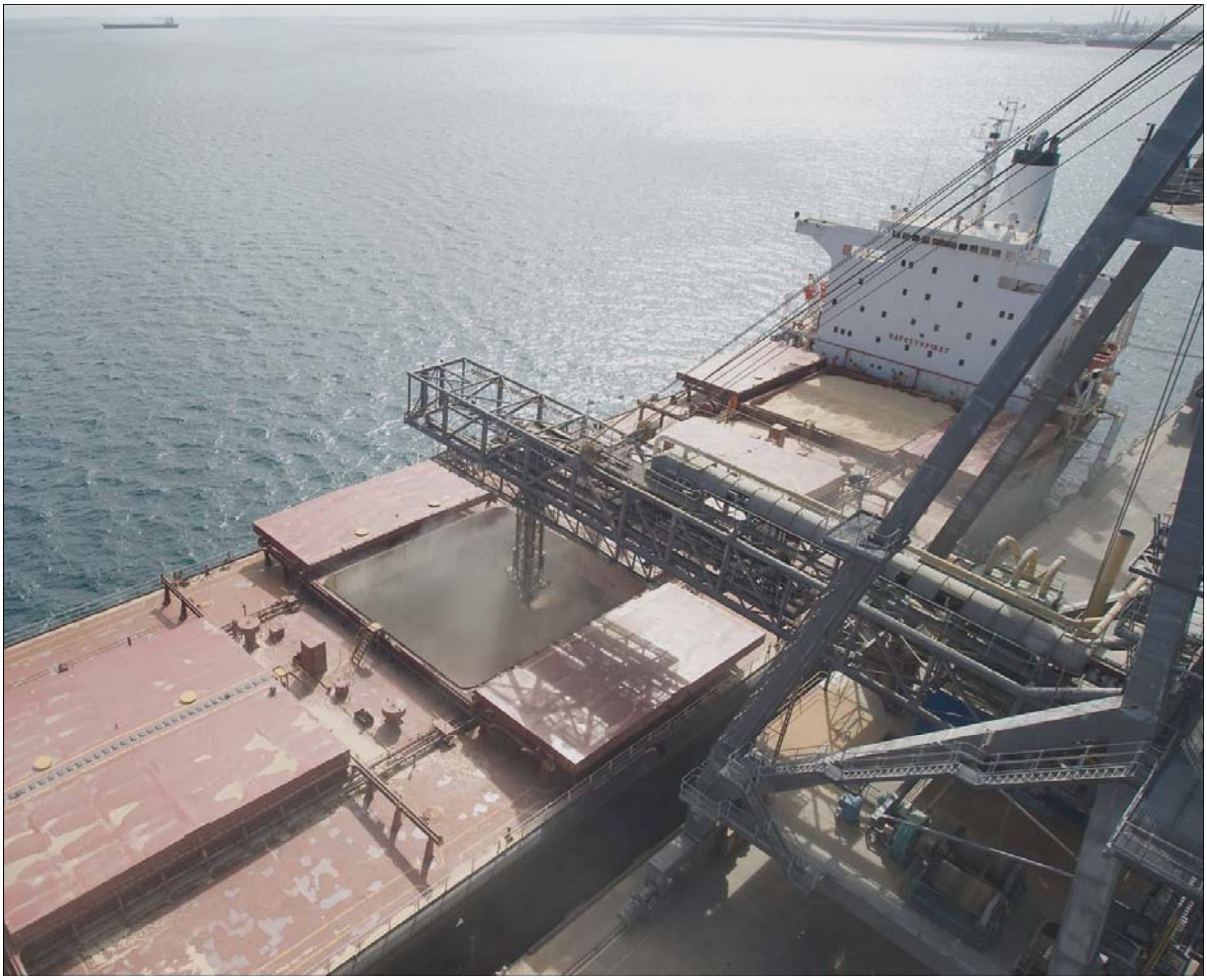
Grain Licensing Authority

Annual Report to the Minister

2007-08



Operation and effectiveness of the licensing scheme for export controls

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

APPENDICES

Executive summary

During 2007/08, the Economic Regulation Authority (ERA) conducted the statutory review of the *Grain Marketing Act 2002* (GMA). The final report was tabled in parliament on 27 July 2008 and recommended that barley, lupins and canola no longer be prescribed, the GMA be repealed and that new grain marketing arrangements be in place before the 2009/10 harvest.

It was a volatile year for grain marketing. Prices for prescribed grains again showed unprecedented rises mainly due to tightening of grain and oilseed supplies. Other factors included increased global demand for biofuels and feedstock, and adverse weather conditions in 2006 and 2007 in some major grain and oilseed producing areas. The Australian dollar exchange rate against the United States (US) dollar reached near record highs towards the end of the 2007/08 financial year, reducing some of the benefits of increased world grain prices in Australian dollar terms. Freight costs in the panamax sector were up 50 per cent on 2006/07.

The Grain Licensing Authority (GLA) believes it has met the requirements of the *Grain Marketing Act 2002, Grain Marketing Regulations 2002* and the Ministerial Guidelines issued under the Act. It also believes that it adhered to its operating procedures and other policies implemented to govern the day to day operation and decision making process.

During the 2007/08 financial year, some changes were made to the GLA operating procedures applicable to the 2008/09 season. The purpose of these changes was to reduce restrictions on licences by allowing Special Export Licence (SEL) holders to export to any customer in a market where the Main Export Licence (MEL) Holder is unlikely to extract price premiums due to market power. The GLA believes that this decision will increase flexibility for SEL holders by providing more opportunity to execute shipments of grain they have acquired.

To date more prescribed grain has been shipped in 2007/08 under SEL's than any other season, with approximately 445,000 tonnes shipped as at June 2008. The GLA's grain sampling and quality testing program was in place for the 2007/08 season. Samples were taken from all SEL shipments and tested independently by Department of Agriculture and Food, Western Australia (DAFWA) and Saturn Biotechnology. Test results confirmed that all grain exported under SEL's met the conditions of those licences.

On 7 July 2008, the terms of office for GLA members Mr Kim Halbert (Grower Representative), Dr David Morrison (Treasury Representative) and Dr David Bowran (DAFWA representative) were due to expire. All three members were re-appointed for a further eight months with their terms of office now due to expire on 7 March 2009.

1. Statutory Review of the GMA 2002

The GMA required the Minister to carry out a review on the operation and effectiveness of the Act as soon as practicable after 31 October 2007. The Minister wrote to the Treasurer requesting the Economic Regulation Authority (ERA) to undertake the review. The Treasurer gave written notice to the ERA on 29 November 2007 with terms of reference to consider four key matters:

- The effectiveness of the operations of the GLA.
- The need for the continuation of the functions of the GLA.
- Other matters that could be relevant to the operation and effectiveness of the Act, including but not limited to analysis of net public benefit.
- The implications of relevant changes in grain marketing in Australia and internationally.

The ERA published an issues paper and a draft report to help interested parties understand the matters under review and to facilitate public comment and debate.

The GLA made a submission to the ERA in which it presented its findings and views on the prescribed status of lupins, canola and barley and also identified a number of key issues for investigation.

In regards to the prescribed grain status of lupins, canola and barley, the GLA stated the following:

- For lupins, that with decreasing exportable surpluses from Western Australia and the fact that lupins are easily substitutable for other high protein feed, it seemed unnecessary to retain controls over bulk exports of lupins.
- For canola, that given there was little evidence of price premiums due to market power and a transparent and liquid forward market for growers to utilise existed, there appeared to be little justification to support single desk marketing for canola.
- For barley, that there may be potential for price premiums due to market power in Japan, but such premiums were much less likely to be extracted from Saudi Arabian and Chinese markets. Given the increase in cash prices WA growers appeared to have received for their barley in comparison to SA growers, the GLA also concluded that partial deregulation had benefited WA growers.

The GLA also raised the following other issues which are really only relevant if the GMA remains in place or GLA operations continue beyond the 2008/09 season:

- The intent of the Act in protecting the single desk or main export licence (MEL), held by Grain Pool Proprietary Limited (GPPL), versus protecting pools, including the appropriate level and type of pooling:
    - The GLA initially interpreted single desk or main export licence to mean the operation of traditional pooling systems. With GPPL appearing to move away from traditional harvest pools to short term fixed tonnage contract pool and cash acquisitions, the GLA requested that the ERA investigate the purpose of the Act in this regard. More specifically, whether the purpose is to protect the main export licence (MEL) holder (GPPL) regardless of whether it markets grain using pools or whether it is to protect pools and the subsequent market power and price premiums that single desk holders claim they can extract from running these pools.

  - The ERA concluded that the Act should not be so narrowly construed as to impose a requirement on the MEL to operate a harvest pool that is open to all growers for the entirety of harvest. The ERA considered that the use of contract pools is an important risk management strategy for grain traders and also ensures growers are able to capitalise on market volatility.

- Information provided by the current main export licence holder, GPPL and evidence of price premiums due to market power:
  - The GLA reported that information received from GPPL had not provided conclusive evidence that price premiums due to market power were available.
- Transparency of GLA decisions:
  - The GLA acknowledged that it is difficult for applicants to determine the likelihood of being granted a licence, however given the commercially sensitive nature of the information provided by the GPPL and SEL applicants and the nature of the licensing process (whereby analysis must be conducted after the application is received) there is little the GLA can do to improve the transparency.
- Reasons for volumes exported under SEL's being significantly less than the volumes granted by the GLA:
  - In relation to the licensing scheme itself, the GLA believes that licence restrictions on market destinations and end customers are increasing the risk of a deal not coming to fruition. It is for this reason that the GLA amended its Operating Procedures for the 2008/09 season. See section 3.1.
  - Other factors cited by SEL holders as impediments to executing export shipments may no longer be an issue with the introduction of CBH's Grain Express.
- Export controls and offences under the Act:
  - Whilst the GLA has been able to cross reference information from a number of organisations to confirm that there has not been breach of export controls, the GMA does not really provide adequate powers to easily access information from other agencies.
- Special Export Licence application and annual licence fees:
  - The GLA believes that given the costs of assessing each application is similar, regardless of tonnage applied for, it would not seem necessary to retain a sliding scale fee structure for application fees and that one flat fee in the range of $15,000 to $20,000 might be more appropriate.

The GLA's full submission to the ERA is contained in Appendix 1.

The ERA's final report was tabled in parliament on 27 July 2008. It recommended that:

1. Barley, canola and lupins should no longer be prescribed.
2. Given the changes to the bulk wheat export arrangements, the GMA 2002 should be repealed in accordance with Section 49.
3. Following the introduction of the new Federal bulk wheat export scheme, it would be preferable that the recommended arrangements for bulk barley, canola and lupin exports be in place for the 2009/10 harvest. With this recommended deregulation, the GLA would no longer be required to assess export licences.

