

EXPLANATORY STATEMENT

Issued by authority of the Minister for Small Business

Competition and Consumer Act 2010

Competition and Consumer Legislation Amendment (Horticulture and Oil Industry Codes) Regulations 2025

Subsection 172(1) of the *Competition and Consumer Act 2010* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 51AE of the Act provides that the regulations may prescribe an industry code for the purposes of Part IVB of the Act and declare the industry code to be a mandatory or voluntary industry code. An industry code regulates conduct of participants in an industry towards other participants in the industry or towards consumers in the industry.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make an instrument of legislative character (including regulations), the power shall be construed as including a power to repeal, amend, or vary any such instrument.

The purpose of the *Competition and Consumer Legislation Amendment (Horticulture and Oil Industry Codes) Regulations 2025* (the Regulations) is to amend the industry codes set out in the *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017* (Horticulture Code) and the *Competition and Consumer (Industry Codes—Oil) Regulations 2017* (Oil Code), to confer the functions of the mediation adviser in the Horticulture Code and the functions of the dispute resolution adviser in the Oil Code on the Australian Small Business and Family Enterprise Ombudsman (ASBFEO).

The Regulations reduce the administrative burden for the Government and small businesses by streamlining and harmonising the operation of dispute resolution procedures across industry codes by consolidating the role of the ASBFEO in resolving disputes.

The Regulations form part of wider Government reform to strengthen access to justice for small businesses. Similar amendments have been made to the industry codes regulating the dairy and franchising industries. Those amendments were made by the *Competition and Consumer (Industry Codes—Dairy) Amendment (2023 Measures No.1) Regulations 2023* and the *Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021*, the latter which has since been incorporated into a remake of the industry code regulating the franchising industry (see *Competition and Consumer (Industry Codes—Franchising) Regulations 2024*). The Regulations also give effect to a recommendation of an independent review of the Oil Code, which recommended ASBFEO be appointed as the dispute resolution adviser in the Oil Code on a permanent basis.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Treasury undertook targeted consultation on an exposure draft of the Regulations with the ASBFEO, the Australian Competition and Consumer Commission (ACCC), the Department of Agriculture, Fisheries and Forestry (DAFF) and the Department of Climate Change, Energy, the Environment and Water (DCCEEW). DAFF previously undertook targeted consultation with select industry stakeholders with respect to the proposed conferral onto the ASBFEO in the Horticulture Code and received support from them. Further, DCCEEW engaged Ernst & Young to perform an independent review of the Oil Code. A report by Ernst & Young of the independent review dated 5 May 2023 recommended the proposed conferral onto the ASBFEO following stakeholder support through consultation. Stakeholders provided support for the conferral on the basis that ASBFEO has specialised expertise and experience in dispute resolution, and is already the first point of contact for parties entering a dispute.

Public consultation on an exposure draft of the Regulations was not undertaken because the amendments are minor and machinery in nature, and primarily relate to internal government processes, in that they streamline the dispute resolution process for the relevant industry participants by changing the government body responsible for this process. The amendments do not impact the substantive rights or obligations of the industry participants regulated by the Horticulture Code and Oil Code. Similar amendments to the industry code regulating the dairy industry were also not subject to public consultation.

The Regulations commenced on the day after the instrument was registered on the Federal Register of Legislation.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to disallowance in accordance with that Act. Section 48A of the *Legislation Act 2003* provides that where a legislative instrument only repeals or amends another instrument, without making any application, saving or transitional provisions relating to the amendment or repeal, that instrument is automatically repealed. By virtue of section 48A, if the Regulations are not disallowed, the Regulations will automatically repeal when the disallowance period ends. Once repealed, the sunset regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* is no longer relevant to the Regulations.

Details of the Regulations are set out in [Attachment A](#).

A statement of Compatibility with Human Rights is at [Attachment B](#).

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: OIA24-07940) and agreed that no Impact Analysis was required. The measure has no impact on compliance costs.

Details of the *Competition and Consumer Legislation Amendment (Horticulture and Oil Industry Codes) Regulations 2025*

Section 1 – Name

This section provides that the name of the regulations is the *Competition and Consumer Legislation Amendment (Horticulture and Oil Industry Codes) Regulations 2025* (the Regulations).

