

# SUBMISSION NO. 18 Horticultural Code and Farm Gate to Plate

WOOLWORTHS LIMITED

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19 December 2011

Mr Thomas Gregory  
Committee Secretary  
House of Representatives Standing Committee on  
Agriculture, Resources, Fisheries and Forestry  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

**By email: [arff.reps@aph.gov.au](mailto:arff.reps@aph.gov.au)**

Dear Mr Gregory

**Re: Constitutional Corporations (Farm Gate to Plate) Bill 2011 and Competition and Consumer Amendment (Horticultural Code of Conduct) Bill 2011**

Woolworths Limited welcomes the opportunity to provide comments on the *Constitutional Corporations (Farm Gate to Plate) Bill 2011* and the *Competition and Consumer Amendment (Horticultural Code of Conduct) Bill 2011*.

Woolworths is committed to supporting Australian farmers. Our reputation as the Fresh Food People is underscored by the fact that we source 100 per cent of our fresh meat (beef, lamb, pork and poultry) and 97 per cent of our fresh fruit and vegetables domestically. The remaining 3 per cent of produce is imported counter-seasonally or when supply is not available in Australia.

In all our trading relationships with farmers and wholesalers, Woolworths is committed to undertaking fair dealings and abides by stringent internal and industry codes of conduct. We were an inaugural member of the Produce and Grocery Industry Code of Conduct in 2000 and remain an active participant in the industry-led administration committee.

Woolworths strongly believes securing a future for Australia's farmers involves working in partnerships with industry to develop new products, promote innovation, increase local supply, build leadership in the agricultural sector's future leaders and foster sustainable practices to ensure our country's long term food security. Over the past five years, we have provided over \$20 million to agricultural communities including funding Landcare projects and 150 scholarships, while also contributing over \$20 million in natural disaster relief through fundraising and matching.

Woolworths appreciates the intention behind these two Bills is to support the horticultural sector. However, we do not believe the proposed legislation will deliver any different outcomes for farmers and may in fact be detrimental.

The provisions of the *Constitutional Corporations (Farm Gate to Plate) Bill 2011* are not supported by evidence. The issue of farm gate prices has been examined extensively in recent years by several government bodies. In 2008, the Australian Competition and Consumer Commission (ACCC) reviewed the buying power of supermarkets and their profit margins on fresh produce. In its Grocery Inquiry report, the ACCC stated:

“It is easy to look to the MSCs [major supermarket chains] given their size and related buying power and assume that this is leading to a widening of the gap between farm gate and retail prices. However, the data available to the ACCC certainly do not support that as a universal picture. Indeed, the data contradicts it in many fruit and vegetable categories.”<sup>1</sup>

There is not only a lack of evidence for retail prices moving ahead of farm gate prices generally, but the actual concept of a farm gate price as described in this Bill simply does not exist in practice. The flat price paid to farmers when they first on-sell their produce will include various levels of value adding that are not separated out from any basic price for harvested produce including transport and packing. In addition, for the most part Woolworths does not see this first buy price for farmers. The majority of our produce is purchased through wholesalers. We only have visibility of the buy price we pay to these intermediaries, at which point in time we are paying for further processes such as quality control, quarantine treatment, ripening, transport to our distribution centre, packaging and grading.

Woolworths is of the view that the proposed *Constitutional Corporations (Farm Gate to Plate) Bill 2011* would be unworkable, cause distortions in the fruit and vegetable market, place additional and costly regulatory burdens on farmers and retailers, potentially reduce farm gate prices and provide misleading information to consumers.

The *Consumer Amendment (Horticultural Code of Conduct) Bill 2011* would also create significant regulatory and financial burdens while duplicating existing processes. Currently, retailers and farming associations endorse the Produce and Grocery Industry Code of Conduct. This industry-led and industry-funded initiative has been in place for 11 years and has been instrumental in raising trading standards and developing best practice supply agreements across the grocery sector. The Code of Conduct is also supported by an Ombudsman who has reviewed and mediated hundreds of disputes over the years.

Woolworths believes that the existing arrangements provide a unique opportunity for the whole of the produce and grocery supply chain to come together to discuss issues and develop collaborative approaches to common challenges. We do not believe mandating retailers become members of an additional code would produce any different outcomes for farmers. Instead, Woolworths is of the view that the best course would be for the Committees supporting both Codes of Conduct should do further work to promote existing dispute resolution opportunities, rather than creating additional layers of complexity as proposed in the *Consumer Amendment (Horticultural Code of Conduct) Bill 2011*.

In light of these concerns, Woolworths does not support either the *Constitutional Corporations (Farm Gate to Plate) Bill 2011* or the *Competition and Consumer Amendment (Horticultural Code of Conduct) Bill 2011*.

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<sup>1</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p307.

Should you have any additional questions arising from this submission, please do not hesitate to contact Cassandra Simpson, Public Policy Manager

Yours sincerely

**Nathalie Samia**  
**Group Manager – Government Relations and Industry Affairs**  
**Woolworths Limited**

# WOOLWORTHS LIMITED

## Woolworths Limited

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**Submission to the Standing Committee on  
Agriculture, Resources, Fisheries and Forestry  
Inquiry into the *Constitutional Corporations (Farm  
Gate to Plate) Bill 2011* and *Competition and  
Consumer Amendment (Horticultural Code of  
Conduct) Bill 2011***

## 1 Executive Summary

Woolworths Limited welcomes the opportunity to provide comments on the *Constitutional Corporations (Farm Gate to Plate) Bill 2011 (Farm Gate to Plate Bill)* and the *Competition and Consumer Amendment (Horticultural Code of Conduct) Bill 2011 (Horticultural Code of Conduct Bill)*.

The Australian horticulture industry is dynamic, diverse and competitive. Our farmers grow an extensive range of fruit and vegetables across the country and supply a variety of markets including export, processors and manufacturers, restaurants and retailers.

As the Fresh Food People, Woolworths is committed to supporting Australian farmers and sources 100 per cent of our fresh meat and poultry and 97 per cent of our fresh fruit and vegetables domestically. This includes over 360 different lines of fruit and vegetables. This produce is sourced from hundreds of producers and suppliers across the country, the majority of whom in turn source produce from hundreds more growers.

In sourcing our produce from local growers, one of our key objectives is to provide long lines of consistent quality product to our customers. We supply fruit and vegetables daily to over 850 stores across the country. In our trading relationships, our priority is to ensure we build partnerships with producers who can ensure reliability and availability so that we can provide the products our customers demand.

The Farm Gate to Plate Bill proposes a system of reporting on prices paid for fresh produce in this supply chain. However the legislation specifically excludes the majority of the costs accrued during the supply chain from the calculation of a farm gate price. Woolworths does not see the initial price paid to farmers as we only have visibility of our cost price when we purchase the product several steps into this supply chain.

