected; and

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 25J

(b) notice of a variation or revocation under section 25H—

is published in the Government Gazette as soon as possible after the grant of a licence or the variation or revocation, as the case requires.

25J. Transfer of licence

- (1) The holder of a licence may apply to the Commission for approval to transfer the licence.
- (2) An application must be in a form approved by the Commission and be accompanied by such documents as may be required by the Commission.
- (3) An application must be accompanied by the application fee (if any) fixed by the Commission.
- (4) The Commission must publish in a daily newspaper generally circulating in Victoria a notice—
 - (a) specifying that an application for the transfer of the licence has been lodged with the Commission for the transfer by the holder to a proposed transferee specified in the notice; and
 - (b) inviting interested persons to make submissions to the Commission in respect of the application within the period and in the manner specified in the notice.
- (5) Subject to this section, the Commission may approve, or refuse to approve, the application for any reason it considers appropriate, having regard to the objectives specified in section 14.
- (6) The Commission must not approve the application unless the Commission is satisfied that the proposed transferee has the capacity to comply with the conditions of the licence.

S. 25J
inserted by
No. 62/2001
s. 85(1).

S. 25J(2)
amended by
No. 75/2004
s. 66(1).

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 3—Regulatory Provisions

s. 25J

(7) The Commission may decide that, upon the transfer of the licence under this section, the conditions to which the licence is subject are varied as decided by the Commission.

S. 25J(7)
amended by
No. 75/2004
s. 66(2)(3).

(8) Subject to this section, the Commission may decide the procedures that are to apply in respect of the transfer of the licences.

S. 25J(8)
amended by
No. 75/2004
s. 66(2).

(9) The Commission must notify an applicant in writing of its decision to approve or refuse to approve the application and, in the case of a decision to refuse to approve the application, of the reasons for its decision.

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S. 25K
inserted by
No. 62/2001
s. 85(1),
repealed by
No. 75/2004
s. 67.

PART 4—TRANSFER OF PROPERTY

26. Transfer of GEB property

On the completion date—

- (a) the property and rights of GEB, wherever located, that, under the State Agreement, are to be transferred to the Purchaser, vest in the Purchaser subject to the encumbrances (if any) subject to which they are to be transferred in accordance with the State Agreement; and
- (b) the liabilities of GEB, wherever located, that, under the State Agreement, are to become liabilities of the Purchaser, become such liabilities.

27. Substitution of party to agreement

Where, under the State Agreement and section 26, rights and liabilities of GEB under an agreement vest in, or become liabilities of, the Purchaser—

- (a) the Purchaser becomes, on the completion date, a party to the agreement in place of GEB; and
- (b) on and after the completion date, the agreement has effect as if the Purchaser had always been a party to the agreement.

28. GEB instruments

Each GEB instrument relating to transferred property continues to have effect according to its tenor on and after the completion date as if a reference in the instrument to GEB were a reference to the Purchaser.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 4—Transfer of Property

s. 29

29. Proceedings

Where, immediately before the completion date, proceedings (including arbitration proceedings) relating to transferred property to which GEB was a party were pending or existing in any court or tribunal, then, on and after the completion date, the Purchaser is substituted for GEB as a party to the proceedings and has the same rights in the proceedings as GEB.

30. Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law, if, immediately before the completion date, GEB is, in relation to transferred property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after the completion date—

- (a) the Purchaser is to be taken to be the registered proprietor of that interest in land; and
- (b) the Purchaser has the same rights and remedies in respect of that interest as GEB had.

31. Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument and certificate of the chief executive officer of GEB, must make any amendments in the Register that are necessary because of the operation of this Act or compliance with the Direction.

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S. 31(2)(3)
repealed by
No. 85/1998
s. 24(Sch.
item 31).

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 4—Transfer of Property

s. 32

32. Stamp duty

No stamp duty is chargeable in respect of anything done under this Act or in respect of any act or transaction connected with or necessary to be done by reason of this Act or by way of compliance with the Direction, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property to, or the creation of any interest in or in favour of the Purchaser or the Subsidiary.

33. Substitution of party to agreement

Where, in accordance with the Direction, rights and liabilities of GEB under an agreement vest in, or become liabilities of the Subsidiary—

- (a) the Subsidiary becomes, when the rights so vest or the liabilities become liabilities of the Subsidiary, a party to the agreement in place of GEB; and
- (b) on and after that time, the agreement has effect as if the Subsidiary had always been a party to the agreement.

34. Liabilities

If, in accordance with the Direction, a liability of GEB is transferred to the Subsidiary, the Subsidiary has the same rights and obligations in respect of the liability as GEB had and GEB ceases to have those rights and obligations.

PART 5—GENERAL

35. Construction and operation of works at Portland

- (1) Despite anything to the contrary in the **Port of Portland Authority Act 1958** or any other Act, the Purchaser or any other person which acquires the undertaking carried on by GEB immediately before the commencement of this section at the Port of Portland may exercise the rights referred to in sub-section (2) on the terms and conditions applying to GEB before that commencement as varied from time to time by the Governor in Council.
- (2) The rights are the right to enter upon any pier, wharf, jetty or works connected with a pier, wharf or jetty which is subject to the **Port of Portland Authority Act 1958** and to erect, maintain and operate on the pier, wharf, jetty or works appurtenances connected with elevators, warehouses, buildings or depots or other appliances for loading or unloading grain to or from vessels and to or from elevators, warehouses, buildings or depots of the person entitled to the rights.

36. Rights in respect of port facilities at Geelong

- (1) Despite anything to the contrary in the **Port of Geelong Authority Act 1958** or any other Act, the Purchaser or any other person which acquires the undertaking carried on by GEB immediately before the commencement of this section at the Port of Geelong may exercise the rights referred to in sub-section (2) on the terms and conditions applying to GEB before that commencement as varied from time to time by the Governor in Council.

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 5—General

- (2) The rights are the right to enter upon the Port of Geelong Authority's pier adjacent to the grain terminal in the Port of Geelong and to rebuild and maintain on the same site the ship loader in place at the terminal immediately before the commencement of this section.

37. Validity of things done under this Act

Nothing effected by this Act or suffered under this Act or done in compliance with the Direction—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (b) is subject to compliance with or is to be regarded as placing any person in breach of or as constituting a default under any Act or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or right or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition which allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any property, right or liability; or
- (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or

Grain Handling and Storage Act 1995
Act No. 45/1995

Part 5—General

s. 37

-
- (f) is to be regarded as frustrating any contract;
or
 - (g) releases any surety or other obligee wholly
or in part from any obligation.

* * * * *

Pt 6
(Heading and
ss 38, 39)
repealed by
No. 74/2000
s. 3(Sch. 1
item 58).

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

SCHEDULES

SCHEDULE 1

s. 5

The Agreement

Sale of Business and Shares Agreement

SALE OF BUSINESS AND SHARES AGREEMENT made 10 May 1995

BETWEEN

- (1) **THE HONOURABLE ALAN STOCKDALE**, Treasurer of the State of Victoria acting for and on behalf of the Crown in right of the State of Victoria (**the "State"**);
- (2) **VICGRAIN OPERATIONS LIMITED ACN 069 291 532** of 24–28 Collins Street, Melbourne, Victoria (**the Purchaser**);
- (3) **VICTORIAN GRAIN SERVICES LIMITED ACN 059 347 349** of 24–28 Collins Street, Melbourne, Victoria (**"Victorian Grain Services"**);
- (4) **GRAINCORP OPERATIONS LIMITED ACN 003 875 401** of Level 10, 51 Druitt Street, Sydney, NSW (**"GrainCorp"**); and
- (5) **THE AUSTRALIAN BARLEY BOARD** of Grain House, 123–130 South Terrace, Adelaide, South Australia (**"ABB"**).

