

## Chapter 3

### The website's transfer to CHOICE

3.1 On 5 November 2008, the Government gave approval for the transfer of the GROCERYchoice website from the Australian Competition and Consumer Commission (ACCC) to Treasury, with the formal transfer (including approximately \$9 million of remaining funding) taking place on 5 January 2009.<sup>1</sup>

3.2 The ACCC has explained that since the handover, its role had been limited to the provision of 'technical advice' until the end of June 2009.<sup>2</sup> The ACCC said that it had not been involved in CHOICE's proposed re-design of the website, nor was it aware of any complaints about the accuracy of information on the website.<sup>3</sup>

#### Rationale for the ACCC ceasing to manage and operate the website

3.3 Describing the rationale for the ACCC relinquishing responsibility for the website, Mr Brian Cassidy, Chief Executive Officer of the ACCC, said:

The issue that arose, and I think it only arose after the website had been up for a couple of months, was a suggestion that there should be various enhancements to the website. We found, and the government agreed with us, that that would be a difficult exercise for us to undertake as the regulator and law enforcer and that is what led to the website being transferred from us, if I can put it that way.<sup>4</sup>

3.4 Mr Cassidy then gave the example of the website publishing the specials of the grocery chains and the potential problems with such an activity:

Once the website starts carrying specials, that potentially leads to people saying, 'I went to the grocery store and that special was not available. It is fake advertising.'<sup>5</sup>

3.5 Treasury also gave similar reasons for the ACCC ceasing to manage the website, noting that there had been consumer feedback suggesting that the inclusion of 'specials' would be useful:

There were some issues around whether the ACCC, as the regulator of the [Trade Practices Act], could actually enter into the space of, for example, providing special prices, given that there are obviously consumer protection issues and, as the regulator of those, there would be actual conflict of

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1 *Senate Estimates Hansard*, 4 June 2009, pp 28–9.

2 *Senate Estimates Hansard*, 26 February 2009, p 51.

3 Mr Brian Cassidy, *Senate Estimates Hansard*, 22 June 2009, p 29.

4 Mr Cassidy, *Senate Estimates Hansard*, 26 February 2009, p 51.

5 Mr Cassidy, *Senate Estimates Hansard*, 26 February 2009, p 52.

interest in pursuing that type of information. Yet I think we were getting a lot of feedback from consumers that it is exactly that kind of information that would be useful and that there is a lot of interest in finding out more about the specials and a smarter way of shopping, if you like, the get the best value for money.<sup>6</sup>

3.6 Associate Professor Frank Zumbo stated that the ACCC should never have been given the responsibility of running the website in the first place:

The ACCC was the wrong body to give this website to ... It is always difficult to have the regulator involved in this sort of activity—providing information—because the information may be incorrect. Because the ACCC was not the best body to do this, they made the information so generalised that it was of little or no benefit to anyone ...<sup>7</sup>

### **CHOICE's proposal to the Government**

3.7 CHOICE made the approach to the Government to take over GROCERYchoice within a month of the website's launch. Noting the ACCC-run website appeared ineffective on a number of fronts including its rushed scoping, specification and delivery, and failure to deliver up-to-date local prices, CHOICE felt it could provide a much better service:

The ACCC website launched to a barrage of public criticism and dissatisfaction. It was clear that consumers didn't find it useful or relevant.

CHOICE felt that there was an opportunity to present an alternative proposal to deliver a website that consumers could use. CHOICE saw a natural fit with GROCERYchoice where we could offer the expertise, skills and consumer understanding necessary to deliver a consumer-focussed website. We considered our 50 year track record and experience in consumer research and publishing put us in the best position to partner with Government, retailers and consumers to deliver a useful service that was relevant to consumers.<sup>8</sup>

3.8 CHOICE took its proposal to the then Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, on 27 August 2008. The following are excerpts from that document:

GROCERYchoice will be presented to the Australian community as a tool to help them in their daily lives. Its central purpose will be to provide price information of a type and in a form that is relevant to consumers. To do this it will be flexible to meet the needs of different households; and it will prioritise feature development based on consumer research and user feedback. Price data will be supplemented with information which will help

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6 Ms H.K. Holdaway, Treasury, *Senate Estimates Hansard*, 4 June 2009, p 33.

