



Constitutional Corporations (Farm Gate to Plate) Bill 2011

2.1 This chapter has five main sections:

- an overview of the Bill;
- key provisions of the Bill;
- background to the Bill;
- issues raised during the inquiry; and
- Committee comment.

Overview

2.2 The Constitutional Corporations (Farm Gate to Plate) Bill (the Bill) would require the major supermarkets to disclose and display prominently the 'farm gate' price paid for fresh fruit and vegetables. The 'farm gate' price would be visible alongside the retail price at the store, which is intended to give consumers the ability to estimate whether the retail price is appropriate. At the Bill's First Reading, Mr Katter said some fresh fruit and vegetable items are being sold to consumers at many times the price paid to farmers.¹

¹ House of Representatives Hansard, 19 September 2011, p. 10426.

2.3 An identical Bill was introduced into the Senate by Senator Nick Xenophon on 13 September 2011. When introducing the Bill, Senator Xenophon said:

Often, particularly in the recent drought years, producers have not been able to sell their produce at much more than the cost of growing it. The aim of this bill is to require grocery retailers to display the farm gate price of fresh produce next to the retail price, so that consumers can see how much profit each retailer earns for each product.²

Key provisions of the Constitutional Corporations (Farm Gate to Plate) Bill 2011

- 2.4 The Bill applies to 'constitutional corporations' that are grocery retailers with more than 1,000m² of floor space dedicated to the display of grocery items that are primarily food-based.
- 2.5 Clause 9 of the Bill will require relevant grocery retailers to display prominently the 'producer price' (farm gate price) in close proximity to the selling price. The producer price is defined in clause 7 as 'the average farm gate price received by farmers for a specific type of produce within a specified 12-month period.' In addition, retailers must publish producer prices on their websites.
- 2.6 The farm gate price refers to the price paid for produce at 'the point at which produce leaves the farm' and produce is defined as 'fresh fruit and vegetable produce'. Other types of farm produce, such as meat and dairy, are not included within the Bill's operations.
- 2.7 Clauses 10 through 13 provide that infringement notices may be issued for breaches of clause 9. The Australian Competition and Consumer Commission (the ACCC) is authorised to issue infringement notices or to apply to the Federal Court for an order against the corporation in contravention. The penalty for breaches is fixed at 600 penalty units.

2 Senate Hansard, 13 September 2011, p. 5906.

Background to the Bill

- 2.8 The concept of requiring retailers to disclose 'farm gate' prices alongside retail prices has been raised before. In 2008, the ACCC examined grocery prices generally and considered the 'farm gate' price issue, though did not find grounds for implementing such a measure.
- 2.9 In 2011 the Senate Economics Legislation Committee inquired into Senator Xenophon's Bill (mentioned above). The Senate Committee recommended the Senate reject the Bill.

Australian Competition and Consumer Commission's 2008 grocery prices inquiry

- 2.10 The ACCC's 2008 inquiry into the competitiveness of retail prices for standard groceries examined farm gate and retail pricing, in response to 'a significant concern raised at hearings and in submissions' relating to 'whether the "gap" between farm gate and retail prices for groceries has been widening in recent times.'³ The ACCC found:

The relationship between the farm gate and the check-out is quite direct for fresh products, such as meat, fresh fruit and vegetables. ... In particular, there is no across-the board evidence to suggest that retail prices for fresh products are going up by a greater percentage than farm-gate prices. The gross margins of Coles, Woolworths and Metcash in fresh products have as a whole not increased significantly in recent years. ... The ACCC accepts that many Australian farmers are suffering and low prices for their product may be a significant contributing factor. However, the extent to which the market power of retailers contributes to this problem is limited.⁴

- 2.11 The above finding was not universally accepted, a point reflected in media coverage at the time.⁵

3 ACCC, 'Inquiry into the Competitiveness of Retail prices for Standard Groceries', July 2008, p. 302.

4 ACCC, 'Inquiry into the Competitiveness of Retail prices for Standard Groceries', July 2008, p. xx.

5 See for example *The Land*, 'Supermarkets Bag an ACCC Bargain', 7 August 2008, p. 9; *Sydney Morning Herald*, 'Growers Defeated in Pulp Friction', 6 August 2008, p. 7.

