



Application for exemption from the Competition and Consumer (Industry Code - Port Terminal Access (Bulk Wheat)) Regulation 2014

22 June 2022

Introduction

Wagner Corporation Pty Ltd (**Wagner Corp**) completed construction of a wharf at 47 Pamela St, Pinkenba on the Brisbane River in 2018. The wharf was built by Wagner Corp to service the berthing of cement clinker ships that carry 35,000 tonnes cargo, as well as other general cargo ships.

Wagner Corp is now intending to bring mobile grain handling equipment on to the wharf in order, through itself or a nominated third party, to use the equipment to supply grain exporting services. Additionally, Wagner Corp may seek to construct grain handling equipment at the wharf for the purposes of facilitating grain exporting (the **Grain Export Equipment**).

Wagner Corp is not a grain trader or exporter and does not own or operate any up country grain storage or handling facilities, or associated rail operations.

Both the owner and operator of the Grain Export Equipment therefore have no economic incentive to limit or restrict access to the Grain Export Equipment by grain exporters or traders.

Wagner Corp currently expects that grain exporting at its Pinkenba Wharf will become operational in or around 20 July 2022. Wagner Corp estimates the total capacity of grain likely to be exported through the Pinkenba Wharf to be no more 300,000mt per annum.

Wagner Corp makes this application for exemption from Parts 3 to 6 of the *Port Terminal Access (Bulk Wheat) Code of Conduct* (**the Code**) on the basis that:

- The operations proposed at Pinkenba are limited and involve only mobile Grain Export Equipment. The ACCC has previously exempted similar mobile grain loader equipment from the operation of the Code.
- Wagner Corp does not operate up-country grain storage or transport operations.
- The grain catchment serviced by Pinkenba is also serviced by the Port of Brisbane. Both GrainCorp and Queensland Bulk Terminals (**QBT**) operate more substantial grain loader infrastructure at the Port of Brisbane. Both are also exempt from the operation of the Code.

Wagner Corp submits that the full operation of the Code in relation to the Grain Export Equipment would therefore be disproportionate given the limited scale of the operations at Pinkenba, and would operate inequitably given the exemptions granted to other, more substantial grain terminals serving the same catchment (and to mobile loading equipment in other locations).

More detail in relation to the various elements required to be considered by the ACCC is set out below.

Export grain catchment for Pinkenba and other competing terminals

The Pinkenba Wharf is located in Brisbane, close to both the Port of Brisbane and the Wilmar Gavilon terminal operated by QBT. The new Grain Export Equipment will therefore service the same grain catchment as the Brisbane Port Zone identified by GrainCorp in its application for exemption in 2015 (per **Figure 1** below).

Figure 1. Brisbane Port Zone



The other two (exempt) grain terminals operating from Brisbane are both substantial and fixed grain lifting facilities. Based on their 2015 exemption applications,¹ Wagner Corp understands them to have the features set out in Table 1 below.

¹ Table taken from Figure 5 of QBT application for exemption, at page 12.

Table 1. GrainCorp Fisherman Island and QBT terminals (Brisbane)

	GrainCorp (Fisherman Island)	QBT
Capacity	1,800,000 MT	840,000 MT
Storage	112,700 MT	70,000 MT
Rail Receival	UP to 2,200 TPH	No
Road Receival	Up to 400 TPH	1200 TPH
Ship Loader	2,200 TPH	1,200 TPH
Vessel Size	Up to Panamax	avg. Handymax

The Grain Export Equipment

By comparison with the fixed and high volume, grain lifting terminals of GrainCorp and QBT, the Wagner Corp infrastructure is limited to mobile loading equipment. There are no on-site grain storage facilities and no rail receival capability.

An illustration of the type of mobile loading equipment proposed to be operated at Pinkenba Wharf is set out at Figure 2 below.

Figure 2. Export Grain Equipment





As the ACCC is aware, mobile grain loading operations are significantly less capital-intensive than permanently fixed, grain-lifting facilities, such as those operated by GrainCorp and QBT at the Port of Brisbane.

The legitimate business interests of the Port Terminal Service Provider

Given the limited nature of the Grain Export Equipment (i.e. permission to use mobile grain ship-loading equipment on a general cargo wharf), the regulatory costs associated with compliance are disproportionately high.

Wagner Corp is concerned that the application of the Code will impose costs and inflexibility on the operations at Pinkenba, in circumstances where grain exporting is a limited part of the total operations at the wharf (which are principally focussed on the import of cement clinker). Amongst other things, these features of the Code are likely to impose operational constraints on the Grain Export Equipment.

Queensland has 4 bulk grain export port terminal facilities. The ACCC has identified that, in Queensland:

- GrainCorp operates facilities at Fisherman Islands (Port of Brisbane), Mackay and Gladstone;
- QBT operates a facility at Brisbane.