4. The Department of Agriculture and Food, Western Australia should be tasked with the collection and dissemination of information, on a monthly basis, to all participants in the Western Australian coarse grain accumulation market. This information should be made available as soon as possible and should include, but not be limited to the quantities of each coarse grain held in the bulk handling system, sales and forward commitments, quantities exported and production forecasts.

2. Marketing environment 2007/08 season

Prices for prescribed grains in the 2007/08 season again showed unprecedented rises mainly due to tightening of grain and oilseed supplies. Other factors included increased global demand for biofuels and feedstock, and adverse weather conditions in 2006 and 2007 in some major grain and oilseed producing areas[1]. Markets were volatile and the Australian dollar exchange rate against the United States (US) dollar reached near record highs towards the end of the 2007/08 financial year, reducing some of the benefits of increased world grain prices in Australian dollar terms. Freight costs in the panamax sector were up 50 per cent on 2006/07.

In 2007/08, world coarse grain production reached just over 1 billion tonnes with ending stocks of around 150 million tonnes similar to 2006/07[2]. World barley production was estimated at 134.9 million tonnes, down 3.8 million tonnes on 2006/07. Australia's barley production of 5.9 million tonnes was below average for 2007/08[3]. Refer to Appendix Two, Table One and Two for coarse grains and barley supply, demand and ending stocks for 2007/08.

In 2007/08, world oilseed production was estimated at 383.4 million tonnes with ending stocks 13.7 million tonnes lower than 2006/07. World production of rapeseed (canola) was 48.1 million tonnes[4]. Australian production of canola was just over 1 million tonnes for 2007/08 (double that of 2006/07)[5]. Anticipated higher prices resulted in increased plantings. Refer to Appendix Two, Table Three for canola supply, demand and ending stocks for 2007/08.

In 2007/08, Western Australia's winter crop was 8.1 million tonnes up 22 per cent on the 2006/07 crop but below the five year average of 10.8 million tonnes. There was a relatively large canola crop of 650,000 tonnes (Table 1).

Table 1. WA crop production, 2003/04-2007/08 (million tonnes)

	2003/04	2004/05	2005/06	2006/07	2007/08	5 year average
Wheat	10.437	7.705	9.478	4.396	4.933	7.390
Barley	2.941	2.080	2.598	1.650	2.414	2.337
Canola	0.606	0.490	0.630	0.379	0.650	0.551
Lupins	0.969	0.688	0.926	0.223	0.144	0.590
Total	**14.953**	**10.963**	**13.632**	**6.648**	**8.141**	**10.867**

Source: Department of Agriculture and Food, 2008.

The impact of the global situation in increasing Western Australian grain prices in 2007/08 can be seen in the estimated pool prices in Table 2 on the following page.

1 Global Agricultural Supply and Demand: Factors Contributing to the Recent Increase in Food Commodity Prices, USDA May 2008.
2 International Grains Council, Grain Market Report No. 379, June 2008.
3 ABARE Crop Report June 2008.
4 International Grains Council, Grain Market Report No. 379, June 2008.
5 Australian Oilseeds Federation, July 2008.

Table 2. WA grain prices quoted as Estimated Pool Returns 2003/04-2006/07 and estimates for 2007/08 (A$ per tonne)

Grain type	2003/04	2004/05	2005/06	2006/07	2007/08F	5 year average
Barley—malting[1]	205	220	212.06	304.15	375	263.24
Barley—feed[2]	170	170	177.06	259.15	345	224.24
Canola[3]	425	345	338.09	508.15	585	440.25
Lupins[4]	217.50	190	187.04	332.74	325	250.46

1 Malting barley prices are based on the Stirling variety for the No. 1 pool.

2 Feed barley prices are based on the number 1 pool.

3 Canola prices are based on the harvest pool (03/04 to 06/07) and the No. 1 pool (07/08F) with 42% oil.

4 Lupins prices are based on the No. 1 pool Source: GPPL.

Prices for barley and canola were up on 2006/07 and the five year average. Of interest is that there was a large differential between the pool and cash prices for canola. In March 2008, cash prices were A$190 per tonne over pool prices. This was due to a combination of tightness in supply and speculative trading pushing futures up[6].

A major factor influencing prices in Western Australia is the exchange rate as nearly all export grain is sold in US dollars. The strengthening Australian dollar has diminished the relative value of grain price returns received by growers. The exchange rate against the US dollar for the 2007/08 financial year is shown in Figure 1.

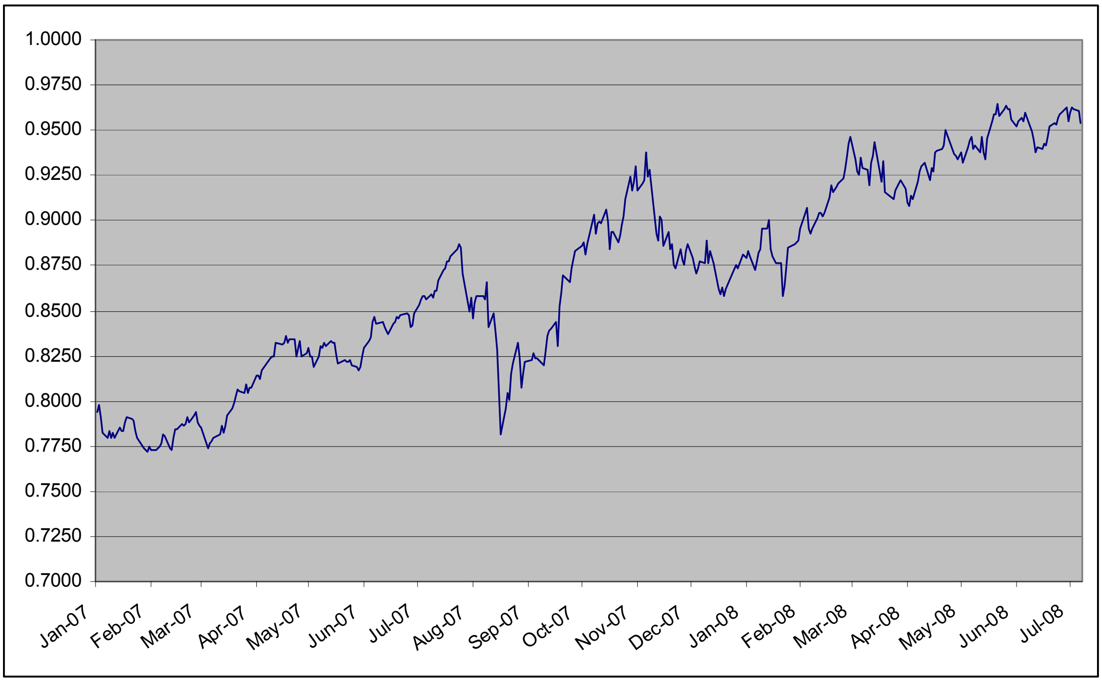


Figure 1. Daily exchange rates: US Dollars per Australian Dollar.

Source: Reserve Bank of Australia, 2007.

6 WA Agri-Food Industry Outlook, April 2008, DAFWA.

As can be seen, the exchange rate was volatile over the major selling period of November to March ranging from a high of 0.946 to a low of 0.857. This would represent a difference of around A$35 per tonne if grain was sold at US$400 per tonne.

Bulk ocean freight rates continued to increase from those in 2006/07 and were volatile over the 2007/08 period with a peak in May 2008 (Figure 2). This peak was driven by solid demand for minerals and grains, as well as China's need for construction materials in the aftermath of the Sichuan earthquake. Shortages of spot tonnage, especially in the Atlantic, buoyant freight futures and record oil prices also contributed to the rise[7].

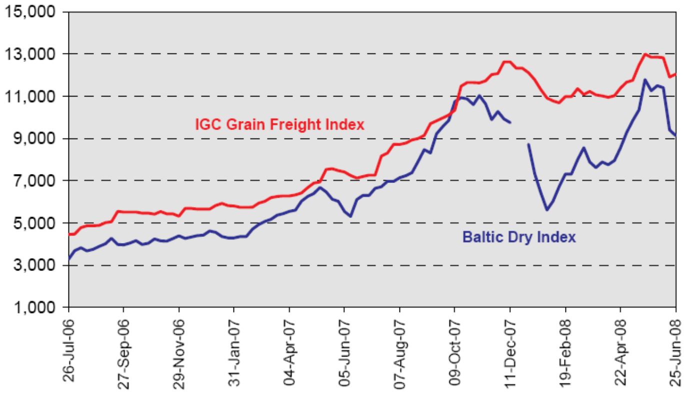


Figure 2. Ocean freight rates—Baltic Dry Index.

Source: International Grains Council, 2008.

Panamax freight costs (the type of ship commonly used for grains but also to haul minerals), reached over US$100,000 per day time charter in May but then dropped back because of grain and soybean supply problems at ports in Argentina. Based on a shipment from Western Australia to Saudi Arabia, current freight rates are around US$75 per tonne. The same time last year the cost was US$47 per tonne. With more competitive rates offered for container freight, there was an increase in container trade out of Australia over the 2007/08 season.

7 International Grains Council, Grain Market Report No. 379, June 2008

3. GLA operations and overview of 2007/08 season

The GLA has throughout the year communicated regularly with its stakeholders particularly the MEL holder GPPL and existing and prospective SEL holders. The GLA also continued to obtain information and advice from a number of independent sources to assist in its decision making process.

3.1 Operating procedures

During the 2007/08 financial year, the annual review of the GLA Operating Procedures for 2008/09 was undertaken in consultation with the MEL and SEL's. The main change from 2007/08 was to reduce restrictions on licences by allowing SEL holders to export to any customer in a market where the MEL is unlikely to extract price premiums due to market power. The GLA believes that this decision will increase flexibility for SEL holders by providing more opportunity to execute shipments of grain they have acquired. It is expected, that in turn, this will lead to greater confidence by SEL holders to bid aggressively for grain and have a positive impact on prices for growers. See Appendix 3 for the GLA Operating Procedures for 2008/09.

3.2 Applications and special export licences for 2007-08 season

For the 2007/08 season, an estimated 1.48 million tonnes of feed barley were produced in Western Australia and of this 686,000 tonnes (46%) were granted in SEL's. The majority of applications for SEL's were for feed barley destined for Saudi Arabia and other Middle Eastern countries to be used as stock feed. Over the period November 2007 to December 2008, approximately 1.2 million tonnes of feed barley have been exported from Western Australia (99% in bulk). Of this total, 444,483 tonnes or 37 per cent was exported under SEL's (Table 3). Included in tonnage shipped was all tonnage allocated under multi-season licences.

For malting barley, an estimated 927,000 tonnes was produced in the 2007/08 season. Of this 180,000 tonnes was granted in SEL's, accounting for 19 per cent of total production. Malting barley applications were mainly for export to China and South America for end use as malt in beer. All applicants were granted licences. To date approximately 365,000 tonnes of malting barley produced in 2007/08 have been exported (308,000 tonnes in bulk and 57,000 tonnes in containers) from Western Australia. Just over 70,000 tonnes of malting barley (18% of total exports) was shipped under SEL's.

