

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry for the Assistant Minister for Competition, Charities and Treasury

Competition and Consumer Act 2010

Competition and Consumer (Industry Code-Port Terminal Access (Bulk Wheat)) Amendment (Review) Regulations 2022

Legislative Authority

Section 51AE of the *Competition and Consumer Act 2010* (the Act) provides that regulations may prescribe an industry code or specified provisions of an industry code and declare that industry code to be a mandatory industry code or a voluntary industry code.

Section 139G of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed for carrying out or giving effect to the Act.

Schedule 1 of the *Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014* (the Principal Regulation) prescribes a mandatory industry code, the *Port Terminal Access (Bulk Wheat) Code of Conduct* (the Code).

Purpose

The *Competition and Consumer (Industry Code-Port Terminal Access (Bulk Wheat)) Amendment (Review) Regulations 2022* (the Regulations) amend subsection 5(2) and repeal section 6 of the Principal Regulation to provide that a second review of the Code be commenced no later than three years after commencement of this instrument.

Background

The objectives of the Code are to: promote the operation of an efficient and profitable bulk wheat export industry; provide a regulatory framework to ensure all bulk wheat exporters have port terminal access; and reduce unnecessary regulatory burden on port terminal service providers.

‘Bulk wheat’ is defined by section 3 of the Principal Regulation as wheat to be loaded onto a ship for export. Bulk wheat does not include wheat to be exported in a bag or container that is not capable of holding more than 50 tonnes of wheat.

The Principal Regulation commenced on 30 September 2014. The previous version of subsection 5(2) of the Principal Regulation provided that a review of the Code was required to begin within three years of the commencement of this subsection. The then Department of Agriculture and Water Resources, now the Department of Agriculture, Fisheries and Forestry (the department) was tasked with conducting this review.

The department released terms of reference and an issues paper in September 2017 to start the first round of consultation. A second round of consultation on an interim report occurred between April-June 2018. The *2018 Review of the Wheat Port Access Code of Conduct* (the Review) was released on 18 October 2018. The Review made 12 recommendations.

Relevantly, the Review noted that Section 6 of the Principal Regulation requires a second review of the Code to start six to eight years after commencement of the Principal Regulation. In effect, this means that a second review of the Code would have to commence no later than 30 September 2022.

The Review concluded at recommendation 1 that, given the need to gather evidence on the efficacy of an amended Code, the Code should be reviewed again in 2022.

Given the complexity of the export wheat supply chain, extensive consultation with industry and the Australian Competition and Consumer Commission (ACCC) has continued to occur. As a result, the recommendations of the first review have not yet been implemented. For any second review of the Code to be meaningful for stakeholders, it would be of benefit for an amended Code to operate for a sufficient period of time to allow evidence to be gathered on its efficacy. As such, the second review of the Code should not commence as originally anticipated by September 2022, but should commence at a later date.

Consultation

The department has consulted with Treasury and the Department of the Prime Minister and Cabinet regarding the Proposed Regulations' amendments to the Code. Matters raised during consultation were taken into account in relation to the underlying policy and the drafting of the Regulations.

The Office of Best Practice Regulation (OBPR) has been consulted and has confirmed that the proposed amendment is a minor amendment requiring no Regulatory Impact Statement.

Impact and Effect

The Regulations amend subsection 5(2) and repeal section 6 of the Principal Regulation. The effect of these amendments, read together, is to delay the commencement of the second review of the Code to start no later than three years after commencement of the Regulations. This means that the review of the Code would be required to commence by 2025.

A more extensive amendment to the Principal Regulation would be required to implement any of recommendations 2 to 10 of the Review. If the Principal Regulation is amended in this way, the Regulations will allow a period of up to three years for an amended Code to operate, which should allow sufficient time to gauge the effect of the amendments for a second review of the Code.

The Principal Regulation is scheduled to sunset on 1 October 2024. The Regulations do not seek to pre-empt the Australian Government's response to the sunset of the Principal Regulation by allowing for a review to take place after this date. A decision to re-make the Principal Regulation before sunset will occur in line with standard processes and may involve considering the recommendations of the Review.