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. This is because a farmer is not paid for “produce available at the farm” as the Bill requires. The price paid to farmers when they first on-sell their produce will include various levels of value-adding that are not separated out from any basic price for harvested produce. Any reporting of a price for harvested produce is therefore likely to be misleading as it would not be representative of the true costs in the fresh produce supply chain.

As a result, the Farm Gate to Plate Bill would not provide meaningful, informative or useful information to consumers. We are committed to empowering our customers and providing them with a variety of information about our fresh produce. The scheme outlined in the Bill would not provide such information and would actually provide incredibly misleading indications of profit margins.

Further, the notion that farm gate prices and retail prices are diverging is not supported by evidence. The issue of farm gate prices has been examined extensively in recent years by several government bodies, with the Australian Competition and Consumer Commission (ACCC) finding in 2008 that there was no widening gap between the two prices.

The Horticultural Code of Conduct Bill proposes to join supermarkets to the existing the Horticulture Code of Conduct. Woolworths does not believe there are compelling reasons to extend the Code in this manner. Woolworths maintains full transparency in its arrangements with all suppliers (both growers and merchants). Our voluntary participation in the Produce and Grocery Industry Code of Conduct (PGICC) demonstrates that Woolworths is already subject to a level of industry

accountability regarding its produce and grocery operations. Including retailers in the Horticulture Code of Conduct would merely impose potentially burdensome compliance costs upon retailers and duplicate existing processes without addressing the reasons for the Code's introduction.

Woolworths appreciates that the intent behind both Bills is to provide support for our farmers and ensure they achieve fair prices for their produce. However, the proposed legislation will not deliver its intended outcomes for farmers and will instead create costly regulatory burdens for all levels of the supply chain. We believe our current practice of adopting strong, long-term trading relationships, complying with the PGICC, moving the retail price in line with changes to market prices and providing a suite of provenance and market information to our customers already lead to positive outcomes for the entire supply chain.

In light of these concerns, Woolworths does not support either the *Constitutional Corporations (Farm Gate to Plate) Bill 2011* or the *Competition and Consumer Amendment (Horticultural Code of Conduct) Bill 2011*.

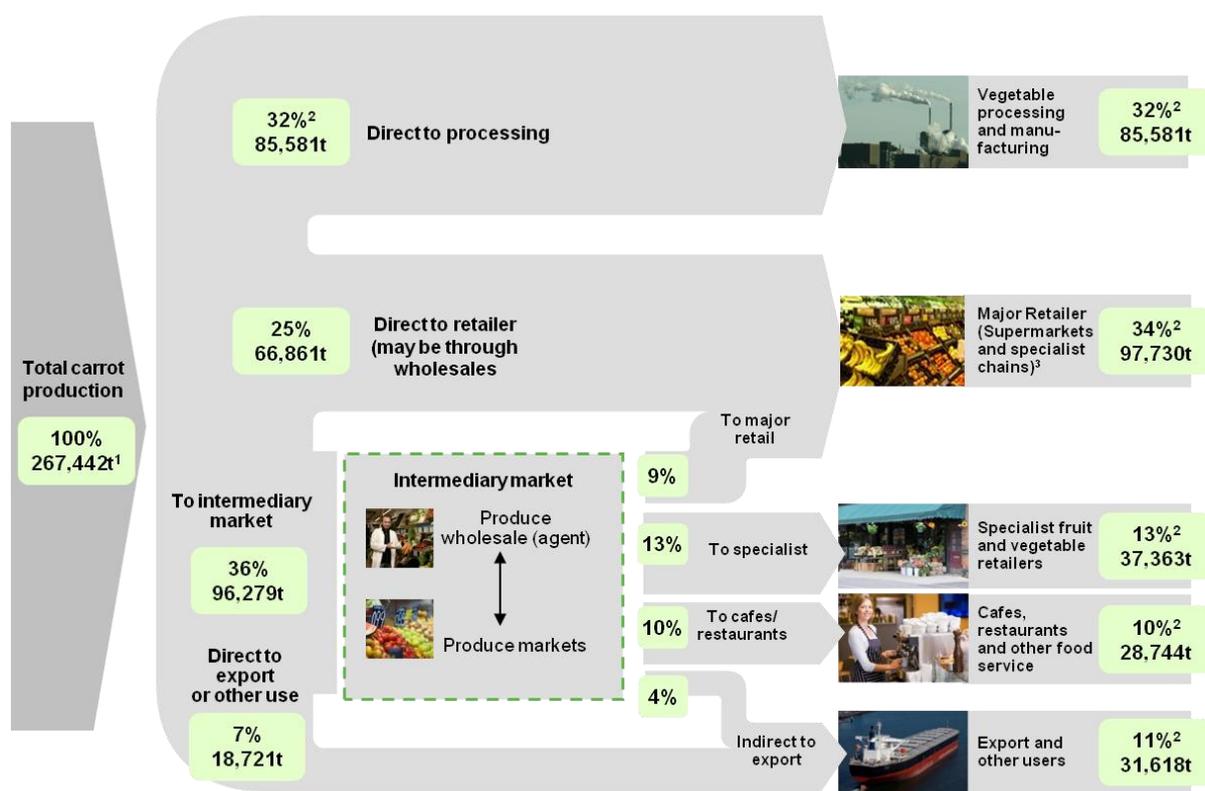
## 2 Overview

In 1987, Woolworths repositioned itself as the Fresh Food People, driving a retail revolution in fresh foods and positioning itself as the leading Australian retailer of fresh foods.

Woolworths is committed to supporting Australia's farmers and domestic sourcing of our fresh produce. One hundred per cent of our fresh meat and poultry and 97 per cent of our fruit and vegetables are grown in Australia. Our fruit and vegetable range includes over 360 different lines and varieties.

Fruit and vegetable growers have a variety of end users they supply produce to other than major supermarket chains. Produce is also exported, sent to processors and manufacturers, purchased by restaurants or sourced by other retailers. For each different product, the shares of each end user will vary greatly. For example, Figure I depicts the breakdown of the end users of carrots grown in Australia by volume. Around 30 per cent of carrots are not available for purchase by retail buyers, leaving wholesalers controlling up to 55 per cent of the remaining product.