RECITALS:

- A. The State of Victoria by the **Grain Elevators Act 1934** established The Grain Elevators Board (**"the GEB"**) as a body corporate owned by the State, and the GEB now operates pursuant to the **Grain Elevators Act 1958** (the **"Act"**).
- B. In accordance with the Act, the GEB constructed, and now operates and maintains facilities for receiving, storing and out-turning Grain and other dry and semi-dry bulk products and carries on related business activities.
- C. The GEB has been declared to be a "reorganising body" under Part 2 of the **State Owned Enterprises Act 1992** and has received or will before the Completion Date receive a duly authorised direction pursuant to section 9 of that Act to transfer certain assets to its wholly owned subsidiary.

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

- D. The State wishes to dispose of the Business including all of the GEB's right, title and interest in the Assets (including the Shares) and Liabilities and the Purchaser wishes to acquire the Business, the Assets and Liabilities and each has respectively agreed to do so on the terms and conditions of this agreement.

THE PARTIES AGREE AND DECLARE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement unless the contrary intention appears—

"this agreement" means this agreement, the schedules and any annexures to this agreement;

"Assets" means those assets owned by the GEB which are used in the Business and are set out in Schedule 1 (which does not include the Fixed Assets) including—

- (i) any legal or equitable estate or interest in personal property, including a contingent one; and
- (ii) any right, privilege and immunity, including a contingent or prospective one;

"Business" means the business of the GEB described in the Recital B;

"Business Day" means a day on which banks in Melbourne are open for business during normal hours;

"Completion" means completion of the sale and purchase of the Business in accordance with clause 5;

"Completion Date" means 30 June 1995 or such other date after 30 June 1995 but prior to or on 31 October 1995 as is notified by the State under clause 5.1;

"Consideration" means the consideration for the acquisition of the Business and Assets as defined in clause 3.1;

"Contracts" means all agreements and contracts to which the GEB or the State in respect of the GEB is a party, including without limitation, insurance policies and contracts with Customers, but excluding any contracts giving rise to an equitable or legal interest in land in favour of the GEB and excluding any contracts relating to Excluded Liabilities;

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

"Customers" means persons who use the facilities and services of the Business including Grain Customers;

"the Direction" means the direction of the Treasurer pursuant to section 9 of the **State Owned Enterprises Act 1995** referred to in Recital C;

"Employee" means a person who on the Completion Date is an employee of the GEB other than an Excluded Employee;

"Employee Entitlements" means the vested and contingent amounts or entitlements to which Employees are entitled as at the Completion Date in respect of sick leave, maternity leave, annual leave, long service leave, accrued rostered hours for rostered days off and approved time off in lieu of overtime;

"Excluded Employees" means those persons in respect of whom written nomination is delivered to the State by the Purchaser before execution of this agreement;

"Excluded Liabilities" means the Liabilities described in Schedule 2;

"Fixed Assets" means all inventory and motor vehicles used by the Business and all assets noted in the Assets Register of the GEB (which is maintained at its head office at 43–51 Lonsdale Street, Melbourne) and all Land which is transferred to the GEB Subsidiary under the Direction;

"GEB Subsidiary" means the entity referred to in clause 2.3;

"Grain" means grains, oil seeds and pulses of all kinds, qualities and varieties including, wheat, barley, oats, sorghum, maize and rice;

"Grain Customers" means Growers and other owners from time to time of Grain stored in the facilities of the Business;

"Growers" means growers of Grain who as part of their farming business, generally deliver Grain to the facilities of the Business;

"Immediately Available Funds" means funds—

- (a) which are upon payment immediately available for use and access by the recipient, or if paid into a bank account, immediately available for withdrawal from that bank account by the

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

person or persons entitled to operate that bank account; and

- (b) the payment of which is not capable of being cancelled or avoided by the payer or any person on behalf of the payer;

"Land" means any legal or equitable estate in real property vested in the GEB;

"Liabilities" means any and all liabilities and obligations of the GEB in respect of the Business of any nature known or unknown and duties, actual contingent or prospective, excluding any bank overdraft, loans and the Excluded Liabilities and including but not limited to—

- (a) all obligations and burdens arising from the Assets and Fixed Assets;
- (b) Deferred Revenue;
- (c) contractual and lease obligations;
- (d) payment obligations in respect of trade creditors and accruals;
- (e) liabilities to pay Employee Entitlements; and
- (f) liability to pay the Superannuation Provision,

as defined in the Balance Sheet and notes of the GEB in its 1994 Annual Report;

"Plant and Equipment Leases" means the leases set out in Item 1 of Schedule 1;

"Projected Schedule" means the Projected Schedule of Assets (other than Shares) and Liabilities in Schedule 3;

"Purchase Price" means the amount determined under clause 4;

"Purchaser's Fund" means a superannuation fund within the meaning of the **Superannuation Industry (Supervision) Act 1993** (Commonwealth) which has been established or identified by the Purchaser for the benefit of the Transferring Members under clause 20;

"Scheme" means each of the State Superannuation Revised Scheme, State Superannuation New Scheme, State Employee Retirement Benefits Scheme and the Transport Superannuation Scheme;

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

"Shares" means shares held by the GEB immediately before Completion in the GEB Subsidiary;

"Superannuation Provision" means in respect of each Scheme, an amount calculated by an actuary appointed by the State as the amount payable to the Trustee of that Scheme in full and final satisfaction of the liability of the GEB to the Trustee of that Scheme at the Completion Date;

"Transferring Employee" means an employee who accepts employment with the Purchaser in accordance with clause 19;

"Transferring Member" means a Transferring Employee who has elected to transfer his or her superannuation benefits under clause 20.5(a);

"Trustee" in relation to a Scheme means the entity which holds the assets of the Scheme on behalf of the members, whether or not the State.

1.2 Interpretation

In this agreement unless the contrary intention appears—

- (a) a reference to this agreement, any other agreement or another document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a reference to a clause includes a sub-clause and a reference to a paragraph includes a sub-paragraph;
- (d) the singular includes the plural and vice versa;
- (e) a reference to any gender includes all genders;
- (f) where an expression is deferred, another part of speech or grammatical form of that expression has a corresponding meaning;
- (g) the word **"person"** includes a firm, body corporate, and unincorporated association or an authority;
- (h) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns;

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

- (i) a reference to an accounting term is to be interpreted in accordance with accounting standards under the Corporations Law, Schedule 5 to the Corporations Regulations and, where not inconsistent with those accounting standards and that schedule, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time;
- (j) headings are for convenience only and are not an aid in the interpretation of this agreement;
- (k) words and phrases defined in the recitals or elsewhere in this agreement have the meaning there ascribed to them; and
- (l) where any obligation to be performed under this agreement falls on a day other than a Business Day, this agreement shall be construed as requiring that obligation to be performed on the next Business Day.

1.3 Purchaser

For the purposes of clauses 14 and 15, references to the Purchaser in the context of the provision or disclosure of information, any inspection or examination or the making of and judgment or evaluation shall be taken to include each of the Purchaser, ABB, Victorian Grain Services, GrainCorp or any person acting on behalf of any of them.