Wagner Corp understands that the GrainCorp facility at the Port of Brisbane operates both as a bulk grain terminal as well as packing and exporting containerised grain.²

GrainCorp is the dominant provider of bulk grain export port terminal services in Queensland, operating 3 out of 4 facilities (or 73% of bulk exports in 2020–21).³ The grain export facilities of QBT and GrainCorp at the Port of Brisbane dominate export volumes (87%). The operations of both QBT and GrainCorp at Brisbane are exempt from the operation of the Code.⁴

Within this context, Parts 3 to 6 of the will create an onerous and inequitable administration burden for Wagner Corp and Rain AG, for such a small export operation.

The interests of exporters and promotion of competition

The availability of the Grain Export Equipment provides exporters with a new and competitive alternative to the major grain (and exempt) exporters from Brisbane – GrainCorp and QBT.

Wagner Corp submits that the Code was established primarily to address the market power of large and integrated grain supply infrastructure (or systems) that required significant capital investment in up-country grain storage and rail access to port. However, Wagner Corp do not own or operate any up-country storage or grain rail haulage services, so the Grain Export Equipment provides an entirely independent export option for Queensland grain exporters and traders, compared with other integrated options.

Wagner Corp anticipates that the operation of a smaller, independent export facility will be of particular benefit to smaller Queensland grain exporters and traders.

² <https://grains.graincorp.com.au/ports-shipping/>

³ Bulk grain port monitoring report – data update 2020-21, December 2021, page 85.

⁴ Bulk grain port monitoring report – data update 2020-21, December 2021, page 11.



Promotion of efficient investment

There are limited, if any, barriers to entry for others that may wish to invest in mobile grain loading equipment.

Ensuring that this equipment does not become subject to heavy-handed regulation under Parts 3-6 of the Code will therefore promote investment and increase diversity of export options for grain exporter and traders.

Other relevant exemptions

As noted above, in Brisbane, both GrainCorp and QBT⁵ are exempt from the operation of the Code.

Wagner Corp submits that the business model proposed is also consistent with other export facilities involving mobile equipment, which have been exempted by the ACCC.⁶

Conclusions

Wagner Corp submits that the use of mobile grain loading equipment at the Pinkenba Wharf should be exempt from the operation of Parts 3-6 of the Code.

Further Questions and Answers:

1. What is your current estimate of when bulk grain export services will commence? Are there any specific factors which may impact on the eventual start date (e.g. delivery of relevant infrastructure to port, finalisation of agreements with relevant parties, securing relevant export accreditation?).

Answer: Current estimate are 2nd half July.

2. In addition to the mobile ship loader pictured at Figure 2 of the draft application, please advise of any other pieces of at-port infrastructure that will be used to deliver bulk grain port terminal services.

Answer: A weighbridge, sampling hut and Truck unloading point.

3. Will Wagner Corporation own all at-port infrastructure that is used to deliver bulk grain export services? If no, please advise of the party or parties that will own this infrastructure, and whether the relevant infrastructure will be leased by Wagner Corporation.

Answer: Loading infrastructure will be owned by the operator of the wharf for that specific use and vessel. e.g. clinker infrastructure owned stevedore for clinker operator, fertilizer the same and grains the same.

4. On page 1 of the draft application you state that 'Additionally, Wagner Corp may seek to construct grain handling equipment at the wharf for the purposes of facilitating grain exporting.' Please advise what kind of infrastructure this statement is referring to (if known at this time).

⁵ Final Determination, GrainCorp Operations Limited and Queensland Bulk Terminals at the Port of Brisbane, Exemption assessments of bulk wheat terminal facilities under the Port Terminal Access (Bulk Wheat) Code of Conduct, 24 September 2015.

⁶ E.g. Riordan Grain Services, Port of Geelong – Exemption assessment of a bulk wheat port terminal facility under the Port Terminal Access (Bulk Wheat) Code of Conduct, 28 July 2017.



Answer: We are presently considering bulk loading infrastructure to include a conveyor system but this is only conceptual at this stage and no firm plans have been made regarding the acquisition or installation of this broader equipment. This infrastructure will also likely be used for cotton seed, fine and coarse quarry aggregate and perhaps woodchip.

5. Who will physically operate the infrastructure used to deliver bulk grain export services (e.g. Wagner Corporation employees/contractors? Independent stevedores?).

Answer: South Australian Stevedoring will physically operate the infrastructure pictured under the supervision and direction of RainAg.

6. Who will consider requests for access to bulk grain export services by grain exporters (or offer these services to grain exporters?). If this party is not Wagner Corporation, please advise who will perform this role.

Answer: Wagner Corporation as wharf owner will consider requests for access to bulk grain export services.

7. Who will be responsible for meeting the Code's reporting obligations (e.g. publishing standard terms and reference prices, a 'port loading statement' which contains details about upcoming shipments including grain type, grain tonnage, and the estimated time that loading will commence)?

Answer: Wagner Corporation will be responsible for meeting the Code's reporting obligations.