

The Senate

Select Committee on
Australia's Food Processing Sector

Inquiry into Australia's food processing sector

August 2012

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Terms of Reference

On 24 March 2011 the Senate referred the following matter to the Select Committee on Australia's Food Processing Sector for inquiry and report.

(1) That a select committee, to be known as the Select Committee on Australia's Food Processing Sector be established to inquire into, and report by 30 June 2012 on the following matters:

(a) the competitiveness and future viability of Australia's food processing sector in global markets;

(b) the regulatory environment for Australia's food processing and manufacturing companies including but not limited to:

(i) taxation,

(ii) research and development,

(iii) food labelling,

(iv) cross-jurisdictional regulations,

(v) bio-security, and

(vi) export arrangements;

(c) the impact of Australia's competition regime and the food retail sector, on the food processing sector, including the effectiveness of the Competition and Consumer Act 2010;

(d) the effectiveness of anti-dumping rules;

(e) the costs of production inputs including raw materials, labour, energy and water;

(f) the effect of international anti-free trade measures;

(g) the access to efficient and quality infrastructure, investment capital and skilled labour and skills training; and

(h) any other related matter.

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Abbreviations

ABARES	Australian Bureau of Agricultural Resource Economics and Sciences
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ADIC	Australian Dairy Industry Council
AFGC	Australian Food and Grocery Council
AIFST	Australian Institute of Food Science Technology
AMAG	Australian Made, Australian Grown
AMIC	Australian Meat Industry Council
AMWU	Australian Manufacturing Workers Union
ANZSCO	Australian and New Zealand Standard Classification of Occupations
APL	Australian Pork Limited
AQIS	Australian Quarantine Inspection Service
AWRI	Australian Wine Research Institute
Blewett Review	Labelling Logic: Review of Food Labelling Law and Policy Dr Neal Blewett, Chair, January 2011
BRCA	British Retail Consortium
BRCWG	COAG Business Regulation and Competition Working Group
COAG	Council of Australian Governments
CCA	<i>Competition and Consumer Act 2010</i> (Cth)
CER	Closer Economic Relations
CoOL	Country of origin labelling
CRCs	Cooperative Research Centres
CSIRO	Commonwealth Scientific and Industrial Research Organisation
DAFF	Department of Agriculture, Fisheries and Forestry

DEEWR	Department of Education, Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade
DIISRTE	Department of Industry, Innovation, Science, Research and Tertiary Education
ECRP	Export Certification Reform Package
EMDG	Export Market Development Grants
EU	European Union
FIAG	Food Industry Advisory Group of the Chamber of Commerce of Western Australia
FSANZ	Food Standards Australia New Zealand
FTAs	Free trade agreements
FTAA	Food Technology Association of Australia
FW Act	<i>Fair Work Act 2009</i> (Cth)
FWA	Fair Work Australia
GAP	Good Agricultural Practice
GCP	Good Catering Practice
GDP	Good Distribution Practice
GFSI	Global Food Safety Initiative
GRP	Good Retail Practice
GWRDC	Grape and Wine Research and Development Corporation
HACCP	Hazard Analysis Critical Control Point
IP	Intellectual property
IRD	Interest rate differential
LEFCOL	Lakes Entrance Fishermans' Co-Operative Society Ltd
OCS	Offshore Constitutional Settlement
OH&S	Occupational Health and Safety

PHAA	Public Health Association of Australia
PICSE	Primary Industry Centre for Science Education
QA	Quality Assurance
R&D	Research and development
RD&E	Research, Development and Extension
RDCs	Research and Development Corporations
RRAT	Senate References Committee on Rural and Regional Affairs and Transport
SNE NP	National Partnership Agreement to Deliver a Seamless National Economy
SPS Agreement	World Trade Organizations' Agreement on Sanitary and Phytosanitary measures
SQF	Safe Quality Food
TAPG	Tasmanian Agricultural Productivity Group
TFGA	Tasmanian Farmers and Graziers Association
457 Visas	Section 457 of the <i>Migration Act 1958</i> (Cth)
WGGA	Wine Grape Growers Australia
WFA	Winemakers' Federation of Australia
WTO	World Trade Organisation

List of Recommendations

Recommendation 1

2.41 The committee recommends that all state and territory governments develop a definitive timeframe for the Council of Australian Governments reform agenda for a National Seamless Economy and actively engage to ensure that momentum for implementation of the reforms is maintained. In particular, the committee urges participants to ensure movement on the integrated transport reforms, including reforms to the heavy vehicle registration process.

Recommendation 2

2.42 The committee recommends that the government expedite those recommendations of the Deegan Report which have not been rejected to position Tasmania to have access to a globally competitive freight system.

Recommendation 3

2.62 The committee recommends that following the introduction of the carbon price on 1 July 2012, the government monitor:

- how the big emitters pass on the costs into the food supply chain; and
- the profitability of businesses in that supply chain, including to farm gate.

Recommendation 4

3.120 The committee recommends that the government initiate an independent review of the competition provisions of the *Competition and Consumer Act 2010*. The committee recommends that the review should include consideration of:

- the misuse of market power;
- creeping acquisitions;
- predatory pricing; and
- unconscionable conduct.

Recommendation 5

3.121 The committee recommends that the review of the CCA consider the inclusion of the functions of a food supply chain ombudsman within the ongoing role of the ACCC.

Recommendation 6

3.123 The committee recommends that the major supermarkets in Australia voluntarily compile and establish benchmarks within their corporate social responsibility documents to measure the level of satisfaction of their suppliers in dealing with the supermarkets. External agencies should be engaged to conduct regular supplier satisfaction surveys, the results of which should be publicised by the supermarkets in their regular reporting cycles.

Recommendation 7

4.88 The committee recommends that the government expand the application of food labelling requirements to require all primary food products for retail sale to display their country of origin, in accordance with recommendation 40 of the Blewett Review.

Recommendation 8

4.97 The committee recommends that the government reform country of origin labelling requirements for food so that these requirements are clearer, more transparent and focus on the consumer's understanding.

Recommendation 9

4.100 The committee recommends that, as part of the review of the *Competition and Consumer Act 2010* (Cth) recommended in Recommendation 12, government should specifically consider whether the 'safe haven' provisions in section 255 are sufficiently focussed on the consumer's understanding of country of origin claims on food products.

Recommendation 10

4.101 The committee recommends that the government consult with industry about the use of the term 'defining ingredient' as a method of determining the country of origin of a product.

Recommendation 11

4.106 The committee recommends that industry and government investigate the potential use of smart phone and barcode technology to provide additional information about the country of origin of food products.

Recommendation 12

4.111 The committee recommends that the government move mandatory country of origin labelling requirements for food to a specific consumer product information standard under the *Competition and Consumer Act 2010*, consistent with recommendation 41 of the Blewett Review.

Recommendation 13

4.122 The committee recommends that, when presented with direct evidence, the Australian Competition and Consumer Commission investigate claims that country of origin labels on processed foods imported into Australia under free trade agreements and other international agreements are misleading and/or deceptive.

Recommendation 14

5.24 The committee recommends government develop a strategic focus on developing access to export markets for the food industry and facilitate an affordable cost environment for industry to access these markets.

Recommendation 15

5.47 The committee recommends that the government take the lead in pursuing a more appropriate level of mutual recognition of commercial and regulatory standards and audit outcomes, possibly through the use of the Global Food Safety Initiative standards benchmarking process.

Recommendation 16

5.54 The committee recommends that industry and DAFF Biosecurity consider establishing a forum in which they can meet to discuss and resolve factors that inhibit export market access, growth and development.

Recommendation 17

5.62 The committee recommends that the Senate Rural and Regional Affairs and Transport References Committee examine the new biosecurity legislation to assess whether it will appropriately address the problems of different standards applying to imported and domestic products and consider monitoring the implementation of relevant measures.

Recommendation 18

6.56 Tertiary and higher education providers should engage more directly with food processing businesses about curricula and outcomes to ensure that the skills developed through further education better match those required by industry.

Recommendation 19

6.61 The committee recommends that the government consider, in consultation with State and territory governments and industry, expanding existing programs promoting the study of, and career paths in, science to include food science and technology.

Recommendation 20

6.63 The National Food Plan should explicitly deal with the labour supply issues facing Australia's food processing sector.

Recommendation 21

6.65 The committee recommends that the government encourage and assist the agricultural and food processing industry in setting up a peak council of industry bodies so that the industry may, amongst other things, more effectively engage with primary, secondary, tertiary and higher education providers about potential career paths in the agrifood sector.

Recommendation 22

6.89 The committee recommends that the government continue to promote and investigate partnerships and programs that connect recently arrived migrants and international workers to jobs in the food processing sector, particularly to jobs in rural and regional centres.

Recommendation 23

6.91 The committee recommends that the government investigate the possibility of extending the class of employers able to access the Seasonal Worker Program to include employers in the food processing sector.

Recommendation 24

6.93 The committee recommends that the government investigate whether the skills recognition frameworks used for skilled migration programs, such as the Australia and New Zealand Standard Classification of Occupations code system, are appropriately recognising food processing skills and qualifications.

Recommendation 25

6.95 The committee recommends that the government require the officers responsible for assessing 457 Visa applications for the food processing sector to have specific knowledge of the sector, its requirements, and the markets within which it operates.

Recommendation 26

6.122 The committee recommends that the government review the flexibility provisions under both the *Fair Work Act 2009* and modern awards, with a view to increasing the ability of employers and employees to negotiate flexible working arrangements, particularly with respect to penalty rates, split shifts and minimum hours for seasonal industries.

Recommendation 27

7.79 The committee recommends that the government investigate the effectiveness of research and development in the food processing sector and in doing so consider the following questions:

- has been a market failure of research and development in the food processing sector?
- are food processors relying on research and development conducted by primary producers?
- is there scope to develop a cooperative research and development approach in the food processing sector similar to rural research and development corporations?
- do the current arrangements for research and development funding support equity of access, particularly for small and medium enterprises?

Recommendation 28

7.80 The committee recommends that the government consider providing research and development assistance specific to the food processing sector.

Recommendation 29

7.81 The committee recommends that the government reviews tax and regulatory settings to support innovation.

Recommendation 30

7.82 The committee acknowledges the establishment of the Food Processing Industry Strategy Group and encourages its active engagement of leading food manufacturing and processing companies to encourage large scale investment in food manufacturing in Australia.

Recommendation 31

7.83 The committee recommends that the government review the funding it has allocated for research and development in the Australian food processing sector.

Recommendation 32

8.60 The committee recommends the government place a stronger focus on development of markets and assistance for market access in a much more costs effective way for developing business.

Recommendation 33

8.61 The committee recommends that the government prioritise completion of trade agreements, noting those currently being negotiated particularly in the Asia-Pacific region.

Recommendation 34

8.62 The committee recommends that the government continue to lobby for the reduction of tariff, non-tariff barriers and subsidies in export destinations through the World Trade Organisation. Pending the passing of the US Farm Bill this year, the government should consider the immediate and ongoing level and impact of these assistance packages.

Recommendation 35

8.63 The committee recommends that a Brand Australia program be considered to assess its effectiveness in promoting the food and grocery sector. In addition, the committee recommends that a campaign be developed promoting Australian food and grocery products overseas based on their unique provenance, premium quality, assured safety and environmental sustainability.

Chapter 1

Australia's food processing sector

Introduction

1.1 On 24 March 2011, the Senate established the Select Committee on Australia's Food Processing Sector to investigate possible policy responses to the challenges and pressures within the broader economy that threaten the ongoing viability and competitiveness of food processing in Australia. The committee was also tasked with examining certain broader areas of government policy, to assess the appropriateness of the overall regulatory environment in which Australia's food processing industry operates. The committee was asked to report to the Senate by 30 June 2012, which was subsequently extended to 16 August 2012.

Conduct of the inquiry

1.2 Information about the committee's terms of reference was advertised widely and on the committee's website, with submissions called for by 3 October 2011. However, submissions have been accepted by the committee throughout the term of the inquiry. The committee also wrote to relevant organisations and individuals to notify them of the inquiry and invite submissions. The committee received 70 submissions. A list of the submissions authorised for publication by the committee is provided at Appendix 1.

1.3 Public hearings were held in Canberra on 13 December 2011, on 11 May 2012 and on 15 May 2012, in Sydney on 10 February 2012, in Shepparton, Victoria on 8 and 9 March 2012, in Devonport, Tasmania on 12 April 2012, in Adelaide on 17 April 2012 and in Perth on 18 April 2012. A list of stakeholders who gave evidence to the committee at these public hearings is provided at Appendix 2.

1.4 The committee also conducted a number of site visits to gain insight into the complexities of running a successful food processing business. The following sites were visited by the committee:

- Campbell Arnott's factory, near Shepparton, Victoria;
- SPC Ardmona factory, Shepparton, Victoria;
- Simplot factories, Quoiba and Ulverstone, Tasmania;
- Field Fresh, Forth, Tasmania;
- Vili's Bakery, Adelaide;
- Haigh's Chocolates, Adelaide;
- Standom Smallgoods, Adelaide, South Australia;
- Gawler River Cattle Company, Adelaide South Australia;

- Cooper's Brewery, Adelaide, South Australia;
- Fremantle Octopus Company, Western Australia;
- Geraldton Fishermen's Co-operative, Western Australia;
- Kailis Bros, Canning Vale, Western Australia;
- Anchor Foods, Fremantle, Western Australia;
- Canon Foods, Canning Vale, Western Australia; and
- Mrs Mac's, Morley, Western Australia.

1.5 The committee particularly appreciates the time and hospitality afforded to it by these businesses.

Acknowledgements

1.6 The committee thanks all those who contributed to the inquiry by making submissions, providing additional information or appearing before it to give evidence.

Notes on references

1.7 References in this report to the Hansard for public hearings are to the official Hansard transcripts.

Overview of Australia's food processing sector

1.8 Australia's food processing sector is part of the nation's broader food industry, and is a key component of Australia's food supply chain. The food industry comprises farm and fisheries production, food and beverage processing, food and liquor retailing within Australia, food exports and food imports. An analysis of Australia's food processing sector requires consideration of the health of the entire food supply chain; from the cost of primary inputs, the price of imports and access to global markets, to the competitiveness of the retail sector as the point of supply for Australian families.

1.9 Data collated by the Department of Agriculture, Fisheries and Forestry demonstrates the industry's substantial contribution to Australia's economy. In 2010–11, the value of Australia's farm and fisheries food production came to \$40.7 billion, while food and liquor retailing turnover comprised of over 50 per cent of Australia's total retailing generating over \$130 billion for the Australian economy. The value added food, beverage and tobacco processing sectors contributed 1.8 per cent total share of Australia's Gross Domestic Product.¹ These statistics alone demonstrate the need to ensure that Australia's food processing sector remains viable, profitable and internationally competitive.

1 Department of Agriculture, Fisheries and Forestry, *Australian food statistics 2010–11*, 'Table 1: Overview of the Australian food industry', p. 1.

1.10 The economic significance of Australia's broader food industry was emphasised by submitters to the inquiry. Positioning the food manufacturing sector within Australia's other manufacturing industries, the Australian Food and Grocery Council highlighted the sector's scale:

Representing 28 per cent of total manufacturing turnover, the sector is comparable in size to the Australian mining sector and is more than four times larger than the automotive sector... The growing and sustainable industry is made up of 38,000 businesses...²

1.11 Similarly, the Australian Made Australian Grown Campaign highlighted the sector's contribution to job growth:

The manufacturing sector is fundamentally important to the Australian economy, especially in terms of jobs, skills and training opportunities, exports and innovation. It is also critical to the fabric of Australian society because of the multiplier effect of the opportunities it creates and its strategic importance to Australia's economic and national security. The food processing sector is a major part of that, with particular importance as a regional employer and for food security reasons.³

1.12 It is estimated that, combined, the sectors forming Australia's food supply chain provide in excess of 939 000 jobs.⁴ Statistics provided by the National Farmers Federation indicate that approximately one-third of the employment opportunities generated are in rural and regional areas, with the agricultural sector employing 317 700.⁵ The correlation between a vibrant food industry and employment opportunities in rural and regional areas was a theme in evidence before the enquiry. Lion stated that:

The food processing industry is a significant contributor to the local economy, currently employing around 300,000 people, half of them in rural and regional areas, and paying about \$14 billion in wages. The focus of this inquiry should be on how we grow this local industry to capitalise on emerging global trends.⁶

1.13 Similarly, representatives of Greater Shepparton City Council highlighted the importance of the industry to regional communities:

Whilst Greater Shepparton's major employment sector is retail, our economy is most definitely underpinned both by agricultural production

2 Australian Food and Grocery Council, *Submission 12*, p 2.

3 Australian Made Australian Growing Campaign, *Submission 56*, p. 1.

4 Australian Bureau of Statistics 2010a *Labour Force Survey, ABS Survey of Education and Work*, as cited in Australian Government, *Issues paper to inform the development of a national food plan*, June 2011, p. 47.

5 National Farmers Federation, *Issues paper – population policy: labour pains*, 2010, p. 1.

6 Mr Duncan Makeig, Group Sustainability Director and General Counsel, Lion Pty Ltd, *Committee Hansard*, 10 February, 2012, p. 50.

and by manufacturing based around that production. When we talk about the importance of food manufacturing to our region we acknowledge that it flows on not only to the grower sector but also to the transport sector and into the retail sector, because the basis of all our employment is underpinned by agricultural production and manufacturing based around it.

...for us it is not just a discussion around food manufacturing; it is about the viability of our entire economy, because we are still very much underpinned by that layer of agriculture.⁷

Challenges for the food processing sector

1.14 This inquiry has gathered considerable evidence from a range of stakeholders on the competitiveness and future viability of Australia's food processing sector. The evidence revealed strong concerns regarding the health of Australia's food processing industry and, more broadly, all sectors on Australia's food supply chain. An undercurrent of pessimism is reflected in submissions from participants in sectors across Australia's food supply chain. Summerfruit Australia advised that 'there is very little that is positive in the food production and food processing sector'.⁸ The bakery Mrs Mac's stated:

The global competitiveness of the Australian Food Processing Sector is diminishing [...] Unless this situation changes, then with the exception of niche products, or some radical innovation to processing techniques developed in Australia, there is not a bright future for Australian food processing and manufacturing companies.⁹

1.15 The views of Food South Australia Inc. were indicative of the warnings given by many submitters that without efforts to address various competitive disadvantages faced by the Australian sector relative to its foreign competitors, the food processing sector will struggle:

It will be a very precarious situation if the food industry is truly on its knees, with old infrastructure, low margins and a flood of imported product, where companies stop investing. As we have seen in some recent examples, when there is a choice of which factory to close, Australia often comes up first. It will be impossible to get back what we lose.¹⁰

1.16 As will be explored in subsequent chapters, the inquiry found that the challenges facing Australia's food processing sector, and all sectors across Australia's food supply chain, are multifaceted. Internal pressures affecting the sector identified

7 Mr Dean Rochfort, General Manager, Sustainable Development, Greater Shepparton City Council, *Committee Hansard*, 8 March, 2012, p. 11.

8 Summerfruit Australia, *Submission 13*, p. 11.

9 Mrs Mac's, *Submission 4*, p. 1.

10 Ms Catherine Barnett, Chief Executive Officer, Inc., *Committee Hansard*, 10 February 2012, p. 17.

included skilled labour shortages,¹¹ increasing costs of electricity and water,¹² transport costs,¹³ retail competition,¹⁴ and the complexity of cross-jurisdictional regulations.¹⁵

1.17 Other factors were submitted as presenting together additional challenges for the sector. The introduction of a carbon tax is widely expected to affect the industry, although witnesses were not able to quantify the degree of the likely impact prior to its commencement on 1 July 2012:

- It will impose \$23 a tonne on all emissions of carbon from the largest 500 businesses. The price on carbon will add to electricity and gas prices. The food-processing industry obviously uses electricity and gas in its production processes, so that will increase their costs.¹⁶
- We are in a situation where we are having to face increased costs that will be coming forward from 1 July with the carbon tax and we are working with the federal government to look at mitigation plans around that. In the case of our business, we have five facilities in Australia which are over the 25,000 tonnes and will be directly impacted upon by the tax from 1 July. I understand from talking to the federal government that there are possibly 11 to 14, maximum, meat-processing facilities which are over that 25,000-tonne threshold.¹⁷
- What does a carbon tax means for me as a business. If I don't know the answers—and generally I don't—what do I need to do to be ready? Usually it is about data capture and often it is about utilising the skills of your workforce better. The engineer is already collecting all the energy bills. What he is not doing is understanding how he can manipulate that data and change the way he contracts with the energy provider to reduce the energy bill or, at the most fundamental level,

11 See for example, BusinessSA, *Submission 7*, p. 1; Food Technology Association of Australia, *Submission 16*, p. 2.

12 See for example, BusinessSA, *Submission 7*, p. 1

13 See for example, Department of Economic Development, Tourism and the Arts (Tasmania), *Submission 6*, p. 2.

14 See for example, Australian Manufacturing Workers' Union, *Submission 21*, pp 2–5; Food South Australia Inc., *Submission 52*, p. 2.

15 See for example, Campbell Arnott's, *Submission 34*, p. 2; Coca-Cola Amatil, *Submission 44*, pp 7–8.

16 Mr Antony Clarke, Senior Policy Adviser, Business SA, *Committee Hansard*, 17 April 2012, p. 1.

17 Mr John Berry, Director and Manager, Corporate and Regulatory, JBS Australia Pty Ltd, *Committee Hansard*, 12 April 2012, p. 35.

talking to the workforce and offering a bit of encouragement and TLC to get them to feel that they are part of the solution.¹⁸

- The meat industry is concerned at how the implementation of the carbon tax in Australia will change our competitiveness and productivity in an international environment, as our major competitors are not similarly impacted. While many large export meatworks are over the 25,000 tonne carbon emission threshold for direct payment, they do not emit enough carbon to attract the significant financial support that the steel and concrete industries and similar large-scale manufacturing industries have access to.

Somewhere between 15 and 25 meat processing plants in Australia are likely to exceed the 25,000 tonne carbon threshold.¹⁹

1.18 The industry has also experienced volatile environmental conditions, reportedly affecting the viability of food producers and processors. Mr Roger Lenne, a representative of Fruit Growers Victoria Ltd, commented that one of the effects of the drought experienced during the early to mid-2000s was that it 'robbed the industry of capital', constraining innovation and expansion:

There was an injection of cash into the canning and fruit growing industry when the two canneries merged and Coca-Cola took them over. Every single bit of that cash from our property went into buying water through the drought. The pressure on prices last year and this year have reduced our cash flow by just under \$1 million from 12 months ago up to this point. Where do you think that has come from? The bank. When my son says, 'Perhaps we should do this,' I say, 'That'll be about a million dollars in investment. Where will we get that from?' That money is gone. The drought has taken it. That is why I am so depressed about it.²⁰

1.19 His concerns were echoed by the Chief Executive Officer of the Greater Shepparton City Council:

The downward spiral cannot continue, or our region and our rural areas will no longer be viable alternatives to invest in and viable alternatives to our major cities as living areas. We believe that will impede Australia's sustainable growth. Our producers, manufacturers and community have dealt with, in the last 10 years, long-term drought and now floods. We also have the Basin Plan and its uncertainty at the current time, and now carbon pricing will start on 1 July. They are very weary. They are uncertain of their

18 Mr Michael Claessens, General Manager Workforce Development and Analysis, AgriFood Skills Australia, *Committee Hansard*, 10 February 2012, p. 15.

19 Mr Gary Burridge, Chairman, Australian Meat Industry Council, *Committee Hansard*, 10 February 2012, p. 22.

20 Mr Roger Lenne, *Committee Hansard*, 8 March 2012, p. 11.

future. Without government support and intervention, this downward trend is likely to continue.²¹

1.20 Competitive disadvantages were also viewed relative to Australia's foreign competitors. For example, Mrs Mac's stated:

Globalisation has enabled many countries to land similar processed foods into Australia at cheaper prices. While there are probably other factors involved, it is due in part to these countries having one or more of the following conditions that lower their costs of processing compared to Australian conditions:

- Cheaper labour, energy and associated on costs e.g worker safety, workers compensation and superannuation payments.
- High populations in these countries assisting in generating better manufacturing economies of scale than the Australian population number can attain at a purely local level.
- Lower standards of processing (building codes, food standards, not being signatories to international obligations)
- Lower cost of many raw materials/ingredients

The competitiveness of Australian processed foods at a global level is currently being further eroded by the strong Australian Dollar and a lack of any willingness by governments and retailers to consider applying a level manufacturing playing field by requiring foreign manufacturers that export food products in to Australia to meet the same processing standards and hence consequential costs that are imposed by government regulation here in Australia across all tiers of government.²²

1.21 These concerns, particularly regarding the strength of the Australian dollar, were shared by other industry participants.²³ Treasury attributed some of the challenges facing Australia's food processing sector to 'the continuing strength of Australia's terms of trade and the high level of activity in the mining and energy sector'. These developments:

...have contributed to a strong exchange rate and upward pressure on certain input costs. Those two factors have reduced the competitiveness of some trade exposed sectors, including the food processing sector.²⁴

21 Mr Gavin Cator, Chief Executive Officer, Greater Shepparton City Council, *Committee Hansard*, 8 March 2012, p. 2.

22 Mrs Mac's, *Submission 4*, p. 1.

23 See, for example, Australian Meat Industry Council, *Submission 36*, p. 3; Food Technology Association of Australia, *Submission 16*, p. 1.

24 Mr Bruce Paine, Principal Adviser, Infrastructure, Competition and Consumer Division, Department of the Treasury, *Committee Hansard*, 13 December 2011, p. 29.

1.22 The Australian Meat Industry Council also listed various challenges to the international competitiveness of its export-oriented industry. These include the continual need to invest in research and development and to widen access to export markets.²⁵ The Australian Food and Grocery Council reported that the impact of the external challenges currently facing Australia's food processing sector can be seen through recent market performance, which has been characterised by flat industry turnover growth and an increase in imports due to the high Australian dollar.²⁶

Opportunities for the food processing sector

1.23 The inquiry has taken place at a time when the importance and role a vibrant food processing sector will play in the coming years is becoming increasingly apparent:

There is a lot of public debate about the future of local manufacturing and industries in various sectors. But I suggest that the food processing sector is unique. The food processing sector is intrinsically tied to Australia's agricultural industries for supply of quality, nutritious food to the population and to the food security of Australia. It is simply not possible to substitute all locally produced foods with imports. For example, if we do not have a viable dairy industry then we do not have a sustainable supply of fresh milk. This has not only economic implications for Australia but also health and nutrition implications as well.²⁷

1.24 Amidst the challenges currently facing the sector, the committee was also informed of opportunities for growth and increased international competitiveness. Data collated in the 2010–11 Australian Food Statistics Report identified that while the value of imports increased over 2010–11, Australia's food export markets continued to grow.²⁸

25 Australian Meat Industry Council, *Submission 36*, p. 3.

26 Ms Kate Carnell, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, 13 December 2011, p. 19.

27 Mr Duncan Makeig, Group Sustainability Director and General Counsel, Lion Pty Ltd, *Committee Hansard*, 10 February 2012, p. 50.

28 Department of Agriculture, Fisheries and Forestry, *Australian Food Statistics 2010–2011*, p. 1.

Figure 1.2: economic overview of Australia's food industry²⁹

TABLE 1 Overview of the Australian food industry

		2005–06	2006–07	2007–08	2008–09	2009–10	2010–11
Value of farm and fisheries food production	\$b	33.9	32.0	37.3	37.4	34.8	40.7
Value added, food, beverage and tobacco processing	\$b	22.9	23.2	23.1	22.4	24.0	23.6
– share of total GDP	%	1.7	1.8	1.7	1.8	1.8	1.8
Food and liquor retailing turnover	\$b	96.7	104.4	111.7	118.8	125.7	130.4
– share of total retailing	%	50.1	50.6	50.7	51.5	52.6	53.2
Value of food exports	\$b	23.9	23.4	23.4	28.1	24.5	27.1
– share of total merchandise trade	%	15.7	13.9	13.0	12.2	12.2	11.0
– minimally transformed share	%	28.1	23.7	28.1	33.7	30.7	36.5
Value of food imports	\$b	7.1	8.3	9.1	10.4	10.1	10.6

1.25 It was put to the committee that export markets provide significant opportunities for sectors across Australia's food supply chain. In particular, the committee's attention was drawn to opportunities presented by the expanding Asian markets.³⁰ The growing awareness of the importance of the growth in Asian markets to Australia's food processing sector is evident in the Prime Minister's recent assertion that '[j]ust as we have become a minerals and energy giant, Australia can be a great provider of reliable, high quality food to meet Asia's growing needs'.³¹

1.26 In outlining the challenges currently facing the sector Treasury conveyed similar sentiments to those recently expressed by the Prime Minister, noting the important opportunities that the rising middle class in the developing economies of Asia present to the future of food processing in Australia.³² More broadly, opportunities arising from global population growth were noted, with BusinessSA advising that the growth 'is leading to stronger demand of food, both in terms of quantity and quality'.³³

29 Department of Agriculture, Fisheries and Forestry, *Australian Food Statistics 2010–2011*, Table 1: Overview of the Australian food industry, p. 1.

30 See for example, Tasmanian Farmers and Graziers Association, *Submission 26*, p. 12.

31 The Hon. Julia Gillard MP, Prime Minister of Australia, Address to the Global Foundation Summit Dinner, Melbourne, 3 May 2012, <http://www.pm.gov.au/press-office/address-global-foundation-summit-dinner-melbourne>, (accessed, 22 May 2012).

32 Mr Bruce Paine, Principal Adviser, Infrastructure, Competition and Consumer Division, Department of the Treasury, *Committee Hansard*, 13 December 2011, p. 29.

33 Business SA, *Submission 7*, p. 1.

1.27 Indeed, industry participants, including Lion, who provided evidence to the committee also identified these opportunities as being those that would most likely ensure the viability of the sector into the future:

In conducting this inquiry I think senators should consider the unique nature of Australia—its size and relatively small and concentrated population; its efficient and productive farm sector; its clean, green image internationally; and its proximity to the growing populations of Asia—and ask itself what sort of food processing sector Australia wants and needs for the future and what the government can do to help. I think in that regard that possibly Europe and the US do not provide a lot of insight into what is required in Australia. It is a uniquely Australian issue.³⁴

1.28 Successive submitters advised that Australia is in a strong position to capitalise on the opportunities provided by expected population growth and expansion in the Asian markets. Comments by BusinessSA are indicative of the optimism that some submitters shared:

Given Australia's geographic size and location, strong history of agricultural production, food processing and technological know-how, supply reliability and strong food and agricultural products standards, the country should be well placed to cater for a substantial part of this increasing food demand.³⁵

1.29 As the statements by BusinessSA and Lion indicate, it was put to the committee that Australia's access to these markets is enhanced by the sector's 'clean green' image. As the Australian Meat Industry Council commented, opportunities exist in '[c]reating and promoting an image of the Australian food industry as vibrant and innovative, consumer driven, future focus, ethical, sustainable'.³⁶ This view was shared by other submitters to the inquiry.³⁷

1.30 These opportunities, and others, are explored in subsequent chapters.

Context of the inquiry

The National Food Plan

1.31 Such challenging and multifaceted circumstances require a coordinated response from government. Although it conceded that to-date a coordinated government approach to the food processing sector has not existed, Treasury advised the committee that as a result of the government's commitment to a National Food

34 Mr Duncan Makeig, Group Sustainability Director and General Counsel, Lion Pty Ltd, *Committee Hansard*, 10 February 2012, p. 50.

35 Business SA, *Submission 7*, p. 1.

36 Australian Meat Industry Council, *Submission 36*, p. 4.

37 See for example, Australian Made Australian Growing Campaign, *Submission 56*, p. 3.

Plan, Australia will have an overarching and integrated policy for the food industry in the near future:

At the 2010 federal election the Government committed to develop a national food plan and subsequently announced that it was providing \$1.5 million over four years to support the creation of the Plan. The Government envisages that the Plan will outline the Australian Government's vision for the food industry and consumers, to guide Australian Government actions and provide certainty for other stakeholders. A national food plan, when finalised, would seek to better explain and better integrate Australia's approach to food policy, from production through to consumption, and be consistent with the Government's market-based policy approach.³⁸

1.32 The Department of Agriculture, Fisheries and Forestry further explained how the plan would present an overarching policy:

In terms of the food plan, as you would be aware the commitment was to develop a plan that covers from paddock to plate, so it involves production, manufacturing, distribution, retail, competition. The plan will deal with everything through the chain... The commitments made by the government in the food plan said it would be from paddock to plate. So the interactions through the chain are important in the food plan and the food plan will need to address the concerns that producers have raised.³⁹

1.33 The announcement of a National Food Plan, and the steps that have been taken to develop that plan thus far, have been welcomed by industry stakeholders:

[T]he AMWU recognises the work that this government has done to highlight the importance of the food manufacturing industry through its establishment of the Food Processing Industry Strategy Group, the national food plan group. It is a progressive step to support tripartite forums to examine our important industries and consider policy.⁴⁰

1.34 The Public Health Association of Australia, however, identified various challenges that developing a coordinated approach will present:

[T]he concept of the National Food Plan of course is to actually balance the different needs and the different policy areas that cover food. It is very easy to see the different areas when we have a parliamentary secretary for health responsible for food and food regulation, yet the National Food Plan has been developed through the Department of Agriculture, Fisheries and Forestry.

38 Department of the Treasury, *Submission 18*, pp 12–13.

39 Dr Colin Grant, First Assistant Commissioner, Plant Biosecurity, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 11 May 2012, p. 14, 19.

40 Ms Jennifer Dowell, National Secretary, Food and Confectionary Division, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, p. 2.

A national food plan should recognise, apart from the importance of profitability, that there are five important regulatory challenges, as we see it: food safety, which is at the moment conducted by FSANZ, we think largely very well, although occasionally we have issues; diet quality; food security; a healthy food economy; and a sustainable food supply. It is about trying to manage those competing challenges. Some of those things, of course, overlap.⁴¹

1.35 In its submission to this inquiry, Summerfruit Australia argued that there is a 'real lack of vision flowing from ALL governments in Australia'.⁴² As will be explored, the evidence provided to the committee is clear that now is the time to act to secure the future of Australia's food processing sector, and all sectors across the food supply chain. Through this inquiry, the committee has focused on measures to harness available opportunities and address evident challenges, to promote the ongoing viability and international competitiveness of Australia's food processing sector. As further detailed in Chapter 9, the committee draws the government's attention to its findings for consideration as part of the development of a National Food Plan.

Concurrent and previous Senate inquiries

1.36 The health of Australia's food processing sector, and related sectors across Australia's food supply chain, is of enduring concern to the Australian Parliament. The committee acknowledges the work of other Senate committees in considering issues that affect Australian food processors, producers and retailers. In particular, the committee notes recent inquiries by the Senate Economics Legislation Committee into proposed amendments to Australia's anti-dumping laws and rules regarding foreign acquisition of Australian farmland;⁴³ the Senate Economics References Committee's inquiry into the impact of supermarket price decisions on the dairy industry and decisions of the Australian Competition and Consumer Commission on the proposed acquisition of Franklin by Metcash Trading Ltd⁴⁴; the Senate Education References Committee's *Inquiry into all aspects of higher education and skills training to support future demand in agriculture and agribusiness in Australia*;⁴⁵ and the Senate Rural

41 Adjunct Professor Michael Moore, Chief Executive Officer, Public Health Association of Australia, *Committee Hansard*, 10 February 2012, p. 31.

42 Summerfruit Australia, *Submission 13*, p. 10.

43 Senate Economics Legislation Committee, *Inquiry into the Customs Amendment (Anti-Dumping) Bill 2011*, 22 June 2011; Senate Economics Legislation Committee, *Inquiry into the Customs Amendment (Anti-Dumping Measures) Bill 2011*, 22 June 2011.

44 Senate Economics References Committee, *Inquiry into decisions of the Australian Competition and Consumer Commission on the proposed acquisition of Franklins by Metcash Trading Limited*, 28 February 2011; Senate Economics References Committee, *Inquiry into the impacts of supermarket price decisions on the dairy industry*, 3 November 2011.

45 Senate Education References Committee, *Inquiry into all aspects of higher education and skills training to support future demand in agriculture and agribusiness in Australia*, 21 June 2012.

and Regional Affairs and Transport References Committee's inquiry into Australia's bio-security and quarantine arrangements.⁴⁶

1.37 In preparing this report, the committee has not sought to replicate but to build on these inquiries. Collectively, the inquiries provide detailed evidence for the Senate's and the government's consideration.

Structure of the report

1.38 Certain challenges facing the sector are facts of life for many businesses. However, government has a clear role in ensuring that taxation and regulatory settings are appropriate so the sector can continue to innovate, access and effectively utilise skilled labour, and remain competitive in international markets. This report focuses on these types of issues. It is divided into nine chapters, as follows:

- Chapter 2 investigates the importance of the labour market to this sector.
- Chapter 3 considers the taxation and regulatory environment that applies to food processing.
- Chapter 4 examines the current retail environment characterised by concentrated competition.
- Chapter 5 examines the issue of food labelling.
- Chapter 6 explores matters of biosecurity and food safety.
- Chapter 7 looks at the role of innovation and research and development in the food processing sector.
- Chapter 8 investigates the role that export markets can play in promoting the long-term viability of Australia's food processing sector.
- Chapter 9 sets out the committee's concluding thoughts.

46 Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into Australia's Spies security and quarantine arrangements*, 10 April 2012.

Chapter 2

The taxation and regulatory environment

Introduction

2.1 Food processing sector participants are subject to a broad range of regulations including food labelling, planning and zoning, state, territory and local government fees and charges, and taxation. Stakeholders raised concerns with the committee that the current inconsistency and duplication in regulation is imposing costs on their businesses and threatening their ability to remain competitive. This chapter discusses the issues raised and sets out the committee's views and recommendations.

The case for reform

2.2 The committee has heard first-hand of the challenge that the cost of government regulation presents to the ongoing competitiveness of food processing sector participants. Their stories illustrate why reform in this area is of such great importance:

About 10 per cent of our operating expenses occur as a direct result of regulation compliance requirements. It is a significant amount for things like, for example, payroll tax, local government rates, charges, by-laws, workers compensation, occupational health, super, all the requirements under the Food Standards Code, the QA auditsIt is a huge cost to us The one thing we really do want...is to find some way of having a real level playing field, guaranteeing that products coming in meet the same standard as Australian businesses are required to meet to manufacture their product. If that is done, then fair enough.¹

2.3 The Australian Food and Grocery Council (AFGC), which represents Australia's \$108 billion food, drink and manufacturing industry, identifies reform in this area as that of greatest importance:

AFGC considers regulatory reform the most prominent and important policy lever which the Government can pull to assist the food industry to meet the challenges it is now facing. Compliance with regulation is always costly, compliance with ineffective, inefficient or unnecessary regulation is wasteful in the extreme. It reduces business profitability directly, undermines investment attractiveness and diverts funds from innovative activities necessary for continued competitiveness and productivity growth...

1 Mr Murray Beres, Chief General Manager, Mrs Mac's Pty Ltd, *Committee Hansard*, 18 April 2012, p. 21.

AFGC... encourage[s] the Government to re-commit to the COAG business regulatory reform agenda.²

2.4 Like the AFGC, the Australian Meat Industry Council (AMIC) identified regulatory reform in the food industry as necessary given the 'deleterious' effect that regulation can have on business:

Regulatory reform in the food industry may warrant consideration in instances of free market distortion or failure, inequitable competition (for land, labour and resources) with other industries, or those instances where legislation is at odds within or between jurisdictions. Importantly, the measure of success in regulatory intervention must be a net improvement from the status quo; poor regulation causes perverse outcomes for industry and may exacerbate an existing problem. Government needs to identify and address those areas of regulation that have deleterious impacts on food production and/or productivity, are duplicative or ineffectual. Such a review would also allow for the identification of common areas of regulatory impost, or issues requiring Government intervention. Additionally, consideration and coordination of policy to ensure consistency and reduced regulatory burden including duplication of verification efforts between all parties, and agreed national standards between industry, Government, commercial clients and consumers remains a key priority. The ability to 'describe' our system to trading partners is of key importance for Australia on the world scene.³

2.5 AMIC went on to explain that they consider environmental standards relevant to land and water use, transport regulations, education and training, food safety inspection and land use competition and apportionment as areas that require regulatory harmonisation between and within state, territory and Commonwealth jurisdictions.⁴

The current regulatory environment

2.6 It is acknowledged by government that the regulatory structure currently governing the food industry is complex and has the potential to impose significant compliance and administrative costs on businesses.⁵ In March 2008 the Council of Australian Governments (COAG) endorsed a cross jurisdictional agenda to reform the costs of regulation to business and to enhance productivity in areas of shared responsibility.⁶ That agenda was to be overseen by the COAG Business Regulation

2 Australian Food and Grocery Council, *Submission 12*, p. 11.

3 Australian Meat Industry Council, *Submission 36*, p. 7.

4 Australian Meat Industry Council, *Submission 36*, p. 7.

5 Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, 2011, p. 32.

6 Council of Australian Governments, *National Partnership Agreement to Deliver a Seamless National Economy*, 2008, p. 3.

and Competition Working Group (the BRCWG).⁷ The National Partnership Agreement to Deliver a Seamless National Economy (the SNE NP) signed late 2008 'recognises the implementation of the reforms progressed through the BRCWG'.⁸

2.7 The SNE NP set out a reform agenda of 27 priority regulation reforms, eight competition reforms as well as reform of regulatory processes.⁹ The 27 priority deregulation areas include matters that were consistently identified in evidence received by the committee as presenting challenges for the sector,¹⁰ as did the eight competition reform areas identified in the agreement.¹¹

2.8 Yet, while stakeholders acknowledge the impediments to business that government regulation presents and welcome reforms in this area, there is a concern among some that the approach being taken is characterised by duplication and inconsistency. Mr Duncan Makeig, Group Sustainability Director and General Counsel of Lion Pty Ltd, explained this concern to the committee:

If I could ask the committee to consider something, it would be to look at the number of participants in the food processing sector and how they would participate from a clear understanding of how all of these different government inquiries interact. There is Minister Ludwig's Food Policy Working Group, there is Minister Carr's Food Processing Industry Strategy Group and there is the National Food Plan process, as well as this inquiry into the food processing sector. They all seem to have overlapping mandates.¹²

2.9 Lion Pty Ltd suggested that these 'complementary activities':

...should be combined or at least streamlined to ensure that they deliver coherent and consistent policy and regulatory outcomes. We do welcome

7 Council of Australian Governments, *National Partnership Agreement to Deliver a Seamless National Economy*, 2008, p. 3.

8 Council of Australian Governments, *National Partnership Agreement to Deliver a Seamless National Economy*, 2008, p. 3.

9 Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, 2011, p. 33.

10 The areas for reform identified in the SNE NP that were raised with the committee as those that present challenges to the food processing sector included: 1 – deregulation reforms: occupational health and safety, environmental assessment and approvals processes, payroll tax harmonisation, food regulation, wine labelling; and 2 – competition reforms: review of Australia's anti-dumping and countervailing system, infrastructure reforms, and national transport reforms.

11 http://www.coag.gov.au/coag_meeting_outcomes/2012-04-13/docs/NP_Deliver_Seamless_National_Economy_Implementation_Plan_Competition_Priorities.pdf, (accessed 1 June 2012).

12 Mr Duncan Makeig, Group Sustainability Director and General Counsel, Lion Pty Ltd, *Committee Hansard*, 10 February 2012, p. 50.

them; it is just that there is a limit to our ability to participate effectively in so many different committees.¹³

2.10 The AFGC also mentioned the COAG reforms and raised concern with the progress that has been achieved to date:

AFGC considers regulatory reform to ameliorate regulatory compliance cost should be a key government policy area to improve productivity within the food processing sector... Food regulation was identified as one of many areas requiring reform, and the Government has yet to deliver a substantive initiative in this area. One area which stills dogs the food manufacturing sector, along with other sectors is the lack of cross-jurisdictional alignment of regulations. AFGC proposes that the current mutual recognition policy derived from agreement between the Commonwealth, States and Territories regarding interstate trade of products be extended to services and business practices.¹⁴

2.11 Such concerns were raised with the committee despite the release of the *BRCWG Report Card on Progress of Deregulation Priorities* earlier this year, which stated that many of the reforms are 'now operational'.¹⁵

Committee comment

2.12 The committee supports cross jurisdictional reform through the COAG reform agenda, particularly the initiatives outlined under the plan for a National Seamless Economy. The committee notes however that more progress needs to be made through this process.

Growth in regulation and red tape

Overview

2.13 In recent years the level of regulation and compliance which participants in the food processing sector are subject to has increased as regulation has continued to be imposed by the three levels of government—Commonwealth, State/Territory and local councils.¹⁶ Increasing regulation increases the cost of products and acts as a disincentive to investment thereby impacting the competitiveness and ongoing viability of the sector.¹⁷

13 Mr Duncan Makeig, Lion Pty Ltd, *Committee Hansard*, 10 February 2012, p. 50.

14 Australian Food and Grocery Council, *Submission 12*, p. 4.

15 http://www.coag.gov.au/coag_meeting_outcomes/2011-08-19/docs/Business_Regulation_and_Competition_Working_Group_Report_Card_on_Progress_of_Deregulation_Priorities.pdf (accessed 25 June 2012).

16 Growcom, *Submission 1*, pp. 5–6.

17 Mr John Berry, Director and Manager, Corporate and Regulatory, JBS Australia Pty Ltd, *Committee Hansard*, 12 April 2012, p. 38.

2.14 In its submission to the committee, the Australian Dairy Industry Council (ADIC) identified the 'expanding' range of regulations and regulatory issues that 'hamper the commercial performance of Australian dairy businesses in both the local and export markets':

- regulation by national systems with blanket rules;
- the trend to regulated programs requiring actions to 'save' energy, water, or waste, instead of using marketplace mechanisms;
- increasing costs of reporting to authorities for a range of national and state programs;
- lack of harmonisation across commodities (for example meat and dairy regulation) and lack of recognition that many businesses produce multiple commodities;
- regulatory creep pressuring businesses into over-compliance;
- overlap of regulations leading to a compliance burden due to duplicative requirements; [and]
- poor or inconsistent enforcement of existing regulations resulting in patchy compliance and a playing field that is not level.¹⁸

2.15 The AIDC explained that regulation regimes should be characterised by:

- minimum effective standards and regulations, based on science and risk assessment at critical points, and strategies to manage risk to protect public health and safety;
- consideration of the food chain in its entirety, and recognition of shared responsibility among all parts of the chain;
- integration of regulatory requirements with business systems such as codes of practice and quality assurance; [and]
- harmonisation at national and international levels, whenever possible.¹⁹

2.16 It is the view of the ADIC that undue regulatory imposts reduce the competitiveness of industry and when 'poorly designed' result in 'higher costs, loss of market opportunities and/or deterrence of innovation and investment'.²⁰

2.17 McCain Foods Australia New Zealand, an international leader in the frozen food industry, similarly advised the committee that regulatory reform is necessary:

...continuous regulatory reform is vital to create business conditions that allow companies to compete.²¹

18 Australian Dairy Industry Council, *Submission 47*, p. 22.

19 Australian Dairy Industry Council, *Submission 47*, p. 22.

20 Australian Dairy Industry Council, *Submission 47*, p. 9.

The need for cross jurisdictional reform

2.18 The committee identified that the regulatory environment for food production and processing in Australia is characterised by inconsistent cross-jurisdictional regulations in areas such as work health and safety standards, food safety standards, environmental standards, and road transport regulations, as well as state and federal taxes.

2.19 This inquiry has identified the issue of inconsistent cross-jurisdictional regulation as an area of significant concern. Participants in the inquiry process repeatedly identified inconsistent cross-jurisdictional regulations as a 'constant source of regulatory drag on the Australian economy imposing unnecessary costs on individuals, industry and governments':²²

Lion believes the Government should try to reduce the current regulatory burden created by overlapping cross-jurisdictional regulations by pursuing harmonisation state by state and where possible between Australian and international regulation.²³

2.20 The Lakes Entrance Fishermens' Co-operative Society Ltd (LEFCOL) explained how inconsistent cross-jurisdictional regulations result in absurd outcomes:

Of all the issues that come up in Fisheries the Offshore Constitutional Settlement (OCS) would be the one that has caused the most angst & confusion over the years. The OCS arrangements or lack of are complex, confusing and in some cases anti-competitive. Unfortunately fish do not understand the OCS and can't see lines on a map

For example, Two Commonwealth licensed fishers [are] operating outside 3 nautical miles adjacent to the VIC/NSW border with Eden and Lakes Entrance as their respective home ports. They both catch 500kg of Octopus working alongside each other as incidental by-catch from normal fishing operations, the operator returning to Eden is free to retain the 500kg yet the operator returning to Lakes Entrance is only permitted to retain 50kg and forced to discard perfectly good Octopus for no reason other the OCS rules. These crazy arrangements differ from specie to specie & state to state.

All these rules do is force perfectly good seafood to be dumped dead which could be feeding our nation. ...Given that ideal worlds are unlikely a priority must be for OCS's to be renegotiated with all states and a system developed whereby all catch is managed in a sustainable manner, all jurisdictions who take the catch contribute to the management costs of the relevant fishery and forced dumping of seafood is eliminated.²⁴

21 McCain Foods Australia New Zealand, *Submission 57*, p. 9.

22 Australian Food and Grocery Council, *Submission 12*, p. 15.

23 Lion Pty Ltd, *Submission 33*, p. 6.

24 LEFCOL, *Submission 3*, p. 4.

2.21 The Tasmanian government, in its evidence to the committee, acknowledged the problem of cross-jurisdictional regulations and explained the steps it was taking to improve consistency and cooperation in this area:

As an initiative under the Economic Development Plan the Tasmanian Government will undertake a systematic sector-by-sector review of the administrative burden of applying and complying with business regulations. Where appropriate, the government will engage with other jurisdictions in addressing areas of concern.²⁵

Work health and safety²⁶

2.22 Regulations concerning occupational health and safety (OH&S) differ throughout Australia. As a result, some participants in the food processing sector have to manage different legislative provisions depending on the location of their operations:

We face similar challenges dealing with eight different Occupational Health and Safety jurisdictions across Australia...and eight Health and Safety (H&S) Acts and Regulations.

[Similarly] we are impacted in the area of Workers' Compensation. This creates an impost on the business in having to ensure we are meeting our responsibilities under these varying regulations.²⁷

2.23 Luv-a-Duck cited OH&S requirements as another significant impost on business:

OH&S in this country—and rightly we should be doing the best we possibly can for our staff and our workers—is becoming increasingly difficult, to comply with and meet all of the requirements. It is becoming extremely costly. Most of the companies I know now have one, two or three people dedicated entirely to OH&S. That is a good thing, but perhaps the government could consider giving us a tax break on it, say 120 per cent instead of 100 per cent. That would help to alleviate some of the pain of that. It is difficult to compete in countries and also compete within Australia with countries and companies that do not comply with the occupational health and safety regulations that we do as a reasonable player.²⁸

2.24 Although the government is taking steps to address these inconsistencies, concerns remain that the legislation introduced (the Model Work Health and Safety

25 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 6*, p. 12.

26 On 1 January 2012, 'occupational health and safety' was renamed 'work health and safety'.

27 Lion, *Submission 33*, pp. 4–8.

28 Mr John Millington, Company Spokesman, Luv-a-Duck, *Committee Hansard*, 17 April 2012, p. 36.

Act) does not extend to workers' compensation.²⁹ Further, the committee heard that at least one state is reluctant to comply with its provisions.³⁰

Committee view

2.25 The committee acknowledges that regulation associated not only with occupational health and safety but also workplace relations and employment impose significant costs on business. The committee takes the view that these are important matters that should be regulated by government, but would be concerned if the requirements result in a burden that impacts the viability of employers. In recognition of the importance of these matters, the committee considered issues related to employment in depth in Chapter 2.

Transport

2.26 The committee heard that differences in transportation infrastructure and fees and charges throughout the different jurisdictions in Australia were potential impediments to competitiveness. The potential for inconsistent transport regulation to hamper business was most clearly identified by Webster Ltd, a Tasmanian based exporter, in its submission to the committee. Although Webster Ltd identified that there are many advantages to producing agricultural products in Tasmania (Bass Strait provides a natural barrier for many pests and diseases), the 'isolation' that Bass Strait provides puts:

Tasmania at a commercial disadvantage when it comes to shipping produce to domestic and export markets.³¹

2.27 In recognition of the significant costs involved in shipping produce from Tasmania to the mainland, the government introduced the Tasmanian Freight Equalisation Scheme (TFES) in 1976 with the objective of providing Tasmanian industries with 'equal opportunities to compete in mainland markets'.³² The TFES, however, does not extend to shipping costs for export bound goods. Although previously Tasmanian producers could access export markets directly, that service is no longer available and goods bound for export must first be shipped to the mainland.

2.28 Webster Ltd informed the committee that the Bass Strait portion of the entire cost of shipping a container from Melbourne to Antwerp is 32 per cent.³³

2.29 Webster Ltd went on to explain to the committee that in addition to the high costs of freight between Bass Strait and the mainland that are not covered by the

29 Lion, *Submission 33*, pp. 4–8.

30 Lion, *Submission 33*, pp. 4–8.

31 Webster Ltd, *Submission 58*, p. 3.

32 Webster Ltd, *Submission 58*, p. 3.

33 Webster Ltd, *Submission 58*, p. 3

TFES, the reforms proposed by the Coastal Trading Bill 2012,³⁴ as well as the introduction of a Port Licence Fee by the Port of Melbourne to enable it to pay an annual port licence fee to the Victorian Parliament, are placing further pressure on their ability to compete.³⁵

2.30 Mr Gavin Cator, Chief Executive Officer of Greater Shepparton City Council, also expressed concerns that the current transport situation is affecting the competitiveness of the food processing sector. Mr Cator explained his concern with road transport and the adequacy of infrastructure to support increasing road transport movements as well as regulations to enable heavier loads:

...to make our industries more competitive we need to move to larger transports. From a previous life in the City of Wodonga and dealing in that area with the transport industry—and I am sure it is the same here in the city of Greater Shepparton—I think that to go from B-doubles to super B-doubles or some combination of those could provide up to a 30 per cent efficiency for those industries. Again, that is a huge benefit to the industries. Currently we are dealing with issues on freeways, but in the Wodonga instance a \$40 million fix to the Hume Freeway would allow super B-doubles from Melbourne into the Wodonga area. So, again, not for a great expenditure, we could have significant improvements to the efficiencies of our trucking industry.³⁶

2.31 The AFGC commented on the regulatory inconsistencies affecting transport of food and grocery items and how the national seamless economy was yet to deliver reform in the transport sector:

Approximately 50 per cent of truck movements in Australia carry food and grocery items as their load, yet we have different regulatory arrangements for truckloads in different states and territories, meaning that there is a fundamental inefficiency in the supply chain for the movement of trucks around the states and territories.³⁷

2.32 AMIC also cited the constraints of Australia's transport and infrastructure systems as impacting on the competitiveness of the meat export business:

An example is the maximum road weight limits in New South Wales. These limits significantly impact on high mass density products like red meat. Forty-foot refrigerated containers now make up the bulk of international

34 Webster Ltd explained that it had seen modelling by Deloitte of the reforms set out in the Coastal Trading Bill 2012 which suggests that as a result of the reforms the cost of freight may increase by as much as 10 to 16 per cent. *Submission 58*, p. 4.

