

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Minister for Competition, Charities and Treasury**

#### *Competition and Consumer Act 2010*

#### *Competition and Consumer (Industry Codes—Food and Grocery) Amendment (Infringement Notices) Regulations 2025*

The *Competition and Consumer Act 2010* (the Act) enhances the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

Section 172 of 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.

Part IVB of the Act provides for industry codes, which regulate conduct among participants in an industry. Specifically, section 51AE of the Act provides that the regulations may prescribe an industry code under the Act, declare the industry code to be a mandatory or voluntary industry code and prescribe pecuniary penalties for a contravention of a civil penalty provision of the industry code.

The purpose of the *Competition and Consumer (Industry Codes—Food and Grocery) Amendment (Infringement Notices) Regulations 2025* (the Regulations) is to ensure that the penalty amounts specified in infringement notices for alleged contraventions of penalty provisions in the *Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024* (the Food and Grocery Code) align with the policy intent.

This amendment reflects the strengthened penalty framework introduced by Schedule 4 to the *Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024* (the Amending Act), which provides higher maximum amounts of penalties in infringement notices which may be applied for the purpose of industry codes relating to the food and grocery industry.

Section 51ACF of the Act, as amended by the Amending Act, provides two tiers of penalties that may be specified in an infringement notice for an alleged contravention of a civil penalty provision of an industry code. The higher penalty amount applies to an industry code if the code relates to the food and grocery industry and the code specifies that subsection 51ACF(2) of the Act applies to that code. The amendments in the Regulations apply these higher penalty amounts to infringement notices for alleged contraventions of the Food and Grocery Code.

The Food and Grocery Code replaces the *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015* (the voluntary Food and Grocery Code) and implements the Government's response to the Independent Review of the Food and Grocery Code (the Review) in 2024. The Food and Grocery Code is a mandatory industry code to address an imbalance in bargaining power between large grocery retailers or wholesalers and their suppliers, to support a competitive and sustainable food and grocery sector. This minor amendment ensures the increased penalties specified in infringement

notices for alleged contraventions of the Food and Grocery Code apply, aligning the code with recommendations of the Review as agreed to by Government.

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

No consultation was undertaken on the Regulations as they intend to address a technical oversight in previous amendments to the Food and Grocery Code, aligning the penalties in infringement notices with the intended policy outcome and reflecting the strengthened penalty framework introduced by the Amending Act. However, extensive consultation was undertaken by the Review, which informed its recommendations, including recommendations relating to penalty amounts in infringement notices.

The Regulations rely on subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that where an Act confers a power to make an instrument of a legislative character (including rules, regulations or by-laws) the power shall be construed as including a power to repeal, amend, or vary any such instrument.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on 1 April 2025.

The Regulations are subject to disallowance, and will sunset on 1 April 2035.

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 (OIA) has been consulted (OIA ref: OIA24-07551) and agreed that the Review, supplemented by further analysis to quantify the net impact, has been certified as a process equivalent to an Impact Analysis. The certification and analysis are available here: <https://oia.pmc.gov.au/published-impact-analyses-and-reports/independent-review-food-and-grocery-code-conduct>.

The measure is estimated to have a low impact on compliance costs.

**Details of the *Competition and Consumer (Industry Codes—Food and Grocery) Amendment (Infringement Notices) Regulations 2025***

**Section 1 – Name**

This section provides that the name of the regulations is the *Competition and Consumer (Industry Codes—Food and Grocery) Amendment (Infringement Notices) Regulations 2025* (the Regulations).

**Section 2 – Commencement**

The Regulations commence the later of immediately after the commencement of the *Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024* (the Food and Grocery Code), and the start of the day after this instrument is registered.

**Section 3 – Authority**

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

**Section 4 – Schedule**

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 to the Regulations amends the Food and Grocery Code to apply higher penalty amounts to infringement notices for alleged contraventions of the code. This amendment aligns the Food and Grocery Code with the intended policy outcome, supporting the Food and Grocery Code to address an imbalance in bargaining power between large grocery retailers or wholesalers and their suppliers, to support a competitive and sustainable food and grocery sector.

Item 1 inserts new section 14B, which provides that subsection 51ACF(2) of the *Competition and Consumer Act 2010* applies to the Food and Grocery Code. New section 14B means that infringement notices for alleged contraventions of civil penalty provisions of the Food and Grocery Code must specify a penalty amount equal to 600 penalty units for bodies corporate and otherwise 12 penalty units.