7 Associate Professor Frank Zumbo, *Proof Committee Hansard*, 6 October 2009, p 5.

8 CHOICE, *Submission 6*, p 4.

consumers choose products according to their performance, health attributes and environmental impact.

... In addition to empowering consumers, GROCERYchoice will support the Government's agenda of keeping downward pressure on grocery prices and will help drive competition to improve quality and the availability of healthy and environmentally sustainable choices consistent with consumer preferences.<sup>9</sup>

... GROCERYchoice will:

- deliver better price information than the current website
- enhance the usability of the information with improved information display, intuitive website design and interactive and visual features
- provide increased transparency (including store and product identification)
- add value to the grocery price information with additional features
- add value to the grocery price information by developing a user community through structured consumer input
- test and where feasible introduce ways of expanding the information available through consumer participation in data collection and information priority setting
- explore mechanisms to obtain more detailed price data from retailers
- use regular research into consumer preferences to guide ongoing review and redesign of the website
- integrate with other key consumer policy agendas including unit pricing, healthy eating and sustainable living.<sup>10</sup>

3.9 CHOICE also proposed that the website 'may' include additional features such as: cheapest basket; personalised baskets (user selected products); individual item prices (including unit prices)<sup>11</sup>; shopping advice (price cycles, how specials work, when to shop, how unit pricing works, links to CHOICE content on groceries including food; and supermarket address lists with maps, transport and parking advice).<sup>12</sup> The proposal also suggested that a 'community of empowered consumers' could be developed, with users providing input such as local specials reporting, local variation reporting on price and availability.<sup>13</sup>

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9 CHOICE, *Submission 6*, p 22.

10 CHOICE, *Submission 6*, pp 22–3.

11 *Submission 1* from the Queensland Consumers Association strongly advocated the inclusion of unit pricing comparisons in the GROCERYchoice website.

12 CHOICE, *Submission 6*, p 23.

13 CHOICE, *Submission 6*, p 23.

3.10 It was envisaged that building the new website would be feasible within a budget of \$20 million over five years:

CHOICE believes a five year commitment to GroceryCHOICE is required to support up-front development of an effective and engaging website. The precise amount required will depend to some extent on the work undertaken already by the ACCC that can be adapted to the website we propose to build, the contracts if any that the ACCC has entered into which would be assigned to us and the exact specification of deliverables. As an indication we believe that a useful website could be built, operated and from time to time enhanced within a budget of \$20 million across the five years.<sup>14</sup>

3.11 However, the contract that was eventually signed with Treasury was worth \$8 million.

### ***Events leading up to contract sign-off***

3.12 CHOICE states that Mr Bowen was receptive to its proposal and referred the organisation to the ACCC. After a meeting with the ACCC on 2 September 2008, CHOICE was referred to Treasury. The department then confirmed that 'CHOICE would satisfy a single supplier arrangement, subject to documentation and pricing.' The chain of events leading to the contract sign-off occurred as follows:

By December 2008, CHOICE had begun to brief supermarkets to outline the nature of the rescope project. Based on our recognition of supermarkets as a key stakeholder, CHOICE's approach was inclusive, flexible and accommodating. CHOICE knew that the most effective and efficient way to deliver the price information required by consumers would be through the cooperation of the supermarkets. A key strategy of the project was to set up an Industry Forum to act as an advisory body and keep communication lines with supermarkets open. CHOICE also made it clear to supermarkets that we were prepared to understand and address every genuine issue that they faced in providing the data needed by consumers. At the same time CHOICE was working on a 'back up' strategy to ensure that there were options to deliver an improved GROCERYchoice site should some of the supermarkets decline to cooperate at first.

Briefings were held with independent supermarkets through the National Association of Retail Grocers of Australia, Woolworths, Coles, ALDI, FoodWorks, Metcash, Ritchies and Franklins.

As final discussions were held with Treasury, CHOICE met with operational staff from the ACCC on 4 December 2008 to obtain information required to implement the project.

