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Senate Standing Committees on Economics  
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**Subject: Big box retailer price setting**

Thank you for the opportunity to submit a response to the Inquiry into Big Box retailer price setting.

The NSW Farmers NSWF) has consistently called for the **Food and Grocery Code of Conduct to be mandatory for all retailers and wholesalers trading in food and groceries with the ability for the regulator to seek meaningful and proportionate civil penalties for non-compliance.**<sup>1</sup> NSW Farmers notes with disappointment that the recommendation of the Emerson Review and the proposed mandatory Food and Grocery Code of Conduct is limited only to supermarkets with an annual revenue of \$5 billion, explicitly excluding other types of businesses.

The decision failed to recognise that in a market where prices and trading practices are distorted by a few large oligopolists - wholesalers, processors and smaller firms with less market power can still engage in unfair conduct, and take advantage of many suppliers seeking better prices amongst a few competitors. Therefore, it is NSW Farmers strong preference to see the Food and Grocery Code of Conduct expanded, not limited to particular business models or turnover ranges.

**Scope of the Code: 'Big Box' vs Supermarkets**

While the definition of Big Box is ambiguous, membership of the Large Format Retail Association includes several outlets which sell food, grocery, or other agricultural products (fresh or processed). Examples include consumer groceries (Costco), nursery and landscaping (Bunnings), business kitchen supplies (Office works), alcoholic beverages (Dan Murphy's), and pet supplies (Petbarn and Petstock). Large Format Retailing is characterised by a wide variety of products in a warehouse-like setting that naturally requires a significant area of land. This kind of retailing is usually located in separate buildings or precincts (as opposed to condensed in shopping centres or street malls) due the area of land required.

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<sup>1</sup> NSW Farmers submission to Review of the Food and Grocery Code of Conduct - February 2024

With the advent of online shopping, it is considered that the distinction between Large Format, supermarket, and small-format retail is an increasingly inadequate classification. For example, Coles, Woolworths and Amazon now operate several warehouses in Australia that effectively operate as Large Format Retail operations, with the only distinction being that groceries are delivered to customers through online ordering, rather than customers shopping at the stores. The effect is so dramatic that many Woolworths stores have reduced their range and inventories<sup>2</sup>. Nearly all Large Format Retailers are also now pivoting to online sales.

As the retail and wholesale markets continue to evolve, it is imperative that the Food and Grocery Code of Conduct remain relevant, and able to respond to areas where new technology or changing consumer preferences give rise for incumbents to rapidly expand and exert market power.

### **Greenlife Industry Issues**

NSW Farmers notes with concern the allegations of unfair trading practices raised by Greenlife Industry Australia (GIA) with respect to Big Box retailers, including Bunnings. These allegations include a lack of agreed prices or volumes, a requirement to discount invoices for timely payment, an inability to negotiate price increases, and a failure to deal in good faith. Many of these allegations reflect those raised by other growers servicing supermarkets facing identical market power dynamics. Nursery producers suffer from many of the same vulnerabilities as fresh produce growers, including long lead times from planting to harvest, and a perishable good that cannot be stored while alternative markets are found if pre-made orders are not honoured.

In principle, NSW Farmers considers that, taking into account the evolving and inadequate distinction between supermarket, Large Format Retail, and online superstores, and the similar levels of market concentration evident throughout all categories and levels of the food and grocery supply chain – that the Code should cover all relevant food and grocery (including greenlife) retailers and wholesalers to drive better behaviour across the sector and protect suppliers and consumers.

If it is ultimately considered more appropriate for the greenlife industry to be covered under a separate code, then NSW Farmers recommends that such a code contains equivalent provisions as in the proposed Food and Grocery Code of Conduct, for protections against retribution and unfair trading practices (such as those described above and in submissions from GIA), significant penalties for breaching the code, and an independent dispute resolution process – detailed further below.

### **Code provisions to protect fresh produce – including greenlife**

Where market power distorts the trading dynamics between farmers and other processors, wholesalers and retailers, NSW Farmers considers that Codes of Conduct are a necessary tool to address the harmful impacts of market power imbalances and provide critical safeguards for farmers supplying these large retailers.

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<sup>2</sup> News.com.au - [Why Woolies believes its supermarkets will shrink in future](#)

NSWFA has continued to advocate for the implementation of a mandatory Food and Grocery Code, with the ability to apply penalties when it is breached and truly independent dispute resolution options for suppliers.

In addition, NSWFA seeks a code that specifically prohibits the following types of harmful behaviour toward suppliers:

- Payments later than 30 days for perishable agricultural and food products
- Payment later than 60 days for other agri-food products
- Short-notice cancellations of perishable agri-food products
- Risk of loss and deterioration transferred to the supplier
- Refusal of a written confirmation of a supply agreement by the buyer, despite request from the supplier
- Misuse of trade secrets by the buyer
- Commercial retaliation by the buyer
- Transferring the costs of examining customer complaints to the supplier
- Threatening to blacklist a supplier
- Refusal to negotiate prices by a buyer
- Using standards and specifications as a way to lock in suppliers
- Unilaterally requiring suppliers to adhere to standards with no compensation for the costs that they impose
- Unilaterally requiring suppliers to adhere to standards that are unreasonably onerous and divergent from broader industry standard
- Requiring that producers either plough-in, dump or feed to livestock any rejected produce rather than selling it to a third party.

#### **Wider economic reforms to address competition**

NSW Farmers has serious concerns for the implications of high market concentration in the food and grocery sector, including greenlife. Markets with many producers but few major retailers can lead to market failure in the form of market power. The harm that arises from this can take many forms including producers receiving prices below their marginal cost of production, and not all can be efficiently addressed through Industry Codes of Conduct.

As such, NSW Farmers has continued to call for critical reforms to address concentration and misuse of market power in the supermarket sector through several recent consultations and inquiries including that the Australian Government:

1. Introduce divestiture powers which can be used in cases of gross market power imbalances which are against the national interest.
2. Develop options to attract new entrants to increase competition.
3. Increase price transparency and data collection across the supply chain, especially regarding farmgate-retail price spreads.
4. Provide the ACCC with more powers and funding to undertake enforcement activities to act as a disincentive against harmful behaviour including reporting of breaches of the Codes of Conduct, including the Food and Grocery Code.
5. Implement Option 4 from Treasury's Consultation Regulatory Impact Statement on Unfair Trading Practices.

Please see NSW Farmers submissions below for additional information regarding our recommendations:

#### **NSW Farmers**

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- [Review of the Food and Grocery Code of Conduct – February 2024](#)
- [Senate Select Committee on Supermarket Prices Inquiry - February 2024](#)

Should The Standing Committee on Economics require further information from NSW Farmers for this inquiry, please contact NSW Farmers Head of Policy and Advocacy, Kathy Rankin via email at [REDACTED] or by phone on [REDACTED].

Yours sincerely

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