Section 2 – Commencement

The Regulations commenced on the day after the instrument was registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Competition and Consumer Act 2010* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 outlines the amendments to the industry codes set out in Schedule 1 to the *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017* (Horticulture Code) and Schedule 1 to the *Competition and Consumer (Industry Codes—Oil) Regulations 2017* (Oil Code).

The Horticulture Code and Oil Code each establish a dispute resolution procedure for disputes that may arise in relation to the respective codes. These procedures include the appointment by the relevant Minister of a mediation adviser in the Horticulture Code and a dispute resolution adviser in the Oil Code. Prior to the Regulations commencing, these appointments were held respectively by SES employees in the Department of Agriculture, Fisheries and Forestry (DAFF) and the Department of Climate Change, Energy, the Environment and Water (DCCEEW).

The amendments remove those appointments and provide for the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) to be conferred the functions previously conferred on the mediation adviser and dispute resolution adviser.

The ASBFEO has specialised expertise and experience in dealing with disputes, as well as an extensive database of contacts who deliver mediation. Further, the ASBFEO already provides support for disputes under the Horticulture Code and Oil Code. Consolidating the ASBFEO's role in resolving disputes is intended to streamline and simplify dispute resolution procedures by providing small businesses with a single continuous point of contact throughout the process. This will reduce the administrative burden for both the

Government and small businesses in resolving disputes in the horticulture and oil industries.

The amendments form part of wider Government reform to strengthen access to justice for small businesses. Similar amendments have been made to the industry codes regulating the dairy and franchising industries. Those amendments were made by the *Competition and Consumer (Industry Codes—Dairy) Amendment (2023 Measures No.1) Regulations 2023* and the *Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021*, the latter which has since been incorporated into a remake of the industry code regulating the franchising industry (see *Competition and Consumer (Industry Codes—Franchising) Regulations 2024*).

The amendments do not impact the substantive rights or obligations of the industry participants regulated by the Horticulture Code and Oil Code.

Schedule 1 – Amendments

Part 1 – Horticulture Code of Conduct

Competition and Consumer (Industry Codes—Horticulture) Regulations 2017

Part 1 sets out the amendments to the Horticulture Code.

Definitions

Items 1 to 4 amend clause 5 of Schedule 1 (about definitions) to the Horticulture Code.

The Regulations repeal the definition of ‘mediation adviser’ and substitute a new definition for ‘Ombudsman’. ‘Ombudsman’ means the ASBFEO. The note under the definition clarifies that the Horticulture Code confers various functions on the ASBFEO (in accordance with paragraph 13(c) of the *Australian Small Business and Family Enterprise Ombudsman Act 2015*). These functions were previously conferred on the mediation adviser.

Accordingly, references to the ‘mediation adviser’ are replaced with ‘Ombudsman’ in the definitions of ‘horticulture produce assessor’ and ‘mediation’.

Dispute resolution

Items 5 to 15 amend Part 5 of Schedule 1 to the Horticulture Code, which sets out a dispute resolution procedure for the Horticulture Code.

Clause 39 is repealed and replaced. The new provision requires the ASBFEO, rather than the mediation adviser, to compile a list of persons who are to be mediators for the purposes of this Part. The appointment of a mediation adviser is removed.

References to the mediation adviser are replaced with references to the ASBFEO in clauses 40 to 44. Consequently, the dispute resolutions functions previously undertaken by the mediation adviser are now conferred on the ASBFEO. Broadly, these functions are to:

- appoint a mediator for a dispute if requested by the parties to the dispute; and

- receive information about a dispute or about the progress of a mediation from the mediator for a dispute.

Horticulture produce assessors

Items 16 and 17 amend Part 6 of Schedule 1 to the Horticulture Code, which provides for the appointment of horticulture produce assessors to investigate and report on any matter arising under a horticulture produce agreement referred to them under the appointment.

References to the mediation adviser are replaced with references to the ASBFEO in clauses 47 and 49. Consequently, the functions previously undertaken by the mediation adviser are conferred on the ASBFEO. Broadly, these functions are to:

- compile and publish a list of persons who are to be horticulture produce assessors; and
- appoint a horticulture produce assessor if the parties cannot agree on the appointment of an assessor.

The data collection and reporting functions conferred on the ASBFEO (i.e. compiling lists and receiving information about disputes) will assist with general reporting and monitoring the effectiveness of the ASBFEO's dispute resolution services and ensure that they can be targeted to current issues and trends in the sector.