**FIGURE I** END USERS OF AUSTRALIAN CARROTS<sup>2</sup>

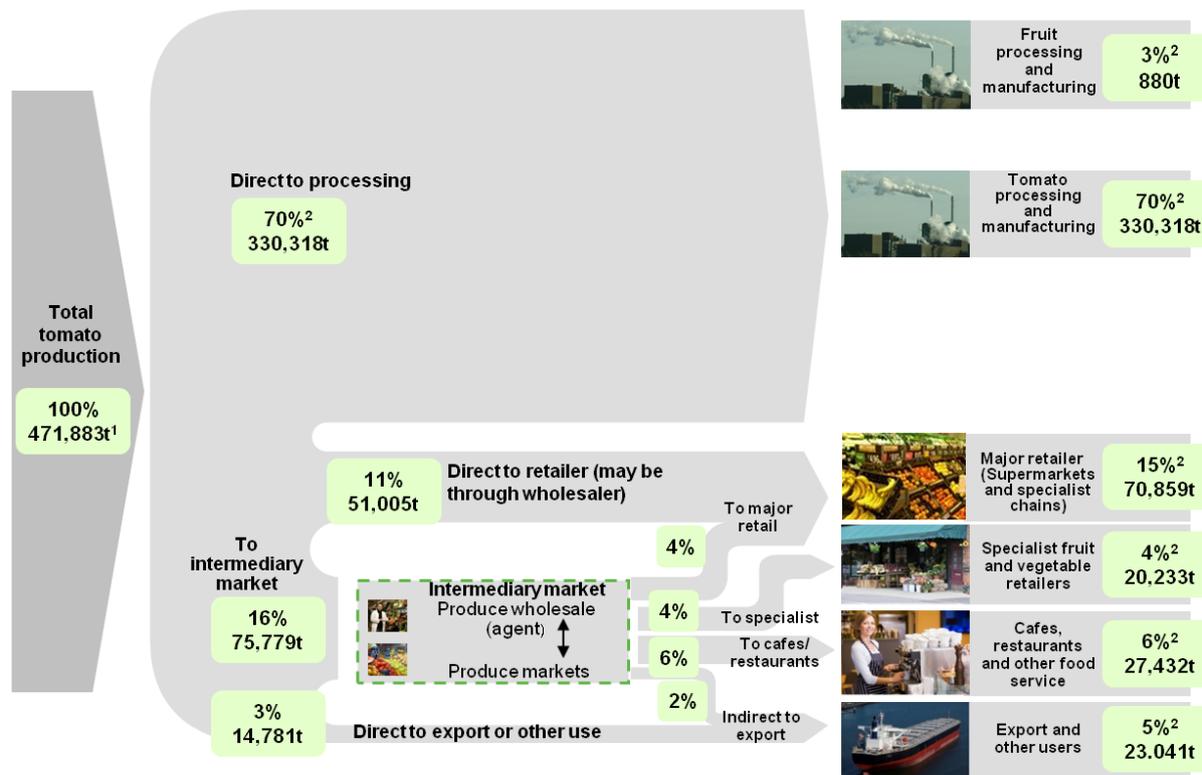


<sup>1</sup> ABS, *Agricultural commodities 2009-10*, n° 7121.0, April 2011

<sup>2</sup> IbisWorld, *A0113 Vegetable Growing in Australia Industry Report*, February 2011

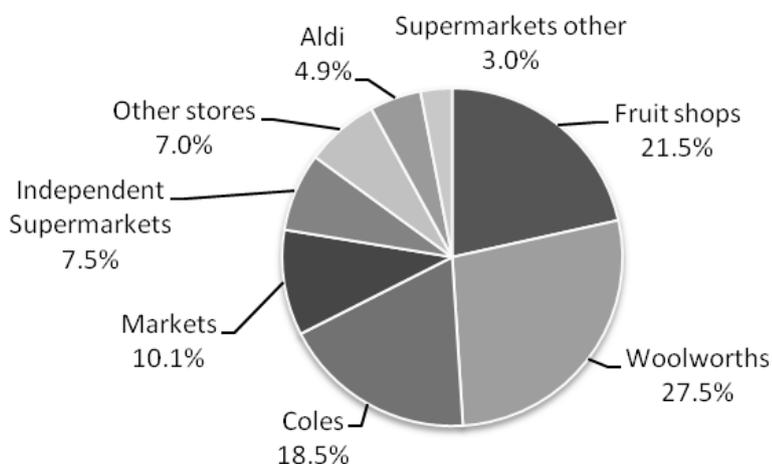
Tomatoes provide a very different example of the variety of end users. Seventy per cent of tomato production is for the processing sector while half of the remaining tomatoes are sold through wholesalers.

**FIGURE II END USERS OF AUSTRALIAN TOMATOES<sup>3</sup>**



The retail fruit and vegetable sector is diverse and competitive. Figure III below depicts the breakdown of fruit and vegetable sales across retailers. According to Roy Morgan's June 2011 Supermarket Monitor, Woolworths sells 27.5 per cent of fruit and vegetables in the retail sector, fruit shops 21.5 per cent, Coles 18.5 per cent, markets make up 10.1 per cent, independent supermarkets sell 7 per cent and Aldi 4.9 per cent.

**FIGURE III SALES SHARES FOR RETAIL FRUIT AND VEGETABLES**



<sup>3</sup> 1. ABS, *ibid.*

2. IbisWorld, *ibid.*

## 4 Working in partnership

Beyond our day to day trading relationships, Woolworths regularly partners with industry to innovate, promote sustainable practices and ensure Australia's future food security. Initiatives include increasing domestic production of certain lines, trialling new products on the market and producing new product lines to ensure our customers have the widest variety possible. Our joint objective and challenge with the sector is to ensure our Australian grown produce is plentiful, can meet national demand and is superior to anything that can be offered from international sources.

### 4.1 Innovation

Woolworths has partnered with industry to improve the local supply of fruit and vegetables for many years. Ten years ago we came together with Australian Garlic Producers (AGP) to increase the local supply of garlic. At the time, all garlic in Australia was a product of China, but Woolworths supported an AGP initiative and provided an understanding that what was produced would be sold in Woolworths stores. This commitment helped AGP secure the necessary finance to expand their business and start to produce commercial quantities. As a result of this partnership and investment, Australian garlic is now available on supermarket shelves and each year the supply window gets longer and the volumes greater. The shared objective of AGP and Woolworths is to have a national supply of Australian garlic bulbs within the next few years.

We have also successfully worked with the Mulgowie Farming Company for over 15 years, including building produce categories such as fresh sweet corn, green beans and broccoli. In 2003, Woolworths approached Mulgowie to produce and develop a supply chain for fresh Australian baby corn. Fresh baby corn at the time was sourced from overseas. Today, Mulgowie supplies 100 per cent of Woolworth's fresh baby corn requirements nationally. This partnership did not just mean increased domestic sourcing of products - the collaboration also led to the direct creation of around 20 new jobs.