Details/Operation

Details of the instrument are set out at [Attachment A](#).

Other

The Regulations are 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 is set out at [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence the day after this instrument is registered.

Details of the *Competition and Consumer (Industry Code-Port Terminal Access (Bulk Wheat)) Amendment (Review) Regulations 2022*

Section 1 – Name

This section provides that the name of the instrument is the *Competition and Consumer (Industry Code-Port Terminal Access (Bulk Wheat)) Amendment (Review) Regulations 2022* (the Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Item 1 in the table provides that the whole of the Regulations commence the day after this instrument is registered. The note to subsection 2(1) highlights that the table only relates to the provisions of this instrument as originally made. The table will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 allows for the insertion of relevant dates and details.

Section 3 – Authority

This section provides that the Regulations are made under the *Competition and Consumer Act 2010* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

Schedule 1 – Amendments

Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014

Item [1] Subsection 5(2)

Subsection 5(1) of the Principal Regulation provides that the Minister administering section 1 of the *Farm Household Support Act 2014* must cause a review of the operation of the *Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014* (the Principal Regulation) to be undertaken. The Administrative Arrangements Order made on 1 June 2022 provides that this Act is administered by the Minister for Agriculture, Fisheries and Forestry.

Item 1 omits “the commencement of this section” from subsection 5(2) of the Principal Regulation, and substitutes “the amendment of this section by the *Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Amendment (Review) Regulations 2022*” (the Regulations). This has the effect of delaying the requirement that existed under subsection 5(1) of the Principal Regulation for the Minister to cause a review, to be no later than three years following the commencement of the Regulations.

This means that, if a more extensive amendment to the Principal Regulation that implements any of the recommendations of the *2018 Review of the Wheat Port Access Code of Conduct* (the Review) is progressed, then item 1 allows a period of up to three years for an amended *Port Terminal Access (Bulk Wheat) Code of Conduct* (the Code) to operate. This should allow sufficient time to gauge the effect of the amendments for a second review of the Code.

Item [2] Section 6

Subsection 6(1) of the Principal Regulation provides for a further review of the operation of the Principal Regulation if it continues in operation for six years or more after the commencement of this section. Subsection 6(2) provides that the review must not start later than 8 years after the commencement of this section.

Item 2 repeals this section. This removes the requirement for a further review of the operation of the Principal Regulation to occur no later than 30 September 2022. As the recommendations of the Review are yet to be implemented, it would not be suitable for a second review of the Code to occur before this date.

Further, the amendments made by item 1 maintains a requirement for a second review of the Code to take place at a later date, being no later than three years following the commencement of the Regulations. These amendments, read together, preserve the intent of section 6 in providing for a further review, particularly as subsections 5(3)-(5) of the Principal Regulation contain the substantive considerations and matters which must be taken into account when conducting a review.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

***Competition and Consumer (Industry Code-Port Terminal Access (Bulk Wheat))
Amendment (Review) Regulations 2022***

This 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 Legislative Instrument

The *Competition and Consumer (Industry Code-Port Terminal Access (Bulk Wheat)) Amendment (Review) Regulations 2022* (the Regulations) amend the *Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014* (the Principal Regulation).

The Principal Regulation prescribes a mandatory industry code, the *Port Terminal Access (Bulk Wheat) Code of Conduct* (the Code), and the Code is set out in Schedule 1 to the Principal Regulation.

Specifically, the Regulations amend subsection 5(2) and repeal section 6 of the Principal Regulation to provide that a second review of the Code be commenced no later than three years after commencement of the Regulations. The effect of these amendments, read together, is to delay the commencement of the second review of the Code to start no later than three years after commencement of the Regulations. This means that the review of the Code would be required to commence by 2025.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Senator The Hon. Murray Watt, Minister for Agriculture, Fisheries and Forestry for
the Hon. Dr Andrew Leigh MP, the Assistant Minister for Competition, Charities and
Treasury**