Infringement notices are an administrative tool that the regulator can use to deter misconduct in relation to an alleged contravention of a civil penalty provision of the Food and Grocery Code and can act as an alternative to civil proceedings. As outlined in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, larger penalties are more appropriate for bigger entities as they provide an adequate deterrent. The increased penalty amounts for bodies corporate reflect the large size and turnover of the retailers and wholesalers regulated under the Food and Grocery Code.

## **Statement of Compatibility with Human Rights**

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

### **Competition and Consumer (Industry Codes—Food and Grocery) Amendment (Infringement Notices) 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 (Industry Codes—Food and Grocery) Amendment (Infringement Notices) Regulations 2025* (the Legislative Instrument) ensures that the penalty amounts specified in infringement notices for alleged contraventions of penalty provisions in the *Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024* (the Food and Grocery Code) align with the policy intent.

This amendment reflects the strengthened penalty framework introduced by Schedule 4 to the *Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024* (the Amending Act), which provides higher maximum amounts of penalties in infringement notices which may be applied for the purpose of industry codes relating to the food and grocery industry.

## **Human rights implications**

The Legislative Instrument may engage the right to a fair trial under Articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR). Article 14 of the ICCPR provides that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14 also includes the right to the presumption of innocence. Article 15 of the ICCPR provides that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence. Articles 14 and 15 apply only in relation to the rights of natural persons, not legal persons, such as companies.

Civil penalty provisions may engage criminal process rights under Articles 14 and 15 of the ICCPR. Most of the civil penalty provisions in the Legislative Instrument apply to the conduct of large grocery businesses in the food and grocery industry. Accordingly, the infringement notice regime has limited engagement with Articles 14 and 15 of the ICCPR, as the Legislative Instrument does not apply the penalties to natural persons.

To the limited extent that the infringement notices may apply to a person other than a large grocery business, the Legislative Instrument may be considered to engage the right to a fair and public hearing as it applies the strengthened infringement notice provisions in the Act, as introduced by the Amending Act, so that a higher penalty must be specified in an infringement notice for an alleged contravention of a civil penalty provision of the Food and Grocery Code. However, the right to a fair and public hearing by a competent,

independent and impartial hearing is not limited by the Legislative Instrument because the person may still elect to have the matter heard by a court rather than pay the amount specified in the infringement notice. This right must be stated in any infringement notice.

Infringement notices are an administrative tool that the regulator can use to deter misconduct in relation to an alleged contravention of a civil penalty provision of the Food and Grocery Code and can act as an alternative to civil proceedings. Infringement notices function like a fine or financial penalty. If an infringement notice is complied with, including payment of the penalty, no further action will be taken against the person. The payment is not considered an admission of criminal guilt.

The infringement notice regime is consistent with most conditions listed in the Attorney-General's Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide), as the increased penalty amounts to infringement notices relate to minor offences that do not require proof of mens rea (guilty mind). Conduct alone is enough to constitute the offence. The application of the infringement notice regime ensures effective and efficient enforcement and protects the integrity of the regulatory regime.

The increased civil penalties in infringement notices are not 'criminal' for the purposes of human rights law. While a criminal penalty is deterrent or punitive, these provisions are regulatory and disciplinary, and they aim to encourage compliance with the Food and Grocery Code. Further, the provisions do not apply to the general public, but to large grocery businesses and suppliers in the food and grocery industry, who should reasonably be aware of their obligations under the Code. Therefore, imposing increasing civil penalties in infringement notices will enable an effective disciplinary response to non-compliance.

While the increased penalty amounts for bodies corporate would be above the maximum amount listed in the Guide, the increased penalty is appropriate in size as it reflects the large size and turnover of the retailers and wholesalers proposed to be regulated under the new Food and Grocery Code. The Guide outlines that larger penalties are more appropriate for bigger entities, as they provide an adequate deterrent.

The Food and Grocery Code implements a mandatory industry code to address an imbalance in bargaining power between large grocery retailers or wholesalers and their suppliers, to support a competitive and sustainable food and grocery sector. The increase to penalties specified in infringement notices for alleged contraventions of the Food and Grocery Code is a reasonable and proportionate means of achieving the legitimate objective of strengthening the penalty framework for industry codes related to the food and grocery industry.

Based on the considerations above, the Legislative Instrument does not limit the right to a fair and public hearing under Articles 14 and 15 of the ICCPR.

## **Conclusion**

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.