### 4.2 Supporting rural communities

Woolworths also works to ensure Australia's food security into the future and encourages the development of sustainably grown local produce. Our Fresh Food Future program draws together a number of initiatives to advance agricultural sustainability and includes components dealing with research, the adoption of sustainable agriculture practices, increasing production capacity and building leadership. Over the past five years, Woolworths has invested over \$20 million to support our regional communities and secure the future of Australian agriculture. Initiatives include:

- over 150 Landcare projects;
- since 2007, offering 150 young Australians every year the opportunity to attend the Woolworths Agricultural Business Scholarship program;
- funding participants in the Rural Industries Research and Development Corporation's Investing in Youth Studentship program;
- sponsoring the Art4Agriculture Archibull Prize;
- working in partnership with Primary Industry Centre for Science Education to promote agricultural sciences as part secondary school curriculum;
- providing long-term support for the Australian Rural Leadership Foundation;
- sponsoring the Nuffield Scholarship to increase practical farming knowledge and management skills and techniques in the primary production sector; and

- sponsoring industry body conferences and field days.

Woolworths is also a foundation partner of the inaugural Australian Year of the Farmer, including contributing \$500 000 in financial support. This initiative aims to promote the importance of farming and rural communities. Throughout the year a range of events will be hosted including country roadshows, food of origin exhibitions, activities to promote agricultural education and career opportunities, and an Agricultural Innovation and Technology Expo.

As recent events have shown us all too clearly, natural disasters can have a devastating effect on our country. Over the last five years, Woolworths has provided farming communities with support to help them in times of need. This has included \$1 million for the Victorian bushfire recovery efforts, \$19.5 million after the Queensland floods and \$1 million to the flood-affected dairy industry.

## 5 Farm gate to plate

The Australian horticulture industry is dynamic, diverse and competitive. Australian farmers grow an extensive range of fruit and vegetables across the country and supply a variety of buyers including export, processors and manufacturers, restaurants and retailers.

### 5.1 Produce pricing: supply and demand

Woolworths works with our various suppliers all around the country on a daily basis to source quality products. Each week our trading partners, be they growers or traders, furnish Woolworths with quotes for their produce. Woolworths and our suppliers will then engage in price negotiations which will take into account current and forecast market price levels as well as availability, grade and quality.

The prices we are quoted will fluctuate on a daily basis in accordance with the current supply. Given the perishable nature of fresh produce, the levels of supply of fruit and vegetables will vary greatly each day. Factors influencing supply will include seasonality, quality, export markets, shelf-life, climate conditions and demand from other buyers. This was recognised by the ACCC in its 2008 Grocery Inquiry, finding that “prices are dictated by supply-and demand conditions in the marketplace at the time the growers’ products are ready for market. The ACCC has no concerns about the competitiveness of any market at this level.”<sup>4</sup>

The ACCC also described the fresh produce pricing structure and farm gate prices. It noted:

“evidence available to the inquiry suggests that retailers do not set farm gate prices, but rather these prices mirror supply and demand factors in the relevant market. In general, the MSCs [major supermarket chains] do not buy sufficient amounts of product to control the market price”.<sup>5</sup>

Woolworths considers this remains an accurate description and remains valid in 2011.

### 5.2 Farm gate prices

In the course of our buying arrangements, Woolworths only has visibility of the cost price we pay to our suppliers, not the price paid to the majority of farmers. Woolworths would therefore not be able to report on what farmers are paid for their produce, because for the most part, we do not see the first buy price in the supply chain, we only see what we pay to suppliers and wholesalers.

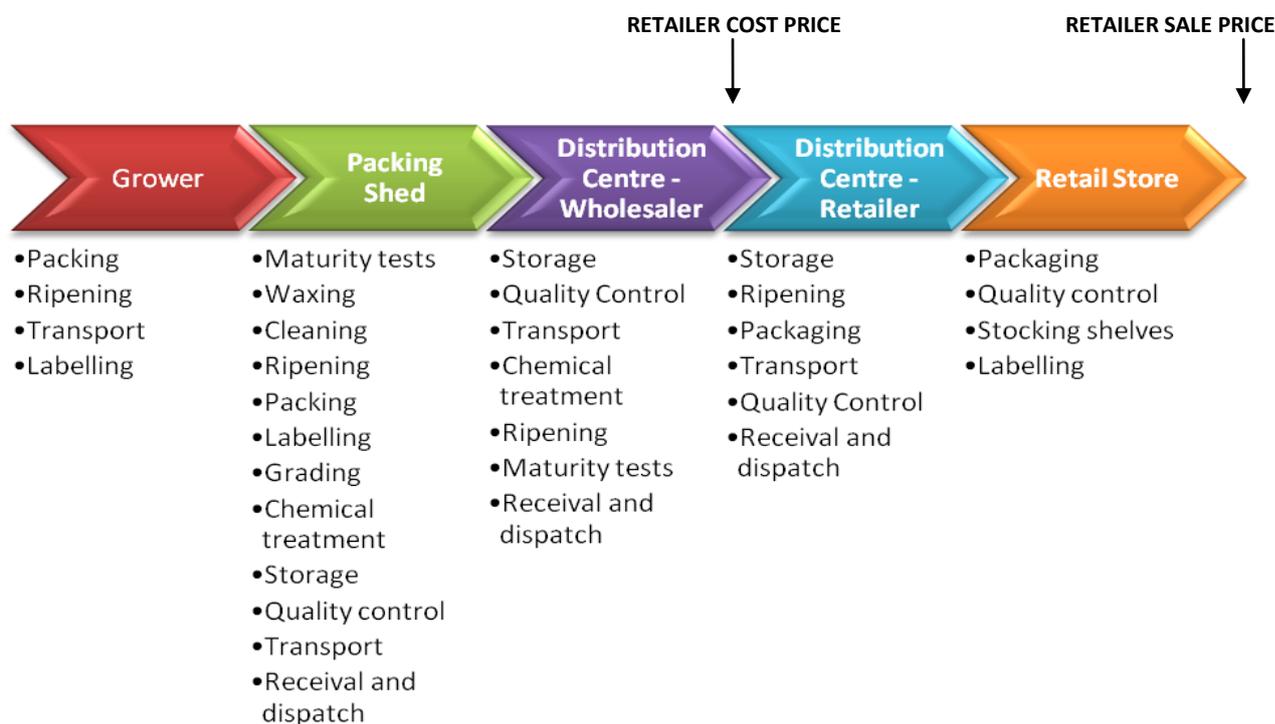
Not only does Woolworths not have visibility of the price paid to farmers, the actual concept of a farm gate price as defined in the proposed Bill simply does not exist. This is because a farmer is not paid for “produce available at the farm” as the Bill requires. The price paid to farmers when they first on-sell their produce will include various levels of value adding that is not separated out from any basic price for harvested produce. For instance, the wholesaler or grower may first undertake activities such as packing, transport, grading and quality control. The range of processes that take place before we purchase a product can be seen in Figure IV below. For this reason, retailers would not be able to report on a farm gate price, because there simply isn’t one for fruit and vegetable produce.

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<sup>4</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p220.

<sup>5</sup> *Ibid.*, p301.