35 Webster Ltd, *Submission 58*, p. 4.

36 Mr Gavin Cator, Chief Executive Officer, Greater Shepparton City Council, *Committee Hansard*, 8 March 2012, pp. 3–4.

37 Dr Geoffrey Annison, Deputy Chief Executive, Australian Food and Grocery Council, *Committee Hansard*, 13 December 2011, p. 23.

container transport systems. Loading a 40-foot container with frozen meat cartons in New South Wales exceeds the road weight limit. This results in inefficient trucks and container utilisations, adding costs and significantly impacting on competitiveness. We are global suppliers and we should have a uniform, globally competitive national transport system.³⁸

2.33 AMIC explained that the problems are not limited to road transport but that there are also problems with rail which are costing business, which if not addressed will threaten the ongoing viability of some communities:

We send trains to the port and we cannot go into deep ports at present because they are fixing the train line. But to take a container 1 kilometre costs us \$300. I saw a bill yesterday for one container with waiting time of \$360 on top. That is not good enough. They can heap the costs back onto us. I know this is a New South Wales situation and I have a problem with the states. There are six departments running trains—too difficult. That could be streamlined. It is not a matter of spending a lot of money; it could be organised with better management.³⁹

Environmental regulation

2.34 The committee's has received evidence that the current regulatory regimes that apply to the food processing sector are damaging the industry. Submitters consistently identified growth in environmental regulation in the areas of water usage and energy and waste usage as areas of concern, particularly as they have seen instances where unnecessary duplication is occurring across the different levels of government.⁴⁰

2.35 Lion Pty Ltd provided an example of where such duplication has arisen:

For example, currently in Victoria all large businesses or businesses that reach a certain energy and water usage threshold are required to submit Environment and Resource Efficiency Plans to the Victorian EPA. This is in addition to the Federal Government's Energy Efficiency Opportunities program and National Greenhouse and Energy Reporting System. These programs then overlap with the National Pollutant Inventory requirements at both a state and federal level.⁴¹

2.36 Lion suggests that the continued development of duplicate regulation, which is occurring at a time when many businesses are 'firmly focussed on delivering environmentally sustainable solutions'; will hamper the ability of businesses to create efficiencies in the supply chain. They suggest that a 'review and rationalisation' of the

38 Mr Gary Burridge, Chairman, Australian Meat Industry Council, *Committee Hansard*, 10 February 2012, p. 23.

39 Mr Roger Fletcher, Chair, Sheepmeat, Australian Meat Industry Council, *Committee Hansard*, 10 February 2012, pp 24–25.

40 Coca-Cola Amatil, *submission 44*, pp 7–8.

41 Lion Pty Ltd, *Submission 33*, p. 6.

many pieces of environmental legislation 'would allow the business to firmly focus attention on delivering supply for the long-term'.⁴²

Committee view

2.37 The committee notes that increased environmental regulation is occurring at the same time as many industry participants, who by nature are energy intensive, are experiencing rising input costs. The committee, like industry, is concerned by these developments, particularly as food processors are likely to suffer further imposts, either directly or indirectly, from 1 July 2012 when the carbon tax takes effect.

2.38 The committee notes that the issue of cross-jurisdictional regulation is on the COAG agenda. However, given that in practice little seems to have changed, the committee takes the view that all state and territory governments need to take action and make all efforts to ensure momentum is maintained to bring the COAG agreements to fruition in a timely manner. The committee highlights the importance of providing the most cost efficient and seamless operating environment for businesses, particularly in relation to transport.

2.39 The committee is aware of the work undertaken by Infrastructure Australia in response to the withdrawal of direct export services out of Tasmania, the Deegan Report, and notes that the government has committed to the continuation of the TFES. The committee urges the government to give the highest priority to the remaining recommendations of the report, ensuring that Tasmania has access to the most cost competitive freight system, which is a vital component of a healthy economy.

2.40 The committee is concerned at the cost of transporting goods from Tasmania to the mainland, particularly those bound for export where there is no local export service provided.

Recommendation 1

2.41 The committee recommends that all state and territory governments develop a definitive timeframe for the Council of Australian Governments reform agenda for a National Seamless Economy and actively engage to ensure that momentum for implementation of the reforms is maintained. In particular, the committee urges participants to ensure movement on the integrated transport reforms, including reforms to the heavy vehicle registration process.

Recommendation 2

2.42 The committee recommends that the government expedite those recommendations of the Deegan Report which have not been rejected to position Tasmania to have access to a globally competitive freight system.

42 Lion Pty Ltd, *Submission 33*, p. 6.

Taxes—state and federal

2.43 In Australia, taxation is imposed by the federal government; however, businesses incur 'taxes' from state and local government through levies and charges such as stamp duty and payroll taxes. The committee heard that the cost of administering these regimes to business in the food processing industry is 'enormous' given that these businesses are relatively labour intensive.⁴³ In fact, it was put to the committee that:

Most businesses would have at least one dedicated member/employee to deal exclusively with the paper work associated with taxation and employment.⁴⁴

Payroll taxes

2.44 Throughout the inquiry, the committee heard time and again that state payroll tax is a 'significant cost...and a significant barrier to maintaining a competitive and viable local food and beverage manufacturing industry' and that more needs to be done to 'reduce the burden on local manufacturers'.⁴⁵

2.45 The Food Industry Advisory Group (FIAG) is of the view that:

Inefficient taxes like payroll and stamp duty act as a deterrent for business investment, particularly when it is a disincentive for employment or business acquisition – both are counter intuitive to the competitiveness and future viability of the processing sector.⁴⁶

2.46 AMIC shared the view of the FIAG that the burden of 'inefficient taxes' acts as a 'disincentive for employment' and as it is not incurred in offshore facilities places foreign competitors at an advantage:

Inefficient taxes like payroll tax act as a detriment for business involvement, particularly when it acts as a disincentive for employment. Payroll tax is just another burdensome tax on business. It increases the cost of labour units in the business. That business is a labour-intensive business. It is a cost that is not borne by our competitors overseas. Australian live animal exports to markets like Indonesia and the Middle East are processed in facilities that do not incur such taxes, further destabilising the level playing field for our sector.⁴⁷

43 Food Industry Advisory Group of Western Australia, *Submission 15*, pp 4–5.

44 Summerfruit Australia Limited, *Submission 13*, p. 5.

45 Coca-Cola Amatil, *Submission 44*, p. 5.

46 Food Industry Advisory Group, *Submission 15*, p. 5.

47 Mr Gary Burridge, Australian Meat Industry Council, *Committee Hansard*, 10 February 2012, p. 23.

2.47 In its submission, Coca-Cola Amatil called on the government to abolish state payroll tax for the manufacturing sector.⁴⁸

Pricing carbon

2.48 Many witnesses to the inquiry suggested that the cost of complying with tax obligations at a federal and state/territory level increases prices and reduces competitiveness. In light of this, concerns were raised with the committee about the impact of the carbon price:

The introduction of a carbon tax, dependent on how it is applied could see a loss of many food processing businesses unable to absorb additional cost while remaining competitive with imported produce from countries not applying a similar regime.⁴⁹

2.49 Mr Peter Greenham, Executive Chairman, HW Greenham and Sons Pty Ltd spoke about the effect of the carbon price and the implications for his business. He advised that although the emissions of his business will be below the limit where the pricing regime applies, increased costs will arise from increases in inputs such as power. Mr Greenham has been informed by the power companies that the cost increase and their energy bill will go up by around 18 per cent or around \$160,000 per year on a current bill of around \$950,000.⁵⁰

2.50 The committee found that although industry participants generally understand the rationale behind the introduction of the carbon price, they would like to see some form of government assistance in recognition that local products will be less competitive against imports from countries that do not impose the same level of tax or regulation on their food industries.⁵¹

2.51 One industry participant submitted that it would like to see government support targeted 'so that the competitive balance is not tilted in favour of products with a larger carbon footprint':

Exemptions from the carbon tax, or free permits, or compensation for the additional cost caused by the tax (not just directly, but including the increased energy costs), should be provided to industries or individual businesses that can demonstrate that the increased cost will make them less competitive against substitutes that produce substantially higher carbon emissions. The food processing industry should receive targeted relief on that basis.⁵²

48 Coca-Cola Amatil, *Submission 44*, p. 5.

49 Food Industry Advisory Group of Western Australia, *Submission 15*, p. 5.

50 Mr Peter Greenham, *Committee Hansard*, 8 March 2012, p. 4.

51 Name withheld, *Submission 8*, pp 4–6.

52 Name withheld, *Submission 8*, p. 6.

2.52 The concerns of smaller processors were shared by larger companies such as Campbell Arnott's, Lion Pty Ltd and Coca-Cola Amatil Ltd.

2.53 Campbell Arnott's identified that the impost of the carbon price will affect its ability to compete with overseas manufacturers:

We are seeing the carbon tax starting to have an impact on our forward fiscal projections from the next fiscal year. I think it has been modelled by the AFGC that it will have about a 4½ per cent impact on operating profits across the industry. As a manufacturer we believe that, with the work we have done on sustainability and conservation, we will fall below those thresholds. But [in respect to] our utility suppliers it is something to keep an eye on. It when you add those taxes up you are not having a level playing field against some of the offshore manufacturers you have to compete with...⁵³

2.54 Lion Pty Ltd considers that the introduction of the carbon price will result in administrative costs for the business as it seeks to comply with its requirements:

The proposed carbon price mechanism and its complexities alone will impose a heavy regulatory burden on the food industry. This burden will be apparent to the food industry in the form of increased requirements around data gathering processes, quantification of cost impacts and quantification of supply chain impacts which will likely require detailed review of all relevant procurement contracts involved in the production of food.

The Government should be wary of amplifying this impending burden with additional regulation where there are already feasible self-regulatory options.⁵⁴

2.55 Coca-Cola Amatil, like Campbell Arnott's, Lion Pty Ltd and other processors who gave evidence to the committee, is also concerned that the carbon price will drive up costs and thus impact its competitiveness:

CCA remains concerned that the Government's Clean Energy legislative package (carbon pricing) creates an additional burden on local manufacturing, driving up costs relative to our international competitors where such burdens do not exist or are subsidised.⁵⁵

2.56 The Department of the Treasury, however, did not share these views and explained that their modelling has shown the impact of the carbon price will be smaller than expected:

A key conclusion of the Treasury modelling is that, at a broad sectoral level, structural changes due to carbon pricing will be much smaller than

53 Mr Craig Funnell, Vice-President, Supply Chain – Asia Pacific, Campbell Arnott's, *Committee Hansard*, 10 February 2012, p. 57.

54 Lion Pty Ltd, *Submission 33*, p. 4.

55 Coca-Cola Amatil, *Submission 44*, p. 5.

other impacts, such as ongoing changes in the terms of trade or consumer tastes. While some emission intensive parts of the economy will undergo structural change, the modelling finds that the bulk of the economy will be largely unaffected... Overall, the modelling finds that less emission-intensive industries, such as food manufacturing, are more competitive and grow faster with domestic carbon pricing than in the global action scenarios.⁵⁶

2.57 The Department of the Treasury also suggested that pricing emissions will slow growth in coal and gas production which in turn will have benefits for the food processing sector by lowering the exchange rate and:

...making other trade-exposed industries, such as food processing, more competitive. Slower productivity growth in carbon-intensive sectors will also slow wages growth and costs of production in other parts of the economy.⁵⁷

Committee view

2.58 In the challenging environment currently facing the food processing industry, the committee considers that wherever possible government should seek to remove additional or duplicated regulatory imposts and ensure that despite the challenges, all participants are competing on a level playing field.

2.59 The committee notes that some of the revenue from carbon pricing is spent on industry assistance. Of particular relevant to the food processing sector is the Clean Technology Investment Program for manufacturing businesses, which provides government co-investment into new capital which lowers energy costs and improves competitiveness.

2.60 The committee is heartened by the commitment that has been made through COAG by the state, territory and commonwealth governments to implement reforms that will lead to a national seamless economy. However, the committee takes the view that progress of these forms is taking too long and further delay may cause further participants in the food processing sector to exit the industry.

2.61 The committee is particularly concerned by the imposts of transportation regulation, state and territory payroll taxes and the carbon price.

56 Department of the Treasury, *Submission 18*, p. 13.

57 Department of the Treasury, *Submission 18*, p. 13.

Recommendation 3

2.62 The committee recommends that following the introduction of the carbon price on 1 July 2012, the government monitor:

- **how the big emitters pass on the costs into the food supply chain; and**
- **the profitability of businesses in that supply chain, including to farm gate.**

Chapter 3

The effectiveness of the Competition and Consumer Act 2010

3.1 In establishing the Select Committee on Australia's Food Processing Sector, the Senate identified 'the impact of Australia's competition regime and the food retail sector, on the food processing sector, including the effectiveness of the *Competition and Consumer Act 2010*' as one of the inquiry's terms of reference.¹ Throughout its inquiry, the committee sought to investigate whether the current market is characterised by competition that will have positive outcomes for consumers or if the market is such that the long term viability of Australia's food processing sector is at risk.

Background

The Competition and Consumer Act 2010

3.2 The *Competition and Consumer Act 2010*² (the CCA) contains Australia's core legislation for addressing anti-competitive conduct. The object of the CCA is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. The Act does this through a legislative framework that makes certain conduct and practices unlawful, while ensuring that an environment that facilitates competition remains. In its submission to the inquiry, Treasury explained how the CCA achieves this:

Competition laws are intended to protect the competitive process in our markets, which will generally deliver greater efficiency and productivity, and better outcomes for consumers...In some cases, however, conduct may be authorised where it may nonetheless produce a net public benefit.³

3.3 It is important to note that a feature of Australia's competition framework is that the laws are 'principally concerned with protecting the competitive process, not individual competitors. They are not designed to protect competitors from rigorous competitive behaviour, not to force businesses to compete'.⁴

3.4 The competition rules of the Act cover a range of conduct including cartel conduct, misuse of market power, anti-competitive agreements and exclusive dealing, as well as prohibiting mergers and acquisitions of companies that would result in a substantial lessening of competition. The consumer protection provisions include rules

1 Journals of the Senate, 2010–11, no. 27, 24 March 2011, pp. 774–775.

2 Prior to 1 January 2011, these provisions were contained in the *Trade Practices Act 1974*.

3 Department of the Treasury, *Submission 18*, p. 7.

4 Department of the Treasury, *Submission 18*, p. 7.

regarding 'country of origin labels', which set parameters for claiming that a product was produced, for example, in Australia, as well as other provisions. The consumer protection provisions of the CCA are explored in Chapter 5 of the report.

Reviews/inquiries into the CCA

3.5 Questions about the effectiveness of the CCA have been the subject of much inquiry in recent times. In January 2008, the Australian Competition and Consumer Commission (ACCC), which is responsible for enforcing the CCA, was referred an inquiry into the competitiveness of retail prices for standard groceries⁵ in response to community concerns about the rising cost of food.⁶ The ACCC's report was presented to the Minister for Competition Policy and Consumer Affairs on 31 July 2008.

3.6 In its report, the ACCC concluded that the changes in retail price reflect changes in the farm-gate/wholesale price⁷ and advised the government that '[e]vidence...does not support the proposition that retail prices have risen while farm gate prices have stagnated or declined'.⁸ Rather, it concluded that 'a range of domestic and international factors have substantially contributed to the recent increases in food prices in Australia' including:

- the current drought, which has reduced the supply of many agricultural products and increased the costs of farming;
- natural disasters such as cyclones and floods, which in combination with quarantine restrictions have caused considerable supply disruptions for some fruit and vegetable products; and
- the international commodities boom, which has: increased the cost of commodities (such as fertiliser and petrol) used to produce and transport many Australian food products; [and] increased the prices some Australian farmers and food producers can sell their products for in export markets, leading to higher domestic prices.⁹

3.7 The ACCC went on to explain that although:

5 In conducting the inquiry the ACCC received 250 submissions and held 22 hearings with a total of 77 witnesses, and also conducted a grocery consumer behaviour survey for which there were 1500 respondents.

6 Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, June 2011, p. 31.

7 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p. 305.

8 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p. xiv.

9 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p. 39.

[i]t is difficult to be certain about the extent to which the above domestic and international factors account for the observed increases in food prices...any potential contribution resulting from increased margins of major grocery retailers and wholesalers is small relative to the overall increase in food prices.¹⁰

3.8 The ACCC's 2008 grocery prices report did, however, result in the introduction of unit pricing, as well as changes to the Horticulture Code of Conduct¹¹ and planning laws to prevent restrictive covenants in leases and enable market access for new entrants.

3.9 Following the ACCC's 2008 report, the operation of the provisions within the CCA in the context of the grocery sector was again the focus of inquiry through the Senate Economics References Committee's inquiry into *The impacts of supermarket price decisions on the dairy industry*.¹² That inquiry, which concluded in November 2011, arose following a decision of the major grocery retailers to reduce the retail price of their own brand (private label) milk to \$1 a litre.¹³ Although the Senate Economics References Committee's inquiry concentrated on only one sector of the food industry—the dairy industry—the committee recommended that the government initiate an independent review of the competition provisions of the CCA.¹⁴

3.10 The establishment of the Senate Select Committee on Australia's Food Processing Sector follows on from these earlier inquiries and was tasked with investigating the numerous pressures that are confronting the industry. The committee considers that determining the effectiveness of the operation of the CCA from the perspective of the food processing sector requires consideration of the entire food supply chain—from the cost of primary inputs to the competitiveness of the retail sector as the point of supply to Australian families.¹⁵

3.11 In its *Issues paper to inform development of a national food plan*, the government identified competition in the food sector as being 'essential to ensuring

10 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p. 39.

11 The Horticulture Code of Conduct regulates trade between growers and traders of fresh fruit and vegetables. The Code aims to promote transparency and improved business practice. The ACCC is responsible for enforcing the Code, and promoting awareness of the Code through, for example, guidelines, articles and fact sheets.

12 This inquiry of the Senate Economics Reference Committee followed an earlier inquiry into the dairy industry by the same committee in 2009–10.

13 Senate Economics References Committee, *The impacts of supermarket price decisions on the dairy industry*, November 2011, p. xiii.

14 Senate Economics References Committee, *The impacts of supermarket price decisions on the dairy industry*, November 2011, p. xvi.

15 Senator the Hon. Richard Colbeck, *Media Release*, 8 July 2011, Inquiry into Australia's food processing sector, p. 1.

efficient use of resources and encouraging rapid uptake of new technologies in food production and services'.¹⁶ In that paper, the government also identified that the current level of competition in the grocery sector is a matter causing concern to some stakeholders:

Recent strong price competition between major supermarkets, which is placing downward pressure on grocery prices, is raising some stakeholder concerns about the impact on prices received by food processors.¹⁷

3.12 Although the government explains that a competitive food sector benefits consumers through 'improvements in food quality, greater consumer choice, competitive grocery pricing, and sufficient growth in food supplies to meet expanding demand',¹⁸ this committee has received evidence that suggests the current characteristics of the marketplace are threatening the ongoing viability of Australia's food processors. This chapter explores the evidence that the committee received.

The current market

Overview

3.13 According to Treasury, the current market in the Australian food processing industry is generally consistent with international markets which also tend 'to be concentrated, with two or three key players in each product type and a number of smaller competitors'.¹⁹

3.14 The food processing sector is dominated by two major retailers, Coles and Woolworths. Estimates of their combined share of the food retail market have been consistently high. In 2005, it was estimated that Coles and Woolworths had a combined market share of 76 per cent.²⁰ In 2008, the ACCC estimated the combined share to be 70 per cent of the national supermarket packaged grocery market and

16 Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, June 2011, p. 31.

17 Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, June 2011, p. 31.

18 Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, June 2011, p. 31.

19 Department of the Treasury, *Submission 18*, p. 4.

20 ABARES, Andrew Jacenko and Don Gunasekera, *ABARE conference paper 05.11 – Australia's retail food sector: some preliminary observations*, May 2005, p. 3,
http://www.abare.gov.au/publications_html/conference/conference_05/CP05_11.pdf (accessed 2 August 2011).

approximately 50 per cent of fresh product sales.²¹ Again, in 2010, IBISWorld also estimated the combined market share to be 70 per cent.²²

A concentrated market

3.15 The lack of competition between the two large supermarkets was consistently identified as a concern by submitters and witnesses who appeared before the committee.

3.16 The Australian Olive Association told the committee:

Coles and Woolworths control 82% of a farmer's/producer's access to a consumer. The combined market share of this duopoly is the highest in the world. The situation is making it nearly impossible for any producer to make a profit from dealing with supermarkets in Australia.²³

3.17 Similarly, the Winemakers' Federation of Australia (WFA) expressed concern that the retail market has become highly concentrated. It cited the market power of Coles and Woolworths (who are now the two major liquor retailers) as a major concern for their industry. The WFA explained that the 2011 Woolworths acquisition of Cellarmasters, an online wine retailer, has given it 'full vertical ownership through the wine supply and value chain' as it included the ownership of Dorrien Estate, Australia's largest small-batch winery, and Vinpac, with bottling, packaging, storage, filtration and testing services.²⁴

3.18 The Australian Food and Grocery Council (AFGC) is also concerned by the current level of supermarket concentration in Australia:²⁵

We have gone from a scenario where, in 1975, Coles and Woolworths had 38 per cent of the market to one where, last year, they had nearly 80 per cent.²⁶

3.19 When the criticisms of the current level of concentration in the supermarket retail sector were raised with the Treasury, the department acknowledged that the focus of the CCA is the consumer rather than the competitors within a market:

21 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p. 51.

22 IBISWorld, *Supermarkets and other grocery stores in Australia*, 2010, p. 23, as cited in Bronwyn Gallacher, 'Emerging characteristics of Australia's supermarket industry – a case study for the ACCC's first ex-post assessment', (2011) 39 ABLR 147, 149.

23 Australian Olive Association, *Submission 68*, p. 4.

24 Winemakers' Federation of Australia, *Submission 35*, p. 5.

25 Ms Kate Carnell, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, 13 December 2011, p. 19.

26 Ms Kate Carnell, AFGC, *Committee Hansard*, 13 December 2011, p. 27.

Competition law plays an important part in prohibit[ing] anti-competitive conduct. Competition laws are principally concerned with protecting the competitive process in the interests of consumers not individual competitors or firms in the industries.²⁷

3.20 When asked about how it ensures policy settings achieve the right balance between consumers and competition, Treasury responded:

...the way that Australia and most other comparable nations have addressed that issue is that we have passed a set of competition laws that proscribe certain forms of behaviour and then we have some factors that the competition regulator takes into account if there is an allegation that there are anticompetitive practices going on.²⁸

3.21 Treasury explained, however, that it 'does not have a role in judging whether markets are competitive or not' but that that role rests with the independent regulator—the ACCC.²⁹

Mergers and acquisitions and current levels of market concentration

3.22 There is no doubt that concentration in the Australian grocery retail sector is at unprecedented levels. The committee heard evidence that suggests this has occurred over time as a result of 'creeping acquisitions'. Creeping acquisitions are a series of small-scale acquisitions that, individually, do not 'substantially lessen competition' in a market, but collectively may do so over time.³⁰ Supermarkets have bought up 'small brands which on their own do not appear to be much' but which over time have built up to be 'quite substantial ownership of market power'.³¹ Each of these small acquisitions is not in breach of section 50, and the series of acquisitions are therefore permissible by law.

3.23 In December 2011, federal parliament passed a law amending the section 50 test to refer to 'a substantial lessening of competition in *any* market' (as opposed to 'a market'). The bill also amended section 50(6) of the CCA, omitting the word 'substantial' in definition a 'market' for purposes of section 50. The intended effect of both amendments was to clarify that the ACCC and the courts can examine local

27 Mr Bruce Paine, Principal Adviser, Infrastructure, Competition and Consumer Division, Treasury, *Committee Hansard*, 13 December 2011, p. 29.

28 Mr Bruce Paine, Department of the Treasury, *Committee Hansard*, 13 December 2011, p. 30.

29 Mr Bruce Paine, Department of the Treasury, *Committee Hansard*, 13 December 2011, p. 30.

30 Competition and Consumer Legislation Amendment Bill 2011, *Explanatory Memorandum*, p. 7.

31 Mr Andrew Wilsmore, General Manager, Policy and Government Affairs, Winemakers' Federation of Australia, *Committee Hansard*, 13 December 2011, p. 15.

markets which may be small geographically but where creeping acquisitions concerns arise.³²

3.24 The Australian Manufacturing Workers' Union (AMWU) questioned the effectiveness of the current legislative provisions given that, in their view, creeping acquisitions that are not illegal have led to the market dominance of the two large retailers:

We have said consistently that the anticompetitive parts of the legislation need to be toughened up and expanded to include the types of behaviour that are taking place. There also needs to be a greater oversight of the industry. As you say, according to the [current] legislation and the [publicly known] facts, there has been nothing illegal about the creeping acquisitions that have led to a duopoly having 80 per cent control of the retail food and grocery market. However, the anticompetitive practices that have now arisen from that are systematically destroying the industry.³³

3.25 In recognition that the CCA through section 50 prohibits mergers and acquisitions that would 'have the effect, or be likely to have the effect, of substantially lessening competition in any market'³⁴ the committee, through its inquiry, sought to investigate the administration of these provisions given the evidence it had received concerning the apparent market power of the major retailers.³⁵

3.26 In its submission to the committee, Treasury explained the role of section 50 of the CCA, identifying that there will be times when merger activity can be of benefit to consumers:

32 Competition and Consumer Legislation Amendment Bill 2011, *Explanatory Memorandum*, p. 9.

33 Ms Jennifer Dowell, National Secretary, Food and Confectionery Division, Australian Manufacturing Workers Union, *Committee Hansard*, 10 February 2012, p. 4.

34 Section 50, *Competition and Consumer Act 2010*. The use of the substantially lessening competition (SLC) test is consistent with international practice as the same test is used in many other Organisation for Economic Cooperation and Development (OECD) countries including the United States, Canada, United Kingdom and New Zealand.

35 Prior to amendments made by the government in 2011, subsection 50(1) of the CCA prohibited a corporation from 'directly or indirectly acquiring shares in the capital of a body corporate or acquiring any assets of a person if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market'. Subsection 50(3) of the CCA then provides a non-exhaustive list of factors that may be taken into account when considering the impact of a merger or acquisition on a market, including the height of barriers to entry and the actual and potential level of import competition in the market. A market is defined by subsection 50(6) of the CCA. This subsection previously stated that a 'market means a substantial market for goods or services in Australia or a State or a Territory or a region of Australia'. The government's recent amendments to subsection 50(1) of the CCA allow the impacts of a merger or acquisition to be considered within the context of 'any market' instead of 'a market'. The government also amended subsection 50(6) by removing the requirement that the market being considered be a substantial market.

The role of a merger provision is to distinguish between welfare enhancing and welfare reducing mergers and acquisitions ... Mergers between firms can be an effective way of developing competitive advantage, optimising the benefits of complementary strengths and taking advantage of economies of scale and scope. Mergers can also operate as an important discipline upon poorly performing management. Merger activity can thus improve efficiency to the benefit of consumers and the community generally.³⁶

3.27 However, given the level of concentration in the grocery retail sector the committee questioned Treasury about its role and that of the ACCC in monitoring merger activity to ensure concentration levels as a result of creeping acquisitions do not get to such a level as to cause concern to government:

Mr Paine: [We] provide advice [and analysis] from a whole of economy perspective and from a whole of Australia perspective on a wide range of factors, You talked about a particular measure of concentration. In fact I do not think it was with respect to market concentration. It was the number of outlets. We would also supplement our advice about how a particular indicator might not provide the full picture. For example, even measures of concentration are not necessarily reflective of a firms', or one or two large chains', market power.

Senator XENOPHON: Say that again. You are saying that the fact that Coles and Woolworths have 80 per cent of the dry grocery market is not itself a significant determinative factor.

Mr Paine: What I said was that, by themselves, a measure of concentration... by itself is not necessarily a measure of firms' market power. Even if it were, from a competition perspective the issue is about what a firm or firms do with that market power. But let us just go back to the previous point, which is [what] firms' market power reflects is not determined by concentration, because, for example, there are other factors, including how difficult it is for competitors to enter the market.³⁷

3.28 Treasury added that international supermarket chains such as ALDI and Costco are emerging as a new source of competition.³⁸ It also explained that concentration alone does not mean a market is anti-competitive or that the current competition laws that apply are ineffective:³⁹

High market concentration, however, does not necessarily indicate that incumbent firms have market power. When assessing the level of competition in a market, it is also important to assess other factors, such as the presence of barriers to entry or expansion, competition from imports,

36 Department of the Treasury, *Submission 18*, p. 9.

37 Mr Bruce Paine, Department of the Treasury, *Committee Hansard*, 13 December 2011, p. 35.

38 Department of the Treasury, *Submission 18*, p. 5.

39 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p. 51.

the level of countervailing power held by buyers, the nature of key competitors, and the availability of substitute products or services.⁴⁰

3.29 The committee notes, however, that not all submitters viewed the entrance of ALDI and Costco into the Australian market as a positive one. Dick Smith wrote in his submission that:

At the time ALDI commenced in Australia I was openly critical of the lack of discussion of the downside having made myself familiar with its vast operations overseas. I predicted that ALDI would take substantial profits out of Australia and make a fortune for their German owner, already one of the wealthiest billionaires in the world however the business model used by ALDI would completely change the food processing, manufacturing and retailing industry in Australia. I have continued over the past ten years to express my concerns.⁴¹

Committee view

3.30 The committee is concerned by the concentration of the grocery retail sector and finds Treasury's assessment of the situation, that 'high market concentration does not necessarily indicate that incumbent firms have market power', less than reassuring.

3.31 In recent years much of the increase in concentration has come about through creeping acquisitions. Although the committee acknowledges the government's recent minor amendments to certain elements of section 50 of the CCA, it takes the view that those changes were placebo provisions and will not achieve much. The review of the CCA should consider whether section 50 ensures that the cumulative effect of acquisitions over time is taken into account by the ACCC.

Loss of market diversity

3.32 As retail concentration increases, it results in a reduction in the diversity of markets into which participants in the food industry sector can sell their products. The committee heard evidence from Professor David Hughes, Emeritus Professor of Food Marketing at the Imperial College of London, that this result occurs in all markets that are highly concentrated. Professor Hughes explained, however, that in such conditions the ability to find new buyers for products can be 'devastating' for businesses if they lose a customer:

When you have a couple of players with that proportion of the market then, clearly, they are going to have an enormous influence on the market. ...If you are dealing with—as in our particular case Tesco's, Sainsbury's and Marks and Spencer—just three customers, they would be well over half our total turnover. If you upset, or if you are dropped or if market conditions change and you lose one of those customers, then it can be damaging. Within your context where you only have two principal retailers, it can be

40 Department of the Treasury, *Submission 18*, p. 5.

41 Dick Smith, *Submission 63*, p. 4.

devastating for the business. If you are suddenly dropped by Coles and then dropped by Woolworths, it makes for a very difficult business environment.⁴²

3.33 Professor Hughes explained that suppliers need to look for diversity in markets to ensure they have choice in situations where the market is concentrated with only a small number of competitors:

The more competition in the market the better it is for suppliers. That just seems to me to make common sense. In South Africa at the Global Table Grape Congress I was talking to major exporters from South Africa and Chile and ... they said what was encouraging from their perspective was growth in emerging markets because the emerging markets in [places like] , India or China were just starting to get to income levels where they saw markets for grapes within their own countries. Now, when they are pushed by the Tescos and the Walmarts of this world—remember, they are trained to get the best deal—they could say, 'We'd love to sell you more at low prices but actually we've got more customers and they are willing to pay a little more.' ...For us, we have the latitude in that there are five or six principal buyers. We do not have just one model. There is the Tesco model, [for example] [There is] the Walmart model towards dealing directly with growers.... That is a little threatening to suppliers who are aggregators....⁴³

3.34 Professor Hughes explained that for countries like Australia, the opportunities that are presented by export markets could perhaps provide some protection to suppliers if they did not want to deal with either of the two major supermarkets:

Within an Australian context, it is more challenging for large-scale suppliers who do not have the export market and who could lose that volume if they dropped a major customer like Coles or Woolworths.

But if you want me to just pitch in on the food manufacturing end, it is really encouraging, isn't it, when Australian processors and manufacturers have that export option? I would say, subjective though it may be, but I have been working with food manufacturers and processors in Australia for the last 15 years or so, that I am often surprised at the proportion of Australian processors and manufacturers who are inward looking and do not have an export view of the world.⁴⁴

Committee view

3.35 The committee supports the view of Professor Hughes and recognises that having a diversity of markets available is of significant benefit to processors and suppliers. The committee recognises, however, that due to market concentration in

42 Professor David Hughes, Emeritus Professor of Food Marketing, Imperial College London, *Committee Hansard*, 15 May 2012, pp. 72–73.

43 Professor David Hughes, *Committee Hansard*, 15 May 2012, p. 74.

44 Professor David Hughes, *Committee Hansard*, 15 May 2012, p. 74

Australia and the current high Australian dollar, there are limited options in the market for processors and suppliers at this time.

3.36 Evidence provided to the inquiry also supported this view. For example, the meat industry representatives took a very different attitude to supermarkets than other witnesses because they had export market alternatives if domestic retail prices and conditions became unsuitable.

Sensitivity to price

3.37 While hearing that the ability of food processors to find alternative domestic destinations for their products was declining, given the increasingly concentrated retail sector, the committee also heard that the sector is also becoming increasingly price sensitive.

3.38 The AFGC pointed out that the Australian grocery market is a price based market, so if Coles and Woolworths cannot get a product for the price they want in Australia they will source it from overseas. The AFGC added that this is occurring for products such as canned pineapple, tuna and frozen fruit and vegetables, which are significantly cheaper when sourced offshore.⁴⁵

3.39 The committee explored what changes have led to this situation. Dr Geoffrey Annison, Deputy Chief Executive of AFGC, offered his view:

I think the fundamental reason is because the asymmetry in the power between the retailers and the branded manufacturers has grown. Whereas 15 years ago they [branded manufacturers] were powerful, they are not nearly as powerful as they are now. So there was more power with the branded manufacturers to resist and say, 'We are not going to give you that product.'⁴⁶

3.40 Dr Annison explained to the committee that change is the result of the level of concentration and subsequent reduction in retailers, as well as the shift of those retailers into private label products:

A number of the other retailers have gone by the board. I think also there has been some shifting of the position within the branded manufacturers so they have not maintained that differentiation between their private label manufacturing and the branded products that they were offering. That is reflected, I think, mainly because of the power that the supermarkets now have in terms of the ability to de-list products and take products off the shelf.⁴⁷

45 Ms Kate Carnell, AFGC, *Committee Hansard*, 13 December 2011, p. 20.

46 Dr Geoffrey Annison, Deputy Chief Executive, AFGC, *Committee Hansard*, 13 December 2011, p. 21.

47 Ms Kate Carnell, *Committee Hansard*, 13 December 2012, p. 21.

The rise of the private label product

3.41 Over the past ten years, there has been a significant increase in the private label range of products carried by the supermarkets. The AFGC informed the committee that the market share of private labels grew from 15 per cent in 2003 to 25 per cent in 2010 and that both Coles and Woolworths are looking at doubling their private label market share.⁴⁸

3.42 Treasury explained the rising growth in private label products to new entrants such as ALDI and Costco:

At the retail end of the food supply chain, the range of products available in supermarkets has evolved significantly in recent years, partly due to the introduction and growth of private label products. New entrants such as ALDI and Costco, both with private label brands, are in part also motivating the major supermarket chains to turn to private label brands as a competitive response.⁴⁹

3.43 However, Treasury informed the committee that although private label goods are growing and expanding into 'less traditional categories such as shelf stable fruit', in comparison to international markets, private label goods in Australia hold substantially less market share.⁵⁰ Treasury also explained that the rise in private labels is good for consumers.

Treasury notes that at the retail end of the supply chain the range of products available in supermarkets has evolved significantly in recent years partly due to the introduction of and growth in private-label products. We also note the concerns of food processors, however, on the other hand, private-label products do also provide consumers with alternative, more affordable options and increased competition and choice, while potentially placing pressure on parts of the operations of food processors is of direct benefit to consumers and to the economy more generally, for example, by effectively raising household disposable income.⁵¹

3.44 Ms Kate Carnell, Chief Executive of the AFGC, explained the attractiveness of private label products to the large retailers:

A grocery line needs to turn over about 50 per cent more stock to be more lucrative than a private label product. The reason for that is quite clear. Private label products do not have to build a brand, they do not have to do R&D, they do not have to buy shelf space and they do not have to do

48 Ms Kate Carnell, *Committee Hansard*, 13 December 2011, p. 20.

49 Department of the Treasury, *Submission 18*, p. 6.

50 Department of the Treasury, *Submission 18*, p. 6.

51 Mr Bruce Paine, Principal Adviser, Infrastructure, Competition and Consumer Division, Treasury, *Committee Hansard*, 13 December 2011, p. 29.

advertising. All of that is already done by the brand manufacturer, who has actually created the market share for the particular product.⁵²

3.45 Ms Carnell elaborated on the difficulties faced by branded products in competing with these private label products:

So what you see is a scenario where Coles and Woolworths own 80 per cent of the supermarket shelf space in this country. You can look at it almost like real estate. ... You need to be able to get onto that shelf to grow your product and to have the economies of scale that you need to be able to compete with those cheap imports. The dilemma is that, of that 80 per cent, more of that 'real estate' is being taken up by private label products, which means that the real estate that is left for Australian branded products is decreasing quite significantly. That means that access to customer is becoming significantly harder. Also, the other issue is that, unless you deal with Coles and Woolworths—that 80 per cent of the shelf space—your capacity to get your product in front of enough consumers to achieve the economies of scale you need to achieve to compete in this market goes down significantly.⁵³

3.46 Campbell Arnott's also raised concerns about the growing trend towards private label brands on supermarket shelves:

In terms of retail, there is a growth strategy around private label. They certainly want to make private label—and I think they have both gone on record as saying this—a greater proportion of the food spend. The challenge we have is to ensure that, when consumers have that choice at the market shelf, they buy an Arnott's or a Campbell's product and not a private label product. We will ensure that we have products there that will stay ahead of the private label game and tempt those consumers.⁵⁴

3.47 As the market share of private label products increases, and the shelf space available to branded goods decreases, there are concerns among the industry that consumer choice will decrease and that this result is already evident:

[B] efore it might have been private label plus four or five other brands, with the limiting of the number of brands that are actually being given access to shelf space, particularly because of private label growth, ...the power is greater now within the retailers of denying that access.⁵⁵

3.48 The WFA echoed these concerns stating that the result of increasing private label products, particularly in goods such as wine, will be a reduction in consumer choice:

52 Ms Kate Carnell, *Committee Hansard*, 13 December 2011, p. 20.

53 Ms Kate Carnell, *Committee Hansard*, 13 December 2011, p. 20.

54 Mr Craig Funnell, Vice-President, Supply Chain, Asia Pacific, Campbell Arnott's, *Committee Hansard*, 10 February 2012, p. 60.

55 Dr Geoffrey Annison, *Committee Hansard*, 13 December 2011, p. 22.

The retailers have brought in their own brands and their brands look very similar to existing brands—and in some cases very similar. So from the consumer's perspective there is no discernible difference between what was a brand is now an own brand. As the product gets homogenised, we are seeing the gravity moving towards the owners of the own brands because for existing brand owners to come into the marketplace they have to see their product sit on the shelf at a place that is not where the foot traffic goes and they have to do it at a price that is dictated to them by the retailers. That is the problem that we are seeing at that bottom end. We are now seeing it starting to creep into the premium part of the business. It is our view that if we get to a point where the retailers have such dominance in terms of the production and supply of the product that will give them a great deal more latitude to increase price in the long term and it will compromise a lot of the systems and the integrity that we put into the production of our wine. [This] will affect the product that [consumers] will be getting and their ability to have choice as to that product.⁵⁶

3.49 Mr Dean Rochfort, General Manager of Sustainable Development at Greater Shepparton City Council, suggested that with the shift to private labels, domestic manufacturers need assistance to develop brand equity and brand loyalty:

The main focus of many of our manufacturers is on the domestic market where they are competing on private label brands. [and] strong brand equity in some of their private label lines [is now growing quite significantly]. ...What our manufacturers are telling us is that there needs to be some initiative and leadership in helping them develop a sense of brand equity and brand loyalty around Australian manufactured produce because they do not have a level playing field. They are competing with cheap imported products and they are finding it very difficult.⁵⁷

3.50 In its submission to the inquiry, Treasury recognised that 'concerns have been raised about the impact of private label products on competition in the retail grocery market and on the viability of branded products'.⁵⁸ Treasury also noted that the ACCC, in its 2008 Grocery Report, reported that:

...the introduction and growth of private label products has the potential to enhance the buying power of major retail chains and decrease the competitiveness within vertical supply chains.⁵⁹

3.51 Treasury went on to explain that although 'private label products may increase competition by motivating suppliers of branded products to be more competitive', there may be other detrimental impacts:

56 Mr Stephen Strachan, *Committee Hansard*, 13 December 2011, p. 14.

57 Mr Dean Rochfort, *Committee Hansard*, 8 March 2012, p. 8.

58 Treasury, *Submission 18*, p. 6.

59 Treasury, *Submission 18*, p. 6.

While generally increased use of private label brands is likely to put downward pressure on prices, which benefits consumers, there may also be other effects such as a crowding out of shelf space which impacts on producers of branded products. As the ACCC Grocery Report highlighted, concerns have been raised that the growth of private label products is lessening consumer choice by narrowing the range of branded products available.⁶⁰

3.52 Treasury explained, however, that ultimately the market will decide as consumers make their choices.⁶¹

3.53 As acknowledged by Treasury, the ability of retailers to sell private label products may crowd out branded items. Food South Australia Inc. expressed concern about the ability of the supermarkets, through their private labels, to act in both the capacity of a supplier and retailer, arguing that private labels 'just permeate the shelf and the consumers do not have the choice they used to have':⁶²

Consumers do want choice, and the permeation of home brand damages the opportunity for food manufacturers to build brands and brand loyalty. There is something inherently wrong with a customer being a competitor. Retailers can capitalise on the leading brands' innovation without the risk and expense of developing the intellectual property.⁶³

3.54 The AMWU explained to the committee how private label products dampen competition:

Essentially, the supermarkets have taken a decision to reduce the number of products on the shelves ... and gone out to the food manufacturers and said, 'We're going to have our label and one other. You may be the one other. If you do exactly what we want you to do, you will be the preferred supplier for as long as we feel free to have you there.' Those negotiations generally require the person who is going to be the 'one other' to produce the private label product. Manufacturers are saying to us that they are damned if they do and damned if they do not. If they refuse a Coles or Woolworths private label, which is in direct competition with their own product, they find theirs taken off the shelves and there are all sorts of accidents and blockages to selling their product.⁶⁴

3.55 The AMWU also expressed concerns about the ability of the major supermarkets to act as both a customer and competitor, arguing that they are

60 Treasury, *Submission 18*, p. 6.

61 Treasury, *Submission 18*, p. 6.

62 Ms Catherine Barnett, Chief Executive Officer, Food South Australia Inc., *Committee Hansard*, 10 February 2012, p. 19.

63 Ms Catherine Barnett, Food South Australia Inc., *Committee Hansard*, 10 February 2012, p. 17.

64 Ms Jennifer Dowell, Australian Manufacturing Workers Union, *Committee Hansard*, 10 February 2012, p. 5.

increasingly sourcing the private label products from lower-cost overseas processors.⁶⁵

3.56 The committee raised these matters with both Coles and Woolworths.

3.57 When discussing their private label products, Coles were categorical in refuting that they have specific strategies to increase their private brands at the expense of branded goods. Coles explained to the committee:

At no stage have we adopted a target around the proportion of private label sales. Indeed, branded products continue to represent 75 per cent of overall sales in our supermarkets. Our strong view is that customers will ultimately decide what level of private label products they will buy, based on the quality and the value of the product offering. There is another document that shows how we make our decisions on shelf ranging. These are pictorial documents and they show that actually we make decisions on products on shelves based on sophisticated customer preference modelling and volume of sales. There is no strategy to replace branded products with private label.⁶⁶

3.58 Woolworths view private label products as providing consumers with choice:

In developing our own brand lines our aim is to increase choice and value for our customers. [This] was recognised by the Australian Competition and Consumer Commission, who found in their 2008 Grocery inquiry that the introduction of private label products offers consumers additional choice and in precompetitive. ...Our customer research tells us loud and clear consumers love the value and quality offered by own brands.⁶⁷

3.59 In fact, research shows that the trend towards private label products is occurring internationally as shoppers seek out savings in their household budgets. In the United States for example, research has shown that the number of people feeling 'self-conscious' or 'embarrassed' when purchasing private brand products is declining as private label goods are increasingly viewed as the 'normal' choice when shopping 'rather than a solely budget-conscious option':

Of the surveyed shoppers, 51% reported feeling savvy when purchasing private brand products. Only 11% claimed to feel self-conscious, and 3% embarrassed, at being seen buying private brand products.⁶⁸

65 Ms Jennifer Dowell, Australian Manufacturing Workers Union, *Committee Hansard*, 10 February 2012, pp. 1–2.

66 John Durkan, Coles Group, *Committee Hansard*, 15 May 2012, p. 2.

67 Woolworths Limited, *Submission 70*, p. 11.

68 Brown, A., 4 June 2012, Private brands favoured in the U.S., AFN Thought for Food, http://www.ausfoodnews.com.au/2012/06/04/private-brands-favoured-in-the-u-s.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+AustralianFoodNews+%28Australian+Food+News%29 (accessed 25 June 2012).

3.60 Although some submitters view the growth in private label as a threat to their ongoing viability, this view is not shared by the retailers who informed the committee of their preference to source their private label products locally in recognition that customers 'place a purchasing preference on Australian grown and made products.'⁶⁹

3.61 Coles explained their 'Australian first' sourcing policy and detailed the recent expansion opportunities it had given producers through long-term supply contracts:

The best example in recent times was a decision to award Bega Cheese a five-year contract to produce Coles brand cheese, which was formerly sourced from New Zealand. The Bega Cheese contract means Australian dairy farmers will be supplying an additional 70 million litres of milk for Coles every year. Other recent Coles brand announcements that will help Australian farmers and food producers include an extension of our 100 per cent Australian grown frozen veg range, the majority of which is grown in Tasmania and processed by Simplot in Devonport ...The range is worth nearly \$40 million a year to Tasmanian vegetable growers and supports hundreds of jobs

On the weekend we also announced an exclusive five-year agreement with a leading Tasmanian business, Tamar Valley Dairy, to produce Coles brand yoghurt for our supermarkets nationally.... The expansion of yoghurt production will increase demand for Tasmanian milk, which will help to underpin the growth of this key farming sector.⁷⁰

3.62 Woolworths similarly explained their 'strong bias of support for Australian supply of our own brand ranges':

Woolworths invests heavily in cooperating with suppliers on new product development... This has seen considerable investment by us in small- and medium-sized manufacturing all around Australia. Good evidence of this sort of approach is our Macro range [which] ... is now made up of some 350 products, almost 90 per cent of which are sourced from Australian suppliers.⁷¹

3.63 Mr Dunn explained that buying locally is preferred but identified availability has forced Woolworths to source some products for their private label brands, particularly frozen vegetables, internationally:

We would absolutely look to buy first in the local market, if we possibly can. Apart from anything else, it is much easier to do business that way than to necessarily contract for supply and ship it from overseas. The other issue is in terms of availability of local produce at any price. We note the

69 Mr John Durkan, Merchandise Director, Coles Group Limited, *Committee Hansard*, 15 May 2012, p. 2.

70 Mr John Durkan, Merchandise Director, Coles Group Ltd, *Committee Hansard*, 15 May 2012, p. 2.

71 Mr Ian Dunn, Head of Trade Relations, Woolworths Ltd, *Committee Hansard*, 15 May 2012, p. 22.

sourcing arrangements for frozen vegetables. We would like to be able to obtain the same level of supply and we cannot. At the moment Woolworths, in terms of frozen vegetables, have a very limited amount of Australian product. The business is split almost equally between New Zealand and other countries around the world.⁷²

3.64 Woolworths is hopeful, however, that this will change and that their goal is to source 30 per cent of frozen vegetables locally:

We expect to increase that proportion substantially over the next 18 months. The projection at this stage is to have some 30 per cent of frozen vegetables sourced locally, about 60 per cent from New Zealand and only 10 per cent from other parts of the world. But that is dependent on being able to obtain supply.⁷³

Committee view

3.65 The committee considers that while the growth in private label products represents a threat to Australian food processors, it also has the potential to provide opportunity for processors.

3.66 The sale of private label goods plays a role in consumers being provided with choice, and as trends indicate that growth in private label consumption is likely to continue, food processors should seek to take advantage of the declarations of both Woolworths and Coles to preference sourcing the food products for their private label goods locally.

3.67 The committee does note with concern the suggestion that growth in private labels will occur at the expense of investment in research and development and product innovation. The committee takes the view that retailers must recognise the value and importance of such investment and continue to encourage local suppliers who are investing in research and development led innovation. The committee is concerned by the suggestion that the large retailers are able to take advantage of other companies' product research and development. It would be uneasy if the growth of private label products occurred at the expense of a vibrant forward-looking local food processing sector.

3.68 While the growth in supermarket private label products is a phenomenon that is not unique to Australia and does present opportunities to the sector, the committee suggests that the CCA is not effectively addressing the negative consequences of the growth or considering the long-term interests of consumers. The committee acknowledges the need for the CCA to protect and promote the interests of consumers and ensure food remains affordable. However, it is concerned that soon the 'pendulum'

72 Mr Ian Dunn, Head of Trade Relations, Woolworths Ltd, *Committee Hansard*, 15 May 2012, p. 24.

73 Mr Ian Dunn, Head of Trade Relations, Woolworths Ltd, *Committee Hansard*, 15 May 2012, p. 24.

might swing so far in favour of the short-term interests of consumers that research and development, innovation and diversity will be lost in the market place and consumers begin to lack choice and may face increased prices.

3.69 The committee expresses concern that through private label investment, the major supermarkets are increasing their ownership across the supply chain, reducing the number and diversity of food suppliers and processors in Australia. It notes the following comment of the AMWU:

The common argument that the current domestic market situation is all about competition and if you are unable to successfully compete in the competitive domestic market it must be because your company is not as efficient or competitive is disingenuous.

Coles and Woolworths are not generally thought of in terms of being food processors, but through their use of their private brands they are in effect, if not in name, major processors.

They do not own a single factory or employ a single person; they produce their private labels through the use of contractors. Essentially they are no different from any other manufacturer. Other manufacturers might use third party contractors to supply them with products from time to time, but in so doing it does not mean that they are any less of a manufacturer or processor.⁷⁴

Relationships in the supply chain and bargaining power

3.70 The nature of Australia's retail sector was examined by the ACCC in its 2008 grocery prices report.⁷⁵ In its submission to the inquiry, Treasury drew the committee's attention to the ACCC's analysis of the food supply chain in Australia and the Commission's observation that the chain, from production to retail, differs for different categories of food:

...food and grocery processors engage with supermarket chains to achieve broad distribution of their products through supermarkets by increasing their product range or establishing direct supply contracts with market entrants such as ALDI... competition between brands for limited shelf space helps to constrain prices at which suppliers can sell their products.⁷⁶

3.71 Given the nature of the food supply chain in Australia, the relationships between market participants are therefore very important. In its submission, Treasury identified a number of factors that 'impact on the relationships between food manufacturers and retailers':

74 Australian Manufacturing Workers' Union, *Submission 21*, p. 3.

75 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p. 209.

76 Department of the Treasury, *Submission 18*, p. 5.

- shelf space allocations are an important point of negotiation between retailers and manufacturers and wholesalers;
- in some instances, food retailers are also seeking to import branded products through lower cost international supply channels (so-called 'parallel importation');
- increased market penetration of retailers' 'private label' products; and
- the entrance of new players in the retail grocery sector (particularly multinational retailers such as ALDI and Costco).⁷⁷

Terms of Trade

3.72 The committee has received evidence that suggests the relationships between participants in the food supply chain are characterised by an imbalance in bargaining power. The WFA explained how control over 70 per cent of the market gives Coles and Woolworths 'quite a degree of influence over the practices and activities of our members in terms of their sales through those channels' and that Coles and Woolworths are able to use that power 'in such a way that it takes any of the negotiation out of the hands of our members'.⁷⁸

3.73 Food processors spoke of the way trading terms were being used by the major retailers in their contract negotiations with food processors.

3.74 Mr Stephen Strachan, Chief Executive of the WFA, gave anecdotal evidence of what can happen to his members in their negotiations with Coles and Woolworths:

The situation that our members will talk about to me but not publicly is that, in negotiations with the retailers, it is pretty much a spreadsheet based approach towards pricing that demonstrates that they have been able to benchmark lowest-cost production across a whole range of producers. They have, obviously, access to all of that information. In doing so, where any producer does not meet best practice then the attitude and the position of those retailers is, 'Well, that comes off your margin; it's not our problem.' So, in a market forces sense, it makes a degree of sense, but in a practical sense it has major implications because there are practical reasons why some can benchmark at lower levels than others, such as proximity or any other number of factors. They are using that very much to their advantage in terms of driving down cost...