2. CONDITIONS PRECEDENT

2.1 Condition

Clauses 3 to 29 (other than clause 4.3) inclusive of this agreement are of no force or effect unless and until—

- (a) the Parliament of Victoria has enacted legislation that has come into effect which ratifies this agreement and authorises its implementation; and
- (b) the Direction is in force.

2.2 Satisfaction of Condition

The parties shall use reasonable endeavours to secure satisfaction of the conditions in paragraph 2.1 and the State shall ensure that a Minister of the Crown introduces and sponsors a bill in the Parliament which, if passed by Parliament, would satisfy the condition referred to in clause 2.1(a).

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

2.3 Incorporation of Subsidiary of GEB

The State shall ensure that a wholly owned subsidiary of the GEB is incorporated prior to Completion (the "**GEB Subsidiary**") and that the GEB transfers to the GEB Subsidiary all its right, title and interest in the Fixed Assets including Land as required by the Direction.

3. TRANSFER OF BUSINESS AND ASSETS

3.1 Consideration

The purpose of this agreement is to provide for the Purchaser to acquire (subject to the limitations contained in this agreement) the benefit and burden of Business from the Completion Date in consideration of the Purchaser paying the Purchase Price to the State and assuming the Liabilities (the "**Consideration**").

3.2 Transfer of the Business, Assets and Liabilities

Subject to Completion (and with effect from the Completion Date)—

- (a) all property and rights in the Business and Assets vest in the Purchaser as a going concern free from all encumbrances; and
- (b) the Liabilities are assumed by the Purchaser,

for the Consideration on and subject to the terms of this agreement.

3.3 Obligations Interdependent

The obligations of the parties in respect of Completion under this agreement and the requirements in respect of transfer of Fixed Assets under the Direction shall be interdependent. All actions at Completion under this agreement and under the Direction shall be deemed to take place simultaneously and no delivery or payment will be deemed to have been made until all deliveries required to be made at Completion under this agreement and the Direction have been made.

3.4 This Agreement is not a Contract for the Sale of Land

The parties acknowledge that this agreement is not a contract for the sale of land.

4. PURCHASE PRICE

4.1 Immediately Available Funds

The Purchase Price is to be paid in Australian dollars in Immediately Available Funds.

4.2 Apportionment

The Purchase Price shall be allocated as follows—

(a) Assets Located in Victoria

97.5%

(b) Assets Located in New South Wales

2.5%

4.3 Banker's Guarantee as Deposit

- (a) Promptly after executing this agreement, the Purchaser will provide to the State an unconditional irrevocable enforceable banker's guarantee in favour of the State for the amount of \$2 500 000 payable on demand by the State, which is in a form and is given by a bank acceptable to the State, and upon which any applicable stamp duty has been paid.
- (b) The banker's guarantee shall be security for the performance by the Purchaser of its obligations in relation to Completion and shall be surrendered by the State immediately after the Purchaser has discharged those obligations.
- (c) If the Purchaser fails to perform any obligation in relation to Completion, the State may give the Purchaser a notice requiring that the matter be remedied within seven Business Days.
- (d) If a notice is given by the State under clause 4.3(c) and the matter is not remedied (or, if the matter is incapable of remedy, agreement has not been reached as to adequate monetary compensation) by the expiration of the period specified in the notice, the State may by further notice terminate this agreement, and—
 - (i) the State will be entitled to call on and apply for its own benefit the full amount of the banker's guarantee; and
 - (ii) without prejudice to any rights that have already accrued (including any right to claim

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

for damages), each party will be released from any further obligations arising by virtue of this agreement.

- (e) Until the conditions set out in clause 2.1 are satisfied, the State shall have no right to call on the banker's guarantee and if those conditions are not satisfied by 29 June 1995, the State shall return the banker's guarantee to the Purchaser.

4.4 Adjustment of Purchase Price for Completion Date

The Purchase Price shall be determined according to the date elected by the State under clause 5.1 to be the Completion Date, as follows—

- (a) if Completion is notified by the State to be 30 June 1995 the Purchase Price is \$51 000 000;
- (b) if Completion is notified by the State to be a day after 30 June 1995 but no later than 31 July 1995 the Purchase Price is \$50 000 000;
- (c) if Completion is notified by the State to be a day after 31 July 1995 but no later than 31 August 1995 the Purchase Price is \$52 000 000;
- (d) if Completion is notified by the State to be a day after 31 August 1995 but no later than 30 September 1995 the Purchase Price is \$54 000 000; and
- (e) if Completion is notified by the State to be a day after 30 September 1995 but no later than 31 October 1995 the Purchase Price is \$56 000 000.

In determining the Purchase Price under this clause, if a notice is given under clause 4.3(c) and Completion subsequently occurs, Completion will be deemed to have occurred on the day of that notice.

4.5 Adjustment of Purchase Price for Current Assets and Liabilities

The Purchase Price shall be reduced by the net amount of Forecast Net Liabilities shown in Schedule 3 as at the Completion Date, or such other amount as agreed by the parties as representing that forecast. If the parties cannot agree the amount of Forecast Net Liabilities then the reduction in the Purchase Price under this clause shall be the amount shown as the Forecast Net Liabilities for 30 June 1995 in Schedule 3.

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

4.6 Adjustment of Purchase Price for Portland Land

- (a) In this clause, "**Portland Land**" means the land described in the leases which are described in Schedule 2 of the Direction and bear the references LS25 to LS31 inclusive.
- (b) If the State procures the sale of the Portland Land to the Purchaser then the price shall be \$3 000 000.
- (c) Neither party is under any obligation to proceed with the sale and purchase of the Portland Land under this clause.

5. COMPLETION

5.1 Time for Completion

- (a) The State may elect by notice in writing to the Purchaser given before 30 June 1995 and at least 7 days prior to the elected date, that Completion will occur on a day between or on 30 June 1995 and 31 October 1995 and if such an election is made, "Completion Date" under this agreement shall mean that day. If no election is made, Completion shall occur on 30 June 1995.
- (b) Subject to clause 2, Completion shall take place at 12.00 midday on the Completion Date at the offices of Blake Dawson Waldron, Level 37, 101 Collins Street, Melbourne.

5.2 Payment

The Purchaser shall at Completion—

- (a) pay to the State the amount of the Purchase Price; and
- (b) assume liability for and indemnify and hold the GEB and the State harmless from and against the Liabilities.

5.3 Control

Upon Completion, the State shall, and shall procure that the GEB shall—

- (a) deliver up operating control of the Business and the Assets to the Purchaser;
- (b) deliver (or where the GEB or the State is legally required to retain them, make available) to the Purchaser (to the extent not already done so) all books of account, files and correspondence, reports, records

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

- and other financial and business data and papers relating to the Business and the Assets (including documents of title relating to the Assets, executed copies of leases, executed copies of the Contracts and board and committee minutes and papers);
- (c) deliver or make available to the Purchaser (to the extent not already done so) all customer lists relating to the Business;
 - (d) deliver to or at the direction of the Purchaser all Assets, including the certificates for the Shares, which are capable of transfer by delivery at the places within Australia at which they are usually located in the normal course of operations of the Business;
 - (e) deliver to or at the direction of the Purchaser instruments of transfer of the Shares which have been duly executed in blank by the transferor and are in registrable form;
 - (f) execute and deliver to the Purchaser the documents necessary to give effect to the Direction including all necessary Transfers of Land, consents, orders, assignments of leases and licences, in registrable form where necessary;
 - (g) execute and deliver to the Purchaser all documents, deeds and instruments in registrable form where applicable and do all things which may be necessary to novate Plant and Equipment leases to the Purchaser or otherwise to give effect to this agreement to vest in the Purchaser absolute legal title to and beneficial interest in the Assets as at Completion;
 - (h) deliver to the Purchaser all certificates and instruments evidencing that the benefit of all and any licences, permits or registrations necessary for the conduct of the Business are vested in the Purchaser pursuant to this agreement (other than those licences, permits or registrations which are available to the Purchaser from the appropriate authorities), including any documents held by the GEB relevant to the re-issue of any such licences, permits and registrations to the Purchaser; and
 - (i) deliver all securities and guarantees held from Customers.