For canola, of the estimated 650,000 tonnes produced, 290,000 tonnes was allocated to SEL's, accounting for 45 per cent of production. The majority of canola applications were for the EU or Sub-continent. It is estimated that approximately 380,000 tonnes of 2007/08 canola has been exported to date (345,000 tonnes in bulk and 35,000 tonnes in containers). For canola, just over half (58 per cent) of tonnage applied for was granted. A record 97,243 tonnes of canola was shipped under special export licences for the 2007/08 season (Table 3).

In the 2007/08 season, an estimated 144,000 tonnes of lupins were produced. Approximately 49,000 tonnes were exported, 31,500 tonnes in bulk and 17,500 in containers (Table 3). It is likely that the remainder were consumed by the domestic market. There were no SEL applications for lupins.

Table 3. SEL holder share of State's production for prescribed grains in 2007/08

2007/08	Production est. (tonnes)	SEL tonnage applied for (tonnes)[1]	SEL tonnage granted (tonnes)	SEL tonnage granted (%production)	WA export est. (tonnes) Nov. '07 to June '08	SEL tonnage shipped as at 30 June 2008
Feed barley	1,487,000	1,208,500	686,000	46%	1,224,000	444,483
Malting barley	927,000	291,650	180,000	19%	365,000	70,202
Canola	650,000	417,500	290,000	45%	380,000	97,243
Lupins	144,000	0	N/A	N/A	49,000	N/A
Total	**3,208,000**	**1,917,650**	**1,156,000**	**36%**	**2,018,000**	**612,288**

[1] Includes tonnage applied for in previous seasons under multi-season licences.

Source: Department of Agriculture and Food, Western Australia 2007 and Grain Licensing Authority 2007.

A record total of 612,288 tonnes of prescribed grains were shipped under special export licences in the 2007/08 season, which is more than what has been shipped in any other season. See Table Four below for a summary of SEL tonnage shipped since the introduction of the GLA.

Table 4. SEL tonnage shipped and % shipped of granted from 2003/04 to 2007/08

Grain type	2003/04	2004/05	2005/06	2006/07	2007/08
Feed barley	316,000 (73%)	165,500 (41%)	118,600 (19%)	151,700 (52%)	444,483 (65%)
Malting barley	0	0	55,300 (50%)	0	70,202 (39%)
Canola	0	25,000 (33%)	0	25,500 (33%)	97,243 (33%)
Lupins	0	0	0	0	0
Total	**316,000 (59%)**	**190,500 (37%)**	**173,900 (22%)**	**177,200 (39%)**	**612,288 (53%)**

3.3 Licence amendments

Due to the dynamic nature of grain marketing, SEL holders regularly revise their marketing strategies and sometimes request amendments to their licences. These requests are considered by the GLA on a case by case basis and the main export licence holder's market strategy is taken into account before amendments are approved. For the 2007/08 season, the GLA received amendment requests for three of the six canola licences that were granted. The requests were to change market destinations either from the EU to the Sub-continent or vice versa. After amendments were made, shipments were executed under two of the licences. There were also minor amendments to the end customers listed on some feed barley and malting barley licences.

3.4 Export compliance and monitoring of shipments

Since inception, the GLA has monitored shipments by SEL holders to ensure that all conditions attached to licences are adhered to. The GLA requires SEL holders to provide a feedback form on the completion of all shipments. This includes a copy of the bill of lading, final destination and end customers sold to and an indication of actual prices achieved. This requirement has been met.

The GLA's grain sampling and quality testing program was also in place for the 2007/08 season. Samples were taken from all SEL shipments and tested independently by Department of Agriculture and Food, Western Australia (DAFWA) and Saturn Biotechnology. This initiative was introduced to enable improved monitoring of exporter performance with the overall aim of protecting the State's reputation as a grain exporter and the Western Australian grain industry in general.

Test results confirmed that all grain exported under SEL's met the conditions of those licences. The GLA is planning to take samples from MEL holder (GPPL) export shipments scheduled for August and September 2008.

3.5 Term of office expiry for GLA members

On 7 July 2008, the terms of office for GLA members Mr Kim Halbert (Grower Representative), Dr David Morrison (Treasury Representative) and Dr David Bowran (DAFWA representative) were due to expire. All three members were re-appointed for a further eight months with their terms of office now due to expire on 7 March 2009. In June 2008, Mr Kim Halbert was also appointed as a member of the Wheat Export Australia which was established to regulate the export of bulk wheat from Australia through the bulk Wheat Export Accreditation Scheme.

3.6 Administration of GLA

In 2007/08, the GLA renewed its Memorandum of Understanding (MOU) with DAFWA for provision of executive and business support services.

Expenses for the 2006/07 financial year were published in the Government Gazette on 23 November 2007 as per regulation 8 of the Grain Marketing Regulations 2002. The MEL received a rebate relating to the annual licence fee paid in 2006/07. SEL applicants did not receive any rebates because while the operating expenses for the GLA were the lowest on record, the revenue from the five applications received did not cover the costs of managing the special export licence process or assessing the applications for the 2006/07 financial year.

GLA total expenditure for the 2007/08 financial year was $227,000 and it is anticipated that both the MEL holder and SEL applicants will receive rebates.

The GLA continued to inform stakeholders of its operating procedures and decisions on SEL applications through the GLA website www.gla.wa.gov.au. Media statements were also released after every meeting.

4. Information made publicly available

Below is the information the GLA is required to make publicly available under Section 42 of the Act. The information below is reported in financial years however section 2.4 of this report provides this same information but by season of grain production.

Throughout the year, regular updates were made on the GLA website where a running tally of amounts of grain sought and granted for each production season can be viewed.

4.1 The number of applications that have been made, that related to each prescribed grain, produced in each season of production

The following applications were received for each prescribed grain for the 2007/08 financial year:

Table 5. Number of applications received from 1 July 2007 to 30 June 2008

Prescribed grain	No.	Season of production
Feed barley	9	6 x 2007/08 3 x 2007/08, 2008/09, 2009/10
Malting barley	2	2 x 2007/08
Canola	9	5 x 2007/08 4 x 2008/09
Lupins	0	
Total	**20**	

Source: Grain Licensing Authority 2008.

4.2 The total amount of each prescribed grain, produced in each season of production, for which a special export licence was sought

Statistics on the Special Export Licences sought in the 2007/08 financial year are as follows:

Table 6. Amount of prescribed grain for which a Special Export Licence was sought from 1 July 2007 to 30 June 2008

Prescribed grain	2007/08 production season	2008/09 production season	2009/10 production season
Feed barley	636,000	300,000	180,000
Malting barley	130,000	–	–
Canola	230,000	295,000	–
Lupins	–	–	–
Grand total	**996,000**	**595,000**	**180,000**

Source: Grain Licensing Authority 2008.

4.3 The total amount of each prescribed grain, produced in each season of production, for which a special export licence was granted

The figures below only include the amount of grain granted in special export licences for the 2007/08 financial year. The corresponding applications for these licences may have been in a different financial year therefore no comparison can be made with Table 5.

Table 7. Amount of prescribed grain for which a Special Export Licence was granted from 1 July 2007 to 30 June 2008

Prescribed grain	2007/08 production season	2008/09 production season	2009/10 production season
Feed Barley	246,000	180,000	60,000
Malting Barley	130,000	–	–
Canola	290,000	145,000	–
Lupins	–	–	–
Grand total	**666,000**	**325,000**	**60,000**

Source: Grain Licensing Authority 2008.

5. The effect of the issue of special export licences on the operation of the main export licence holder

The ERA, in its recent review of the GMA 2002, concluded that is it is likely that the entry of multiple export traders and the associated competition for pool/cash traders has improved the main export licence holder's (GPPL) operation of pools and cash acquisitions for prescribed grains. The ERA did not find any evidence to suggest there had been deterioration in GPPL pool operation / performance since the introduction of the GMA 2002.

GPPL remains concerned over the fact that SEL applicants can effectively apply to have the 'option' of sourcing and supplying grain from Western Australia whereas GPPL as the main export licence holder and buyer of last resort, is obliged to find a good market for all prescribed grain delivered to it. According to GPPL, the uncertainty of the amount of grain it will be obliged to market on behalf of the WA grain industry impacts negatively on its pooling and marketing operations.

Whilst GPPL acknowledges that assessment of SEL applications take into account a traders history in exporting under and complying with SEL's, it is of the opinion that the GLA needs to adopt a firmer approach towards granting licences to applicants who have failed to execute licences.

In 2007/08, GPPL again operated contract pools for malting and feed barley. These were short-term, fixed tonnage pools designed to reward growers who supported the GPPL barley pools early in the season. Growers were only able to commit a portion of their estimated crop production when they contracted to these pools. GPPL closed its No.1 barley pools in November 2007 before harvest had finished and then opened No.2 pools. It appears that this action was taken to preserve equity in pools to continue to attract customers in response to competition in the market. Similarly for canola the No.1 pool closed earlier than usual in December 2007.

6. The benefits and costs associated with the main export licence and special export licence

While there is much speculation about the benefits and costs of the licensing scheme to Western Australian growers and the grain industry as a whole, it is difficult to measure these in a meaningful way.

Past cash price analyses commissioned and/or conducted by the GLA indicated that the granting of special export licences appears to have facilitated higher prices for WA grain growers. The ERA concluded in its review that the statistical analyses conducted previously indicated relative prices rather than absolute prices increased after the implementation of the GLA. It did however note that it is difficult to quantify the amount of any price change which is directly attributable to partial deregulation.

The ERA also found that the introduction of the GLA has been effective at increasing grain market competition, which has provided a greater range of selling options for growers of prescribed grains.

Under the Act it is intended that the GLA operate on a ‘Fee for Service’ basis.

The GLA collects three types of fees under the Act:

1. Main Export Licence Holder Fee—$400,000 per annum.
2. Special Export Licence Application Fee:
    - For 20,000 tonnes or less—$5,000.
    - For more than 20,000 tonnes but not more than 50,000 tonnes—$10,000.
    - For more than 50,000 tonnes—$20,000.
3. A Licence Fee of $500 payable each year a licence is held.

The total operating expenditure for the GLA for the 2007/08 financial year was $226,525 (Table 8). This is below the five year average of $304,905.

Table 8. GLA operating expenditure from 2003/04 to 2007/08

Finances	2003/04	2004/05	2005/06	2006/07	2007/08	Average
Operating Costs*	$323,000	$332,000	$335,000	$308,000	$227,000	$304,905

Source: Grain Licensing Authority 2008.

* *Rounded to the nearest thousand.*

In terms of direct financial cost on a per tonne basis, a simple calculation has been conducted below. The GLA operating expenditure for 2007/08 of $227,000 has been divided by the estimated number of tonnes of 2007/08 Western Australian prescribed grain sold by growers (3.25 million tonnes). Based on this calculation, the average cost per tonne equates to $0.07 (Table 9).

