***Legislation (Deferral of Sunsetting—Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation) Certificate 202******4***

**EXPLANATORY STATEMENT**

Issued by the Attorney-General in compliance with
section 15G of the *Legislation Act 2003*

**INTRODUCTION**

The *Legislation (Deferral of Sunsetting—**Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation) Certificate 2024* (the Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003* (the Legislation Act)*.* It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. The Certificate will be subjected to the disallowance provisions of the Legislation Act as the deferred sunsetting day specified in the Certificate is after the first anniversary of the originally scheduled sunsetting day, which means that subsection 51(4) of that Act (which provides an exemption from disallowance for deferrals of 12 months or less) does not apply.

**OUTLINE**

Sunsetting is the automatic repeal of legislative instruments after a fixed period. The Australian Government’s sunsetting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunsetting framework is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration. Under paragraph 51(1)(c) of the Legislation Act the Attorney-General can issue a certificate to defer the sunsetting day of an instrument for a period of either 6, 12, 18 or 24 months.

The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day. This allows instruments to continue to be in force for a further but limited period of time after the date on which they would otherwise sunset. This removes the administrative burden of remaking instruments which would have a limited duration prior to their repeal and potential replacement, or where circumstances prevent the making of replacement instruments prior to the sunsetting day.

The Certificate defers the sunsetting date of the *Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014* (‘Regulation’) by 24 months from 1 October 2024 to 1 October 2026.

The ability to defer sunsetting dates is an integral part of the sunsetting framework. It provides the necessary flexibility to ensure the standard 10-year sunsetting period does not result in unintended consequences or impose an unreasonable administrative burden on Commonwealth agencies or the Parliament. In this case, the Regulation is expected to be remade within 24 months of the sunsetting date as a result of a review by the Department of Agriculture, Fisheries and Forestry (DAFF). If the Certificate were to be disallowed, there would not be enough time to review the Instrument prior to the sunsetting day.

**PROCESS BEFORE CERTIFICATE WAS MADE**

**Regulatory impact analysis**

Certificates of deferral of sunsetting are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Impact Analysis (OIA). The OIA reference for this standing exemption is ID19633.

**Consultation before making**

Before the Certificate was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The Regulation is made under section 51AE of the *Competition and Consumer Act 2010*.

Schedule 1 of the Regulation prescribes a mandatory code of conduct (‘the Code’) that regulates the behaviour of bulk wheat port terminal service providers towards bulk wheat exporters. This is to ensure that exporters of bulk wheat have fair and transparent access to port terminal services.

DAFF is conducting a comprehensive review of the operation of the Code as required under section 5 of the Regulation.  To assist with this review, a public consultation process commenced on 19 October 2023 and closed on 9 February 2024. Following the public consultation period, DAFF undertook face-to-face meetings with key stakeholder groups that had submitted to the review. A Wheat Port Code Review Reference Group consisting of members from industry representative organisations was also established to support and facilitate targeted consultation with wheat export industry stakeholders across the supply chain, including wheat producers, exporters and port terminal service providers. DAFF will analyse the feedback received through this consultation process and develop a report for the Minister for Agriculture, Fisheries and Forestry. The report will include recommendations regarding the future operation of the Code.

DAFF has consulted with Treasury and the Australian Competition and Consumer Commission in relation to this Certificate. DAFF also advised stakeholders consulted as part of the review that the government had the option to defer sunsetting if required.

Certificates of deferral are machinery in nature, and enable legislative instruments that would otherwise sunset to remain in force for a further, but strictly limited, period of time. This will minimise the administrative burden on stakeholders associated with consultation on a deferral that will only have effect for a limited amount of time. Any replacement instrument will be subject to further consultation and parliamentary oversight, including oversight of whether adequate consultation occurred with persons likely to be affected by the replacement instrument.

