
June 2018
About GrainGrowers

About GrainGrowers

GrainGrowers is an independent and technically resourced, grain farmer representative organisation with 17,500 members across Australia. GrainGrowers’ goal is a more efficient, sustainable and profitable grain production sector that benefits all Australia grain farmers and the wider grains industry. GrainGrowers has three divisions which work cooperatively to achieve improved grain industry outcomes: 1) Capability Building, 2) Industry Engagement and 3) Policy and Innovation.

GrainGrowers has a National Policy Group comprised of 15 elected representatives from across Australia. Five growers represent each of the three major grain-growing regions: Northern Region encompasses Queensland and Northern NSW, the Southern Region encompasses southern NSW and Victoria and the Western Region encompasses South Australia and Western Australia.

About the Australian grains Industry

Australian grain farmers annually grow some 45 million tonnes of wheat, barley, oats, sorghum, canola and pulses such as chickpeas and faba bean, which at the farm gate alone is worth $13.5 billion. This production generates more than 170,000 jobs in rural, regional and metropolitan areas across Australia. Over 70% of Australia’s grain production is exported, earning some $11.4bn in export earnings annually, and accounting for more than a quarter of all agricultural export earnings. Furthermore, domestic sales of grain underpin the fortunes of the domestic food manufacturing sector and other important export industries such as the red meat and dairy industries.

Trade is vital for the Australian grains industry, and grains deliver significant export earnings for Australia and employment across rural, regional and metropolitan Australia. However this is contingent on producing a quality product which suits the market, and reliably and efficiently delivering grain to these markets. Ensuring an efficient, low cost supply chain is therefore imperative as it underpins the competitiveness of Australian grains in international markets.
## CONTENTS

About GrainGrowers

1 Executive Summary

2 Overview

2.1 Competitive port system essential to grains exports

2.2 GrainGrowers supports the retention of the Code

2.3 ACCC to ensure exemptions are still valid

2.4 The Code must be mandatory

2.5 An industry-specific Code is required

2.6 Improving the Code - introduce a standard template for shipping stem information (port loading statements)

3 Conclusion
1 Executive Summary

GrainGrowers welcomes the opportunity to respond to the Interim Report on the Review of the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation.

GrainGrowers believes that the mandatory Port Terminal Access Code (the Code) is necessary to support fair and transparent access to port terminal services and should be retained at this point in time. GrainGrowers also supports the immediate strengthening of aspects of the code to ensure consistency of information and to introduce penalties for non-compliance.

With continuing regional port monopolies and high vertical integration across the supply chain, an industry-specific Code has an important role to play in encouraging competition at all grain ports across Australia. This is imperative for the export-oriented Australian grains sector.

The Code provides assurance to growers that there is a framework, with independent oversight, in place to encourage competition and monitor performance at ports. The Australian Competition and Consumer Commission (ACCC) has assessed the performance of the ports in both high and low production years, and strongly recommends the continuation of the Code. GrainGrowers endorses this view and encourages ACCC to continue to monitor performance and to review exemptions to ensure they remain appropriate.

GrainGrowers remains concerned about a range of industry practices and behaviours which impact on competition, and therefore on the prices growers receive for their grain. While it is acknowledged that these may be beyond the original scope of this Code, behaviour displayed by bulk handlers while undertaking practices such as stock swaps, differences in in-turn and out-turn specifications, and the setting of location differentials, can and do have an impact on competition along the supply chain and which can flow through to the port. While flexibility is important to ensure an efficient grain supply chain operates both for exports and domestically, so to it is essential that a level playing field exists so that there is fair and open competition.

These issues must be closely examined and GrainGrowers supports a market study being conducted to determine the extent and impact of such practices and to consider appropriate market, industry and regulatory responses. GrainGrowers will be seeking for such a study to be conducted within the next 12 months and be complete before the next Review of the Code.

GrainGrowers recognises that the ACCC’s recent proposal to include all grain and to extend the Code up-country are, in part, intended to assist address some of these
practice concerns. In principle, GrainGrowers supports further consideration being given to these proposals but also believes that given the practices are industry-wide, amending the Code may have limited impact and could have unintended consequences and potentially reduce the competitiveness of the grain supply chain, particularly in South Australia. The Code, while the only available industry-specific regulatory instrument available at the moment, may not be the most appropriate instrument to address these industry-wide practices in the longer term.

GrainGrowers considers there are three immediate opportunities to strengthen the Code to ensure it operates with maximum effect, these being:

1. To clearly define a minimum reporting period for daily port loading statements
2. To ensure all shipping stem information is provided in a consistent format and level of detail to allow easy comparison,
3. The introduction of penalty provisions within the Code to deter non-compliance and provide a more direct and timely mechanism for the ACCC to use for breaches of the Code.

In summary, GrainGrowers supports:

1. retention of the mandatory Ports Code,
2. the introduction of a clearly define a minimum reporting period for daily port loading statements
3. a standard format template to ensure all shipping stem information is provided in a consistent format and level of detail to facilitate comprehensive consolidated information,
4. The introduction of penalty provisions within the Code to deter non-compliance and provide a more direct and timely mechanism for the ACCC to use for breaches of the Code.
5. an independent market study of the grains supply chain to consider the impact of structural and industry practices on competition, to be completed before the next review of the Code, and
6. a further review of the Code within five years.
2 Overview

2.1 Competitive port system essential to grains exports

A competitive, accessible and transparent port system is essential to growers to encourage export volumes and competitive prices. With around 70 percent of the crop exported each year, it is in growers’ interest to ensure businesses can obtain timely and fair access to port facilities on competitive terms.