A final meeting with Treasury and Minister Bowen was held on 16 December 2008 before the Treasury Head Contract was signed by both parties on 19 December 2008.<sup>15</sup>

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14 CHOICE, *Submission 6*, p 24.

15 CHOICE, *Submission 6*, pp 4–5.

3.13 On 22 December 2008, Mr Bowen issued a press release announcing that from 2 February 2009, the consumer organisation CHOICE would take over the management of GROCERYchoice:

"CHOICE's experience with the needs and interest of the Australian consumer make it well placed to be able to provide the most useful information on GROCERYchoice to help consumers find the best value at the checkout," Mr Bowen said.

... "At the time of the launch, the Government made it clear that through GROCERYchoice it wanted to give a guide to consumers as to the cheapest supermarkets in their region," Mr Bowen said ... "As I outlined previously, these new arrangements represent value for money for the taxpayer and will be put in place at no additional cost."

The decision to directly outsource the GROCERYchoice website to CHOICE was in accordance with the Commonwealth Procurement Guidelines.<sup>16</sup>

3.14 An attachment to the media release outlined the 'phases' of management under CHOICE. Phase 1—effective from 2 February 2009—would entail initial changes to the website such as: the CHOICE name and logos to appear on the website; a comments forum; access to a consumer grocery survey; and the continuation of a subscription service where consumers could receive notice of new data releases. In Phase 2, CHOICE would continue to use the existing data collection survey to publish prices on the first business day of each month. Phase 3 would involve the relaunch of the website with significant changes:

Subject to satisfactory supermarket co-operation, the new website will include the following features:

- Publication of basket prices for individual supermarket locations;
- Publication of basket prices for all leading supermarket chains or groups and other smaller independent operators;
- Publication of grocery prices on a no less than weekly basis.

Other further enhancements may include:

- The provision of additional information on grocery products, such as nutritional information, unit pricing information, product origin, etc;
- The addition of a new functionality that allows users to construct their own baskets of grocery products and to compare these baskets across supermarkets.<sup>17</sup>

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16 The Hon Chris Bowen MP, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Media release: 'CHOICE to provide expertise in managing GROCERYchoice', 22 December 2008, <http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/110.htm&pageID=003&min=ceb&Year=&DocType=> (accessed 11 September 2009).

### ***The decision to outsource the website to CHOICE***

3.15 Asked why CHOICE was chosen to operate the website, Treasury replied:

CHOICE are a major, national consumer, not-for-profit organisation. They approached the government with a proposal to effectively take over the GROCERYchoice website and to enhance it with additional information that the ACCC were not really in a position to add to the website given potential conflicts with the ACCC's role. The government looked at that proposal and, because CHOICE could enhance it, there was consideration that it represented good value for money and the government made a decision to go with CHOICE. As I said the [Commonwealth] procurement guidelines do allow situations for direct sourcing.<sup>18</sup>

3.16 Treasury denied that this arrangement represented a breach of the AusTender protocol, referring to the mandatory procurement procedures.<sup>19</sup> Condition 8.33(c) states that an agency may conduct procurement through direct sourcing:

...for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership and which are not routine purchases from regular suppliers.<sup>20</sup>

3.17 As far as market testing of opportunities for other organisations to run the website, Treasury stated that it had carried out 'desktop research' on some other options, after CHOICE had approached the Government with its unsolicited proposal:

... it was actually a situation where direct sourcing should be used. Having said that ... within a very short time frame we did quite a bit of research to look at what other possible organisations might be out there that are in the same stands as CHOICE, who is completely independent and who understands very well Australia's consumers as well as the grocery market which this website was targeting.<sup>21</sup>

3.18 At Senate Estimates, Treasury indicated that it had sought legal advice on potential conflicts of interest, noting CHOICE's commercial activities in the media,

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17 The Hon Chris Bowen MP, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Media release: 'CHOICE to provide expertise in managing GROCERYchoice', 22 December 2008, <http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/110.htm&pageID=003&min=ceb&Year=&DocType=> (accessed 11 September 2009).