6. FURTHER PAYMENTS AND ADJUSTMENTS

6.1 Working Capital Adjustment

- (a) In this clause—
- (i) "**Adjustment Amount**" means the difference between the Net Amount at Completion and the Net Amount at Adjustment;
 - (ii) "**Adjustment Date**" means the day which is 90 days after the Completion Date;
 - (iii) "**Projected Net Amount at Completion**" means the total amount shown in the Projected Schedule at the Completion Date;
 - (iv) "**Actual Net Amount at Completion**" means the actual audited amount which is the difference between the value of the Assets and Liabilities shown in the Projected Schedule as at the Completion Date, calculated on the Adjustment Date under paragraph (b) of this clause;
- (b) The parties shall arrange that an auditor appointed by the State shall calculate the Actual Net Amount at Completion and the Adjustment Amount on the Adjustment Date.
- (c) If the Adjustment Amount represents an amount by which the Actual Net Amount at Completion is a lesser liability than the Projected Net Amount at Completion, then the Purchaser shall pay the Adjustment Amount to the State within 5 Business days after the Adjustment Date.
- (d) If the Adjustment Amount represents an amount by which the Projected Net Amount at Completion is a greater liability than the Actual Net Amount at Completion, then the State shall pay the Adjustment Amount to the Purchaser within 5 Business days after the Adjustment Day.

6.2 Depreciation Adjustment

- (a) If, in respect of depreciation of the Fixed Assets—
- (i) the Purchaser or an entity related to the Purchaser is allowed a deduction from its assessable income for the year of income immediately following Completion which is

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

based on a cost base of the book written down value of the Fixed Assets; or

- (ii) the Purchaser or an entity related to the Purchaser obtains a ruling or determination from the Australian Taxation Office that a deduction will be allowed which is based on a cost base of the book written down value of the Fixed Assets,

the Purchaser shall pay \$5 000 000 to the State.

- (b) The Purchaser shall or shall procure an entity related to the Purchaser to either—
 - (i) within two years of the Completion Date, apply to the Australian Taxation Office for a ruling that the cost base of the Fixed Assets for the purpose of calculation of depreciation for taxation purposes is the book written down value of those Fixed Assets; or
 - (ii) claim a deduction for depreciation of the Fixed Assets calculated on the basis that the cost base of those assets is their book written down value for the purposes of any taxation return for the year of income immediately following Completion.
- (c) The Purchaser shall, or shall procure an entity related to the Purchaser to—
 - (i) give notice to the State within 7 days of it being notified of an allowance or disallowance of a claim or a ruling or refusal to make a ruling in respect of depreciation of the Fixed Assets; and
 - (ii) if required by the State, at the State's expense, no later than 14 days before the last day for lodging an objection, lodge a written objection with the Commissioner of Taxation containing such grounds as the State shall reasonably require.
- (d) If such objection is disallowed in whole or in part, the State shall be entitled to elect by notice in writing whether or not the objection should be further pursued at the expense of the State. If the State elects to pursue the objection, it shall be entitled to conduct such proceedings in the name of the Purchaser or entity

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

related to the Purchaser and to compromise the matter on such terms as the State determines.

- (e) The Purchaser shall pay any amount required to be paid under paragraph (a) to the State within 14 days after the claim or deduction is ultimately determined.

7. PROPERTY AND TITLE

Property in, title to and risk of the Business and the Assets as at the Completion Date shall vest in the Purchaser on the Completion Date.

8. SECURITIES AND GUARANTEES

Any securities or guarantees held from Customers and capable of being exercised only by the State or the GEB may be exercised or enforced by the Purchaser at its expense in the name of the GEB or the State as and from the Completion Date, and the State shall do all things reasonably required, and shall ensure that the GEB will do all things reasonably required, to enable the Purchaser to do this.

9. TRADE DEBTORS

The State shall procure that, upon Completion the GEB gives to each trade debtor notice of the assignment of the debt to the Purchaser under this agreement.

10. THE CONTRACTS

10.1 Vesting

Subject to Completion and without prejudice to the rights of the parties under clause 10.3, with effect from the Completion Date all the right title and interest of the State and the GEB in or arising out of the Contracts are vested in the Purchaser including all monies payable, whether already payable or payable in the future and whether or not contingently payable.

10.2 Purchaser's Assumption of Obligations under Contracts

Subject to clause 10.3, on the Completion Date, the Purchaser shall assume all and any of the obligations of the GEB and the State under the Contracts and the Purchaser shall indemnify and hold the GEB and the State harmless against—

- (a) all liabilities, losses, damages, costs or expenses incurred or suffered by the GEB and/or the State under any such Contract; and

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

- (b) all actions, proceedings, claims or demands made against the GEB and/or the State under any such Contract.

10.3 Payments in Respect of Prior Years' Harvests

Where, under any Contract with respect to Grain received by the GEB before Completion—

- (a) there arises an obligation to pay an amount in respect of out-turn performance under the Contract, the Purchaser and the State shall each be liable to pay half that amount; and
- (b) there arises a right to receive an amount in respect of out-turn performance under the Contract, the Purchaser and the State shall each be entitled to receive half that amount

and the Purchaser shall within 7 days of receipt or payment of such amount or of ascertainment of any such obligation or right, claim from the State, or account to the State for, as the case requires, the amount received from or due to the State as the case may be.

11. PLANT AND EQUIPMENT

On or before Completion, the State shall, and shall procure that the GEB shall execute and deliver to the Purchaser all documents, deeds and instruments and do all things which may be necessary to vest the benefit of the Plant and Equipment Leases in the Purchaser as from Completion.

12. LAND

The State shall ensure that, prior to the Completion Date, the GEB, complies with the Direction in relation to the transfer of Land to the GEB Subsidiary.

13. PORT FACILITIES

The shipping gallery and loader facility used by the Business at the Port of Geelong Grain Terminal and the rights of the GEB under section 13 of the Act to enter upon the pier at the Port of Portland and to erect, maintain and operate appurtenances and appliances are Assets subject to this agreement and the State shall ensure that those rights survive the repeal of the Act.

14. STATE WARRANTIES AND INDEMNITIES

14.1 Authority

The State warrants that—

- (a) it has full power and authority to enter into, execute and complete the transactions contemplated by this agreement;
- (b) this agreement has been duly authorised, executed and delivered by the State and is a valid and legally binding obligation of the State enforceable against it in accordance with its terms subject to general equity principles; and
- (c) no other acts on the part of the State are necessary to authorise the execution and delivery of the agreement by it and the completion of the transactions contemplated on its part.