**FIGURE IV VALUE ADDING AT VARIOUS STAGES OF THE SUPPLY CHAIN**



### 5.3 Retail prices

When setting the final retail price, retailers don't only take into account the cost price, but also various other business costs including staffing, utilities, marketing, maintenance and rent amongst many others. This was recognised by Whitehall Associates in their 2004 report for the Department of Agriculture, Fisheries and Forestry - *Price Determination in the Australian Food Industry*. The report found "retailers seek a target margin to achieve corporate and/or business targets but also to cover losses associated with produce spoilage, clearance discounting and the labour-intensive business of putting fresh food appeal into practice with stock display replenishment and adequate turnover of bay space."<sup>6</sup>

The parliamentary speeches introducing the Bill have indicated that one of the purposes of the legislation would be to highlight the perceived gap between the price paid to farmers and these final retail prices. The ACCC previously reviewed the buying power of supermarkets and their profit margins on fresh produce, finding that:

"It is easy to look to the MSCs [major supermarket chains] given their size and related buying power and assume that this is leading to a widening of the gap between farm gate and retail prices. However, the data available to the ACCC certainly do not support that as a universal picture. Indeed, the data contradicts it in many fruit and vegetable categories."<sup>7</sup>

The Senate Economics Committee accepted this view in their Inquiry into the Bill, finding that "the evidence obtained by the committee indicate[d] overwhelmingly that the problem the Bill seeks to address either does not exist or is at least extremely contentious"<sup>8</sup>.

<sup>6</sup> Whitehall Associates, *Price Determination in the Australian Food Industry*, 2004, p54.

<sup>7</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p307.

<sup>8</sup> Senate Economics Committee, *Report on the Constitutional Corporations (Farm Gate to Plate) Bill 2011*, 2011, p46.

## 6 Fair returns to farmers

Woolworths Limited is committed to supporting Australian farmers and recognises that the intent behind the proposed legislation is to assist our agricultural sector. However, the Bill will not deliver its objective of increasing returns to farmers and could potentially drive market prices down.

The majority of Woolworths' fresh produce is sourced from intermediaries such as packing sheds and wholesalers, rather than from dealing directly with growers. The price agreed between the two parties is of a commercial in confidence nature. We do not know what price our suppliers are purchasing their product for, or what they are charging other purchasers buying from them. Nor do we know what our direct growers are charging wholesalers or other direct buyers. Growers are at liberty to set different prices for different buyers to ensure they get the maximum return for their crops. If farmers were forced to release pricing information to their buyers, it would potentially cause buyers to compare the rates they were charging others and force prices down across the market to match the lowest sell price. This in turn could actually decrease returns to farmers and remove their autonomy to determine their business structures and selling arrangements.

Additionally, such a reform would create additional costs for farmers, wholesalers and retailers. If information about buy prices and costs associated with processing had to be disclosed, this would create a significant amount of red tape for farmers and wholesalers and place unnecessary regulatory burdens on them. Collating all their pricing information over a year, adapting their IT systems and supplying their commercial information to the various retail businesses would take considerable resources which would in turn diminish their profit margins. This would come at a time when growers experiencing significant increases in input costs. These pressures were highlighted in a recent ABARES report on the vegetable industry which found "Increased farm input costs was the factor most commonly reported to be an impediment to the future viability of vegetable farms...An estimated 80 per cent of vegetable growers viewed input costs (such as water, fuel and fertiliser) as an impediment."<sup>9</sup>

The Senate Economics Committee has taken this view, finding "the Bill could not operate in an economically efficient or practical manner and may, in fact, have the adverse consequence of increasing the producers' costs, with no evidence it will improve the prices they receive"<sup>10</sup>.

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<sup>9</sup> ABARES, *Australian vegetable growing farms: an economic survey, 2009–10*, 2011, p40.

<sup>10</sup> Senate Economics Committee, *Report on the Constitutional Corporations (Farm Gate to Plate) Bill 2011*, 2011, p47.

## 7 Empowering our customers

Woolworths provides a range of information to our customers about current conditions in the fruit and vegetable sector. We are committed to ensuring this information timely and meaningful to assist them to make informed choices. Our customers tell us that they want helpful and relevant information about local product, what is in season and what to look for when selecting individual items. Unfortunately, the Bill will not provide this type of meaningful, contextual information but will actually deliver the opposite.

### 7.1 Providing meaningful information

**FIGURE V FRESH MARKET UPDATES IN STORE**



Our supermarkets provide updates about the causes of significant changes in prices of our fruit and vegetables. We also let our customers know why the appearance of the produce may be different to what they usually find in our stores. In consumer surveys our customers tell us that they want to understand where their produce comes from, how to pick fruit and vegetables and why there are price fluctuations at certain times of the year.

**FIGURE VI FRESH MARKET UPDATES ON TELEVISION**



Examples of these initiatives include providing updates regarding seasonal variations as well as informing our customers about a product's provenance, including country of origin, and mapping the growing regions the produce is sourced from.