18 Mr David Martine, Treasury, *Proof Committee Hansard*, 18 September 2009, p 6.

19 Ms HK Holdaway, Treasury, *Senate Estimates Hansard*, 4 June 2009, p 33.

20 Commonwealth Procurement Guidelines, December 2008, <http://www.finance.gov.au/publications/fmg-series/procurement-guidelines/division-2.html#mandatory> (accessed 5 November 2009).

21 Ms Holdaway, Treasury, *Senate Estimates Hansard*, 4 June 2009, p 33.

and had put in place appropriate risk management strategies. Treasury also stated that CHOICE would not be able to promote their business interests on the website:

The contract makes it very clear that the GROCERYchoice website and information available on that website obviously has to be free of charge for the Australian people, that there cannot be any links that allow CHOICE to sell some of their other products.<sup>22</sup>

3.19 Asked what quality assurance processes were in place to verify the accuracy of prices CHOICE uploaded to the website and the usefulness of the information, Treasury answered:

One of the requirements is around the KPI [key performance indicator] that CHOICE has to provide us with a full report and an independent quality assurance report that goes with that.<sup>23</sup>

3.20 It was also stated that any key activities carried out by CHOICE could not be done without prior agreement from the department.<sup>24</sup>

3.21 Treasury said that it had not done its own calculations on the cost impact at the store level of the CHOICE proposals for gathering information for weekly price reporting, but noted that the mechanism by which CHOICE would be obtaining price data was still being considered. Senator Bushby then asked:

**Senator BUSHBY**—If an additional cost which a supermarket store does not currently have was imposed through government regulation on to a supermarket store, would you accept that where they could—and competition obviously comes into it—they would pass that cost on to consumers or they would seek to?

**Ms Holdaway**—Firstly, this is not regulation. It is basically an information website that is going to be made available to consumers. There are no mandatory requirements on anyone.

**Senator BUSHBY**—If CHOICE approaches a supermarket to obtain prices the supermarket can say no?

**Ms Holdaway**—Absolutely, because there is no mandatory requirement. This is not a regulation by the government.<sup>25</sup>

### ***Treasury's contractual arrangements with CHOICE***

3.22 Treasury provided details of its \$8 million contract with CHOICE to manage the GROCERYchoice website (which remains the property of the government).<sup>26</sup> The

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22 Ms Holdaway, Treasury, *Senate Estimates Hansard*, 4 June 2009, p 48.

23 Ms Holdaway, Treasury, *Senate Estimates Hansard*, 4 June 2009, p 47.

24 Treasury, *Senate Estimates Hansard*, 4 June 2009, p 47.

25 Treasury, *Senate Estimates Hansard*, 4 June 2009, p 48.

26 Ms Holdaway, Treasury, *Senate Estimates Hansard*, 4 June 2009, p 47.

contract was executed on 19 December 2008, with the first payment of \$1 million made at that time. Another \$1 million was paid around February 2009 when the website was re-skinned. Another \$1 million was paid in April 2009, once CHOICE met the contract requirement to provide a revamped and user-friendly website with opportunities for consumers to interact. The payment schedule and milestones were set out in Schedule 2 of the contract, which is at Appendix 4.<sup>27</sup>

3.23 Treasury described the key performance indicators set out in the contract:

... [they] are built around the objectives of the website to ensure that consumers are well-informed of the grocery prices and to ensure that it provides the ability for consumers to make their own choices about their purchasing behaviour. Therefore, it is built around the reliability of the website. Reliability includes providing up-to-date information but also ensures that the website does not falter where it is not accessible for an extensive period.<sup>28</sup>

3.24 A subcontract with an IT provider, Getronics, was also continued to allow for the website's transition to CHOICE.<sup>29</sup>

3.25 Appendix 5 shows a table of all subcontract arrangements in relation to the GROCERYchoice website under both the ACCC and CHOICE.

