

Dissenting Report by Senator Nick Xenophon

1.1 This bill aims to address one part of the serious and far reaching problems within Australia's grocery retail sector and the food supply chain, and the impact it has on our farmers. It does not propose, and could not reasonably be expected to propose, a 'one step' solution to the many complex issues in this sector.

1.2 While the Committee states that the problem of low farm gate prices received by producers cannot be directly linked to the Coles and Woolworths duopoly, it is hard to believe that the massive market power held by these two retailers does not have the potential to have a negative impact on producers.

1.3 During the 15 November hearing, Mrs Margy Osmond, CEO of the Australian National Retailers' Association, stated:

In the case of a company like Woolworths, for example, 80 percent of their suppliers have been with them for more than 10 years, and a substantial number for more than 30 or 40 years.¹

1.4 However, if Coles and Woolworths control over 80 percent of the grocery market, it is apparent that producers would not have many other options about where to sell their produce, particularly if they are major producers.

1.5 In response to questions about this issue, Mr Peter White, President of the South Australian Farmers Federation, stated:

It is difficult for them to go into the intricacies of their business to spell that out. It is hard to get that information and, like I said, it is pretty easy for them to say that in the pub without actually standing up and giving you hard evidence, which makes our job extremely difficult. As a farmer representation group, it even makes it more difficult in that, if—as a policy, I suppose—we came out and said, 'Look, we believe that the Coles and the Woolworths of this world are giving a lot of our producers a hard time and dictating the price,' those who were supplying them would ring up and say: 'Don't make those sorts of waves, because we don't want to upset our relationship. If you're going to do that, we'll have to seriously look at whether we're members of your organisation.' So we are caught in a difficult position with it as well.²

1 Mrs Margy Osmond, ANRA, *Proof Committee Hansard*, 15 November 2011, p. 21.

2 Mr Peter White, SAFF, *Proof Committee Hansard*, 15 November 2011, p. 33.

1.6 Mr White elaborated on the fact that while producers may be happy to raise these issues in an unofficial setting, it is unlikely that they would be willing to give formal evidence.³

1.7 Evidence provided by Mr Scott Gregson of the ACCC in relation to the confidentiality of complaints provided to the ACCC supports this. Mr Gregson said:

That is common across a number of industries where we get complaints and particularly, as you point out, where there is a symbiotic relationship or a need to have that relationship in place. Complainants are often concerned about the impact.⁴

1.8 It is important to keep this information in mind when considering existing reports into these issues.

1.9 It is also important to note that, while most submitters did have concerns about the Bill itself, many were supportive of the issues it aims to address and raised concerns about the effect of the Coles and Woolworths duopoly.

1.10 In their submission to the Committee, the Australian Food and Grocery Council recommended the introduction of a Supermarket Ombudsman to help level the playing field in the grocery retail sector. They stated:

AFGC shares, however, the concerns that asymmetry in the market power of large supermarket chains and their suppliers coupled with the aggressive retail pricing of the major market players and the aggressive trading terms they extract is squeezing the margins of businesses up the supply chain and threatening their viability. Food manufacturers are being forced to shut business, or relocate off shore which in turn is disadvantaging their regular, long terms suppliers of fresh produce.

To address this market power imbalance AFGC proposes that the Government establish a **Supermarket Fair Trading Code of Conduct and a Supermarket Ombudsman** charged with ensuring fairness in trading term negotiations along the supply chain and providing a mechanism to resolve disputes regarding trading practices.⁵ [Emphasis supplied]

1.11 The introduction of such an Ombudsman, working in conjunction with other measures, would provide additional support to retailers trying to compete against the Coles and Woolworths duopoly, and give greater choice to food producers.

1.12 Some concerns also related to determining a ‘farm gate price’, given the different handling and sale processes produce may go through between leaving the producer and arriving at the point of sale.

3 Mr Peter White, SAFF, *Proof Committee Hansard*, 15 November 2011, p. 31.

4 Mr Scott Gregson, ACCC, *Proof Committee Hansard*, 15 November 2011, p. 18.

5 Australian Food and Grocery Council, *Submission 5*, p. 4.

1.13 The solution to this is greater transparency in the supply chain. One step towards achieving this would be to require all wholesalers and retailers to be subject to the Horticulture Code of Conduct.

1.14 In his evidence to the Committee, Mr White of South Australian Farmers Federation indicated his support for this. He said:

Codes of practice by their very nature tend to be accepted by those who are doing the right thing and ignored by those who do not want to do the right thing. I think that, if it were strengthened and included those, that would provide some integrity and some honesty that does not exist at the moment.⁶

1.15 I also note the concerns raised by some submitters, including the Citrus Growers of South Australia Inc, that displaying a farm gate price may mislead consumers and even put them off buying fresh produce all together.⁷

1.16 The solution to this would be a public information campaign. It is widely acknowledged that consumers want more clearly-displayed information about products, not less, as demonstrated by the response to food labelling issues. It is therefore reasonable to believe that the public would be receptive to this measure once they are aware of how it operates.

1.17 The issue of clarity in food labelling was also raised by several submitters, including both the Citrus Growers of South Australia Inc and the South Australian Farmers Federation during the hearing.⁸ This is an issue that continues to be raised by producers and consumers alike, particularly in relation to accurate and meaningful country of origin labelling. The Government should consider whether the findings of the Blewett Review go far enough in this instance.

1.18 The measures outlined in this bill should stand as one part of a major overhaul of Australia's grocery sector, with particular attention paid to competition, labelling and supply chain transparency issues. The Committee makes reference to the difficulty in implementing the measures in this bill. However, I agree with the point raised by Mr White of South Australian Farmers Federation during the hearing. He said:

I think it probably does make it difficult. But does that make it wrong? That is the point we probably need to think about: just because it is difficult, does it necessarily make it not worthwhile doing?⁹

6 Mr Peter White, SAFF, *Proof Committee Hansard*, 15 November 2011, p. 33.

7 Mrs Catherine Lowe, CGSA, *Proof Committee Hansard*, 15 November 2011, p. 4.

8 Mrs Catherine Lowe, CGSA, *Proof Committee Hansard*, 15 November 2011, p. 4;
Mr Peter White, SAFF, *Proof Committee Hansard*, 15 November 2011, p. 29.

9 Mr Peter White, SAFF, *Proof Committee Hansard*, 15 November 2011, p. 29.

Recommendation 1

1.19 That the bill be amended to allow for a phase-in period of twelve months to provide for a public information campaign and to ensure supply chain transparency measures are in place.

Recommendation 2

1.20 That the Horticulture Code of Practice be expanded to apply to all wholesalers and retailers.

Recommendation 3

1.21 That the Government introduce a Supermarket Ombudsman to oversee the grocery retail sector, with emphasis on competition and pricing issues.

Recommendation 4

1.22 Subject to Recommendation 1, that the bill be passed.

Senator Nick Xenophon
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