

28 February 2011

Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Sir/Madam

The Produce and Grocery Industry Code Administration Committee administers the Produce and Grocery Industry Code of Conduct. This code promotes fair and equitable trading practices within the produce and grocery industry supply chain and includes a low cost dispute resolution scheme.

I note that the inquiry into *The impacts of supermarket price decisions on the dairy industry* is considering the suitability of the framework contained in the Horticulture Code of Conduct to the Australian Dairy Industry.

In its considerations the Senate Committee should be aware that the existing framework contained in the Horticulture Code does not cover the Australian Dairy industry. However, the existing Produce and Grocery Industry Code of Conduct does provide such cover.

The Produce and Grocery Industry Code is a successful code that has helped reduce disputes within the produce and grocery industry and to improve behaviour along the supply chain.

Attached is information that highlights the nature and extent of the code, its coverage and objects within industry. As a voluntary code the Produce and Grocery Code is flexible and can easily be adapted to meet the changing requirements of the industry.

The objectives of the code are to promote fair and equitable trading practices within the produce and grocery industry supply chain. Fair and equitable trading practices enhance the competitiveness and efficiency of the supply chain and the code's guidelines set a standard for companies in the industry.

The code aims to minimise trade disputes by improving industry participants' knowledge and understanding of fair and equitable trading practices, such as the use of contracts and clear terms of trade. Fewer disputes ultimately results in lower costs for the industry that would otherwise be passed on to the consumer or suppliers.

It is important to note that dairy farmers have access to the dispute resolution system established by the code.



PRODUCE & GROCERY INDUSTRY  
**CODE OF CONDUCT**

A great strength of the committee is its ability to bring leaders along the supply chain together to meet – this committee has been the only such forum. At its last meeting the committee agreed to build on this strength and to take the initiative in identifying and discussing broader supply chain issues and be proactive in its response to industry concerns.

Yours sincerely

IAN DAVIS

Chairman

Produce and Grocery Industry Code Administration Committee



## **Senate Economics Committee inquiry into the impacts of supermarket price decisions on the dairy industry.**

The Produce and Grocery Industry Code Administration Committee<sup>1</sup> (the Committee) administers and monitors the Produce and Grocery Industry Code of Conduct (the code). The code is voluntary and promotes fair trading practices and good commercial relationships in the produce and grocery industry. The code covers all supply chain participants (except consumers) in the industry, including growers, processors, wholesalers, distributors and retailers.

### ***History of the PGICC***

The Federal Parliament established the Joint Select Committee on the Retailing Sector on 10 December 1998 to inquire into and report on the impact of market concentration in the retail sector and recommend possible revenue neutral courses of action for the Australian Government.

The Joint Select Committee presented its report, *Fair Market or Market Failure?*, on 30 August 1999, with the government releasing its response to the report on 17 December 1999. The government responded to the Joint Select Committee's recommendations by implementing a voluntary industry code of conduct and a government funded industry ombudsman to assist to resolve industry disputes.

The Retail Grocery Industry Code of Conduct Committee (RGICCC) was established on 13 February 2000 as an industry-funded committee comprising of a cross-section of industry representatives.

The RGICCC developed the Retail Grocery Industry Code of Conduct, which was launched on 13 September 2000.

On 11 February 2005, the Retail and Grocery Industry Code of Conduct Code was renamed the Produce and Grocery Industry Code of Conduct to better reflect its coverage within the industry with the RGICCC becoming the Produce and Grocery Industry Code Administration Committee (PGICAC).

### ***Australian Dairy Farmers***

On 19 December 2005 membership of the Committee was extended to include more representatives from the agricultural sector, including Australian Dairy Farmers.

On 27 January 2009, Australian Dairy Farmers resigned its membership of the Committee advising that

*The ADF considers the high value work of the PGICAC was delivered sometime ago with the bedding down of the code. As such, we feel that we are now well able to progress any future considerations that emerge in this space through our membership of the National Farmers Federation.*

Australian Dairy Farmers remains an endorsing body of the code and dairy farmers have access to the dispute resolution procedure established under the code.

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<sup>1</sup> The Committee consists of an independent Chairman and a cross section of members from the produce and grocery industry, with representatives from Coles Group, Woolworths Ltd, the National Association of Retail Grocers of Australia, the National Farmers' Federation, Australian Chamber of Fruit and Vegetable Industries, the Australian Retailers Association, and the Victorian Farmers Federation.