### ***CHOICE's subcontract arrangements***

3.26 CHOICE's submission provided the following details about its subcontracts with other providers:

- SMS Management & Technology, Australia's largest IT consulting firm, was subcontracted for the programme management, technical build, hosting and maintenance of GROCERYchoice;
- Moon Group was contracted to deliver the online design for the new GROCERYchoice website;
- Nielsen Online was contracted to conduct surveys on the CHOICE website and the GROCERYchoice website to canvas opinions of the original GROCERYchoice website, conduct a needs analysis, and create a profile of GROCERYchoice users, shopping habits and demographics;

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27 Treasury, Answers to Questions on Notice, Budget Estimates, June 2009, 'GROCERYchoice website contract', pp 51–2, available at [http://www.aph.gov.au/Senate/committee/economics\\_ctte/estimates/bud\\_0910/Treasury/answer/s/grocerychoice\\_contract\\_1.pdf](http://www.aph.gov.au/Senate/committee/economics_ctte/estimates/bud_0910/Treasury/answer/s/grocerychoice_contract_1.pdf). The full contract is available at [http://www.aph.gov.au/Senate/committee/economics\\_ctte/estimates/bud\\_0910/Treasury/index.htm](http://www.aph.gov.au/Senate/committee/economics_ctte/estimates/bud_0910/Treasury/index.htm) (see bet 102).

28 Ms Holdaway, Treasury, *Senate Estimates Hansard*, 4 June 2009, p 32.

29 Ms Holdaway, Treasury, *Senate Estimates Hansard*, 4 June 2009, p 32.

- Freshlogic, a market analysis and consulting firm, was contracted to provide a rationale for comparing fresh produce; information on the top selling 5 000 products for the top 80 per cent of brands, top selling fresh foods, and weekly specials data; and
- Bruce Clay Australia was contracted to develop a search engine optimisation strategy for GROCERYchoice as part of the broader marketing strategy.<sup>30</sup>

### ***Freshlogic's arrangements with CHOICE***

3.27 Freshlogic appeared before the committee to describe the work it had done for CHOICE in relation to the GROCERYchoice website. The firm had approached CHOICE in February 2009, as Mr Martin Kneebone, Director, explained:

... we ended up talking to CHOICE about helping them distil fresh food information into the most sensible comparisons that they possibly could. That requirement was very time pressured. I just make the point that the data that they would potentially have been working with would have been highly varied because the conventions in fresh food have not really streamlined the same product description disciplines that you have in grocery products, where you have an ABN and a more structured sort of approach to the way it is described. In fresh food the same product can be described quite differently, and that was very much our focus.<sup>31</sup>

3.28 The issue of fresh produce comparison is discussed further in chapter 5.

### **Events leading to the GROCERYchoice contract termination**

3.29 CHOICE argued that all contractual obligations were on track to be delivered by 1 July 2009. The re-launched website was to include weekly updates of 1 100 to 1 500 specials (increasing weekly), and prices from ALDI and Foodworks:

On 1 July 2009 CHOICE was ready to launch a new, consumer-focussed GROCERYchoice website built on a platform of sophisticated, purpose built, software capable of delivering all the information that consumers expected about grocery prices in each store. On 1 July 2009 consumers would have had access to more than a thousand accurate and up-to-date prices in each major supermarket and in many other supermarkets as well. The number of prices would have increased steadily over the following weeks. In addition our GROCERYchoice website would have delivered a rich menu of additional expert and consumer generated information soon after.<sup>32</sup>

3.30 CHOICE described the events during June 2009 which led up to the public announcement of the website's demise:

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30 CHOICE, *Submission 6*, pp 9–10.

31 Mr Martin Kneebone, Freshlogic, *Proof Committee Hansard*, 6 October 2009, p 25.

32 CHOICE, *Submission 6*, p 2.

On 9 June 2009 a new Minister for Competition Policy and Consumer Affairs was appointed, Dr Craig Emerson. The CHOICE CEO wrote to the Minister requesting a meeting to brief him on GROCERYchoice. The Minister agreed and indicated he had already met with supermarkets.

In the week prior to the website's launch, on 23 and 24 June 2009, the CHOICE CEO and the CHOICE Director of Partnerships held a number of briefings with the Prime Minister's office, Government and Opposition representatives, as well as independent senators and journalists. The overall response to the re-designed website was positive.