14.2 Warranties

The State warrants that at Completion each of the statements set out below is accurate and not misleading—

- (a) the Direction has been fully complied with, or arrangements have been made to comply with it, in all material respects;
- (b) the Assets are not subject to any mortgage, pledge, charge or lien;
- (c) the State has sufficient authority to enter this agreement and to ensure that the Assets are transferred to the Purchaser;
- (d) the written information given by or on behalf of the State to the Purchaser, in respect of the GEB's assets and business is accurate and not misleading in the context in which it was given;
- (e) the GEB—
 - (i) complies with all laws and regulations relating to human health and safety applicable to the Business and is not aware of any notice, order, prosecution, action or suit taken or likely to be taken against it pursuant to any such laws or regulations, except as disclosed to the Purchaser;

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

- (ii) has obtained and maintained all permits, orders or approvals required by the Business under those laws and regulations; and
 - (iii) nothing is likely to prejudice the continuance of such permits, orders or approvals;
- (f) the Assets are substantially in the same condition (fair wear and tear excepted) as the Assets were when inspected by the Purchaser, as part of its due diligence investigations;
- (g) no guarantee has been given by the GEB except as disclosed in writing prior to the date of this agreement;
- (h) except where previously advised to the Purchaser by the State or the GEB, all material contracts entered in to by the GEB have been disclosed to the Purchaser in writing prior to the date of this agreement;
- (i) the GEB is not involved in any material litigation or arbitration proceedings and no such litigation or arbitration has been compromised except as disclosed to the Purchaser in writing prior to the date of this agreement on the basis that litigation and arbitration is material if it involves a claim or claims totalling more than \$100 000 which was made during the 5 years prior to the date of this agreement;
- (j) the accounts of the GEB for the period ended 30 September 1994 ("1994 accounts") present fairly the financial position and assets and liabilities of the GEB and its business at the date of those accounts;
- (k) since the date of the 1994 accounts—
 - (i) the business of the GEB has been carried out in the ordinary course of business;
 - (ii) no substantial asset of the GEB has been disposed of or acquired or become subject to any option except in the ordinary course of business;
 - (iii) no liability has been incurred except in the ordinary course of business; and
 - (iv) there have been no brand names, copyright, franchises, intellectual property, licences, patents or trademarks created, acquired or revalued in respect of the GEB's business; and

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

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- (l) to the best of the State's knowledge and belief no contract to which the GEB is a party is liable to be rescinded or terminated by any other party by reason of a breach or default by the GEB, or by reason of this agreement;
 - (m) to the best of the State's knowledge and belief each contract to which the GEB is a party is binding on each party, valid and, subject to the discretions applying in respect of equitable remedies, enforceable according to its terms;
 - (n) other than those disclosed to the Purchaser in writing prior to the date of this agreement, the GEB is not a party to any agreement with a union or with its employees (and no such agreement or award applies to the GEB) and the GEB has complied with its obligations under all such agreements or awards;
 - (o) other than as disclosed to the Purchaser in writing prior to the date of this agreement, the GEB has not entered into any contract of employment with any Employee and except as provided in an applicable award or contract has not entered into any agreement or arrangement for payment to an Employee of a retirement, severance or redundancy allowance or benefit;
 - (p) the GEB Subsidiary has not (other than for the purpose of the Direction)—
 - (i) given any mortgage, charge or pledge or created any encumbrance over its assets;
 - (ii) issued any security (within the meaning of "securities" as defined in Section 92 of the Corporations Law); or
 - (iii) entered into any contract, incurred any debt or fine or assumed any liability or obligation apart from any obligation pursuant to the Direction other than in the ordinary course of business; and
 - (q) the assets of the GEB Subsidiary are substantially in the same condition (fair wear and tear excepted) as when inspected by the Purchaser, as part of its due diligence investigations.
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Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

14.3 Exclusion of Liability

To the extent permitted by law, all other warranties in respect of the Business, the Assets, the Liabilities and the entitlements of the Employees are expressly excluded.

14.4 Indemnities

- (a) Notwithstanding anything elsewhere contained in this agreement, the State indemnifies the Purchaser in respect of every cause of action or liability to a third party arising from any act done or omitted to be done on or before the Completion Date by the GEB or any of its agents or employees and in respect of any loss, damage, liability or payment (legally required to be made), which the Purchaser suffers, incurs or is liable for as a result of such an act or omission.
- (b) Where any action or claim is instituted against the Purchaser to which paragraph (a) may apply—
 - (i) the Purchaser shall notify the State of the action or claim and all the relevant details and that a claim for indemnity is likely to be made by the Purchaser under paragraph (a) of this clause;
 - (ii) the Purchaser must not agree to arbitrate, settle or compromise the claim without the consent of the State;
 - (iii) any defence or action will be conducted in the name of the Purchaser but according to the directions of the State having regard to the ongoing business relationships of the Purchaser; and
 - (iv) the Purchaser shall render such assistance to the State as it may reasonably require in connection with such defence, including providing witnesses, documentary and other evidence and affording the State reasonable access to all relevant books, records and files.

15. PURCHASER RELIES ON OWN JUDGEMENT

15.1 Own Judgment

The Purchaser relies on its own—

- (a) judgement and evaluation of the information and data supplied by or on behalf of the State and the GEB including, without limitation, discussions with

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

officers, employees and agents of the State and the GEB conducted at the Purchaser's discretion; and

- (b) inspection and appraisal of the Fixed Assets, Assets and Liabilities, including contractual and other rights.

15.2 Representations and Statements

The Purchaser does not rely upon any—

- (a) conduct of; or
(b) statements, warranties or representations (other than those specified in this agreement) made to the Purchaser or to any other person by,

the State or the GEB or any person acting on behalf of the State or the GEB including any officer, director, employee, agent or adviser of any of them.

15.3 Acknowledgment

The Purchaser acknowledges that—

- (a) it has had the opportunity to—
- (i) examine the information and data supplied by or on behalf of the State and the GEB;
 - (ii) seek such independent advice as it considers necessary and make enquires of the State, the GEB and other persons; and
 - (iii) access information with respect to those matters in connection with its purchase of the Assets and assumption of the Liabilities;
- (b) it is capable of evaluating the merits and risks associated with the purchase of the Assets and the assumption of the Liabilities;
- (c) to the extent that—
- (i) the Purchaser has failed to make an inquiry of the State or the GEB as part of the Purchaser's due diligence about a matter material to its purchase of the Assets and assumption of the Liabilities; or
 - (ii) there is a fault or defect with any of the Assets, the cost of rectification of which, taken individually or together with the cost of rectifying any other fault or defect, involves the expenditure of less than \$100 000,

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

the Purchaser foregoes its right to claim damages under the warranties given in clauses 14.1 and 14.2 in relation to such matter;

- (d) none of—
 - (i) the State or the GEB; and
 - (ii) any person acting on behalf of the State or the GEB including any officer, director, employee, agent or adviser of any of them,has given any representation or warranty as to the future prospects of the Business; and
- (e) no person other than the State has authorised or caused the issue of any invitation or offer in respect of the subject matter of this agreement.

16. PURCHASER'S WARRANTIES

The Purchaser, the ABB, Victorian Grain Services and GrainCorp each warrant that—

- (a) it has full power and authority to enter into, execute and complete the transactions contemplated by this agreement;
- (b) the execution of this agreement has been duly authorised by all necessary corporate action on its behalf;
- (c) it is satisfied that the Purchaser or the GEB Subsidiary has all necessary licences, consents, authorisations and permits required for the ownership and operation of the Business;
- (d) it has completed its due diligence to its satisfaction;
- (e) it is satisfied that the Assets and the Liabilities are all the assets and liabilities that the Purchaser and the GEB Subsidiary is acquiring and that the Assets are sufficient for the Purchaser and the GEB Subsidiary to properly operate the Business; and
- (f) except as disclosed to the State and the GEB in writing, the Purchaser has not entered into an agreement, arrangement or understanding with any person in respect of—
 - (i) the management or operation of the Business;or

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

- (ii) the Purchaser's acquisition of the Assets including, without limitation, the provision of finance to the Purchaser.