Senate Economics Legislation Committee inquiry

2.12 In November 2011, the Senate Economics Legislation Committee reported on the Bill introduced into the Senate by Senator Xenophon. According to the report:

In summary, the committee's view is that the evidence it has received clearly indicates that there are substantial problems with the Bill at every level, in relation to:

- the determination of a producer price;
- the unintended adverse consequences of the Bill for producers that would likely outweigh any benefit, however slight that might be;
- the potentially misleading nature of a producer price;
- the lack of evidence that the problem identified by the Bill exists;
- if the problem does exist, the Bill may not be the correct response to that problem; and
- the serious concerns of the ACCC about its capacity to enforce the Bill.⁶

2.13 The Senate Committee received evidence that 'the gap between farm gate prices and retail prices for fresh produce is not caused by the actions of the major retailers' and that the 'display of a producer price by itself will not add to transparency' because of the nature of the supply chain.⁷ Rather, low returns to growers were attributed to:

- the high Australian Dollar;
- limited export markets; and
- oversupply within local markets.⁸

2.14 The report stated:

The evidence obtained by the Committee indicates overwhelmingly that the problem the Bill seeks to address either

6 Senate Economics Legislation Committee, 'Constitutional Corporations (Farm Gate to Plate) Bill 2011', November 2011, p. 47.

7 Senate Economics Legislation Committee, 'Constitutional Corporations (Farm Gate to Plate) Bill 2011', November 2011, p. 46.

8 Senate Economics Legislation Committee, 'Constitutional Corporations (Farm Gate to Plate) Bill 2011', November 2011, p. 33.

does not exist or is at least extremely contentious. On that basis, the committee cannot recommend that the Bill be supported.⁹

- 2.15 Senator Xenophon, in a dissenting report, argued that the remedy to low farm gate prices is greater transparency in the supply chain. He stated that the Bill was not intended to solve every problem and consumers desire more information, not less, and 'would be receptive to this measure once they are aware of how it operates.' He also recommended that the Horticulture Code of Conduct 'be expanded to apply to all wholesalers and retailers' and called for the Bill to be passed.¹⁰

Issues raised during this inquiry

- 2.16 Submissions to this inquiry presented arguments and raised themes of a similar vein to previous inquiries, which were largely oriented around the price margins of the major supermarkets.
- 2.17 The Australian National Retailers Association (ANRA) submitted that food retailers in 2009-10 achieved a pre-tax profit margin of 5.8% compared to 11.1% across all industries.¹¹ ANRA also stated that the Bill has been based on 'the mistaken belief that grocery retailers are earning 'unfair' margins.'¹² One submission cited the 'market monopoly exercised by Coles and Woolworths as a major obstacle for food growers in obtaining a fair price.'¹³ Coles Supermarkets Australia Pty Ltd (Coles) submitted that farmers receive between half and two-thirds of the final retail price and 'receive a fair share of the retail price... given the other costs and players in the agri-food supply chain.'¹⁴ The National Farmers' Federation (NFF) sympathised with the Bill's intent of adding transparency to the supply chain and obtaining appropriate prices for primary producers, but believed 'that this proposal will not achieve these outcomes and is potentially unworkable (or at least extremely difficult to implement) in practice.'¹⁵

9 Senate Economics Legislation Committee, 'Constitutional Corporations (Farm Gate to Plate) Bill 2011', November 2011, p. 46.

10 Senate Economics Legislation Committee, 'Constitutional Corporations (Farm Gate to Plate) Bill 2011 - Dissenting Report by Senator Nick Xenophon', November 2011, pp. 49-52.

11 Submission 16, Australian National Retailers Association, p. 8.

12 Submission 16, ANRA, p. 8.

13 Submission 9, Louise McManus.

14 Submission 10, Coles, p. 10.

15 Submission 4, NFF, p. 1.

2.18 Three major areas of concern were raised in submissions:

- identification of the 'farm gate' price;
- display of the 'farm gate' price; and
- impacts on suppliers and retailers.

These are each discussed in turn below.