CHOICE briefed Minister Emerson on 23 June 2009. The Minister gave no indication at his meeting with CHOICE that he intended to terminate the Government's contract with CHOICE. CHOICE supported his suggestion that it would be useful to meet jointly with supermarkets and ANRA, in fact outgoing Minister Bowen had planned to hold a similar meeting before the Cabinet re-shuffle. At the meeting on 23 June 2009, it was agreed that a meeting involving the minister, CHOICE and industry representatives would be held soon after the launch of the site a week later; instead, on 25 June 2009, Minister Emerson advised CHOICE that he had convened a meeting for the next day. The short notice meant appropriate officers from CHOICE could not attend. Minister Emerson proceeded to meet with supermarkets and ANRA on 26 June 2009. On 26 June 2009, five days before the website was due to launch, CHOICE received notice of the GROCERYchoice contract termination.

Minister Emerson's office rang the CHOICE CEO at 2pm, who was in a meeting. CHOICE received written termination by fax at 2.35pm and by email at 2.39pm. A media release from the Minister's office was published at 2.52pm. The CHOICE Media team received calls from 2.55pm. The CHOICE CEO learned of the termination after his meeting concluded at 3.15pm, when he was contacted by the Minister on the telephone.<sup>33</sup>

3.31 The media release from the Minister for Competition Policy and Consumer Affairs, the Hon. Dr Craig Emerson MP, on 26 June 2009 stated:

Following a meeting today with the major grocery retailers, it has become clear to me that it is not feasible to implement the originally envisaged GROCERYchoice proposal.

The Government remains of the view that consumers are better placed to make informed choices when they are able to gain access to prices conveniently and make comparisons among supermarkets.

However, the GROCERYchoice proposal as originally envisaged would not be able to generate reliable, timely data as a basis for consumers to make meaningful comparisons in their local neighbourhoods.

In Australia there are thousands of supermarkets and thousands of grocery items. Upon close examination of the data requirements for reliable price information, I have formed the view that it is not feasible to generate that

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33 CHOICE, *Submission 6*, pp 8–9.

information in a timely manner. Less comprehensive and less timely data could be generated but it would have significantly less value to consumers.

I will hold discussions with supermarket chains about the possibility of an industry website capable of providing convenient grocery price data that could be audited by a government-appointed auditor.<sup>34</sup>

3.32 CHOICE was clearly astounded by the Government's decision, having had no earlier indication of the Minister's reservations:

CHOICE is still not clear why the decision to terminate the project was taken and firmly believes that it was the wrong decision. CHOICE had gone to Canberra the week before launch to give key politicians a clear understanding of what the website would deliver and demonstrate the website's purpose and readiness. We also briefed journalists with the objective of giving the website some positive publicity. At no time did we sense anything other than a high level of interest and support. It also seems curious that if the Minister had suspected the website wasn't going to be of value, that he didn't mention his doubts at the meeting convened with CHOICE on 23 June 2009. So close to launch it would have been more prudent to allow the site to launch, to gauge level of support and seek to add pressure on the non participating supermarkets to comply.<sup>35</sup>

#### *The meeting on Friday 26 June 2009*

3.33 While CHOICE stated in its submission that the Minister's office had advised of the meeting on 25 June 2009 (the day before it was due to be held), Mrs Margy Osmond, Chief Executive Officer of the Australian National Retailers Association (ANRA), told the committee that ANRA had been given notice of the meeting earlier in the week:

**Mrs Osmond**— ... We were advised of this meeting going forward on Tuesday the 23rd. Like everybody else, we were busy but we made sure we were there. It is our understanding that CHOICE were advised at the same time we were of the minister's desire to get a clear picture from all the players in one room at one time. CHOICE, for reasons that I simply cannot fathom, chose not to attend ...

**Senator BARNETT**—So you are saying CHOICE decided not to attend that meeting with the minister?

**Mrs Osmond**—Yes.

**Senator XENOPHON**—Were you told that they were not going to attend?

**Mrs Osmond**—That is right.

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34 The Hon Dr Craig Emerson MP, Minister for Competition Policy and Consumer Affairs, Media Release, 'Government will not proceed with GROCERYchoice', 26 June 2009, <http://minister.innovation.gov.au/Emerson/Pages/GOVERNMENTWILLNOTPROCEEDWITHGROCERYCHOICE.aspx> (accessed 11 September 2009).