**FIGURE VII IN STORE DISPLAYS**



**FIGURE VIII BUYING AND PROVENANCE INFORMATION**

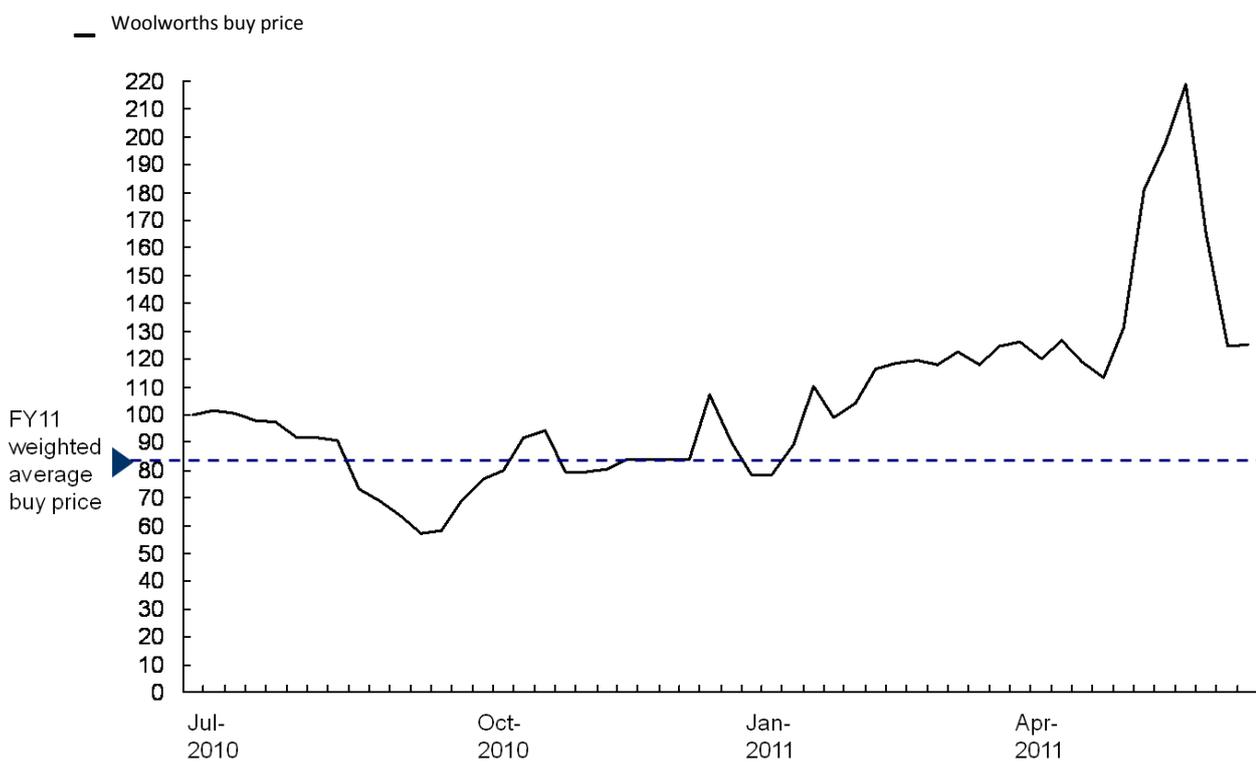


## 7.2 Market volatility

The labelling of average farm gate prices would not provide our customers with meaningful information to inform their purchases. Firstly, the information will be quickly out of date. As described above, horticulture is a volatile and dynamic industry and prices change on a daily basis. This is true for all products, whether they are available year round or only seasonally. Changes in retail prices closely mirror changes in market prices throughout the year. When a customer views an average annual buy price on a product it would have no relation to the price a retailer paid for the product in front of them.

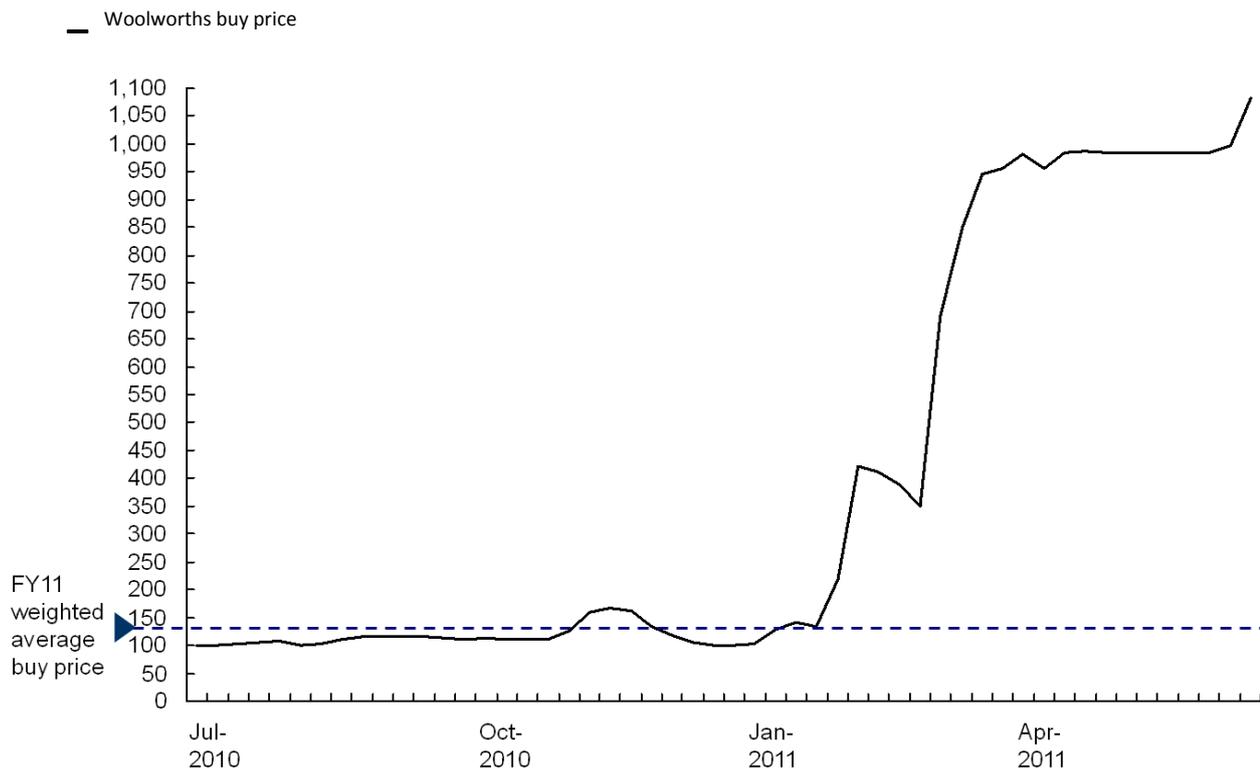
Strawberries are an example of a product that is seasonal and therefore the buy price would vary greatly throughout the year in line with supply and demand. As Figure IX below shows, an average price will be completely out of step with the buy price during much of the year. At any given time of the year, a customer may think we are making 100 per cent profit on the item, or that we are charging below cost price. In reality, the retail price throughout the year will generally fluctuate with the market price.

**FIGURE IX ANNUAL INDEXED BUY PRICE FOR STRAWBERRIES 2010-11**  
(INDEX 100 IN JULY 2010)



As we have seen in the past year, natural disasters can also cause extremes in pricing in the market. The example at Figure X shows the volatility in banana prices following Cyclone Yasi and the Queensland floods and demonstrates how misleading an average annual farm gate price could be in relation to current retail prices.

**FIGURE X ANNUAL INDEXED PRICE FOR BANANAS IN 2010-11**  
(INDEX 100 IN JULY 2010)



## 7.1 Profit margins

The Explanatory Memorandum for the Bill states that the object of the legislation is to “enable consumer to understand the pricing practices of grocery retailers in relation to fresh produce”<sup>11</sup>. Providing an annual average that does not take into account supply chain costs would not achieve this aim and would in fact be extremely misleading for customers. The ACCC supports this position.

“Comparing farm gate prices with retail prices of some products is difficult and not necessarily instructive, given the level of processing that occurs after the product leaves the primary producer. For these products, given the high proportion that the cost of processing is to the end retail price, changes in farm gate prices may show very little correlation with the prices paid at the retail level.”<sup>12</sup>

Woolworths believes that this Bill will confuse and mislead our customers and will not assist them in making purchasing decisions.

<sup>11</sup> Explanatory Memorandum, *Constitutional Corporations (Farm Gate to Plate) Bill 2011*, Clause 3.

<sup>12</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p382.