Savings provisions

Part 8 of Schedule 1 to the Horticulture Code sets out transitional, saving and application provisions.

Items 18 to 20 insert a new Division 2 in Part 8 which contains savings provisions with respect to the Regulations. The Division is intended to preserve the appointment of mediators and horticulture produce assessors by the mediation adviser in relation to pending dispute resolution procedures and investigations. Therefore, the person appointed as a mediation adviser under subclause 39(1) of Schedule 1 immediately before the commencement of the Regulations will maintain their functions in relation to an ongoing dispute or matter until that dispute or matter has been finalised.

Clause 64 sets out definitions for the purposes of Division 2 of Part 8. The definitions are:

- 'amending regulations' means the Regulations;
- 'commencement day' means the day the Regulations commence;
- 'old code' means the Horticulture Code as in force immediately before the commencement of the Regulations.

The old code continues to apply on and after the commencement day of the Regulations:

- to a dispute if, before that day, a party to the dispute requested the mediation adviser to appoint a mediator for the dispute and the dispute resolution procedure under Part 5 of Schedule 1 to the old code was ongoing in relation to the dispute (clause 65); or
- to a matter arising under an agreement if, before that day, a horticulture produce assessor was appointed in relation to that matter and that assessor had not prepared a

report under clause 51 of Schedule 1 to the old code or given a copy of the report to the persons mentioned in that clause (clause 66).

Clause 65 recognises that mediation commences when a person requests mediation, and that appointments in relation to an ongoing mediation should continue until it has been resolved to ensure consistency to all parties involved. Clause 66 recognises that the role of a horticulture produce assessor appointed in relation to a matter arising under an agreement is to investigate and report on that matter and therefore that an ongoing appointment should continue until the assessor has prepared and provided a copy of the report to the relevant persons, thereby concluding the assessor's role in relation to the matter.

Part 2 – Oil Code of Conduct

Competition and Consumer (Industry Codes—Oil) Regulations 2017

Part 2 sets out amendments to the Oil Code.

Definitions

Items 21 and 22 amend clause 4 (about definitions) of Schedule 1 to the Oil Code.

The Regulations remove the definition of 'dispute resolution adviser' and insert a new definition for 'Ombudsman'. 'Ombudsman' means the ASBFEO. The note under the definition clarifies that the Oil Code confers various functions on the ASBFEO (in accordance with paragraph 13(c) of the *Australian Small Business and Family Enterprise Ombudsman Act 2015*). These functions were previously conferred on the dispute resolution adviser.

Dispute resolution

Items 23 to 27 amend Part 4 of Schedule 1 to the Oil Code, which sets out the dispute resolution procedure for the Oil Code.

Clause 41 is repealed and replaced. The new provision requires the ASBFEO, rather than the dispute resolution adviser, to advise the relevant Minister on dispute resolution under Part 4. The appointment of a dispute resolution adviser is removed.

References to the dispute resolution adviser are replaced with references to the ASBFEO in clauses 42 to 45. Consequently, the functions previously undertaken by the dispute resolution adviser are conferred on the ASBFEO. Broadly, those functions are to:

- appoint a designated mediator for a dispute if the parties cannot agree to refer the dispute to a person to provide mediation or other assistance;
- request and receive information about disputes; and
- provide assistance in relation to disputes, attempt to resolve disputes and make non-binding determinations about disputes.

The data collection and reporting functions (i.e. requesting and receiving information about disputes) conferred on the ASBFEO will assist ASBFEO in making non-binding determinations, advising the relevant Minister about dispute resolution under the Oil Code,

general reporting and monitoring the effectiveness of the ASBFEO's dispute resolution services to ensure that they can be targeted to current issues and trends in the sector.

These amendments implement recommendation 3.5.4 of the independent review of the Oil Code, as outlined in the report dated 5 May 2023 prepared for DCCEEW by Ernst & Young. The recommendation provided for the ASBFEO to carry out the dispute resolution functions of the dispute resolution adviser on a permanent basis.

Savings provision

Item 28 inserts a new Division 2 in Part 5 of Schedule 1 to the Oil Code. The Division is intended to preserve the appointment of the dispute resolution adviser for pending dispute resolution procedures. That is, the person appointed as dispute resolution adviser under clause 41 of Schedule 1 immediately before the commencement of the Regulations will maintain their functions in relation to an ongoing dispute until that dispute is finalised. The Division recognises when the dispute resolution adviser's role is triggered in relation to a dispute and reflects that it should continue until an ongoing dispute has been resolved to ensure consistency for all parties involved.

