



Australian Government

Australian Government response to the second review of the Wheat Port Code

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Department of Agriculture, Fisheries and Forestry

GPO Box 858 Canberra ACT 2601

Telephone 1800 900 090

Web agriculture.gov.au

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Acknowledgement of Country

We acknowledge the continuous connection of First Nations Traditional Owners and Custodians to the lands, seas and waters of Australia. We recognise their care for and cultivation of Country. We pay respect to Elders past and present, and recognise their knowledge and contribution to the productivity, innovation and sustainability of Australia's agriculture, fisheries and forestry industries.

Introduction

The Australian Government welcomes the release of the *Report on the second review of the Wheat Port Code* (the Report) and thanks the members of the Wheat Port Code Review Reference Group – Grain Producers Australia, GrainGrowers Limited and Grain Trade Australia – for the support and input they provided to the review. The Government also thanks the stakeholders along the wheat export supply chain who engaged with the review.

Australia's grains industry makes a significant contribution to agriculture and the broader Australian economy and has a well-earned reputation as a supplier of high-quality wheat and a reliable trading partner. With ever increasing competition in international markets for wheat, it is critical the Australian Government sets in place the right regulatory settings to support a productive, profitable and sustainable wheat export industry.

The Government's responses to the review's recommendations are set out under *Response to Review's findings*.

Background

The *Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014* prescribes, in Schedule 1, the Port Terminal Access (Bulk Wheat) Code of Conduct (the code), for the purposes of section 51AE of the *Competition and Consumer Act 2010* (the Act). The code is an industry code that is intended to ensure that exporters of bulk wheat have fair and transparent access to port terminal services. The code was introduced in 2014 to regulate the conduct of port terminal service providers (PTSPs) to ensure that exporters of bulk wheat had fair and transparent access to port terminal services.

In November 2023, the Department of Agriculture, Fisheries and Forestry commenced the second review of the code. With the code sunseting on 1 October 2026, the second review was also designed to both inform the Government's decision on the code's fitness for purpose and to satisfy the requirement that the code be periodically reviewed. The purpose of the review was to broadly determine:

- What effect has the code had?
- If the code is still necessary?
- If it is still necessary, could the code be improved?

Response to Review's findings

The overall finding of the second review was that the code in its current form is no longer fit for purpose. The review further found that:

- 1) The national market for port terminal services has changed significantly since 2014, which has resulted in an overall increase in competition between PTSPs.
- 2) Parts 3 to 6 of the code are the least fit for purpose. This part of the code may be acting as a barrier to new PTSPs entering the market, and this perverse outcome outweighs any benefits to exporters and growers in retaining Parts 3 to 6 of the code. Little evidence has been provided to demonstrate there is a market failure in the wheat export supply chain that would require the retention of these provisions.
- 3) The outcomes achieved by Part 2 of the code, including good faith and the provision of information through port loading statements, port loading protocols, and standard terms and reference prices, provide a positive benefit to the wheat export industry.
- 4) There is some evidence that a mechanism is required to ensure PTSPs continue to undertake practices such as publishing port loading statements. The review did not however find sufficient evidence to establish this can only be done by continuation of the code, rather than through industry self-regulation.

The Australian Government accepts the findings of the review and agrees industry should transition to self-regulation. The government notes the review's recommendation that the code remain in place until industry has developed self-regulation. To provide regulatory certainty and support a transition to self-regulation, the government will remake the code in a streamlined format, with the code to remain in place for 3 years. At the end of this period, the code will cease to operate.

Chapter 3 of the Report outlined several amendments that could be made to the code to improve its operation. The review suggested removing the access provisions in Parts 3 to 6 of the code to reduce regulatory burden. The Government is supportive of this approach.

The removal of these Parts would shift the focus of the code during the transition period to good faith and transparency obligations relating to the operation of port terminal facilities through timely publication of port loading statements, port loading protocols, and standard terms and reference prices. The government accepts the review's finding that these provisions provided a benefit to industry with minimal cost.

The review also suggested technical amendments to the remaining parts of the code that provide for good faith and transparency obligations to provide greater clarity to participants about its operation and to reduce regulatory burden by removing components no longer required for its effective operation. The Government is broadly supportive of these changes. The Government does not however support the review's suggestion that the code include civil penalty provisions. This is because there is a lack of sufficient evidence these provisions are required for the remade code to operate effectively.

Transitioning to self-regulation represents a further step in the journey that began in 2008 with the abolition of the single desk arrangements for wheat exports, followed by the removal of the mandatory access test in 2014. This presents an opportunity for further growth of the wheat export industry by reducing regulatory barriers that otherwise could potentially limit competition, while still ensuring essential information transparency is provided to supply chain participants.