And then of course we have the situation, being in an oversupplied market, where there are any number of producers lining up to sell to them because they have distressed product that they need to sell into the marketplace. We know that the oversupply will not last forever, but our big fear is that, once they entrench their own brands in the marketplace—at the same time devaluing the existing brands or those brands that have been in the marketplace and turning it into a homogenous price based product—then

77 Department of the Treasury, *Submission 18*, p. 5.

78 Mr Stephen Strachan, *Committee Hansard*, 13 December 2011, p. 12

they will have a foothold in that we will not be able to back away from that.⁷⁹

3.75 Although both Coles and Woolworths advised the committee that where suppliers express discontent in negotiations the relationship between the retailer and the supplier is not affected, submitters suggest in fact that such occurrences result in delisting of products without consultation and at a cost to the supplier.⁸⁰ Such experiences are said to have led to the current situation where processors are reluctant to speak publicly due to a fear of retribution.

3.76 When concerns about pressure to accept trading terms including additional fees, were raised with the retailers, Woolworths explained that negotiations although tough, were fair:

I would say that we are tough negotiators... We negotiate fairly in the marketplace on behalf of our customers. If we agree to an increase or a change in trading terms with a supplier, it will be because they see a benefit in doing so.⁸¹

3.77 Woolworths went on to explain that 'rise and fall' clauses are not unilaterally altered if the retailer matches a competitor's promotion:

We would not see that circumstance as part of trading terms—that is, day-to-day product and price negotiation. We would undertake that negotiation with the vendor not in arrears but ahead of any development in the marketplace. We would not unilaterally take money in any way, shape or form. But we would not see that as something we would describe as trading terms; we would see that as normal day-to-day price negotiation. Trading terms is a framework that we set out under which the two parties agree to do business. ...There is a long-term agreement to do business between two parties and then that business is done on a daily transactional basis.⁸²

3.78 Woolworths explained that:

We have those [rise and fall clauses] and they typically apply to circumstances such as fresh milk supply and things that go over a period of time when there may be changes to market conditions. On packaged goods and normal package buying, it really is a matter of a price that is accepted for a period of time until such time as another price is negotiated with the supplier.⁸³

79 Mr Stephen Strachan, *Committee Hansard*, 13 December 2011, p. 13.

80 *Confidential submission*.

81 Mr Ian Dunn, Woolworths Ltd, *Committee Hansard*, 15 May 2012, p. 28.

82 Mr Ian Dunn, Woolworths Ltd, *Committee Hansard*, 15 May 2012, p. 29.

83 Mr Ian Dunn, Woolworths Ltd, *Committee Hansard*, 15 May 2012, p. 29.

3.79 Mr Dunn told the committee that in those cases where a competitor announces a price promotion and Woolworths matches the price in the market, they will ask a supplier if they can contribute to the discount but they do not alter trading terms:

That would generally involve a telephone call and a discussion with the supplier to say: 'I am now selling at a lower margin in the marketplace on this particular product. Are you in a position to help me? I can do this, this and this if you are able to do that, that and that.' If it happens, that is fine; if it does not happen, we match the price anyway and we trade as we are.⁸⁴

3.80 In responding to the committee's concerns about trading terms, Coles explained that its trading terms are complex and involve a variety of terms, 'probably well over 100'. When asked about their top five trading terms, Mr Durkan said:

In as many instances as you could have we would prefer to have net cost prices, so no trading terms at all apply to our cost prices. If I take most of our fresh areas, they are net prices. Where we get into complex terms tends to be in our groceries and more on our branded side than on our private label side. Those terms are so varied and there would be no commonality around them, and in many cases designed by the food manufacturers rather than—

3.81 Mr Durkan said that the shape of their trading terms are decided by the food manufacturers and explained that:

...Our trading terms are built over many, many, many years. These are not trading terms that have just evolved in the last two, three, four, five years. If we could, Coles would have net trading terms. We would have a net price and we would be done with it. There are variable elements, depending on how much marketing spend the manufacturers wish to make in a year.⁸⁵

3.82 When asked to explain their trading terms 'in one sentence', Coles stated:

There are a range of terms; when a supplier wants to promote products, they have terms around promotions.⁸⁶

3.83 Coles explained that suppliers of fresh food such as bananas would not be charged a marketing expense, ullage expense, or freight expense as fresh food items are 'net trading terms', whereas trading terms on branded products may require a supplier to invest a promotional percentage with Coles.⁸⁷

3.84 Despite Coles' and Woolworths' assurances that their negotiation processes are fair, the committee heard repeatedly throughout its inquiry that food manufacturers were reluctant to speak publicly about specific instances of abuse of market power by

84 Mr Ian Dunn, Woolworths Ltd, *Committee Hansard*, 15 May 2012, p. 29.

85 Mr John Durkan, Coles Group Ltd, *Committee Hansard*, 15 May 2012, p. 7.

86 Mr John Durkan, Coles Group Ltd, *Committee Hansard*, 15 May 2012, p. 7.

87 Mr John Durkan, Coles Group Ltd, *Committee Hansard*, 15 May 2012, p. 7.

the major supermarkets. The committee encountered a genuine reluctance for witnesses to come forward and give evidence on these matters, even on a confidential basis. For example, Food South Australia Inc. referred to a 'fear of retribution' and characterised the situation of 'very lopsided contract processes' as being 'somewhat David and Goliath'.⁸⁸

3.85 Ms Barnett from Food South Australia cited the experience of a food supplier going into decline as a result of dealings with a major supermarket:

[A] supplier three years ago supplied 14 products across Australia to one of the major supermarkets, to anywhere between 450 and 700 stores. Today they have no national distribution. This is largely because of new agreements proposed around waste and mark-down that were in addition to the trading terms that existed. They have now been replaced by imported product.⁸⁹

3.86 She gave other examples of suppliers' negotiations with the grocery retailers, illustrating the difficulties arising from contract arrangements on prices:

Example two is where the input costs of a business have increased to 40 per cent higher than they were three years ago. After 12 months of negotiation a price increase was granted. This has impacted its ability to manage price rises with other retailers and margin that it has never been able to recoup. The trend has been to apply additional trading terms which in turn provide more margin to the retailer but not to the supplier.

Example three is, again, of increased input costs year on year and an inability to increase prices. Other retail businesses want the same prices as the majors, and the result has been losing margin to retain and grow the business while absorbing increased costs. [Because] the lines are being decreased[new products] are no longer being taken up. A reduction of listings and promotional expectations, despite co-op funds in the trading terms, is leading to an unsustainable business.

My fourth example is where the costs of fuel, freight, gas, labour, raw materials, packaging, trading terms and utilities have all increased. ...Nearly 50 branded products were on the shelves five years ago nationally, and they are now down to approximately 15. Own-brand competition is priced, obviously, at a medium to low level—and they are generally imported. There is less choice of branded product for consumers, and there is a lack of negotiation with suppliers regarding changing terms. My last example is of an over 20 per cent decrease in recommended retail price over the last five years. There has been an increase in promotional spend expectation of nearly 50 per cent.⁹⁰

88 Ms Catherine Barnett, Food South Australia Inc., *Committee Hansard*, 10 February 2012, p. 18.

89 Ms Catherine Barnett, Food South Australia Inc., *Committee Hansard*, 10 February 2012, p. 17.

90 Ms Catherine Barnett, Food South Australia Inc., *Committee Hansard*, 10 February 2012, p. 18.

3.87 Mr Roger Lenne of Fruit Growers Victoria Ltd detailed the reluctance of the organisation to deal directly with the supermarkets despite being a collective:

...I have not personally approached them. ...Individuals like us would not even get through the door...I have had it said to me before, ..., 'We'll buy our food from overseas; from other countries.' I hope that they do not believe it.⁹¹

3.88 Mr John Wilson of Fruit Growers Victoria Ltd suggested that 'the majors have an aversion to talking to industry associations' as it costs money and by dealing with a 'preferred supplier chain they can play one off against the other'.⁹² Mr Wilson further explained the difficulty of negotiating as a collective:

They will resist and go straight to the Trade Practices Act, which says that it is anticompetitive to deal only with collectives. We make approaches to and work with major packers on the fresh fruit side to try and maintain some sense in the marketplace. But it is very difficult, because all you need is one player who, under financial pressure, succumbs and then you will have a cave-in effect. That has happened recently with the Coles campaign for cheaper permanent prices for produce.⁹³

3.89 Professor David Hughes explained that some firms will have the ability to push back but that that is dependent on size and 'countervailing power'.⁹⁴

3.90 Again, when these concerns were raised with both Coles and Woolworths, they detailed that there was no possibility that such behaviour should be occurring and emphasised to the committee the value they place on developing their relationships within the supply chain.⁹⁵

Committee view

3.91 The committee is concerned by the evidence that it received throughout the duration of its inquiry, particularly the conflicting evidence from processors and retailers concerning the negotiation process. The committee recognises the need to find an effective means of investigating and resolving the types of allegations made to the inquiry. Importantly, the committee notes the current process being undertaken by the ACCC to look more closely at market structures in the supermarket sector and appeals to suppliers to approach the ACCC with their evidence.

91 Mr Roger Lenne, Fruit Growers Victoria Ltd, *Committee Hansard*, 8 February 2012, pp. 6–7.

92 Mr John Wilson, Fruit Growers Victoria Ltd, *Committee Hansard*, 8 March 2012, pp. 6–7.

93 Mr John Wilson, Fruit Growers Victoria Ltd, *Committee Hansard*, 8 March 2012, pp. 6–7.

94 Professor David Hughes, *Committee Hansard*, 15 May 2012, p. 73.

95 Refer to answers to questions on notice 31–34 received from Coles on 1 June 2012. Refer to Woolworths Limited, *Submission 70*, pp. 6–8.

Unconscionable conduct and misuse of market power

3.92 Treasury explained to section 46 of the CCA, relating to the misuse of market power, in the following terms:

There are three elements that must be proven in order to establish a breach of the misuse of market power prohibition in subsection 46(1), that:

- the respondent has a substantial degree of power in a market (which has essentially been interpreted as a freedom from competitive constraint);
- the respondent took advantage of that power (acted in a manner that it would not have acted were it subject to competitive pressures); and
- the conduct had the purpose of:
 - eliminating or substantially damaging a competitor;
 - preventing entry to a market; or
 - preventing or deterring a person from engaging in competitive conduct in that or any other market.⁹⁶

3.93 The ACCC noted the unconscionable conduct provisions in the CCA, which prohibit a corporation from engaging in conduct that is 'in all the circumstances' 'unconscionable':

Amendments taking effect from 1 January 2012 unified sections 21 and 22 of the Australian Consumer Law (formerly sections 51AB and 51AC of the *Trade Practices Act 1974*) into a new consolidated section of the Australian Consumer Law and inserted a list of interpretative principles. In relation to the former section 51AC the ACCC has in recent years had a number of successful cases before the courts.⁹⁷

3.94 The ACCC further explained that the amendments will assist its ability to investigate 'systemic or widespread unconscionable conduct concerns', but that as the amendments are 'relatively recent it may take some time for concerns to arise and matters to then be brought before the courts'.⁹⁸

3.95 Not all submitters to the inquiry shared Treasury's view that concentration does not 'necessarily indicate that incumbent firms have market power'.⁹⁹ In fact, Ms Kate Carnell, Chief Executive of the AFGC, went as far as to suggest that:

96 Treasury, *Submission 18*, p. 8.

97 Australian Competition and Consumer Commission, answer to question on notice 2f – 15 May 2012, received 22 May 2012.

98 Australian Competition and Consumer Commission, answer to question on notice 2f – 15 May 2012, received 22 May 2012.

99 Treasury, *Submission 18*, p. 5.

...there is market failure in this space at the moment. One of the things about market failure is that, where you have such an imbalance in power, the people with no power are not game to say anything. ... At the moment, with the ACCC legislation, unconscionable conduct is almost impossible to prove unless you can prove they actually set out to send you broke. Coles and Woolies are [not] setting out to send our members broke, [so] it is almost impossible for our members to win.¹⁰⁰

3.96 She also emphasised the need for action:

...In five years' time,, we will be talking about when we used to have a food manufacturing industry in Australia and how unfortunate it was that it closed. ...We have got a good example of what happens if you take your eye off the ball.¹⁰¹

3.97 When asked if it is inevitable that once a certain level of concentration among a few players is reached, it leads to behaviour that would be seen as unfair, or a misuse of market power, Professor Hughes stated:

I do not think there is a point when you suddenly tip into that position... this is not academic or scientific... as companies, whether they be suppliers or retailers, gain more market power then often as not that becomes associated with arrogance—the arrogance of market power—and there is likely a predilection for abuses. ...My view is that, wherever you have intense retail concentration, you will have abuses. Large scale retailers consist of individuals, buyers and if you give individuals a lot of market power on occasions they will abuse that power. That is exactly why there should be regulations.¹⁰²

3.98 Professor Hughes remarked that the question of what is an acceptable level of retail concentration is a 'constant topic of conversation' at the political level.¹⁰³

3.99 The effect of vertical integration on horizontal competition was considered by the ACCC in its 2008 Grocery inquiry. The report stated:

The ACCC considers that competition and efficiency concerns are only likely if horizontal competition is weak at any of the vertical stages, resulting in sellers having market power at that stage.¹⁰⁴

3.100 The ACCC went on to explain that at that time, in 2008, it had:

...received little firm evidence of such a situation prevailing at any level below the retail level, but has not been able to investigate all market

100 Ms Kate Carnell, *Committee Hansard*, 13 December 2012, p. 28.

101 Ms Kate Carnell, *Committee Hansard*, 13 December 2012, p. 28.

102 Professor David Hughes, *Committee Hansard*, 15 May 2012, pp. 72–74.

103 Professor David Hughes, *Committee Hansard*, 15 May 2012, pp. 72–73.

104 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p. 225.

participants involved with the supply chains for the thousands of standard grocery products.¹⁰⁵

- 3.101 The committee notes the ACCC's findings, as set out in the 2008 report:

In assessing the efficiency of the supply chain, the ACCC has therefore examined the horizontal competition at the various functional levels as well as the vertical relationships between parties in different functional levels... the ACCC considers that concerns about potential impediments to the efficient supply of groceries to consumers are only likely to be realised if market power exists in any of the functional levels of the supply chain. Market power is more likely to exist where there are high barriers to entry, high levels of concentration and limited import competition. In the absence of market power, the ACCC is confident that the supply chain would deliver groceries to consumers in an efficient manner, which would result in greater choice and lower prices for consumers.¹⁰⁶

Is legislative change required?

- 3.102 The committee asked various industry participants what they would like to see done to address their concerns that the big retailers are engaging in anti-competitive practices in grocery retailing. Witnesses suggested that the CCA urgently needed reform.

- 3.103 The AMWU's view was that the current legislation needed to be toughened to address what it viewed as anti-competitive practices within the supermarket duopoly.¹⁰⁷ While acknowledging there was 'nothing illegal' about the creeping acquisitions which had given rise to Coles and Woolworths controlling around 80 per cent of the retail food and grocery market, the supermarkets' current practices were said to be 'systematically destroying the industry'.¹⁰⁸

- 3.104 Raising concern about how creeping acquisitions were affecting not just the food industry but other sectors, the AMWU commented:

...the duopoly is moving into other areas at a rapid pace, so the same effect that is occurring in the food industry will occur in those other industries that they are moving into—petrol, hotels, pharmaceuticals and all of those areas—unless there is some sort of consideration given to how you stop the

105 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p. 225.

106 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p. 218.

107 Ms Jennifer Dowell, Australian Manufacturing Workers Union, *Committee Hansard*, 10 February 2012, p. 3.

108 Ms Jennifer Dowell, Australian Manufacturing Workers Union, *Committee Hansard*, 10 February 2012, p. 4.

process of creeping acquisitions ending up in the situation where you no longer have effective competition in a sector of industry.¹⁰⁹

3.105 The WFA also suggested that the government could look at the issue of creeping acquisitions:

Consolidation by Coles and Woolworths has occurred by creeping acquisitions. In the European Union, for example, two major retailers wanted to join forces and it was disallowed because it would have given them a market share of 60 per cent. If it was 10 per cent here and 10 per cent there it would have been over the 60 per cent. So it is just a matter of how those creeping acquisitions build to a larger one.¹¹⁰

3.106 The WFA also highlighted the CCA's heavy emphasis on the consumer and suggested that perhaps the 'pendulum' has shifted too far in favour of the consumer:

...the Competition and Consumer Act is very heavily dominated towards consumers, to ensure that consumers get the best deal—which we understand and respect. However, as I said earlier, there are big question marks over the nature of the product as it comes through and it does start to undermine some of the integrity that we have set up around the manufacture of our product and it does ultimately affect choice in terms of the product going through to consumers. I guess the other point to make is that there are industries that sit behind the value chain and they are suffering because of the domination of the major retailers.... We think that the balance has shifted. The pendulum has shifted way too much in favour of those consumer issues. That plays right into the hands of the major retailers and so the industry issues are not being considered adequately.¹¹¹

3.107 The Australian Dairy Industry Council (ADIC) similarly suggested that changes to the CCA were necessary and suggested that 'a definition of unconscionable conduct be inserted into the Act...an 'effects' test be reintroduced; and a statutory duty of good faith be enacted as part of the Act'.¹¹²

Committee view

3.108 The committee notes the recent amendments to consumer law that will enhance the ability of the ACCC to investigate claims of unconscionable conduct. However, the committee maintains that these provisions within the CCA, particularly the provisions relating to misuse of market power, should be given specific attention in a review of the CCA.

109 Ms Jennifer Dowell, Australian Manufacturing Workers Union, *Committee Hansard*, 10 February 2012, p. 4.

110 Mr Andrew Wilsmore, *Committee Hansard*, 13 December 2011, p. 15.

111 Mr Stephen Strachan, *Committee Hansard*, 13 December 2011, pp. 14–15.

112 Mr Chris Griffin, Chairman, Australian Dairy Industry Council, *Committee Hansard*, 9 March 2012, p. 20.

3.109 The review of the CCA should consider the inclusion of the functions of a food supply chain ombudsman within the ongoing role of the ACCC.

Calls for a mandatory code of conduct

3.110 In addition to suggestions that the CCA be amended, the committee heard calls for a mandatory code of conduct to apply to grocery retailers.

3.111 The AFGC suggested the introduction of such a code, with oversight by a supermarket ombudsman:

AFGC considers a greater commitment to fair business practices and equitable risk and return along the supply chain would be enhanced by introducing a co-regulatory Supermarket Fair Trading Code of Conduct overseen by a Supermarket Ombudsman. The Code would provide guidance on acceptable approaches for negotiating trading terms and contracts. Applicable to retailers with greater than \$1b p.a. turnover it would limit the power of the supermarkets to extract unreasonable additional funds from suppliers beyond original contractual agreements. The Ombudsman would arbitrate disputes arising from trading practices not consistent with the Code of Conduct.¹¹³

3.112 Mr Chris Griffin, Chairman of the Australian Dairy Industry Council, supported the AFGC's calls for a mandatory code of conduct,¹¹⁴ as did Food South Australia Inc.:

I think transparency is really a key issue in all of this. You have your input costs going up and your retail prices or margins are sustained, but it is that middle manufacturing and processing area that is losing out. I think any code of conduct probably needs to be mandatory. I think voluntary codes of conduct do not appear to be working. For example in the olive oil industry ...[T]here has to be an efficient mechanism by which there is the transparency and that gives food manufacturers a fair go.¹¹⁵

3.113 When asked about the AFGC proposal for a mandatory code of conduct, Treasury responded:

As you would be aware, mandatory or voluntary codes can be prescribed in the CCA. Our experience—and we have some reasonably firsthand experience—is that it is generally better if the industry itself can come to some sort of arrangement rather than the government first proposing it and the parliament, if they agree, passing laws to have such prescribed codes. Some of the reasons why there is likely to be a greater net benefit in self-regulation are that the participants can tailor-make the codes to their own business conditions and practices. Self-regulation is likely to lead to lower

¹¹³ Australian Food and Grocery Council, *Submission 12*, pp. 4–5, pp. 12–14.

¹¹⁴ Mr Chris Griffin, Australian Dairy Industry Council, *Committee Hansard*, 9 March 2012, p. 20.

¹¹⁵ Ms Catherine Barnett, Food South Australia Inc., *Committee Hansard*, 10 February 2012, p. 19.

compliance costs on the businesses than if bureaucrats, the government and the parliament, in its greater wisdom, impose a set of conditions on them. It is likely to be more flexible. Another reason is that self-regulation does not impose costs on the public purse, essentially, which have obviously got to be funded by taxpayers eventually.¹¹⁶

Committee view

3.114 The committee notes the evidence it received from the Product and Grocery Industry Ombudsman (PGIO) and suggests that the effectiveness of the Code and the PGIO is somewhat limited. The committee took evidence that there is strong support from agribusiness, processing and manufacturing industries for a mandatory Supermarket Fair Trading Code of Conduct or similar, overseen by a Supermarket Ombudsman. In this context, it notes the following comments from the National Secretary of the AMWU:

In the short term we would certainly like to see the ACCC be given the powers to deal with the issues when they collect the evidence. People in the industry who are already reluctant to give evidence because of the impact it may have on their businesses will certainly not give evidence when they know that, even if they do, no constructive action can be taken arising from that evidence. So we would like to see some changes to that legislation in the short term to allow the ACCC to deal with those issues.

...There have been proposals for industry ombudsmen and a number of other suggestions. We are open to any of those suggestions which would allow for greater oversight of what goes on in the industry—the exposure of the practices that take place on a daily basis, which are threatening not only jobs and the manufacturing industry itself but also our ability as a nation to feed ourselves.¹¹⁷

3.115 The committee takes the view that the introduction of a mandatory code and an ombudsman, without first investigating why the existing ombudsman is not effective, would simply add cost and regulatory burden to the industry.

Concluding committee comments

3.116 Despite the challenges confronting the industry, the committee considers that there are opportunities for processors and suppliers. The committee agrees with the view of Professor Hughes that suppliers have a responsibility to know a lot more about consumers and their shoppers than they do at the moment and should develop more export expertise. The committee acknowledges that this is not always easy as it requires resources that may not be available to smaller companies. However, this investment may help balance out the power within the supply chain and provide diversity, giving food processors much needed countervailing power. The committee

116 Mr Bruce Paine, Treasury, *Committee Hansard*, 13 December 2011, p. 33.

117 Ms Jennifer Dowell, National Secretary, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, pp 3–6.

suggests that the ability of the food processing sector to keep in-step with the continually evolving market would also be aided by such investment.

3.117 The ACCC advised the committee that the behaviour of the supermarkets is currently an area of interest to it, although it is still in the process of forming a view in relation to issues that have been raised and the relevant legislative provisions:

Since our last appearance our chairman, Rod Sims, has publicly commented on our interest in matters concerning supermarkets in particular, and that is reflected in the new compliance and enforcement policy that was published earlier this year where we set out a number of priorities for the ACCC over the next period. They included considering competition and consumer issues in highly concentrated sectors. We particularly named supermarkets as being an area of interest.

We have sought in various forums people to come forward, particularly suppliers, even on a confidential or anonymous basis, to assist us to get a better feel for the issues out there. I am happy to note that we have had a number of approaches in light of those calls. That is greatly assisting the ACCC to get on top of the issues that we have seen in the marketplace and that we have commented on publicly. We are turning our minds to those issues to see, first of all, whether they can be considered under the provisions of the Competition and Consumer Act. Even more generally, we are just forming a view in relation to the provisions.¹¹⁸

3.118 The committee welcomes this recent development and eagerly awaits the ACCC's announcements concerning its activities. In light of the ACCC's announcement, the committee considers that the time for processors to present their concerns to the ACCC is now. The committee accordingly urges food processors to approach the ACCC and provide evidence of the concerns they have raised with the committee to the ACCC so that the anecdotal evidence that has been provided to the committee can be investigated.

3.119 The committee notes that the Senate Economics References Committee's report on *The impacts of supermarket price decisions on the dairy industry*, recommended that the government initiate an independent review of the competition provisions of the *Competition and Consumer Act 2010*. The government, however, declined to initiate a review until the law is further tested by the ACCC in the courts. While the committee supports further action by the ACCC, it considers that the experiences of the food processing sector since the release of the Dawson Report in 2003 make the case for a review even stronger.

118 Mr Scott Gregson, Group General Manager, Enforcement Operations Group, Australian Competition and Consumer Commission, *Committee Hansard*, 15 May 2012, p. 63.

Recommendation 4

3.120 The committee recommends that the government initiate an independent review of the competition provisions of the *Competition and Consumer Act 2010*. The committee recommends that the review should include consideration of:

- **the misuse of market power;**
- **creeping acquisitions;**
- **predatory pricing; and**
- **unconscionable conduct.**

Recommendation 5

3.121 The committee recommends that the review of the CCA consider the inclusion of the functions of a food supply chain ombudsman within the ongoing role of the ACCC.

3.122 The committee notes that over recent years, supermarkets have published and expected suppliers to comply with corporate and social responsibility standards. It is appropriate that supermarkets also comply with standards as they relate to the treatment and satisfaction of those who supply them with their products. The committee recommends that the major supermarkets in Australia voluntarily compile and establish benchmarks within their corporate social responsibility documents to measure the level of satisfaction of their suppliers in dealing with the supermarkets. This framework needs to be supported by the use of external agencies to conduct regular supplier satisfaction surveys, the results of which should be publicised by the supermarkets in their regular reporting cycles. The committee believes that such a system would not only highlight the importance of the supermarkets' treatment of their suppliers; it would also encourage the supermarkets to value and respect their relationship with suppliers and to respond constructively to their suppliers' feedback.

Recommendation 6

3.123 The committee recommends that the major supermarkets in Australia voluntarily compile and establish benchmarks within their corporate social responsibility documents to measure the level of satisfaction of their suppliers in dealing with the supermarkets. External agencies should be engaged to conduct regular supplier satisfaction surveys, the results of which should be publicised by the supermarkets in their regular reporting cycles.

Chapter 4

Food labelling

4.1 This chapter covers issues raised with the committee about the labelling of processed foods. While Australia's food labelling requirements deal with a broad range of topics, from country of origin requirements, to nutritional information and other health and animal welfare claims, the written and oral evidence presented to the committee predominantly dealt with country of origin requirements. This makes sense given the primary focus of the inquiry is on the competitiveness and future viability of the Australian food processing sector—many submitters saw the current country of origin labelling requirements as being a major inhibitor in the growth of the food processing industry. That is, they believed that Australians would pay a premium for food processed in Australia and made from Australian ingredients, but that current country of origin labelling laws allowed imported food to be presented as Australian.

4.2 Accordingly, this chapter will focus on country of origin labelling requirements. Other labelling issues will only be dealt with insofar as they arise out of the recent review of Australia's food labelling regime, conducted by Dr Neal Blewett AC.

Country of Origin Labelling Regime

4.3 Australia's country of origin labelling requirements derive from a number of sources. Some of these sources, such as the *Australian New Zealand Food Standards Code* (Food Standards Code) and Codex Alimentarius, are specific to food; others, such as the *Competition and Consumer Act 2010* (Cth) (CCA), apply more generally to goods and services.

4.4 It is helpful to understand how these regimes interact before examining some of the evidence received by the Committee about the effect of country of origin labelling laws on the Australian food processing industry. In short, the Food Standards Code requires that certain foods display their country of origin and, if applicable, manufacture. The CCA, on the other hand, provides guidance about the terminology to be used in making claims about the country of origin or manufacture of goods, including produce.

Food Standards Code

4.5 The Food Standards Code sets out the minimum standards for the supply of food in Australia and New Zealand. These standards are set by an independent statutory authority, Food Standards Australia New Zealand (FSANZ), under the *Food Standards Australia New Zealand Act 1991* (Cth). FSANZ summarised its objectives in setting these standards in its submission to the committee:

FSANZ is established to give consumers confidence in the quality and safety of the food supply chain, provide a regulatory framework that establishes an economically efficient environment for industry, give consumers information relating to food that enables them to make informed choices, and provide consistency in domestic and international food regulation in Australia and New Zealand, without reducing the safeguards applying to public health and consumer protection.¹

4.6 While many of the standards set by FSANZ concern public health and nutrition, a number also regulate the labelling of food products. Standard 1.2.11 is most relevant to the committee's report as it deals with country of origin labelling.

4.7 The Standard requires certain food products to identify the country of origin of the ingredients in the food product and, if it was processed, the country in which the food was processed for retail sale. The below table sets out these requirements:

Food	Labelling requirement
Packaged food (other than food falling in the categories below)	<ul style="list-style-type: none"> (a) a statement on the package that identifies where the food was made or produced; or (b) a statement on the package: <ul style="list-style-type: none"> (i) that identifies the country where the food was made, manufactured or packaged for retail sale; and (ii) to the effect that the food is constituted from ingredients imported into that country or from local and imported ingredients as the case may be.
Fish, including cut fish, filleted fish, fish that has been mixed with one or more other foods and fish that has undergone any other processing including cooking, smoking, drying, pickling or coating with another food	A label on or in connection with the display of the food: <ul style="list-style-type: none"> (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local foods or imported foods or both.
Fresh pork, whole or cut, except where the product has been mixed with food not regulated by subclause 2(2) of the Standard	
Pork, whole or cut, that has been preserved by curing, drying, smoking or by other means, except where that product has been mixed with food not regulated by subclause 2(2) of the Standard (other than those foods used in the preserving)	
Fresh whole or cut fruit and vegetables (if it is displayed otherwise than in a package)	
Whole or cut fruit and vegetables where that produce has been preserved, pickled, cooked, frozen or dehydrated except where that produce has been mixed with food not regulated by subclause 2(2) of	

1 FSANZ, *Submission 46*, p. 1.

the Standard (other than with those foods used in the preserving, pickling or cooking as the case may be).

Fresh whole or cut fruit and vegetables (if it is displayed in a package that does not obscure the nature or quality of the food)

A label on the package or in connection with the display of the food:

- (a) identifying the country or countries of origin of the food; or
- (b) containing a statement indicating that the foods are a mix of local foods or imported foods or both.

Source: Food Standards Australia New Zealand, Food Standard 1.2.11.

4.8 The Standard does not itself set out the criteria for determining the origin of food or the location of its making, manufacture or packing. These criteria are set out in the Australian Consumer Law (ACL) in the CCA and are dealt with below. It is notable that the criteria in the ACL apply generally to the advertising of all goods and services, not only food.

4.9 While FSANZ is responsible for setting the standards in the Food Standards Code, the enforcement of the Code is the responsibility of State and Territory authorities, who have incorporated the substance of the Code into their food safety legislation.²

Codex Alimentarius

4.10 The Codex Alimentarius (Codex) is a collection of international standards, guidelines and advisory texts dealing with the production and safety of food. It is administered by the Codex Alimentarius Commission, which was established in 1963 by the United Nations' Food and Agricultural Office and the World Health Organisation. Australia is a member of the Commission.³ The World Trade Organisation and the Codex Commission collaborate about the use of international food standards in relation to global trade issues, particularly under the Agreement on the Application of Sanitary and Phytosanitary Measures.⁴ The Commission notes that:

The reference made to Codex food safety standards in the World Trade Organizations' Agreement on Sanitary and Phytosanitary measures (SPS Agreement) means that Codex has far reaching implications for resolving trade disputes. WTO members that wish to apply stricter food safety measures than those set by Codex may be required to justify these measures scientifically.⁵

2 See section 21 *Food Act 2003* (NSW), section 16 *Food Act 1984* (Vic), section 39 *Food Act 2006* (Qld), section 22 *Food Act 2008* (WA), section 21 *Food Act 2001* (SA), section 21 *Food Act 2003* (Tas), section 27 *Food Act 2001* (ACT) and section 20 *Food Act* (NT).

3 <http://www.codexalimentarius.org/codex-home/en/> (accessed 13 June 2012).

4 World Trade Organisation: http://www.wto.org/english/thewto_e/coher_e/wto_coden_e.htm (accessed 13 June 2012).

5 <http://www.codexalimentarius.org/about-codex/en/> (accessed 13 June 2012).

4.11 Codex forms the international context to the standards set by FSANZ.

4.12 Codex contains a general standard on the labelling of pre-packaged foods. The standard requires that pre-packaged food show the country of origin of the food if its omission would mislead or deceive the consumer. If food from one country is processed in a second country in a way which changes its nature, then the second country is regarded as the country of origin for the purposes of the standard.⁶

Competition and Consumer Act 2010

4.13 Among other things, the CCA contains a number of provisions dealing with consumer protection. These provisions are set out in the ACL, which forms Schedule 2 to the CCA. While the ACL is relevant to the labelling of food, it applies broadly to the advertising of all products and services. There are a number of provisions of the ACL which affect the manner in which food can show its country of origin:

- (a) the prohibition against misleading or deceptive conduct, or conduct that is likely to mislead or deceive (section 18);
- (b) the prohibition against making false or misleading representations about the standard, quality, value, grade, composition, style, model or history of goods (paragraphs 29(1)(a) and 151(1)(a));
- (c) the prohibition against making false or misleading representations about the place of origin of goods (paragraph 29(1)(k) and 151(1)(k)); and
- (d) the prohibition against conduct liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for purpose or quantity of goods (section 33).

4.14 The ACL also contains, in section 255, a number of provisions specifically guiding businesses on how to make country of origin claims. These provisions are often known as 'safe havens' as they operate to protect businesses from claims that statements about the country of origin of products are misleading or deceptive. The following table sets out the circumstances in which a business may make a claim about the origin of goods:

6 Codex Alimentarius, General Standard for the Labelling of Prepackaged Foods CODEX STAN 1-1985, cl. 4.5.

Representation	Requirements to be met
1. A representation as to the country of origin of goods	(a) the goods have been substantially transformed in that country; and (b) 50% or more of the total cost of producing or manufacturing the goods is attributable to production or manufacturing processes that occurred in that country; and (c) the representation is not that goods are the produce of a particular country or made by way of a logo specified in the regulations.
2. A representation that goods are the produce of a particular country	(a) the country was the country of origin of each significant ingredient or significant component of the goods; and (b) all, or virtually all, processes involved in the production or manufacture happened in that country.
3. A representation as to the country of origin of goods by means of a logo specified in the regulations	(a) the goods have been substantially transformed in the country represented by the logo as the country of origin of the goods; and (b) the prescribed percentage of the cost of producing or manufacturing the goods is attributable to production or manufacturing processes that happened in that country.
4. A representation that goods were grown in a particular country	(a) the country is the country that could, but for the fact that a representation has been made of the kind referred to in item 1 or 2 of this table, be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each significant ingredient or significant component of the goods was grown in that country; and (c) all, or virtually all, processes involved in the production or manufacture happened in that country.
5. A representation that ingredients or components of goods were grown in a particular country	(a) the country is the country that could, but for the fact that a representation has been made of the kind referred to in item 1 or 2 of this table, be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each ingredient or component that is claimed to be grown in that country was grown only in that country; and (c) each ingredient or component that is claimed to be grown in that country was processed only in that country; and (d) 50% or more of the total weight of the goods is comprised of ingredients or components that were grown and processed only in that country.

Source: Section 255 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

4.15 The operation of these safe haven provisions attracted significant criticism from witnesses throughout the inquiry. These comments will be addressed later in this chapter, however, it is worth noting that much of the criticism centred around the two tests for whether something can be said to have been 'made in' a country, being:

- (a) the requirement that the goods be 'substantially transformed' in that country; and

- (b) the requirement that 50 per cent or more of the total cost of producing or manufacturing the goods (including expenditure on materials, labour and overheads) is attributable to production or manufacturing processes that occurred in that country.

4.16 Under subsection 255(3), goods are 'substantially transformed' in a country where they 'undergo a fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change'. The Australian Competition and Consumer Commission (ACCC) has noted that processing imported and Australian ingredients into a finished product (such as a cake) would likely be considered a 'substantial transformation', but less significant changes to ingredients (such as the reconstitution of imported concentrated fruit juice into fruit juice for sale) may not.⁷

4.17 In its submission to the inquiry, the Australian Made, Australian Grown (AMAG) Campaign noted that the ACCC has previously issued guidelines suggesting that the 'substantial transformation' threshold is not high. These ACCC guidelines stated that mixing, homogenisation, coating and curing were all processes 'likely to be considered as substantial transformation' of food. The AMAG Campaign noted that homogenised milk, battered fish fillets, ham and bacon may all be regarded as 'substantially transformed' from their original ingredients. This means that, provided that at least 50 per cent of the cost of production is incurred in Australia, these products may be labelled as 'made in Australia', even if all the main ingredients have been imported.⁸

4.18 The ACCC has previously encouraged businesses to make qualified claims about the origin of ingredients used in their products if doing so would provide more complete information to consumers.⁹ Examples of such claims include:

- 'Made in Australia from local and imported ingredients', where the product satisfies the criteria for being labelled 'made in Australia' and is predominantly made from local ingredients; and
- 'Made in Australia from imported and local ingredients', where the product satisfies the criteria for being labelled 'made in Australia' and is predominantly made from imported ingredients.

7 ACCC, *Country of Origin Claims and the Australian Consumer Law*, <http://www.accc.gov.au/content/item.phtml?itemId=303666&nodeId=ca18a960c4a18fff7da324c16583bed9&fn=Country%20of%20origin%20claims%20&%20the%20ACL.pdf> (accessed 13 June 2012)

8 Australian Made, Australian Grown Campaign, *Submission 56*, p. 4. Note that the guidelines are no longer available on the ACCC's website.

9 ACCC, *Country of origin claims and the Trade Practices Act. 2006*, pp 18–19. <http://www.australianmade.com.au/assets/Uploads/Country-of-origin-claims-and-the-TPA.pdf> (accessed 13 June 2012).

4.19 It should be noted that a label on a product stating that it is 'made in Australia' is separate from and different to a label displaying the 'Australian Made' symbol. The 'Australian Made' symbol is used under license from the AMAG Campaign. A product must comply with more stringent criteria set out in the AMAG Code of Practice, before it can obtain a license to display the AMAG symbol, rather than a simple 'made in Australia' claim. These criteria are particularly stringent with respect to the 'substantial transformation' test, and the AMAG Campaign has specifically excluded a number of processes from being considered as substantially transforming food. These include freezing, canning, mixing or blending ingredients, homogenisation, marinating, curing, roasting and coating.¹⁰

Blewett Review

4.20 This inquiry occurs in the context of some government attention to the issue of food labelling. The Council of Australian Governments and the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) recently sought a comprehensive examination of food labelling law and policy. Dr Neal Blewett AC conducted the review, presenting his report, *Labelling Logic: Review of Food Labelling Law and Policy* (Blewett Review), to the government on 28 January 2011.¹¹

4.21 While the report dealt with all aspects of Australia's food labelling regime, including public health and food safety issues and dealing with new technologies, a number of its recommendations relating to 'consumer values issues' touch on the scope of the committee's inquiry. Suffice to say that, where they raised it as an issue, submitters' reactions to traffic light labelling were mixed.

4.22 The Legislative and Governance Forum on Food Regulation of the Ministerial Council released its response to the Blewett Review on 9 December 2011.

Findings

4.23 Much of the Blewett Review was concerned with the health and food safety implications of food labelling. In particular, the Review's recommendations that the government mandate a traffic light system for foods have attracted significant media and industry interest.

4.24 However, it is the Blewett Review's findings on the impact of consumer values issues on food labelling that are of particular relevance to this inquiry. The term 'consumer values issues' refers to the idea that 'many people feel strongly about

10 Australian Made, Australian Grown Campaign, *Submission 56*, p. 5.

11 Commonwealth of Australia, *Labelling Logic: Review of Food Labelling Law and Policy*, Dr Neal Blewett (Chair), January 2011. Copies of the report may be obtained from [http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/48C0548D80E715BCCA257825001E5DC0/\\$File/Labelling%20Logic_2011.pdf](http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/48C0548D80E715BCCA257825001E5DC0/$File/Labelling%20Logic_2011.pdf), (accessed 13 June 2012).

the origins of the food they buy and how and under what conditions it was produced'.¹² The Review distinguished between more generalised values issues about human rights, animal welfare, environmental sustainability and country-of-origin concerns on the one hand, and issues relating to food production, such as free range, organic and halal, on the other.¹³

4.25 The Blewett Review noted that country of origin considerations are particularly important in food labelling. The Review found that such issues 'may serve as a surrogate for many consumers for other information demands such as carbon miles, animal welfare or even perceived food safety'.¹⁴ Further, and consistent with the evidence before this committee, the Review uncovered 'widespread concern over the confusing plethora of definitions relating to the Australian nature of the product'.¹⁵ These two findings are of particular relevance to the committee because country of origin labelling is the only values-based label claim that has attracted government intervention.¹⁶

Country of origin recommendations

4.26 A number of the Blewett Review's recommendations concerned changes to the country of origin labelling regime for food. These recommendations were primarily aimed at making labels clearer and more accurate.

4.27 First, the Review recommended that Australia's existing mandatory country of origin labelling requirements for food be maintained and extend to cover all primary food products for retail sale (Recommendation 40). This recommendation was aimed at making country of origin labelling requirements consistent across all primary food products. Currently, beef, lamb and chicken products are not required to display any information about their country of origin.

4.28 The Review also recommended that mandatory requirements for country of origin labelling on all food products be provided for in a specific consumer product information standard for food under the CCA rather than in the Food Standards Code (Recommendation 41). The aim of this recommendation was to ensure that country of origin requirements were dealt with in a single regulatory framework, rather than the overlapping regimes of consumer and food laws, set out above.

4.29 Finally, the Blewett Review recommended that the government clarify the current regime about claims of Australian origin. The Review recommended that, for foods bearing some form of Australian claim, a consumer-friendly, food-specific

12 *Labelling Logic: Review of Food Labelling Law and Policy*, para. 6.1, p. 97.

13 *Labelling Logic: Review of Food Labelling Law and Policy*, para. 6.2, p. 97.

14 *Labelling Logic: Review of Food Labelling Law and Policy*, para 2.6, p. 33.

15 *Labelling Logic: Review of Food Labelling Law and Policy*, para. 6.40, pp 108–9.

16 *Labelling Logic: Review of Food Labelling Law and Policy*, para. 6.31, p. 106.

country-of-origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed (Recommendation 42). As part of this recommendation, the Review proposed a simplified scheme of labels, replacing the words 'made in' with the words 'made of'. This recommendation addressed concerns raised with the Review about the confusing nature of the current labelling regime.

4.30 Essentially, the Blewett Review recommended creating a specific regime regulating food product country of origin labelling claims separate to the general laws governing country of origin claims for other products, such as manufactured goods.

Government response

4.31 The government released its response to the Blewett Review on 9 December 2011. In relation to recommendation 40, the government noted that FSANZ was considering amendment to the Food Standards Code that would extend country of origin labelling requirements to unpackaged beef, veal, lamb, hogget, mutton and chicken.¹⁷

4.32 The government's response explicitly rejected the idea of creating a separate regime governing country of origin claims for food, as proposed in recommendations 41 and 42 of the Blewett Review. The government noted that changes to the current country of origin labelling regime would impose costs on business and explained its rationale for rejecting the proposed changes in the following manner:

the proposed framework does not recognise the intent of 'made in' claims, which support the important contribution the manufacturing sector makes to the local economy (and community) by considering a range of inputs including raw materials (ingredients), packaging, labour and associated overhead costs. Depending on the type of claim used, the current regulatory framework gives recognition to the contribution of local production and manufacturing, as well as the origin of the ingredients and components of a food product.¹⁸

4.33 Instead, the government response stated that it would consult with relevant consumer protection agencies to review existing materials on country of origin labelling and, if appropriate, develop an educational campaign. In evidence to the committee, Mr Paul Trotman, General Manager of the Trade and International Branch,

17 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, pp 43–44.
<http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/home>
 (accessed 13 June 2012)

18 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, p. 45.
<http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/home>
 (accessed 13 June 2012)

Department of Industry, Innovation, Science, Research and Tertiary Education, indicated that these reviews were in their early stages:

We have been actively engaged with Treasury in response to the recommendations that came out of the Blewett review. We are looking at the country of origin labelling materials with the specific objective of clarifying the requirements around country of origin labelling. As I said, the department has met with Treasury and also with officials from state and territory departments and agencies. We are working towards refining all of the information brochures and fact sheets that have been developed and also towards looking at developing a few more of those fact sheets to make it easier for consumers to understand.¹⁹

Committee view

4.34 Evidence before this committee suggests that the government's response misunderstands consumer and industry expectations about the purpose and clarity of country of labelling laws with respect to food. The committee believes that there may be a case for simplifying and clarifying these laws as they relate to food products. Whether or not country of origin labelling laws are simplified, the committee believes that consumer education is vital.

Concerns about Labelling

4.35 As stated above, the committee heard significant evidence suggesting that the current country of origin labelling regime did not accurately convey information to consumers. Submitters were particularly concerned that the current array of country of origin descriptions was misleading, poorly understood by consumers and open to abuse.

Lack of Transparency in Country of Origin Labels

4.36 The position of many submitters was put succinctly by Mr John Wilson, General Manager, Fruit Growers Victoria Limited:

We are aware that the current labelling laws in Australia are almost deceptive in their structure. We challenge any man in the street to know the difference between 'product of Australia' and 'made in Australia'. We understand that the laws are currently under review. Hidden behind that you also have the structure of the mathematics where water is taken into account as added Australian content.²⁰

19 Mr Paul Trotman, General Manager of the Trade and International Branch, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 11 May 2012, p. 40.

20 Mr John Wilson, General Manager, Fruit Growers Victoria Limited, *Committee Hansard*, 8 March 2012, p. 8.

4.37 Other submitters argued that the current laws allow products made almost exclusively from imported products to be labelled as 'made in Australia'. For example, Australian Pork Limited (APL) noted that the current country of origin labelling laws made it 'very difficult for consumers to differentiate Australian from imported processed pork products'.²¹ This was because:

most ham and bacon made from Australian pork contains a small amount of imported curing ingredients (which can't be sourced in Australia), [so] it is theoretically excluded from using the *Product of Australia* label. Instead, it must use the obscure *Made in Australia* claim, alongside products made from imported pig meat. Products made from imported pig meat are permitted to use the *Made in Australia* claim if the product has been substantially transformed (made into ham or bacon) in Australia.²²

4.38 APL believed that there was a mismatch between the intent of the country of origin claim and consumer expectations. APL cited the results of internal research suggesting that consumers believed a claim that a product was 'made in Australia' meant that the pigs were raised in Australia.²³ It placed the blame for this mismatch directly on the 'substantial transformation' test, which classed relatively simple processing practices such as curing and smoking as substantial transformations.

4.39 APL was not the only submitter to express concern about the 'substantial transformation' test.²⁴ Others also noted that the second limb of the 'Australian made' threshold, that at least 50 per cent of the costs of production were incurred in Australia, was relatively easy to overcome. The relatively high labour and other input costs in Australia coupled with the high dollar could disproportionately skew the costs of the final product.²⁵ As with the 'substantial transformation' test, this allowed products to claim that they had been 'made in Australia' even where their defining ingredients were significantly removed from Australia.

4.40 According to APL, the effects of the leniency of country of origin labelling laws in Australia was 'a complete brick wall' in the face of its efforts to differentiate Australian products and provide the consumer with information.²⁶ APL drew the committee's attention to the manner in which the 'made in Australia' claim could undermine consumer confidence in other matters. For example, in Denmark, pigs do

21 Australian Pork Limited, *Submission 30*, p. 8.

22 Australian Pork Limited, *Submission 30*, p. 8.

23 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Ltd, *Committee Hansard*, 13 December 2011, p. 5.

24 These concerns were also raised in submissions from the Citrus Growers of South Australia, *Submission 45*, concerning orange juice; LEFCOL, *Submission 3*, concerning crumbed fish/prawns.

25 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 6*, p. 13.

26 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, *Committee Hansard*, 13 December 2011, p. 9.

not have to have access to the outdoors in order to be labelled as 'free range', however, in Australia, they do. As curing is regarded as a substantial transformation, bacon cured in Australia from Danish pork can be labelled as both 'free range' and 'made in Australia', even though the pork would not meet Australian free range standards.²⁷

4.41 Similarly, APL also noted that the lack of precision in labelling laws was undermining the pork industry's commitment to phase out the use of sow stalls by 2017; the inability of consumers to distinguish between pork products grown and made here and those made overseas undermined Australian farmers' significant investment and ongoing education to achieve this goal.²⁸

4.42 The Lakes Entrance Fishermen's Cooperative Society Limited (LEFCOL) made similar comments about seafood. Mr Dale Sumner, General Manager of LEFCOL, stated:

The labelling laws do not allow consumers to put a value on our sustainability credentials. ...Flathead is a very common name and, as I mentioned earlier, that is our main species in Lakes Entrance. Without looking at those boxes under a microscope, it is not easy to see where that fish is from, other than on the bottom box it says it is a product of Malaysia. The flathead is actually from Argentina. It is South American flathead that goes to Malaysia to have the coating put on it and it is then imported into Australia. The mum and dad consumers see those boxes, they see 'flathead' and think it is an Australian product.²⁹

4.43 The AMAG Campaign highlighted similar issues in its submission to the committee. It noted that it had recently modified its own Code of Practice to specifically exclude certain processes such as freezing, canning, juicing, homogenisation, curing and coating, from being considered a 'substantial transformation' of food. The AMAG Campaign believed that these processes alone were not sufficient transformations of food to attract the 'Australian Made' logo, irrespective of whether 50 per cent or more of the cost of production was incurred in Australia.³⁰

Support for current standards

4.44 The evidence before the committee about country of origin labelling issues was not universally negative. A number of submitters either did not raise it as an issue facing their business or saw it as masking the real issues confronting the industry: price, innovation and product research, development and marketing.

27 Australian Pork Limited, *Submission 30*, pp. 12–13.

28 Australian Pork Limited, *Submission 30*, pp. 7, 9.

29 Mr Dale Sumner, General Manager, Lakes Entrance Fishermen's Cooperative Society, *Committee Hansard*, 9 March 2012, pp. 32–33.

30 Australian Made Australian Grown, *Submission 56*, p. 5.

4.45 It is important to note that claims that current country of origin labelling laws harming Australian food processors rest on the assumption that Australian consumers will choose to buy Australian goods rather than imported goods when prices are comparable. Many submitters who raised the issue of country of origin labelling cited statistics in support of this fact. For example, according to a Roy Morgan poll commissioned by the AMAG Campaign in 2007, 89 per cent of consumers felt that it was important or very important that fresh food was Australian and 82 per cent felt that it was important or very important that processed food was Australian.³¹ APL cited similar statistics from Newspoll from 2008.³² The AMWU summed up this position in its evidence before the committee:

Australian consumers, as we have seen in the research, prefer to buy Australian made, particularly when it comes to food. This is because they want to know that the food is safe and of high-quality and they want to support Australian jobs. Nevertheless, consumers have great difficulty in finding and deciphering where products are actually produced.³³

4.46 But this consumer preference is not always born out in practice. Indeed, a 2010 Choice survey cited in APL's submission noted that only about half of the respondents would always try to buy Australian products if they were available.³⁴ Further, Mr Dick Smith stated in his evidence before the committee that he was uncertain about the depth of support for Australian made food. He explained his belief that high profile moves to promote Australian made food would not ultimately succeed:

I have a fear that what would happen initially when it got lots of publicity would be that most Aussie consumers would support it and then they would end up just going and buying the cheapest. Let me give you an example. You were referring to our peanut butter, which is on the bottom shelf in Woolworths and Coles. What happened there was that we brought out this Australian peanut butter, which is a really good product made by the farmers in Kingaroy, we priced it just a little bit above Kraft's and we got to 16 per cent of the market, which was absolutely fantastic. This was 13 years ago. It became, of our \$80 million turnover, the most successful line. Immediately, Kraft started discounting by a dollar and so what happened was that that everyone just went and brought the Kraft. Sales of our product dropped to below about seven per cent, which is when it would normally be dumped by the supermarkets, but I think they did think, 'Let's support

31 Australian Made Australian Grown, *Submission 56*, p. 3.

32 Australian Pork Limited, *Submission 30*, p. 7.

33 Ms Jennifer Dowell, National Secretary, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, p. 2.

34 Available: <http://www.choice.com.au/reviews-and-tests/food-and-health/labelling-and-advertising/nutritional-labelling/country-of-origin-labelling-survey-results.aspx> (accessed 6 June 2012). Note that this study relates to all Australian manufactured goods, not just food.

Australian, we'll keep the Dick Smith product,' so it was actually the consumers.³⁵

4.47 Mr Callum Elder, Executive General Manager, Quality and Innovation at Simplot Australia, similarly stated that the issue was that consumers said one thing in surveys but, when confronted by actual price differences in the supermarket, behaved very differently:

Previously, market research and consumer spending has said that when you ask a consumer on the street whether they want Australian produced food the answer is unequivocally yes. When they get into the supermarket that does not seem to be reflected in their behaviour. Certainly, I am sure they would want Australian produce, just about everybody would want Australian produced food, but how much of a premium are they prepared to pay for it when they can buy a can of corn from Thailand that can be half the cost of a can of corn produced in Australia?³⁶

4.48 Others put this view more starkly:

Some have trialled promoting 'Australian made' campaigns and have found these to be a dismal failure. The vast majority of consumers, in fact, purchase on the basis of price and taste factors. In reality, the level of loyalty to 'Australian made' product is low.³⁷

4.49 This is evident in the practices and evidence of both Coles and Woolworths. In their marketing material, both retailers appear at pains to emphasise the amount of fresh or processed food on their shelves that is made from Australian ingredients.³⁸ Both companies continued to emphasise these credentials in their submissions to and evidence before the committee.³⁹ But the companies' policies to look first at sourcing Australian produce are clearly subject to overriding considerations of price and taste.⁴⁰ These policies are apparent in Mr Smith's submission that Coles has refused to stock his fruit spreads because they are 30 cents more expensive than imported brands.⁴¹

35 Mr Dick Smith, Owner, Dick Smith Foods, *Committee Hansard*, 11 May 2012, p. 11.

36 Mr Callum Elder, Executive General Manager of Quality and Innovation at Simplot Australia, *Committee Hansard*, 12 April 2012, p. 20.

37 Dr David McKinna, Consultant, *Submission 32*, p. 17.

38 See, for example, Coles Group Limited, *Submission 22*, Attachments 1–4, Woolworths, *Meet our growers*, <http://www.woolworths.com.au/wps/wcm/connect/website/woolworths/freshfoodideas/meetthe growers/meet+our+growers> (accessed 13 June 2012) and Woolworths, *100% Australian Apples: Woolworths commits to Australian apples*, 25 January 2012, <http://www.woolworths.com.au/wps/wcm/connect/website/woolworths/about+us/woolworths-news/woolworthscommitstoaustralianapples> (accessed 13 June 2012).

