

Explanatory Statement

Issued by Authority of the Minister for Infrastructure and Transport
Competition and Consumer Act 2010
Competition and Consumer (Inland Terminals) Declaration 2017

Legislative authority

Subsection 10.02A(1) of Part X of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may, by legislative instrument, declare that a specified facility is an inland terminal for the purposes of this Part. The *Competition and Consumer (Inland Terminals) Declaration 2017* (the Instrument) is a legislative instrument for the purposes of the *Legislation Act 2003*.

Purpose

The Instrument declares specified facilities as inland terminals for the purposes of Part X. The inland terminals must be in Australia, but outside a designated port area (subsection 10.02A(2)). The purpose of declaring inland terminals is to allow liner shipping companies who are parties to registered liner shipping conference agreements under Part X of the Act to extend their Part X exemptions for liner shipping services to/from port terminals to include liner shipping services to/from declared inland terminals. This is intended to improve the movement of containers away from ports to inland distribution centres, relieving congestion in and around Australia's major ports. The instrument only relates to exemptions for liner shipping services operating under a registered conference agreement. The instrument gives no particular rights to the owners of the declared inland terminals themselves.

Background

The Minister for Infrastructure and Transport administers Part X of the Act. Part X of the Act provides limited conditional exemptions from competition rules that would otherwise prevent restrictive trade practices (section 45 and 47 of the Act). International liner shipping companies may form agreements relating to the provision of cargo shipping services and seek registration of such agreements under Division 6 of Part X. If an agreement is registered under Part X, international liner shipping companies may collaborate as conferences to coordinate joint services, share capacity and agree on freight rates. Liner shipping comprises scheduled services for non-bulk cargo, mostly carried in containers.

Impact and Effect

The Instrument revokes the previous instrument made under subsection 10.02A(1) of the Act (the *Instrument of Declaration of Inland Terminals 2008*, Instrument No: Part X 10.02A 1/2008) and declares that each of the facilities listed in the Schedule is an 'inland terminal' for the purposes of Part X.

Consultation

The Department of Infrastructure and Regional Development (the Department) consulted with peak industry shipping bodies as part of the review process. These bodies represented the main stakeholders for the administration of Part X of the Act and were the same stakeholders consulted in the 2008 review. The Australian Competition and Consumer Commission and a peak shipping body which represents international liner shipping companies operating on Australia's trade routes were also consulted. The Department also consulted with peak shipper bodies (representing the customers of the shipping lines) designated under Part X.

Consultation was also conducted within the Department with relevant branches and other relevant government agencies. The Statement of Compatibility with Human Rights was consulted with the Attorney General's Department.

The consultation process included providing the existing instrument, the proposed new instrument and an analysis of the proposed changes to internal and external stakeholders for comment. The consultation process requested feedback/comments on the proposed new instrument to be provided to the Department within a certain time period. Stakeholders responded indicating support for the proposed changes to the current instrument.

At the end of the consultation period, the Department considered the comments provided prior to finalisation of the proposed new instrument. Following signature of the new instrument, the Department wrote to stakeholders on 24 August 2017 and provided them with a copy of the signed instrument.

Regulation Impact Statement

The Office of Best Practice Regulation was consulted and advised that a Regulation Impact Statement was not required (OBPR ID 21589).

Statement of Compatibility with Human Rights

The Instrument is compatible with the human rights and freedoms recognised or declared under Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full Statement of Compatibility with Human Rights is attached.

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011
Competition and Consumer (Inland Terminals) Declaration 2017*

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The Minister for Infrastructure and Transport administers Part X of the Act. Part X provides limited conditional exemptions from competition rules that would otherwise prevent restrictive trade practices (section 45 and 47 of the Act). International liner shipping companies may form agreements relating to the provision of cargo shipping services and seek registration of such agreements under Division 6 of Part X. If an agreement is registered under Part X, international liner shipping companies may collaborate as conferences to coordinate joint services, share capacity and agree on freight rates. Liner shipping comprises scheduled services for non-bulk cargo, mostly carried in containers.

The *Competition and Consumer (Inland Terminals) Declaration 2017* (the Instrument) declares specified facilities as inland terminals for the purposes of Part X. The inland terminals must be in Australia, but outside a designated port area (subsection 10.02A(1)). The purpose of declaring inland terminals is to allow liner shipping companies who are parties to registered liner shipping conference agreements under Part X of the Act to extend their Part X exemptions from port terminals to declared inland terminals. This is intended to improve the movement of containers away from ports to inland distribution centres, relieving congestion in and around Australia's major ports.

This Instrument revokes the previous instrument made under subsection 10.02A(1) (the *Instrument of Declaration of Inland Terminals 2008*, Instrument No: Part X 10.02A 1/2008) and declares that each of the facilities listed in the Schedule is an 'inland terminal' for the purposes of Part X.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Darren Chester MP

Minister for Infrastructure and Transport