## 8 Horticulture Code of Conduct

Woolworths appreciates that the proposed *Competition and Consumer Amendment (Horticultural Code of Conduct) Bill 2011* was introduced with the intention of ensuring Australian producers have access to fair and transparent dealings with buyers. Woolworths is committed to fair dealings with all of our suppliers, including farmers. However, we do not believe the extension of the Horticulture Code of Conduct to retailers would deliver different outcomes for farmers or retailers. Instead, implementing the scheme would be costly, increase red tape and introduce complexity by duplicating existing dispute resolution mechanisms.

### 8.1 Long term and established relationships

In sourcing our produce from local growers, one of our key objectives is to provide long lines of consistent quality product to our customers. We supply fruit and vegetables daily to over 850 stores across the country. In our trading relationships, our priority is to ensure we build partnerships with producers who can ensure reliability and availability so that we can provide the products our customers demand. Woolworths has strict quality standards for our fresh produce, and we ensure our chosen suppliers are aligned with customers needs for consistently safe quality fresh food.

The majority of our trading relationships are long-term and established. There is a strong view among many growers that these types direct supply relationships with the major supermarket chains offer the best long term stable returns. This is consistent with research findings that integrated supply chains with retailers reduce price volatility and increase returns to growers. For example, in 2005 ABARE (now ABARES) concluded that direct supply contracts can provide greater price stability and a guaranteed market for produce, increased flow of information to farmers on consumer requirements and the development of innovative and superior product lines based on that information.<sup>13</sup>

### 8.2 Fair dealings

Woolworths is committed to fair dealings with all of our suppliers, including Australia's farmers. We work to a strict Woolworths Code of Conduct and an Internal Produce Code of Conduct. Our business model incorporates "best in class" supplier relationships and our contracts have several key standard features. In the case of fresh produce, they are based on a relatively simple set of obligations, with an emphasis on close and regular communication between suppliers and buyers. Key features include:

- A clear and simple Supply Schedule Arrangement which sets out in detail volumes to be supplied based on forecasted trade (usually for the calendar year ahead). Suppliers are not bound to supply Woolworths with the full quantity specified in the contract if this is not possible.
- Pricing based on a weekly monitor of market pricing (wholesale and retail) and agreed weekly after discussion between the supplier and the Woolworths buyer.
- A stipulation that all product be supplied within specifications at all times, with agreement on the part of the supplier to the requirements of the Woolworths Quality Assurance (WQA) Standard.
- Provision for joint promotional activity designed to stimulate demand for product during appropriate periods of the season or to help launch a new product.

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<sup>13</sup> Jacenko, A. and D. Gunasekera 'Australia's retail food sector: Some preliminary observations', Australian Bureau of Agricultural and Resource Economics, The Pacific Food System Outlook 2005-06, 11-13 May 2005.

- A requirement for regular communication (usually on a weekly basis) with a Woolworths Business Manager designated as the point of contact in the event that the supplier feels the spirit of the agreement is not being met.

Evidence submitted to the 2008 ACCC Grocery Inquiry suggests that most growers are satisfied with their trading relationships with the major supermarket chains. For example, Horticulture Australia Ltd stated in its submission to the Grocery Inquiry:

“The contracts agreed to by the major retailers with their direct suppliers more than meet the minimum requirements of the [Horticulture] Code – in general, they are solid documents covering both the terms of trade arrangements and the specific agreements currently covered by the Horticulture Produce Agreement. ... In general, industry has no reason to suppose that these contracts are not operating as intended”.<sup>14</sup>

### 8.3 Produce and Grocery Industry Code of Conduct

While Woolworths has strong internal mechanisms in place to ensure we have best practice arrangements with our suppliers, we strongly believe in the importance of industry-based initiatives. Such schemes have the capacity to raise industry standards, provide cost effective dispute resolution processes and enhance information sharing across supply chains. Such self-regulation is common among sectors and has been promoted by Government in their recent document *Policy guidelines on prescribing industry codes*<sup>15</sup>. In the forward to that Code, the Hon David Bradbury MP, Parliamentary Secretary to the Treasurer, stated that:

“Where possible, markets should be allowed to operate without excessive regulation. There are clear benefits for industries who establish high standards of conduct for businesses that operate in their sector, including through self-regulating industry codes. This gives consumers and businesses faith that there is a framework in place that encourages best practice and offers appropriate redress when needed.”<sup>16</sup>

In 2000, Woolworths became an inaugural member of the Produce and Grocery Industry Code of Conduct (PGICC - <http://www.produceandgrocerycode.com.au/>). This industry-led scheme incorporates a code of conduct, an ombudsman and an industry committee. This voluntary supply-chain wide scheme aims to:

- promote fair and equitable trading practices among 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 in the event of a dispute.

The Code covers all members of the supply chain including primary producers, processors, wholesalers, distributors, retailers and the food service industry. The Code of Conduct, developed by industry covers the basic principles underpinning grocery standards and specifications, contracts, labelling, packaging, preparation, notifications of acquisitions and dispute resolution services. The Code has been endorsed by Aldi Stores, Australian Chamber of Fruit and Vegetable Industries Limited, Australian Chicken Growers Council, Australian Dairy Farmers, Australian Egg Corporation Limited, Australian Retailers Association, Coles, National Association of Retail Grocers of Australia, National Farmers’ Federation, National Retail Association, Queensland Retail Traders and Shopkeepers Association and Woolworths.

<sup>14</sup> Horticulture Australia Ltd, *Public Submission to ACCC Grocery Inquiry by Horticulture Australia Ltd*, prepared by CDI Pinnacle Management Pty Ltd, 11 March 2008, pp. 6-7.

<sup>15</sup> Australian Competition and Consumer Commission, *Policy guidelines on prescribing industry codes under Part IVB of the Competition and Consumer Act 2010*, May 2011

<sup>16</sup> *Ibid.* p iv.

#### **8.4 Produce and Grocery Industry Ombudsman**

The PGICC is supported by the Produce and Grocery Industry Ombudsman. The Ombudsman is an independent position, funded by Government, which has the capacity to provide confidential advice to industry participants and mediation services. The Office provides impartial mediation services to facilitate agreement between parties in dispute in a timely and cost effective manner without the need for legal representation.

#### **8.5 Produce and Grocery Industry Code of Conduct Administration Committee**

A crucial feature of any successful code of conduct is of course industry support. The Administration Committee plays an important coordination role in implementing the code and also educating the sector about best practice trading practices. The Committee also provides a unique forum for Government and industry members from across the entire supply chain to come together to discuss common concerns and develop shared responses.

The Committee's membership currently includes representatives from Woolworths, Australian Chamber of Fruit and Vegetable Industries, Australian Retailers Association, Coles, National Association of Retail Grocers of Australia and the Victorian Farmers Federation. Additionally, a member of the Horticulture industry is also represented on the Committee.