39 Woolworths, *Submission 70*, pp. 4, 9; Coles, *Submission 22*, cover letter, p. 7, pp. 38 f.

40 Woolworths, *Submission 70*, pp. 4–5; Coles, *Submission 22*, pp. 17, 41, 48.

41 Dick Smith Foods, *Submission 63*, p. 1.

4.50 These are important factors to keep in mind when considering whether or not the current country of origin labelling regime should be reformed. It is particularly important given the cost to businesses resulting from any change in mandatory food labelling requirements. As the Treasury stated:

Food labelling requirements can generate significant compliance costs for businesses, and may constitute a barrier to entry or expansion for firms in the food processing industry. These costs need to be carefully balanced against the various public policy objectives of food labelling, such as for health or safety reasons, or to assist consumers to make informed purchasing decisions.⁴²

4.51 The submission from the Food Industry Advisory Group of the Chamber of Commerce of Western Australia (FIAG) gave further detail to these statements. It cited a 2003 study that estimated changes to mandatory label information cost individual small and medium enterprises about \$60 000. The FIAG also quoted a deli goods manufacturer member as estimating that changes to mandatory labelling standards would cost over \$200 000 for the 'overall change of artwork/printer plates, plus any residual stock of packaging material that [is] not exhausted inside a given grace period'.⁴³

4.52 The cost to manufacturers of changes to mandatory labelling requirements is an important consideration. This is particularly the case when the Australian food processing sector is already under significant pressure. Extra sales from increased consumer information would need to outweigh the additional costs involved in complying with changed mandatory labelling requirements.

4.53 Some submitters were also concerned that labelling issues were given undue importance in the industry. Mr Dean Rochfort, General Manager, Sustainable Development of the Greater Shepparton City Council, argued that the focus should be on processors better understanding their market and consumer behaviours:

What our manufacturers are telling us is that there needs to be some initiative and leadership in helping them develop a sense of brand equity and brand loyalty around Australian manufactured produce because where they see their competitors in those particular channels through the supermarket they do not have a level playing field. They are competing with cheap imported products and they are finding it very difficult. They are struggling with the same cost regimes and the same biosecurity regimes that are faced by them as local manufacturers. That comes back again to some of the issues that were mentioned about how we become smarter about production and leadership in terms of branding our local products. I

42 Department of the Treasury, *Submission 18*, p. 11.

43 Food Industry Advisory Group of the Chamber of Commerce of Western Australia, *Submission 15*, p. 6.

think 'country of origin' is at the lower end of sophistication of what we need to get to in terms of getting consumers to change behaviours.⁴⁴

4.54 Some evidence before the committee also brought into question the role of government in requiring mandatory country of origin labels. Ms Helen Hubble, a food technologist appearing in her private capacity, suggested that it is the role of industry and individual processors to explain the reasons why consumers should buy Australian produced food, rather than imported food. As she explained to the committee:

I think maybe the industry does not advertise that they are clean, that they are green, that we do not use this, that we have clean water, that we do not fish in dirty water—whatever it is. I do not think they sell themselves.⁴⁵

Committee view

4.55 It is clear that food labelling issues, particularly to do with country of origin requirements, loom large in the minds of many industry participants. This was especially the case for primary producers, but other witnesses, including food processors and retailers, gave evidence about the manner in which country of origin labelling laws affected their business. Some appeared to present it as a fundamental issue, the solution to which would level the playing field for a whole host of other issues confronting the industry, including the cost of imports, the high dollar and high input costs like labour and electricity.

4.56 But, as set out above, the evidence presented before the committee was equivocal about the role of country of origin labelling in addressing the issues confronting the food processing sector. While it is true that many Australian consumers felt that buying Australian products was important, it is also apparent that cost and quality were equally, if not more, significant factors on consumers' minds. In these circumstances, if country of origin labelling laws were changed, it is not entirely clear that the benefit (in terms of increased consumer sales) would outweigh the additional costs to industry (in interpreting new standards and changing labels).

4.57 The evidence points to a need for industry participants to fully understand the market for each of their products. For processors and farmers alike, this means thinking primarily about the consumer, not just the wholesaler or the retailer. Australia produces extremely high quality food, both at the farm gate and after processing. It is healthy, produced in stable, sustainable, clean and cruelty-free conditions and is subject to a rigorous health inspection system which ensures it is consistently of high quality. These factors are reflected in its generally higher cost to the consumer. But, in setting down ground rules for when and how country of origin claims can be made,

44 Mr Dean Rochfort, General Manager, Sustainable Development of the Greater Shepparton City Council, *Committee Hansard*, 8 March 2012, p. 8.

45 Ms Helen Hubble, Private capacity, *Committee Hansard*, 9 March 2012, p. 23.

governments can only do so much in promoting these benefits to consumers. It is primarily the responsibility of industry to sell the reasons why consumers should purchase food made of Australian ingredients, to make more of their fresh, clean and healthy image.

4.58 It is worth recalling that the Blewett Review found that consumers often used country of origin labels as a shorthand way of assessing a number of values-based concerns. This is a significant observation for the food processing industry; understanding the specific values that are hidden behind consumers' preference for Australian products and communicating those particular values to consumers may assist in overcoming any price differences with respect to imported products.

4.59 None of this should detract from the fact that the current country of origin labelling laws are not at all transparent and potentially mislead consumers. The impact of these laws appears to be different across the processing sector, affecting some industries more significantly than others. The effect of country of origin laws is particularly keenly felt in industries where the freshness of the product remains important to consumers even after it has been processed, such as with seafood.⁴⁶ Country of origin labelling will also be important where it affords an opportunity for a product to make claims about production standards that are illegitimate by Australian standards, but legitimate by the standards of the country from which the ingredients have been imported.⁴⁷

4.60 Potential options to change the current labelling regime are explored in the next section of this chapter. It is, however, clear that consumers need to be educated about whatever country of origin labelling regime is adopted. The current confusion about the labelling regime is unacceptable and may mislead those consumers who seek information about the origin of their food.

Options for reform

4.61 Submitters proposed a range of possible actions on country of origin labelling to the committee. Naturally, the solutions proposed depended on what submitters saw as the problem with country of origin labelling. These proposed solutions included adjusting the existing labelling regime to make labels less confusing or to provide greater detail, educating consumers and using technology to better connect consumers with the food they were purchasing.

Making existing labelling laws clearer

4.62 Many proposed solutions were aimed at making country of origin information on food products clearer. While some of these submissions went to the technical

46 LEFCOL, *Submission 3*, p. 3.

47 This is the case with Danish pork referred to earlier. See Australian Pork Limited, *Submission 30*, pp. 12–13.

aspects of making country of origin claims—the 'substantial transformation' and cost of manufacture tests—others were more general in their suggestions.

Consistency of labelling requirements

4.63 Not all food products are required to contain claims as to their country of origin. Few submitters commented at all on the uneven requirements for country of origin labelling for food and the fact that beef, lamb and chicken products are not required to display this information.⁴⁸ This may reflect the general lack of understanding of country of origin labelling laws, rather than indicating any particular satisfaction with the status quo. The committee notes that the Blewett Review recommended that country of origin labelling requirements be extended to cover all primary food products for retail sale.⁴⁹ In its response to the Review, the government indicated that FSANZ was examining a proposal to largely implement that recommendation.⁵⁰

Technical changes

4.64 In relation to the technical tests for country of origin claims, some submissions suggested that the 'substantial transformation' test was too broad and included changes to ingredients that consumers would not regard as 'substantial'. The AMAG Campaign noted that:

[a] major area of concern was in the interpretation of the term 'substantial transformation' in regard to food products, particularly as set out in the ACCC booklet '*Food and beverage industry: country of origin guidelines to the Trade Practices Act*'. Under these guidelines, mixing, homogenisation, coating and curing are all processes "likely to be considered as substantial transformation".

Thus, homogenised milk, mixed diced vegetables, blended fruit juices, battered fish fillets, crumbed prawns and ham and bacon may all qualify as 'Australian Made' even though all the major ingredients may be imported, as long as at least 50% of the cost of production is incurred in Australia.

48 Australian Made, Australian Grown Campaign, *Submission 56*, pp 3–4; Australian Food and Grocery Council, *Submission 12*, attachment 2, position statement.

49 Commonwealth of Australia, *Labelling Logic: Review of Food Labelling Law and Policy*, Dr Neal Blewett (Chair), January 2011. Recommendation 40, p. 108.
[http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/48C0548D80E715BCCA257825001E5DC0/\\$File/Labelling%20Logic_2011.pdf](http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/48C0548D80E715BCCA257825001E5DC0/$File/Labelling%20Logic_2011.pdf), (accessed 13 June 2012).

50 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, pp. 43–44.
<http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/home> (accessed 13 June 2012)

This is out of step with community expectations and the source of much of the criticism in the media about Australia's "confusing" labelling laws.⁵¹

4.65 To remedy this, submissions proposed that the definition of 'substantial transformation' be made more restrictive to no longer include those processes which submitters saw as simple. These processes included freezing, canning or simple preserving processes, simple mixing or blending of food ingredients, juicing, homogenisation, seasoning, marinating, curing, roasting or toasting and coating.⁵² Removing these processes from the definition of 'substantial transformation' it was said, would provide consumers with more accurate information about the country of origin of products, including their primary ingredients.⁵³

Changing terminology

4.66 Some submitters believed that the terminology used in country of origin claims stood in the way of greater consumer understanding.

4.67 For example, some submitters suggested that qualified claims should be abolished in their entirety.⁵⁴ That is, products should not be able to claim that they are made in Australia from a combination of local and imported ingredients. AMAG stated that this claim was 'illogical and confusing for both consumers and manufacturers'.⁵⁵

4.68 This proposal would make a country of origin claim an all or nothing option; either the product meets the substantial transformation and cost of production requirements and can make a claim that it was 'made in Australia' or it does not and it cannot. It does not, however, take into account the rationale for allowing these qualified claims, identified in the Blewett Review as being, in part, to account for fluctuations in the availability of ingredients and the cost of inputs:

This is a qualified claim that can be used where it is not possible for a stand alone 'Made in' claim to be made, either due to uncertainty around the question of substantial transformation and whether 50% costs of production is met or to adjust to seasonal changes in availability of individual ingredients.⁵⁶

51 Australian Made, Australian Grown Campaign, *Submission 56*, p. 4. (emphasis in original).

52 Australian Made, Australian Grown Campaign, *Submission 56*, p. 5; Also note the example of curing, Australian Pork Limited, *Submission 30*, p. 8.

53 Australian Made, Australian Grown Campaign, *Submission 56*, p. 4.

54 South Australian Farmers' Federation, *Submission 24*, p. 1; Australian Made, Australian Grown Campaign, *Submission 56*, p. 6.

55 Australian Made, Australian Grown Campaign, *Submission 56*, p. 6.

56 *Labelling Logic: Review of Food Labelling Law and Policy*, p. 109.

4.69 The Blewett Review itself argued that the terminology for country of origin claims was in need of reform. After noting that the country of origin labelling requirements under the ACL apply to all goods, not just food, the Review argued that food should be considered separately.⁵⁷ The Blewett Review recommended a food-specific country of origin labelling regime on the basis that:

food is ingested and taken into ourselves, unlike most other consumer goods that are just used, [so] naturally consumers are primarily focused on the components and ingredients of foods and not with their substantial transformation, packaging or value adding. The Panel would therefore favour an Australian-origin claim based on the ingoing weight of the various components of the food, excluding water.⁵⁸

4.70 This labelling scheme was to remove claims about where a product had been made or packed, focusing the consumer's attention on its primary ingredients. The framework proposed contained the following four statements:

- (a) 'Made of Australian Ingredients', where at least 80 per cent by weight (excluding water) of all ingredients or components are of Australian origin;
- (b) 'Made of Australian and Imported Ingredients', where at least 50 per cent by weight (excluding water) of ingredients and components are of Australian origin;
- (c) 'Made of Imported and Australian Ingredients', where less than 50 per cent by weight (excluding water) of ingredients and components are of Australian origin; and
- (d) 'Grown in Australia' where foods are wholly grown in Australia (for unpackaged or unprocessed foods only).⁵⁹

4.71 The government response to the Blewett Review rejected this recommendation for two reasons. First, the government rejected the argument on economic grounds:

There may be considerable costs to food businesses in complying with a [country of origin labelling] scheme based on the ingoing weight of ingredients. Previous economic analysis suggests that this approach may have a negative impact on both food manufacturers and local suppliers, potentially decreasing the competitiveness of Australian food businesses and increasing the demand for imported foods.⁶⁰

57 *Labelling Logic: Review of Food Labelling Law and Policy*, para 6.41-6.43, pp. 109–110.

58 *Labelling Logic: Review of Food Labelling Law and Policy*, para 6.43, p. 110.

59 *Labelling Logic: Review of Food Labelling Law and Policy*, para 6.44, p. 110.

60 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, p. 45.

4.72 Second, and perhaps more fundamentally, the government disagreed with the premise of the Review's recommendation that food was deserving of separate treatment as compared to other goods:

the proposed framework does not recognise the intent of 'made in' claims, which support the important contribution the manufacturing sector makes to the local economy (and community) by considering a range of inputs including raw materials (ingredients), packaging, labour and associated overhead costs. Depending on the type of claim used, the current regulatory framework gives recognition to the contribution of local production and manufacturing, as well as the origin of the ingredients and components of a food product.⁶¹

4.73 The committee's view, set out more fully below, is that this response misunderstands consumer expectations about country of origin labels for food and will only perpetuate consumer confusion about the purpose and meaning of such labels. However, the response does point to an issue raised by other witnesses: that not all food products are a simple combination of ingredients; for some food products, the final product is greater than the sum of its component parts and the process of manufacturing is quite significant. As Ms Kate Carnell, Chief Executive Officer, Australian Food and Grocery Council, noted:

we have indicated to government on a number of occasions that we are more than happy to negotiate or to sit down and try to sort out a scenario where you overcome the pork and, to some extent, the orange juice problem, but at the same time not mess up—as I think we have talked about before—the chocolate industry. Haigh's makes great chocolate in South Australia but the cocoa does not come from Australia and the vanilla does not come from Australia.⁶²

4.74 Ms Carnell went on to acknowledge that country of origin labelling had different effects in different sectors of the food processing industry. She suggested that, for some products, the country of origin labelling laws might better focus on the defining ingredient, rather than the process of manufacture. That is, where there is a defining ingredient in a product, for example pork in ham or bacon, then the country of origin of that ingredient should determine its label. For other products, Ms Carnell noted that it was the processing of the ingredients that was of fundamental importance to the consumer.⁶³ For Ms Carnell, the one-size fits all approach of the current regime does not appear to work:

There has been a white paper, a discussion paper, put out just to try to get discussion happening in this space. I think everyone accepts that there are

61 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, p. 45.

62 Ms Kate Carnell, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, 13 December 2011, p. 25.

63 Ms Kate Carnell, *Committee Hansard*, 13 December 2011, p. 25.

things that do not pass the nod test in country of origin. We just have to work out what it is that we have to change—not to mess up the fact that we have lots of manufacturers in Australia that produce great products that are made in Australia and should be able to say that they are made in Australia, because they are, while at the same time addressing the defining ingredient issue.⁶⁴

Greater detail in labelling

4.75 A number of witnesses suggested that the lack of clarity in country of origin labelling requirements could be overcome by requiring food products to display substantially more detail about the geographic origin of their ingredients. For example, Mr Mark Pickering, a committee member of the Citrus Growers of South Australia stated that:

We need to have truth in labelling. ... I would imagine that you could put in something like the country of origin. If you had different amounts, you could have the first five countries listed down on the label and you could even put the percentage. I think that is what happens in the States. You might have, for example, 'Australia 50 per cent; New Zealand 40 per cent; China 10 per cent.' That is one option. In regard to the processors saying that it is going to be very expensive, I would like to pose the question: who pays for it now? The consumer pays for it now and the producers pay it now.⁶⁵

4.76 Other witnesses in favour of more precise labelling laws proposed graphical representations of the percentage of Australian content in a particular product. These graphics included a traffic light system for Australian content⁶⁶ and shading out a letter in the word 'Australian' for each 10 per cent of the product that was imported.⁶⁷

4.77 There are obvious practical and cost issues involved in imposing such standards. Witnesses recognised that the more detailed standards were, the greater the cost that would be imposed on processors if the source of ingredients changed because of seasonal or other fluctuations in availability.⁶⁸ The AMWU also noted that

64 Ms Kate Carnell, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, 13 December 2011, p. 25.

65 Mr Mark Pickering, Member, Citrus Growers of South Australia, *Committee Hansard*, 17 April 2012, p. 19.

66 Fruit Growers Victoria, Additional information presented to committee, 8 March 2012.

67 Mr Ron Gray, Committee Member, Citrus Growers of South Australia, *Committee Hansard*, 17 April 2012, p. 19.

68 Mr Ron Gray, *Committee Hansard*, 17 April 2012, p. 22.

supermarket private label brands may regularly change processors, and that this would require an impractical weekly change of label.⁶⁹

4.78 Witnesses offered some solutions to this problem of seasonal variation, suggesting that changes in the origin of ingredients could be dealt with by placing stickers on products or labels in supermarket aisles explaining the change.⁷⁰ Indeed, the AMWU's submission suggested that more detailed requirements could actually encourage processors to deal with seasonal or other variations in ingredients by sourcing different local ingredients rather than looking overseas:

A good example of a relatively cost effective innovative solution was provided in recent weeks by Berri Fruit Juices (National Foods) who, when found itself with a shortage of raspberries on the market, decided to take the decision to use local plums as an ingredient instead, rather than sourcing raspberries from overseas. They explained this by placing a little round sticker onto their cartons of fruit juice.⁷¹

4.79 Witnesses did, however, acknowledge that the mechanised nature of food processing meant that even these mitigating measures would involve additional cost,⁷² whether through increased labour costs or changes to manufacturing procedures.⁷³ Further, it was not easy to reconcile these proposals with other evidence about the nature and purpose of food labelling, which was to provide readily intelligible information about the origin of ingredients to consumers.⁷⁴ Indeed, as Mr Peter Bush, Executive Officer of the Food Technology Association of Australia, pointed out in the context of using pictorial labels, there is a risk that providing too much information will simply confuse consumers further.⁷⁵

Consumer education

4.80 Underlying many of these proposals for reforms to the current labelling system was the idea that consumers should know what they are purchasing and, to the greatest extent possible, where it came from. Some witnesses suggested that these

69 Ms Jennifer Dowell, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, p. 8.

70 Mr Peter White, President, South Australian Farmers Federation, *Committee Hansard*, 17 April 2012, pp 10–11.

71 Australian Manufacturing Workers' Union, *Submission 21*, p. 7.

72 Mr Peter White, South Australian Farmers' Federation, *Committee Hansard*, 17 April 2012, p. 12.

73 Mr Mark Pickering, Member, Citrus Growers of South Australia, *Committee Hansard*, 17 April 2012, p. 25.

74 Mr Callum Elder, Simplot Australia, *Committee Hansard*, 12 April 2012, pp. 20–21; Mr Peter White, South Australian Farmers Federation, *Committee Hansard*, 17 April 2012, p. 10.

75 Mr Peter Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 2.

ends were ultimately a matter of consumer education: to know and understand what front of pack labels do and do not mean, both in terms of country of origin and health issues, and to explore these matters further if they so desired.⁷⁶ This approach recognised that there was only so much space on a product label, and only so much information that can usefully be conveyed in that space.⁷⁷

4.81 The committee received evidence about the potential role of technology in assisting consumers in this area. As noted by the Tasmanian Department of Economic Development, Tourism and the Arts:

While the cost and size of food labels restricts the amount and type of information included on labels, technology has developed to a point where consumers could track food origins and content throughout the supply chain with the use of a bar code and a smart phone where producers make this information available.⁷⁸

4.82 The Public Health Association of Australia (PHAA) noted that such technology already existed in relation to health information contained in food product labels. Adjunct Professor Michael Moore, Chief Executive Officer of the PHAA, told the committee that:

we are very conscious of new technologies that are becoming available. Just recently the George Institute released an app that goes on the iPhone—and I have it on my phone—where you can scan the product and it actually gives a traffic light labelling. That sort of thing may well actually provide better information on country of origin. ...

I would have thought that industry would want to be at the leading edge of these things. The George Institute is particularly concerned with salt. But with the support of Bupa they have been able to develop an application where you simply point your iPhone at the barcode and in a very short time you have not only information about the product but also suggestions for healthier alternatives. I think that industry will be looking very closely at that sort of information [although] I do not foresee a time where everyone is walking around to every single product with their iPhone in their hand. That does not tend to be how we shop.⁷⁹

4.83 Dr Christina Pollard, Co-Convenor of the Food and Nutrition Special Interest Group in the PHAA, noted that care would need to be taken to ensure that information provided through such technology was reputable and accurate:

76 Dr Christina Pollard, Co-Convenor, Food and Nutrition Special Interest Group, Public Health Association of Australia, *Committee Hansard*, 10 February 2012, p. 35.

77 Ms Jennifer Dowell, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, p. 7.

78 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 6*, p. 12.

79 Adjunct Professor Michael Moore, Chief Executive Officer, Public Health Association of Australia, *Committee Hansard*, 10 February 2012, pp 33–34.

On the point of iPhone apps and technology, it is very important that support material, which is the information that the app is based on, is from a credible, reliable source and reflects Australia's total food supply. It would be extremely useful if the foods that we saw in the supermarket had a front-of-pack labelling system that instantly told you which were healthier options. For people who are a lot more interested and techno-savvy and had financial access to instruments like iPhones, they could reinforce that or check out individual products from time to time. That tends to be how we shop.⁸⁰

Committee views

4.84 As set out in the previous section, the committee believes that there are flaws in Australia's current country of origin labelling system. The issue that confronts the committee is whether reform of that system would, in fact, benefit the Australian food processing industry. Clearly, any changes will have compliance costs and there would need to be evidence that the cost of the changes would be outweighed by increased sales. In this regard, the evidence before the committee was inconclusive.

4.85 The committee's view is that there would be merit to reforming the current country of origin labelling laws to make them more transparent. The committee's view, expressed in the previous section, was that industry must do more to understand consumer preferences and behaviour. Government can assist this by providing a strong and clear country of origin labelling regime upon which processors can more confidently base their claims.

4.86 In this sense, there should be a level playing field across all foods. The current anomalies in country of origin labelling requirements, which allow some foods to escape such labelling altogether, appear illogical and are unacceptable. The committee endorses recommendation 40 of the Blewett Review, which recommended expanding country of origin labelling requirements to cover all primary food products for retail sale.

4.87 The committee welcomes the government's response to the recommendation and urges FSANZ to expand the Food Standards to align with the Blewett Review's recommendation 40. In the event that FSANZ does not extend Food Standard 1.2.11 to at least cover unpackaged beef, veal, lamb, hogget, mutton and chicken, the committee believes that it should give substantive reasons for its decision. This would assist the community to understand FSANZ's priorities in setting country of origin labelling standards.

80 Dr Christina Pollard, Co-Convenor of the Food and Nutrition Special Interest Group, Public Health Association of Australia, *Committee Hansard*, 10 February 2012, p. 35.

Recommendation 7

4.88 The committee recommends that the government expand the application of food labelling requirements to require all primary food products for retail sale to display their country of origin, in accordance with recommendation 40 of the Blewett Review.

4.89 The committee notes that, despite consensus on the fact that there are problems with Australia's country of origin labelling laws, there appear to be no easy or simple fixes. For some food products, the origin of the component ingredients may well be more important to consumers than its place of packaging or transformation. For other food products, the place of manufacture of the final product may be the most important consideration.

4.90 The cases of bacon and chocolate, explored in submissions and by witnesses in the committee's hearings and site visits, provide a useful comparison. On the one hand, a scheme in the form proposed by the Blewett Review—that is, to focus on the origin of the ingredients in a product alone—would not allow businesses like Haigh's to make claims regarding the Australian manufacture of their product, only about the origins of the ingredients. On the other hand, the current scheme and the government's response to the Blewett Review emphasises only the place of manufacture of goods. This emphasis is at the expense of a clearer indication to consumers about the origin of their food.

4.91 In the committee's view, it appears illogical to deny food processors acknowledgment of their significant role in turning raw ingredients into a product for retail sale. The committee also believes that the current country of origin labelling laws are out of step with consumer and industry expectations. The evidence before the committee suggested that consumers and industry alike did not see country of origin laws primarily as recognition of 'the contribution of local production and manufacturing' and secondarily as information about the origin of ingredients.⁸¹ Rather, the evidence suggested that whether one matter or the other was important depended on the product.

4.92 In this context, the committee believes that the focus of country of labelling laws should be on the consumer's understanding. This means that, first and foremost, claims about the country of origin of a product should be clear and not misleading. This principle should guide the development and content of other aspects of Australia's country of origin labelling regime, including the 'safe harbour' provisions of the CCA.

81 *Response to the Recommendations of Labelling Logic: Review f Food Labelling Law and Policy*, December 2011, pp 44–45.

<http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/home>
(accessed 13 June 2012).

4.93 As discussed in paragraph 4.117 below, the committee believes that New Zealand's laws about place of origin representations may be a useful starting point.⁸² It has been the policy of successive New Zealand Governments that country of origin labelling for all food types is a voluntary practice for the food industry to use as a marketing tool. However, food labelling, voluntary or mandatory, must be true and accurate.⁸³ The success of these policies may be attributable to the provisions of the *New Zealand Fair Trading Act 1986* which specifically prohibit misleading and deceptive conduct and false representations—sections 9, 10, and subsection 13(j).⁸⁴ These provisions are attached in Appendix 4.

4.94 The committee notes that New Zealand's system cannot be directly translated into an Australian context, given there is no requirement in New Zealand to provide country of origin information and this potentially reduces the need for the 'safe haven' provisions which complicate the Australian position.

4.95 The committee notes that evidence was given that the progression of private label products that are packaged to look like a branded product. It is often difficult to determine the provenance of these products from the labels.

4.96 The committee also notes recent reports that Tesco's Chief Executive Officer, Sir Terry Leahy, was quoted as saying that there is a limit to how much private labelling can achieve. He warned against forcing customers to buy private label products. Sir Leahy indicated that a maximum threshold of between 30 and 50 per cent of sales could be generated by a supermarket's own house brands.⁸⁵

82 New Zealand Commerce Commission, *The Fair Trading Act – Place of Origin Representations*, <http://www.comcom.govt.nz/assets/Fair-Trading/Factsheets/FTA-Place-of-Origin-fact-sheet-January-2012.pdf> (accessed 5 June 2012).

83 Ministry for Primary Industries, 'Country of Origin labelling—Questions and answers', <http://www.foodsmart.govt.nz/whats-in-our-food/food/food-labelling/country-of-origin/> (accessed 6 August 2012).

84 It is also noted that subsection 27(1) of the New Zealand Fair Trading Act 1986 enables the Governor General to make regulations concerning consumer information including in relation to the disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion or supply of the goods or services.

85 Megan Carlaw, 'Woolworths 'Official Range Profile' tries to counter House Brand war perception', 31 July 2012, <http://www.ausfoodnews.com.au/2012/07/31/woolworths-%E2%80%98official-range-profile%E2%80%99-tries-to-counter-house-brand-war-perception.html> (accessed 15 August 2012).

Recommendation 8

4.97 The committee recommends that the government reform country of origin labelling requirements for food so that these requirements are clearer, more transparent and focus on the consumer's understanding.

4.98 Precisely how a focus on the consumer's understanding is to be translated into legislation was the subject of some debate before the committee. The committee believes that the review of the CCA recommended in Recommendation 12 affords the government an opportunity to consider whether the 'safe haven' provisions in section 255 sufficiently focus on the consumer's understanding of country of origin labelling for food products.

4.99 The committee's preference is for country of origin labelling laws for food which allow processors the option to make claims about the location of manufacture of the food, but which also focus on the defining ingredient in the product. The committee considers that government should consult with industry to determine a precise definition for the term 'defining ingredient'. The committee is of the view that the term, in combination with the ability to make claims about the place of manufacture of food products, properly focuses the attention of country of origin labelling laws on the consumer.

Recommendation 9

4.100 The committee recommends that, as part of the review of the *Competition and Consumer Act 2010* (Cth) recommended in Recommendation 12, government should specifically consider whether the 'safe haven' provisions in section 255 are sufficiently focussed on the consumer's understanding of country of origin claims on food products.

Recommendation 10

4.101 The committee recommends that the government consult with industry about the use of the term 'defining ingredient' as a method of determining the country of origin of a product.

4.102 The committee believes that once rules about when a processor can claim that a food product is from Australia are consistent and meaningful for consumers, the ability of the industry to understand its domestic and international markets and successfully and innovatively market its products to consumers will be strengthened.

4.103 The committee notes that there may well be other benefits, tied to innovation and export opportunities, which attach to labelling Australian processed foods in this way. Coles' submission, for example, suggested that the future for Australian food processors was to develop niche products for both domestic and overseas consumption.⁸⁶ If Australia is looking to expand its food export capabilities to

86 Coles, *Submission 22*, pgs 37 and 49.

become, as recent media has labelled it, the 'food bowl of Asia'⁸⁷ then information accurately conveying the Australian origin of the primary ingredients and the location of their processing and product development will assist in overseas product differentiation.

4.104 If current labels are retained, then there should be some attempt to clear the confusion surrounding their meaning. This is particularly the case with respect to the difference between unqualified and qualified claims about when a product is 'made in Australia'. The committee believes that a concerted campaign to educate consumers about the meaning of different product claims is necessary. The committee welcomes the initial commitment made by the government in response to the Blewett Review to educate consumers about country of origin requirements. It notes, however, that these matters are ultimately subject to consumer demands for information about the country of origin of goods.

4.105 In this context, the committee notes the possibilities and opportunities for the use of technology, particularly smart phone technology, in providing consumers with information about the country of origin of their food. The committee encourages government and industry to examine the scope for the creation of online information, accessible via bar codes on products, with reputable and up to date country of origin information about products. Participation in such a system could be voluntary. It would enable consumers interested in the origin of their food to more easily connect with producers for whom country of origin information is important. Further, such a system could encourage a greater connection between consumers and their food, allowing them to track the seasonal variation in ingredients. The committee believes that there may be some scope to make the provision of such information mandatory for large processors and private label products.

Recommendation 11

4.106 The committee recommends that industry and government investigate the potential use of smart phone and barcode technology to provide additional information about the country of origin of food products.

4.107 The committee is aware of concerns, such as those raised by the AMWU, that private label food products do not clearly display their country of origin.⁸⁸ The committee understands that private label food products are, like other food products, subject to the Food Standards, which require certain products to display information about their country of origin, and the CCA, which regulates how that information should be displayed. The committee would be very concerned if private label food

87 Daniel Flitton, 'We can be food bowl of Asia: PM', *The Age*, May 4, 2012.
<http://www.theage.com.au/opinion/political-news/we-can-be-food-bowl-of-asia-pm-20120503-1y1w9.html> (accessed 14 June 2012).

88 See, for example, Ms Jennifer Dowell, National Secretary, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, pp 7–8.

products were in some way exempt from the same provenance labelling requirements as other products.

4.108 The committee notes that an understanding that processed food is different from other kinds of manufactured goods and is therefore deserving of separate regulation underlies the above recommendations. This is consistent with the conclusions of the Blewett Review. The committee believes that country of origin claims for food products should be treated differently from those of other manufactured goods on the basis that, in consumers' minds, they are different. The origin of individual components of food is much more likely to be significant to a consumer than those of other consumer goods because, as the Blewett Review noted, we ingest food and take it into ourselves. Similarly, as noted by the Blewett Review and echoed by other witnesses, consumers often use country of origin claims as a short hand assessment of other values-based claims in a way that is quite different to other manufactured products.

4.109 The current system of country of origin regulation—where the requirement that a product make a country of origin claim is set out in the Food Standards (and administered by state and territory food safety authorities) but the rules governing how those claims should be made are set out in the ACL (and therefore administered by the ACCC and state and territory consumer protection agencies)—is unacceptable and, in the committee's view, contributes to the lack of consumer understanding. The committee believes that the issue of country of origin claims is primarily one of competition law, rather than food safety. The committee notes that recommendation 41 of the Blewett Review was that mandatory country of origin labelling requirements for food should be moved to a specific consumer product information standard under the CCA. The government's response to this recommendation was that:

Australia and New Zealand currently have different CoOL arrangements in place. These differences will remain whether mandatory CoOL requirements remain in the Food Standards Code or are moved to the CCA. Moving CoOL requirements for food to the CCA will decrease the amount of legislation; however, there would still need to be more than one area that would address CoOL. Within Australia, CoOL requirements also apply to imports under the *Commerce (Trade Descriptions) Act 1905* and *Commerce (Imports) Regulations 1940*. These requirements are enforced by the Australian Customs and Border Protection Service.⁸⁹

4.110 The committee believes that this response does not adequately address the substance of the Blewett Review's recommendation. It does not interact with the idea that country of origin labelling laws for food are unnecessarily complex and confuse consumers, or that food is deserving of specialised regulation. The committee therefore recommends that the government reconsider its response to

89 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, p. 44.

recommendation 41 of the Blewett Review and move mandatory country of origin labelling requirements for food to a specific consumer product information standard under the CCA.

Recommendation 12

4.111 The committee recommends that the government move mandatory country of origin labelling requirements for food to a specific consumer product information standard under the *Competition and Consumer Act 2010*, consistent with recommendation 41 of the Blewett Review.

4.112 The committee does not believe that country of origin labelling laws should be unduly prescriptive. The committee does not agree with those suggestions that such laws should require details about the precise percentage of Australian content in food products. To do so would be unnecessarily onerous on processors and unlikely to produce any greater benefit than broad but more transparent requirements. The committee's view is that to require significant detail about the Australian content of a product would be counterproductive: it would increase the cost of products with Australian ingredients and would be out of step with consumer expectations about the availability and consistency of products. It is quite clear that consumption patterns now demand that products are available year round and without significant regard to seasonal availability. Country of origin labelling laws should be flexible enough to accommodate this expectation.

4.113 It is worth reiterating that the committee believes that government can only do so much with respect to labelling issues, particularly country of origin labels, to assist the food processing sector. Once more clear and well understood country of origin labels are in place, the onus is on industry to use this regime as a springboard. Government cannot and should not legislate consumer desires—it is up to industry to understand the consumer and what they want and to deliver it to them.

Australia–New Zealand Closer Economic Relations Agreement Issues

4.114 Some evidence before the committee raised concerns about imported foods from New Zealand.⁹⁰ In particular, submitters were concerned that food could be imported into New Zealand and given a label stating that it was the product of New Zealand.

4.115 Ms Jan Davis, Chief Executive Officer of the Tasmanian Farmers and Graziers Association, summarised the issue:

Another issue that causes significant difficulty dealing with our competitors from New Zealand is the fact that they are a gateway for product from other countries which is then rebadged, repackaged and sold as New Zealand produce. So their domestic production is only a very small part of their

90 For example: Department of Economic Development, Tourism & the Arts, *Submission 6*, p. 11.

export production, and that causes us great grief too, because none of that product imported into New Zealand must meet the conditions that we have to meet here in Australia.⁹¹

4.116 These concerns were echoed by the AMWU, which suggested that it was the voluntary nature of New Zealand's country of origin labelling laws that allowed these practices:

Unlike Australia (with the exception of wine) there is no mandatory requirement for CoOL [country of origin labelling] in New Zealand, instead suppliers may voluntarily opt to supply CoOL. Perhaps this is why in New Zealand goods can be imported, then packaged in New Zealand and labelled as a product of New Zealand.⁹²

4.117 The extent to which this is a real, rather than a perceived, issue is somewhat unclear. While New Zealand does not have mandatory country of origin labelling laws, the committee is aware that, where such claims are made, they cannot be misleading or deceptive under New Zealand fair trading laws.⁹³ Indeed, an example in material before the committee about New Zealand's laws on place of origin representations suggests that, where claims are made about the origin of a product, New Zealand authorities apply a more stringent test than their Australian counterparts:

Local companies implied by statements on the labelling of their products that their ham and bacon were produced in New Zealand. However a significant amount of the pork used to make the products was imported. The Commission's view was that this labelling was misleading as the essential character of ham and bacon was provided by the pork, which was of overseas origin. The Commission issued formal warnings to these traders.⁹⁴

4.118 Further, evidence before the committee from the Department of Foreign Affairs and Trade (DFAT) was somewhat vague about whether claims about the repackaging of products in New Zealand were, in fact, an issue. In response to senators' questions about New Zealand labelling laws and free trade agreements disadvantaging the Australian industry DFAT responded:

That is the question of what the rules of origin are in the CER agreement. The rules of origin in each trade agreement should make sure that [bringing

91 Ms Jan Davis, Chief Executive Officer, Tasmanian Graziers and Farmers Association, *Committee Hansard*, 12 April 2012, p. 8.

92 Australian Manufacturing Workers' Union, *Submission 21*, p. 8.

93 See the New Zealand Commerce Commission's fact sheet about Place of Origin Representations: <http://www.comcom.govt.nz/assets/Fair-Trading/Factsheets/FTA-Place-of-Origin-fact-sheet-January-2012.pdf> (accessed 5 June 2012).

94 New Zealand Commerce Commission, *The Fair Trading Act – Place of Origin Representations*, <http://www.comcom.govt.nz/assets/Fair-Trading/Factsheets/FTA-Place-of-Origin-fact-sheet-January-2012.pdf> (accessed 5 June 2012)

in products from elsewhere] does not happen. The way that the products are defined for preferential treatment require them not to be transhipped.⁹⁵

4.119 Other evidence before the committee suggested that any issues with New Zealand labelling were a variation on the issues already canvassed with respect to country of origin labelling. Dr David McKinna stated:

[C]onsumers are unknowingly being duped.... A recent project by this consultancy revealed an extreme example of this - a seafood product was being caught in the Atlantic Ocean, frozen at sea on a Korean vessel, landed in China for first stage processing, imported into New Zealand, repacked as product of New Zealand and then shipped to Australia to be thawed, reprocessed and crumbed here. This product was sold in Australia as 'Product of Australia', competing against Australian-caught fish from the local fishery on an equal basis.⁹⁶

Committee view

4.120 While a number of submitters raised claims about the inaccuracy of the country of origin labels placed on food imported from New Zealand, there was very limited specific evidence about these practices. Accordingly, the committee is unable to express an opinion either way about whether there are issues with New Zealand operating as a gateway for the importation and processing of foreign foods.

4.121 In any event, the allegations deserve further investigation to ensure that the information provided to Australian consumers is accurate and not misleading. This is particularly so with respect to the case raised by Dr McKinna; if true, it appears to be in breach of the CCA. The committee therefore recommends that the ACCC investigate these claims, and that individuals, businesses or groups with direct evidence of misleading practices concerning the use of the 'made in Australia' or 'made in New Zealand' labels contact the ACCC.

Recommendation 13

4.122 The committee recommends that, when presented with direct evidence, the Australian Competition and Consumer Commission investigate claims that country of origin labels on processed foods imported into Australia under free trade agreements and other international agreements are misleading and/or deceptive.

95 Ms Jan Adams First Assistant Secretary, Free Trade Agreement Division, DFAT, *Committee Hansard*, 11 May 2012, p. 48.

96 Dr David McKinna, *Submission 32*, p. 17.

Chapter 5

Biosecurity and food safety

5.1 Biosecurity encompasses measures to mitigate and manage the risks arising from transmission of infectious diseases, pests, invasive species or organisms. While, in a broad context, biosecurity may also include issues such as the security of dangerous pathogens and toxins that exist in laboratories, the focus in this inquiry has necessarily been on biosecurity as it relates to food processing.

5.2 Inextricably linked to the issue of biosecurity in the food processing sector are matters concerning food safety. Food safety concerns the methods of producing, preparing, handling and storing food to ensure it remains safe for consumption. The specific issue of food safety is not dealt with in length in this chapter; rather, the chapter focuses on those aspects linked with biosecurity.

5.3 Throughout this inquiry, the committee heard that the key biosecurity and food safety issues that confront food processors, and which they view as impacting their ongoing viability, are cost recovery; the plethora of various audit, certification and quality assurance processes with which they are required to comply; and a concern that imports and exports do not compete on a level playing field. This chapter discusses these issues.

Background

5.4 Responsibility for biosecurity in Australia rests with the Department of Agriculture, Fisheries and Forestry (DAFF). In 2008, the Beale Review of Australia's biosecurity system recommended against a 'zero-risk' approach to biosecurity and concluded that the system should 'shift from zero-risk to managed risk, from barrier prevention to border management, from "no, unless..." to "yes, provided...".'¹ The review also recommended structural changes to biosecurity regulatory authorities, proposing that the Australian Quarantine Inspection Service (AQIS), Biosecurity Australia, and segments of the Product Integrity, Animal and Plant Health Division in DAFF be combined.²

5.5 In response to the Beale Review,³ DAFF introduced a range of biosecurity reforms that included integrating AQIS, Biosecurity Australia and areas within DAFF

1 Beale et al, *One biosecurity: A working partnership – The independent review of Australia's quarantine and biosecurity arrangements report to the Australian Government*, 2011, p. xvii.

2 Beale et al, *One biosecurity: A working partnership – The independent review of Australia's quarantine and biosecurity arrangements report to the Australian Government*, 2011, p. xix.

3 Another response to the Beale review includes developing new biosecurity legislation to replace the *Quarantine Act 1908*.

into the Biosecurity Services Group,⁴ (referred to as DAFF Biosecurity in this report).⁵ In May 2011, the Australian Government announced that DAFF would continue to deliver biosecurity services, rather than establishing a separate statutory authority or commission.⁶

5.6 DAFF Biosecurity deals with matters including agriculture, pastoral issues, fishing, food and forestry industries; rural industries inspection and quarantine; primary industries research; administration of export controls on agricultural, fisheries and forestry industries products; and food security policy and programs.⁷ DAFF Biosecurity Australia also provides import and export inspection and certification services, and is responsible for quarantine controls at the Australian border.⁸

5.7 International arrangements, agreements and obligations also exist to work in concert with domestic biosecurity arrangements, including the World Trade Organisation (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures.⁹ The WTO agreement requires all members of the World Trade Organisation, including Australia, to consider all import requests concerning agricultural products from other countries. Requests are assessed against Australia's biosecurity and quarantine policies, which are overseen by DAFF Biosecurity.

5.8 In April 2012, the Senate References Committee on Rural and Regional Affairs and Transport (RRAT References Committee) tabled its final report on its inquiry into Australia's biosecurity and quarantine arrangements.¹⁰ The RRAT

4 DAFF, *Annual Report 2009-10*, p. 115.

5 In some cases evidence from witnesses or submissions may have referred specifically to the separate organisations that previously existed.

6 DAFF, *Annual Report 2010-11*, p. 159.

7 *Administrative Arrangements Order*, Schedule, Administrative Arrangements, Part 1, 14 September 2010.

8 DAFF, *About Biosecurity Australia*, <http://www.daff.gov.au/ba/about> (accessed 8 August 2011).

9 The WTO Agreement on the Application of Sanitary and Phytosanitary Measures seeks to solve the following problem: How do you ensure that your country's consumers are being supplied with food that is safe to eat — “safe” by the standards you consider appropriate? And at the same time, how can you ensure that strict health and safety regulations are not being used as an excuse for protecting domestic producers? Source: World Trade Organisation, *Sanitary and Phytosanitary Measures*, http://www.wto.org/english/tratop_e/sps_e/sps_e.htm, (accessed 28 May 2012).

10 Further background on biosecurity and Australia's current approach to biosecurity and quarantine is summarised in that report, and includes: national administrative and legal arrangements; managing biosecurity risks; the appropriate level of protection; the risk assessment process; the emergency animal disease response agreement; cost of disease response; the national management group; the consultative committee on emergency animal diseases; and the emergency plant pest response deed. Source: Senate References Committee on Rural and Regional Affairs and Transport, *Australia's biosecurity and quarantine arrangements*, April 2012, pp. 8–17.

References inquiry addressed issues including the import risk analysis process and levels of resourcing. That committee made a number of recommendations, including giving higher priority to the Beale Review reforms, and committee scrutiny of the new biosecurity legislation.¹¹ In an interim report, the committee also recommended improvements in stakeholder consultation and administration, and continuation of the 40 per cent rebate on export cost recovery.¹² The RRAT References has signalled its interest in conducting a detailed examination of the Biosecurity Bill.¹³

5.9 There have also been a number of related parliamentary inquiries into biosecurity over the last six years.

The role of biosecurity

5.10 Australia's isolation has given it many advantages from a biosecurity perspective. The committee consistently heard that stakeholders understand the important role of biosecurity in protecting and promoting the food processing industry:

- Biosecurity plays a critical role in protecting the food supply, providing community as well as individual benefits. Any actions in this area need to consider all potential impacts, including human health impacts, socioeconomic costs from trade losses, and environmental damage. This includes achieving a biosecurity and quarantine system viewed by all as meeting the letter and spirit of World Trade Organisation agreements, and not as a trade barrier.¹⁴
- The food processing sector believes that a strong biosecurity regime is essential. While there is recognition that there is a higher cost associated with not being able to access cheaper ingredient/input products, in the long run strong biosecurity measures protects the local quality food chain for Western Australian consumers.¹⁵

5.11 The committee also received evidence that the current costs associated with biosecurity arrangements are an impost on the sector and, if not addressed, will continue to act as obstacles that impede its ability to compete domestically and in international markets. Evidence provided to the committee consistently identified (i) cost recovery; (ii) the need to harmonise the various audit, certification and quality

11 Senate References Committee on Rural and Regional Affairs and Transport, *Australia's biosecurity and quarantine arrangements*, April 2012, p. ix.

12 Senate References Committee on Rural and Regional Affairs and Transport, *Biosecurity and quarantine arrangement, Interim Report: the management of the removal of the fee rebate for AQIS export certification functions*, April 2012, p. vii.

13 Senate References Committee on Rural and Regional Affairs and Transport, *Australia's biosecurity and quarantine arrangements*, April 2012, p. 4.

14 Australian Dairy Industry Council, *Submission 47*, p. 27.

15 Food Industry Advisory Group of Western Australia, *Submission 15*, p. 6.

assurance processes with which food processors are required to comply; and (iii) the lack of a level playing field for imports and exports as the main hurdles they face when trying to comply with their biosecurity obligations in today's challenging market environment.

Cost recovery

5.12 Cost recovery broadly encompasses fees and charges related to the provision of government goods and services (including regulation) to the private and other non-government sectors of the economy.¹⁶

5.13 In December 2002, the government adopted a new broadly based cost recovery policy that was designed to improve the consistency, transparency and accountability of its cost recovery arrangements and promote the efficient allocation of resources.¹⁷

5.14 The effectiveness of the cost recovery policy introduced in 2002 has since been the subject of review.¹⁸ In November 2009, the Government announced an Export Certification Reform Package (ECRP), which included a 40 per cent offset of the full cost impact on export industries from 1 December 2009 to 30 June 2011. New export fees and charges, returning industry to full cost recovery commenced on 1 December 2009.¹⁹

5.15 In its 2010 incoming government brief, DAFF advised the Minister that:

16 Financial management Guidance No. 4, *Australian Government Cost Recovery Guidelines*, July 2005, pp 2–3.

17 The principles underlying the cost recovery policy include that: (i) agencies should set charges to recover all the costs of products or services where it is efficient and effective to do so; (ii) any charges should reflect the costs of providing the product or service and should generally be imposed on a fee-for-service basis or, where efficient, as a levy; and (iii) all agencies with significant cost recovery arrangements will need to prepare Cost Recovery Impact Statements (CRIS) where a Regulation Impact Statement has not addressed cost recovery. Source: Finance Circular No. 2005/09, *Australian Government Cost Recovery Guidelines*, Department of Finance and Deregulation, p. 1.

18 In 2008, an internal DAFF review of the cost recovery implementation found that in some cases cost recovery did not comply with the cost recovery policy. In 2009, the Productivity Commission noted that fees for importing food into Australia were generally higher than those faced by New Zealand importers, even with the benefit of a 40 per cent Australian government rebate and that the costs to business of AQIS services are higher than some comparable domestic services provided by other agencies. Source: Productivity Commission Research Report, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, December 2009, p. 329.

19 Government Response to Senate References Committee on Rural and Regional Affairs and Transport, *The removal of the fee rebate for AQIS export certification functions*, September 2009, p. 2.

The ECRP is expected to be fully implemented by 30 June 2011. It is a component of the broader reforms of Australia's quarantine and biosecurity system. In addition to the meat inspection reforms, the ECRP provides funding for reforms to export regulatory arrangements and the export supply chain and for fee rebates for the dairy, fish, grain, horticulture, live animal and meat export industries in the transition to full cost recovery for export certification services.²⁰

5.16 However, the committee consistently heard evidence that the cost recovery arrangements are a cause of concern to the food processing sector.

5.17 The Australian Meat Industry Council (AMIC) expressed concern at the 100 per cent cost recovery arrangements for AQIS certification charges:

While AMIC has entered into agreement with the federal government for the delivery of a new Australian Export Meat Inspection Service, commonly known as AEMIS, this is only the start of a drive for new efficiencies. Productivity gains from the system fell well short of what we negotiated originally and they fell well short of negating the impact of the costs associated with the removal of the 40 per cent contribution from government. Every Australian packer is paying more. We are also competing in an international marketplace with countries like the United States and Brazil that do not charge these government fees.²¹

5.18 Mr John Berry of JBS Australia explained the additional costs that the shift to a full cost recovery policy will have for its operations:

In our case, taking away the 40 per cent rebate has meant that overall costs for us in terms of our AQIS fees and charges have gone from \$6 million before the reform agenda to now \$10 million per year, based around the government's full cost recovery policy.²²

5.19 Summerfruit Australia also spoke of the disincentive the cost recovery presents to its activities:

The decision to remove the 40% AQIS Export rebate is a negative action by the Australian Government. Cost recovery is also a disincentive because the 'real costs of the service' are not being charged instead it is 'full cost recovery' that builds in a high level of variable costs that are not relevant to the service.²³

20 DAFF incoming Government Brief 2010, Volume 2 – urgent business, <http://www.daff.gov.au/about/publications/igb>, (accessed 29 May 2012), p. 60.

21 Mr Gary Burridge, Chairman, Australian Meat Industry Council, *Committee Hansard*, 10 February 2012, p. 23.

22 Mr John Berry, Director and Manager, Corporate and Regulatory, JBS Australia Pty Ltd, *Committee Hansard*, 12 April 2012, p. 36.

23 Summerfruit Australia Limited, *Submission 13*, p. 8.

5.20 The Food Industry Advisory Group of Western Australia also suggested that the charges imposed do not represent value for money:

The changes to AQIS fee for service has been controversial and an additional cost impost on the food processing sector. Comments by processors suggest that they haven't seen enough changes to the regime to justify the 'fee for service' changes and that the charges are at a level which do not represent value for money.²⁴

5.21 Other submitters noted that in some cases, such as low value products, the AQIS charges can be a significant portion of the business costs, and in some cases greater than the value of the products a business is seeking to export:

- It is just sheer madness. The fact that AQIS have tried to go to full cost recovery is an impost that most of the companies cannot wear. We are selling a relatively high-value product into the Asian market and the Middle East, but it is only a very small part of our operation. Our operation is really profitable because of the Australian market, not because of export. But if you look at the poultry industry that are trying to sell low-value product, you will see that it does not even cover the costs. The value of that low-value product—let us say that it is the wings and the feet—going to Asia does not cover the cost of AQIS charges.²⁵
- Everyone is charged; there is no such thing as a free audit. Whilst the audits are undertaken at a charge, as I have indicated, one thing that really concerns us is the recent spike in AQIS charges. I presume you have come across this before. Significantly for us, our licence fee went from, I think, \$2,000 to \$14,000 a year and the increase in inspection service charges was about 400 per cent. Given that we do not export significantly a large volume of product into Singapore and Hong Kong it is a big chunk of any leftover profit for that little aspect of our business.²⁶

5.22 Chapter 4 of this report considered issues of competition and noted that a diversity of markets, including export markets, was a strategy to reduce trade exposure of food processors to the dominance of the major supermarkets. The committee believes that government can play an important role to ensure that access to export markets is well facilitated and that cost of access to these markets is not prohibitive. Greater effort in this policy area is imperative. In recent years, government action has

24 Chamber of Commerce and Industry WA and the Food Industry Advisory Group, *Submission 15*, p. 7.

25 Mr John Millington, Company Spokesman, Luv-a-Duck, *Committee Hansard*, 17 April 2012, p. 40.

26 Mr Murray Beres, Chief General Manager, Mrs Mac's Pty Ltd, *Committee Hansard*, 18 April 2012, p. 18.

increased the cost of accessing export markets through removal of AQIS fee rebates. There is little evidence of facilitation of additional market opportunities.

Committee view

5.23 The evidence presented to the committee is consistent with that raised in previous inquiries into Australia's biosecurity arrangements.

Recommendation 14

5.24 The committee recommends government develop a strategic focus on developing access to export markets for the food industry and facilitate an affordable cost environment for industry to access these markets.

Harmonisation of audit arrangements

Existing arrangements

5.25 The complexity of issues relating to food safety has increased with rapid globalisation of food processing, globalised retailing, consumer demand for more natural and more convenient products, and an overall increase in the population's susceptibility to food borne illness:²⁷

To respond successfully to these challenges, there is a need for international adoption of modern systems for the management of food safety risks. The key elements include risk-based preventative controls, programs to monitor their effectiveness, appropriate government oversight, and a strong program of research on emerging food safety issues.²⁸

5.26 As the Commonwealth does not have exclusive power under the Constitution to make laws in the area of biosecurity and quarantine, the administration of Australia's biosecurity and quarantine is, therefore, governed by both Commonwealth and state and territory laws:²⁹

Australia therefore has a collaborative, multi-jurisdictional approach to food regulation. The Australia/New Zealand Joint Food Standards System was established in 1996 by *'The Agreement between the Government of*

27 M. Cole and G. Ball, *Global trends and opportunities in food and nutritional sciences*, 43rd Annual Australian Institute of Food Science and Technology Convention, Food Australia 62 (1), October 2010, p. 462.