A 24-month deferral will allow sufficient time for DAFF to finalise the review and for the government to consider the recommendations of the review. A deferral of sunsetting will also avoid the need to remake the Regulation in its current form for the short period of time before it is either repealed, remade, or a replacement instrument is issued. As such, given that deferral of the sunsetting date of the Regulation is consistent with the policy intent of the sunsetting regime and does not significantly alter existing arrangements, appropriate consultation has occurred for the purposes of section 17 of the Legislation Act.

**Statutory preconditions relevant to the Certificate**

If the statutory conditions in section 51 of the Legislation Act are met, an instrument’s sunsetting day can be deferred for 6, 12, 18 or 24 months by means of a certificate made under that section. In terms of process, the Legislation Act requires:

1. the responsible rule-maker to apply to the Attorney-General in writing, and
2. the Attorney-General to be satisfied that:
	1. the instrument would (apart from the operation of the sunsetting provisions) be likely to cease to be in force within 24 months after its sunsetting day
	2. the proposed replacement instrument will not be able to be completed before the sunsetting day for reasons that the rule-maker could not have foreseen and avoided
	3. the dissolution or expiration of the House of Representatives or the prorogation of the Parliament renders it inappropriate to make a replacement instrument before a new government is formed, or
	4. the Attorney-General has approved Part 4 of Chapter 3 of the Legislation Act (Sunsetting) not applying to that instrument, and
3. the Attorney-General to issue a certificate. The explanatory statement for the certificate must include a statement of reasons for the issue of the certificate.

The Minister for Agriculture, Fisheries and Forestry, the Hon Julie Collins MP, provided a written application to the Attorney-General seeking a certification of deferral of sunsetting for the Regulation. The Hon Dr Andrew Leigh MP, Assistant Minister for Competition, Charities and Treasury is currently responsible for administering section 51AE of the enabling legislation (the *Competition and Consumer Act 2010* (the Act)) under which the instrument is made. However, section 5 of the Regulation requires the Minister for Agriculture, Fisheries and Forestry to undertake a review of the Regulation. Pursuant to subsection 19(4) of the *Acts Interpretation Acts 1901*, the Assistant Minister authorised a Minister administering the Department of Agriculture, Fisheries and Forestry to act on his behalf to make a written application to the Attorney‑General for a certificate of deferral of sunsetting for the Regulation for 24 months (from 1 October 2024 to 1 October 2026). On this basis, the Minister for Agriculture, Fisheries and Forestry is the ‘rule-maker’ for the purposes of section 51 of the Legislation Act.

On the basis of the information contained in the statement of reasons below, the Attorney‑General is satisfied that the Regulation would, apart from the operation of Part 4 of Chapter 3 of the Legislation Act, be likely to cease to be in force within 24 months after its sunsetting day.As such, the criterion in subparagraph 51(1)(b)(i) of the Legislation Act is met.

**Statement of Reasons for issuing of the Certificate**

For the purposes of subsection 51(5) of the Legislation Act this section sets out the statement of reasons for issuing the Certificate.

The Certificate defers the sunsetting date of the Regulation by 24 months to 1 October 2026 to enable DAFF to complete its review of the Regulations and for the government to consider further reform.

The Regulation prescribes the Code that regulates the conduct of port terminal service providers. The Code commenced in 2014 and establishes an access arrangement to ensure exporters of bulk wheat have fair and transparent access to port terminal services. When the Code was introduced it was the most recent step in the gradual deregulation of Australia’s wheat marketing arrangements.

DAFF is conducting a review of the operation of this Regulation as required by section 5 of the Regulation. The review must identify opportunities for deregulation to facilitate free and open competition in the Australian wheat export market as well as consider whether there are appropriate alternative mechanisms to achieve this outcome. It must also address a broad set of statutory review considerations set out in subsections 5(3) to 5(5) of the Regulation. To assist with this review, a public consultation process commenced on 19 October 2023 and closed on 9 February 2024. Following the public consultation period, DAFF undertook face-to-face meetings with key stakeholder groups that had submitted to the review. A Wheat Port Code Review Reference Group consisting of members from industry representative organisations was also established to support and facilitate targeted consultation with wheat export industry stakeholders across the supply chain, including wheat producers, exporters and port terminal service providers. DAFF will analyse the feedback received through this consultation process and develop a report for the Minister for Agriculture, Fisheries and Forestry.