### **Structure and description of code**

The Produce and Grocery Industry Code of Conduct is a voluntary set of guidelines promoting fair trading practices in the produce and grocery industry and provides a simple dispute resolution mechanism. The best practice principles promoted by the code encourage fair, equitable and open relationships between industry participants to strengthen relationships and minimise disputes

The code covers vertical transactions within the produce and grocery industry supply chain and guides the conduct of businesses within the industry. The code is intended to cover all participants (except consumers) in the Australian produce and grocery industry, including growers, processors, wholesalers, distributors and retailers.

The objectives of the code are to:

- promote fair and equitable trading practices amongst industry participants;
- encourage fair play and open communication between industry participants as a means of avoiding disputes; and
- provide a simple, accessible and non-legalistic dispute resolution mechanism for industry participants in the event of a dispute.

The code addresses four important issues:

- *Produce standards and specifications* - All industry participants support an efficient and competitive produce and grocery industry which accords equal respect to:
  - the right of retailers to buy the best produce at the best price; and
  - the right of suppliers to have their produce fairly evaluated for purchase against clear and objective standards and specifications.

All industry participants recognise that produce standards and specifications must allow for seasonal variations in produce.

- *Contracts* - All industry participants support the right of suppliers and retailers to freely negotiate the terms and conditions of any supply contracts.;
- *Product labelling, packaging and preparation* - All industry participants accept the right of retailers to determine labelling, packaging and preparation requirements, subject to the standards imposed or promoted by the relevant regulating authorities or industry associations, including any voluntary codes of conduct or practice.; and
- *Notification of acquisitions* - All industry participants acknowledge that:
  - the *Competition and Consumer Act 2010* (formerly the Trade Practices Act) prohibits acquisitions or mergers which would have the effect or likely effect of substantially lessening competition in a market (s.50);
  - there is no statutory notification requirement of acquisitions to the Australian Competition and Consumer Commission (ACCC) imposed on industry participants; and
  - voluntary notification of acquisitions to the ACCC is an existing, corporate practice for many industry participants.

### **Endorsement of the Code**

The following organisations and businesses have committed to promoting the code and their own internal dispute resolution procedures:

- Aldi Stores
- Australian Chamber of Fruit and Vegetable Industries Limited
- Australian Dairy Farmers
- Australian Chicken Growers Council

- Australian Egg Corporation Limited
- Australian Retailers Association
- Coles Group Limited
- Murray Valley Winegrape Growers
- National Association of Retail Grocers of Australia
- National Farmers' Federation
- National Retail Association
- Queensland Retail Traders and Shopkeepers Association; and
- Woolworths Limited.

Other organisations are welcome to endorse the code and do so by advising the Secretariat in writing of an intention to endorse the code and making a public statement of their endorsement.

### ***Dispute resolution***

The code provides for a two-stage dispute resolution scheme that:

1. Encourages applicants to raise disputes with the respondent; and
2. Encourages unresolved disputes to be raised with the Produce and Grocery Industry Ombudsman (Ombudsman).

As outlined in the code, the Ombudsman provides a confidential mediation service, which is subsidised by the Australian Government. The Ombudsman manages and oversees a panel of qualified mediators who deliver the mediation services. The Ombudsman service mediates disputes in accordance with the code.

In 2006 the government instituted a new model of delivery of the Ombudsman service. The Ombudsman service had been delivered by a single provider who conducted mediations. Following the changes the Ombudsman administers a panel of mediators who conduct the mediations. This focus on early dispute resolution has resulted in a drop in the number of inquiries that become disputes requiring mediation.

### ***Achievements of the Committee and Code***

The Committee values its ability to bring together industry representatives to foster collaboration, communication and understanding of issues affecting the industry. The Committee is not aware of any other Committee that has effectively brought together supply chain participants and representatives in a cooperative and facilitative environment for the benefit of the industry.

The code and its mediation service have helped the industry to resolve and minimise the occurrence of trade disputes. The Committee highly values the mediation service as an important tool in managing disputes, improving trading practices and maintaining better business relationships. The effectiveness of the settlement of disputes prior to initiating a formal mediation process is indication of the code's success.

The Committee has made various amendments and improvements to the code over the last three years, including the development of a Terms of Trade Checklist (attached), broadening of the Committee's membership base and the regular publication of the Committee's statements of outcomes from meetings. The checklist promotes the code's principles and was developed to assist industry participants consider what terms and conditions should be included in contracts to help minimise disputes and promote best practice. This work is an example of the Committee assisting the industry to independently manage trading practices.