28 M. Cole and G. Ball, *Global trends and opportunities in food and nutritional sciences*, 43rd Annual Australian Institute of Food Science and Technology Convention, Food Australia 62 (1), October 2010, p. 462.

29 The states and territories are, for example, responsible for the intra and inter-state movement of goods of quarantine concern. Source: Senate References Committee on Rural and Regional Affairs and Transport, *Australia's biosecurity and quarantine arrangements*, April 2012, p. 7.

Australia and the Government of New Zealand establishing a System for the Development of Joint Food Standards'.³⁰

5.27 The *Agreement between the Government of Australia and the Government of New Zealand establishing a System for the Development of Joint Food Standards* (hereafter referred to as The Treaty) 'seeks to reduce unnecessary barriers to trade, to adopt a joint system of food standards, to provide for timely development, adoption and review of food standards and to facilitate sharing of information'.³¹

5.28 In addition to the Treaty, in July 2008 the Commonwealth, states and territories signed the 'Food Regulation Agreement', which was designed to provide safe food controls, cost-effective compliance and enforcement arrangements for industry, government and consumers and a nationally consistent regulatory approach.³²

5.29 The Australia New Zealand Food Regulation Ministerial Council is established under the Food Regulation Agreement, and has responsibility for the development of domestic food regulatory policy.³³ Food standards, which reflect the policy, are developed by Food Standards Australia New Zealand (FSANZ), and are set out in the *Australia New Zealand Food Standards Code*.³⁴

5.30 At the border, the *Imported Food Control Act 1992* authorises the inspection and control of intended food imports. Inspections are conducted by DAFF Biosecurity, which operates a 'risk-based' border inspection program known as the 'Imported Food Inspection Scheme'. While the inspections are carried out by DAFF Biosecurity, FSANZ advises on the risks posed by the food under inspection. Once in

30 Department of Health and Aging, *Food regulation secretariat*, <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-system1.htm> (accessed 28 July 2011).

31 Department of Health and Aging, *Food regulation secretariat*, <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-system1.htm> (accessed 28 July 2011).

32 *Food Regulation Agreement 2008*, clause A; available at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-system1.htm>.

33 *Food Regulation Agreement 2008*, clause 3; available at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-system1.htm>

34 Food Standards Australia New Zealand, *Australia New Zealand Food Standards Code*, <http://www.foodstandards.gov.au/foodstandards/foodstandardscode.cfm> (accessed 28 July 2011). The food standards are enforced under state and territory legislation. Source: Department of Health and Aging, *Food regulation secretariat*, <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-system1.htm> (accessed 28 July 2011).

Australia, state and territory authorities have responsibility for monitoring food for sale, whether imported or produced within Australia.³⁵

5.31 The Productivity Commission, in its 2009 research report *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*,³⁶ noted that while standards for domestically produced food are uniformly adopted across Australian jurisdictions, there is no requirement to ensure consistent implementation and enforcement of these standards in the jurisdictions:³⁷

Businesses wishing to import food products to Australia are potentially faced with eight different approaches to implementing a food safety standard for a given product.³⁸

5.32 The findings of the Productivity Commission in December 2009, noting the complexity of the existing regulatory arrangements,³⁹ were also raised with the committee. The Australia Food and Grocery Council, commented on the current arrangements, and gave examples of other influences:

Biosecurity should be driven primarily by sound science and with risk analysis processes to provide rational assessments of potential impacts including economic impacts. AFGC considers that to a large extent the methodologies utilised by Biosecurity Australia and State and Territory agencies are generally consistent with this principle. Notwithstanding this AFGC is concerned this is not always the case with outcomes being inappropriate on occasions due to:

- 1) non-scientific, arbitrary regulatory requirements;
- 2) lack of funding; and

35 Australian Quarantine and Inspection Service, *Food*, <http://www.daff.gov.au/aqis/import/food> (accessed 28 July 2011).

36 The Productivity Commission released this report in December 2009.

37 Productivity Commission Research Report, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, December 2009, pp. 334–335.

38 Productivity Commission Research Report, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, December 2009, pp. 334–335.

39 The Productivity Commission found: Duplication in export and domestic regulation puts an undue compliance burden on some Australian primary product exporters, while the integrated regulatory structure in New Zealand means this is less of an issue there. The extent to which multiple and overlapping audits impose additional costs on businesses varies more between industries than jurisdictions. All Australian jurisdictions have memoranda of understanding between regulators to facilitate the recognition of audits and reduce business compliance costs. Compared with New Zealand, Australia's regulatory system for exports relies less on electronic processing to reduce business compliance costs and is less able to embrace improvements in the domestic food safety system associated with shifts toward outcome based standards. Source: Productivity Commission Research Report, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, December 2009, p. 329.

3) political intervention.⁴⁰

Commercial audits

5.33 In addition to audits arising from federal and state and territory regulatory requirements, customers of food processors also often impose their own food safety and quality assurance standards verified through third party audits. The Productivity Commission was advised that it is the view of industry organisations and businesses that there is overlap between AQIS/NZFSA audits and inspections and commercial audits required by supermarket chains and overseas buyers:

Some poultry processing plants in Australia have around 25 full-day audits per year. While two of these include the state health department (or equivalent) and another one or two per year are from AQIS, the remainder are private commercial audits [which are often]... directed at food quality rather than food safety.⁴¹

5.34 The Food Industry Advisory Group informed the committee that:

If you have Woolworth's accreditation, Cole's accreditation, Safe Quality Food (SQF) and Hazard Analysis Critical Control Point (HACCP), there is no room for local health departments any more. Our local health department audit is just a waste of time. Once you achieve a standard, it is like sending someone who has a PhD at university back to primary school. The health department comes in at a certain standard and they are really replicating something and the business is at a far higher standard.⁴²

5.35 Other submitters highlighted the impact of large companies pushing standards to a high level and that in some cases they have enough market influence to require their standards to be met:

- The retailers and others will push the standards to the highest level they can, because it makes it easier for them to guarantee product and get quality.⁴³
- If you are going to deal with Coles and you want their business, you have to play by their rules. If you are going to deal with Woolworths and you want their business, you have to play by their rules.⁴⁴

40 Australian Food and Grocery Council, *Submission 12*, p. 17.

41 Productivity Commission Research Report, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, December 2009, December 2009, p. 346.

42 Mr Richard Pace, Member, Food Industry Advisory Group, Chamber of Commerce and Industry of Western Australia, *Committee Hansard*, 19 April 2012, p. 13.

43 Mr Arthur Blewitt, Chief Executive Officer, AgriFood Skills Australia, *Committee Hansard*, 10 February 2012, p. 11.

44 Mr Richard Pace, Food Industry Advisory Group, Chamber of Commerce and Industry of Western Australia, *Committee Hansard*, 18 April 2012, p. 13.

5.36 The Tasmanian Department of Economic Development, Tourism and the Arts noted the interaction of the problems of the increased biosecurity cost recovery and the duplication of commercial and regulatory audits:

A further concern of industry is that it will have to pay for AQIS' functions as it moves to a cost recovery approach. Tasmanian Agricultural Productivity Group (TAPG) Board members believe that many QA functions achieve the same results as AQIS and that the government should explore systems to reduce duplication and adopt an outcome approach to compliance (for example, where a QA requirement and AQIS regulation are the same, then AQIS recognises that and accept its standards as met).⁴⁵

5.37 The Australian Dairy Industry Council raised similar concerns:

A truly national biosecurity system with adequate resources to cater for risk mitigation and border control, and to manage existing incursions would be a great step forward. While the dairy industry supports the consistency, we are concerned about directions in these negotiations towards cost shifting to producers for strategies fundamental to maintaining livestock industries and rural economies.⁴⁶

5.38 The committee heard from a witness, that while standards exist, there is constant pressure causing changes to those standards, resulting in additional costs in the supply chain:

The problem I see with the food safety situation in Australia is that all these big companies are on a path of continuous improvement. ... They are continually fiddling with those standards.

I supply to Nashi, McDonalds, Woolworths, Coles, Spotless and I do not know who else. Every single one of those companies now has taken that basic HACCP standard—or we operate off a British standard called the British Retail Consortium (BRC), which is the British supermarket or retail consortium—and fiddled with it and said, 'We want that, but we also want this bit', and (a) it is totally unnecessary and (b) half the time it is exactly the same thing.⁴⁷

The Global Food Safety Initiative

5.39 The committee considered the Global Food Safety Initiative (GFSI) which was created to harmonise food safety standards in order to reduce audit duplication throughout the supply chain:

GFSI therefore chose to go down the route of benchmarking, developing a model that determines equivalency between existing food safety schemes,

45 Department of Economic Development, Tourism and the Arts (Tasmania), *Submission 6*, p. 13.

46 Australian Dairy Industry Council, *Submission 47*, p. 27.

47 Mr Ben Allen, Food Industry Advisory Group, Chamber of Commerce and Industry of Western Australia, *Committee Hansard*, 19 April 2012, p. 14.

whilst leaving flexibility and choice in the marketplace. This benchmarking model is based on the GFSI Guidance Document, a multi-stakeholder document that was drafted with input from food safety experts from all over the world, and defines the process by which food safety schemes may gain recognition by GFSI and gives guidance to these schemes.⁴⁸

5.40 GFSI encourages companies buying food products to accept certification to GFSI recognised food safety schemes, thereby enabling their suppliers to have a more efficient audit process:

Under the umbrella of GFSI, many major retail, manufacturer and food service companies have come to a common acceptance of the GFSI recognised food safety schemes.⁴⁹

5.41 GFSI has set up sub-sectors of the food supply chain including Good Agricultural Practice (GAP), Good Manufacturing Practice (GMP), Good Distribution Practice (GDP), Good Catering Practice (GCP) and Good Retail Practice (GRP).⁵⁰ In the GAP sub-sector, a separate organisation—FoodPLUS GmbH—has developed a good agricultural practices standard, GLOBALG.A.P:

GLOBALG.A.P. is a pre-farm-gate standard, which means that the certificate covers the process of the certified product from farm inputs like feed or seedlings and all the farming activities until the product leaves the farm.⁵¹

5.42 In February 2009, the GFSI and GLOBALG.A.P announced the development of a joint approach to benchmarking standards.⁵²

5.43 When asked about simplifying the certification and audit processes, Woolworths noted the need to take care regarding competition laws:

It is very difficult for us to initiate any such change. We have to be careful that we do not go and breach any regulations in terms of collusive dealing in the marketplace. If there is some agency out there that can bring the various schemes together to a level that allows us to be satisfied with the outcome—that it is no less robust than the process we have in place today.

48 Global Food Safety Initiative Benchmarking, <http://www.mygfsi.com/gfsi-benchmarking-general.html>, (accessed 31 May 2012).

49 Global Food Safety Initiative Benchmarking, <http://www.mygfsi.com/gfsi-benchmarking-general.html>, (accessed 31 May 2012).

50 The Global Food Safety Initiative, *GFSI Guidance Document*, Sixth Edition, p. 62.

51 GLOBALG.A.P., http://www.globalgap.org/cms/front_content.php?idcat=2, (accessed 31 May 2012).

52 GLOBALG.A.P press release, *New GLOBALG.A.P and Global Food Safety Initiative (GFSI) Partnership to Further Effort on Food Safety Standard Harmonisation*, http://www.globalgap.org/cms/front_content.php?idcat=44&idart=749, (accessed 31 May 2012).

We do not seek to impose any additional costs on any of our suppliers because at the end of the day it gets passed on to the consumer. We would like to be as efficient and effective as possible. I am not sure what the mechanism is to reach that point, but we would support getting to a point that is more effective and efficient than today's.⁵³

5.44 The committee is encouraged by the potential the GFSI has to reduce costs through the food supply chain and noted that a range of companies operating in Australia are participating in the GFSI. This includes Woolworths, which has claimed commitment to world class quality assurance programs.⁵⁴

5.45 The committee also noted continuing efforts to align regulations across domestic jurisdictions. Therefore, a remaining significant source of duplicative audit requirements is the misalignment between commercial and regulatory standards.

Committee view

5.46 The committee endorses the Productivity Commission finding that to the extent that commercial requirements exceed the domestic and export standards enforced on businesses, the costs to business of separate audits by government agencies may be reduced.⁵⁵ The committee is therefore of the view that there is significant potential to reduce costs throughout the supply chain by moving to a more appropriate level of mutual recognition of commercial and regulatory audit standards, possibly through the use of the GFSI standards benchmarking process.

Recommendation 15

5.47 The committee recommends that the government take the lead in pursuing a more appropriate level of mutual recognition of commercial and regulatory standards and audit outcomes, possibly through the use of the Global Food Safety Initiative standards benchmarking process.

Import and export issues

5.48 Australian exports are required to satisfy importing country conditions to gain market access. Importing countries generally require agricultural commodities to be certified by the 'national competent authority, which issues certificates on a government-to-government basis. DAFF Biosecurity operates export inspection/auditing systems and provides export certification that reflects the requirements and expectations of importing country governments. Importing countries thereby rely on exporting countries to ensure that their standards are met. When

53 Mr Ian Dunn, Head of Trade Relations, Woolworths Ltd, *Committee Hansard*, 15 May 2012, p. 26.

54 Woolworths, Answer to Question on Notice, 15 June 2012 (received 4 June 2012).

55 Productivity Commission Research Report, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, p. 346.

import requirements have been set by a country, exporters are required to have specific arrangements to ensure compliance.⁵⁶

Export market access issues arising from biosecurity

5.49 The committee heard from witnesses who were seeking more assistance from DAFF Biosecurity in reopening markets (particularly overseas markets) following biosecurity incidents. The committee heard of issues with duck exports to both Indonesia and New Zealand. Mr John Millington of Luv-a-Duck outlined the issues his company faces:

- I think it is one of the areas where they could go into bat for us. Indonesia and New Zealand are two other areas that we have been trying to get into for nearly 10 years now. Since the Bali bombing we have not sold a duck into Indonesia; prior to that, we were selling quite well into there. ... There are artificial trade barriers created with Indonesia. We have not been able to get a straight answer as to why we cannot deal with that country....AQIS are the people that control the ability to export to those countries.⁵⁷
- We have been trying to get into New Zealand for five years. ... The excuse is that a disease occurs in poultry in Australia which does not occur in New Zealand. Our argument has been that that disease does not occur in ducks but does occur in chickens. We have been able to demonstrate that it is not in ducks. Still to this day we have not exported one bloody duck to New Zealand⁵⁸

5.50 The committee was informed that ways have been found around this issue for exports to other countries, such as Japan:

Japan have agreed that there is a problem with pigeons in Victoria, avian influenza in the case of the outbreak down just north of Melbourne. They say, 'We'll put a 50 kilometre exclusion circle around that. We'll trade from the rest of Victoria and the rest of Australia, but not within this 50 kilometre radius.'⁵⁹

5.51 AMIC suggested that portfolio responsibilities between trade and agriculture were unclear and were not leading to optimal market outcomes for Australian producers:

Having the same organisation deal with market access to international markets and market entry into Australia is creating problems for industry.

56 DAFF incoming Government Brief 2010, Volume 4 – story briefs, <http://www.daff.gov.au/about/publications/igb>, (accessed 30 May 2012), p. 26.

57 Mr John Millington, Luv-a-Duck, *Committee Hansard*, 17 April 2012, p. 37.

58 Mr John Millington, Luv-a-Duck, *Committee Hansard*, 17 April 2012, p. 40.

59 Mr John Millington, Luv-a-Duck, *Committee Hansard*, 17 April 2012, p. 35.

There should be two distinctly different bodies and people dealing with the two different market requirements.⁶⁰

Committee view

5.52 The committee acknowledges that there appear to be some tensions in the relationship between industry and DAFF Biosecurity. It considers that a strong relationship between these parties is vital to achieving growth in export markets, and appeals to industry and DAFF Biosecurity to work together to this end.

5.53 The committee is of the view that the federal government should consider the evidence provided to the committee with regard to international biosecurity trade barriers.

Recommendation 16

5.54 The committee recommends that industry and DAFF Biosecurity consider establishing a forum in which they can meet to discuss and resolve factors that inhibit export market access, growth and development.

Different standards applying to imported and domestic products

5.55 The committee was informed of concerns about different standards applying to imports, exports and domestic products. Commenting on the importance of biosecurity, Ms Jennifer Dowell, National Secretary of the Food and Confectionery Division of the Australian Manufacturing Workers Union, stated:

Food and biosecurity are very important to Australians, yet we know that the testing regime and standards applied to imported food goods are not necessarily as high as those applied to Australian-made goods. Many examples have been explained to us by our manufacturers and members of imported ingredients and goods that have been found to be unusable as they fail to conform to the appropriate standards. Nonetheless, the products have been allowed in and delivered to the local manufacturers.⁶¹

5.56 Coles raised related issues, but was also concerned to ensure that the problem was resolved without increasing trade barriers inappropriately:

Australian regulation in food safety and quality are amongst world's best practice. As cheaper food product imports increase into Australia, it is critical to ensure that these standards are applied universally to protect consumer safety (and not simply provide increased barriers to trade).⁶²

60 Summerfruit Australia Ltd, *Submission 13*, p. 7. South Australian Horticultural Services also raised this point in their submission to the inquiry – *Submission 14*, p. 6.

61 Ms Jennifer Dowell, Australian Manufacturing Workers Union, *Committee Hansard*, 10 February 2012, p. 2.

62 Coles, *Submission 22*, p. 63.

5.57 The Productivity Commission also considered this issue and was informed by industry that:

Industry in Australia has noted a number of areas in which domestic food safety standards are being implemented more stringently on domestic businesses than on competing import businesses. In some areas this may be due to the impact that differences in implementation of food safety requirements across jurisdictions has on the standards imposed on imports (as discussed above).⁶³

5.58 The Productivity Commission went on to make the following point:

Application of food safety requirements throughout the production chain for domestic businesses, but not for imported businesses, may unduly raise the opportunity costs of domestic businesses (unless similar requirements are made in the importer's home country) and has contributed to some products that are not approved for production nevertheless being imported.⁶⁴

5.59 The Productivity Commission also noted that 'for food importing businesses, these differing requirements have the potential to create confusion, necessitate contact with multiple jurisdictions/agencies and lead to additional costs in demonstrating compliance with food standards, both at border inspections and post-border'.⁶⁵

5.60 The 2008 Beale Review recommended that 'the Commonwealth's biosecurity legislation should provide that authority given by the Commonwealth to import goods into Australia also authorises the goods to be imported into a state or territory on the same conditions (if any)'. The government at the time (18 December 2009) agreed in-principle with the recommendation of the Beale Review and indicated that it intended to negotiate a new agreement with states and territories by the end of 2009.⁶⁶ In March 2012, the Government, in its update on the Beale Review, indicated that this would now be implemented in the new biosecurity legislation.⁶⁷

63 Productivity Commission Research Report, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, December 2009, pp. 336–337.

64 Productivity Commission Research Report, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, December 2009, p. 329.

65 Productivity Commission Research Report, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, December 2009, pp. 334–335.

66 Australian Government preliminary response to Beale et al, *One biosecurity: A working partnership – The independent review of Australia's quarantine and biosecurity arrangements report to the Australian Government*, 18 December 2009, p. 4.

67 Department of Agriculture, fisheries and Forestry, *Reform of Australia's Biosecurity system – An update since the publication of One biosecurity: a working partnership*, March 2012, p. 22.

Committee view

5.61 The committee notes the continuing concerns raised about differing standards and is keen to see this issue addressed. The committee suggests that it may be appropriate for the Senate RRAT committee to continue to monitor this matter through the passage of the new biosecurity legislation and its implementation.

Recommendation 17

5.62 The committee recommends that the Senate Rural and Regional Affairs and Transport References Committee examine the new biosecurity legislation to assess whether it will appropriately address the problems of different standards applying to imported and domestic products and consider monitoring the implementation of relevant measures.

Chapter 6

Skills development and labour market issues

6.1 This chapter covers the skills and labour market issues that face Australia's food processing industry. Labour and skills featured prominently in the submissions and evidence before the committee. Two broad themes emerged from the inquiry: those relating to tightness in the labour market, particularly with respect to the supply of skilled employees; and those relating to flexibility under the *Fair Work Act 2009* (Cth) (FW Act) and its associated modern awards.

The food processing labour market

6.2 Before examining the skills and labour issues identified in the inquiry, it is useful to set out some background information about the food processing labour market generally.

6.3 In evidence to the committee, the Department of Education, Employment and Workplace Relations (DEEWR) noted that, as at February 2012, the food processing industry employed some 194 300 people across about 10 000 businesses.¹ Many of these businesses are in rural centres and are a major source of employment for people in country towns.² In these towns, it is not simply the workers who depend upon the continued existence of food processing companies, but also a raft of local industries, from tradespeople to retailers, as well as their families.

6.4 Employment in the food processing sector has defied the general decline in manufacturing employment in Australia. According to Dr Alison Morehead, Group Manager of the Workplace Relations Policy Group, DEEWR:

Even though employment and manufacturing as a whole decreased by 62,000, or 6.1 per cent, in the five years to August 2011, employment in food product manufacturing increased by 12,200, or by 6.7 per cent.³

6.5 DEEWR predicted that this trend would continue, particularly in the manufacturing of bakery products, dairy products and meat and meat products.⁴ This

1 Dr Alison Morehead, Group Manager of the Workplace Relations Policy Group, Department of Education, Employment and Workplace Relations, *Committee Hansard*, 11 May 2012, p. 29; DEEWR, answer to question on notice from 11 May 2012, p. 4 (received 2 April 2012).

2 Mr David Losberg, Representative, Australian Dairy Industry Council, *Committee Hansard*, 9 March 2012, p. 21.

3 Dr Alison Morehead, DEEWR, *Committee Hansard*, 11 May 2012, p. 29.

4 Department of Education, Employment and Workplace Relations, answer to question on notice, 13 December 2011, p. 7 (received 2 April 2012).

growth in employment was not even across the sector or over the five year period for which DEEWR provided statistics. In answer to a question on notice, DEEWR provided the following table setting out employment trends in the food processing sector for the past five years:

Industry Code	Industry Title	Employment at Feb 2012 (000s)	One Year Change to Feb 2012 (000s)	Five Year Change to Feb 2012 (000s)
11	Food Product Manufacturing (Overall)	194.3	-11.0	5.8
111	Meat and Meat Product Manufacturing	53.2	-1.9	1.8
112	Seafood Processing	1.7	0.2	-0.5
113	Dairy Product Manufacturing	17.5	-4.2	1.4
114	Fruit and Vegetable Processing	4.8	-3.0	-4.2
115	Oil and Fat Manufacturing	1.6	0.2	-0.9
116	Grain Mill and Cereal Product Manufacturing	3.2	-2.4	-3.9
117	Bakery Product Manufacturing	68.4	5.4	10.1
118	Sugar and Confectionery Manufacturing	10.5	-4.7	-1.1
119	Other Food Product Manufacturing	9.8	-3.9	-4.6

Source: DEEWR, Answers to Question on Notice from public hearing 11 May 2012, received 1 June 2012.

6.6 The 'other food product manufacturing' subsector, in which the greatest job losses occurred, includes potato crisp manufacturing, animal feed production and other 'non-staple' items such as coffee and tea.

6.7 DEEWR also presented statistics about employers' recruitment experiences in the 12 months to September 2011, including in the agriculture, forestry and fishing industry and the food product manufacturing and beverage and tobacco product manufacturing sectors. It is particularly notable that, despite reporting low levels of competition for vacancies and low numbers of suitable candidates, employers in both the agriculture, forestry and fishing industry and the food product manufacturing and beverage and tobacco product manufacturing sectors reported rates of unfilled vacancies lower than the rate across all industries.⁵ These statistics are set out in more detail in Appendix 3.

5 Department of Education, Employment and Workplace Relations, answer to question on notice, 13 December 2011, pp 8–9, (received 2 April 2012).

6.8 Finally, and significantly for this inquiry, DEEWR noted that the industry faced a number of skill shortages in both the professional labour market and technicians and trades market. In the professional sphere, DEEWR noted that there had been 'persistent shortages of agricultural scientists/consultants' since 2007, mainly driven by a low supply of such professionals.⁶ In relation to technicians and tradespeople, DEEWR noted that some employers found it difficult to recruit agricultural technicians, and that the industry had had some trouble recruiting qualified bakers and butchers for the last decade.⁷

Committee view

6.9 The evidence before the committee bore out DEEWR's statistics on shortages in the labour market. Submitters noted shortages of both skilled and unskilled workers. In order to suggest methods of addressing these shortages, it is important to understand why they have occurred. In this regard, the evidence before the committee was remarkably consistent, focusing on a shortage of food science and agriculture graduates, a perceived gap between graduates' skills and knowledge and industry's expectations and impact of the mining boom. These issues are dealt with in the next sections of this chapter.

Shortage of food science and agriculture graduates

6.10 Many submitters argued that skilled labour shortages facing the industry resulted from a shortage of food science and agricultural graduates. The Australian Dairy Industry Council (ADIC) quoted a study which showed that, while there were 5000 agricultural scientist positions for graduates each year, there were only about 800 graduates.⁸ ADIC also provided the committee with a May 2011 report by the Allen Consulting Group for the Food Technology Association of Australia (FTAA) on the demand for food science and technology graduates. This report noted that the number of food science and technology graduates had been declining in Australia and that this trend was in line with international experiences.⁹

Reasons for the shortage

6.11 The main reason submitters offered for this decline in enrolments related to the food processing industry's image as a potential career path. The problem was one

6 Department of Education, Employment and Workplace Relations, answer to question on notice, 13 December 2011, p. 8, (received 2 April 2012).

7 Department of Education, Employment and Workplace Relations, answer to question on notice, 13 December 2011, p. 8, (received 2 April 2012).

8 Australian Dairy Industry Council, *Submission 49*, p. 21.

9 Allen Consulting Group, *Demand for Food Science and Technology graduates: FTAA skills demand survey analysis: Report to Food Technology Association of Australia*, May 2011. This was submitted by the Australian Dairy Industry Council as an answer to question on notice, 9 March 2012 (received 20 April 2012).

of both perception and awareness. The Australian Food and Grocery Council (AFGC) submitted that:

For some time AFGC and its members have been concerned about the shortage of high calibre candidates for senior management roles in technical areas such as technology management and quality assurance. Although the reasons for poor recruitment of students into food science, technology and engineering disciplines have not been clearly established AFGC considered it is more deep rooted than a simple reflection of the skills shortage which Australian industry generally is experiencing. One contributing factor is thought to be the general lack of awareness among young people of the career opportunities which exist in the food industry, including in technical areas.¹⁰

6.12 A number of submitters noted that food processing was simply not seen as an attractive option by many students:

I think one senator said in Hansard that they did believe that the food industry was sexy. It is not. Generally, we have moved away from it. If you go round the average factory, be it a milk factory, a canning factory or an abattoir, you will see it is not sexy.¹¹

I am a food technologist. The job is hot and sweaty, it involves shift work and early starts and if you have a trial you can guarantee it is going to be in the middle of the night. I have always found the job to be rewarding, but it is definitely not glamorous. You do not need to worry about whether the job is glamorous or this or that. It is real—you are making something real. You are paying your bills, you are part of society and you are paying your tax.¹²

6.13 According to some submitters, this lack of allure meant that students chose more lucrative specialisations in science and engineering than food. Mr Peter Bush, Executive Officer of the FTA, argued that:

Because food science and technology is almost at the bottom level, with engineering and things like that at the top, it is very difficult to attract students of food science and technology ...¹³

6.14 Mr Anthony McHugh, Senior Project Manager, Food and Agribusiness in the Tasmanian Department of Economic Development, Tourism and the Arts, echoed these sentiments:

It goes back to the issue of what incentives there are for people to enter these courses when they have so much other choice before them,

10 Australian Food and Grocery Council, *Submission 12*, p. 21.

11 Mr Peter Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 2.

12 Ms Helen Hubble, Private capacity, *Committee Hansard*, 9 March 2012, p. 23.

13 Mr Peter Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 3.

particularly people with a scientific bent and a good scientific brain. There is engineering, there is the mining industry and, if you are mathematically inclined, there is banking and finance.¹⁴

6.15 Even where students had an interest in food and agricultural sciences, some submitters believed that universities did not offer courses which led naturally to a career in food processing. Instead, submitters believed that university courses privileged nutritional studies¹⁵ or environmental sciences¹⁶ over food technology and agricultural sciences. Dr Michael Eyles, Senior Adviser, Food, Health and Life Science Industries Group, Commonwealth Scientific and Industrial Research Organisation (CSIRO), stated that:

You have heard about the numbers going into food science. There has also been quite a shift in the composition of those numbers. There has been an increasing move of students away from the hard sciences like engineering and so forth associated with food science and into nutrition. So that has obvious consequences for the way those people can be used. A lot of things that go into helping school students make up their mind whether food process engineering or nutrition is sexy and at the moment it is nutrition.¹⁷

6.16 Similarly, ADIC noted that, in the case of environmental sciences, the focus of the qualification and the skills and interests it developed were quite different to those developed by an agricultural science program:

The education sector has responded to the broad community promotion of environmental issues with young people enrolling in environmental science programs. Environmental science is generally focussed on preserving functioning biological systems; it is not about producing saleable products in a sustainable manner. In contrast, agriculture requires the management of biological, economic and human resources to produce a profit; agriculture can only be sustainable as long as it is profitable. Rather than assuming environmental science graduates can be used to fill the gap, perhaps a better approach would be to boost the 'public good' credentials of agricultural and food science degrees.¹⁸

6.17 In this regard, the committee notes that data provided by DEEWR suggests that enrolments in agricultural studies, including both general agricultural studies and more specific courses related to fisheries, forestry, horticulture and viticulture, have

14 Mr Anthony McHugh, Senior Project Manager, Food and Agribusiness, Department of Economic Development, Tourism and the Arts *Committee Hansard*, 12 April 2012, p. 32.

15 Mr Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 3.

16 Australian Dairy Industry Council, *Submission 47*, pp 21–22.

17 Dr Michael Eyles, Senior Adviser, Food, Health and Life Science Industries Group, Commonwealth Scientific and Industrial Research Organisation, *Committee Hansard*, 11 May 2012, p. 38.

18 Australian Dairy Industry Council, *Submission 47*, pp 21–22.

also dropped significantly over the last ten years. In the same period, enrolments in environmental studies have increased dramatically.¹⁹

6.18 Mr Allen Grant, First Assistant Secretary of the Agricultural Productivity Division, Department of Agriculture, Fisheries and Forestry (DAFF), believed that the Department had more to do to understand why this shift had occurred:

[W]e need to better explore in particular the tertiary education system through both the technology institutes and the universities to find out if this is a supply led issue or a man led issue? Are the universities cutting courses because no-one is applying, or is no-one applying because there are no courses? We keep getting this circular argument. That is certainly an issue we are trying to explore better with some of those institutions.²⁰

6.19 It is notable that these declining enrolments occur in the context of a decline in the number of secondary and tertiary students studying science more generally. Some submitters believed that this decline in numbers exacerbated the recruitment problems posed by the industry's relative lack of glamour.²¹

Graduate skill gaps

6.20 Concerns about the decline in enrolments in food and agricultural science degrees were also accompanied by concerns about the sorts of skills possessed by graduates of those courses. That is, some in the food processing industry believed that not only were tertiary education institutions not producing enough graduates for the food processing industry, they were not properly equipped for entry into the workforce.²²

6.21 Mr Bush, of the FTA, believed that the content of courses that traditionally led to food processing careers had changed, moving away from technical science skills and into content less relevant to the workplace:

[F]ood science and technology ... has now changed to food science and nutrition. The courses have changed. Even young people feel that food science and technology is not sexy but food science and nutrition is. So the courses have been changed in their content. Firstly, they have gone from four years to three years. Secondly, they have reduced the amount of food

19 Department of Education, Employment and Workplace Relations, answer to question on notice, 13 December 2011, p. 3 (received 2 April 2012).

20 Mr Allen Grant, First Assistant Secretary of the Agricultural Productivity Division, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 11 May 2012, p. 23.

21 Mr Peter Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 3.

22 Mr Peter Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 3.

and food related topics and increased human nutrition and nutrition topics in general.²³

6.22 The Australian Meat Industry Council (AMIC) held similar concerns;²⁴ Campbell Arnott's referred to this process as 'a slow erosion of Food Science courses'.²⁵

6.23 The Allen Consulting Group Report, which surveyed a number of food processing businesses, noted that this had resulted in:

...many FST [food science and technology] graduates [who] do not possess the skills and attributes businesses consider important. The disparity between skills identified by businesses as important, and skills identified as usually being possessed by FST graduates suggests that many graduates do not possess the technical skills that are considered important by business.²⁶

6.24 While the report also found that this disparity 'may be exacerbated by high business expectations', these expectations came from managerial experience:

[T]his business expectation has developed primarily due to managers expecting the skills of graduates to be similar to the skills they possessed when they left university. However, it was noted that degree courses teaching these skills don't necessarily exist anymore.²⁷

6.25 Mr Callum Elder, Executive General Manager of Quality and Innovation at Simplot, argued that the decreased focus on core technical skills in food science and technology courses was, in part, a result of changes to the role of universities:

if we move onto the universities, the training of agronomists and other specialists that we need in this country that have a significant lack of, they have become profit centres and tend to produce courses that are the cheapest for them to run. Every university has a nutrition or food course; hardly any of them have any technical food science courses anymore,

23 Mr Peter Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 3.

24 Mr Gary Burridge, Chairman, Australian Meat Industry Council and Mr Roger Fletcher, Chair, Sheepmeat, *Committee Hansard*, 10 February 2012, p. 27.

25 Campbell Arnott's, *Submission 34*, p. 7.

26 Allen Consulting Group, *Demand for Food Science and Technology graduates: FTAA skills demand survey analysis*, May 2011, p. iv, <http://www.allenconsult.com.au/publications.php?s=demand-for-food-science-and-technology-graduates>, (accessed 8 August 2012).

27 Allen Consulting Group, *Demand for Food Science and Technology graduates: FTAA skills demand survey analysis*, May 2011, p. 8, <http://www.allenconsult.com.au/publications.php?s=demand-for-food-science-and-technology-graduates>, (accessed 8 August 2012).

because they are required to have equipment and this equipment is expensive to buy and maintain.²⁸

6.26 The Allen Consulting Group Report found that these industry perceptions about the skills and practical experience of food science graduates did not always affect their employability in the same way. Large businesses and businesses in rural areas found that graduates' willingness to relocate was a greater factor affecting their recruitment; it was in small and medium-sized businesses and in businesses in metropolitan areas that 'skills mismatch' was more frequently cited as a reason for not employing graduates.²⁹

International recruitment solutions

6.27 A number of businesses told the committee that they had reacted to this skills shortage by recruiting from overseas. Mr John Millington, Company Spokesman for Luv-a-Duck told the committee that:

Probably the biggest issue for us is skilled labour shortages. In recent years—for the last 10 to 15 years—we have been sourcing our skilled labour workforce from overseas, mainly from South Africa. ... Our demand is primarily for skilled tradesmen.³⁰

6.28 Mr Elder, from Simplot, argued that these graduates often had access to better technology and training in their home countries. By recruiting these graduates, businesses, particularly smaller businesses, were able to access knowledge about new technologies and procedures that was not easily available to them in Australia:

[W]e find access to pilot plant equipment and expertise that we can draw on in people who can utilise that equipment to be a very difficult thing. Quite often now we are actually getting graduates and people from overseas, from Germany and other countries that do have wonderful centres. CSIRO has got a good processing centre, the Victorian centre at Werribee is very good. Apart from that, they are almost non-existent across the country. How do SMEs, which are not big companies like us, get to trial new equipment—pilot scale equipment—to see if it is right for their processes, to see if it can give them improved efficiencies or productivity advantages, if they cannot access that at a centre of excellence or a research centre.³¹

28 Mr Callum Elder, Executive General Manager of Quality and Innovation, Simplot, *Committee Hansard*, 12 April 2012, p. 21.

29 Allen Consulting Group, *Demand for Food Science and Technology graduates: FTA skills demand survey analysis*, May 2011, p. 16,
<http://www.allenconsult.com.au/publications.php?s=demand-for-food-science-and-technology-graduates>, (accessed 8 August 2012).

30 Mr John Millington, Company spokesman, Luv-a-Duck, *Committee Hansard*, 17 April 2012, p. 35.

31 Mr Callum Elder, Executive General Manager of Quality and Innovation, Simplot, *Committee Hansard*, 12 April 2012, p. 21.

6.29 Mr Bush, from the FTAA, believed that there were often strong pathways for international food science and technology students, particularly postgraduate students, to enter the Australian workforce:

The government has made it quite easy with working students, even 457 visas et cetera, and we find ourselves today with the situation where many of the students who came want to stay and many of them still want to work here in Australia. We may well have made that easy for them. Secondly, in terms of our immigration policy of going for qualified persons, we find within the industry now the developing lower strata or entry level is heavily made up of immigrant—if that is the word—food science technologists, very well qualified, particularly from New Zealand, the Subcontinent, South Africa, Ireland and, as is developing now, Thailand and China.³²

Potential domestic solutions

6.30 The committee heard evidence offering a number of solutions to the problems faced by the food processing industry in attracting graduates. These solutions revolved around promoting the industry as an attractive potential career path to students, both secondary and tertiary, and increasing industry engagement with tertiary institutions to ensure that courses develop skills and knowledge that more closely match industry expectations.

Dealing with perception issues

6.31 AgriFood Skills Australia submitted that any approaches to addressing the shortage of food science and technology graduates should be accompanied by the industry making a concerted effort to make its image more contemporary:

It is important that there be effort focused *on contemporising industry's image as a place to work and grow*. Academics, policy makers and even careers advisors are susceptible to the stereotypical image of the food sector as lower skilled and offering poor job and career options. To the contrary, the industry has a wide range of technical and highly sophisticated job roles in vibrant, world class companies. Promoting an industry image which focuses on contemporary and emerging job roles, and importantly career 'pathways' they open up, remains paramount.³³

6.32 Dr Geoffrey Annison, Deputy Chief Executive of the AFGC, gave similar evidence to the committee:

It is my personal belief that there has been a fundamental shift in the last 10 years in the way the food industry has been viewed in Australia. It was my observation during the 1990s that the food industry, for want of a better term, was the flavour of the month, so we had a number of very positive

32 Mr Peter Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 4.

33 AgriFood Skills Australia, *Submission 10*, p. 4.

developments that really highlighted the opportunities with the food-processing industry. ... That growth continued in that trajectory on into the mid-2000s. Around 2005 it started to drop off. But it was also in the year 2000-01 that the concerns around obesity and diet suddenly took off, and I think our industry went... [to being viewed as] not making the right products, we were not labelling them properly and we were not promoting them correctly.³⁴

6.33 Mr Grant, of DAFF, made it clear that the Department was aware of these image concerns. He gave evidence to the committee that there were clear connections between the image of agriculture and pathways into careers in food processing. Mr Grant believed that:

There are two elements to it. One is: how do you give agriculture a better name so that people become more interested in it to start with, so that that will flow through to people wanting to study related agricultural degrees? We are interested in people studying science per se as much as agriculture per se, because you can generally translate science into a whole range of agricultural tools.

The second thing is to identify that agriculture is not just about farms and hard work; agriculture is also about food processing. It is about high tech and it is about sophistication. Those are some of the messages we need to get across.³⁵

Promotion of career paths in schools

6.34 Many submitters believed that these perception issues needed to be dealt with initially in schools, particularly secondary schools:

We have identified that we need to get into schools at primary school level and at secondary school level as well to give people an understanding of what our industry can offer them in a working career. It is not just about getting down and milking the cows. There is laboratory work. A huge array of skills are required in this field of agriculture. The rural-urban divide is a real issue for us, and more and more that is becoming the case. I am aware that the National Farmers Federation is thinking along the same lines and trying to get agricultural education curriculum back into the schools. It is a problem now, but it will become a big problem if we do not, as far as getting staff is concerned.³⁶

34 Dr Geoffrey Annison, Deputy Chief Executive of the AFGC, *Committee Hansard*, 13 December 2011, p. 26.

35 Mr Allen Grant, First Assistant Secretary of the Agricultural Productivity Division, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 11 May 2012, p. 23.

36 Mr Chris Griffin, Chairman, Australian Dairy Industry Council, *Committee Hansard*, 9 March 2012, p. 18.

6.35 Dr Eyles, from the CSIRO, noted that attracting students to the food sciences could occur within existing programs aimed at encouraging students to pursue careers in science:

There are two issues you touched on: one is attracting students into science and the other is attracting students into food science, in particular, at the graduate level. One of the programs that CSIRO has had in place for some years, ...is a program called Scientists in Schools [which] teams up working scientists with science teachers. The intention is to give students in schools a real feel for what science is all about.... The reason I mention it in this context is because there has been a special focus in some states on getting food scientists into schools and helping students understand that actually food science is not cooking; it is quite sophisticated stuff that is interesting and you can have a really interesting career in food science.

6.36 The AgriFood Skills Council similarly submitted that there were a number of programs already in operation aimed at showing students possible careers paths in food science and technology. The Council highlighted its development of industry pathways programs for food processing in South Australia as a method of encouraging students to consider careers in the food sector. It noted that an industry pathways program was:

an industry endorsed set of learning strategies, career resources and nationally accredited VET [vocational education and training] competencies and/or qualification(s) that articulate into apprenticeships, traineeships, further education or training and direct employment.³⁷

6.37 The AgriFood Skills Council's submission also highlighted the possible use of the Primary Industry Centre for Science Education (PICSE) as having the potential to expand the scope of its operations to include the promotion of science careers in food science and technology.³⁸ PICSE is a body aimed at attracting students in years 11 and 12 into the tertiary study of science, particularly as it relates to agribusiness. PICSE is the result of collaboration between government (DEEWR, the Grains, Fisheries and Cotton Research and Development Corporations), universities (University of Tasmania, University of Western Australia, Flinders University, University of New England, University of the Sunshine Coast and University of Southern Queensland), and industry (GrowSmart Training (SA), Horticulture Australia, Dairy Australia and the Cotton Catchment Communities Cooperative Research Centre). Its focus is currently on science in primary industries, with particular emphasis on agriculture, aquaculture, ecology, horticulture, fisheries, water security, sustainability, climate change and the environment.³⁹

37 AgriFood Skills Australia, *Submission 10*, p. 5.

38 AgriFood Skills Australia, *Submission 10*, p. 5

39 PICSE, *About Us—Overview*, <http://www.picse.net/HUB/overview.htm> (accessed 19 June 2012).

6.38 The Council also noted that whatever is done to educate children in schools, local businesses will need to ensure they continue to engage with students in order to convert interest into a vocation. Without this continued engagement, the Council believed that the industry would continue to suffer from a poor image amongst students and graduates.⁴⁰

6.39 In response to a question on notice, DEEWR noted that the Australian Curriculum: Science, which has been adopted by Education Ministers, provided:

...opportunities for teachers to include education about agriculture and primary industries broadly and food processing more specifically. Additional opportunities will be afforded through the technologies learning area, the curriculum for which is still to be decided.⁴¹

6.40 The Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE) also brought the committee's attention to the \$54 million allocated in the 2012–13 federal budget to improve student engagement in maths and science. DIISRTE stated that:

Funding through this program will support innovative partnerships between universities and schools that are experiencing difficulty in engaging students in science and maths, have poor outcomes in maths and science, and/or have low numbers of students going on to further study in science and maths.⁴²

Tertiary and higher education engagement

6.41 A number of submissions to the committee pointed to the need for greater engagement with tertiary and other higher education institutions. They believed that the lack of connection between industry and universities resulted in poor outcomes in two respects. First, because it meant that food science and technology career paths were not being adequately or accurately presented to tertiary students; and secondly, because it meant that universities were developing courses and curricula without sufficient reference to the workforce needs of industry.

6.42 After noting that there was 'a huge disconnect' between academia and the food processing industry, Mr Bush, of the FTAA, provided the committee with anecdotal evidence about the effects of site visits he undertook with students from universities in Victoria:

We had a grant for five factory visits. The first one was exceptionally successful and was published. It was with RMIT. We came up here and went to Simplot and Riverland Oilseeds. We had the whole situation set up for the two-day visit. From memory, there were 28 students and 25 of them

40 AgriFood Skills Australia, *Submission 10*, p. 5.

41 DEEWR, answer to question on notice from 11 May 2012, p. 2 (received 2 April 2012).

42 DEEWR, answer to question on notice from 11 May 2012, p. 3 (received 2 April 2012).

were international students. I did a survey in the bus coming out of Melbourne, asking them: 'Would you consider working in rural Victoria? If not, why not?' I did the same survey when we were driving back into Melbourne;...there was a 90 per cent change: of those students, even international ones, 90 per cent said on the way back that, yes, they would [work in rural Victoria].⁴³

6.43 Mr Bush contended that the food processing industry should be proactive about engaging with tertiary education institutions.⁴⁴ ADIC noted that it had done so, through its development of the People in Dairy strategy and the National Centre for Dairy Education Australia (a partnership with a number of Australian TAFE colleges). It did, however, believe that there was only so much it could do:

The industry would welcome a more visible and proactive training strategy developed between the industry and government and integrated with the National Food Plan. Only government can address issues such as the National Training Package working for the industry, access to training funds, and difference between states in vocational education and training models.⁴⁵

6.44 The AFGC submitted that it had begun the process of re-engaging industry with academia. It pointed to its announcement in 2011 that it would assist in funding a professorship in food science and technology at the University of Queensland from January 2012. Dr Annison and Ms Kate Carnell, Chief Executive Officer of the AFGC, told the committee that:

The purpose of that will be to support a particular individual, but that person will also be responsible for developing an industry placement program and scholarship program which will then be supported by the industries themselves or by the companies themselves, [so that the message goes down through the university undergraduates and down into the schools that there is active support for students who choose a career option in food science or food engineering.

...Part of this is that the companies will provide holiday work, internships and a whole range of things around this. I have to say that, for an organisation like the Australian Food and Grocery Council, jointly funding a chair at one of the bigger universities is a very exciting financial challenge for us. But, for all of that, we believe it is important. The companies are absolutely on board with providing that great experience...We are putting

43 Mr Peter Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 4.

44 Mr Peter Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 4.

45 ADIC, *Submission 47*, p. 21.

quite significant money on the table to try to lift the profile of the industry generally. But more has to be done.⁴⁶

6.45 The Allen Consulting Group Report also picked up on the use of internships as a method of providing pathways into the industry and ensuring that graduates learn skills relevant to the workplace. It noted, however, that industry and universities did not always share enthusiasm for internships:

In relation to addressing these issues [of the mismatch between university studies and industry requirements], most respondents believe that requiring internships to be part of a degree, giving graduates a level of work experience, would be effective. It was noted that internships introduce people to a workplace, allow the development of workplace skills and also allow employers to get to know potential recruits.

Consultations suggested that from a university perspective, requiring internships to be part of degrees is difficult. It was suggested that internships are hard to manage, requiring large amounts of time and expense, and they are not usually considered feasible.⁴⁷

6.46 Evidence before the committee did, however, suggest that, even where industry bodies and businesses had identified the need for greater engagement with tertiary education providers, their approach was not necessarily coordinated. Dr David McKinna suggested that '[t]he pathways for students between training and job outcomes can be rather *ad hoc*'.⁴⁸

6.47 DAFF indicated that it was examining pathways from tertiary education into the industry as part of the National Food Plan. Mr Grant, of DAFF, noted the number of stakeholders meant that any initiatives undertaken in this context required close and careful consultation:

[T]here are a lot of players around both the private sector and within government that have a role in delivering education. So we are working closely with the deans of agriculture, who I am pretty sure work those figures [about the number of food technology workers from overseas]—that have come from AgriFood Skills Australia—with organisations like PIEF [Primary Industries Education Foundation] and PICSE.⁴⁹

46 Ms Kate Carnell, Chief Executive Officer of the AFGC, *Committee Hansard*, 13 December 2011, pp 25–26.

47 Allen Consulting Group, *Demand for Food Science and Technology graduates: FTA skills demand survey analysis*, May 2011, p. v.

48 Dr David McKinna, *Submission 32*, p. 12.

49 Mr Allen Grant, First Assistant Secretary of the Agricultural Productivity Division, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 11 May 2012, p. 23.

6.48 Dr Eyles, of the CSIRO, also noted that there were a number of informal linkages and programs that did, in fact, link government, industry and educational providers. Dr Eyles told the committee that:

[T]here are a lot of connections in place—for example, ... like the chair at the University of Queensland. The CSIRO and the University of Queensland and the professional organisation that I mentioned, AIFST [Australian Institute of Food Science and Technology], work together to run a summer school for postgraduate students in food science and technology each year. So at the informal level, people are actually talking to each other reasonably well, I think, in the food space.⁵⁰

6.49 In its response to questions on notice, DIISRTE, through DEEWR, indicated that it had a number of programs in place to assist the development of courses in agriculture. These included \$1.2 million over the period 2007–2011 to develop projects on soil science, plant breeding and rangelands management, as well as \$3.6 million to PICSE.⁵¹

Committee views

6.50 It was clear from the evidence before the committee that there are unlikely to be any easy solutions for the problems faced by food processors in recruiting skilled food science and technology graduates. In part, this appears to be because of the position of the industry. It is affected by the same stresses and issues that affect both the Australian agricultural and manufacturing industries. It is also affected by the general decline in science graduates and enrolments at both a secondary and tertiary level. For many businesses, their rural location accentuates these pressures, particularly when it comes to the labour market.

6.51 These are structural issues confronting the Australian economy and they demand a coordinated response from government, educational institutions and industry. The evidence before the committee suggests that this has been lacking, and both government and industry have pursued an ad hoc approach to addressing this skills shortage.

6.52 The committee is concerned at evidence suggesting a disconnect between the food processing industry and education and training providers. It is concerned because, as some submitters noted, of the high average age of workers in the agriculture and agricultural sciences sector, many of whom will retire in the near future.⁵² It is concerned because of current reports about the need for 5000 agricultural

50 Dr Michael Eyles, Senior Advisor Food Health and Life Sciences Industries Group, CSIRO, *Committee Hansard*, 11 May 2012, p. 39.

51 DEEWR, answer to question on notice from 11 May 2012, p. 3 (received 2 April 2012).

52 ADIC, *Submission 47*, p. 21; Mr Anthony McHugh, Department of Economic Development, Tourism and the Arts, *Committee Hansard*, 12 April 2012, p. 31.

scientists each year when Australian universities are only producing 800.⁵³ It is concerned because the future of Australia's food processing industry lies in product innovation, research and development and, at the current time, our capacity for these things appears to be diminishing. The committee believes that engagement between the food processing industry and education and training providers is crucial. While ADIC made the following remarks about the dairy industry alone, the committee believes that they apply equally to whole of the food processing industry:

The future of the ... industry relies on highly capable and well-trained people continuing to work invest and work in the industry. A coordinated effort by industry and government is required to attract, retain and develop the people needed.⁵⁴

6.53 Similarly, the committee agrees with AMIC's submission that:

It is going to be [the industry's] ability to innovate, mechanise and adopt some of the latest technology that will help maintain its competitive profile globally in the future.⁵⁵

6.54 Despite this, the committee believes that there are promising signs for the future. First, it is clear that at least some industry bodies have identified the need to engage with tertiary and secondary education institutions. In this regard, the committee welcomes moves by the ADIC and, more recently, AGFC to establish more formal links with tertiary and higher education providers. These sorts of initiatives, which encourage career pathways from education institutions to industry, appear to the committee to be an important part in ensuring that courses and training will be more relevant to both students and industry.

6.55 Obviously, industry moves cannot occur in a vacuum. Tertiary and higher education providers should also seek to capitalise on these moves and engage further with industry about the sorts of skills required. The committee therefore recommends that tertiary and higher education providers should engage more directly with food processing businesses about curricula and outcomes to ensure that the skills developed through further education better match those required by industry.

Recommendation 18

6.56 Tertiary and higher education providers should engage more directly with food processing businesses about curricula and outcomes to ensure that the skills developed through further education better match those required by industry.

53 ADIC, *Submission 47*, p. 21.

54 ADIC, *Submission 47*, p. 9.

55 AMIC, *Submission 47*, p. 8.

6.57 Secondly, the committee notes that food issues appear to have moved into the public's consciousness in recent times. The government is developing the National Food Plan, and, in recent months, there has been some public discussion about food, food security and the future of the Australian food industry.⁵⁶ There is substantial opportunity for industry to engage with the public about food and careers in food production, to lift its image and present itself as a vibrant industry with a focus on innovation and sustainability and one which offers challenging, rewarding and attractive career paths.

6.58 The committee notes, however, that these moves will only form part of a solution. Without some form of coordination, they might only continue the current fragmented approach. In this sense, the committee believes that the government must do more to both assist and coordinate industry efforts to engage with education providers at all levels and to promote careers in agriculture and food sciences and technology.

6.59 While there may be many informal connections between industry, government and educational bodies,⁵⁷ the committee believes more should be done to ensure that these connections are formalised and coordinated.

6.60 Evidence before the committee suggests that there are a number of existing programs and bodies that could be expanded to better promote the food sciences and technology, particularly given the connections between the food processing sector and agriculture. At a tertiary level, they include the postgraduate summer school run by the CSIRO and AIFST at the University of Queensland. At a secondary level, these include PICSE and the Scientists in Schools program run by the CSIRO. The evidence before this inquiry appears to suggest that it is particularly important to develop students' interest in science generally, and agriculture and food science and technology in particular, at least in secondary school. This could include more explicit incorporation of education about food processing in the Australian Curriculum, including in the technologies learning area curriculum.

Recommendation 19

6.61 The committee recommends that the government consider, in consultation with State and territory governments and industry, expanding existing programs promoting the study of, and career paths in, science to include food science and technology.

6.62 The committee believes that the development of the National Food Plan presents an opportunity for the government to address these issues and to assist in the coordination of the engagement between industry and higher education providers. In

56 See, for example, Fyfe, Melissa and Millar, Royce, 'Future of Food' series in *The Age*, <http://www.theage.com.au/victoria/futureoffood2012> (accessed 20 June 2012).

57 Dr Michael Eyles, CSIRO, *Committee Hansard*, 11 May 2012, p. 39.

this context, the committee recommends that the National Food Plan deal specifically with the labour issues facing the food processing sector, including the supply of appropriately and adequately trained agriculture and food science and technology graduates.

Recommendation 20

6.63 The National Food Plan should explicitly deal with the labour supply issues facing Australia's food processing sector.