17. GROWER OWNERSHIP AND CONTROL

- (a) The Purchaser and Victorian Grain Services shall ensure that all Growers are progressively given an equitable opportunity to acquire an interest in Victorian Grain Services and that by 1 January 2001 all Growers will have been given such opportunity to acquire the entire ownership of Victorian Grain Services.

- (b) The ABB, Victorian Grain Services, GrainCorp and the Purchaser shall ensure that the issued capital of the Purchaser is initially owned as follows—

ABB	not less than 10%
GrainCorp	not less than 20%
Victorian Grain Services	not less than 65%,

and that such proportions of ownership are maintained for at least 2 years.

18. PROHIBITION ON USE OF NAME

The Purchaser, the ABB, Victorian Grain Services and GrainCorp each agrees that it shall not, and shall ensure that its employees, agents and assigns shall not use the name "Grain Elevators Board" in connection with any of the Assets or the Business in any way whatsoever after Completion.

19. EMPLOYEES

19.1 Offers by Purchaser

The Purchaser shall offer employment as from the day following the Completion Date to each of the Employees on terms comparable to those upon which the Employees are employed by the GEB including, where an Employee is a member of a Scheme, terms which have regard to the benefits available to the Employee under that Scheme.

19.2 Release from Employment

The State shall ensure that the GEB shall unconditionally release from its services Employees who wish to accept the Purchaser's offer of employment and shall use its best endeavours to ensure that each of the Employees accepts the offers as made.

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

19.3 Entitlements

The Purchaser undertakes to honour all Employee Entitlements (whether accrued or accruing) existing on the Completion Date of each Transferring Employee including, without limiting the generality of this clause, entitlements to long service leave, sick leave, maternity leave and recreation leave.

19.4 Conditions of Employment

On and from the day following the Completion Date, the Purchaser is responsible for and must comply with all Awards relating to Transferring Employees and employment award conditions, as varied in accordance with their terms, including (without limitation) conditions relating to redundancy and termination of employment, of each Transferring Employee.

19.5 Non-accepting Employees

The Purchaser indemnifies and holds the State and the GEB harmless against any payments paid to an Employee to whom no offer of comparable employment with the Purchaser was made or to whom an offer of employment was made but not accepted, in accordance with the provisions of this agreement.

19.6 Indemnity

The Purchaser indemnifies and holds the State and the GEB harmless against all expenses, losses, damages and costs that the State and the GEB may sustain or incur as a result of, whether directly or indirectly, any claim by a Transferring Employee in relation to payment or non-payment of salary, holiday pay and long service leave to such employees which accrue on and after the day following the Completion Date.

20. SUPERANNUATION

20.1 Definitions

In this clause—

- (a) "**Three Month Date**" means the day which is three months after the Completion Date;
- (b) "**Estimated Superannuation Provision**" means the amount calculated under clause 20.7(a) in relation to each Scheme;

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

(c) "**Actual Superannuation Provision**" means the amount calculated under clause 20.8(a)(i) on the Three Month Date in relation to each Scheme; and

(d) "**Adjustment Amount**" means the amount calculated under clause 20.8(a)(ii).

20.2 The Purchaser to Provide Superannuation Benefits

The Purchaser shall be responsible for the provision of superannuation benefits for Employees and shall comply with the **Superannuation Guarantee (Administration) Act 1992** and the **Superannuation Industry (Supervision) Act 1993** after the Completion Date.

20.3 Establishment or Identification of Purchaser's Fund

Before the Completion Date, the Purchaser shall establish or identify one or more superannuation funds—

- (a) which provide benefits to Employees in association with their employment by the Purchaser to a level at least sufficient to avoid liability for a superannuation guarantee charge under the **Superannuation Guarantee (Administration) Act 1992**;
- (b) which are regulated superannuation funds under the **Superannuation Industry (Supervision) Act 1993**; and
- (c) which have all necessary approvals and powers to receive transfers of members' benefits from the Schemes.

20.4 Transfer of Members

As and from the Completion Date, the Purchaser shall arrange for all Transferring Employees to be admitted as members of a Purchaser's Fund.

20.5 Election by Members

The Trustees and the GEB shall arrange for Transferring Employees to elect to either—

- (a) transfer an amount in respect of their accrued entitlements in the Schemes to a Purchaser's Fund or any other superannuation fund elected by a Transferring Employee which complies with the requirements set out in paragraphs 20.3(a), (b) and (c); or
- (b) subject their accrued entitlements to the **Superannuation (Portability) Act 1989**.

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

20.6 Transfer of Benefits

On the Three Month Date, the Purchaser shall arrange for an amount representing the entitlements of each Transferring Member in the Schemes at the Completion Date, to be accepted by the Trustee of a Purchaser's Fund or any other fund elected by the Transferring Member which complies with the requirements in paragraphs 20.3(a), (b) and (c) as a transfer into that fund.

20.7 Calculation and Payment of Superannuation Provision

- (a) Before the Completion Date, GEB shall ensure that the actuary of each Scheme estimates by way of actuarial assessment the Superannuation Provision in relation to that Scheme as at the Completion Date, and the GEB shall notify the Purchaser of that amount (the "**Estimated Superannuation Provision**").
- (b) The calculation of the Superannuation Provision for each Scheme shall be on an actuarial basis recommended by the actuary of that Scheme and approved by the State.
- (c) Before the Completion Date, the GEB shall arrange for the Purchaser to be authorised to pay the Superannuation Provision in respect of each Scheme, to the Trustee of that Scheme.
- (d) On the Completion Date, the Purchaser shall pay into a bank account held in the name of the Purchaser, to which a representative of the Purchaser and a representative of the State are joint signatories, the aggregate amount of the Estimated Superannuation Provision in relation to each Scheme.
- (e) Within three Business Days of the Completion Date, the Purchaser shall pay 95% of the amount of the Estimated Superannuation Provision calculated for each Scheme under paragraph (b) (and held under paragraph (d)) to the Trustee of that Scheme.
- (f) The parties shall ensure that their nominated signatories to the bank account described in paragraph (d) sign withdrawal forms relating to that account for, but only for, the purpose of the payment required under paragraph (e) or under clause 20.8(b).

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

- (g) After the obligations under this clause 20 have been satisfied, paragraph (f) shall no longer apply and the Purchaser shall not be required to maintain a nominee of the State as a signatory to the bank account described in paragraph (d).

20.8 Adjustment for Actual Superannuation Provision

- (a) The GEB shall arrange for the actuary of each Scheme to calculate before the Three Month Date—
- (i) the Superannuation Provision as at the Completion Date (the "**Actual Superannuation Provision**"); and
 - (ii) the excess of the Actual Superannuation Provision over the amount paid under clause 20.7(e) to the Trustee of each Scheme (the "**Adjustment Amount**"),
- and shall notify the Purchaser of those amounts.
- (b) The Purchaser shall pay to the Trustee of each Scheme the Adjustment Amount and interest on the Adjustment Amount calculated at 10% per annum for the period between the Completion Date and the Three Month Date, for that Scheme.
- (c) Any payment required to be made under this clause shall be made within 14 days of the Three Month Date.

21. STAMP DUTY

The State shall bear and be responsible for the payment of all and any stamp duty payable in Victoria and the Purchaser shall bear and be responsible for stamp duty payable in New South Wales, on or in respect of this agreement or any instrument or transaction contemplated in or necessary to give effect to this agreement or the Direction.