Given the regional port monopolies and vertical integration which exist in the grains supply chain, the mandatory Code provides an industry-specific mechanism to facilitate access and monitor operators’ behaviour (under the watchful eye of the ACCC).

The Code was introduced in 30 September 2014 to regulate the conduct of bulk wheat terminal service providers. The Code was designed to:

I. Provide other exporters with access to port terminal facilities on fair and reasonable terms.

II. Mitigate the potential abuse of market power and monopolistic behaviour by vertically integrated businesses that provided port terminal services and exported wheat.

And in 2018, these remain valid and necessary objectives of the Code.

2.2 GrainGrowers supports the retention of the Code

GrainGrowers believes the Code is still necessary and provides an important framework to underpin fair access to ports.

In light of the two monitoring reports published by the ACCC, it is clear the Code is still required. The ACCC has stated:

- It doesn’t consider fair and transparent access to bulk grain export would be assured in the absence of the Code.

- Without the Code, exporters may reduce their participation in markets, and reduce marketing options for growers and ultimately the price they get for grain.

- It shares the concerns of industry about potential abuse of market power and agrees that industry specific regulations are necessary.

- ACCC strongly supports retention of Code and recommends changes to the Code to improve its effectiveness. This will ensure fit-for-purpose and appropriately targeted regulation, and amendments will also ensure ACCC can best fulfil its enforcement role under the Code.
ACCC response to the Wheat Port Code – Issues Paper (12 December 2017)

“The Code plays an important role in ensuring port access for the exporters that buy grain from Australian growers. ...ACCC does not consider that fair and transparent access to bulk export grain export services across Australia would be assured in the absence of the Code. Without fair and transparent port access, exporters may reduce their participation in export markets, reducing the marketing options for growers and ultimately the price that they can secure for grain.” Page 1

The Code provides some assurance to growers that there is a framework to encourage competition at ports. The ACCC has assessed performance of the ports in both high and low production years, and strongly recommends the continuation of the Code. GrainGrowers endorses this view and encourages ACCC to continue to monitor performance and requests ACCC review exemptions to ensure they remain appropriate.

2.3 ACCC to ensure exemptions are still valid

GrainGrowers supports the tiered structure in the Code, and allowing operators to seek exemption where warranted by the prevailing competitive conditions. The Code provides sufficient flexibility to consider the changes at competitive conditions at each port, and has granted 16 exemptions to date. GrainGrowers believes the ACCC must continue to review exemptions to ensure the conditions on which they were granted remain valid.

2.4 The Code must be mandatory

A mandatory Code remains necessary and GrainGrowers would not support a move to a voluntary Code. Given the level of regional monopolies and vertical integration which continues to exist in the industry, a mandatory code provides much needed oversight and transparency about the performance of the port operations.
2.5 An industry-specific Code is required

While the Issues Paper raises the use of the Competition and Consumer Act (CCA) powers as a point of recourse, the practical reality is that it is unlikely this would be used, and certainly not as a preferred course of action. The dispute resolutions in the Code are therefore important and provide for simpler, more direct course of action.

Indeed the ACCC acknowledge that pursuing port access through the CCA can be a “costly, time-consuming and uncertain path to access…and unlikely to be a viable option for most access seekers. ACCC considers it provides more certainty and is more cost effective to continue industry-specific regulation”.

2.6 Improving the Code - introduce a standard template for shipping stem information (port loading statements)

GrainGrowers believes the port loading statements (often called shipping stem data) are important to provide an overview of activity. However currently there is no consistent format for statements, and each operator prepares them slightly differently. This makes consolidation of the data difficult and time-consuming for the industry, who use this information to develop an overarching view on exports.

GrainGrowers would like to see a standard template applied to all operators which would facilitate consistent data being available across all port zones. This would improve the availability and transparency of relevant information to all participants and the broader industry. At a minimum the following information should be captured and published as required:

1. Slot Reference number
2. Port
3. Ship Name
4. Exporter
5. Cargo (Commodity)
6. Grade
7. Volume
8. Est departure of ship
9. Destination of ship
10. ETA at destination
11. Volume of cargo being unloaded at destination

GrainGrowers would support the information collection processes and timeframes of the Code being simplified, provided that there was no impact on the quality and availability of pertinent data.
3 Conclusion

The Code provides an essential framework to regulate the conduct of bulk wheat terminal service providers. While there are enhancements that can and should be made to the Code to improve its effectiveness, the ACCC’s monitoring reports clearly show that the Code continues to play an important role in:

I. Providing other exporters with access to port terminal facilities on fair and reasonable terms, and

II. Mitigating the potential abuse of market power and monopolistic behaviour by vertically integrated businesses that provided port terminal services and exported wheat.

GrainGrowers supports the retention of the mandatory Wheat Port Code, with small improvements, and believes a further review of the Code should be held within five years. Within this timeframe a grain market study will be important to explore the full range of competition issues that may exist in the Australian grains supply chain.