6.64 During its inquiry, it became apparent to the committee that there was a need for greater coordination of industry's activities in engaging with education providers at all levels. There are a number of industry bodies, including PICSE, PIEF, the National Farmers' Federation, AgriFood Skills and the Agribusiness Association of Australia, who are responsible for discrete issues affecting the food processing industry. There is, in these circumstances, some risk of the siloing of responsibilities and issues, and of unnecessary competition between bodies. The committee believes that their efforts would result in enhanced outcomes for the agrifood sector if their activities were more actively coordinated by a peak council. The committee therefore recommends that the government encourage and assist the agrifood sector in setting up such a peak council so that the industry may, amongst other things, more effectively engage with primary, secondary, tertiary and higher education providers about potential career paths in the food processing sector.

Recommendation 21

6.65 The committee recommends that the government encourage and assist the agricultural and food processing industry in setting up a peak council of industry bodies so that the industry may, amongst other things, more effectively engage with primary, secondary, tertiary and higher education providers about potential career paths in the agrifood sector.

6.66 Finally, the committee notes that a number of businesses have been forced to look internationally to fill agricultural scientist and food science and technology positions. While this is understandable and appropriate, the committee believes that this should not occur at the expense of businesses' engagement with local institutions, particularly educational institutions.

Other labour shortages

6.67 There was also some evidence before the committee about shortages in both tradespeople and unskilled labour. Submitters attributed these shortages to a range of factors, including the mining boom, the nature of the work and more traditional labour mobility issues associated with the rural and regional location of many businesses.

Reasons for shortages

6.68 The evidence before the committee suggested that the reasons for shortages for tradespeople and unskilled labour were varied. Mr Stuart Clarke from the Western Australian Department of Agriculture and Food was typical of a number of submitters when he said that:

Nowhere suffers more than Western Australia from the influence of the mining and petroleum sector drawing labour and competing for labour with the processing industry. We have heard it from all different sectors—from agricultural producers right the way through the chain to food processors.⁵⁸

6.69 Similarly, Mr Chris Griffin, Chairman of ADIC stated that:

We are trying to educate people in the diverse range of roles and jobs available in the industry but it is difficult. To the west there is a mining boom, in Queensland there is a mining boom and we are fighting those labour issues. People are being attracted out of all sorts of industries to go to the mines and that is impacting on our ability to keep good staff.⁵⁹

6.70 Other submitters, such as Haigh's Chocolates, identified a range of factors as affecting their ability to find and retain skilled and unskilled staff:

Over the last number of years, Haigh's has experienced an increasing amount of pressure to retain highly skilled people due to wages offered by the Government supported automotive and defence industries and the growing demand for labour in the mining industry. Contract trades people to install, maintain and develop our key plant and equipment have become more expensive and more difficult to retain.⁶⁰

6.71 Conversely, the AMWU articulated in its submission that there was a greater need to advertise and promote the training and career opportunities that presently exist:

There is no shortage of labour per se, but more of a lack of interest, more people, particularly younger people, would be encouraged to go into these industries if they knew they could get a trade certificate or diploma, but many people simply do not realise the opportunity to do so is there.⁶¹

6.72 The nature of the work was also cited as a reason for labour shortages. Mr John Hazeldene the Managing Director of Hazeldene's Chicken Farm noted that

58 Mr Stuart Clarke, Director, Food industry Development, Department of Agriculture and Food, Western Australia, *Committee Hansard*, 18 April 2012, p. 7.

59 Mr Chris Griffin, Australian Dairy Industry Council, *Committee Hansard*, 9 March 2012, p. 21.

60 Haigh's Chocolates, *Submission 59*, p. 1.

61 Australian Manufacturing Workers' Union, *Submission 21*, p. 13.

his business was 'not an employer of choice when you talk about a processing floor'.⁶² But, he noted, the work was rewarding and:

We have a pretty good workforce. It is not a glamorous job and it is probably hard to entice the really highly educated people. But as far as unskilled workers are concerned, we provide a lot of employment for those sorts of people.⁶³

Impact of shortages

6.73 A number of submitters noted that the effect of these factors was to drive up the cost of labour at least in the short term. As Mr David Harrison, General Manager of Advocacy, Chamber of Commerce and Industry of Western Australia, stated:

Looking at some of the challenges for our members, and certainly food suppliers and manufacturers are no exception to this, the biggest challenge is labour—the availability of it and the ability to retain their workforce. For those who are lucky enough to find or hang onto their workers, it comes at a significant cost in terms of dollars because they are competing across the whole economy, including with the resources sector, for those workers. Workers are at a premium price at the moment and that is impacting on margins, bottom lines and profitability, and I am sure that each of the members here will talk to you about that.⁶⁴

6.74 Similarly, Mrs Mac's Pty Ltd confirmed that the cost of labour would only increase, at least in the near term:

Labour shortages (both skilled and unskilled) are an issue for the food industry, particularly in WA where the mining boom creates a shortage of labour in the lower paid industries forcing wages up ...It is expected we will be facing another serious labour shortage in 2012 as many mining and energy projects come on stream.⁶⁵

6.75 The AgriFood Skills Council argued that food processing businesses were particularly vulnerable to wage rises resulting from a tight labour market:

This is particularly in regional Australia where many food processing establishments are located and dependent on the food production supply chain, which is vulnerable to workforce attrition to the resources boom due to portability of skills. Across the supply chain enterprises are competing for an already scarce labour pool at higher pay-rates than the food sector

62 Mr John Hazeldene, Managing Director, Hazeldene's Chicken Farm, *Committee Hansard*, 9 March 2012, p. 26.

63 Mr John Hazeldene, Managing Director, Hazeldene's Chicken Farm, *Committee Hansard*, 9 March 2012, p. 27.

64 Mr David Harrison, General Manager of Advocacy, Chamber of Commerce and Industry of Western Australia, *Committee Hansard*, 18 April 2012, p. 10.

65 Mrs Mac's Pty Ltd, *Submission 4*, p. 4.

can afford. If not addressed ..., these factors may threaten the sustainability of Australia's food industry as a whole – with significant implications for regional social fabric, the economy and the environment.⁶⁶

Current programs

6.76 The evidence before the committee about potential solutions concentrated mainly on the role of immigration in alleviating the pressure food processors felt as a result of labour shortages. These current programs took two general forms: those which connected recent migrants and jobs, and those which specifically brought in labour from overseas to assist industries.

6.77 Submitters were generally very positive about programs connecting recently arrived migrants and jobs. Mr Millington, of Luv-a-Duck, noted that Luv-a-Duck had considered relocating to a bigger city to overcome labour shortages, but that it instead employed a number of recently arrived migrants:

Unskilled labour shortages we have overcome ourselves. Given Nhill is an isolated area and we are a big fish in a small pond, the unemployment rate in Nhill is around two per cent. So it is not that we do not employ the locals or the locals do not want to work for us. The fact is that there are just not the numbers there to be able to do it. When we wanted to expand the operation[we found more staff with the Karen Burmese. who have done a fantastic job for us.]⁶⁷

6.78 Mr Hazeldene, of Hazeldene Chickens, for example, noted similarly that much of his company's workforce was drawn from non-English-speaking backgrounds, such as Vietnamese, Thais, Chinese and Burmese, who had contributed very positively and been well accepted in the Bendigo community.⁶⁸

6.79 In response to questioning from Senator McKenzie, Mr Hazeldene went on to explain that he had not sought to access any special immigration schemes. Rather, the local council had approached him about providing employment opportunities to migrants, most recently Karens from Burma.⁶⁹

6.80 Mr Stuart Clarke, Director of Food Industry Development, in the Western Australian Department of Agriculture and Food, stated that his Department had met with representatives from the baking industry to discuss solutions to the labour shortage resulting from the mining boom. Mr Clarke told the committee that:

⁶⁶ AgriFood Skills Australia, *Submission 10*, pp 2–3.

⁶⁷ Mr John Millington, Company spokesman, Luv-a-Duck, *Committee Hansard*, 17 April 2012, p. 35.

⁶⁸ Mr John Hazeldene, Managing Director, Hazeldene's Chicken Farm, *Committee Hansard*, 9 March 2012, p. 27.

⁶⁹ Mr John Hazeldene, Managing Director, Hazeldene's Chicken Farm, *Committee Hansard*, 9 March 2012, p. 27.

We recently had a workshop where we put in the same room access to pools of labour that the baking and milling businesses had not previously accessed before. These are recent migrants. ...There were lots of light bulb moments in the room, about how to access labour that would be appropriate for that particular business [The migrants] are keen to be part of the community and to be gainfully employed. That is one solution for a particular type of labour, particularly unskilled labour in the food industry.⁷⁰

6.81 Mr Clarke believed that direct connections between the industry, government and non-government groups assisting immigrants had a number of benefits:

Those businesses are now liaising with those agencies to get that direct input. ...[Both] were very keen to see how far they could go It is to build an ongoing connection as well, ...We got the training providers involved in the meeting as well. The training council were there. They have a certain role to play also. It is several pieces of the puzzle, but the puzzle is coming together now.⁷¹

6.82 Mr Gavin Cator, Chief Executive Officer of the Greater Shepparton City Council, informed the committee that his council had previously used the Victorian Government's Skilled Migration Program to attract workers to regional centres, and that this program had been successful in placing skilled migrants:

The Victorian government has previously successfully funded a skills program to attract skilled workers into the area. The City of Greater Shepparton has been part of that program. That has been successful to the extent that 47 placements have been provided in the last few years. Across our area 28 businesses have been assisted. We have 10 successful placements happening at this period of time and we are attempting to assist 33 businesses currently. I would suggest that it has been a very successful program but, unfortunately, the Victorian government has not sought to continue funding for that program for next year.⁷²

6.83 Other submitters found solutions to their labour problems in specialist immigration schemes. Mr Millington, of Luv-a-Duck, stated that his company had used visas available under section 457 of the *Migration Act 1958* (Cth) (457 Visas) to fill demand for skilled labour:

Our demand is primarily for skilled tradesmen—and we have heard talk this morning about the mines and the fact that they are sucking up a lot of the skilled tradesmen. We are one of the companies that suffer as a result of

70 Mr Stuart Clarke, Director, Food Industry Development, in the Western Australian Department of Agriculture and Food, *Committee Hansard*, 18 April 2012, p. 7.

71 Mr Stuart Clarke, Director, Food Industry Development, in the Western Australian Department of Agriculture and Food, *Committee Hansard*, 18 April 2012, p. 7.

72 Mr Gavin Cator, Chief Executive Officer of the Greater Shepparton City Council, *Committee Hansard*, 8 March 2012, p. 12.

that. We have a predictive scheme in our company whereby we train apprentices and after four to five years they decide to go to the west to make their fortune. Some come back but most do not. So that is one of the problems that we have. To overcome it we have been bringing in staff from overseas, particularly from South Africa and Zimbabwe.⁷³

6.84 Mr Millington did have some criticisms of the 457 Visa regime, telling the committee that his company had lost access to good people because of delay in assessing their qualifications:

There is an issue regarding trade recognition [which] ... is causing a lot of headaches. I will give you an example. In the last three weeks we have had a toolmaker join our company. He is from South Africa. It has taken us nearly two years to get him in. He is a very patient person and he also knew one of the diesel mechanics that we had brought in previously. On the other hand, we had three others that we interviewed nearly a year ago—two refrigeration mechanics and a fitter and turner—and in the last month they have all bailed out; they have said they cannot wait any longer. So we went to South Africa and we interviewed them, only to lose them at the last moment. That has set us back 12 months. It is a big problem.⁷⁴

6.85 AgriFood Skills Australia also raised concerns about skills recognition in its submission to the committee, noting that:

[T]here is a growing demand for labour which will not be met by national labour supply. A key barrier for industry to be eligible for skills programs is the ANZSCO code system. This system does not accurately reflect the occupations within the food processing industry, and where it does, the skill level requirements are at too low a level.⁷⁵

6.86 DEEWR presented some evidence to the committee about its programs to address labour shortages through migration. It made particular reference to the Pacific Seasonal Worker Pilot Scheme as a means to assist the horticultural industry deal with peak demands. It noted that the Scheme had recently expanded to become the Seasonal Worker Program.⁷⁶ This Program has not been extended to allowing food processors to employ seasonal Pacific workers, though the committee notes that AgriFood Skills Australia submitted it should.⁷⁷

73 Mr John Millington, Company spokesman, Luv-a-Duck *Committee Hansard*, 17 April 2012, p. 35.

74 Mr John Millington, Company spokesman, Luv-a-Duck *Committee Hansard*, 17 April 2012, p. 35.

75 AgriFood Skills Australia, *Submission 10*, p. 5.

76 Mr Malcolm Greening, Branch Manager, DEEWR, *Committee Hansard*, 11 May 2012, pp 26–27.

77 AgriFood Skills Australia, *Submission 10*, p. 5.

Committee view

6.87 The evidence before the committee suggests that the food processing sector has suffered not only from a shortage of skilled graduates, but also of tradespeople and unskilled workers. It indicates that, as low margin and high volume businesses, it was often difficult for processors to compete with the wages offered by the mining sector and they were unable to either employ or retain sufficiently skilled employees. Obviously, this inhibits food processing businesses' profitability, sustainability and prospects for growth.

6.88 The committee is encouraged by the industry's use of partnerships with government and communities in order to fill these labour shortages. The committee is particularly encouraged by the evidence it received about food processing businesses in regional centres employing recently arrived migrants, such as the Karen from Burma. The committee recommends that the government continue to promote and investigate partnerships and programs that connect recently arrived migrants and international workers to jobs in the food processing sector, particularly to jobs in rural and regional centres.

Recommendation 22

6.89 The committee recommends that the government continue to promote and investigate partnerships and programs that connect recently arrived migrants and international workers to jobs in the food processing sector, particularly to jobs in rural and regional centres.

6.90 The committee also notes the possibility of extending the Seasonal Worker Program to allow food processing businesses to offer seasonal work. While the committee understands that the Program has only recently progressed from its pilot stage, it believes that it could be extended to the processing sector, not least because of its intimate connections to the agricultural industries which may already access the Program. The committee believes that this would assist the sector in overcoming short term labour difficulties, without undermining the wages, conditions or employment prospects of Australian workers.

Recommendation 23

6.91 The committee recommends that the government investigate the possibility of extending the class of employers able to access the Seasonal Worker Program to include employers in the food processing sector.

6.92 The committee heard some evidence to suggest that the 457 Visa process was not entirely adapted to the food processing sector, particularly in relation to skills recognition. The committee therefore recommends that the government investigate whether the skills recognition frameworks used for skilled migration programs, such as the Australia and New Zealand Standard Classification of Occupations code system, are appropriately recognising food processing skills and qualifications.

Recommendation 24

6.93 The committee recommends that the government investigate whether the skills recognition frameworks used for skilled migration programs, such as the Australia and New Zealand Standard Classification of Occupations code system, are appropriately recognising food processing skills and qualifications.

6.94 Finally, the committee also heard evidence suggesting that the 457 Visa process did not always take into account the issues facing the food processing industry, particularly the impact of a two-speed economy. The committee understands that some food processing businesses have had difficulties in obtaining workers through the 457 Visa process as a result of the demand for particular skills in the mining sector and because government does not adequately differentiate between industries in assessing applications for such visas. The committee recommends that the government require the officers responsible for assessing 457 Visa applications for the food processing sector to have specific knowledge of the sector, its requirements, and the markets within which it operates, or access to expertise and advice about these issues.

Recommendation 25

6.95 The committee recommends that the government require the officers responsible for assessing 457 Visa applications for the food processing sector to have specific knowledge of the sector, its requirements, and the markets within which it operates.

Workplace relations issues

6.96 Apart from skills shortages, many submitters were concerned about workplace relations issues. While there were a number of discrete issues that submitters raised about the operation of specific parts of the FW Act, concerns were ultimately focused on the issues of wages and flexibility.

Wage issues

6.97 Some submitters indicated concern about increasing wage rates under the FW Act and modern awards. Mr Gary Burridge, Chairman of AMIC, submitted that these wage rates had been occurring in recent years without simultaneous increases in productivity:

But rising labour costs without productivity offsets, along with on-costs such as workers compensation and the new superannuation contributions, are driving higher per unit labour costs, making running a low-margin meat processing business in regional Australia less viable.⁷⁸

78 Mr Gary Burridge, Australian Meat Industry Council, *Committee Hansard*, 10 February 2012, p. 23.

6.98 Mr John Durkan, Merchandise Director of the Coles Group, believed that wage rates had the potential to impact very significantly on the future of the Australian food processing industry. In evidence to the committee, Mr Durkan stated:

The labour rates have the potential to make Australia an expensive place for food manufacturing. You can see that with some of the manufacturers who have moved offshore where they have factories in local countries such as New Zealand and South-East Asia that allow them to provide goods to Australia. We are in danger of seeing more of that happening, specifically with multinationals where they can supply efficiently in large volumes. This is where scale plays a part for those multinationals. With local Australian businesses it is more difficult to do that, obviously.⁷⁹

6.99 Other submitters noted that high wages were both positive and negative as they could operate to attract workers to Australia, alleviating the pressure many felt as a result of labour shortages. Mr Roger Lenne, a member of Fruit Growers Victoria, told the commission that his orchard business employed substantial numbers of backpackers:

We employ about 100 backpackers because Australians do not wish to work in orchards. We must get that clear; they do not wish to. We do have three Australians and they are all over 50 years old. It is an awful job so you would expect people to move on, wouldn't you, from time to time? You would expect a large turnover. We had three leave such a terrible job. Why, you have to ask. We are paying exactly double what these people earn at home. We are paying them €150 to €160 a day. They get between €60 and €80 at home. We are meant to be internationally competitive.⁸⁰

6.100 Mr Les Murdoch, Chairman and Director of the Tasmanian Agricultural Productivity Group (TAPG), argued that high wages were simply a reality of the current labour market:

The cost of labour is a cost to production. When we compare ourselves to New Zealand, for example, we are much higher. Where we sit in the overall scheme of things, if we looked at paying people less we would not get anybody working for us. Everybody would leave and go to the mines [Even now] we have got people going elsewhere working because we cannot pay them enough.⁸¹

79 Mr John Durkan, Merchandise Director, Coles Group, *Committee Hansard*, 15 May 2012, p. 4.

80 Mr Roger Lenne, Member, Fruit Growers Victoria, *Committee Hansard*, 8 March 2012, p. 8.

81 Mr Les Murdoch, Chairman and Director, Tasmanian Agricultural Productivity Group, *Committee Hansard*, 12 April 2012, p. 6.

6.101 Although these costs were a reality, Mr Murdoch argued that they would not be without effect. Such high labour costs would lead to increased mechanisation as businesses sought to remain competitive in domestic and international markets.⁸²

6.102 Dr McKinna was more pessimistic about the effect that high labour costs would have on the future of Australia's food processing sector. Dr McKinna submitted that the future was stark:

... for food products where there is a high labour content or the cost of raw or materials is high, Australia is not competitive, and these industries will gradually die. High labour, fresh food products will only remain viable because it is not practical to ship them cost effectively, e.g. washed lettuce.⁸³

Flexibility issues

6.103 By far the most significant issue that submitters raised with respect to workplace relations was that of flexibility under the FW Act and modern awards. The committee heard evidence that the FW Act was inflexible in key areas around penalty rates, working hours and casual rates.

6.104 A number of submissions to the committee noted that the FW Act and modern awards applicable to the food processing industry did not account for the commercial realities within which they had to operate. In particular, some submitters felt that the applicable modern awards did not sufficiently take into account the connections between food processing and agriculture and the seasonal nature of the industry. Mr Murdoch, of TAPG, summarised the issue that faced many food processors:

When you are processing vegetables you need to process vegetables on the weekend. When you are paying double time and double time and a half on public holidays and all those sorts of things, it is a huge cost, and those things are not really incurred in New Zealand.⁸⁴

6.105 These sentiments were echoed in a number of other submissions. In response to a question on notice, McCain Foods stated that:

The current penalty rates regime in Australian award structures do not encourage continuous 24 hour 7 day processing. Overtime and shift penalties are much higher in Australia than in New Zealand, which again contributes to lower productivity and lack of competitiveness in Australian made products.⁸⁵

82 Mr Les Murdoch, Chairman and Director, Tasmanian Agricultural Productivity Group, *Committee Hansard*, 12 April 2012, pp 6–7.

83 Dr David McKinna, *Submission 32*, p. 20.

84 Mr Les Murdoch, Chairman and Director, Tasmanian Agricultural Productivity Group, *Committee Hansard*, 12 April 2012, p. 5.

85 McCain Foods, answers to questions on notice, 12 April 2012 (received 11 May 2012).

6.106 Mr Andrew Wilsmore, General Manager of Policy and Government Affairs, Winemakers Federation of Australia, noted that assumptions about working hours and requirements under the FW Act clashed with the seasonal nature of the wine industry:

The key thing to note is that the wine making industry and our cellar doors, and the grape-growing side of our business, is not a typical manufacturing industry where you can turn your machine off at five o'clock or over the weekend. There are midnight pickings during vintage and it is just full on for weeks on end. The current structure [under the fair Work Act] does not allow you the flexibility as an industry to be able to meet the workforce requirements which are there for us.⁸⁶

6.107 As Mr Andrew Heap, Policy Advisor to the Tasmanian Farmers and Graziers Association, starkly put the issue:

We are not talking about basic wages here; we are talking about the sorts of penalties that our competitors do not have.⁸⁷

6.108 Submitters gave evidence to the committee that recognition of the commercial realities of the food processing industry should either come through changes to the modern award or through greater flexibility to negotiate the terms and conditions of employment with employees. Ms Carnell, of AFGC, stated that:

[T]he reality is that there have been some very real issues for a number of our members with regard to the flexibility clause and not being able to translate it into new agreements [with] the level of flexibility that they have had in the past, and that is a real issue.⁸⁸

Effect of flexibility provisions

6.109 The effect of the lack of flexibility in industrial awards was, according to evidence before the committee, to increase the cost of production and reduce the domestic and international competitiveness of Australian food products. Ms Jan Davis, Chief Executive Officer of the Tasmanian Farmers and Graziers Association, provided the following example of the manner in which the inflexibility of the FW Act limited the ability of employers to offer their employees additional hours:

In a previous role, I was the CEO of the mushroom industry association. The mushroom industry is one of our most labour intensive industries—it is hugely labour intensive. We have very short windows for producing mushrooms. They double in size every 22 hours. They have to be picked when they have to be picked, because markets will require a certain size product. We had many, many people who were prepared to come in and

86 Mr Andrew Wilsmore, General Manager of Policy and Government Affairs, Winemakers' Federation of Australia, *Committee Hansard*, 13 December 2011, p. 16.

87 Mr Andrew Heap, Policy Advisor, Tasmanian Farmers and Graziers Association, *Committee Hansard*, 12 April 2012, p. 9.

88 Ms Kate Carnell, AFGC, *Committee Hansard*, 13 December 2011, p. 27.

work split shifts, largely women with school-age children. They would work from 6 until 8, go home, and come back and work 4 until 6 and go home—a split shift, but you cannot do it now. We have many people who are prepared to work weekends because it suits their family circumstances, but because of the loadings we cannot do that now.⁸⁹

6.110 Mr Dick Smith has similar concerns, as expressed in the following exchange with the committee:

Mr Smith: I think we should look at that [the issue of penalty rates], because the alternative is that everything will get processed overseas. We will not employ anyone. As I mentioned, our costs will go down slightly, but our taxes will go up to pay for the dole for these people. It is an international marketplace. Our governments, with the support of the electorate, have said, 'We want to have free trade; we want the advantages.' That does mean you may need look at penalty rates. A good example is Heinz taking their beetroot manufacture to New Zealand just because the labour cost is slightly lower.

CHAIR: McCain has done the same thing with vegetables.

Mr Smith: I would have much preferred it stay here, to have done a deal with the unions and said, 'Either you can lose your jobs or we can not have the penalty rates that we have at the moment and the jobs will stay in Australia.'⁹⁰

Current flexibility provisions and their review

6.111 There was some acknowledgment that the FW Act included flexibility provisions, but submitters argued that these were either not being taken up, or were insufficient for the purposes of the food processing industry.⁹¹ Ms Barb Cowey, Senior Policy Advisor to Business SA, argued that:

There are flexibilities in the act, no-one is questioning that, but they are not necessarily flexibilities that actually suit the industry, the industry nature and the way that the industry actually needs its labour force.⁹²

6.112 In its evidence to the committee, DEEWR noted that modern awards were made following significant input from both employer and employee groups. Dr Morehead, of DEEWR, noted that, during the initial award modernisation process in 2009, employer concerns about the original horticultural modern award resulted in its amendment:

89 Ms Jan Davis, Chief Executive Officer, Tasmanian Farmers and Graziers Association, *Committee Hansard*, 12 April 2012, p. 10.

90 Mr Dick Smith, Owner, Dick Smith Foods, *Committee Hansard*, 11 May 2012, p. 5.

91 Mr Antony Clarke, Senior Policy Adviser, Business SA, *Committee Hansard*, 17 April 2012, p. 3.

92 Ms Barb Cowey, Senior Policy Advisor, Business SA *Committee Hansard*, 17 April 2012, p. 3.

The horticultural award was one that got particular focus during the process [of award modernisation]. The then minister for workplace relations in August 2009 actually varied her award modernisation request relating to the horticultural award in response to the industry-specific concerns that were raised with her from employer groups.... [Consultation] resulted in the then Australian Industrial Relations Commission on 23 December 2009 issuing a decision which turned around and agreed with the majority of the employers' concerns. In that respect, issues such as piece rates, flexibility provisions, minimum payments for casual employees and other issues were really addressed in favour of what we had heard from employers. For example, the National Farmers Federation came out very much in support of that and was very happy with that result.⁹³

6.113 In relation to the horticultural award, Dr Morehead went on to note that:

The modern horticultural award does have a span of ordinary hours, which the employer groups supported. There were a number of flexibilities in respect of overtime and Sunday pay rates...with that particular award.⁹⁴

6.114 DEEWR explained to the committee that Fair Work Australia (FWA) was currently in the process of reviewing the operation of modern awards, and that FWA had received a number of applications to vary the awards governing employment in the food processing sector. Dr Morehead noted that eight applications had been made to vary the *Food, Beverage and Tobacco Manufacturing Award 2010*, and that representatives from both sides had sought its variation:

[T]he issues in the applications include things like clarifying the qualifications required for workers undertaking quality control; removing the shift allowance payable to casuals; and the unions, the AMWU and the National Union of Workers, seeking to have adult wages paid at the age of 18 years and to include loadings and entitlements to employees working non-standard hours, and so on.⁹⁵

6.115 Dr Morehead did, however, note that FWA was dealing with a number of issues that were raised in submissions relating to multiple industries. In a statement made on 27 April 2012, Justice Ross, President of FWA, relevantly identified applications to consider penalty rate, award flexibility and public holiday provisions in

93 Dr Alison Morehead, Group Manager of the Workplace Relations Policy Group, DEEWR, *Committee Hansard*, 11 May 2012, p. 27.

94 Dr Alison Morehead, *Committee Hansard*, 11 May 2012, p. 27.

95 Dr Alison Morehead, *Committee Hansard*, 11 May 2012, p. 28.

the *Food, Beverage and Tobacco Manufacturing Award 2010* as being dealt with as common issues.⁹⁶

Committee views

6.116 It is clear from the evidence before the committee that workplace relations issues are of significant concern to a number of businesses in the food processing industry. There are numerous pressures on the industry to remain locally and globally competitive, including the high wages paid to Australian food processing workers relative to those in many export-competing nations. The issues that appeared to be of most concern to witnesses were not generally those of union dominance or strikes, but of the impact of workplace relations laws on labour costs through both wage setting and penalty rates.

6.117 Some committee members believe that the impact of penalty rates may have a disproportionate effect on some sections of the food processing industry. The wine industry, for example, relies heavily on cellar doors and other venues trading after-hours, weekends and public holidays. Under the new Awards, this may be prohibitive due to wage costs, potentially affecting the economy of entire regions.

6.118 The evidence before the committee does not suggest that the FW Act is having an appreciable impact on basic wage rates, at least in the food processing sector. It seems clear to the committee that there are other factors operating in the labour market to increase wages without productivity offsets that, had wages been increased through FWA, might otherwise have been taken into account. There are other factors operating in the labour market to increase wages, including the mining boom and skills shortages identified in this chapter.

6.119 Some industries expressed concern that inflexibilities in the FW Act and modern awards do affect processors' labour costs. In particular, restrictions on food processors' ability to negotiate terms and conditions of employment that take into account the commercial realities of the food processing industry appear to be negatively affecting food processing businesses, their profitability and, as one witness put it, their sustainability.⁹⁷ The evidence before the committee suggested that the current flexibility provisions in the FW Act, relating to the negotiation of enterprise agreements and individual flexibility arrangements, do not adequately serve industry needs.

96 Fair Work Australia, *Statement—Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 Part 2 of Schedule 5, item 6—Review of all modern awards (other than modern enterprise awards and State reference public sector modern awards) after first 2 years*, paragraph [4], available at <http://www.fwa.gov.au/decisionsigned/html/2012fwa3514.htm> (accessed 13 June 2012).

97 Ms Jan Davis, Chief Executive Officer, Tasmanian Farmers and Graziers Association, *Committee Hansard*, 12 April 2012, p. 10.

6.120 The committee believes that, while the award modernisation process has resulted in the reduction of red tape and compliance costs for businesses (in that there are now only 123 modern awards instead of thousands of industrial instruments), this has occurred at the expense of flexibility, particularly individual flexibility. The committee believes that the one-size-fits-all approach of the FW Act and modern awards inhibits productivity, business profitability and employment prospects, and that it should be accompanied by an appropriate level of flexibility. Allowing employers greater flexibility to negotiate the terms and conditions of employment with their employees will assist in increasing productivity and lowering employers' labour costs. The committee therefore recommends that the government review the flexibility provisions under both the FW Act and modern awards, with a view to increasing the ability of employers and employees to negotiate flexible working arrangements, particularly with respect to penalty rates, split shifts and minimum hours for seasonal industries.

6.121 The committee notes that FW Australia's 2012 report into the FW Act contained a number of recommendations to improve the flexibility of awards.⁹⁸ The committee believes that the government must act to ensure that the FW Act provides meaningful individual flexibility arrangements while maintaining protections for employees.

Recommendation 26

6.122 The committee recommends that the government review the flexibility provisions under both the *Fair Work Act 2009* and modern awards, with a view to increasing the ability of employers and employees to negotiate flexible working arrangements, particularly with respect to penalty rates, split shifts and minimum hours for seasonal industries.

6.123 The committee notes that some of the food processing industry's concerns about flexibility may be dealt with through the review of modern awards. It encourages businesses in the food processing industry to become involved in that review, to ensure that FWA takes their views into account.

6.124 The committee believes that more flexible workplace relations laws better take into account the commercial realities facing the food processing sector. The committee acknowledges that the expectations consumers and retailers place on food processors and producers (and consequently workers and unions) are such as to require workplace relations laws that do not inhibit or penalise constant production during peak periods.

98 Fair Work Australia, *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation*, June 2012, p. 109–110.

6.125 As an aside, the committee notes that many witnesses spoke of the need for greater 'flexibility', but few explained precisely what they meant by the term or how increased flexibility would affect their business if it were granted. That is, it was not entirely clear whether witnesses used the term 'flexibility' as an alternative way of expressing their interest in lowering labour costs to boost competitiveness, or whether they believed that an increased ability to depart from the terms of the modern award would in fact improve outcomes for workers and raise productivity (for example, that lowering penalty rates for split shifts might increase the number of hours offered to individual employees during peak production periods).

Chapter 7

Innovation, research and development

Introduction

7.1 Throughout its inquiry the committee consistently received evidence suggesting that research and development led innovation will be critical to the future of Australia's food processing industry. As a result, one of the committee's key concerns has been to identify the settings and incentives for encouraging investment in research and development in the food processing sector.

7.2 This chapter examines the opportunities and challenges for ongoing innovation through research and development in Australia's food processing sector and identifies the role of government in enabling the industry.

An overview of expenditure

7.3 The government estimates that during 2008–09, rural research and development investment totalled \$1.5 billion, \$710 million of which was attributed to government funding for programs including Cooperative Research Centres, the CSIRO and universities, Rural Research and Development Corporations and revenue foregone through the research and development tax concession.¹

7.4 The CSIRO views research and development within the food supply chain as 'important to ensure that the Australian food industry is secure and sustainable'.² Similarly, the Australian Bureau of Agricultural Resource Economics and Sciences (ABARES) have stated that '[r]esearch and development on food supply chains could be as important to food security as research to improve yields'.³ Although ABARES considers that '[t]here is no foreseeable risk to Australia's food security', they have identified that there will be challenges to food security in the coming decades:

Australia's strength in providing food to other countries faces a number of challenges over coming decades. The rate of growth in agricultural productivity is declining in Australia, and perhaps globally, as growth in investment in research and development (R&D) has declined. Additional

1 Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, June 2011, pp 44–45.

2 Jay Sallahewa, Sustainable Food Processing, CSIRO, Sustainable food manufacturing – challenges and opportunities, *Food manufacturing innovation and sustainability forum presentation: session one*, 4 June 2010, p. 37.

3 Australian Bureau of Agricultural Resource Economics and Sciences (ABARES), *Science and Economic Insights – Issue 1: 2011–Global food security: facts, issues and implications*, May 2011, p. 4.

challenges include climate change, increasing pressure on limited resources such as land, water and fertiliser, and, if Australia follows the path of a number of other countries, demand from non-food uses of crops, particularly for biofuel.⁴

7.5 ABARES considers strong productivity growth will be key to ensuring food security in the face of these challenges.⁵ Yet despite the benefits of research and development, ABARES has reported that 'public expenditure on R&D in agriculture, which grew at an average of 6.5 per cent a year between 1953 and 1980, has since grown at only 0.6 per cent a year'.⁶ The concern that investment in research and development has declined over recent years is shared by Dr Martin Cole and Mr Geoff Ball of the CSIRO:

Agricultural research and development investment has declined globally over the last two decades and is woefully inadequate to deal with the challenges... The lack of investment in innovation has also seen the food industry become one of the least profitable industry sectors...an increase in investment is needed if the food industry is to overcome the many challenges of globalisation and realise the growth opportunities of meeting the consumer drivers of health, convenience and premium foods...⁷

7.6 Dr Cole and Mr Ball claim that the 'complex issue of food security cannot be met solely by increasing production efficiencies', but that opportunities that improve sustainability must be found within the entire supply chain:

...this will require investment in both pre and post-farm gate food production and processing. The solution will require the development of new sustainable food manufacturing technologies that minimise the impact on the environment, water use, greenhouse gas emissions, waste generation and energy requirements.⁸

7.7 They consider that a 'global perspective to innovation' is required to ensure 'cutting edge ideas and technology from the rest of the world [can] be adapted and

4 ABARES, *Science and Economic Insights – Issue 1: 2011 – Global food security: facts, issues and implications*, p. 1.

5 ABARES, *Science and Economic Insights – Issue 1: 2011 – Global food security: facts, issues and implications*, p. 5.

6 ABARES, *Science and Economic Insights – Issue 1: 2011 – Global food security: facts, issues and implications*, p. 11.

7 M. Cole and G. Ball, 'Global trends and opportunities in food and nutritional sciences, JR Vickery Address, 2010, 43rd Annual AIFST Convention, *Food Australia*, October 2010, pp. 461–462.

8 M. Cole and G. Ball, 'Global trends and opportunities in food and nutritional sciences, JR Vickery Address, 2010, 43rd Annual AIFST Convention, *Food Australia*, October 2010, pp 461–462.

adopted here' and suggest that 'a collaborative research network that partners with industry will develop the human capital required for innovation.'⁹

The role of government

7.8 Although the food processing sector faces a multitude of challenges, many outside the realm of government control, there remain opportunities for government to ensure its policies encourage the sector's long term viability. One such area is by providing an environment conducive to ongoing investment in research and development.

7.9 Campbell Arnott's made the point that, despite its size and value to the economy, the food processing sector is often forgotten when the government is considering policy responses to encourage ongoing investment:

When the government talks about manufacturing, it is always about the car industry or heavy industry. There are more than 300,000 people employed in food manufacturing in this country. We have some manufacturers, including ourselves, which have leading-edge technology that does require some of our best and brightest from university to come and work with us to continue that trend. Without technology and innovation, you will not be able to compete here. You will never be able to compete with a box of biscuits coming out of China. ...The only way to change that game is to have great R&D and technology, and people in plants that can adapt that technology and scale it up.¹⁰

7.10 The Australian Manufacturing Workers Union (AMWU) agreed that as much as possible should be done to support Australian companies:

...to be able to effectively take up any opportunities that arise in our region including looking to greater support for R&D and innovation in the sector, assisting food companies to re-equip with state-of-the-art food production technologies that drive innovation and productivity, and effectively investing in the skills and training of their management and workforce.¹¹

Committee view

7.11 The committee notes the current government's claims it has fostered investment in the industry through its tax settings and research programs. However, the committee notes the changes that were made to the research and development tax

9 M. Cole and G. Ball, 'Global trends and opportunities in food and nutritional sciences, JR Vickery Address, 2010, 43rd Annual AIFST Convention, *Food Australia*, October 2010, pp 461–462.

10 Mr Craig Funnell, Vice President, Supply Chain – Asia Pacific, Campbell Arnott's, *Committee Hansard*, 10 February 2012, p. 59.

11 Ms Jennifer Dowell, National Secretary, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, p. 2.

credit in 2010 and the assertions of the then Minister, who, at the time, informed a parliamentary committee that the recent doubling in claims, which the government attributed to as resulting from illegitimate claims, was 'unsustainable'. The committee notes that although the government maintains that the definitional changes that were subsequently introduced would ensure only legitimate claims could be made, the effect of those changes would be a capping of the expenditure:

In my view, given the growth in expenditure that has occurred in this particular area—and it has doubled in the last couple of years—you have to make an assessment as to whether or not you think the level of genuine R&D investment has doubled in that length of time. It poses another question: are claims being submitted that are not legitimate? Under the current way in which the law is interpreted, people are able to do this. We want to make some changes because if you do not do the changes then the whole scheme becomes unsustainable, the whole process is brought into disrepute. In my judgement, I would be negligent not to act and take action if I knew this was going on, had responsibility for the administration of this program and held it in the regard that I do. That is what we have done. We have moved it from a system of deductions to a system of credits. We are doing it within a funding envelope, as I say, of \$1.5 billion a year.¹²

7.12 The committee takes the view that although it is too soon to understand the impact of the changes to the research and development tax credit, there is a need to continue to monitor if the reduction in the credit has a negative impact on the sector.

7.13 The committee considers that additional and ongoing government investment through tax settings and research programs is necessary to support research and development led innovation in the food processing sector. In this context, the committee views research and development led innovation as including improvements in all parts of the processing chain—improved equipment and processes that create production efficiencies as well as new product development. Innovation in all parts of the chain is necessary given the challenges confronting the industry.

The importance of research and development

7.14 Industry participants on this inquiry consistently highlighted the important role research and development needs to play, particularly if Australia is to capitalise on the opportunities presented by growth in the Asian markets.

7.15 Lion Pty Ltd identified the importance of investment and innovation in capturing the opportunities presented by Asian markets:

There is clearly an opportunity here for Australia to become the food bowl for Asia and feed emerging markets. To do this, we must support local production and build an international reputation as a producer of the highest

12 Senator the Hon. Kim Carr, Minister for Innovation, Industry, Science and Research, Senate Economics Legislation Committee, *Budget Estimates Hansard*, 31 May 2010, p. 81.

quality food and beverage products. It is only through investment and innovation that the industry can take advantage of this opportunity.¹³

7.16 However, in identifying this area of future growth, Lion Pty Ltd advised the committee that their ability to continue to invest and take advantage of such opportunities is suffering as a result of the current domestic market environment:

Unfortunately, the current economic climate provides limited scope for business in the sector to innovate and expand. Sustained low consumer confidence continues to put downward pressure on pricing while input costs continue to spike, meaning that most in the industry have found their margins squeezed and have limited ability to reinvest. The Australian dollar continues to undermine exports while enhancing opportunities for competing imports, particularly in private label.¹⁴

7.17 It is clear that the strong Australian dollar, which is placing downward pressure on profit margins, is affecting the level of investment businesses are able to make. Like Lion Pty Ltd, the Australian Meat Industry Council (AMIC) highlighted the difficulties they face in pursuing innovation and research and development:

The red meat industry processing sector operates on margins of the order of one to three per cent, against a set of tightly controlled cost-plus parameters. The risk-reward balance is not as attractive for R&D in the red meat processing sector because of the small margins industry has to fund innovation from. With a margin of one to three per cent it is very hard to fund innovation. Government needs to understand the specific needs of the red meat processing sector in R&D programs.¹⁵

7.18 Campbell Arnott's also identified the importance of innovation to their business and whilst it appears to the committee that they focus more on growing their share of the domestic market and are not as keenly looking to capture the opportunities presented by foreign markets, the role of innovation is no less important to their continued success:

To remain competitive we have to continue to invest substantially for innovation and growth. It is not just about cost. You have to be cost competitive but you have to be innovating to grow. You have to have a reason to entice the consumer to the supermarket shelves to want to buy your product. ...**So cost is absolutely important; innovation is more important.** [emphasis added] We need to make the products that our

13 Mr Duncan Makeig, Group Sustainability Director and General Counsel, Lion Pty Ltd, *Committee Hansard*, 10 February 2012, p. 50.

14 Mr Duncan Makeig, Group Sustainability Director and General Counsel, Lion Pty Ltd, *Committee Hansard*, 10 February 2012, p. 50.

15 Mr Gary Burridge, Chairman, Australian Meat Industry Council, *Committee Hansard*, 10 February 2012, p. 23.

consumers want and also tempt them with products they have not yet even thought of.¹⁶

7.19 However, not all participants in the food processing sector are optimistic about the opportunities that can be harnessed through increased investment in research and development. This was most clearly identified by Mrs Mac's who, in their submission, advised the committee that without 'radical innovation' the future of food processing in Australia is not 'bright':

The competitiveness of Australian processed foods at a global level is currently being further eroded by the strong Australian Dollar and a lack of any willingness by governments and retailers to consider applying a level manufacturing playing field by requiring foreign manufacturers that export food products in to Australia to meet the same processing standards and hence consequential costs that are imposed by government regulation here in Australia across all tiers of government.

Unless this situation changes, then with the exception of niche products, or some radical innovation to processing techniques developed in Australia, there is not a bright future for Australian food processing and manufacturing companies.¹⁷

Committee view

7.20 Given that investment in research and development and increased cost efficiencies and improved competitiveness, the committee takes the view that more needs to be done to support continued investment in research and development. As tighter margins further reduce the capacity of firms to invest in research and development, the committee considers it critical that the government needs to provide an environment that encourages ongoing investment in this area.

7.21 The committee considers that the evidence it has received demonstrates that research and development led innovation will be key to overcoming the challenging environment that many in the food processing sector face. Campbell Arnott's explained this very well:

We are beset at the moment with a number of unique challenges that we probably have not seen before occurring at the same time. As I said earlier, you can bemoan them or you can work out how to compete... We have certainly seen a huge benefit from incentivising good investment in technology in our plans to enable us to continue to grow the business and also move up the food chain, if I can use that word colloquially, in terms of

16 Mr Craig Funnell, Vice President, Asia Pacific Supply Chain, Campbell Arnott's, *Committee Hansard*, 10 February 2012, p. 55.

17 Mrs Mac's, *Submission 4*, p. 1.

technology, which then requires a different skilled workforce over time to manage.¹⁸

7.22 The committee is encouraged by the resilience of the sector and its commitment to facing the challenges head on but acknowledges the role of government in supporting industry through setting appropriate policies, specifically in this instance, those relating to research and development.

The challenges to research and development led innovation

7.23 A unique challenge among those facing food processors is the growth in private label supermarket products. The role of these products in the mix offered to the market place poses a significant risk to food processors that were once more able to rely on loyalty through their established brands:

Consumers do want choice, and the permeation of home brand damages the opportunity for food manufacturers to build brands and brand loyalty.¹⁹

7.24 Over time, however, as the major retailers have sought to grow their businesses by entering the market with private label products which provide a similar, if not identical alternative to consumers at a reduced cost, the need to capture improvements through innovation, whether that be through new products or improved processes, has become paramount for survival.

Intellectual Property

7.25 Research and development enables Australian food processors to innovate their product offerings and ensure that their business models are as lean and competitive as possible. However, with the growth in private labels, the incentive for such investment is diminishing given that the large retailers are able to take advantage of the available intellectual property for their private label brands, without having to make any investment.

7.26 The Australian Food and Grocery Council (AFGC) explained how this can occur:

There are several ways that it can happen, where the IP can be taken over by the supermarkets. One is the declaration, up to 12 months before the product launch, by the branded manufacturers of what they are proposing in terms of new products or product renovation. There are anecdotes of exactly what you say happening, where the supermarkets have launched a private label even before the branded manufacturers have, with the same product concept... The other way that they take the IP from the branded

18 Mr Craig Funnell, Vice President, Asia Pacific Supply Chain, Campbell Arnott's, *Committee Hansard*, 10 February 2012, p. 61.

19 Ms Catherine Barnett, Chief Executive Officer, Food South Australia Inc., *Committee Hansard*, 10 February 2012, p. 17.

manufacturers is simply when a product is seen to be successful on the supermarket shelves the retailers then demand a private label version of it, which is almost identical if not identical.²⁰

7.27 Food South Australia were also worried by this trend:

Retailers can capitalise on the leading brands' innovation without the risk and expense of developing the intellectual property. Gone are the days when people only bought home brand if they could not afford anything else.²¹

Success through innovation

7.28 Despite this concerning evidence, the committee also received information that suggests that some food processing businesses, who have continued to innovate, have been able to resist moving into private label processing by maintaining their brands and developing new products:

We certainly see our focus being around our brands. We have some very strong brands in this country. Arnott's is seen in 96 per cent of all households in the country. Tim Tam is one of the strongest brands in the country. We see our resources—our capacity management of the asset base as well as our R&D and plant personnel being focused behind those brands—as being of higher importance than manufacturing private label. We have an asset base also—and this is probably different to colleagues who have spoken today—that is highly utilised. You have to continue to ensure that that asset base remains highly utilised and that the investments that go in behind it are behind innovation and technology to enable your brands to grow.²²

7.29 Campbell Arnott's attribute their success to product innovation:

We have [maintained our share of shelf] through staying ahead of the game and giving retailers a reason for wanting us to be on the shelf—because the consumers want our product. Consumers are savvy. They certainly are looking for price, but they are also looking for innovation and new products. ...

We are fortunate that we are in a sector that is fairly exciting. We are able to bring different products, textures and flavourings to a marketplace to excite consumers. We are taking advantage of that. We also have a very

20 Dr Geoffrey Annison, Deputy Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, 13 December 2011, p. 19.

21 Ms Catherine Barnett, Chief Executive Officer, Food South Australia Inc., *Committee Hansard*, 10 February 2012, p. 17.

22 Mr Craig Funnell, Vice President, Asia Pacific Supply Chain, Campbell Arnott's, *Committee Hansard*, 10 February 2012, p. 57.

large R&D marketing group who really do understand the consumer in this country and that allows us to bring those products to market.²³

7.30 Mr Vincent Pinneri of Coca-Cola Amatil also explained to the committee instances when they are able to take this approach and resist producing private label products:

On a particular innovation where we have first mover advantage we will not allow that to go into private label, versus other areas like tin cans, which is where our infrastructure is and our overheads are, it is about leveraging the infrastructure while we are in that space.²⁴

Wine

7.31 The committee heard that the growth of private label products is spreading further than everyday grocery items and now poses a potential problem to the Australian wine industry.

7.32 The Winemakers' Federation of Australia (WFA) explained the loss of diversity to the committee and how their industry organisation intends to confront the challenge that it presents through research and development. It also explained the importance of the RDC (Research and Development Corporations) model in including small grape growers and wine makers.

WFA believes that research and development plays a critical role in the wine industry's future, particularly in the areas of viticulture, oenology and market development. WFA's priority is to ensure that returns from R&D activities are maximisedIn partnership with Wine Grape Growers Australia (WGGA), we have established the Innovation Policy Committee to ensure R&D, especially that funded by industry levies, delivers cost-effective outcomes. WFA also works productively with [other organisations].WFA is seeking to achieve a better alignment of government and industry objectives from Research, Development and Extension (RD&E) and a stronger, expanded R&D base to ensure we maintain a dedicated R&D agenda that reflects the collaborative nature of the wine sector.

There are a large number of small grape growers and winemakers in the Australian wine sector – which is one of its greatest strengths. These businesses have little chance of conducting effective R&D on an individual basis and therefore rely heavily on the capability that is developed through levies allocated by the GWRDC towards research. WFA believes strongly that the RDC model is world leading and reflects the unique nature of much

23 Mr Craig Funnell, Vice President, Asia Pacific Supply Chain, Campbell Arnott's, *Committee Hansard*, 10 February 2012, p. 60.

24 Mr Vincent Pinneri, Managing Director, SPC Ardmona, Food Services Division of Coca-Cola Amatil (Aust) Pty Ltd, *Committee Hansard*, 10 February 2011, p. 42.

of Australia's agriculture and value-added businesses. Its preservation is important for ongoing innovation across the sector.²⁵

7.33 For those food processing sector participants that are unable to decline requests to provide product for private label goods, the committee received evidence that they must remain competitive, either through new product development or process improvements that reduce the costs in their business. However, in a tight market this can be difficult as spending on research and development may be one of the first areas of cost to be cut.

7.34 Mr John Berry of JBS Australia identified that this is occurring as operators look to take costs out of their business to ensure their survival, including funding that would otherwise be invested in research and development:

You may not be aware of this, but the meat-processing industry pays statutory levies on the processed animal direct to the Department of Agriculture, Fisheries and Forestry. That is then reallocated to the Australian Meat Processor Corporation. Its levy-paying members have access to 15 per cent of those funds to be used for the purposes of R&D. They can be leveraged on a dollar-for-dollar basis through the federal government.

That is a good model and has been a very successful model. But, without being too dramatic, I think we are currently in a situation where we are looking to take cost out of the business.²⁶

7.35 Mr Berry explained that in the meat-processing industry there are limits to the amount of automation and therefore 'leanness' that can be built into the production line and therefore, where research and development will not have a 'commercial payback' it will not be prioritised:

It is not realistic to expect that we can automate these businesses. They are and they will continue to be labour intensive businesses. So we are looking to implement technologies where we can. But, again, they have to meet commercial paybacks. We are looking to identify key areas of cost which we can take out of the business.²⁷

7.36 Although Coca-Cola Amatil do not face the same challenges as commodity processors such as the meat and dairy industries, they advised the committee that their ability to create new products through innovation will enable them to share more of the profits they make with their suppliers not only through requiring more product but also as a result of increased margins on new items. They gave the example of pears:

25 Winemaker's Federation of Australia, *Submission 35*, p. 9.

26 Mr John Berry, Director and Manager, Corporate and Regulatory, JBS Australia Pty Ltd, *Committee Hansard*, 12 April 2012, p. 38.

27 Mr John Berry, JBS Australia Pty Ltd, *Committee Hansard*, 12 April 2012, p. 38.

Historically, the business used to export a significant amount of pears to Japan, Germany and all over the world. We have subsequently reduced our quota to probably half, or maybe even less than that, but the trees are still there. So those pears are now going into the fresh market, which is reducing the fresh market price. Our ability to change that will be driven by our ability to execute a new processing technology, which we have found, that will allow us to do sliced pears that have a longer shelf life—21 days. They are still fresh, but sliced, and have anti-ageing and antibacterials. ...Being able to do a sliced pear is very different to selling a can of tinned fruit, which you can get from anywhere and can be easily replicated. It is about price realisation, which then allows us to share more equitably with the growers and other people in the supply chain²⁸

Committee view

7.37 The committee acknowledges that there are many complex challenges facing the Australian food processing sector and that the opportunities that research and development led innovation provide may not be accessible to all food processing sector participants. In light of this fact and given that researchers have identified that future success will depend on innovation within the entire supply chain, the committee considers that the role of government in ensuring that taxation and regulatory settings encourage innovation is even more important, particularly for small and medium enterprises and those commodity based processors that do not have the same ability to either access research and development or diversify their products.

Government support for research and development

7.38 The government currently provides support for research and development through the research and development tax concession and the provision of funding for Cooperative Research Centres, Rural Research and Development Corporations, the CSIRO, and universities.

7.39 Throughout its inquiry, the committee sought to understand how effective the existing support provided by these programs has been in encouraging research and development.

Overview of industry research programs

7.40 Cooperative Research Centres (CRCs) support research and development by fostering collaboration between researchers, industries, communities and governments to solve major challenges facing Australia.²⁹ They do this by linking researchers with industry to focus research and development towards utilisation and

28 Mr Vincent Pinneri, Coca-Cola Amatil (Aust) Pty Ltd, *Committee Hansard*, 10 February 2012, p. 40.

29 Department of Industry, Innovation, Science, Research and Tertiary Education, *CRC Directory 2011–12*, p. iv.

commercialisation.³⁰ CRCs may have many participating organisations including universities and research institutions, businesses, governments, international partners, not-for-profit organisations, and industry and community associations. At present there are eight active CRCs related to the food industry.³¹

7.41 Research and development corporations (RDCs) cover nearly all of Australia's agricultural industries and are the primary channel through which government provides funding for rural research and development.³² RDCs do this by investing in research, development and innovation that seeks to improve productivity and quality to ensure competitiveness, profitability and sustainability.³³ RDCs involve partnership between government and industry.³⁴

7.42 The Clean Technology Investment Program is a competitive, merit-based grants program introduced in 2011 to support Australian manufacturers to maintain competitiveness in a carbon constrained economy. It seeks to do this through grants for investments in energy efficient capital equipment and low emission technologies, processes and products.³⁵

The effectiveness of these programs

7.43 The committee sought the advice of the responsible government departments as to the effectiveness of these programs. On raising the matter of CRCs with the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE), the department explained that there are currently eight active CRCs related to the food industry but that none of those CRCs is specific to food processing:

I will start with the eight active CRCs... We listed the National Plant Biosecurity CRC, which had a ceasing date of 30 June 2012. It was actually successful in the 14th selection round we ran last year, and will continue funding for another six years starting from 1 July 2014. The Beef Genetics Technology CRC will cease on 30 June 2012...The other CRCs that are

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https://www.crc.gov.au/Information>ShowInformation.aspx?Doc=about_programme&key=bulletin-board-programme&Heading=The%20Program (accessed 24 May 2012).