Table 9. Cost of the licensing scheme (per tonne) for 2007/08 Western Australian prescribed grains sold

GLA operating expenditure for 2007/08 financial year (A$)	Estimated amount sold of WA prescribed grain for 2007/08	Average cost per tonne (A$)
A$227,000	3.25 m tonnes	A$0.07

Source: Grain Licensing Authority 2008.

The GLA acknowledges that there may be other indirect costs (such as restrictions to market destinations on licences which may reduce the flexibility to take advantage of spot market prices) attributable to the licensing scheme but these are difficult to quantify.

7. Annual assessment of the existence and extent of price premiums from market power available to the main export licence holder

The purpose of the *Grain Marketing Act 2002* is not to undermine the benefits of single desk marketing, but to maximise the benefits from competition while retaining any identified premiums arising from the exercise of market power by the Main Export Licence (MEL) holder, Grain Pool Pty Ltd (GPPL).

Essentially the Act requires the GLA to balance any benefits of increased competition from the granting of export licences with any premiums the GPPL is extracting from markets through the use of its single desk power.

The Ministerial Guidelines issued under the Act define a 'premium' as a market advantage that can be leveraged by the existence of a main export licence, that is the price that can be achieved through a range of mechanisms to control supply and manage the market place.

As noted in the recent ERA report reviewing the GMA, conditions required for market power to be present include:

- having substantial share of the market in order to command market power;
- having a high degree of market knowledge, including competitors' behaviour and the responsiveness of changes in demand for grains as a result of changes in price;
- the presence of limited substitutes to undermine premiums; and
- acquiring sufficient quantities of the grain to be able to restrict supply to target markets.

The ERA concluded in its report that the majority of studies conducted (including three independent assessments commissioned by the GLA) indicated that single desk exporters of prescribed grains from Western Australia cannot exert significant market power on international grain markets or derive associated price premiums.

The ERA also noted that one of the fundamental principles of single desk marketing is the use of harvest pools to aggregate the output of producers and market the grain as a broadly homogenous product in order to extract price premiums. The ERA found that since the GMA was introduced, there has been a shift from traditional harvest pools to contract pools and cash trading as the dominant method for buying export grain. The ERA's view was that the decline in the use of traditional harvest pools would undermine any ability of a single desk marketer to extract price premiums.

8. The effect of the licensing scheme on the Western Australian grains industry generally

It is evident that growers now have an increased number of options for export of prescribed grain including selling for a cash price or delivering to pools.

8.1 Price comparisons with other States

Past cash price analyses commissioned by the GLA indicated that Western Australian feed barley and malting barley prices increased significantly over South Australian prices since the inception of the GLA.

Throughout the 2007/08 season there were some comments from industry that WA growers would be disadvantaged in comparison to SA growers who as of 1 July 2007 where operating in a deregulated barley market. The comparison of prices between WA (Fremantle) and SA (Adelaide) indicated that this was not the case. After taking into account WA's freight advantage of US$5 to $10, it appeared that 2007/08 WA feed barley prices were on par with those being offered in SA (Figure 3).

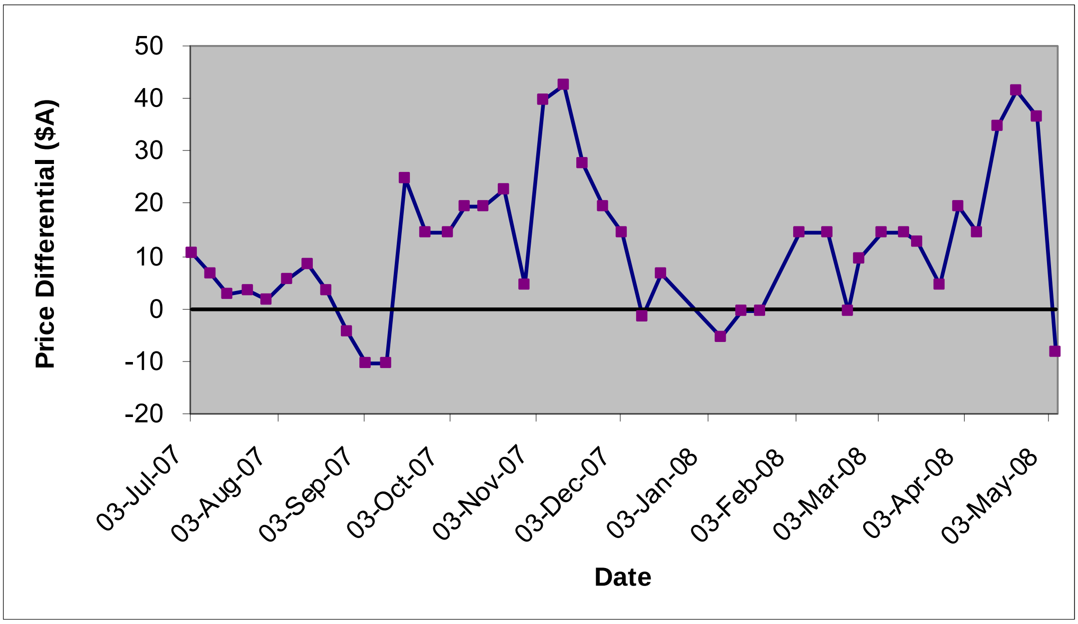


Figure 3. WA (Fremantle) 2007/08 feed barley cash price differential from SA (Adelaide).

Similarly for malting barley prices, SA growers did not appear to receive a premium over WA growers (Figure 4).

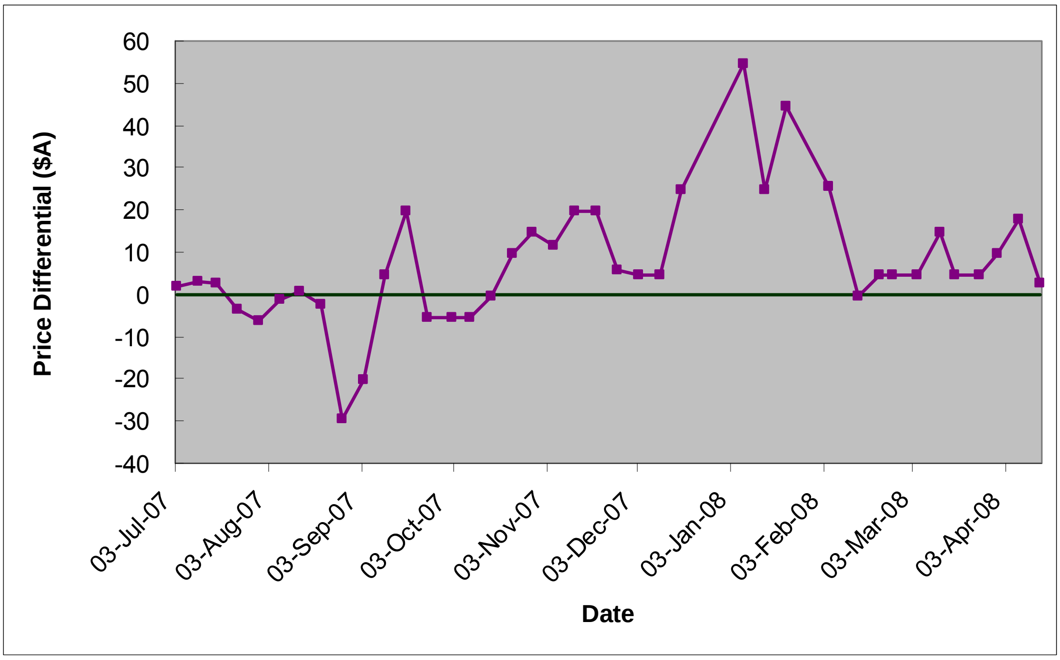


Figure 4. WA (Fremantle) malting barley cash price differential from SA (Adelaide).

Source: Grain Licensing Authority 2008.

WA canola prices appeared to be lower for the 2007/08 season in comparison to other States of Australia. This would appear to be due to the shortage on the domestic market in the Eastern States which pushed local prices up over export parity.

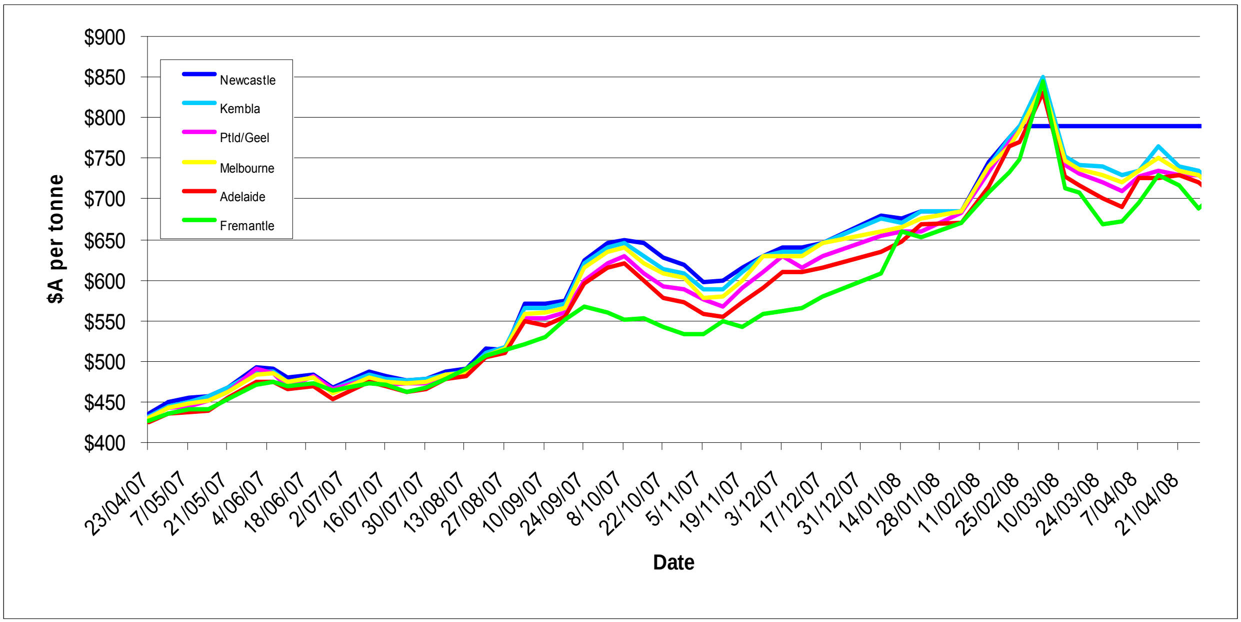


Figure 5. Australian canola prices 2007/08 season.

Source: Grain Licensing Authority 2008.

8.2 New products and pricing options

Grain marketers have continued to offer new products and pricing options to growers to compete for a share of WA grain production.