22. PUBLIC ANNOUNCEMENT

22.1 The Purchaser, ABB, Victorian Grain Services and GrainCorp

The Purchaser, the ABB, Victorian Grain Services and GrainCorp shall not, except as required by law, make or cause to be made any public announcement of, or in relation to, the sale and purchase of the Business or the Assets without the prior written consent of each of the other parties.

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

22.2 The State

The State may make public announcements of, or in relation to, the sale of the Business and Assets.

23. PARTIES TO FACILITATE REGISTRATION OF OWNERSHIP

23.1 Transfer of Assets

The State will and will ensure that the GEB will, execute all documents and do all things reasonably necessary to facilitate the registration of the Purchaser as the legal owner of the Assets at Completion.

23.2 Facilities on Land Owned by Third Parties

Where the Assets comprise facilities constructed on land which on the Completion Date is owned by a person other than the State or the GEB or the GEB Subsidiary, the State undertakes to execute and to ensure that the GEB or the GEB Subsidiary executes all documents and do all things reasonably necessary to vest those Assets in the Purchaser, together with any ancillary rights in relation to land necessary for the conduct of the Business which are held by the State or the GEB or the GEB Subsidiary, without further payment to the State by the Purchaser.

24. DEFAULT AND TERMINATION

24.1 Events of Default

In addition to its rights to terminate under clauses 4.3 and 25.3, the State may at its option terminate this agreement by notice in writing to the Purchaser, the ABB, Victorian Grain Services and GrainCorp if—

- (a) any litigation is commenced or threatened against the Purchaser, the ABB, Victorian Grain Services or GrainCorp or any judgment order or decree is made by a court or tribunal against any of them which in the State's reasonable opinion is material;
- (b) a receiver, receiver and manager, liquidator, administrator or any similar person is appointed to the Purchaser, the ABB, Victorian Grain Services or GrainCorp or any action is taken which has the likely effect of such appointment;

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

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- (c) the Purchaser, the ABB, Victorian Grain Services or GrainCorp does any act or thing or omits to do any act or thing which will make it liable to any fine, penalty or prosecution which in the State's reasonable opinion is material;
 - (d) the Purchaser, the ABB, Victorian Grain Services or GrainCorp does any act or thing or omits to do any act or thing which might adversely affect (in the reasonable opinion of the State) its ability to perform its obligations under this agreement;
 - (e) any part of the Purchase Price or any payment required to be paid by the Purchaser under clause 6 is not paid when due and payable;
 - (f) any representation, warranty or statement made by the Purchaser, the ABB, Victorian Grain Services or GrainCorp in connection with this agreement is untrue or misleading (whether by omission or otherwise) in any material respect when made; or
 - (g) the Purchaser defaults under, breaches any term of, or fails to comply with the Direction.

24.2 Default Interest

Any amount payable to the State under this agreement not paid when due shall bear interest on the amount outstanding from time to time at the same rate as is payable from time to time on a judgment for debt entered in the Supreme Court of Victoria.

24.3 Termination by Purchaser

The Purchaser may at its option terminate this agreement by notice in writing to the State if—

- (a) the State does any act or thing or omits to do any act or thing which might adversely affect (in the reasonable opinion of the Purchaser) the ability of the State to perform its obligations under this agreement;
 - (b) any representation, warranty or statement made by the State in connection with this agreement is untrue or misleading (whether by omission or otherwise) in any material respect when made; or
 - (c) the State defaults under or breaches any term of the Direction.
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Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

25. PERFORMANCE SECURITY

25.1 Banker's Guarantee to secure Purchaser's Performance

The Purchaser shall at Completion provide to the State an unconditional irrevocable enforceable banker's guarantee in favour of the State for the amount of \$2 500 000 payable on demand by the State, which is in a form and is given by a bank acceptable to the State, and upon which any applicable stamp duty has been paid.

25.2 Guarantee

The banker's guarantee shall be security for the due and punctual payment of any amount required to be paid by the Purchaser under clauses 6, 10.3 and 20.8 of this agreement.

25.3 Default in Performance

- (a) If the Purchaser fails to perform any of the payment obligations described in clause 25.2, the State may give the Purchaser a notice requiring that the matter be remedied within seven Business Days.
- (b) If a notice is given by the State under paragraph (a) and the matter is not remedied (or, if the matter is incapable of remedy, agreement has not been reached as to adequate monetary compensation) by the expiration of the period specified in the notice, the State may by further notice terminate this agreement in relation to that obligation, whereupon—
 - (i) the State will be entitled to call on and apply for its own benefit up to the full amount of the banker's guarantee provided under this clause; and
 - (ii) without prejudice to any rights that have already accrued (including any right to claim for damages), each party will be released from any further obligations arising by virtue of this agreement in relation to the relevant obligation.

26. ASSIGNMENT

26.1 No assignment

ABB, Victorian Grain Services, GrainCorp or the Purchaser may not assign any of their rights or obligations under this agreement except with the prior written consent of the State, which may be withheld at its absolute discretion.

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

27. LEGAL AND ACCOUNTING COSTS

Each party bears its own legal, accounting and other advisory costs and expenses in relation to the preparation, execution and implementation of this agreement.

28. NOTICES

28.1 Method of Giving Notices

A notice, consent, approval or other communication (each a "**Notice**") under this agreement shall be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and—

- (a) delivered to that person's address;
- (b) sent by pre-paid mail to that person's address; or
- (c) transmitted by facsimile to that person's address.

28.2 Time of Receipt

A Notice given to a person in accordance with this clause is treated as having been given and received—

- (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting; or
- (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.

28.3 Addresses for Notices

For the purpose of this clause the address of a person is the address set out below or another address of which that person may from time to time give Notice to each other person—

State:

Attention: The Secretary
Department of the Treasury and Finance

Address: Level 7
55 Collins Street
MELBOURNE VIC 3000

Facsimile: (03) 9654 6861

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

Purchaser:

Attention: The Executive Director,
Grains Group
Victorian Farmers Federation

Address: Level 3
Farrer House
24–28 Collins Street
MELBOURNE VIC 3000

Facsimile: (03) 9207 5539

GrainCorp:

Attention: Mr Tom Keene

Address: Level 10
51 Drutt Street
SYDNEY NSW 2000

Facsimile: (02) 9325 9180

ABB:

Attention: Mr Michael Iwaniw

Address: 123–130 South Terrace
ADELAIDE SA 5000

Facsimile: (08) 8321 1249

Victorian Grain Services:

Attention: The Executive Director,
Grains Group
Victorian Farmers Federation

Address: Level 3
Farrer House
24–28 Collins Street
MELBOURNE VIC 3000

Facsimile: (03) 9207 5539

2.29. CONTINUITY OF GEB

The State shall ensure that the GEB shall continue in existence with undiminished power for as long as is necessary for it to perform its obligations under this agreement for a period of up to 12 months after the Completion Date.

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

30. GENERAL

30.1 No Merger

Any rights and obligations of the parties under this agreement which are expressed to operate or may have effect upon or after Completion or have not been fulfilled in whole or in part by Completion, as the case may be, (including the representations, warranties and indemnities made and given pursuant to this agreement) shall not merge on Completion, but shall remain in full force and effect.

30.2 Time of the Essence

Time shall be of the essence of this agreement.

30.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing signed by the party to be bound by the waiver.

