

## **Explanatory Statement**

Issued by Authority of the Minister for Infrastructure, Transport and Regional Development  
*Competition and Consumer Act 2010*  
Instrument of Competition and Consumer (Designated Shipper Bodies) Amendment  
Declaration 2019

### **Legislative Authority**

Section 10.03 of Part X of the Competition and Consumer Act 2010 (the Act) provides that if the Minister is of the opinion that an association represents the interests, in relation to outwards or inwards liner cargo shipping services, of Australian shippers, the Minister may, by legislative instrument, declare that the association is a designated shipper body for the purposes of Part X of the Act. The Instrument of Competition and Consumer (Designated Shipper Bodies) Amendment Declaration 2019 (the Instrument) is a legislative instrument for the purposes of the Legislation Act 2003.

### **Purpose**

The Instrument amends the Competition and Consumer (Designated Shipper Bodies) Declaration 2018 to specify that the Australian Peak Shippers Association is a designated inwards peak shipper body for the purposes of Part X. A designated inwards peak shipper body represents the interests, in relation to inwards liner cargo shipping services, of Australian shippers generally.

Part X of the Act provides Australian exporters and importers with countervailing powers to strengthen their negotiating ability with conferences. Under Section 10.41 of the Act, parties to a registered conference agreement are to take part in negotiations with the relevant designated shipper body in relation to negotiable shipping arrangements.

### **Background**

The Minister for Infrastructure, Transport and Regional Development is the Minister responsible for 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 liner cargo shipping services and seek registration of such agreements under Division 6 of Part X of the Act. If an agreement is registered under Part X of the Act, 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.

### **Consultation**

The Department consulted with peak industry shipping bodies (representing the customers of the shipping lines) and those associations currently declared peak or secondary shipper bodies in late 2017. These organisations represent industry stakeholders for the administration of Part X of the Act.

The consultation process included providing the then existing Instrument and an extract of the Act referring to the role of a peak or secondary shipper body to stakeholders for comment. The shipper bodies were requested to provide feedback/comments and nominations for declaration as a peak or secondary shipper body. In the absence of any Designated Peak Inwards shipper body, further consultation was undertaken in 2018 to fill this role.

Consultation was also conducted with relevant government agencies. The Attorney General's Department was consulted on the content of the Statement of Compatibility with Human Rights.

Following signature of the new Instrument, the Department will provide copies to stakeholders and arrange for publishing on the Federal Register of Legislative Instruments.

### **Regulation Impact Statement**

The Office of Best Practice Regulation was consulted and advised that a Regulation Impact Statement is not required (OBPR ID 22770).

### **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*  
Instrument of Declaration of Competition and Consumer (Designated Shipper Bodies) Amendment  
Declaration 2019 Pursuant to Subsection 10.03 of the Competition and Consumer Act 2010

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, Transport and Regional Development is the Minister responsible for Part X of the Competition and Consumer Act 2010 (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). International liner shipping companies may form agreements relating to the provision of cargo shipping services and seek registration of such agreements under Division 6, Part X of the Act. If an agreement is registered under Part X of the Act, 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 Instrument amends the Competition and Consumer (Designated Shipper Bodies) Declaration 2018 to specify that the Australian Peak Shippers Association is a designated inwards peak shipper body for the purposes of Part X. Designated shipper bodies represent the interests of Australian shippers. Part X of the Act provides Australian exporters and importers with countervailing powers to strengthen their negotiating ability with conferences. Section 10.29 of the Act requires parties to a provisionally registered conference agreement to take part in negotiations with the designated peak shipper body or if there is not at that time a designated peak shipper body, the designated secondary shipper body nominated by the Registrar for the purposes of Section 10.29 of the Act.

In accordance with Section 10.41 of the Act, parties to a registered conference agreement shall take part in negotiations with the relevant designated shipper body in relation to negotiable shipping arrangements (including any provisions of the agreement that affect those arrangements) whenever reasonably requested by the shipper body, and consider the matters raised, and representations made, by the shipper body.

### **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 the Human Rights (Parliamentary Scrutiny) Act 2011 as it does not raise any human rights issues.

**The Hon Michael McCormack MP**

**Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development**