35 CHOICE, *Submission 6*, p 9.

**Senator XENOPHON**—And were you given a reason? Did they refuse to attend or were they unable to attend?

**Mrs Osmond**—In fact, we were uncertain whether they would be there until we actually arrived at the meeting.

**Senator PRATT**—You were clear they were invited?

**Mrs Osmond**—Yes. The purpose of the exercise was to put all the players in one room.<sup>36</sup>

3.34 Mrs Osmond attended the meeting convened by Dr Emerson at Parliament House in Canberra on 26 June 2009 (at which ANRA, Woolworths, ALDI, Franklins, Metcash/IGA and Treasury were present) and gave the following evidence to the committee:

**Mrs Osmond**—It was intended to be a discussion of where everybody was at with the exercise. What were the stumbling blocks? Could we go forward? What was it all about? It was an exploratory meeting on the minister's behalf which I suppose you would expect from a new minister.

**Senator BARNETT**—Was the outcome of the meeting such that there were still more things to be considered, there were more things to be explored, or did you all come to the conclusion that this was a total waste of time and money and therefore the minister agreed with everybody in the room that he needed to shut it down within a matter of hours in the afternoon from that meeting?

**Mrs Osmond**—No.

**Senator BARNETT**—This is a very swift move by the minister following that meeting with you where CHOICE was not represented.

**Mrs Osmond**—Can I say to you that at the end of the meeting the minister gave no indication of where he was going. It was clearly an exploratory meeting.<sup>37</sup>

3.35 ANRA outlined to the committee the position that it had put forward at the meeting:

We had outstanding issues that needed to be resolved. They related to the legalities, the liabilities and a whole list of things that we had on a number of occasions put to CHOICE and got varying degrees of success in getting any kind of information back from them. Certainly my impression around the room was that everybody else was having similar difficulties.<sup>38</sup>

3.36 Senator Xenophon asked whether ANRA had conveyed the view that its members were ultimately not willing to cooperate with CHOICE:

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36 *Proof Committee Hansard*, 6 October 2009, p 38.

37 *Proof Committee Hansard*, 6 October 2009, p 45.

38 Mrs Margy Osmond, Australian National Retailers Association (ANRA), *Proof Committee Hansard*, 6 October 2009, p 46.

**Mrs Osmond**—We made it clear that our members had misgivings about CHOICE on the basis of their performance up to that point.

**Senator XENOPHON**—That is not what I asked. Did you make it clear that the information requested by CHOICE for the website to be launched would not be provided by your members?

**Mrs Osmond**—We made it clear we could not see a way that could be provided by 1 July, given that there was no memorandum of understanding signed.

**Senator XENOPHON**—Did you indicate that information could have been provided had there been a memorandum of understanding signed?

**Mrs Osmond**—I do not think we went to that level. The minister asked the question and I answered it.<sup>39</sup>

3.37 Mr Andrew Tindal of ALDI also gave evidence about the 26 June meeting, which he recalled had lasted for around 90 minutes, and to which ALDI had been invited via a telephone call from the Minister's office 'in the earlier part of that week'<sup>40</sup>:

The minister opened by asking if he could get an understanding as to the various retailers' positions regarding GROCERYchoice, and the various retailers provided those positions. The minister then wanted to get a bit of an understanding as to what options there were in terms of GROCERYchoice and what people's thoughts were. At the end of the meeting the minister wrapped it up and basically let us know that he was considering the matter and that he would therefore come to a decision as to how things would move forward.<sup>41</sup>

3.38 Mr Tindal stated that while he 'certainly got the impression that the minister wanted to appraise the situation and make a decision', there was no indication during the meeting that the Government was considering closing the website down.<sup>42</sup>

3.39 Senator Xenophon asked what ALDI's position had been at the meeting:

**Mr Tindal**— ... we put forward to the minister that we support the concept of transparency of pricing, that GROCERYchoice is a representation of such transparency and that we had provided to CHOICE in good faith a dummy set of data so that they were able to develop some back-end database and some front-end pages. I must stress that we have not seen the final version of that website. We also said there were some ongoing issues that we were trying to work through with CHOICE and they were issues such as the like-for-like concepts ...