Identification of the 'farm gate' price

2.19 According to the ANRA it would be unfeasible to identify a 'farm gate' price that could be displayed in supermarkets:

In practice, this requirement would mean that large retailers must 'discover' the prices farmers are paid for their produce. This is highly problematic, if not impossible. ... ANRA's supermarket members typically source fruit and vegetables from a variety of providers... where produce is consolidated, graded, packed etc before purchase by retailers.¹⁶

2.20 In addition, according to Coles' submission, the retail price includes many other components unrelated to the farm gate price:

The reality is that the agri-food supply chain is complex and that there are a range of parties including growers, packing shed operators, transport operators, distribution centre operators and wholesalers and retailers who all influence the final price of fresh produce.¹⁷

2.21 Woolworths similarly submitted that the Bill 'specifically excludes the majority of the costs accrued during the supply chain from the calculation of a farm gate price.'¹⁸ Woolworths informed the Committee that the initial price paid to farmers is unknown 'as we only have visibility of our cost price when we purchase the product several steps into the supply chain.'¹⁹ The submission added:

Not only do we not see the price paid to the majority of farmers who grow our produce, but the actual concept of a farm gate price as defined in the proposed Bill does not exist in practice.²⁰

16 Submission 16, ANRA, p. 7.

17 Submission 10, Coles, p. 3.

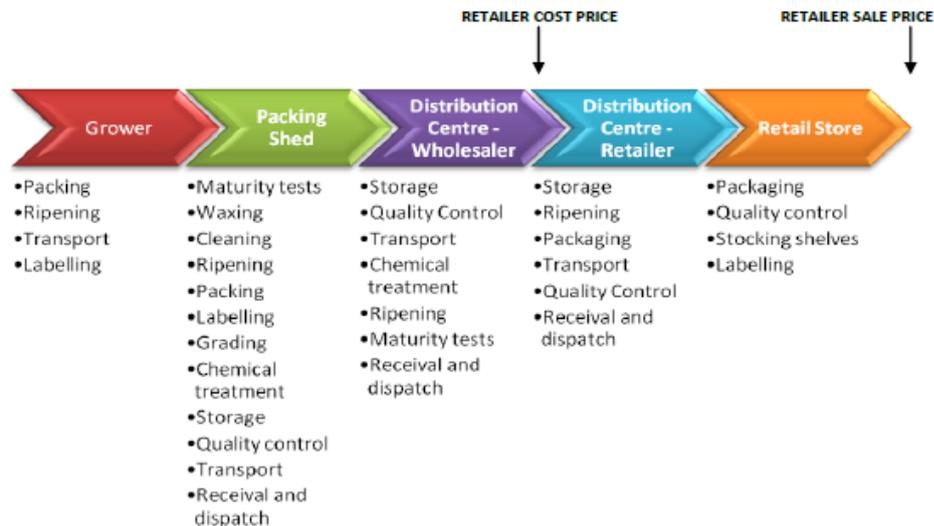
18 Submission 18, Woolworths, p. 1.

19 Submission 18, Woolworths, p. 1 and p. 7.

20 Submission 18, Woolworths, p. 1.

2.22 Woolworths provided the following diagram in its submission to show the stages of produce processing through the supply chain.

Figure 2.1: Example of the fresh produce supply chain



Source Submission 18, Woolworths, p. 8

2.23 Although the Committee was informed that the ‘farm gate’ price is non-existent and not identifiable, Coles was able to supply the Committee with illustrative examples of price margins to advance a separate argument relating to how the Bill might mislead consumers by disguising true costs and price volatility. Whilst this historic information ‘took months to complete’ and was based on ‘partial data’, Coles used the results to argue that supermarket net profit margins are ‘very low.’²¹

2.24 This indicates that even if ‘farm gate’ prices may be unknown, at the very least supermarket margins are identifiable.