#### **8.6 Horticulture Code of Conduct**

Woolworths does not believe there would be an additional benefit in extending the Horticulture Code of Conduct to supermarkets who are already members of the PGICC. Including supermarkets in the Code would increase industry regulation, prove costly, duplicate existing processes and undermine the work of the PGICC - all without addressing the reasons for the Code's introduction.

The proposal to include retailers under the Horticulture Code of Conduct is not a new one. During initial scoping for a potential Horticulture Code of Conduct back in 2005, the Federal Government appointed an independent consultant, the Centre for International Economics, to prepare a regulation impact statement (RIS) on potential model codes. When reviewing the possibility of including all first point of sale transactions, the Centre for International Economics found doing so "would impose a regulatory burden on many transactions which already meet the objectives of the code, including those transactions conducted by retailers, processors and exporters"<sup>17</sup>.

Most recently the proposal was put forward by the ACCC in the course of its 2008 Grocery Inquiry. In reviewing the findings of the ACCC report, the Horticulture Code of Conduct Committee was of the belief that including all first point of sale transactions under the Code would "create additional compliance and administration costs"<sup>18</sup> and that "the implications of extending the Code to these sectors have not been comprehended."<sup>19</sup>

It is unnecessary to impose this regulatory burden as Woolworths already has open and transparent supplier relationships in place. The clarity in the detail of the business relationships between Woolworths and its suppliers is industry best practice. This has also been acknowledged in the

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<sup>17</sup> *Mandatory Horticulture Code of Conduct: A Regulation Impact Statement*, 2005, p18.

<sup>18</sup> Horticulture Code of Conduct Committee, *Implications of the Australian Competition and Consumer Commission recommendations to amend the Horticulture Code of Conduct*, August 2009, p4.

<sup>19</sup> Horticulture Code of Conduct Committee, *Implications of the Australian Competition and Consumer Commission recommendations to amend the Horticulture Code of Conduct*, August 2009, p36.

adoption of the Woolworths Supply Terms and Conditions as the model for use by participants under the PGICC.

The National Farmers Federation recognised the strength of these arrangements during the course of the 2008 ACCC Grocery Inquiry, noting “the major retail chains and processors already offer contractual clarity and transparency in their dealings with horticulture growers”<sup>20</sup>. This view was also taken by the Centre for International Economics in the draft regulation impact statement for the Horticulture Code of Conduct back in 2005 when they stated “supermarkets are likely to gain nothing from the implementation of the code due to the fact that they are largely achieving the desired objectives of the code now but under voluntary codes of conduct”<sup>21</sup>.

It is not only supermarkets who adhere to these best practices buying arrangements though - one of the key features of the PGICC is its extensive industry coverage. The PGICC covers the entire supply chain – literally from farm gate to plate. This includes farmers, manufacturers, wholesalers and agents, distributors and retailers across the food, beverage and non-food sectors.

By contrast, the Horticulture Code of Conduct is limited to a small part of the grocery sector. Should the Horticulture Code of Conduct were to be extended to include retailers, this would still leave large parts of the produce and grocery industry not covered by a code. This would also create different regimes for different parts of the farming and broader grocery sector, including manufacturers. For instance, the dairy industry is not caught by the Horticulture Code of Conduct.

Such a move may also potentially remove the incentive for growers, wholesalers and retailers to remain committed to the PGICC. This view was supported by the Horticulture Code of Conduct Committee when considering the 2008 ACCC recommendations as a result of the Grocery Inquiry:

“The Committee consulted with the Produce and Grocery Industry Code Administration Committee (PGICAC) who administer and monitor the Produce and Grocery Industry Code (PGIC) about the ACCC recommendations. The PGICAC indicated that some of their members may no longer see value in the voluntary PGIC and might withdraw their support should the mandatory code be extended to capture them. This would result in the PGIC no longer being representative of all sectors and other organisations potentially withdrawing from the voluntary PGIC and it losing the critical mass necessary for viability. Whereas the mandatory code covers the first transaction from the grower in the horticulture supply chain, the voluntary PGIC covers all transactions along the supply chain for all product lines. If organisations stopped supporting the voluntary PGIC it could leave these sectors and the parties to secondary and subsequent horticulture transactions without access to a low cost dispute resolution service.”<sup>22</sup>

Woolworths believes there are opportunities for both code committees to further engage members in the future. In particular, there is an ongoing role for the committees to educate industry participants about the dispute resolution options already available to them. This was acknowledged by the Produce and Grocery Industry Code of Conduct Administration Committee who during the course of their February 2011 meeting resolved to further promote the work of the ombudsman and support increased transparency. In 2009 the Horticulture Code of Conduct Committee came to a similar conclusion, affirming that:

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<sup>20</sup> National Farmers Federation, *Submission to ACCC Grocery Inquiry*, 2008, p16.

<sup>21</sup> Centre for International Economics, *Horticulture Code of Conduct*, draft regulation impact statement, 2005, pxix.

<sup>22</sup> Horticulture Code of Conduct Committee, *Implications of the Australian Competition and Consumer Commission recommendations to amend the Horticulture Code of Conduct*, August 2009, pp36-37.

“Further education is imperative to ensure the Code is implemented effectively... An appropriately funded, industry-driven education and training strategy focusing beyond compliance issues to practical operational issues should be adopted.”<sup>23</sup>

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<sup>23</sup> Horticulture Code of Conduct Committee, *Implications of the Australian Competition and Consumer Commission recommendations to amend the Horticulture Code of Conduct*, August 2009, p8

## 9 Conclusion

Woolworths Limited thanks the House of Representatives Standing Committee on Agriculture, Resources, Fisheries and Forestry for the opportunity to provide comments on the *Constitutional Corporations (Farm Gate to Plate) Bill 2011* and *Competition and Consumer Amendment (Horticultural Code of Conduct) Bill 2011*.

Woolworths is committed to supporting Australian farmers and providing our customers with the resources to make informed decisions about their purchases. One of the pillars of our business is to provide fair returns to growers and fair prices to our customers. We do not believe these two Bills will assist either farmers or consumers.

The Farm Gate to Plate Bill would be impossible to implement. The simplistic definition of a farm gate price outlined in the Bill does not exist in practice and could not be extrapolated out of any cost price paid to farmers. Additionally, for the most part Woolworths does not see the initial price paid to farmers as we only have visibility of our cost price when we purchase the product several steps into the supply chain.

The ACCC has already conducted thorough investigations into the relationship between farm gate and retail prices and found this is not a significant issue. Implementing this legislation could only cause the prices paid to farmers to be driven down and mislead customers.

Likewise, the Horticultural Code of Conduct Bill will not deliver different outcomes for farmers and would impose unnecessary compliance costs. The PGICC already provides a dispute resolution mechanism and standard setting for the whole grocery supply chain. Additionally, it is widely acknowledged that major retailers, including Woolworths, already offer a best practice trading terms with suppliers and have open and transparent practices.

For these reasons, Woolworths does not support the Bills.