30.4 Amendment

The parties may from time to time by agreement in writing vary any provision of this agreement and—

- (a) a Minister of the Crown must cause a copy of that agreement to be laid before each House of Parliament within 6 sitting days of the House following the making of that agreement;
- (b) that agreement comes into operation on the expiration of 6 sitting days after a copy of that agreement has been laid before each House of Parliament unless revoked in whole or in part by either House of Parliament;
- (c) paragraphs (a) and (b) shall not apply to the giving of a waiver, a failure of a party to require full or part performance of an obligation or the granting of or agreement to an extension of time under this agreement.

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

30.5 Attorneys

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of the revocation or suspension of the power of attorney under the authority of which the attorney executes this agreement.

30.6 Severability

Any provision in this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

30.7 Counterparts

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

30.8 Further Assurance

Each party shall do, sign, execute and deliver and shall procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to effectively carry out and give full effect to this agreement and the rights and obligations of the parties under it.

30.9 Entire Agreement

This Agreement is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this agreement. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement.

31. LAW AND JURISDICTION

31.1 Governing Law

This Agreement is governed by the law in force in Victoria.

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

31.2 Submission to Jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with this agreement.

EXECUTED as an agreement.

Signed for and on behalf of **THE STATE OF VICTORIA** by the Honourable Alan Stockdale, MP, Treasurer in the presence of: }

Peter Coatman	Alan R. Stockdale
------------------------	----------------------------

Witness:

THE COMMON SEAL of VICGRAIN OPERATIONS LIMITED was affixed in the presence of, and the sealing is attested by: }

Peter Alleyne Cook	Allan Donald McCallum
Secretary Name (printed):	(L.S.)
	Director Name (printed):

THE COMMON SEAL of VICTORIAN GRAIN SERVICES LIMITED was affixed in the presence of, and the sealing is attested by: }

Peter Alleyne Cook	Allan Donald McCallum
Secretary Name (printed):	(L.S.)
	Director Name (printed):

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

**THE COMMON SEAL of
GRAINCORP OPERATIONS
LIMITED** was affixed in the
presence of, and the sealing is
attested by:

}

(L.S.)

Ron O'Meara
.....

David Groves
.....

Secretary
Name (printed):

Director
Name (printed):

**THE COMMON SEAL of
AUSTRALIAN BARLEY
BOARD** was affixed in the
presence of, and the sealing is
attested by:

}

(L.S.)

B. D. Banbury
.....

K. Dingwall
.....

Secretary
Name (printed):

Director
Name (printed):

SCHEDULE 1

ASSETS

Item 1—Plant & Equipment Leases

All leases of photocopiers or other equipment used by the Business to which the GEB is a party.

Item 2—Shares

All issued Shares in the GEB Subsidiary.

Item 3—Current Assets

Current assets comprising:

- Cash at bank and on hand
- Investments
- Debtors and Accrued Revenue
- Term Deposits
- Stores

as defined in the Balance Sheet and Notes of the GEB in its 1994 Annual Report.

Item 4—Right, Title and Interest in Contracts

All the right, title and interest of the GEB in Contracts.

Item 5—Other Associated Assets

All other rights and assets connected with the Business, including:

- rights under warranties relating to equipment;
- goodwill;
- intellectual property rights;

and excluding—

- any rights arising out of the Act, other than those expressly referred to in this agreement.
-

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

SCHEDULE 2

EXCLUDED LIABILITIES

The following loans—

LENDER	LOAN NUMBER
VTBA	21
VICFIN	241
VICFIN	245
VICFIN	250
VICFIN	246
VICFIN	244
VICFIN	253
VICFIN	252
VICFIN	254
Commonwealth of Australia	38
Commonwealth of Australia	134
Local Government Finance Authority S.A.	89
Local Government Finance Authority S.A.	131
Local Government Finance Authority S.A.	136
National Nominees Ltd	131
Prudential Assurance Company	51
Prudential Assurance Company	62
Prudential Assurance Company	79
Prudential Assurance Company	114
Prudential Assurance Company	121
State Superannuation Board Victoria	224
State Superannuation Board Victoria	225
State Superannuation Board Victoria	226
Westpac Custodian Nominees	35
Westpac Custodian Nominees	64
Westpac Custodian Nominees	126
Westpac Custodian Nominees	140
Port of Portland Authority	GT5
Port of Portland Authority	27
Port of Portland Authority	24
Port of Portland Authority	32/280

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 1

SCHEDULE 3

**PROJECTED SCHEDULE OF ASSETS (OTHER THAN SHARES)
AND LIABILITIES OF THE BUSINESS**

	30/6/95	30/9/95
	\$'000	\$'000
ASSETS		
Investments	16 250	11 000
Debtors and Accrued Revenue	2 000	2 000
Stores	1 500	1 500
Total	19 750	14 500
LIABILITIES		
Creditors and Accruals	4 600	4 600
Provision for Employees (current)	2 550	2 550
Deferred Revenue	850	460
Provision for Employees (non-current)*	16 170	16 300
Total	24 170	23 910
Forecast Net Liabilities	(4 420)	(9 410)

* Includes unfunded superannuation liabilities.

The items described in this Schedule are defined in the same way as in the Balance Sheet and Notes of the GEB in its 1994 Annual Report.

Grain Handling and Storage Act 1995
Act No. 45/1995

Sch. 2

Sch. 2
repealed by
No. 73/2003
s. 18.

* * * * *

Victorian Legislation and Parliamentary Documents

Grain Handling and Storage Act 1995
Act No. 45/1995

Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 11 May 1995

Legislative Council: 6 June 1995

The long title for the Bill for this Act was "A Bill to make further provision for regulating the handling and storage of grain, to repeal the **Grain Elevators Board Act 1958** and for other purposes."

The **Grain Handling and Storage Act 1995** was assented to on 14 June 1995 and came into operation as follows:

Part 1 (sections 1–4) on 14 June 1995: s. 2(1); sections 5–12, 26–38 on 14 June 1995; section 13–25, 39(1) on 1 July 1995: Special Gazette (No. 49) 14 June 1995 page 1; section 39(2) on 1 January 1996: Special Gazette (No. 124) 19 December 1995 page 1.

Grain Handling and Storage Act 1995
Act No. 45/1995

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Grain Handling and Storage Act 1995** by Acts and subordinate instruments.

Superannuation Acts (Amendment) Act 1996, No. 4/1996 (as amended by No. 82/1996)

Assent Date: 18.6.96
Commencement Date: S. 134(5) on 18.6.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Grain Handling and Storage Act 1995**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 31) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Grain Handling and Storage Act 1995**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 58) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Grain Handling and Storage Act 1995**

Essential Services Commission Act 2001, No. 62/2001

Assent Date: 23.10.01
Commencement Date: Ss 83–85 on 1.1.02: s. 2
Current State: This information relates only to the provision/s amending the **Grain Handling and Storage Act 1995**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 30) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Grain Handling and Storage Act 1995**

Grain Handling and Storage (Amendment) Act 2003, No. 73/2003

Assent Date: 21.10.03
Commencement Date: Ss 3–18 on 22.10.03: s. 2
Current State: This information relates only to the provision/s amending the **Grain Handling and Storage Act 1995**

Essential Services Commission (Amendment) Act 2004, No. 75/2004

Assent Date: 9.11.04
Commencement Date: Ss 58–67 on 10.11.04: s. 2
Current State: This information relates only to the provision/s amending the **Grain Handling and Storage Act 1995**

Grain Handling and Storage Act 1995
Act No. 45/1995

Endnotes

3. Explanatory Details

No entries at date of publication.