Display of the ‘farm gate’ price

2.25 A number of submissions were of the view that displaying the farm gate price would mislead and confuse consumers because the ‘farm gate’ price would not move in synchronisation with retail prices. Display of farm gate prices as envisaged in the Bill would be ‘highly misleading’ according to the ANRA, because customers do not necessarily understand the ‘process and costs involved in bringing fresh produce to their local food retailer.’ The ANRA also advised that confusion would arise when prices change due to seasonal variation of supply and demand, along with a ‘myriad’ of other market factors. ‘As a result, there could well be

21 Submission 10, Coles, p. 4.

instances where the average farm gate price could exceed the price offered by the food retailer,' the ANRA submitted.²²

2.26 Coles and Woolworths concurred, each respectively submitting that the display of farm gate prices would cause 'confusion amongst consumers'²³ and 'provide misleading information to consumers.'²⁴ Woolworths explained that reporting a 'farm gate' price would be potentially unrepresentative of true costs.²⁵

2.27 The National Farmers' Federation (NFF) also had a similar stance. The NFF, while 'supportive of a transparent value chain and obtaining appropriate prices for primary producers,' submitted:

...we believe that this proposal will not achieve these outcomes and is potentially unworkable (or at least extremely difficult to implement) in practice. The NFF does not believe that the Bill will improve farm gate prices and will instead create a confusing layer of information for consumers.²⁶

2.28 The Queensland Law Society's submission did not support the Bill, giving on the same grounds as retailers and farmers: in essence, implementation would not be possible. Additionally, the Society pointed out that the Bill is not expressly limited only to Australian farm gate prices, creating additional price verification problems if international farm gate prices were included. The Society also argued that 'to itemise all the costs involved would be cost prohibitive and would not assist in promoting the objectives of the Bill'.²⁷

Impacts on suppliers and retailers

2.29 The ANRA submitted that, even if a 'farm gate' price could be identified, the task of compiling the information would be burdensome and cause retailers to bear the cost of gathering and tracking farm gate prices. The ANRA's submission stated:

Even if this information were available... attempting to compile and maintain a database of 'farm gate prices' for retailers would

22 Submission 16, ANRA, p. 8.

23 Submission 10, Coles, p. 3.

24 Submission 18, Woolworths Ltd, p. 2.

25 Submission 18, Woolworths Ltd, p. 1.

26 Submission 4, NFF, p. 1.

27 Submission 5, Queensland Law Society, pp. 1-2.

also impose a significant regulatory impost on farmers and the wholesale businesses they supply.²⁸

- 2.30 The Queensland Law Society's submission commented that any errors or omissions, even when price changes could be 'fluid', might amount to 'misleading or deceptive behaviour' by retailers if incorrect prices were displayed.²⁹ This, in turn, may attract financial penalties.
- 2.31 Woolworths cautioned that displaying the farm gate prices 'could actually decrease returns to farmers' as buyers through the supply chain could compare each other's prices and respond by aiming to match the lowest 'farm gate' price.³⁰ 'Additionally, such reform would create additional costs for farmers, wholesalers and retailers,' Woolworths submitted, also adding that the reform would generate increased regulation.³¹

Committee comment

- 2.32 The Committee agrees with evidence received that 'farm gate' prices would be difficult for retailers to identify. Fundamentally, this is because the major retailers generally do not purchase directly from growers.
- 2.33 Even if identifiable, display of the farm gate price would be potentially misleading, as other costs added into the price of produce along the supply chain would remain undisclosed. Produce that undergoes a process of handling, shipping and packaging would need to have a farm gate price displayed without these components included. Other practical problems might also arise, for example, when produce purchased on separate occasions, at various prices, is later sold on the same shelf. There is also a risk that anomalous price trends will cause confusion and potentially deter purchases of fresh fruit and vegetables.
- 2.34 The Committee believes that the nature of the supply chain makes the Bill's implementation impractical. It is also likely that retail prices would increase to offset expenses associated with tracing and monitoring 'farm gate' prices.
- 2.35 Whilst the Committee acknowledges the Bill's positive intent and supports the principle of increased transparency and information for consumers,

28 Submission 16, Australian National Retailers Association, p. 7.

29 Submission 5, Queensland Law Society, p. 2.

30 Submission 18, Woolworths, p. 9.

31 Submission 18, Woolworths, p. 9.

the Committee believes that the Bill may not necessarily achieve its aims and could have adverse and unintended consequences. Therefore, the Committee does not support the Bill.

Recommendation 1

- 2.36 **The Committee recommends that the Constitutional Corporations (Farm Gate to Plate) Bill 2011 not be passed.**