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39 *Proof Committee Hansard*, 6 October 2009, p 56.

40 ALDI, Answers to Questions on Notice (received 16 October 2009).

41 Mr Andrew Tindal, ALDI, *Proof Committee Hansard*, 6 October 2009, p 83.

42 Mr Tindal, ALDI, *Proof Committee Hansard*, 6 October 2009, p 84.

**Senator XENOPHON**—Would it be fair to say that what ALDI said about the potential of GROCERYchoice was quite different from what ANRA, Woolworths, Coles and Franklins put to the minister?

**Mr Tindal**—I think that all parties stated support for transparency of grocery retail prices. In terms of the support of GROCERYchoice itself, the concept, there were varying views within the room.<sup>43</sup>

3.40 Further discussion of grocery retailers' concerns about the CHOICE version of the website is in chapters 4 and 5.

### **A possible industry-run website?**

3.41 In the aftermath of the failed website, CHOICE has called on the Government to:

...deliver on its promise to provide transparent pricing information through an independent grocery price website [which] will require legislation that all supermarkets must provide timely pricing information.<sup>44</sup>

3.42 Associate Professor Zumbo also recommended to the committee that:

In the absence of the major supermarket chains voluntarily providing full price transparency to their customers, the Federal Government to legislate to require that supermarkets of a size greater than 2000 metres make publicly available a website containing real time pricing information on all products sold in such supermarkets.<sup>45</sup>

3.43 CHOICE recommended that if the Government was not prepared to legislate to such an effect:

... then it is essential that it make good on its commitment to developing an industry based scheme, provided it is independently supervised and meets the needs of consumers.<sup>46</sup>

3.44 Treasury said that it had not been involved thus far in discussions with industry stakeholders as to the possible design or timeframe for an industry-run website.<sup>47</sup> ALDI told the committee that it had not been a part of any discussions on an industry-run website.<sup>48</sup> Woolworths understood that the Government had been discussing an industry website with ANRA.<sup>49</sup>

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43 *Proof Committee Hansard*, 6 October 2009, p 85.

44 CHOICE, *Submission 6*, p 17.

45 Associate Professor Zumbo, *Submission 14*, p 11.

46 CHOICE, *Submission 6*, p 17.

47 Dr Steven Kennedy, Treasury, *Proof Committee Hansard*, 18 September 2009, p 8.

48 Mr Tindal, ALDI, *Proof Committee Hansard*, 6 October 2009, p 82.

49 Mr Andrew Hall, Woolworths, *Proof Committee Hansard*, 28 October 2009, p 25.

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3.45 The *Daily Telegraph* reported on 9 November 2009 that ANRA advised that discussions had been taking place but that there was 'no plan for an industry-run price-tracking site', nor a timeframe for concluding discussions.<sup>50</sup>

### Committee view

#### Recommendation 3

3.46 **The committee recommends that the Government reveal its plans for an industry-operated grocery price data website.**

3.47 The committee also believes that Dr Emerson demonstrated a lack of professionalism in his decision to announce the scrapping of the GROCERYchoice website, just days before its scheduled re-launch, without having forewarned CHOICE or provided an opportunity to respond. His behaviour lacked a clear sense of transparency or fair play, having not had the courtesy to speak to representatives of CHOICE prior to publicly announcing that the Government was terminating its contractual arrangements.

#### Recommendation 4

3.48 **The committee recommends that the Government note the unfair manner in which its contractual arrangements with CHOICE were prematurely terminated by the Minister for Competition Policy and Consumer Affairs, the Hon. Dr Craig Emerson MP, without affording CHOICE a right of reply, and ensure that such unprofessional and discourteous conduct does not occur again.**

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50 John Rolfe, 'Kinks in food chains, duopoly of Coles and Woolworths blamed for the soaring supermarket costs', *Daily Telegraph*, 9 November 2009, <http://www.dailytelegraph.com.au/money/money-matters/kinks-in-food-chains-duopoly-blamed-for-the-soaring-supermarket-costs/story-fn300aev-1225795538817> (accessed 9 November 2009).