In the 2007/08 season, Glencore Grain (T/A Brooks Grain) introduced a new option for WA barley growers. Titled 'Farmers Choice' it was essentially a multi-grade contract for barley where growers could lock in the feed barley price and later lock in the spread between malt and feed prices at fixed dates in November and December. They also offered forward and post-harvest contracts, delayed delivery and warehouse transfers for barley as well as canola.

In 2007/08, Elders Ltd and Toepfer International formed a joint venture Elders Toepfer Grain. Elders Ltd expect that Toepfer's world wide presence and investments in export facilities in Europe, the Americas and Asia will bring new marketing opportunities for Australian grain growers. Elders Toepfer Grain offered growers cash forward contracts for feed and malting barley (fixed grade and multi-grade) giving growers the option to deliver feed or malting barley against these contracts. Post-harvest contracts and warehouse transfers were also offered.

AWB offered cash price contracts for canola and barley in the 2007/08 season. Contracts included forward contracts and cash at silo.

Cargill Australia Ltd offered a range of contract types in Western Australia in 2007/08 including Cash Spot, Cash Forward, Cash Multi-grade, Target Pricing and No Price Established (NPE) contracts covering a variety of crops including canola and barley. The NPE contracts for canola allow the seller to contract a specific quantity for delivery, with the price to be fixed, by a mutually agreeable later date. An interest free 70 percent advance is paid to the grower upon delivery, with the remainder payable upon contract fixation. In 2008/09 Cargill will also offer Fixed Grade cash contracts and cash at silo contracts for feed barley. Cargill continues to offer growers flexible deferred payment options, which will include remuneration for interest and storage costs to the grower.

Whilst Louis Dreyfus were not particularly active in WA during the 2007/08 season they recently opened an office in Perth and will be offering fixed grade forward cash contracts for barley and canola in all port zones for the coming season.

8.3 Continuance of Grain Marketing Workshops

In response to partial deregulation of barley, canola and lupin and in preparation for wheat deregulation, grain marketing education and training for growers continued in Western Australia throughout 2007/08. A joint initiative between The National Association of Commodity Marketers of Australia—Western Australia (NACMAWA), Curtin University and the Department of Agriculture and Food, the 'Understanding Grain Markets' workshops were attended by 420 growers across 19 regional locations. Based on feedback from participants of the first workshop, some enhancements were made and a second more advanced workshop was developed. These new workshops are currently being rolled out across the State.

9. Other factors affecting the operation and effectiveness of the licensing scheme

The GLA believes that the rapid changes to the grain marketing, storage, and handling landscape in Australia will have a significant impact on the grains industry generally and will need to be taken into account in the operations of the GLA.

9.1 Deregulation of National Wheat Marketing

On the 1 July 2008, the Australian Government effectively deregulated Australian grain marketing by introducing a wheat export accreditation scheme which provides opportunity for a number of Australian grain exporters to obtain accreditation. Wheat Exports Australia has so far accredited 13 companies and there are some applications still being assessed.

SEL holders have communicated to the GLA that having licence restrictions on market destinations for barley and canola may limit their opportunities to export these grains as part of a combined shipment with wheat. This could mean that GPPL as the main export licence holder for coarse grains and an accredited wheat exporter may hold a competitive advantage over other exporters operating in the WA market.

9.2 CBH's Grain Express

Grain Express, a new initiative by the CBH Group, has been introduced to the WA grain industry. CBH believes that it will deliver a coordinated approach to managing the WA grain supply chain in a deregulated marketing environment.

Under Grain Express, transport, storage and handling services will be packaged and managed by CBH Grain Operations on behalf of the industry, which according to CBH will allow total transparency in freight charges and a reduction in supply chain costs.

The Australian Competition and Consumer Commission (ACCC) has stated that it will not oppose an exclusive dealing notification lodged by Cooperative Bulk Handling Ltd (CBH) in relation to proposed grain transport, storage and handling arrangements in Western Australia. The ACCC said it was satisfied that the introduction of Grain Express is not likely to lead to a substantial lessening of competition in relevant markets.

Significant concerns were expressed to the ACCC that under Grain Express, CBH would pass information to its trading subsidiaries, Grain Pool and AgraCorp, that could be used anti-competitively in the grain trading market. However, the ACCC said it was satisfied that CBH has taken necessary steps, through its amended Ring Fencing Policy, to limit the potential for commercially sensitive information being transferred to its trading subsidiaries.

9.3 COAG review of Western Australian Ports

As required by the Council of Australian Governments' (COAG's) Competition and Infrastructure Reform Agreement (CIRA), the Western Australian Government has called for submissions in relation to port competition and regulation.

The objective of the review, to be conducted by the Allen Consulting Group, is to determine whether:

- there is a demonstrated case for economic regulation of port and related infrastructure facilities at the representative ports nominated for review (Esperance, Fremantle (Inner and Outer Harbours) and Port Headland); and

- there is competition in the provision of port and related infrastructure facility services, including issues of port planning and third party access.

From the GLA's perspective it is essential that all SEL holders have fair and equal access to CBH's storage and handling facilities at WA's ports.

Currently, the *Bulk Handling Act 1967* requires that CBH allow any party to use the bulk handling facilities and equipment controlled by it at ports in the State on the payment of a (prescribed) charge. That is access to the facilities is essentially available on a 'common-user' basis, although there are no provisions that govern the manner in which access is to be provided, nor how prices are to be determined.

Under the *Wheat Marketing Act 2008* all export accredited companies that also control bulk handling terminals (such as CBH) must pass an access test. Prior to 1 October 2009 this can be achieved by complying with continuous disclosure rules or alternatively a decision made under the *Trade Practises Act 1974* that an effective access regime is in place and wheat exporters have access to port terminal services.

The continuous disclosure rules require that companies publish a statement on their website setting out their policies and procedures for managing demand for the port terminal service (including the nomination and acceptance of ships to be loaded using the port terminal service). The statement must be update on daily basis and include the:

- name of each ship scheduled to load grain using the port terminal service; and
- time when the ship was nominated to load grain using the port terminal service; and
- time when the ship was accepted as a ship scheduled to load grain using the port terminal service
- quantity of grain to be loaded by the ship using the port terminal service; and
- estimated date on which grain is to be loaded by the ship using the port terminal service.

After 1 October 2009, companies must still comply with continuous disclosure rules but there must also under the *Trade Practises Act 1974* be an access undertaking or a decision made that an effective access regime is in place and wheat exporters have access to port terminal services.

Appendix One: GLA Submission to the Economic Regulation Authority regarding the review of the Grain Marketing Act 2002

GRAIN LICENSING AUTHORITY

SUBMISSION TO THE ECONOMIC REGULATION AUTHORITY

FOR THE REVIEW OF THE GRAIN MARKETING ACT 2002

FEBRUARY 2008

Scope

This submission from the Grain Licensing Authority (GLA) attempts to highlight the issues it has experienced whilst administering the *Grain Marketing Act 2002* and operating the licensing scheme for bulk exports of barley, canola and lupins. This submission does not seek to build a case for or against deregulation but does explain the issues which the GLA would like to see investigated in the pending review and why. Most of the issues have been listed in the Issues Paper released by the Economic Regulation Authority (ERA). This submission also includes some specific recommendations and considerations for any potential future licensing scheme.

The GLA have identified the following main issues for investigation:

1.0 The prescribed grain status of lupins, canola and barley

2.0 The intent of the Act in protecting the single desk or main export licence (held by Grain Pool Proprietary Limited – GPPL) versus protecting pools, including the appropriate level and type of pooling

3.0 Information provided by the current main export licence holder, GPPL and evidence of price premiums due to market power

4.0 Transparency of GLA decisions

5.0 Potential impediments for Special Export Licence (SEL) Holders in accumulating grain and executing licences

If the ERA review recommends retaining any form of licensing system then the following issues need to be addressed:

6.0 Export controls (scope and definition) and offences applicable under any potential future licensing system

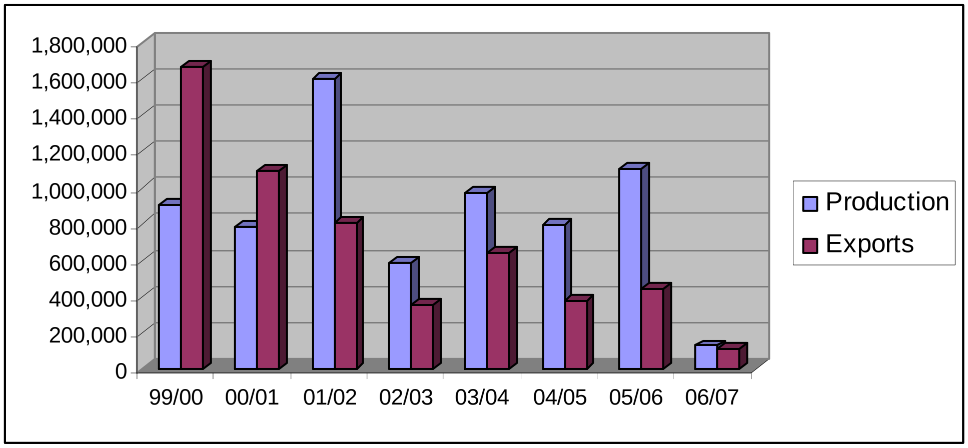
7.0 The appropriate fees and charges for licences under any potential future licensing system

1.0 Prescribed grain status of lupins, canola and barley

1.1 Lupins

Western Australia's lupin production has been declining in recent years and despite being the world's largest producer of lupins, exports have declined significantly since 1999/2000. If there was a return to normal seasonal conditions and fertiliser (nitrogen) costs continued to increase, it is possible that farmers may increase their lupin production once again.

Figure 1. WA lupin production vs exports



Note: Export may be greater than production where stock has been carried from a previous season of production

Source: ABARE Commodity Statistics and DAFWA Agrifood Infonet

At present, the majority of lupins produced in Western Australia are used on farm as animal feed, sold domestically or shipped in containers. There are some small groups emerging in the business of growing and marketing Western Australian lupins. Western Australia's main export markets for lupins are the European Union (EU), South Korea and Japan. In the feed markets, lupins can be easily substituted for other high protein feed sources such as soybean meal.

There have been only two applications for lupins both of which were approved however there were no shipments under these licences.

