



# **Department of Agriculture, Fisheries and Forestry**

## **Wheat Port Code | Second Review**

GrainCorp submission

9 February 2024

# 1. Introduction

GrainCorp appreciates the opportunity to respond to the Department of Agriculture, Fisheries and Forestry's Second Review of the Wheat Port Code (the **Code**) Discussion Paper.

GrainCorp is a leading diversified Australian agribusiness, with an integrated operating model connecting growers to domestic and international consumers around the globe. We operate seven bulk wheat port terminals across the East Coast of Australia as a port terminal service provider (**PTSP**) under the Code and as an exporter of wheat and other grains in eastern Australia. GrainCorp is also an exporter of wheat and other grains and a port terminal access seeker in Western Australia.

GrainCorp has a long and proud history of providing port elevation services to access seekers.

## 2. Executive summary

Since the introduction of the Code, GrainCorp has witnessed a significant increase in competition and the continual evolution of Australia's wheat export industry. There has been a substantial increase in the number of PTSPs, significant investment in alternative export channels (such as mobile loaders and containerisation) resulting in greater choice for access seekers and increased competition in the market for export services. This has also been demonstrated by the growing number of PTSPs that have applied for, and been granted an exemption, by the Australian Competition and Consumer Commission (**ACCC**) from the requirement to comply with Parts 3 to 6 of the Code .

Australia's wheat export industry is a significant economic generator for Australia, generating approximately \$13 billion of export value in 2021-22 creating jobs and investment in regional communities around the country. It is critical that the bulk wheat export sector can operate effectively and competitively across the globe.

The purpose of the Code was to provide a deregulatory pathway for Australia's wheat export industry. Almost 10 years later, the Code has fulfilled this purpose and no longer serves the industry for its originally intended purpose, to promote the development of an efficient, competitive and profitable bulk wheat export market. This is demonstrated by the number of PTSPs that have been granted exemption to Parts 3 to 6 of the Code.

In GrainCorp's view, the Code should be allowed to sunset on the basis that regulation of the wheat export industry can continue under Australia's competition law framework – a view that was shared by the ACCC in its recent submission.

*GrainCorp believes the Code has served its purpose, is no longer relevant and should be allowed to sunset without replacement.*

## 3. Is the Wheat Port Code still necessary?

### 3.1 Should the Wheat Port Code be remade in its current form, remade with amendments, or allowed to sunset?

The Code was originally introduced to provide a deregulatory pathway for the bulk wheat industry, by promoting the development of an efficient, competitive and profitable bulk wheat export marketing industry following the replacement of the *Wheat Export Marketing Act* 2008.

At the time the Code was introduced there were some residual concerns as to whether the industry would successfully transition from a tightly structured and regulated market to a more competitive and efficient market and, in the first instance, there was a recommendation that a voluntary code of conduct be used as the mechanism for the transition. Ultimately, the Code was introduced – a mandatory prescribed code under the Competition and Consumer Act 2010 (Cth) regulated by the ACCC. The Code was intended to provide a stable mechanism to support confidence in the transition process and to enable the successful evolution of the Australian wheat export industry to an efficient and competitive market.

GrainCorp believes that Bulk Wheat industry has evolved so significantly since the Code was introduced that, not only has it achieved its intended purpose, but the Code now has limited application and relevance to today's Bulk Wheat Export industry.

The data points set out in 3.2 Evolution of the Bulk Wheat industry below provide evidence to support this view.

