

2 February 2024

Mr Stephen Hodge
Director, Crops Policy Section
Food Policy Branch, Agricultural Policy Division
Department of Agriculture, Fisheries and Forestry
GPO Box 858
CANBERRA ACT 2601

Grain Producers SA Ltd

Level 2, 180 Flinders Street Adelaide SA 5000
PO Box 7069 Hutt Street Adelaide SA 5000
P: 1300 734 884 F: 1300 734 680

ABN: 43 154 897 533

grainproducerssa.com.au

By email: via [Have Your Say](https://www.havesaysa.gov.au) - wheatportcodereview@agriculture.gov.au

Dear Mr Hodge

Submission re: Port Terminal Access (Bulk Wheat) Code of Conduct (the Wheat Port Code)

I write regarding the release of a discussion paper to the second review of the Port Terminal Access (Bulk Wheat) Code of Conduct (the Wheat Port Code) and the Department of Agriculture, Fisheries and Forestry (DAFF) request for submissions.

GPSA is the peak industry body representing the 4,500 grain farming businesses in South Australia who plant more than 4 million hectares of cereals, pulses, and oilseeds annually. South Australia produces an average of 7.9 million tonnes of grain each year, which contributes more than \$4 billion to Australia's gross food revenue. This is made possible by grain growing businesses and farming communities across the state.

Bulk wheat export terminals are a critical element to South Australian grain producers' supply chain, and we welcome the opportunity to provide input into the second review of the Wheat Port Code.

- **What effect has the Wheat Port Code had?**

The Wheat Port Code regulates the conduct of port terminal service providers. Currently in South Australia, Viterra Australia (Viterra) at the Port Giles, Port Lincoln, Thevenard or Wallaroo facilities must comply with all parts of the Wheat Port Code. All other port terminal service providers are exempt service providers that do not have to comply with the obligations in Parts 3 to 6 of the Wheat Port Code.

Overall, the intent of the Wheat Port Code, with its two-tiered regulatory framework, and operating arrangements, has played an important role for South Australian grain producers, predominantly for those with few alternatives to enter the export wheat supply chain, and particularly for access to grain traders. Export wheat owners that do not possess or operate port terminal assets have competed with wheat buyers from Viterra's fully integrated supply chain and six port terminals operated throughout South Australia.

In July 2019, Viterra provided a written application to the Australian Competition and Consumer Commission (ACCC) seeking to be determined an exempt service provider of port terminal services provided by means of all six of their port terminal facilities located in South Australia. In April 2021, the ACCC released final determinations granting exemptions for Viterra's facilities at Port Adelaide Inner Harbour and Outer Harbor, and not

granting exemptions for Viterra's facilities at Port Giles and Wallaroo. In July 2021, following consideration of the 2020-21 peak shipping period, the ACCC released final determinations to not grant Viterra exemptions for port terminal services by means of its port terminal facilities at Port Lincoln and Thevenard.

In addition to Viterra's exempt port facilities at Port Adelaide's Inner Harbour and Outer Harbor, South Australia has AWB Limited at Cargill Australia (Cargill) with port terminal facilities at Port Adelaide, and ADM Trading Australia Pty Ltd (ADM) port terminal facilities at Port Pirie. Cargill and ADM are well positioned to inform DAFF on the effect the Wheat Port Code had on their decisions to develop supply chains in partial competition with Viterra. Independent operators of port terminals that do not buy wheat include T-Ports (Lucky Bay and in 2023/24 with a new port terminal at Wallaroo that was granted exempt service provider status in May 2023), and Semaphore Container Services (Port Adelaide) who could inform and assist DAFF to understand the relationship of the Wheat Port Code to their entry and activity providing port terminal services.

GPSA is not aware of secured future investment in South Australia by any new port terminal service providers.

- **Is the Wheat Port Code still necessary?**

Users of port terminal facilities are clearly best placed to provide views on the impact of and need for the Wheat Port Code. Are export wheat traders satisfied the behaviour of the bulk wheat port terminals service provider is sufficient to cause the conditions necessary to trade there? Are asset disadvantaged wheat traders, for example, China's COFCO Corporation (COFCO), South Australia's Centre State Exports or Louis Dreyfus, able to comment on the effects the Wheat Port Code has on their ability to export at non-exempt port terminal facilities?

In the absence of alternative regulatory powers, the Wheat Port Code remains necessary. GPSA is concerned that should the Wheat Port Code be repealed on 1 October 2024 that mechanisms in place are deficient to achieve fair and open competition. Under Part IIIA of the *Competition and Consumer Act 2010*, a national access regime sets the legal right for third parties to gain access to certain infrastructure services, with terms and conditions that are reasonable. The ACCC produces monitoring reports that analyse bulk grain exports and examine industry matters. However, grain buying practices of the exporters and the relationship between site delivered, supply chain costs, international markets and prices paid to grain producers by the controllers of a large majority of the world's grain trade, including Bunge Limited (Bunge is going through a process aiming to acquire 100% of the issued and outstanding share capital of Viterra), ADM and Cargill grow undiscovered.

- **If it is still necessary, could the Wheat Port Code be improved?**

A regulatory framework is necessary to protect the interests of South Australian grain producers. GPSA is concerned about the weak correlation between the grain prices received net of supply chain or other deductions, and the price of grain international end users pay.

Grains are a commodity, and the price fluctuates in international commodities marketplaces. Mostly South Australian grain production is exported, yet those grain producers are selling at local sites, whether at an upcountry storage facility or port terminal, and not directly to the international end user. As a result, many grain producers can be out of touch on dealing with buyers in international markets, relying on unbiased

advice or digital networks to make smart grain marketing decisions. They do not have visibility or transparency of the difference between the prices they take, and the prices received by international grain buyers.

GPSA suggests the following policy settings to support South Australia's grain production environment:

- Improvements to the Wheat Port Code to include enforcement powers to impose penalties for non-compliance. Currently, the Australian Competition and Consumer Commission (ACCC) has limited recourse to apply penalties. By introducing flexibility to impose fines there will be greater incentive for compliance.
- Expansion of regulations to cover all export grains rather than wheat only. As evidenced by the ACCC (Second review of the Wheat Port Code, ACCC submission in response to Discussion Paper, 14 December 2023)); *'There has been an increase in the production and export of non-wheat grain since the Code commenced'*, and there is a need to involve all export grains.
- Expansion of regulations to cover all upcountry storage facilities. Are Viterro grain buyers advantaged over other grain buyers at a Viterro facility? Should all grain buyers have equal knowledge of stored grain quality (particularly delivered grains of quality over Grain Trade Australia (GTA) receival standards used for pay grades), volumes held on site, and transparency in terms and conditions?
- Expansion of regulations to level the playing field in marketing grain for grain buyers and grain producers. For example, ensuring shipping stem information is published in a consistent format and coverage that is extended to all ports where grains are exported.

Thank you once again for the opportunity to provide feedback on the inquiry into the Wheat Port Code, and we look forward to engaging with DAFF into the future.

Yours sincerely,



Brad Perry
CHIEF EXECUTIVE OFFICER
GRAIN PRODUCERS SA