Table 1. SEL applications and licences for lupins

No. of applications	Tonnes applied for	No. of SEL's granted	Tonnes granted	Tonnes shipped
2	80,000	2	80,000	0

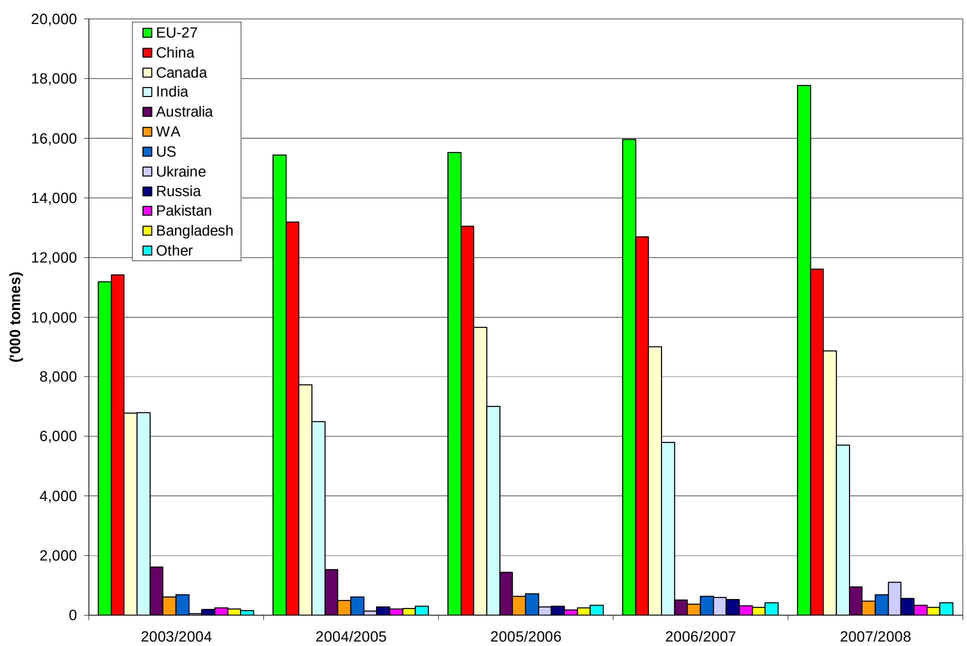
Source: Grain Licensing Authority 2008

With decreasing exportable surpluses from Western Australia and the fact that lupins can be easily substituted for other high protein feed it would seem, at present, unnecessary to retain controls on the bulk exports of lupins. If production were to return to past levels of up to 1 million tonnes per annum then opportunities would arise for industry to establish supply chains into the niche export markets.

1.2 Canola

When comparing Western Australia canola production to the rest of the world, figure 3 below highlights that the EU, Canada, China and India are the major canola producers in contrast to Australia and Western Australia which are very small producers.

Figure 3. World canola production



Source: USDA – FSA PSD online (2007) *Production, Supply and Distribution Online*

In terms of trade, Western Australia is also relatively small on the global scale. Canada is the largest exporter of canola in the world, accounting for over 75 per cent of global trade during the last five years. Australia's share of recent global canola trade has varied from 22 per cent in 2003/04 to a low of 5 per cent in 2007/08. Western Australian contribution to global canola trade has ranged from 5 per cent in 2006/07 to 11 per cent in 2003/04.

The major importers of canola are Japan, Mexico, China and Pakistan. These four countries have recently averaged 77 per cent of world canola imports. An estimated trade matrix based on a 5 year average is presented below.

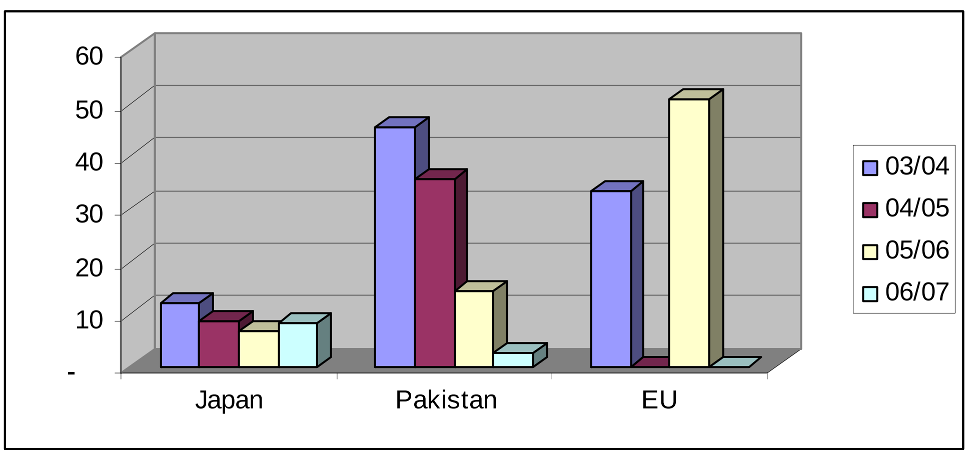
Table 2. Canola trade matrix (percentages)

		Importers			
		Japan	Mexico	China	Pakistan
Exporters	Canada	78	85	45	23
	Australia	21		41	48
	Ukraine				0
	United States	<1	5		
	EU	1	11	14	28
	Russian Federation			<1	
	Other			<1	<1

Source: UN Comtrade Data reported by Foster and French

Economically speaking, a seller would need to have at least 40 per cent market share to be able to exert market power, according to the Australian Competition and Consumer Commission (ACCC). Figure 2 below shows that even if a single desk seller had access to the entire exportable Western Australian canola crop, it would not be able to consistently maintain a 40 per cent market share in any of Western Australia's key markets.

Figure 2. WA canola market share in key markets (%)



Source: DAFWA 2008, USDA FAS Online 2008

The current main export licence holder, GPPL has in the past claimed that it can extract a premium for canola in Japan and Pakistan through the use of its 'single desk'.

The GLA has since its inception, commissioned a number of reports by independent consultants to investigate this matter. Below is a summary of conclusions from those reports.

One of the reports for canola into Pakistan concluded the following:

- *In the Pakistan market, Australia has an ongoing long term supply role.*
- *The 60-70 per cent of Australian canola produced outside of Western Australia is all freely exported into world markets.*
- *GPPL use a trading house, as its preferred partner to sell into Pakistan. In its marketing to Pakistan, GPPL does not deal directly with local buyers. GPPL claim this is to avoid counterparty risk.*
- *GPPL is hopeful that it will develop Pakistan as a market where additional premiums are available.*
- *Freight and quality premiums will be available against some competing origins and freight premiums will be available against other Australian States.*
- *If special export licences were granted for the export of canola to Pakistan, then Western Australia would still be able to achieve a similar volume of canola into this market.*

The report could not conclude that any 'single desk' marketing premiums are available.

For canola into Japan the following observations were made:

- *There does not appear to be further growth in the Japanese market, therefore all other origins entering Japan will be forced to buy entry into that market by displacing Canadian seed through discounting of price.*
- *In Japan there are now two groups controlling nearly 80 per cent of the market. Mergers are likely to continue and lead to some further rationalizing of the market in the form of plant closures and the construction of more modern and larger capacity facilities.*
- *Canadian Canola FOB prices are the same to all destinations and show no specific premium exists in any market other than the origin freight advantage.*
- *Canola is a global market place. In today's markets we can see just how volatile prices can be. In Canada, the market operates openly and prices are discovered daily to the benefit of the grower. There is true competition in the market between the buyers and daily events that bring price volatility. The variety of contract options that the Canadian industry provides, offers flexibility to the farmer and allows them to make sound marketing decisions.*
- *It would appear to be logical that Western Australia, which clearly finds its price direction from open market prices in Canada, should also consider opening the market up to increased competition. There is very little doubt that when a farmer has something to sell, his options are better where there are more buyers than sellers.*

- *The main benefit presented in support of single desk selling is the ability of single desk sellers to extract a price premium from the exercise of market power.*
- *However, the existence of a price premium depends upon a crucial assumption of the existence of a highly oligopolistic market structure - that is a market structure dominated by a few firms in which these firms are able to control information and the flow of substitutes. If anything, the market place for canola appears to becoming more, rather than less, transparent as is evidenced by the very thin margins available from trading and the increasing reliance by traders to extract margins from a offering a range of services and quality specifications.*
- *Most importantly, there is a contradiction involved with the exercise of market power by an organisation that seeks to develop close relationships with its end users to extract price premium on the basis of service and quality provision, as the two would appear to be mutually exclusive.*
- *It would appear that the GPPL's single desk selling powers provides little or no scope to achieve a premium when selling canola from the exercise of market power. Other 'benefits' of the single desk such as ensuring quality, savings by shipping C&F and year-round supply can be achieved without the single desk.*

In addition to these reports, there were also the independent assessments of price premiums due to market power conducted by Advance Trading Australia in 2006, Storey Marketing Services in 2005 and Farm Horizons in 2004. These all concluded that due to the highly competitive nature of the international grain market and GPPL's relatively small market share in most key canola markets, it was unlikely GPPL would be able to exert market power.

In view of the findings above, the GLA has little evidence of price premiums due to market power. With the existence of a transparent and liquid forward market for growers to utilise there appears to be little justification to support single desk marketing for canola.

1.3 Barley

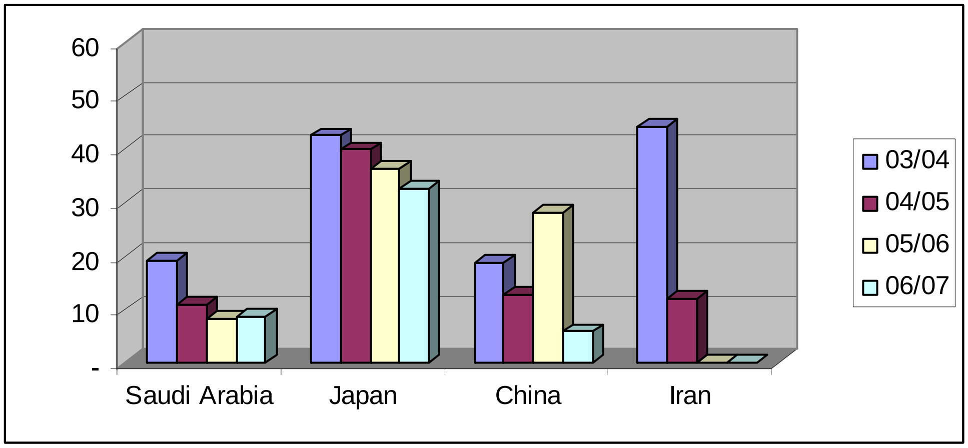
Western Australia's main markets for barley include Japan (feed and malting), Saudi Arabia (feed) and China (malting barley).

The three independent assessments on price premiums due to market power indicated there is potential for price premiums for Western Australian feed and malting barley into Japan.

Japan consumes approximately 1.65 million tonnes of barley per annum and there is no indication that it will show a significant increase in the near future. On the contrary, some decline is expected as Japan's cattle population shrinks.

Western Australia consistently supplies one third of Japan's total barley imports, but has rarely supplied over 40 per cent of Japan's total imports. Western Australia's market share for barley Japan has ranged from 32 per cent to 42 per cent in recent years. The majority of barley supplied is for feed purposes.

WA barley market share in key markets (%)



Source: DAFWA, 2008 and USDA FAS Circular Series FG 09-09, Sept 2007.

Japanese markets are highly regulated through the Simultaneous Buy and Sell (SBS) system. The SBS system was introduced in 1999 for feed barley and in 2007 for barley used for human consumption (i.e. malting barley). It limits the number of companies allowed to export to Japan and can serve to inflate prices relative to other markets. GPPL has excellent access into the Japanese market through long established relationships.