### 3.2 Evolution of the Bulk Wheat industry

Since the Code was introduced in 2014:

- there has been a significant increase in the number of PTSPs – in the 14/15 shipping year there were seven (7) PTSPs and there are now sixteen (16);
- there has been a significant increase in the number of operational port facilities – in the 14/15 shipping year there were twenty-one (21) operational port facilities and there are now thirty-two (32);
- across the East Coast of Australia, where GrainCorp operates as a PTSP, there has been an increase in operational port facilities from nine (9) to sixteen (16);
- the number of PTSPs who have been granted exemption from the requirement to comply with Parts 3 to 6 of the Code has increased from eleven (11) to twenty-five (25);
- in the 21/22 shipping year, following the significant increase in the number of PTSPs granted an exemption from Parts 3 to 6 of the Code, around 11% of all bulk grain exported from Australia was loaded at a facility operated by a PTSP who was bound by all requirements of the Code;
- the wheat export industry has seen the arrival of flexible, low-cost business models that utilise mobile ship loading equipment which have significantly less sunk costs when compared to fixed port terminal facilities and can rapidly (and opportunistically) scale up or down according to the size of the harvest.
- export volumes have substantially increased from 21.7mmt to 40.5mmt.

Australia's Bulk Wheat industry has significantly changed and evolved over an extended period of time to an industry that continues to see the arrival of new market participants, new flexible operating models, record export volumes and, importantly, a significant decrease in the number of participants now bound by all requirements of the Code (decisions made by both ACCC and the Australian Government).

These factors demonstrate that there is substantial competitive pressure across the Bulk Wheat industry.

### 3.3 Relevance and impact of the Code on today's Bulk Wheat industry

GrainCorp believes the Code has achieved its intended purpose and is no longer relevant to today's Bulk Wheat industry. The Bulk Wheat industry is a significant economic generator for Australia, generating approximately \$9 billion of export value in 2021-22 and significant jobs and investment in regional communities around the country.

GrainCorp believes that it is vital that Australia's Wheat Export industry is afforded the opportunity to drive international competitiveness for wheat exports. This can be achieved by enabling PTSPs the flexibility to adopt quickly to changing conditions.

The additional requirements under Parts 3 to 6 of the Code, place a regulatory burden on non-exempt PTSPs which has the consequence of reducing their ability to respond quickly and efficiently to changing market

conditions. For example, unforeseen supply chain disruptions including up-country challenges or issues with cargo accumulation caused by weather conditions and weather events, industrial action, vessel delays and incidents. This is compounded by the fact that wheat is a perishable, highly variable, consumable product, requiring quality and safety to be paramount. Australian wheat is a highly valued international commodity due to its quality and PTSPs should be afforded the flexibility to respond and adapt when unforeseen circumstances arise.

Volatile and unpredictable weather conditions and weather events have been a particular issue and disruption to wheat supply chains (specifically, flood and fire events) and, unfortunately, are expected to be a growing issue due to climate shifts. At exempt ports, GrainCorp can flexibly adapt and change to manage these issues, work with customers to balance their respective requirements and ensure capacity is efficiently utilised. At non-exempt ports, onerous lead-times and ensuring capacity allocation protocols and requirements continue to be met, make it difficult and risky to reallocate or change capacity to ensure the most efficient utilisation of the facility.

In GrainCorp's view, it is difficult to see what positive benefits the requirements of Parts 3 to 6 of the Code have on today's Bulk Wheat industry and, specifically, exporters. Rather, in GrainCorp's experience, the requirements have had the unintended consequence of impeding the ability of PTSPs to respond quickly and effectively to ensure export capacity is efficiently utilised and exporter needs are met.

Finally, the Code requires PTSPs to gather and publish information. GrainCorp acknowledges that, notwithstanding the complexity involved in establishing the processes to support this publication, there is no material ongoing impact on our business arising from this requirement.

However, much of the information gathered presents little value to industry (in particular, performance KPIs and information on stock quality held at port). These requirements present a cost on the industry and GrainCorp queries the benefit of this ongoing requirement.

## 4. Conclusion

Competition in the Bulk Wheat industry has evolved to such a great extent that the application of the Code no longer meet its originally intended purpose.

Furthermore, the requirements of the Code have placed a burden on the industry that serves to restrict the flexibility to export wheat effectively without generating any apparent corresponding benefits.

The Australian Wheat Export industry should be allowed to operate effectively and efficiently in the global wheat export market without the need for the Code, on the basis that effective protections exist and will continue to evolve under Australia's broader competition law framework.

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