DAFF considers any legislative amendments to the Code or the development of a new regulatory mechanism required to implement the findings of the review currently being undertaken would be in place within 24 months after the sunsetting day of the Regulation. If the Code is to be replaced by an alternative mechanism, DAFF considers a 24-month deferral of the sunsetting date will allow sufficient time for this mechanism to be developed and implemented. The deferral of the sunsetting of the Regulation will also ensure there is no gap in the Code’s regulatory framework, and avoid the need to remake the Regulation in its current form for the short period of time before it is either remade or an alternative new mechanism is implemented.

Accordingly, the Regulation will likely cease to be in force in its current form within 24 months of its original sunsetting date.

**More information**

Further details on the provisions of the Certificate are provided in Attachment A.

The Regulation which is subject to the Certificate, and which will now sunset at a later day as specified in the Certificate, is available on the Federal Register of Legislation.

Further information may be requested from the Attorney‑General’s Department about the operation of the Certificate, and from the Treasury and DAFF about the Instrument to which the Certificate applies.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The *Legislation (Deferral of Sunsetting—Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation) Certificate 2024* (the Certificate) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act).

**Overview of the Certificate**

The Certificate is made under paragraph 51(1)(c) of the *Legislation Act 2003*. Under that paragraph the Attorney-General can issue a certificate to defer the sunsetting day of an instrument for a period of either 6, 12, 18 or 24 months. The instrument will then be repealed on the day specified in the Certificate instead of the originally scheduled sunsetting day. The Instrument specified in the Certificate is the *Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014.*

The Regulation is expected to be repealed and replaced within 24 months of its scheduled sunsetting day as part of the review of the legislative framework.

The Certificate allows the Regulation to continue to be in force for a further, but limited, period of time when it would otherwise sunset. This removes the administrative burden of remaking the Instrument which would have a limited duration prior to its expected repeal and replacement, or where circumstances prevent the making of a replacement instrument prior to the sunsetting day.

**Human Rights Implications**

A certificate of deferral of sunsetting extends the operation of the instrument but does not change or affect the rights engaged under the original instrument.

The Regulation does not engage any of the human rights and freedoms recognised or declared by the international instruments in section 3 of the Human Rights Act. This is evidenced by the explanatory statement published when the Instrument was made.

Therefore, overall, the Certificate is compatible with human rights because it does not engage any issues of human rights and freedoms.

Before issuing the Certificate, the Attorney-General was satisfied that the Regulation would, apart from the operation of the sunsetting provisions, cease to be in force within 24 months of its sunsetting date. Issuing a certificate of deferral therefore avoids the need to replace the Instrument in its current form for a short period of time before it is expected to be repealed and replaced.

Instruments that are replaced will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the remade Regulation will be assessed at the time it is made, including through the requirement to prepare a Statement of Compatibility with Human Rights.

**Conclusion**

This Certificate is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act, as it does not engage any human rights issues, and ensures that any proposal to make a replacement instrument will be subject to parliamentary oversight and scrutiny.

**ATTACHMENT A**

**NOTES ON THE CERTIFICATE**

**Section 1 Name**

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation) Certificate 202*4. The Certificate may be cited by this name.

**Section 2 Commencement**

This section provides for the Certificate to commence on the day after it is registered.

**Section 3 Authority**

This section provides that the Certificate is made under paragraph 51(1)(c) of the *Legislation Act 2003*.

**Section 4 Deferral of sunsetting**

This section provides that the *Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat) Regulation 2014*, for which the sunsetting day is 1 October 2024, is repealed by section 51 of the *Legislation Act 2003* on 1 October 2026.

**Section 5 Repeal of the instrument**

This section provides that the Certificate is repealed at the start of 2 October 2026.