

GLENCORE GRAIN PTY LTD

WA Bulk Handling Act model

17 May 2010

It was submitted in paragraph 10 a of Glencore Grain's submission of 7 May 2010 that there should be a plain statement in the Wheat Export Marketing Act and the scheme under the Act of the obligation to grant access to a port terminal facility, and that s 19 of the Western Australian Bulk Handling Act 1967 provides an example of such a statement.

The relevant provisions of the WA Act are as follows.

S 19 of the Bulk Handling Act provides:

Subject to this Act and the regulations, the Company shall allow a person, on payment of the prescribed charges, the use of any bulk handling facilities and equipment controlled by it at ports in the State.

The 'company' is CBH.

S 34(1) of the Act provides:

In return for the services of the Company in the receipt, handling, storage and delivery of grain, the Company is authorised to make such charges as are from time to time fixed by the Company's board of directors.

The Act provides for warrants (transferrable instruments) to be given by CBH for grain delivered into its storage. S 46(1) provides

A holder of a warrant requiring grain from the Company for shipment, shall notify the Company of the requirement, forthwith after arranging the charter of a ship to carry the grain from a port at which the Company loads bulk grain, and shall furnish, with the notice, such other particulars as may be prescribed.

Regulation 19(1) under the Act provides:

Every person entitled to grain who wishes to obtain grain from the Company shall —

- (a) pay to the Company —*
 - (i) the charges that are ascertainable in the particular case; and*
 - (ii) subject to later adjustment between the person entitled to the grain and the Company the amount of charges that are not definitely ascertainable on the date of the surrender of the warrant or the satisfaction of an entitlement to grain as calculated by the Company to the date on which it is then expected that the quantity of grain will actually be delivered;*
- (b) bear any transport charges incurred in respect of grain obtained from the Company;*
- (c) surrender to the Company any warrant relating to the grain; and*
- (d) give the Company notice at least 14 days before delivery is to commence of the preferred place of delivery.*

Reg 20 provides:

- (1) *Subject to section 15 of the Act, before 1 March in any year the Company shall deliver grain at any receival point or port in the State as required by the person entitled to grain, but is not obliged to deliver grain from the particular point of receival as shown on the warrant.*
- (2) *Subject to section 15 of the Act, on or after 1 March in any year, the Company may deliver grain to any receival point or port in the State.*

The provisions of s 46(1) and 34 of the Act and regs 19 and 20(1) regulate or are relevant to the use of the bulk handling facilities and equipment controlled by CBH at ports and accordingly are provisions contemplated by the words "Subject to this Act and the regulations" in s 19 of the Act.

Accordingly, for the purpose of s 19, subject to a person:

- (i) holding a warrant for grain delivered to CBH;
- (ii) having notified CBH the person's requirement for grain from CBH forthwith after arranging the charter of a ship to carry the grain from a port at which CBH loads bulk grain;
- (iii) paying to CBH the charges ascertainable in the particular case and any further charges by way of adjustment as provided in reg 19(1)(ii), being charges fixed by CBH's board of directors;
- (iv) surrendering any warrant relating to the grain;
- (v) giving at least 14 days notice of delivery of the preferred place of delivery,

CBH is required to allow the person the use of any bulk handling facilities and equipment controlled by it at ports in the State at the time notified for the presence of the ship at the port.

It is submitted that the Wheat Export Marketing Act should contain a statement of access along the lines of s 19 above. Details as to charges and related matters such as in the other provisions quoted above could be in the scheme under the Act.