31 Ms Ann Bray, General Manager, Food and Chemicals Branch, Department of Industry, Department of Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 11 May 2012, p. 32.

32 http://www.daff.gov.au/agriculture-food/innovation/research_and_development_corporations_and_companies (accessed 24 May 2012).

33 http://www.daff.gov.au/agriculture-food/innovation/research_and_development_corporations_and_companies (accessed 24 May 2012).

34 http://www.daff.gov.au/agriculture-food/innovation/research_and_development_corporations_and_companies (accessed 24 May 2012).

35 <http://www.ausindustry.gov.au/programs/CleanTechnology/CleanTechnologyInvestment/Pages/default.aspx> (accessed 24 May 2012).

currently in place are the Sheep Industry Innovation CRC, , the Australian Seafood CRC, and the Future Farm Industries CRC [which will all] cease on 30 June 2014. We have another three which will cease over 2016, 2017 and 2019, the latter being the High Integrity Australian Pork CRC. .³⁶

7.44 Despite there being no active CRCs that specifically look to assist the food processing sector, DIISRTE did advise the committee that they are in the early stages of looking at possible opportunities to address this situation:

We are looking at some early concepts around working closely with the research organisations, academia, state governments, the Commonwealth government and the CSIRO around what we can do to assist the process of collaboration. We only have early ideas at the moment. They are not developed enough to be mentioned today, but they might be developed well enough at the stage of the National Food Plan, the white paper.³⁷

7.45 In evidence to the committee however, Mr Callum Elder, Executive General Manager, Quality and Innovation, Simplot Australia Pty Ltd explained that investment beyond CRCs is required. Mr Elder explained that in order to innovate businesses need access to pilot plant and equipment to test whether or not the new equipment will provide their processes with efficiencies, and therefore whether the investment in the capital is worthwhile. Mr Elder explained however that access to pilot plant and equipment in Australia is very limited:

Every university has a nutrition or food course; hardly any of them have any technical food science courses anymore, because they are required to have equipment and this equipment is expensive to buy and maintain. So we find access to pilot plant equipment and expertise that we can draw on in people who can utilise that equipment to be a very difficult thing. Quite often now we are actually getting graduates and people from overseas, from Germany and other countries that do have wonderful centres. [Here there is only the] CSIRO centre at Werribee.... How do SMEs, which are not big companies like us, get to trial new equipment...if they cannot access that at a centre of excellence or a research centre?³⁸

7.46 In response to the committee's questions concerning the level of demand for access to the Clean Technology Investment Program by the food processing sector, the department advised that there had been a lot of interest in the Food and Foundries Investment Program:

36 Mr Anthony Murfett, General Manager, Cooperative Research Centres Program, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 11 May 2012, p. 33.

37 Ms Ann Bray, Department of Industry, Dept of Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 11 May 2012, p. 34.

38 Mr Callum Elder, Executive General Manager, Quality and Innovation, Simplot Australia Pty Ltd, *Committee Hansard*, 12 April 2012, p. 21.

\$150 million is dedicated to food. We launched it on 16 February. It would be fair to say we have had a very significant response to the food and foundries program. Our initial push into the industry was electronically. Since [the launch day], the webpage for the program has had over 15,000 hits. ...We already have 16 applications from the food industry, seeking grant support of about \$12.9 million, and we are working through that at the moment. Considering a 16 February launch, that is a fairly impressive response, from our experience of launching grant programs in the past.³⁹

7.47 Dr Edwards explained that the funding that has been set aside for the program is to be allocated over six years and that 16 applications had been received.⁴⁰

Committee view

7.48 The committee takes the view that the Food and Foundries Investment Program is not in fact additional investment in the food processing sector, rather the funding that has been set aside for this program represents compensation for the industry. This compensation is only necessary as a result of the additional costs being introduced by the government through its carbon price.

7.49 The inquiry heard that the industry is generally complimentary of the RDC program. Indeed, the Australian Dairy Industry Council (ADIC) in their submission explained that they have found RDCs to be responsive to changing conditions:

Over the years the RDCs have proved responsive to changing external conditions. While the overall structure of RDCs has remained the same, the governing framework has been modified. Internal governance systems have seen RDCs devise a range of approaches to developing R&D investment strategy, measuring return on investment, managing commercialisation and developing extension/application programs.

7.50 ADIC explained that they see RDCs as playing a 'valuable role in identifying, funding and guiding the commercial application and extension of innovation' and gave the example of the dairy RDC, Dairy Australia Limited, which was established five years ago:

[The dairy RDC was established] out of an industry-led initiative to respond to and manage the changing needs of dairy farming, and maximise the returns to farmers from levy-based investment. The Dairy Australia / RDC model provides a framework for Australia's 8,000 dairy farmers to directly invest in R&D and encourages farmers collectively to engage in the continuous pursuit of industry innovation and advancement.⁴¹

39 Dr Russell Edwards, General Manager, Clean Technology Investment, AusIndustry, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 11 May 2012, p. 34.

40 Dr Russell Edwards, DIISRTE, *Committee Hansard*, 11 May 2012, p. 34.

41 Australian Dairy Industry Council, *Submission 47*, p. 43.

7.51 They did explain however that RDCs could be further improved by ensuring '[m]aintenance of the RDC model with closer alignment to industry focus and funding and government priorities.'⁴²

7.52 Like the dairy industry, the WFA were also complimentary of the RDC model:

WFA believes strongly that the RDC model is world leading and reflects the unique nature of much of Australia's agriculture and value-added businesses. Its preservation is important for ongoing innovation across the sector.⁴³

7.53 Although most industry participants view RDCs favourably, AMIC suggested that existing research and development programs, including RDCs, are uncoordinated as a result of their joint administration:

The disconnected nature of R and D investment and prioritisation between the RDC structure overseen by DAFF and that of the Department of Innovation, Industry, Science and Research (DIISR) presents an on-going source of frustration (due to competition and/or fragmentation of investment) for the red meat and livestock industry (and agriculture more broadly).⁴⁴

7.54 The committee is concerned by recent government decisions to reduce investment in research and development, including the decision to stop funding Land and Water Australia and an apparent move away from agricultural CRCs. The committee is particularly concerned by these developments particularly in light of evidence it received throughout the course of its inquiry that demonstrated the importance of research and development and innovation to the food processing sector.

7.55 The committee does however consider that in view of the government's commitment to the development of a National Food Plan, there are opportunities for new CRCs to be established that specifically look to address the challenges facing the food processing sector. The committee would also like to see that funding arrangements due to expire for existing CRCs be reviewed with a view to providing ongoing support.

7.56 The committee is encouraged that industry participants do appear to be engaging with government sponsored programs that aim to enable and support investment in research and development but notes the evidence it received suggesting that more needs to be done to encourage investment in pilot plant and equipment. The committee takes the view that in the absence of such investment, it is clear that the

42 Australian Dairy Industry Council, *Submission 47*, p. 36.

43 Winemakers Federation of Australia, *Submission 35*, p. 9.

44 Australian Meat Industry Council, *Submission 36*, Attachment 1, pp 7–8.

food processing sector will continue to rely on importing skilled labour and intellectual property.

7.57 The committee is pleased that food industry participants have shown interest in the Food and Foundries Investment Program (part of the Clean Technology Investment Program) however remains convinced that this program does not reflect additional investment in research and development but is rather compensation for additional costs being imposed by the government through the introduction of a carbon tax. Further, the committee notes that given there have only been 16 applications, more should be done to ensure that smaller businesses within the industry are aware of the program and the opportunity it provides to upgrade plant and equipment.

7.58 In respect of the RDCs, the committee is pleased that in their preliminary response to the Productivity Commission's report into RDCs that the government has indicated it will not adopt the recommendation to reduce funding to these research bodies but suggests in fact that what is required is an increase in funding for these bodies.

7.59 The committee notes that small and medium enterprises at times struggle to access research and development funding. The committee views equity of access to research and development funding as vital to an ongoing vibrant and sustainable food industry.

Research and development tax concessions

7.60 Throughout its inquiry, the committee also sought to understand how the recent changes in the research and development tax concession had affected business investment activity.

About the concession

7.61 From 1 July 2011 the government introduced changes to the research and development tax concession. The existing research and development tax concession was replaced with a new incentive comprised of two elements:

- A 45% refundable research and development tax offset available to eligible companies with an aggregated turnover of less than \$20 million per annum; and
- A 40% non-refundable R&D tax offset available to all other eligible companies. (Any unused component of the non-refundable offset can be carried forward for use in future years.)⁴⁵

45 <http://www.innovation.gov.au/Industry/FoodProcessingIndustry/Pages/About.aspx> (accessed 24 May 2012).

7.62 Prior to these changes, the tax concessions available for research and development included:

- a 125 per cent tax concession that provided claimants with a deduction of 125 per cent of eligible expenditure incurred on Australian owned R&D activities;
- an R&D tax offset that enabled small companies with an annual turnover of less than \$5 million and whose aggregate Australian-owned R&D expenditure was more than \$20,000 but less than \$1 million to obtain a tax offset equivalent to their tax concession entitlement;
- an incremental 175 per cent premium tax concession for those companies that increase their R&D expenditure in Australia relative to their average R&D expenditure over the previous three years; and
- an incremental 175 per cent international premium tax concession available for increased in foreign-owned R&D activities carried on by a company incorporated in Australia.⁴⁶

7.63 The changes to the tax concession that took effect from 1 July 2011 were the subject of a Senate Economics Legislation Committee inquiry in June 2010. Throughout that inquiry stakeholders raised concern that the changes would result in a reduction of investment in research and development in Australia. Submitters criticised the time which the government had allocated for consultation with stakeholders as well as the definitional changes to 'core' and 'supporting' research and development that the bill contained. Stakeholders were concerned that these changes would disqualify their investment in research and development activities from the concessions.⁴⁷

7.64 The committee notes, however, that the recommendation of the majority report to review the program after two years was taken up by the government and as a result an R&D Tax Incentive Advisory Committee has been established, under Innovation Australia:⁴⁸

The Advisory Committee will canvass a broad range of views and provide advice to the government on the implementation and operation of the new

46 Senate Economics Legislation Committee, *Tax Laws Amendment (Research and Development) Bill 2010 [Provisions] and Income Tax Rates Amendment (Research and Development) Bill 2010 [Provisions]*, 15 June 2010, p. 9.

47 Senate Economics Legislation Committee, *Tax Laws Amendment (Research and Development) Bill 2010 [Provisions] and Income Tax Rates Amendment (Research and Development) Bill 2010 [Provisions]*, 15 June 2010, pp 81–86.

48 <http://www.innovation.gov.au/Industry/FoodProcessingIndustry/Pages/About.aspx> (accessed 24 May 2012).

R&D Tax Incentive. The R&D Tax Incentive will be reviewed after two years of operation to gauge the policy's effective implementation.⁴⁹

7.65 Despite the newness of the research and development tax arrangements, throughout its inquiry the committee sought to identify whether or not the changes had had the effect of reducing investment in these activities.

Effects of the changes to the concession

7.66 When asked about the effect of the changes to the regime, Mr Andrew Redman, Regional Quality and Regulatory Operations Manager, General Mills Australia and New Zealand commented:

I personally do not have any sense of how that has played out for industry in that short period of time. I know that things like compliance with the legislation makes it difficult. Being a larger company, we are in a position to do that. ... I think it would be prohibitive for smaller companies [without the infrastructure in-house] to take advantage of the R&D concession.⁵⁰

7.67 The AFGC however do consider that the 'erosion' of the tax concession has dampened investment in research and development:

Public sector support for the food processing industry, however, is lower now than any time in the past decade through a combination of the erosion of the value of the R&D Tax Concession scheme and a loss of direct grants to the industry.⁵¹

7.68 Simplot's Executive General Manager of Quality and Innovation, Mr Callum Elder, also commented on the recent changes to the research and development tax concession. He suggested that although it is hard to measure the impact at this point in time:

...fundamentally, to increase productivity you need to invest. One of the forms that you need to invest in is new technology, new approaches to doing things—doing things smarter and better, as you talked about. To undertake that research and development costs money. I think one of the best encouragements that government can give to industry is to have an effective IRD [interest rate differential] tax concession that truly encourages innovation and the use of the skills that we have right across this country, in universities, research centres of excellence and within companies. ...[but] it looks at the moment like our particular tax concession amount will drop

49 <http://www.innovation.gov.au/Industry/FoodProcessingIndustry/Pages/About.aspx> (accessed 24 May 2012).

50 Mr Andrew Redman, Regional Quality and Regulatory Operations Manager, *Committee Hansard*, 8 March 2012, p. 3.

51 Australian Food and Grocery Council, *Submission 12*, p. 15.

by 30 per cent next year, because the range of activities for which you can make claim have been narrowed.⁵²

Risks to local research and development

7.69 Mr Elder identified the risk that changes to the tax concession may lead companies offshore for their research and development activities:

There are certain provisions that are also restrictive relating to it. In the global economy, R&D can be conducted by multinationals literally anywhere. Where do we want that R&D to be conducted? It should be conducted in this country for the benefit of our society, our people and our industry. In relation to an effective tax rate, for our return at the moment we would be lucky to get 7c in the dollar for our R&D spend. By the time we put our costs against that—all the record-keeping and other activities required, the accounting costs—it is barely worth doing, and that is for a large company like ours. For a smaller SME, it would not even bother. It would not be worthwhile.⁵³

7.70 General Mills Australia and New Zealand also suggested to the committee that there is a need to encourage local investment in research and development and ensure any 'temptation to take R&D offshore' is removed:

One of the things we have here to try and help value add in the industry is the ability to add some innovative R&D to differentiate ourselves. I think a lot of companies really value the R&D tax concessions... If we can encourage more local R&D in the food manufacturing sector I think that is only going to add a lot of value [and] benefit the whole community.⁵⁴

7.71 Simplot is of the view that the changes will lead to a reduction in local research and development expenditure, particularly for the multinationals:

They will conduct the R&D offshore where they get better tax effective treatment for that investment. Of course, there are all sorts of flow-on benefits to the R&D apart from just conducting it. The maintenance of our skill sets and know-how in universities right through is very short-sighted. There are countries out there that have 150 or 200 per cent deductibility on R&D activities. Ours is roughly 125 to 130. You can claim the 100 per cent as a business activity anyway. It is effectively 25 or 30 per cent of then a 30 per cent tax rate on a company. You can see the numbers come down very rapidly to say, 'Is this actually worthwhile?' I know some of my

52 Mr Callum Elder, Executive General Manager, Quality and Innovation, Simplot Australia Pty Ltd, *Committee Hansard*, 12 April 2012, pp 18–19.

53 Mr Callum Elder, Simplot Australia Pty Ltd, *Committee Hansard*, 12 April 2012, pp 18–19.

54 Mr Andrew Redman, General Mills Australia and New Zealand, *Committee Hansard*, 8 March 2012, p. 3.

counterparts across the industry are saying that this will probably be the end of their R&D activities in this country in the future.⁵⁵

7.72 The evidence provided to the committee by Simplot was noted with concern by the Tasmanian Government, particularly in light of investment they expect will occur in Tasmania in the future:

I hear with concern comments made by Mr Elder from Simplot that, given a company of that size and the R&D framework that is currently in place, it is barely worthwhile for them to be undertaking it. My impression is that R&D is generally carried out by larger companies—I am thinking in the food processing and manufacturers space and leaving aside primary industries. Given that they are often global or national companies, that in most cases will be taking place outside Tasmania. There is, from what I have seen, not a lot going on in the R&D space in the manufacturing area.⁵⁶

Committee view

7.73 Although the committee heard that it is still too early to tell if the recent changes to the tax concession for research and development have affected investment activity, the committee is concerned by the evidence that it received and particularly the suggestion that processors may consider relocating their research and development activities offshore.

7.74 Throughout its inquiry, the committee has heard of the difficult challenges which confront the industry and, like those who have contributed to the inquiry, considers that research and development led innovation will play a vital role in ensuring the ongoing viability of the sector. Given this, the committee is concerned by any suggestion that the new research and development tax framework will not provide the support the industry desperately needs.

7.75 The committee considers that government has a role to play in ensuring that taxation and regulatory settings are appropriate so the sector can continue to innovate and remain competitive in international markets. Campbell Arnott's supported this, advocating that:

What we are asking government to do is this: if you can level the playing field, that would be great, and continue to support us on tax advantages and tax investment strategies and work on the labour piece and the regulatory environment. If we continue to ensure that they are being focused on, we as an organisation can continue to keep a manufacturing footprint that is significant in this country and we will continue to be very competitive and

55 Mr Callum Elder, Simplot Australia Pty Ltd, *Committee Hansard*, 12 April 2012, pp 18–19.

56 Mr Anthony McHugh, Senior Project Manager, Food and Agribusiness, Department of Economic Development, Tourism and the Arts, *Committee Hansard*, 12 April 2012, p. 31.

have some of our competitors from overseas continue to try to work out how to beat us.⁵⁷

7.76 As identified in both this chapter and chapter 2, investment in research and development has a role to play in ensuring a future skilled workforce for Australia's food processing sector. A failure to encourage such investment, particularly through investment in the CSIRO, CRCs, RDCs or joint ventures with industry, will diminish capacity and potentially inhibit the ability of the industry to play a role in satisfying the growing demand out of Asia.

7.77 The committee agrees with the evidence it has received that competition in the sector 'ensures efficient use of resources, incentivises innovation and encourages rapid uptake of technology' and the suggestion that the government needs to do more in terms of 'co-investment and collaboration in new technology, particularly in manufacturing, environmental sustainability and in non-food-specific areas such as food safety R&D.'⁵⁸

7.78 The committee is convinced of the role research and development led innovation has to play in enhancing efficiency and competitiveness in the Australian food processing sector.

Recommendation 27

7.79 The committee recommends that the government investigate the effectiveness of research and development in the food processing sector and in doing so consider the following questions:

- **has been a market failure of research and development in the food processing sector?**
- **are food processors relying on research and development conducted by primary producers?**
- **is there scope to develop a cooperative research and development approach in the food processing sector similar to rural research and development corporations?**
- **do the current arrangements for research and development funding support equity of access, particularly for small and medium enterprises?**

Recommendation 28

7.80 The committee recommends that the government consider providing research and development assistance specific to the food processing sector.

⁵⁷ Mr Craig Funnell, Campbell Arnott's, *Committee Hansard*, 10 February 2012, p. 60.

⁵⁸ Australian Meat Industry Council *Submission 36*, p. 5

Recommendation 29

7.81 The committee recommends that the government reviews tax and regulatory settings to support innovation.

Recommendation 30

7.82 The committee acknowledges the establishment of the Food Processing Industry Strategy Group and encourages its active engagement of leading food manufacturing and processing companies to encourage large scale investment in food manufacturing in Australia.

Recommendation 31

7.83 The committee recommends that the government review the funding it has allocated for research and development in the Australian food processing sector.

Chapter 8

Australian food exports—opportunities and challenges

8.1 Throughout the inquiry the committee received much evidence that suggests that the regulatory environment applying to food processing sector exports inhibits the ability of industry participants to access export opportunities. This chapter explores the role that export can play in ensuring the long term viability of the food processing sector.

Overview

Exports and imports in the food processing sector

8.2 Throughout its inquiry the committee heard of the importance of international trade to Australia's food processing sector. The Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE) explained that in recent years the value of Australia food exports had increased:

[T]he value of Australian food exports increased to \$27 billion in 2010-11, including nearly \$17 billion worth of processed foods, which represents approximately 63 per cent of total food exports. Japan remains the largest destination for Australian food exports, with the ASEAN group of countries also growing in importance as a destination for Australian food exports.¹

8.3 The value of food exports does tend to fluctuate and is influenced by a range of factors including seasonal production issues.

8.4 Australia's food exports and imports fall into three main categories: 'minimally transformed' products, such as grains, oilseeds and live animals, 'substantially transformed' products, such as meat, dairy products, sugar, beverages and malt, and 'elaborately transformed' products, such as biscuits and confectionary.²

8.5 The committee also noted that imports of food to Australia have increased in the past few years. Imports now comprise approximately 30 per cent of processed and 4 per cent of fresh fruit and vegetable consumption in Australia.³ In real terms, the value of Australia's food imports has risen by approximately 5.3 per cent per year over the past two decades. Areas in which the value of imports is increasing include

1 Ms Ann Bray, General Manager, Food and Chemicals Branch, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 11 May 2012, p. 32.

2 DAFF, *Australian Food Statistics 2009-10*, p. 7.

3 Australian Government, *Issues paper to inform development of a national food plan*, p. 93.

processed seafood, processed fruit and vegetables, bakery products, confectionary, beer and wine.⁴

The current environment

8.6 Despite food exports having risen in 2010–11, Australia's food processing sector is currently operating in difficult circumstances. Throughout the inquiry, the impact of the high Australia dollar was consistently identified as a cause of concern to processors. Not only did industry stakeholders cite the strong Australian dollar as impacting on their margins but argued that, as a strong dollar makes imports cheaper, it has dampened their ability to compete both domestically and in international markets. Webster Ltd, Australia's fourth oldest business, operating since 1831, identified the challenges facing exporters succinctly:

The future of Australia's export industry faces many challenges – a strong Australian dollar, increasing compliance costs, a decline in funding for the Agricultural industry, widespread skill shortages, high labour costs, rapidly increasing costs of services and inputs and taxes, all of which are out of the control of the industry.⁵

8.7 DIISRTE recognised that tough circumstances currently confront the industry:

The industry is currently suffering from poor margins, higher imports, higher value of the Australian dollar—which helps to inhibit opportunities for export but also increases competition from imports—difficult retail trading conditions and the availability of skilled and unskilled labour.⁶

8.8 Yet, in noting these challenges the department explained that the government, through its Food Processing Industry Strategy Group, is looking to assist the sector and will do this by promoting the natural benefits of the Australian industry:

The strategy group has not yet delivered its report but is likely to focus on Australia's key strengths in the area, including its reputation for product safety and high quality, including disease-free status; the large, high-quality public research institutes that we have, such as CSIRO, which has a considerable food focus; available energy, raw materials and land that crosses multiple latitudes for large-scale food production; and opportunities for the Australia processed food industry to exploit the soaring regional need for food.⁷

8.9 In recognising these issues, industry conceded the need to find opportunities amidst the challenges:

4 Australian Government, *Issues paper to inform development of a national food plan*, p. 93.

5 Webster Ltd., *Submission 58*, p. 2.

6 Ms Ann Bray, DIISRTE, *Committee Hansard*, 11 May 2012, p. 32.

7 Ms Ann Bray, DIISRTE, *Committee Hansard*, 11 May 2012, p. 32.

From my perspective, what our industries have to do is up the ante on their ability to export product as a way of allowing the level of production to be maintained at a critical mass, or even increased, as well as support a strong domestic market situation.⁸

8.10 Commenting on the challenges of rising labour costs, rising input costs and the strong Australian dollar, the Coles Group Limited also suggested that these characteristics provide opportunities to the sector:

...food processing companies have the opportunity to be proactive in the face of these challenges by investing in export capacity, in improved quality of existing products and in innovation of new products.⁹

Opportunities for export

8.11 Throughout its inquiry the committee heard that the rising middle class in Asia presents many opportunities to Australia's food processing sector. The Australian Food and Grocery Council (AFGC), which represents many of the food processing sector participants, noted:

[t]he growing middle class in India, China and South-East Asia is real and it is actually happening for some small companies—and not so small companies as well. We think there is a huge opportunity to increase that flow-on.¹⁰

8.12 The Department of Foreign Affairs and Trade (DFAT) informed the committee that as a result of the growth in the world population, and with a substantial amount of that growth being in Asia, 70 per cent more food will be required by 2050:

The outlook for Australian food exporters is broadly positive, despite the current challenges. With the world population projected to be over nine billion by 2050, there is an estimate that 70 per cent more food will be required. Much of the population increase will be in Asia, which already receives 55 per cent to 60 per cent of our agrifood exports. The rapid growth of the middle class in Asia will see greater demand for higher quality, safe and protein-rich food, including more meat and dairy products. Australia remains well placed to help supply this food to Asia. Asian consumers are becoming more sophisticated and demanding.¹¹

8 Mr Trevor Ranford, Consultant, Summerfruit Australia Ltd and South Australian Horticultural Services, *Committee Hansard*, 11 May 2012, p. 54.

9 Mr John Durkan, Merchandise Director, Coles Group Ltd, *Committee Hansard*, 15 May 2012, p. 1.

10 Ms Kate Carnell, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, 13 December 2011, p. 24.

11 Mr Christopher Langman, First Assistant Secretary, Trade and Economic Policy Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 11 May 2012, pp 42–43.

8.13 However, although both industry and government acknowledge the opportunities that exist, the AFGC suggested that more needs to be done to harness market opportunities. The AFGC recommended a 'brand Australia' approach to take advantage of Australia's clean, green image:

...we do not have a Brand Australia in the food and grocery space, so in terms of how we are selling Australia as a great source of safe, high-quality food, to some extent has no brand. There is no work we have done. Australia Unlimited, the branding approach, does not fit very well in the food space; whereas, say, for New Zealand, who have worked really hard on their Pure brand, have done extraordinarily well in selling New Zealand as a great source of safe, high-quality food. We think there needs to be more work done on Brand Australia.¹²

8.14 While it is acknowledged that Australia has a comparative advantage in the agri-food sector as a 'clean, safe and high-quality' food producer, other sectors of the food industry do require some assistance.

8.15 The horticultural sector of the industry was identified as an area, that despite having potential for significant growth, requires assistance:

Horticulture stands out as being a significant growth industry in Australia. Horticulture as a whole is the quickest-growing agricultural sector. It is the third-most important industry to Australia behind beef and grains. Yet our history and experience with exports of horticulture are pretty poor. In a way, that comes back to two issues: (1) the ability of the industry to want to take on exports and find new markets; and (2) the work that Dr Grant is doing on trying to facilitate and open export markets through SPS considerations and arrangements...We can help them through trade facilitation. We can help them with SPS issues and negotiations. We work closely with the industry on, for example, identifying what they think are the most important priorities for their export markets and we use that information to ensure our resources meet their priorities. We are doing a lot, but I accept that progress has been slow.¹³

8.16 The current weaknesses of the horticultural industry were acknowledged by Mr Trevor Ranford of Summerfruit Australia Ltd and South Australian Horticultural Services:

[T]o be able to process food, you have to have the raw product in the first place. So we need to go back to the grassroots of production. One of my early mentors told me that in horticulture there were three components—one was export, one was domestic and one was processing—and if any one of those were weak then the industry was potentially weak. I would suggest to you at the present moment in horticulture in Australia all three of those are weak and therefore we have a weak production sector and that leads to a

12 Ms Kate Carnell, *Committee Hansard*, 13 December 2011, p. 24.

13 Mr Allen Grant, First Assistant Secretary, Agricultural Productivity Division, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 11 May 2012, pp 21–22.

weakening processing sector. The issues that have been raised within the submissions highlight some of the areas of concern for industry.¹⁴

8.17 Given the opportunities that rising wealth and changing tastes in Asia represent for Australian food processors, the committee sought to identify how effective government assistance is to food processing sector participants.

8.18 When asked to explain their role in helping businesses access growing international markets, and therefore take advantage of the opportunities, DFAT explained:

DFAT supports exports by working to negotiate improved access to overseas markets for Australian goods and services, including processed foods. Our trade policy complements the government's focus on productivity, enhancing domestic reform, and that will improve export competitiveness. DFAT also facilitates opportunities in overseas markets for Australian exporters by helping them to gain access to decision makers, by supporting promotional activities and by assisting with market access issues. The personal attention of ministers, including by leading trade delegations, and our ambassadors can make a real difference for Australian companies overseas.¹⁵

8.19 The department also explained the role of Austrade, which is a part of DFAT, in facilitating business leads:

Austrade works closely with companies to provide specific business leads. Following comprehensive reforms unveiled by the trade minister last year, Austrade is increasing its efforts to identify opportunities in emerging and growth markets, including in Asia.¹⁶

8.20 However, when processors were questioned about the assistance that these agencies provide to them, few gave evidence that they accessed the services on offer. Luv-A-Duck told the committee that Austrade has been of little relevance to its operations:

Austrade have not been particularly relevant to us...given the size of our operation. Austrade deal more with the bigger companies and they do a good job. Smaller ones like ours seem to slip through the net. AQIS is a different thing. We have to deal with them on every issue...We have been trying to get into New Zealand for five years. We used to trade there. There were some issues with fire blight and so on at a certain stage, maybe five or six years ago. Some difficulties were established that arose out of that between AQIS here in Australia and its equivalent in New Zealand. It has

14 Mr Trevor Ranford, *Committee Hansard*, 11 May 2012, p. 51.

15 Mr Christopher Langman, Department of Foreign Affairs and Trade, *Committee Hansard*, 11 May 2012, pp 42–43.

16 Mr Christopher Langman, Department of Foreign Affairs and Trade, *Committee Hansard*, 11 May 2012, pp 42–43.

been tit for tat and...an artificial trade barrier has been created during that time.

We have spent tens of thousands of dollars trying to overcome all of the issues that have arisen regarding New Zealand.¹⁷

8.21 The Australian Manufacturing Workers' Union (AMWU) were similarly critical of government and suggested that although it is 'absolutely imperative' that AQIS protect Australian industry from disease, there is no longer the right balance between protection and market access:

Senator EDWARDS: ...We have Austrade out there—a different agency—and we have AQIS. If you could give them a score out of 10, what would you give them at the moment?

Ms Dowell: Probably about four—and that is on a good day.

Senator EDWARDS: If you were the chief executive of AQIS and were looking after quarantine and also market access, what priority would you give to the market access department?

Ms Dowell: That is a difficult question, isn't it? You cannot take the focus off quarantine. It is absolutely imperative that we make sure that our industries in Australia are protected and looked after. But I think market access is equally important. You need to make sure that we do have access, that we do know what is coming into the country, and that we do have some sort of levelling-up of the requirements globally. One of the issues for AQIS—to give them some credit—is that they simply do not have the number of people they need to be able to do their jobs adequately...My four out of 10 comes from the fact that, notwithstanding that a lot of it has to do with the numbers of people, it also has to do with decisions about the testing regime and, in particular, what is appropriate for the testing of manufactured food products that come into Australia. I think there is a great deal of room to improve the performance of AQIS legislatively—in areas of skills, in the way they apply testing regimes and how they enforce those testing regimes. We increasingly see things coming to this country in the food processing industry that, in my view, should not be allowed in; but they continue to arrive here.¹⁸

8.22 The Tasmanian Farmers and Graziers Association (TFGA) suggested that the requirement that users pay for the services of Austrade can act as an impediment to producers looking to access export market opportunities. TFGA told the committee that:

...if an intending exporter seeks to obtain help in developing the market through Austrade or with EMDG assistance, he/she will be told that there is a large element of "user pays". This means that market research information that could assist in initial assessment decision making is only available on

17 Mr John Millington, Company Spokesman, Luv-a-Duck, *Committee Hansard*, 17 April 2012, p. 40.

18 Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, p. 5.

very restricted terms. In fact, it is not too out of place to suggest that visiting a potential market and canvassing opportunities personally can often be a better approach. While this may eventually be necessary to meet possible customers, early stage evaluation is generally when the most help is needed. Similarly with the hurdles that have to be met and charges paid to satisfy export inspection requirements – an intending exporter needs to be very sure that they want to make the jump from domestic to export.¹⁹

8.23 However, not all producers consider that the government agencies responsible for assisting industry to access export market opportunities are not doing enough. In fact, Mr John Berry, Director and Manager of Corporate and Regulatory at JBS Australia, indicated that the industry, due to its fragmented nature, was in part responsible for not having capitalised on export market opportunities:

I believe that the industry itself has not done the right thing. We are a fragmented industry. We have producer groups, we have processing groups and we have a whole range of people who are looking to put positions to government—whether they be on trade issues or whether they be on industry policy issues—and that has got to stop.²⁰

8.24 In making this observation JBS Australia informed the committee that there is, however, 'momentum for change in this industry to have a more solid, consolidated voice for the industry from the producer sector through to the processor' which would 'give the opportunity to get that one voice consistent with the government.'²¹

8.25 Mr Berry went on to inform the committee that:

...with regard to market access trade issues, unfortunately the fact is, because we are seen as part of agriculture, that for a lot of our trading partners—in terms of the people we are looking to do bilateral deals with—agriculture seems to be a no-fly zone. I have come back from a recent trip to Indonesia with the trade minister and the agriculture minister. That gave me a very good insight into the policies and politics of Indonesia both from live cattle and boxed beef perspectives. We see great opportunities in the Indonesian market but until we start seeing traction and the ability to be able to work with the Indonesians to be a major supplier of animal protein to that market there are still going to be problems.²²

8.26 Mr Berry argued that, given policies of self-sufficiency are common in emerging markets, a bipartisan approach is required to ensure the opportunities can be accessed:

19 Tasmanian Farmers and Graziers Association, *Submission 26*, pp 13–14.

20 Mr John Berry, Director and Manager, Corporate and Regulatory, JBS Australia Pty Ltd, *Committee Hansard*, 12 April 2012, p. 39.

21 Mr John Berry, JBS Australia Pty Ltd, *Committee Hansard*, 12 April 2012, p. 39.

22 Mr John Berry, JBS Australia Pty Ltd, *Committee Hansard*, 12 April 2012, p. 39.

We need a bipartisan approach to it by both sides of politics. We need to be making sure that we know what is on the table in terms of negotiations and that we are not giving unrealistic expectations to industry sectors because there is a lot of time and money wasted which does not end up resulting in any commercial results. More importantly, I believe that we need to be working, as an industry collectively, with not just Minister Ludwig's agriculture portfolio because that is just one part of it. We have got Minister Emerson and a whole host of departments that we need to be across. Unfortunately, to date we have not had that. We have not had that grunt in terms of a whole-of-government approach.²³

The challenges to export

8.27 Despite the many opportunities for export and government programs that provide assistance, throughout its inquiry the committee heard of certain challenges to export that confront the industry. These include the strength of the Australian dollar, cheap imports and regulatory costs associated with export certification.

A strong Aussie dollar

8.28 The strength of the Australian dollar in recent years has placed considerable pressure on Australian based export businesses and industries more broadly.

8.29 DFAT explained that although the high dollar is clearly putting 'significant competitive pressure' on some industries as it makes Australian products more expensive, they do not view the strong dollar as 'all negative or all positive':

It is complicated, though, in the sense that it is not all negative or all positive. Just to give you an example, of course it means that it is more expensive for consumers overseas to buy our products, from one perspective. But, on the other hand, certain inputs are clearly less expensive to buy for Australian producers.²⁴

8.30 The committee however heard that the strength of the dollar had in fact caused some export focused food processing businesses to close. For example, Mr Stuart Clarke, Director of Food Industry Development in the Western Australian Department of Agriculture and Food explained that since 2006, several of the larger food processors in Western Australia have gone to the wall for various reasons. He explained that those that have been exposed and are reliant upon the export market have had some real difficulties—Challenge Dairy is one example.²⁵

23 Mr John Berry, JBS Australia Pty Ltd, *Committee Hansard*, 12 April 2012, p. 39.

24 Mr Christopher Langman, Department of Foreign Affairs and Trade, *Committee Hansard*, 11 May 2012, pp 48–49.

25 Mr Stuart Clarke, Director, Food Industry Development, Department of Agriculture and Food, Western Australia, *Committee Hansard*, 18 April 2012, p. 5.

8.31 Elders Group Ltd also explained that while some commodity exporters have weathered the currency volatility better than others, they have some concerns for the beef industry if it loses capacity as a result of the current circumstances. Elders Group Ltd explained that rash decisions in these circumstances will be counterproductive when conditions become more favourable:

Our fear is that people will make decisions based upon what is happening right now without looking at the long-term impact. The high Aussie dollar is clearly making it difficult for exporters at the moment, particularly soft commodity exporters, and we see that in all shapes and forms. In areas such as grain, we have seen very large crops over the last two years after the drought of the early 2000s and that to a degree has offset the high Aussie dollar. With yields up and quality reasonably good as a rule, broad acre croppers have been okay. You do not see the same, for example, around beef where the herd is reasonably stagnant.

The ability for Australia to export boxed beef, particularly high-end boxed beef, into the northern and north-eastern Asian markets like Japan and Korea is really impacted on at the moment. We need to be careful that we do not see decisions being made because of the lack of viability that would further impact that industry. For example, only last week JBS Swift closed down a very large feedlot in New South Wales. Our board put significant pressure on myself and the management team to justify why we should continue to run two large feedlots, which are 20,000 head each, which at full capacity would have \$50 million worth of work and capital tied up in them. What is the return to shareholders there? The issue is that once you close a feedlot, everybody is going to struggle to reopen one with all the EPA controls that go on. Next time drought hits and we do not have the abundance of pasture that we have got across the east coast at the moment, all of a sudden we are going to be back into this mentality of how are we going to get enough beef?²⁶

8.32 Concern at the impact of the high value of the dollar is widespread throughout the food processing sector. Mr John Millington, Company Spokesman for Luv-a-Duck, stated:

With the Australia dollar at a \$1.05 or \$1.07, it is difficult for us. While we have very good quality product, certainly value added, and we have a good market share, nevertheless, to export our prime duck meat is very difficult.²⁷

Cheap imports

8.33 As the strength of the Australian dollar has put pressure on exports, competition from imports has intensified. Submitters to the inquiry suggested that not

26 Mr Malcolm Jackman, Chief Executive Officer and Managing Director, Elders Group Ltd, *Committee Hansard*, 17 April 2012, p. 28.

27 Mr John Millington, Company Spokesman, Luv-a-Duck, *Committee Hansard*, 17 April 2012, p. 36.

only are imports increasing as a result of the strength of the dollar but they are also originating from markets where government heavily subsidises the domestic food processing sector.

8.34 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited (APL) explained to the committee that the high level of imported pork being processed in Australia was the result of both the high Australia dollar and the level of subsidies on meat from North America and Europe.²⁸ APL explained to the committee that although the exact level of subsidisation is difficult to calculate and there is little cooperation from the local authorities to undertake that calculation, APL estimates the level of subsidy is likely to be in the vicinity of 30 per cent:²⁹

The biggest challenge facing Australian pork production is increasing competition from large volumes of highly subsidised, cheap pork imports from the United States, Canada and the European Union. It arrives frozen and is processed into ham, bacon and smallgoods in Australia. Around \$9.4 million worth of pork imports arrive in Australia each week which translates into half a billion dollars going offshore each year. Up to 80 per cent of the processed pork sold in Australia is made from imported pig meat which makes it difficult for local smallgoods manufacturers to compete in the domestic processed pork market.³⁰

8.35 Mr Spencer spoke of a study undertaken by an agricultural economist to try to quantify the scale of subsidies. They found that in the 2009-10 year the value of agricultural policy support across the whole of the EU was \$150 billion, in the US \$100 billion, Canada \$6 billion and in Australia around \$1 billion made up of rural research and development, matching funding and fuel excise subsidy.³¹

8.36 Mr Spencer emphasised that to combat the challenge of imported product APL will focus on differentiating their product from import subsidised competition:³²

We as an industry have to do the best we can to make our product as attractive as possible. One of the things that we now recognise in the community that they are looking for is these intangible aspects such as higher standards of animal welfare, higher standards of environmental protection, and we as an industry want to move in this direction.³³

8.37 The need for local food producers to innovate and differentiate their products in order to remain competitive in the challenging domestic market environment was

28 Mr Andrew Spencer, Australian Pork Limited, *Committee Hansard*, 13 December 2011, p. 3.

29 Mr Andrew Spencer, Australian Pork Limited, *Committee Hansard*, 13 December 2011, p. 3.

30 Australian Pork Limited, Australian Pork Limited, *Submission 30*, p. 4.

31 Mr Andrew Spencer, Australian Pork Limited, *Committee Hansard*, 13 December 2011, p. 4.

32 Mr Andrew Spencer, Australian Pork Limited, *Committee Hansard*, 13 December 2011, p. 1. See also Australian Pork Limited, *Submission 30*, p. 6.

33 Mr Andrew Spencer, Australian Pork Limited, *Committee Hansard*, 13 December 2011, p. 4.

explained to the committee by other food processors; their experiences and the need to invest in research and development to innovate is covered in detail in Chapter 7.

Regulatory costs

8.38 In addition to the uncontrollable external factors of a high dollar and cheap imports, the committee received evidence that domestically, government red tape and regulation is a further impediment to export.

8.39 Time and again submitters to the inquiry and witnesses at public hearings expressed concern with the current export certification processes run through the Australian Quarantine Inspection Service (AQIS). Their concerns particularly related to the cost increases that have resulted from recent Export Certification reforms. Stakeholder concerns in relation to the impediments to trade that AQIS present for food processing sector participants are covered in detail in Chapter 6 of the report.

Free trade agreements

8.40 DFAT explained to the committee that in negotiating free trade agreements (FTAs) their priority is to improve access to overseas markets for Australian exporters.³⁴

8.41 Many submitters to the inquiry, however, consider that Australia's approach to FTAs often leaves domestic producers and businesses at a disadvantage. The AFGC told the committee that:

[f]ood is always a difficult one in free trade because there are a lot of local requirements for the companies that we have free trade agreements...So Australia tends to be a little bit holier than thou in this space, and we are heavily into being into free trade, so we let stuff in pretty easily but often the countries that we are dealing with do not do quite as well...Until now we have ended up with some dumb approaches where, for example, Thailand can sell sugar to Australia but Australia cannot sell sugar to Thailand until 2020.³⁵

8.42 The Department of Agriculture, Fisheries and Forestry (DAFF) acknowledged that although protectionist policies do provide challenges, as a small player there are longer term benefits to be gained by Australia taking a more open approach to trade:

Australia through its history has adopted a policy of having minimal trade barriers, tariffs and quotas, and we have tried to work very hard through the global trade negotiations and the WTO to convince other countries that they should be reducing those barriers...Australia is a very small player in the global market. While we have a very strong export focus in our own

34 Mr Christopher Langman, Department of Foreign Affairs and Trade, *Committee Hansard*, 11 May 2012, pp 42–43.

35 Ms Kate Carnell, Australian Food and Grocery Council, *Committee Hansard*, 13 December 2011, p. 24.

country, our exports are a very small proportion of the food that rotates through the world. I think the judgment for a number of decades has been that Australia, being an export-focused nation, can benefit more by adopting freer trade status than by trying to impose barriers on all goods or selected goods. I think that there have been a number of economic studies that have shown that clearly it is to our advantage to adopt free trade or low tariffs, low restrictions and low barriers and to try to encourage others to do the same...³⁶

8.43 While the AFGC conceded that FTAs can be valuable, they suggested that they can also 'potentially disadvantage trade from countries which are not signatories to the agreement':

This "shutting out" phenomenon is poorly documented with respect to effects on the food and beverage industry in Australia. Nevertheless, when countries which imposed tariffs of up to 40% on food product imports sign bi-lateral free trade agreements with other select countries, industry in non-signatory countries face greater challenges in exporting to them.

The complexity of the FTAs makes exporting for food companies relatively complex, particularly when exploring the potential of new markets in which to export. This may be particularly challenging for small companies with limited resources to review and understand the implications of each of the FTAs.³⁷

8.44 The AFGC suggested that this situation could be improved by the government being more proactive in promoting FTAs, by providing guidance that assists smaller companies access new export opportunities.³⁸

8.45 DFAT explained that it is currently working on a number of new FTAs, including with Australia's key Asian markets. For some industry participants, this process is not occurring fast enough. The Winemakers' Federation of Australia, which views China as the 'one significant bright spot in the industry's future', is particularly concerned that Australia has not yet concluded an FTA with China:

Australia currently does not have a FTA with China, which means Australia's ability to effectively compete in this market against other wine producing nations that have successfully negotiated an FTA, such as New Zealand and Chile, is significantly reduced. Considering the expanding Chinese market and potential for sustainable long-term growth, it is important that Australia's competitiveness is maintained and a successful conclusion to a China FTA is soon reached.³⁹

36 Mr Allen Grant, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 11 May 2012, p. 17.

37 Australian Food and Grocery Council, *Submission 12*, p. 18.

38 Australian Food and Grocery Council, *Submission 12*, p. 20.

39 Winemakers' Federation of Australia, *Submission 35*, p. 13.

Anti-dumping

8.46 Australia's anti-dumping and countervailing system exists to ensure that any 'material injurious effects' of 'dumped' or subsidised imports on Australian industries are remedied.⁴⁰

8.47 The Productivity Commission, in its recent review of Australia's anti-dumping and countervailing system, identified that dumping occurs when:

[a]n overseas supplier exports a good to Australia at a price below its 'normal value' in the supplier's home market. If dumping causes, or threatens to cause, 'material injury' to local producers of 'like goods', then remedial action — mainly the imposition of special customs duties — can be taken against the imported goods concerned. Similarly, countervailing duties can be imposed on imports which benefit from any of a specified group of government subsidies and which cause or threaten material injury to a local industry producing like goods.⁴¹

8.48 These rules are based on internationally agreed rules and procedures under the auspices of the World Trade Organization (WTO). Anti-dumping regimes are common among many developed and developing countries.⁴²

8.49 The committee did not receive any specific evidence commenting on the effectiveness of Australia's anti-dumping and countervailing system. Some stakeholders did, however, suggest that dumping is occurring in the food processing sector.

8.50 Coca-Cola Amatil was of the view that 'despite antidumping measures already in place, food dumping remains an issue.' However they did not cite specific examples of occurrences where they consider dumping has occurred.⁴³

8.51 APL informed the committee that in 2006 it investigated undertaking anti-dumping action to establish whether dumped or subsidised pork imports were causing, or were threatening to cause, material injury to the Australian pork industry producing 'like goods'. However, the complexity and cost of proving which producers formed the Australian pork industry producing these 'like goods' resulted in no action being taken.

40 Productivity Commission, *Australia's Anti-dumping and Countervailing System*, N. 48, 18 December 2009, p. 1. http://www.pc.gov.au/_data/assets/pdf_file/0006/93750/anti-dumping.pdf (accessed 2 June 2012).

41 Productivity Commission, *Australia's Anti-dumping and Countervailing System*, N. 48, 18 December 2009, p. 1. http://www.pc.gov.au/_data/assets/pdf_file/0006/93750/anti-dumping.pdf (accessed 2 June 2012).

42 Productivity Commission, *Australia's Anti-dumping and Countervailing System*, N. 48, 18 December 2009, p. 1. http://www.pc.gov.au/_data/assets/pdf_file/0006/93750/anti-dumping.pdf (accessed 2 June 2012).

43 Coca-Cola Amatil, *Submission 44*, p. 9.

8.52 APL suggested that reversing the onus of proof in dumping cases would make it easier for Australian pork producers to defend their position from unfair competition from below-cost products:

I believe reversing the onus of proof would make a huge difference in being able to technically determine whether dumping was taking place. One of the biggest problems we have had is getting the cooperation of the processing companies in Australia in giving us the costs of the various parts of their value-adding because they are also major importers as well as domestic users of pig meat.⁴⁴

8.53 APL also advised that it now sits on the Close Processed Agricultural Goods Working Group and is working with government and industry to help improve access to anti-dumping measures for the pork industry.⁴⁵

8.54 In their submission to the inquiry, the AFGC discussed recent recommendations they had made to government based on their concern that Australia's anti-dumping rules have not been effective. The recommendations included a number of guiding principles which the AFGC considers anti-dumping policy and legislation should reflect:

- Australian industry and particularly the manufacturing sector must have ready and easy access to measures that have the clear objective of preventing products from being dumped in Australia to the detriment of the domestic sector;

Australian business should be able to compete equitably on the global market and anti dumping measures should provide for transparent and equitable remedies but not allow or encourage vexatious or frivolous claims;

- the measures should be administered and processed in a timely way that minimises costs and uncertainty for the business and provides a swift remedy to any activity that is injuring, or will injure, the domestic sector;
- the anti dumping legislation should provide clear, unambiguous and transparent definitions of what constitutes dumping and be able to report on the magnitude of imports and the proposed impact of the imported products on the domestic industry including final cost to consumer; and the arrangements should provide for a transparent and equitable process for appeal from parties associated with any action.⁴⁶

8.55 The AFGC also raised concerns around parallel imports:

44 Mr Andrew Spencer, Australian Pork Limited, *Committee Hansard*, 13 December 2011, pp 6–7.

45 Australian Pork Limited, *Submission 30*, p. 13.

46 Australian Food and Grocery Council, *Submission 12*, pp. 20–21.

Another important, and related issue, is parallel importing — that is the importing of branded products manufactured overseas, often to different commercial and regulatory requirements. Like anti dumping, this is an issue of concern to the food and grocery sector and one which contributes to the challenge of maintaining a safe and sustainable sector in Australia. Parallel importing could raise serious concerns with respect to food standards and health of Australian consumers specifically in relation to correct and accurate labelling requirements and quality standards.⁴⁷

8.56 The AFGC advised the committee, however, that they 'welcomed' the government's announcement of the establishment of an International Trade and Remedies Forum,⁴⁸ which occurred in June 2011.⁴⁹

Committee view

8.57 The committee takes the view that, despite the obstacles, export represents a valuable opportunity for the food processing sector and government policies, regulations and agencies should support food processors trying to export.

8.58 The committee considers that information and awareness of the support and assistance that government can provide to potential exporters needs to be more effectively communicated to food processors.

8.59 The committee also considers that FTAs and the removal of tariff and non-tariff barriers present opportunities for government to provide further support and assistance to this important sector.

Recommendation 32

8.60 The committee recommends the government place a stronger focus on development of markets and assistance for market access in a much more costs effective way for developing business.

Recommendation 33

8.61 The committee recommends that the government prioritise completion of trade agreements, noting those currently being negotiated particularly in the Asia-Pacific region.

47 Australian Food and Grocery Council, *Submission 12*, pp. 20–21.

48 Australian Customs and Border Protection Service, *International trade remedies forum*, <http://www.customs.gov.au/site/InternationalTradeRemediesForum.asp>, (accessed 22 June 2012).

49 Australian Food and Grocery Council, *Submission 12*, pp. 20–21.

Recommendation 34

8.62 The committee recommends that the government continue to lobby for the reduction of tariff, non-tariff barriers and subsidies in export destinations through the World Trade Organisation. Pending the passing of the US Farm Bill this year, the government should consider the immediate and ongoing level and impact of these assistance packages.

Recommendation 35

8.63 The committee recommends that a Brand Australia program be considered to assess its effectiveness in promoting the food and grocery sector. In addition, the committee recommends that a campaign be developed promoting Australian food and grocery products overseas based on their unique provenance, premium quality, assured safety and environmental sustainability.

Chapter 9

Concluding comments

9.1 Throughout the course of the inquiry, the Select Committee on Australia's Food Processing Sector received extensive evidence from representatives across the food supply chain. It is clear to the committee that, as a trade exposed sector, Australia's food processing industry is challenged by the sustained strength of the Australian dollar. Rising input costs and certain government policy decisions, such as the introduction of a carbon tax and changes that have led to inflexibilities in the labour market, place further pressure on participants in the industry.

9.2 The conditions facing the sector at this point in time could be described as the perfect storm; however, this view is not shared by all. Treasury take the view that the wider economy is in the midst of a structural change and that this change is impacting many sectors, not just food processing. This "structural change" could be less euphemistically described as an industry phase out.

9.3 In preparing this report, the committee was conscious that there are certain pressures to which the industry will need to adjust and that some of these pressures are not unique to the food processing sector. It is clear that some participants have recognised the need to adjust and to identify new opportunities, but there is a need for the sector, as a whole, to embrace this approach.

9.4 The uniqueness of the sector, however, does present significant opportunities. Australia is well placed to help fulfil the expected increase in demand for high quality food associated with the rising middle class in Asia.

9.5 To respond to the sector's challenges and to take advantage of its opportunities, what is most necessary is a multifaceted response, from both industry and government, which is coordinated and collaborative. The challenges within the food processing sector are complex and have flow on effects throughout the supply chain. The sector's response needs to focus on innovation and working out how best to compete, while government has a responsibility to support this by ensuring the appropriate policy settings are in place. Similarly, the opportunities available to the sector can be maximised by both industry and government being proactive.

9.6 The committee takes the view that its report should inform the development of the National Food Plan (particularly in the areas of research and development, access to export markets, biosecurity and food labelling, quality and safety) which will set out Australia's integrated food policy. However, some of the evidence the committee received suggests broader changes are required. In particular, the committee notes the urgent need for a review of the effectiveness of the *Competition and Consumer Act 2010* with a view to striking a better balance between the consumer and competitors and ensuring market participants enjoy a level playing

field. The committee also suggests that broader reforms are required to help attract and retain suitable and qualified workers.

9.7 The committee sincerely thanks all those who participated in, and contributed to, its inquiry. The evidence provided has been invaluable in informing the committee and shaping its recommendations. The committee now calls on the government to carefully consider the evidence it has gathered and to act on its recommendations.

Senator the Hon Richard Colbeck

Chair

Government Senators' Dissenting Report

1.1 With Australia's agriculture and food industry undergoing rapid change, Government Senators welcomed the establishment of the Senate Select Committee on Australia's Food Processing Sector in March 2011 to inquire into possible policy responses to the challenges confronting the sector. The Terms of Reference for the Inquiry were very broad. The Committee was tasked with inquiring into and reporting on:

- the competitiveness and future viability of Australia's food processing sector in global markets;
- the regulatory environment for Australia's food processing and manufacturing companies
- the impact of Australia's competition regime and the food retail sector, on the food processing sector, including the effectiveness of the Competition and Consumer Act 2010;
- production inputs costs, infrastructure, investment capital and human capital issues
- Trade policy effects and opportunities.

1.2 Senate Select Committees are established to consider complex issues which extend beyond the responsibilities of Senate Standing Committees. The overarching scope of the terms of reference for this inquiry has been a challenge for the Committee, particularly in relation to the regulatory issue where submissions have in many cases reflected anecdotal evidence, rather than providing detailed analysis of regulatory burdens.

1.3 Government Senators are particularly disappointed that only one State or Territory government made a submission to the Inquiry, given that the food processing sector makes a major contribution to the Australian economy and is particularly important in rural and regional Victoria, South Australia, Western Australia, Queensland and New South Wales.

1.4 Seventy submissions were received, and these were dominated by industry associations and stakeholders, including the relevant unions who were concerned to do justice to the terms of reference and to assist the Committee to understand the complexity and challenges confronting this sector.