Given that GPPL holds a sizeable and consistent market share, is subject to less competition through Japanese regulation, and has good market access there is potential for GPPL to exert market power and extract price premiums.

GPPL therefore place high importance on the Japanese markets by maximising the quantity (feed and food grade) it supplies. This means that in smaller production years they limit supplies to other markets such as Saudi Arabia.

The GLA has commissioned independent reports on feed barley to Saudi Arabia and the conclusions from the most recent report prepared in 2006 are presented below:

- *The Saudi Arabian barley represents about 52 percent of the world feed barley trade. In times of surplus barley, all roads lead to Saudi Arabia.*
- *Saudi Arabia is an extremely flexible and price conscious market. They source barley from all origins and on average buy about 6 million metric tonnes per annum.*
- *The import subsidy to control domestic prices is an important factor as to when and from which origin Saudi Arabia import barley. When the combination of subsidy and world price reflect an attractive barley price compared to other feed stocks large purchases of world price barley will take place.*
- *Due to their geographical location, Europe and Eastern Europe have more options for barley destinations than do the other major exporters like Australia, Canada and the United States of America (USA).*
- *Statistics suggest that the EU 25 and Eastern Europe are the most consistent suppliers into the Saudi feed barley market.*
- *For Australia, Canada and Australia, the Saudi Arabian market is extremely important because of its capacity to take large vessels and thus to level the playing field on freight costs. In a surplus market all must compete into this market.*
- *There is little evidence of single desk power in Saudi Arabia. All barley origins do business in Saudi Arabia, and there are very large annual volume variations for the two single desk shippers, Australia and Canada. For example, over a five year period, Australian exports have ranged from a low of 2.5 percent (203,000 tonnes) of Saudi imports to a high of 58.9 percent (3,119,000 tonnes). The cumulative average from 2001 to 2005 is 22.5 percent.*
- *In times of surplus, both Australia and Canada need to be price setters to attract market share.*
- *If third party licenses were not available through the GLA, Western Australia would be the only single desk seller into Saudi Arabia (apart from South Australia). The Canadian Wheat Board sells most of the barley destined to Saudi Arabia via Canadian based or multinational trading companies.*

The GLA has also conducted a cash price analysis for barley to determine whether Western Australian barley prices have increased or decreased, in comparison to other States of Australia, since the commencement of GLA operations in 2003.

The analysis was based on a regression analysis model, incorporating prices offered from 2000/01 to 2002/03 seasons (before GLA) and 2003/04 to 2006/07 seasons (after GLA).Variation attributable to seasonal (annual production) and weekly conditions were removed.

For feed barley, the analysis showed that Fremantle cash prices significantly increased by an average of $11.32 per tonne more than Adelaide cash prices.

A South Australian port should be considered a good comparison for prices in a regulated market versus prices in a deregulated market. South Australia is the most similar to Western Australia in terms of the high proportion of grain exported and for the time period analysed, South Australia barley marketing was still operating under a single desk arrangement.

South Australian barley marketing is now virtually deregulated, but it would be too early to tell what impact the change has on cash prices offered to farmers in South Australia compared to those in Western Australia.

For malting barley, the cash price analysis showed that prices in Western Australia declined significantly less than any of the other States, with a difference of $11.40 per tonne between Fremantle and Adelaide prices.

Western Australia's main market for malting barley is China. The most recent market analysis commissioned by the GLA on the Chinese market for malting barley is presented below:

- *Australian malting barley has gained a good name in China; and on average, Australian malting barley has historically occupied a majority (60%) of the China import market. Prospects are good for Australia to substantially expand its export of barley to China in the years ahead. This may be tempered by seasonal availability.*
- *Chinese imports of malting barley have increased dramatically reflecting the reduced domestic production together with a robust 5-6 per cent annual increase in beer consumption.*
- *Continued beer demand growth combined with lack of ability to expand domestic production of malting barley and high import tariffs on malt would indicate that the outlook is for continued strong growth in imports of barley for malting purposes.*
- *The ability of any single seller to compete in such an environment will be governed by their ability to be consistently price competitive against suppliers from other origins.*
- *To increase market share in China, consideration should be given to offering high quality technical training, which highlight the benefits of Australian malt barley varieties.*
- *In order to maintain its international market share, Australia needs to produce an extra 1.5 million tonnes of malting barley by 2010. Meaning, by 2010, markets will exist for Australian production of around 3.7 million tonnes of malting barley per annum.*
- *Historically, the Chinese barley trade has been government controlled and monopolized by COFCO. COFCO was the first to introduce Australian barley into China. Although COFCO lost its monopoly of barley import in 1995, they are still the biggest malting barley buyer in China.*

- *China's malting barley market is now free and open. Australia, Canada and France are China's main suppliers of malt barley. In addition, China has also imported malting barley from USA, New Zealand, Spain, Britain, Denmark and South Africa.*
- *Australia is a price taker as the returns for malting barley are determined by the market. Whilst there is short-term opportunity for price control due to seasonal supply considerations, this opportunity would be open to all sellers because of market transparency.*
- *GPPL claim to only sell malting barley quality as opposed to feed to maintain good relationships, continued market access and better returns for growers*
- *It appears that GPPL exports to China have been direct to end users but also to trading houses. They do not sell to Northern China. These factors would make it more difficult to exert market power.*
- *There is little evidence that GPPL actively promote West Australian malting barley in China in comparison to the Canadian Wheat Board (CWB) for example.*
- *In a free market, growers have absolute control over the timing of sales, the degree of finance they are prepared to bear, risk assessment, and ultimately the income they receive for their production – in short it is the international trader who assumes the majority of the risk. A regulated marketing system however forces this risk onto the producer.*
- *Malting barley is increasingly becoming a "specialty crop" as maltsters continue to tighten the quality specifications and demand a higher level of quality control through the supply chain. Growth in contracting malting barley directly with producers will continue to provide less price transparency on the world market.*

The GLA is of the view that for barley, there is potential for price premiums due to market in Japan, but such premiums are much less likely to be extracted from Saudi Arabian and Chinese markets. Given the increase in cash prices that Western Australian growers have received for their barley in comparison to South Australian growers, it is also clear to the GLA that partial deregulation has benefited Western Australian growers.

2.0 The intent of the Act in protecting the single desk or main export licence (GPPL) versus protecting pools, including the appropriate level and type of pooling)

Whilst the one of the purposes of the Act is to increase competition, the ministerial guidelines issued for the GLA, indicate that is not to be done at the expense of the benefits of single desk marketing. More specifically the GLA are required to protect any price premium that can be leveraged by the existence of the main export licence holder, through its ability to control and manage the market place.

The guidelines also state that the GLA should protect the State's reputation as a grain exporter and take into account other factors such as the main export licence holders marketing strategy and ability to enter into and supply long term agreements before making decisions on whether to grant a special export licence.

The GLA had initially interpreted single desk or main export licence to mean the operation of the traditional pooling systems.

Over the past 18 months in particular, there has been a trend by farmers to sell an increasing proportion of prescribed grains for cash.

It also appears that GPPL are moving away from providing the traditional pooling options that growers were accustomed to and that the GLA assumed the Act was intended to protect. The traditional harvest pools which were open to everyone for the whole season have become less common as premium and contract pools are introduced. Contract pools are short-term fixed tonnage pools, not necessarily open to everyone and can close at any time without prior notice, in order to protect the price for growers who committed to the pool early in the season. This type of pooling seems to be in contradiction with the original propositions put forward for the benefit of pooling and a single desk approach which was to hold grain in pools for up to 18 months, until the opportunity arose to exert market power and extract a premium. The benefit of this was that over the life of the pool, the average price and returns for growers would be higher.

The GLA has protected the main export licence by declining SEL applications that may have a negative impact on GPPL's pool marketing strategies and ability to supply on long term agreements.

Given the main export licence incorporates GPPL's cash trading entity, Agracorp, who is not required to apply for an SEL (because all grain is lawfully owned by GPPL), it is difficult for the GLA to ascertain to what extent it can protect pool returns to growers. In a market where the majority of grain is sold for cash, it would be reasonable to suggest that the GLA could potentially end up protecting one cash trader against all others.

The review of the Act should investigate whether the purpose of the *Grain Marketing Act 2002* or any future legislation that might be introduced is to protect the main export licence (GPPL) irregardless of whether it markets grain using pools or whether it is to protect pools (a definition of a pool would be needed) and the subsequent market power and price premiums that single desk holders claim they can extract from running these pools.

3.0 Information provided by the current main export licence holder, GPPL and evidence of price premiums due to market power

The main export licence holder, GPPL, provides market reports to the GLA that summarise its main export sales and give a general overview of its marketing strategies. The information provided does not provide conclusive evidence that price premiums are being achieved.

This has meant the GLA has had to use other means to determine the potential for price premiums due to market power.

The GLA has in the past commissioned three independent assessments of the existence of price premiums due to market power. Advance Trading Australia in 2006, Storey Marketing Services in 2005 and Farm Horizons in 2004 all concluded that due to the highly competitive nature of the international grain market and GPPL's relatively small market share into most key markets, it was unlikely GPPL would be able to exert market power. As per Section 1.3, the assessments did, however, suggest that there may be some potential in the Japanese feed barley market.

Whilst the combination of information from various sources has been sufficient for the GLA to function, the GLA feels that to improve the decision making process, access to more detailed information is required.

Any future legislation should consider specifying the information to be provided by the main export licence holder and include actionable consequences or penalties for non compliance.

4.0 Transparency of GLA decisions

Some parties might argue that to improve the transparency of a licensing process, applicants should be able to determine their chances of a successful application. The Act is highly subject to interpretation and with new and different factors being taken into account as the grain marketing environment changes over time, the system may be considered somewhat subjective.

The GLA advises applicants in advance of each season (through its operating procedures) of the factors that will be considered and the weighting given to certain to assessment criteria. However, because of the commercially sensitive nature of the information provided by GPPL and SEL applicants in relation to a specific application (ie market destination, end customer, marketing strategy, pricing etc) and the fact that the analysis is not conducted until the applications and information is received from all relevant organisations, it is not possible to guarantee an applicant whether or not they will be successful.

The GLA believes that the assessment criteria does adequately reflect the purpose of the Act but the purpose is not only to maximise the benefit of market competition as stated in the ERA Issues Paper but also to protect the benefits of a single desk. One issue is that the benefits of a single desk are debatable and not clearly defined in the Act.

5.0 Reasons for volumes exported under SEL's being significantly less than the volumes granted by the GLA

The GLA cannot explain with any certainty why there is less grain being exported than what is being granted since it does not know the volumes being acquired by the marketers or the volumes being sold domestically.