Clause 49 sets out definitions for the purposes of Division 2 of Part 5. The definitions are:

- 'amending regulations' means the Regulations;
- 'commencement day' means the day the Regulations commence;
- 'old code' means the Oil Code as in force immediately before the commencement of the Regulations.

Clause 49 provides that the old code continues to apply on and after the commencement day of the Regulations where, before that day:

- a party to a dispute asked the dispute resolution adviser to attempt to resolve a dispute about supply of a declared petroleum product under clause 43 of the old code; or
- a party to a dispute notified the dispute resolution adviser under clause 44 of the old code that the parties could not agree to refer the matter to mediation or other assistance; and
- a dispute resolution procedure under Part 4 of the old code was ongoing in relation to the dispute.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Competition and Consumer Legislation Amendment (Horticulture and Oil Industry Codes) Regulations 2025

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Competition and Consumer Legislation Amendment (Horticulture and Oil Industry Codes) Regulations 2025* (the Regulations) amends the industry codes set out in *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017* (Horticulture Code) and the *Competition and Consumer (Industry Codes—Oil) Regulations 2017* (Oil Code).

The Regulations confer the functions of the mediation adviser in the Horticulture Code and the dispute resolution adviser in the Oil Code on the Australian Small Business and Family Enterprise Ombudsman (ASBFEO).

The Regulations are intended to reduce the administrative burden for the Government and small businesses by streamlining and harmonising the operation of dispute resolution procedures across industry codes by consolidating the role of the ASBFEO in resolving disputes. Similar amendments have previously been made to the industry codes regulating the dairy and franchising industries.

The Regulations form part of wider Government reform to strengthen access to justice for small businesses and also give effect to a recommendation of an independent review of the Oil Code.

Human rights implications

The Regulations may engage the following rights:

- Right to an effective remedy in article 2(3) of the *International Covenant on Civil and Political Rights* (ICCPR)
- Right to privacy and reputation in article 17 of the ICCPR.

Right to an effective remedy

Article 2(3) of the ICCPR protects the right to an effective remedy for any violation of rights or freedoms recognised by the ICCPR, including the right to have such a remedy determined by competent judicial, administrative, or legislative authorities or by any other competent authority provided for by the legal system of the State.

The Regulations promote procedural efficiency in the handling of dispute resolution processes by conferring the functions of the mediation adviser in the Horticulture Code and the dispute resolution adviser in the Oil Code within the ASBFEO. The Regulations facilitates the crystallisation of the ASBFEO's role at the point of requests for mediation or dispute resolution and thereby ensures greater efficiency in the appointment of mediators and horticulture produce assessors within the ASBFEO's office.

The Regulations engage and promote the right to an effective remedy because they serve to streamline the dispute resolution pathway, provide greater procedural certainty as well as consistency, and alignment, in procedures across industry codes. Notably, the procedural changes do not alter the rights of parties to a dispute, including the right to commence court proceedings to have a dispute resolved.

Right to privacy and reputation

Article 17 of International Covenant on Civil and Political Rights (ICCPR) prohibits the arbitrary or unlawful interference with one's privacy, family, home or correspondence. This includes the respect for informational privacy, including in respect of storing, using, and sharing private information and the right to control dissemination of personal and private information.

The Regulations engage the right to privacy because it empowers the ASBFEO to request and receive information, which may include personal information, such as name, in relation to disputes under the Horticulture Code or Oil Code. The Regulations also provide for the ASBFEO to compile a list of persons who are to be mediators or horticulture produce assessors, which may include personal information about those persons, such as name.

The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary. For an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UN Human Rights Committee has interpreted the requirement of 'reasonableness' to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

The information collection and sharing functions conferred on the ASBFEO are necessary for the efficient and effective delivery of the ASBFEO's dispute resolution services under the Horticulture Code and Oil Code.

Any personal information received by the ASBFEO under the Horticulture Code or Oil Code will remain subject to the protections under the *Privacy Act 1988*. For example, use and disclosure of this personal information is only permitted to the extent that is necessary and appropriate for the purposes of performing the ASBFEO's functions.

The amendments are consistent with the information collection and sharing functions of the ASBFEO in other industry codes, such as the industry codes in the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019* and the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024*.

Conclusion

The Regulations are compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.