As per the GLA annual report for the 2006/07 season, SEL holders have cited in addition to poor seasonal conditions for that season, the following on-going impediments to shipping under their licences:

- Restrictive nature of the licensing system (i.e. limiting destinations/buyers means that there is increased risk of a deal not coming to fruition);

- CBH storage and handling fees and charges (i.e. export accumulation fees);
- Lack of options for swap stocks (GPPL own the majority of the grain in the CBH system but don't have an economic imperative to swap it);
- Cost of stock swaps (only marginally cheaper than the export accumulation fee).

CBH maintain that it is in their best interest to provide high standards of service to all of their customers and that pricing of services is related to the costs.

The GLA are not in a position to either substantiate or reject these claims but feel these should be thoroughly investigated by the ERA. If any of these factors prevent marketers from accumulating, storing and out-loading grain under the same conditions as any other marketer such as the GPPL, it might be considered anti-competitive behaviour, in which case the Act would not be having the intended effect.

6.0 Export controls and offences under the Act

Under Section 23 of the *Grain Marketing Act 2002* it is an offence to buy prescribed grain for export in bulk without a licence. It is practically impossible for the GLA to determine whether or not grain has been bought without a licence because even if it was bought with the intention of exporting it in bulk, the owner can maintain that the intention was to sell to the domestic market, the main export licence holder (GPPL) via the traders pool or to another SEL holder.

Under Section 24 of the *Grain Marketing Act 2002* it is an offence to export prescribed grain in bulk without a licence. Whilst the GLA has been able to extract information from other government departments and CBH Ltd to determine whether there has been a breach, the legislation does not specially provide the GLA with powers to access or instruct another agency to provide this information.

7.0 Special Export Licence application and annual licence fees

Most applications received by the GLA are for 35,000, 50,000 or 60,000 tonnes of grain which is one bulk shipment depending on the size of the vessel. The sliding scale structure does not relate to shipments sizes nor to the cost of assessing an application which is the same regardless of the number of tonnes applied for.

As long as the fee amount still serves to ensure that only marketers who are financially resourced to pay growers and are committed to export will actually apply for licences, it would not seem necessary to retain a sliding scale structure for application fees. One flat fee in the range of $15,000 to $20,000 might be more appropriate and would (based on previous operating expenditure) cover the cost of the SEL application process.

The $500 annual licence fee does not cover the cost involved in actually issuing a licence, amending a licence, managing the feed back process, ensuring licence conditions are met and coordinating the grain quality testing regime.

It has become more common for SEL holders to request amendments to their existing licence and since each request has to be processed and considered by the members there are costs involved. Costs are higher when a change in market destination or end users is requested. Often the GLA has to decide whether the changes are significant enough to warrant a new application.

The grain quality testing regime was introduced amid claims that sub-standard quality grain was being exported and serves as a tool for the GLA to monitor exporter performance and protect the State's reputation as a grain exporter however it also has costs. An annual licence fee of approximately, $2,500 would more adequately reflect the real cost involved.

The GLA also believes that the annual licence fee should apply to one shipment of grain per production season. Therefore if a licence is granted early in the season, or more than one year before the shipment occurs, the licence holder would only be required to pay one fee as opposed to one every financial or calendar year (part or whole) that the licence is held for.

Appendix Two: World ending stocks for coarse grain, barley and canola

Table 1. **World coarse grain supply and demand (million tonnes)**

	2006/07	2007/08 est	2008/09 forecast
Opening stocks	183.9	154.4	155.5
Production	987.7	1,077.9	1,052.7
Total supply	110.4	126.1	115.5
Use	1,171.5	1,232.3	1,208.2
- Food	150.1	153.2	152.4
- Industrial	173.1	202.9	230.6
- Feed	637.3	665.0	642.4
Total Use	1,017.1	1,076.8	1,077.4
Exports	110.4	126.1	115.5
Closing stocks	154.4	155.5	130.8

Source: International Grains Council, 2008

Table 2. **World barley supply and demand (million tonnes)**

	2006/07	2007/08 est	2008/09 forecast
Opening stocks	33.1	25.3	19.8
Production	138.7	134. 9	145.6
Total supply	15.5	14.4	16.3
Use	171.8	160.1	165.4
- Food	7.7	7.7	7.6
- Industrial	27.1	27.3	28.0
- Feed	102.3	95.9	99.3
Total Use	146.5	140.3	144.1
Exports	15.5	14.4	16.3
Closing stocks	25.3	19.8	21.3

Source: International Grains Council, 2008

Table 3. World Oilseed Supply and Demand, 2004/05-2008/09 (million tonnes)

	2008/09F	2007/08	2006/07	2005/06	2004/05
Opening stocks	69.4	83.1	73.1	64.8	48.0
Production ….	**412.0**	**383.4**	**397.4**	**383.2**	**372.3**
Thereof: soybeans	*241.3*	*222.7*	*237.4*	*222.0*	*216.6*
Cotton seed	*43.7*	*43.9*	*44.4*	*42.8*	*45.2*
Groundnut, shelled	*24.5*	*24.2*	*22.8*	*24.1*	*23.7*
Sunflower seed	*31.9*	*28.3*	*29.8*	*30.3*	*26.4*
Rapeseed / canola	*53.7*	*48.1*	*47.8*	*49.3*	*46.3*
Palm kernels (b)	*11.8*	*11.0*	*10.1*	*9.7*	*8.9*
Copra (b)	*5.2*	*5.2*	*5.0*	*5.1*	*5.2*
Total supplies …	**481.4**	**466.5**	**470.5**	**448.0**	**420.3**
Disappearance	**410.0**	**397.1**	**387.4**	**374.9**	**355.5**
Thereof: soybeans	*240.6*	*234.1*	*225.7*	*214.7*	*204.5*
Sunseed	*31.5*	*28.0*	*30.7*	*30.1*	*26.3*
Rapeseed	*52.9*	*50.2*	*48.8*	*48.3*	*43.1*
Other oilseeds	*85.0*	*84.8*	*82.2*	*81.8*	*81.6*
Ending stocks	**71.4**	**69.4**	**83.1**	**73.1**	**64.8**
Thereof soybeans	*61.2*	*60.5*	*71.9*	*60.1*	*52.8*
Stocks/usage (a)	**17.4**	**17.5%**	**21.5%**	**19.5%**	**18.2%**
Thereof soybeans	*25.4%*	*25.9%*	*31.8%*	*28.1%*	*25.8%*

(a) Stocks in % of preceding 12 months' disappearance. (b) Calendar year, i.e. 2nd of split year.

Source: Oil World 12 October 2007.

Appendix Three: GLA operating procedures 2008/09 season

Operating Procedures 2008/09 season

The Grain Licensing Authority (GLA) is the regulatory Authority for prescribed grains in Western Australia (WA). The GLA operates under the *Grain Marketing Act 2002* to protect:

1. any market power and consequent price premiums that may exist for the main export licence holder,
2. the State's reputation as a grain exporter and
3. the State's grain industry generally.

The GLA operates on a cost recovery basis. If the amount of revenue received from the Main Export Licence (MEL) holder and Special Export Licence (SEL) applicants exceeds the State's expenses in administering the Act the excess is repaid as a rebate.

The GLA is adopting the following operating procedures for the 2008/09 season:

- All applications and information supplied to the GLA will be treated as confidential.
- Every SEL application will be assessed on its merits, taking into consideration the Act, Ministerial Guidelines and the operating procedures set out in this document.
- The GLA will base its decisions on the evidence presented to it and all stakeholders are encouraged to supply as much information as possible to the GLA in support of their position. In conducting its assessments, the GLA undertakes its own market research and analysis, collecting information from various independent sources as well as from the MEL holder and SEL applicants.
- In regards to its decisions, the GLA will, for each season, make the following information available on its website www.gla.wa.gov.au :
    - total tonnes applied for by grain type and market
    - total tonnes granted and declined by grain type and market
    - total tonnes shipped to date under SELs

Assessment criteria and application fees

- The GLA will take into account an applicants' history in international commodity trade, their history as a fair trader and where relevant their past performance in complying with SELs and whether or not grain has been shipped under these licences.
- The GLA will give preference to issuing licences for new market opportunities and into countries, or to customers, which are not currently serviced by the MEL holder. Applicants need only specify customers when applying for an SEL for canola or barley to Japan, barley to China and barley to Saudi Arabia.
- The GLA will take into consideration any price premium due to market power.
- The GLA will take a cautious approach to granting licences until a firm estimation of seasonal conditions and crop size is available. Additionally the GLA is not likely to grant licences for more than 60,000 tonnes per prescribed grain per application per season.
- Consideration of the effect a grant of a licence would have on the State's reputation as a grain exporter and the State's grain industry in general will be particularly relevant to applications for multiple seasons, for numerous markets and customers.
- Section 29 (3) of the Grain Marketing Act contemplates a licence being granted to authorise both buying of grain for export *and* the export of that grain. Consequently an application for a licence should be made before the grain to be exported is purchased.

- Applications for SELs are deemed to be received when all components of the application and the application fee is received by the GLA. The application will not be processed until the fee is received.
- Application fees are based on the total number of tonnes for all seasons applied for in one application. *For example an application of 50,000 tonnes per annum over 3 years will attract a fee $20,000 as the total number of tonnes is 150,000.*

For 20,000 tonnes or less	$5,000
For more than 20,000 tonnes but not more than 50,000 tonnes	$10,000
For more than 50,000 tonnes	$20,000

- As per section 6 of the *Grain Marketing Regulations 2002*, if the amount paid for a SEL application fee exceeds the State's expenses attributable to the deciding of the application and the determination of any appeal, the excess funds will be rebated following publication of the notice required by regulation 8. This will be as soon as practicable after the end of the financial year in which the fee was received.

Licence conditions and fees

- A $500 annual licence fee will be payable upon grant of a licence and on the anniversary of the date the licence was granted each year the licence remains in effect.
- Matters specified on a licence will include the name of the licence holder, type of prescribed grain, the season and quantity, the country, the customer if required (canola or barley to Japan, barley to China and barley to Saudi Arabia), the licence term and the quality of grain to be shipped. The licence will also be subject to the following conditions:
    - Consent for GLA to monitor quality by taking grain samples from every export shipment (this operation will not incur additional costs for the SEL holder).
    - Grain volume level does not exceed 5% variation.
    - Within 21 days of ship departure, forward to the GLA the completed feedback form, copy of the bill of lading, variety declaration form and skeleton weed levy form
    - Payment of crop improvement royalties (where appropriate) and levies.
    - Any other conditions imposed by the GLA specific to a particular application.
- The GLA will consider amendments to licences only if sufficient justification can be provided. These must be submitted in writing.
- Under Section 36 (3) a licence is not transferable.

Appeals

- Under section 40 (3) of the Act, any applicant who is aggrieved by a licensing decision of the Authority, may within 30 days after receiving notice of the decision appeal to the Minister in writing. The Minister will make a determination within 30 days of the notice being received. Any costs associated with the determination of an appeal will be deducted from any potential rebate due to the applicant. For further information on the appeal process, please contact the Office of the Minister for Agriculture and Food on (08) 9213 6700 or e-mail kim-chance@dpc.wa.gov.au.