1.5 Government Senators want to highlight that some aspects of the Terms of Reference were not widely addressed through submissions or evidence, and urge those who are reading the full report to consider the comprehensive National Food Plan Green Paper, as well as industry and other research which more fully reflect the nature of national competition policy, the regulatory environment and the infrastructure and investment issues which are critical to the future of Australia's food Processing Sector.

1.6 This report does not seek to re-visit the issues raised in the wider Committee Report and Government Senators support the general thrust of the report. However, we specifically disagree with recommendations 4, 5, 24 25 and 26.

1.7 Government Senators make the following further recommendations:

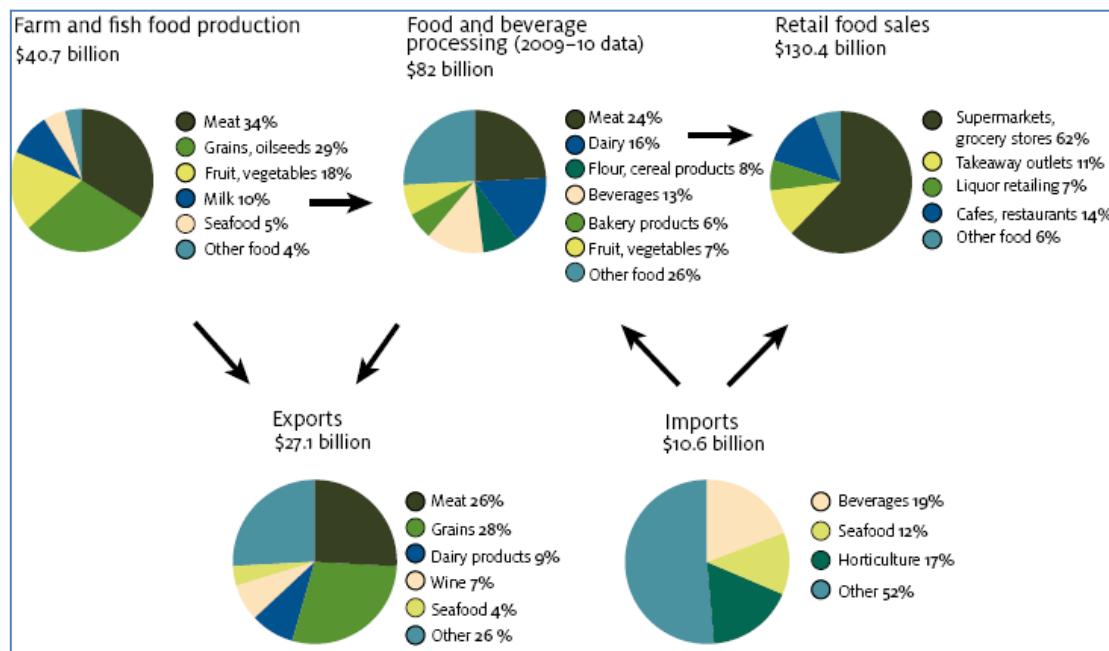
- 1. Government Senators reject any call for further reviews of the Fair Work Act. A comprehensive, independent review has just been completed, which found that the legislation does provide a number of avenues for flexibility.**
- 2. Government Senators encourage food processing industry employers who require greater flexibility of their workforce to utilise the existing mechanisms allowable under the Fair Work Act.**
- 3. Government Senators recommend that the Federal Government increase consultation with, and education of, the food processing sector about industry opportunities and obligations in relation to the carbon pricing mechanism.**

The Food Processing Sector in Australia

1.8 Agriculture, food processing and the retail and export of Australian primary products has always been part of the Australian 'psyche'. There is a strong connection between Australian farmers and their land, and between food processing and manufacturing industries and the rural and regional communities in which they operate. The Committee visited several regional locations where value-adding to local produce was a significant part of the local economy.

1.9 The food processing sector's value chain is significant to the Australian economy.

FIGURE 1: Value chain for food in Australia, 2010–11



Source: DAFF 2012, *Australian Food Statistics 2010-11*, Department of Agriculture, Fisheries and Forestry, Canberra

1.10 Several reports have informed the Green paper on Australia's National Food Plan, released in July 2012, and issues canvassed in the Terms of Reference for the Senate Inquiry have been considered in the development of the Green Paper.

1.11 The issues include:

- The adequacy of investment in innovation and research and development;
- The cost and availability of transport and freight infrastructure
- Increasing costs for raw materials, energy, water and labour
- The extent of competition within the food industry, and particularly in the provision of retail and wholesale services;
- Concerns about rapid industry rationalisation and integration across the supply chain and the impact these developments may have on small producers and processors;
- concerns about the emergence of 'private labels' and they impact these may have on brand competition and the allocation of shelf space;
- concerns about food safety and quality;

- the potential environmental impacts of food production, processing and handling practices;
- Evolving consumer tastes and preferences for healthier and more life-style compatible meals;
- Changing labour requirements in the food processing, distribution and retailing sectors;
- Potential bio-security risks and the integrity of Australia's pest and disease status.

1.12 Government Senators acknowledge therefore that this Inquiry has not been a 'stand-alone' piece of work. In fact, the development and consultation around the National Food Plan has built upon submissions provided to the Inquiry. In the same way, the development of the Committee's report reflects issues raised in regional consultations and industry roundtable meetings which have informed the Green Paper for the National Food Plan as well as other work being undertaken by government and industry to continue to address challenges in this sector.

1.13 Australia's status as a net exporter of food products depends on market access and a liberal trade regime. The Committee received extensive evidence that those within the sector acknowledge that the Australian food industry exists within a global economic food market, and many of the recent changes evident in the industry reflect the fact that producers and processors are competing in global export markets as well as with importers in the Australian domestic market.

1.14 Many Australian food supply chains are also increasingly part of global business and supply chains. This global participation enables access to foreign technology, knowledge, capital and other business inputs.

1.15 The National Food Plan Green Paper identifies Australia's key strengths in the market as:

Its geographic location, with relative proximity to key emerging markets in Asia; resource endowments favourable to producing abroad range of agricultural products; a large pest-and –disease-free bio-security status; a stable political and business environment, strong R&D and innovation; and a skilled and capable workforce. (p. 6)

1.16 The food processing sector is facing pressure from increasing international competition including on costs of the strong Australian dollar and variable seasonal outputs. To maximise opportunities, Australian businesses need to continue to change and innovate in seeking cost efficiencies and market share.

1.17 While the Committee heard evidence that parts of the food industry face difficult business conditions such as labour and skills shortages and increasing costs of some farm inputs, industry bodies including the Meat and Livestock Australia acknowledge that Australia's market advantages are allowing businesses to tap into rising food demand and food prices, particularly in commodity and niche markets.

1.18 Meat and Livestock Australia are promoting innovation as the way forward.

The global financial crisis separated the best from the rest as leaders were forced to make tough decisions fast, based on less-than-perfect information, throwing out the rule book without sacrificing growth potential. Today's operating environment is hyper-connected, volatile and fragmented. Technology is a major driver, but the changes are more profound and the implications for Australia are far-reaching. Sections of our economy might be cushioned by resource wealth and Asia's growing markets, but such advantages are selective and finite.

Developing and implementing appropriate technology solutions is critical to improving a processor's bottom line and ensuring the sustainability of the industry. MLA is committed to foster creativity and support technology providers and processors to innovate and develop new safer, sustainable and cost-efficient solutions to problems affecting the industry

1.19 Australian food producers and food businesses have significant opportunities as the demand and prices for food commodities increase, in response to both population and income growth, particularly in Asia.

Trade Policy Implications

1.20 Successive governments have supported multilateral trading systems. High-quality bilateral and regional FTAS support the multilateral system promoting a liberalised approach to trade in food and agricultural products between Australia and its trading partners.

1.21 Australia has successfully concluded FTAs with New Zealand, Singapore, the US, Thailand, Chile and the Association of Southeast Asian Nations (ASEAN). Work is also underway to conclude FTAs with Korea, Japan, China, and co-operation Agreements with India, Indonesia and the Gulf Cooperation Council. Negotiations are continuing on the Trans-Pacific Partnership Agreement with the Asia-Pacific countries of Brunei Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, US and Vietnam.

1.22 Some submissions argued that FTAs reduce Australia's competitiveness and argued for 'fair trade' rather than 'free trade'. Government senators are concerned misunderstandings exist about the potential benefits and opportunities that come from FTAs, and the importance of these agreements for driving regional economic trade liberalisation and integration in participating countries.

1.23 Some submissions conflated several issues and argued for greater protection for Australian industry. For example: Mrs' Mac's stated:

"...the lack of willingness by governments and retailers to consider applying a level manufacturing playing field by requiring foreign manufacturers that export food products into Australia to meet the same processing standards and hence consequential costs that are imposed by government regulation here in Australia across all tiers of government." (p. 1)

1.24 Rather than a drive to the bottom, multi-lateral agreements seek to impose WTO rules and obligations on those countries.

1.25 Australia also pursues agreements with trading partners on specific commodities or commodity groups to ensure existing markets remain open and trade in Australian products takes place with minimal disruptions. These include beef, wheat, dairy, sheep, meat and sugar. To support export-ready companies to expand their business in growing and emerging markets, the industry has argued strongly for improving trade services to help identify those opportunities.

1.26 Government senators are very concerned about the level of pessimism that exists within the food processing industry, as parts of the industry continue to struggle with the impacts of the global financial crisis, our strong exchange rate and the reduced competitiveness of the industry. The answer however, is not to diminish Australian standards, rather to strive for efficiencies in regulation, minimise duplication and support innovation across the supply chain. For Australia, as a developed country with a strong, educated labour force, we are not going to compete on labour costs. Therefore, the emphasis by successive governments must be on research and development, and innovation that will increase productivity, marketability and address production challenges.

1.27 Industry bodies acknowledge this. Meat and Livestock Australia, promoting innovation in their sector argue:

Tight margins in the red meat processing sector mean limited resources have been devoted to technical innovation and the application of automation to some of the pressing human capital issues facing the sector.

New technologies such as automation offer significant opportunities to solve problems such as improving productivity, increasing yield recovery and remuneration levels, occupational health and safety (OH&S) performance and attracting people with new skills into the industry.

Developing and implementing appropriate technology solutions is critical to improving a processor's bottom line and ensuring the sustainability of the industry. MLA is committed to foster creativity and support technology providers and processors to innovate and develop new safer, sustainable and cost-efficient solutions to problems affecting the industry.¹

1.28 The Australian government has a range of programs to assist firms increase their productivity and move up the value chain by encouraging innovation. Raising the capabilities of these firms is aimed at helping them adapt to the challenges of working in a global economy, including currency fluctuations and in particular the current high Australian dollar.

1 (<http://www.redmeatinnovation.com.au/innovation-areas/new-technologies>)

1.29 The committee heard evidence that food industry firms are seeking greater assistance to commercialise new products in response to changing food consumption patterns and tastes. This may include how to manage IP issues and access investment capital to modernise plant and equipment and to fund research and development. Government incentives for SMEs with up to \$20m turnover include a 45% refundable tax offset for research and development. From 1 January 2014, these companies will be able to access credits on a quarterly basis.

1.30 Government senators believe however, that more can be done to support SMEs to access quality advice, support, technology advice and access to research , and encourages Enterprise Connect, (a government funded network that links local firms to resources in their immediate region and across the country) encouraging innovation, sustainability and entrepreneurship to better promote its Food Network throughout the industry. This is critical for boutique parts of the sector developing gourmet products, such as the Australian Barramundi Farmers Association, who need access to early research funding for pre-commercialisation activities

1.31 The Australian government also pursues agreements with trading partners on specific commodities to ensure existing markets for Australian agricultural and food exports remain open. This is done through industry bodies, working closely with government funded trade services located in overseas countries.

1.32 Industry leaders acknowledge the importance of market intelligence and support for Australian food businesses and rely on government representatives to provide country specific advice to potential exporters. However, some concerns were expressed about the lack of access to this kind of information for small and medium enterprises, which have fewer resources and capacity to understand technical market access issues.

1.33 Government senators therefore call for greater efforts to improve market intelligence and its coordination and dissemination to food export businesses to help the industry, particularly SMEs to identify potential trade opportunities.

Regulation and Competition Policy Implications

1.34 Government senators support efforts to reduce duplication in the regulatory environment and urges state and territory governments to address issues which are delaying the completion of the National Partnership on the Seamless National Economy. We particularly note concerns from industry on the importance of delivering reforms to harmonise occupational health and safety laws and urges all jurisdictions which have yet to deliver agreed outcomes for this reform to do so by the end of 2012.

1.35 Given the importance and challenges for the food processing sector of ongoing regulatory reform as highlighted by this chapter, we urge urges all jurisdictions to prioritise work through COAG to develop a new regulatory reform agenda for finalisation by the end of this year.

1.36 Government Senators reject Recommendations 4 and 5. We see no need at this time to review the competition provisions of the Competition and Consumer Act 2010 (CCA). Since coming into office in 2007, the Government has made a number of important amendments to the competition provisions of the CCA, including clarifying the misuse of market power provisions, criminalising hard-core cartel conduct and clarifying the mergers and acquisitions laws in relation to creeping acquisitions. We note that these recommendations closely mirror Recommendations 5 & 7 from the Senate Economics References Committee's Inquiry into The Impacts of Supermarket Pricing Decisions on the Dairy Industry. We endorse the comments by the Government Senators in relation to the Senate Economics References Committee report.

1.37 Government senators welcome the recent focus placed on the major supermarket chains by the Australian Competition and Consumer Commission (ACCC). The ACCC has stated that, during 2012, it will be giving priority to competition and consumer issues in highly concentrated sectors, particularly in the supermarket sector. The ACCC is closely examining the major supermarket chains to ensure that any negotiations of supply arrangements are not unconscionable and that they do not misuse any market power.

1.38 Given the recent changes to the CCA, Government Senators consider that the competition provisions need not be reviewed until the ACCC has had the opportunity to further test the law in the courts. It is only after the laws have been suitably tested that any weaknesses in the law can be appropriately identified.

Bio-security issues

1.39 Increased global trade and increased passenger travel has placed significant pressure on Australia's bio-security, import inspection and export certification systems. Food producers should not underestimate the advantages that come with Australia's reputation for clean, pest and disease-free status in a number of key markets.

1.40 Australia regulates the export of meat, dairy, fish, grains, horticulture and live animals through the provisions of the *Export Control Act 1982*. These provisions relate to the requirements of importing countries and are the outcome of negotiations between Australia and the importing country.

1.41 Government senators were concerned to hear evidence that some trading partners are setting unnecessary and unsubstantiated import requirements posing significant burdens on food export businesses. The live cattle export trade is one example of where this has occurred.

1.42 Imported foods, plants and animals must comply with all applicable Australian laws, including those covering labelling, environmental, food safety and biosecurity arrangements. Biosecurity restrictions are set out in the *Quarantine Act 1908* and are consistent with Australia's obligations under the WTO. Imported foods are inspected under the provisions of the *Imported Food Control Act 1992* which

provides for inspection and control of imported goods. However, the most common deficiency in meeting these standards is in food labelling.

1.43 Evidence provided to the committee highlighted the cost impost on the Australian food processing industry of the import and export system, and Government Senators are particularly keen to see the development and introduction of the new *Biosecurity Bill* to replace the *1908 Quarantine Act* with a more streamlined and cost-effective legislative framework. As well, we believe that the Imported Food Control Act should be reviewed to address the concerns of industry about controls of imported foods.

Cost recovery policy issues

1.44 In relation to issues of cost recovery mechanisms, it would appear that not all parts of the industry understand the reforms and initiatives being undertaken to bring the industry in line with the conditions of WTO agreements. New export fees and charges returning industry to full cost recovery commenced on 1 December 2009. The Australian Government provided \$25.8 million to support reforms to the meat sector., and a further \$1.92 million in transitional assistance to exporters of smallgoods and poultry products, cold stores and freight forwarders.

1.45 This measure was not contested by the Coalition at the time . It is worth noting that at the 2007 election the Coalition made no promise to extend the 40% rebate on export certification fees. They made no provision for it in the budget beyond 2008. Full cost recovery was their stated policy in Government. However, they subsidised the system which helped to entrench inefficiency and shielded export certification users.

1.46 In relation to the evidence provided to the Committee from the horticultural sector in relation to cost recovery issues, we note that even with the 40% rebate, the Horticulture export certification program was subject to chronic under-collection and was inefficient. Government senators note that the new arrangements have the potential to deliver significant efficiencies and has provided \$6.5 million in transitional assistance to horticulture exporters..

1.47 Government Senators note that the Australian Government Cost Recovery Guidelines were implemented by the Howard Government, and applaud the Government's efforts which have resulted in a reduction in the cost to exporters of export certification services in the order of \$30 million per annum.

Anti-Dumping Measures

1.48 The Committee received anecdotal evidence about this issue and Government Senators are interested to ensure that our food processing sector is not disadvantaged by this practice. Dumping occurs when goods are exported to Australia at a price below the domestic price in the country of export. While it is a problem that reaches industries far beyond primary production, the Committee considered the problem of

tinned, frozen and fresh food from across the globe flooding the Australian market at a fraction of the price.

1.49 One of the main drivers of produce dumping is the subsidies paid by foreign governments, particularly in the European Union and US, where farmers and owners of farmland receive cash subsidies depending on market prices for crops, the level of disaster payments and other factors. The US Department of Agriculture also provides subsidised crop insurance and marketing support to the country's farmers. This is not the case in Australia, where we operate on the counter argument to subsidised farming – that it props up growers who are inefficient, instead of promoting successful farming and production practices.

1.50 Other overseas producers have significantly lower costs across all categories – including cheap and sometimes even illegal labour – that allow them to produce food at a price that undercut Australians producers. Flooding the market with imported produce, especially in the frozen food category, being may be profitable for some, but many growers would like to see some level of protection against aggressive dumping of food products at below the cost of production.

1.51 It is important to consider the conditions that Australian producers have fought for decades for to secure. More than this, if free trade is also to be fair trade, we need to consider the effect on wider Australian economy of local food producers being excluded from the market because the supermarkets are not prepared to pay them enough to survive while they can source similar products overseas.

1.52 Government senators acknowledge that in response to industry and consumer calls, the Minister for Home Affairs has announced the Brumby Review to examine the current arrangements for assessing and investigating anti-dumping matters and consider the feasibility of a commonwealth anti-dumping agency.

Transport and Freight issues

1.53 The transport industry across Australia is under pressure to plan effectively for the massive increase in the national freight task. The relationships between freight infrastructure and economic growth is one of interdependence, and in terms of the food processing sector, freight infrastructure is critical to ensuring that fresh produce gets to market quickly and efficiently.

1.54 Government Senators disagree with the claims of some witnesses that the Coastal Trading Bill 2012 will increase costs. This claim is based on modelling done by Deloitte that claimed freight costs would increase up to 16% under the Shipping Reforms. However the baseline assumptions of the Deloitte report are incorrect. The modelling is based on the assumption that all temporary licenses will be phased out in 5 years and that all coastal cargo will be carried on Australian licensed vessels, paying Part A wages. This has never been the Government's intention and the exposure drafts do not contain such a measure. The Deloitte analysis therefore is not based on the legislation currently before Parliament.

1.55 The Government has also pursued the creation of single National Transport Regulators since coming to Office in 2007. From 1 January 2013 there will finally be three National Transport Regulators (for Heavy Vehicles, Rail and Maritime). This will reduce the number of regulators from 23 to 3 and result in \$30 billion in productivity gains over the next 20 years.

Workforce issues

1.56 The Government senators reject Recommendation 24 as it stands, pending further consideration. The Australia and New Zealand Standard Classification of occupations (ANZCO) is an international standard for comparative evaluation and statistical analysis used by the ABS. Devoting resources to establishing another set of standard for the food industry would be time-consuming and contentious and would conflict with standards across other sectors, particularly in agriculture.

1.57 Government Senators also reject Recommendation 25. We do not believe that, industry specific training is likely to assist in addressing this issue, because concerns expressed by witnesses went more to the policy settings, rather than how DIAC officers apply those settings. In fact, the challenges of a two speed economy are common across a range of industries therefore specific training is unlikely to assist.

1.58 In relation to the industrial relations issues canvassed in the Inquiry, Government Senators refer the Committee to the recently completed independent Review into the Fair Work Act. The Report of the Panel reviewing the Fair Work Act found that labour costs have not increased, with overall wage growth since 2009 around its decade-long average. It noted that the legislation provides a number of avenues for flexibility, including through the use of individual flexibility agreements and enterprise bargaining.

1.59 Under the Fair Work Act, an employer and employees can negotiate an enterprise agreement on any matter that pertains to their relationship. There are no unnecessary restrictions on what can be included in an agreement. The Fair Work Act requires that such an agreement leave employees better off overall than against the applicable modern award. This provides flexibility to change award conditions, so long as employees are better off overall.

1.60 In addition, an employer and employee covered by an award or an enterprise agreement can negotiate an individual flexibility agreement that meets the employee's individual needs. Again, the employee must be better off overall against the modern award or enterprise agreement, as applicable.

1.61 The independent Panel rejected claims that flexibility is created by cutting wages and conditions. The Report did not recommend the reintroduction of AWAs or any form of individual contract. In fact, the Panel identified that AWAs were bad for many employees, especially for low-skilled and vulnerable workers. The Panel found many of these workers suffered the unilateral removal of conditions, a reduction in their take-home pay and were worse off overall compared with the relevant award.

AWAs undermined the safety net, often for those who needed protection most, and the Panel had no appetite to reintroduce this arrangement.

1.62 The Report found no convincing evidence that the Act impedes productivity growth. It also cautiously notes some recent figures indicating improvements in productivity. The Panel found that since the Act came into force, important outcomes like wages growth, industrial disputation, the responsiveness of wages to supply and demand, the rate of employment growth and the flexibility of work patterns have been favourable to Australia's continuing prosperity.

1.63 Government Senators note that Fair Work Australia is currently undertaking a review of modern awards, including in relation to penalty rates and flexibility. Interested parties are able to make submissions in relation to these matters as part of the independent Fair Work Australia process.

1.64 The AMWU, as the union representing workers in the food processing sector was not questioned about wages, conditions or flexibility let alone the impact of the Fair Work Act and modern awards on their members and their members' workplaces.

1.65 It is disappointing that the majority report reflects highly selective evidence on industrial relations matters from the Committee's public hearings, rather than including more measured responses by businesses to Committee questions about the Fair Work Act.

1.66 At the Sydney hearing of the Committee, Mr Vincent Pinneri from SPC Ardmona, a major fruit and vegetable processor, was questioned by Senator Fisher about the supposed impacts of the Fair Work Act and modern awards on his business. Mr Pinneri's evidence, not included in the Committee Report, reflects a different perspective:

Senator Fisher: Thank you. In your opening statement and your submission you talk about challenges to your business and labour costs. How have you found the Fair Work Act—good, bad or indifferent?

Mr Pinneri: I think there are some areas of improvement in the relationship with the unions and the Fair Work Act.

Senator Fisher: Such as?

Mr Pinneri: I think the arrangements need to become more flexible.

Senator Fisher: Is that because of the unions' conduct or because of the legislative provisions or both?

Mr Pinneri: Both.

Senator Fisher: Have the unions approached your business any differently since the passage of the Fair Work Act?

Mr Pinneri: The relationships that we currently have with the unions we deal with has actually been quite collaborative. We want to move the discussion into a different direction moving forward because right now, we

need to get to a very different space in the negotiations around the next EBAs. In our world, Sunday during a season is like a Friday.

Senator Fisher: You said that your needs are primarily in the area of flexibility. Do you mean agreement content or the agreement-making process?

Mr Pinneri: Agreement content.

Senator Fisher: Yes. The PM does not control when the apples ripen—none of us do.

Mr Pinneri: So during the season I think there is a different approach that we should have in terms of the agreement content versus out of season. We are going to try to do everything we can to deseasonalise our business by leveraging technology.

Senator Fisher: But you grow fruit.

Mr Pinneri: But there is processing technology that allows you to put it into bulk containers that you can manufacture out of season without losing the integrity of the product. We will do that, but our primary focus is during a five- or six-month period. So we need to have very different arrangements during that period which will help with our cost competitiveness as well in terms of taking the input costs out of the business, specifically labour ones.

Senator Fisher: So how is your modern award?

Mr Pinneri: In what regard?

Senator Fisher: There is a federal award that would govern you and underpin your agreement. Do you have any views on that or is that largely irrelevant because of your enterprise agreement?

Mr Pinneri: It is largely irrelevant because of the enterprise agreement.

Senator Fisher: You talked about productivity and how you have been able to increase it with your machinery et cetera, particularly during peak seasons. Has the Fair Work Act helped you in respect of increasing productivity?

Mr Pinneri: I think that has been driven by us making the right level of investments out of season and us working with our own people to actually get to the productivity and the union stewards that are on the floor.

Senator Fisher: Has the Fair Work Act hindered you? Could you have done better without it in that respect?

Mr Pinneri: No, it has been irrelevant.²

² Mr Vincent Pinneri, SPC Ardmona, Food Services Division of Coca-Cola Amatil (Aust) Pty Ltd, *Committee Hansard*, 10 February 2012, p. 42–43.

1.67 Also at the Sydney hearing, in response to questions about the Fair Work Act Mr Craig Funnell of Campell Arnott's made the following observations:

Mr Funnell: In terms of Fair Work.. we probably see Fair Work Australia as being reasonably benign... We have a very close working relationship with our employees across our plants. We continue to drive productivity and they continue to drive productivity in our operations. We have had no real issue with Fair Work.

Senator Fisher: Fair Work Australia is the tribunal. Do you mean the Act as well?

Mr Funnell: We have certainly had no issues across our plants that have really required us to get into any major issues with Fair Work Australia. We have certainly worked through an EBA process across our factories. We have certainly had EBAs come up for renegotiation. They have been processed through Fair Work with no issue.³

1.68 In Adelaide, Mr John Millington, from Luv-a-Duck specifically identified no adverse impacts of the Fair Work Act:

Senator Fisher: In your experience have you found any ramifications for you in terms of labour, any changes good or bad since the implementation of the Gillard government's Fair Work legislation?

Mr Millington: In our case we have not.... we have enterprise agreements in place and we just do not have IR issues at all. So Fair Work Australia has not been a problem for us in compliance or with our staff.⁴

1.69 Government Senators note that there are the flexibilities available to employers through the Fair Work Act that enable them to negotiate with their employees an enterprise agreement on any matter that pertains to their relationship, as long as the employee is better off overall comparative to the applicable modern award. Further, an employer and employee covered by an award or an enterprise agreement can negotiate an individual flexibility agreement that meets the employee's individual needs as long as the employee is better off overall against the modern award or enterprise agreement, as applicable.

Recommendation 1

1.70 Government Senators reject any call for further reviews of the Fair Work Act. A comprehensive, independent review has just been completed, which found that the legislation does provide a number of avenues for flexibility.

³ Mr Craig Funnell, Campbell Arnott's, *Committee Hansard*, 10 February 2012, p. 61.

⁴ Mr John Millington, Luv-a-Duck Committee Hansard, 17 April 2012, p. 35.

Recommendation 2

1.71 Government Senators encourage food processing industry employers who require greater flexibility of their workforce to utilise the existing mechanisms allowable under the Fair Work Act.

Skills

1.72 Government Senators are concerned by the Committee Report's lack of focus on increasing the skills of Australian workers. While we support programs that seek to fill skills gaps with labour from overseas, this must not be done without due consideration or at the expense of Australian workers.

1.73 A significant initiative in workforce skills development omitted from the Committee Report is the AgriFood Skills component of the National Workforce Development Fund (NWDF). This fund provides more than \$6 million of skills and training initiatives across the industry sectors and has been actively accessed by food processing firms to ensure workers gain the specific skills required to improve their business.

1.74 For example, Haigh's Chocolates has used the NWDF to train and qualify workers in Competitive Manufacturing. Funding is also available through AgriFood Skills to help individual employers to implement workforce planning and the training of their workforce and to support industry stakeholders to implement sector wide or regional workforce initiatives.

1.75 Government Senators note that AgriFood Skills was created by the Howard Government in 2004 when it disbanded the National Food Industry Training Council. While the National Food Industry Training Council was focussed solely on the food industry, AgriFood Skills has vast responsibilities for areas such as food, beverage and pharmaceutical processing; meat; horse and greyhound racing; rural and related industries; and seafood.

Energy Costs and the Carbon Price

1.76 Government Senators fundamentally disagree with much of the evidence presented to the Committee in relation to the Carbon pricing policy. There are many examples in the food processing sector that highlight the potential for innovation and opportunities being harnessed through the Clean Energy Technology package.

1.77 Government Senators note that a significant portion of the revenue from carbon pricing is spent on industry assistance. Of particular relevance to the food processing sector is the Clean Technology Investment program for manufacturing businesses, which provides government co-investment into new capital which lowers energy costs and improves competitiveness.

1.78 In evidence to the Committee, Mrs Mac's Pty Ltd, a large scale bakehouse, expressed appreciation for the range of government grants to assist businesses

Mr Beres: "We have actually accessed, very recently, federal government funding for some energy-saving initiatives within the organisation. The benefits to us, for example, are: a 28 percent reduction in our water heating costs, a 25 percent increase in one of our line speeds using the same level of energy input, and a 30 per cent efficiency gain in some of our condensers within our operations."⁵

1.79 The Jobs and Competitiveness Program (JCP) alleviates anti-competitive impacts from the carbon price on trade exposed and directly liable businesses. By allocating up to 94.5 per cent of permits free to businesses who operate in international markets, the JCP allows these businesses to remain competitive. Businesses which provide inputs into the food processing sector are directly liable for the carbon price and are trade exposed, therefore they are not required to pass on carbon related costs, ensuring upstream clients are also shielded from anti-competitive carbon price impacts.

1.80 The Committee noted industry requests that government support be targeted 'so that the competitive balance is not tilted in favour of products with a larger carbon footprint'. Government Senators believe that this concern is addressed in the design of the Clean Technology Investment Programs (CTIP) and the JCP. JCP assistance is directly tied to carbon price liability and trade exposure in the market, while the CTIP provides co-investment based on the merit of investment proposals.

1.81 The food processing sector is quickly drawing on these programs to improve innovation and productivity. For example

- Crafty Chef – Emu Plains NSW have received nearly \$500,000 from carbon pricing revenue to install a new commercial blast freezer. This will reduce the carbon intensity of its operations by 54.1 percent, reduce energy intensity by over 56 per cent and boost turnover by 150 per cent to \$50 million.
- Across its national network, De Bortoli Wines is undertaking a range of measures across its all areas of its business from production to warehousing. The purpose is to improve energy efficiency across its operations and upgrade old equipment, supported by almost \$5 million from the Clean Energy Technology package. De Bortoli will improve energy efficiency across its operations by 36.3 per cent.

1.82 Government Senators refute the claim made by Campbell Arnott's using modelling from the AFGC, that pricing carbon will have about a 4.5 percent impact on operating profits in the industry. The AFGC modelling did not include the assistance measures outlined above and should be treated as an overestimate of the actual impacts on the sector.

5 Mr Murray Beres, Mrs Mac's Pty Ltd *Committee Hansard*, 18 April 2012, p. 18.

1.83 Lion Pty Ltd suggested significant potential administrative costs would occur as a result of the carbon pricing mechanism. As Lion Pty Ltd is not a directly liable business, there should not in fact be any additional administrative burdens. However, the evidence indicates the extent of community misunderstanding about the actual impacts of carbon pricing on Australian businesses.

1.84 Treasury modelling of the food manufacturing industry projects growth by 108 per cent by 2050, with meat processing growing by 137 per cent over the same period. It also projects that carbon pricing will result in food processing outputs 2 per cent higher in 2050 than without, and that meat processing output alone will be over 1 per cent higher in the same time period. This supports Treasury's broad conclusion that carbon pricing will drive a shift of economic activity towards non-emission intensive sectors of manufacturing, like food processing, and away from emission intensive sectors of manufacturing, like aluminium.

1.85 The food processing sector needs assistance to understand the real implications of the carbon price on the food supply chain and the mechanisms for determining those costs and how to pass them on to consumers. Government Senators are concerned that consumer information and education is a critical factor in understanding the principles and purposes of carbon pricing and its effect on the sector, and urges continued investment in community awareness and education as the mechanism comes into operation.

Recommendation 3

1.86 Government Senators recommend that the Federal Government increase consultation with, and education of, the food processing sector about industry opportunities and obligations in relation to the carbon pricing mechanism.

1.87 Government Senators note that the ACCC has a strong mandate to monitor business activity that makes misleading claims about the impact of carbon pricing to mask other price increases. Misleading claims can result in action by the ACCC and fines of up to \$1.1 million. Directors and senior officers also face fines of up to \$220,000, and disqualification as a director. The ACCC has already fined companies for misleading price gouging.

1.88 For example, in late July, 2012 the ACCC accepted an enforceable undertaking from a South Australian refrigeration contractor, Equipserve, to correct their claims that price increases were wholly due to the carbon price. Equipserve represented that the entire refrigerant price increase from \$98 to \$395/kg was wholly due to the carbon price, but this was not the case. Equipserve Solutions admitted that the conduct breached the Australian Consumer Law by wrongly attributing the entire price increase to the carbon price.

Concluding Remarks

1.89 Government senators were impressed by the depth and diversity of the food processing sector represented through this Inquiry. The evidence highlighted the

challenges of an industry sector undergoing significant change, and the opportunities for innovation that are emerging from those pressures.

1.90 Domestic and international factors impacting on the sector reflect the globalised nature of the sector, as well as more highly informed consumers seeking value for money. It is government's role to create an enabling environment for strong market participation, and this report highlights important areas of reform that will be critical for the food processing sector.

1.91 It is clear that the answer is in the sector's capacity to innovate and thrive. We were provided with inspiring examples of new and emerging products that are capable of transforming parts of the sector. We need to remember however, that the industry is best served by an innovative and adaptive business culture and a well trained and supported workforce.

Senator Ursula Stephens

Senator Glenn Sterle

Senator Anne Urquhart

Minority Report by Nick Xenophon

Independent Senator for South Australia

1.1 Australia's food processing sector is vital to our economy and food security. It is extremely concerning that successive governments have not seen fit to provide the industry with the support it needs, especially in relation to ensuring that Australia has world's best competition and consumer laws that adequately safeguard the competition and competitive diversity provided by food processors, small businesses and farmers.

1.2 As a result, food processors in Australia are now battling against a multitude of challenges, including the Coles and Woolworths duopoly, excessive levels of regulation, high production costs and the constant threat from imported products which can be passed off as Australian because of weak and misleading labelling laws. The Federal Government must act as a matter of urgency to ensure our food processing sector has a sustainable future.

1.3 The Committee's majority report has identified many of the major challenges facing the food processing sector, and with it the impacts on our primary producers. The issues in this report raise the bigger question of whether the Government and Opposition will adopt effective policies which will not only ensure the survival of the industry, but will also promote its future growth.

1.4 It is also important to acknowledge that the food processing sector – with its some 194,300 jobs across 10,000 businesses – is currently facing significant 'unknowns' in its future. Both the introduction of a carbon price and the Murray Darling Basin Plan will affect the industry, but it is currently impossible to quantify the extent of these effects.

1.5 I endorse the Committee's recommendation that the Government should monitor the implementation of a carbon price, although this should also include the Basin Plan. In particular the impact of the Basin Plan on South Australia given the vulnerability of SA food processors and producers being at the 'tail end' of the river system, combined with the early adoption of water efficiency measures in SA and the distortion in the water market that will be created by the overwhelming majority of \$5.8 billion in water efficiency funds going to the eastern states.

Recommendation 1

1.6 The Federal Government monitor the effect of the Basin Plan on food production and processing as a matter of priority, and in particular South Australia.

1.7 I note the Federal Government's intention to create a National Food Plan. I support this intention, but any plan must be comprehensive, detailed and focus on action rather than ongoing monitoring. The Plan should cover all aspects of the food production and processing industries, and focus on consumer as well as industry outcomes. I endorse the comments of the Public Health Association of Australia in relation to this¹.

1.8 It is also vital that the National Food Plan addresses the multi-jurisdictional and complex regulations placed on the food processing industry. It is clear that this piecemeal approach to regulation is placing undue burden on an already struggling sector.

Recommendation 2

1.9 The Federal Government take into account all areas of the food production and processing industries when forming the National Food Plan, and ensure that the Plan focussed on action-based outcomes.

1.10 The lack of higher education interest and opportunities in relation to the food processing sector needs urgent attention. I note the important work of the Primary Industry Centre for Science Education (PICSE) in these areas. It is a significant failing of State and Federal governments that PICSE continues to struggle for funding and, due to a lack of long-term funding guarantees, is forced to exist from year to year. More secure funding would undoubtedly lead to even better outcomes from this organisation, and in turn the food processing sector.

1.11 It is unacceptable that processors are forced to access expert knowledge about new technologies and procedures outside Australia, as stated by Mr Elder of Simplot.² This points to a serious failure in both education and research and development in Australian agriculture and food processing.

1.12 I acknowledge the Committee's recommendation in relation to higher education, and I encourage State and Federal governments to address the funding problems for such organisations.

1.13 It is also important to note the challenges facing the industry in relation to labour costs, and I endorse the Committee's comments in relation to this. Not only are food processors – particularly small businesses with 20 full-time equivalent employees or less – competing against higher wages in more lucrative industries, such as mining, but the substantial increase in penalty rates under the Fair Work awards has created additional pressure.

¹ Adjunct Professor Michael Moore, Chief Executive Officer, Public Health Association of Australia, *Committee Hansard*, 10 February 2012, p. 31

² Mr Callum Elder, Simplot, *Committee Hansard*, 12 April 2012, p.21

1.14 I note the broad concerns raised by the industry in relation to transport infrastructure and the associated high costs of transporting goods³. Similar concerns were discussed in the Rural and Regional Affairs and Transport References Committee inquiry into operational issues in export grain networks. That inquiry received evidence of extremely high costs and market concentration in rail networks, and also of the difficulties caused by lack of infrastructure investment by State and Federal governments.

1.15 In my Additional Comments to that report, I made several recommendations for further reviews and assessments to be undertaken into freight and rail transport costs in Australia⁴. The evidence received by this committee shows the problems extend far further than the grain industry, and as such these recommendations should be acted on as a matter of urgency.

Recommendation 3

1.16 The Federal Government, as a matter of urgency, appoint an appropriate body to review the condition of lines for rail freight transport in Australia, with particular attention to a cost/benefit analysis of rail versus road transport and the benefits of implementing an auction-based system similar to the one currently operating in the US.

1.17 I strongly support the majority recommendation of the Committee regarding an independent review of the *Competition and Consumer Act 2010*, particularly the need for closer monitoring and effective action in relation to creeping acquisitions, especially by Coles and Woolworths. The fact that Coles and Woolworths have been able to expand their market share from 40 percent to over 80 percent in thirty years without triggering any regulatory interference or action shows significant gaps in both government policy and the current regulatory system. Creeping acquisitions can substantially lessen competition over time and it is essential that the anti-competitive effect of such acquisitions are acknowledged and that the *Competition and Consumer Act 2010* adequately prohibits anti-competitive creeping acquisitions.

1.18 A review of the provisions within the *Competition and Consumer Act 2010* insofar as they relate to collective bargaining is also warranted. Growers groups provided evidence to the Committee that the major retailers are either reluctant to negotiate with collectives or refuse to do so. The imbalance of power between suppliers and retailers could lead to circumstances where, due to their market share, major retailers may simply refuse to collective bargain or enter into discussions in good faith with smaller suppliers about prices, terms and conditions. There is a danger

³ Mr Gary Burridge, Chairman, Australian Meat Industry Council and Mr Roger Fletcher, Chair, Sheepmeat, Committee Hansard, 10 February 2012, p. 27.

⁴ Senator Nick Xenophon, Additional Comments, *Rural and Regional Affairs and Transport References Committee report into operational issues in export grain networks*, 16 April 2012, p.105

that such practices can lead to the closure of smaller suppliers.⁵ Persistently low orange prices were behind the decision of orange grower Bill Rüdiger to bulldoze part of his orchard in March 2012.⁶ If we truly values Australia's food industries we must act now.

1.19 Further, if the Federal Government still needs convincing of the devastating impact of persistently low farm gate prices then I refer them to the evidence of dairy farmers in the Inquiry into the impacts of supermarket prices on the dairy industry.

1.20 As the abovementioned inquiry was started due to the private label price war on milk, I believe particular attention needs to be paid to the growing dominance of private labels in our major retailers. Suppliers are being put in a difficult position when they are asked to manufacture a private label product which will be in direct competition with their own branded product. Furthermore, as evidence before the Committee suggests, "*retailers can capitalise on the leading brands' innovation without the risk and expense of developing the intellectual property*".⁷ Together with the lack of funding for the industry for research and development, I believe the growth of the private label poses one of the most significant threats to Australia's food processing industry as it seriously jeopardises new product innovation and over time reduces product choices to the detriment of consumers.

1.21 I am concerned by the Department of Treasury's belief that "*ultimately the market will decide*" the extent of private label market domination.⁸ This position seems dangerously naïve and fundamentally flawed as it ignores the evidence of producers and manufacturers that private labels dampen competition and will lead to a reduction in product innovation and diversity. Given Treasury also identified a number of other factors that impact the relationship between suppliers and retailers⁹, I am concerned about that Department's lack of sense of urgency and policy foresight to address this major power imbalance to date.

1.22 The loss of product choice and innovation over time represents a serious and growing market failure and it would be expected that, at the very least, the Department of Treasury would undertake meaningful independent research regarding how consumers could be worse off with less product choice and innovation. Such independent research should be undertaken as soon as possible as a failure to recognise and respond in an adequate and timely manner to a market failure seriously distorts market competition to the considerable detriment of consumers.

⁵ Citrus Growers of South Australia Inc, *Submission 45*, p. 2.

⁶ Laura Pool and William Rollo, "Producer bulldozes orange trees", ABC Rural, <http://www.abc.net.au/rural/sa/content/2012/03/s3456935.htm>, accessed 6 August 2012.

⁷ Ms Catherine Barnett, Chief Executive Officer, Food South Australia Inc., *Committee Hansard*, 10 February 2012, p. 17.

⁸ Treasury, *Submission 18*, p. 6.

⁹ Department of the Treasury, *Submission 18*, p. 5

1.23 Perhaps the greatest example of the growing disparity of bargaining power that exists between suppliers and retailers is in the trading terms. Woolworths believes its negotiations to be ‘tough but fair’¹⁰. However where the market is dominated by two main retailers it is unrealistic to take the view that retailers are not receiving a disproportionately greater benefit from the trading terms than the suppliers. In a country where suppliers have relatively few buyers domestically, and are faced with prohibitive export costs, the major supermarket chains can impose ‘take it or leave it’ position during trading terms negotiations.

1.24 The Committee heard disturbing evidence in camera of what appeared to be unfair and unconscionable practices by major retailers to particular food processors. The fact that these food processors were not prepared to give evidence in public is in itself disturbing (indeed it merely confirms the experience of the producers of ABC’s ‘Lateline’ program of 21 March 2012, where it was revealed that over 100 calls were made to producers and processors and only one was prepared to speak, as long as their identity and product were not revealed). This climate of fear seems to be a function of the growing market power of Coles and Woolworths, combined with inadequate competition and consumer laws.

1.25 There needs to be an urgent review of laws against unfair contract terms. Such laws are currently limited to traditional consumer contracts and do not cover contracts involving small business and farmers. This is a significant gap in laws against unfair contract terms. In relation to the food processing sector potentially unfair contract terms include the imposition of additional fees and charges above what was originally agreed to by the supplier, as well as the refusal of retailers to accept legitimate price increases. Suppliers need better protection from unfair contract terms such as these in order for them to continue operating in the market.

1.26 According to industry the unconscionable conduct provisions within the Australian Consumer Law also need strengthening as currently it is almost impossible to prove a retailer has acted unconscionably.¹¹ Associate Professor Frank Zumbo, a leading commentator on competition and consumer law issues, has also proposed that a statutory definition of unconscionable conduct be included in Australian Consumer Law and that Australia needs effective laws to deal with unfair terms in contracts involving small businesses.¹²

Recommendation 4

1.27 Amend the Australian Consumer Law to deal effectively with unfair contract terms in contracts involving small businesses and farmers, with further consideration be given to including a broad statutory definition of unconscionable conduct in the Australian Consumer Law.

¹⁰ Mr Ian Dunn, Woolworths Ltd, *Committee Hansard*, 15 May 2012, p. 28.

¹¹ Ms Kate Carnell, *Committee Hansard*, 13 December 2011, p. 28.

¹² A/Prof Frank Zumbo, *Promoting a more diverse and competitive Australian supermarket sector* (2012) 20 AJCCL 25

1.28 Suppliers could benefit from a mandatory code of conduct which applied to grocery retailers. A mandatory code would set standards on acceptable approaches to negotiation, which together with a Supermarket Ombudsman or the proposed Federal Small Business Commissioner, could provide the platform from which to assist small businesses to resolve disputes.¹³ I am concerned by Treasury's belief that it is better to leave an industry to self regulate.¹⁴ In a trading environment dominated by two major retailers and increasingly characterised by potentially anti-competitive pricing strategies, suppliers need more empowerment than ever if they are to continue to trade profitably.

1.29 Evidence presented to the Committee demonstrates voluntary codes are not taken seriously and that a mandatory code would be "*an efficient mechanism by which there is the transparency...that gives food manufacturers a fair go*".¹⁵ A mandatory code of conduct needs to be backed by financial penalties in the same way that the South Australian Government has recently provided a legal framework in the *Small Business Commissioner Act 2011* for the imposition of financial penalties for breaches of mandatory codes of conduct under the South Australian *Fair Trading Act 1987*.¹⁶

Recommendation 5

1.30 The Federal Government implement a mandatory Supermarket Fair Trading Code of Conduct, to be overseen by a Supermarket Ombudsman or the proposed Federal Small Business Commissioner and backed by financial penalties under the Competition and Consumer Act for breaches of the Code.

1.31 Whilst I acknowledge the Committee's comments in relation to the reluctance of suppliers to come forward with complaints about the market power of the major retailers, particularly in regards to negotiating terms of trade, I believe more can be done to encourage and facilitate the complaint making process. The difficulty for suppliers lies in the fact that their concerns must be communicated to the retailers by the ACCC during the process of the ACCC investigation. The ACCC must improve their complaint handling processes can be maintained and guaranteed. Furthermore, if a supplier that comes forward subsequently faces detriment there ought to be a reverse onus of proof provision which would impose penalties on a retailer unless it can be shown that the adverse action was not in any way related to the complaint.

¹³ Australian Food and Grocery Council, *Submission 12*, pp. 4–5, pp. 12–14.

¹⁴ Mr Bruce Paine, Treasury, *Committee Hansard*, 13 December 2011, p. 33.

¹⁵ Ms Catherine Barnett, Food South Australia Inc., *Committee Hansard*, 10 February 2012, p. 19.

¹⁶ A/Prof Frank Zumbo "The rise and rise of small business commissioners" (2012) 20 AJCCL 93

Recommendation 6

1.32 Amend the Australian Consumer Law to provide greater protection for suppliers who have suffered detriment after making a complaint to the ACCC and by placing the onus on the party complained of to prove that the adverse action was not in any way related to the complaint.

1.33 There are also issues of the effectiveness of existing laws. It is interesting to note that the predatory pricing provisions in the ‘Birdsville Amendment’ (section 46(1AA) of the *Trade Practices Legislation Amendment Act (No 1) 2007*) have yet to be tested by a prosecution even though it has been in force for some five years. At the very least, the ACCC should issue guidelines as to its approach to the Birdsville Amendment.

1.34 However, improvements to the ACCC’s processes should not be limited to their handling of complaints. As evidenced by their inaction in terms of the duopoly’s market power which was largely obtained through creeping acquisitions, I believe the ACCC needs to take a more proactive approach to market supervision and investigation.

1.35 The current legislative framework does not give adequate powers to the ACCC to deal with abuses of market power. The risk of such abuse seems inevitable with an increase in market share unless there is an effective regulatory approach. The United Kingdom and the United States have general divestiture powers which deal with market power by forcing businesses to ‘break up’ once they become so large they become anti-competitive.

1.36 Divesting the major retailers of some of their market power would help to create a level playing field for suppliers and encourage more effective competition. Associate Professor Frank Zumbo has proposed that Australian competition laws be amended to introduce a general divestiture power¹⁷. Having such a power in the *Competition and Consumer Act* would bring our laws into line with the United States and the United Kingdom.

Recommendation 7

1.37 Amend the *Competition and Consumer Act 2010* to provide for a general divestiture power whereby the ACCC and other affected parties could, in appropriate cases, apply to the Courts for the breakup of monopolies or dominant companies that engage in conduct that undermines competition.

1.38 It is entirely appropriate that the Australian Consumer Law now heavily favours the interests of consumers by encouraging competition in the market place. However if urgent action is not taken to address the imbalance of power of major

¹⁷ A/Prof Frank Zumbo *Don't bank on bank competition: The case for effective laws against anti-competitive mergers and creeping acquisitions*, (2010) 18 TPLJ 26

retailers over suppliers, consumers could eventually be paying more for their groceries if suppliers hit the wall and go out of business. Ultimately that will lead to less choice and less competition.

1.39 I fully support the Committee's recommendations regarding future regulatory options, especially those that relate to the structural separation of supermarkets' private label businesses and the capping the level of market share achievable by retailers. This requires legislative reform to implement the Committee's recommendations.

1.40 I support the Committee's recommendations regarding changes to Australia's food labelling laws, particularly the Committee's recommendation that the Federal Government implement recommendations 40 and 41 of the Blewett Review (even though the reforms should go further, both in terms of transparency and clarity).

1.41 I believe the Federal Government's response to the Blewett Review was a win for multinational, foreign owned companies who can export their products to Australia where unsuspecting consumers purchase them, believing they are supporting Australian producers. The Australian Food and Grocery Council bears considerable responsibility for this given the number of multinational food processing companies it represents. Given the evidence presented to the Committee about the impact of our inadequate labelling laws, the Federal Government has more than sufficient reasons to implement the Blewett Review's recommendation as a matter of urgency.

1.42 There are serious concerns about our current labelling regime and the extent to which it allows foreign imports to be classified as 'Made in Australia'. Currently the test for a product to achieve this classification it must either be 'substantially transformed' in Australia or 50 percent of the total cost of producing or manufacturing the good is attributable to processes that took place in Australia.

1.43 The Australia-New Zealand Closer Economic Relations Agreement is also failing Australian producers. One of the most poignant examples of the extent of this failure came from Mr David McKinna, who pointed out that seafood caught in the Atlantic by a Korean vessel can be processed in China, imported into New Zealand to be repacked and labelled at 'Product of New Zealand'. It can then imported into Australia where the seafood is crumbed and frozen can be sold as a 'Product of Australia'.¹⁸

1.44 The Committee has recommended that claims of misleading or deceptive conduct arising from imports under Australia's free trade agreements should be investigated, however I believe specific attention should be paid to imports under the Australian-New Zealand Closer Economic Relations Agreement.

1.45 I acknowledge the Committee's discussion about education campaigns to help further public understanding of Australia's labelling laws, however I believe such

¹⁸ Dr David McKinna, *Submission 32*, p. 17.

campaigns would be ineffectual due to the difficulty involved with clearly explaining our current labelling laws. The Federal Government's attention should be focused on reform of the laws as this will be the most effective way to protect and promote Australian producers.

1.46 The Federal Government must also look at reforming current labelling regulations pertaining to health-related claims, such as 'fresh' and 'light'. It was recently revealed that Coles were advertising their 'CuisineRoyale' bread as 'Australian' and 'baked today, sold today', when in actual fact the bread was made from dough that had been imported from Ireland.¹⁹

1.47 The submission by the Australian Olive Association highlighted how imported chemically refined olive oils can be labelled as 'light' and 'extra light' and are sold in direct competition with Australian made 'extra virgin' olive oil.²⁰ Consumers believe they are purchasing a healthier option by choosing a 'light' olive oil, however 'light' does not mean 'low fat'. Thus Australian olive oil producers are forced to compete with cheap and misleading imports.

1.48 Given the Australian Olive Association's evidence that tests performed on olive oils available in Australia revealed some imported olive oils are in fact 'lamp oil' and therefore not fit for human consumption,²¹ it is imperative that the Federal Government move to strengthen food labelling and biosecurity laws. The Federal Government should act on the Blewett Review's recommendation to establish definitions for nutrition and health related terms such as 'light' and 'fresh'. In the absence of any such action I intend to introduce legislation to address the current ambiguity of our labelling laws.

Recommendation 8

1.49 The Federal Government establish definitions for health related terms such as 'light' and 'fresh' be established.

Recommendation 9

1.50 There needs to be an urgent overhaul of Australia's country of origin food labelling laws to provide truthful and useful information to consumers.

1.51 As signalled by the Committee, a review of the new biosecurity legislation is necessary to determine whether it adequately addresses the different standards that apply to imported goods versus domestic products. Our current legislation has failed Australian producers and consumers, evidenced by the inconsistencies surrounding the

¹⁹ Pia Ackerman, 'Coles accused of Irish-made bread con', *The Australian*, 5 July 2012, <http://www.theaustralian.com.au/news/nation/coles-accused-of-irish-made-bread-con/story-e6frg6nf-1226417762206> (accessed 13 August 2012).

²⁰ Australian Olive Association, *Submission 68*, pp. 1-2.

²¹ Australian Olive Association, *Submission 68*, p. 3.

import and use of the pesticide carbendazim. Australian citrus growers were banned from using the pesticide carbendazim over two years ago, but the Federal Government is still allowing Brazilian orange juice concentrate containing carbendazim to be imported following a backflip on its previous commitment to halt its importation.

1.52 I have previously raised concerns about the difficulties Australian producers face from imported New Zealand goods, and in particular New Zealand apples that carried the risk of fire blight.²² Australia was opening our doors to imports that could jeopardise an entire Australian industry because many apple growers felt trade agreements took precedence over appropriate biosecurity arrangements.

1.53 Another issue deserving Federal Government attention is the current costs associated with biosecurity arrangements, particularly the impact of cost recovery arrangements for AQIS certification charges. The removal of the 40 percent rebate on certification charges will have a significant financial impact across the food processing sector, including in the meat and horticultural industries. Summerfruit Australia expressed concerns that now the full cost of recovery is being charged which is not reflective of the actual service being provided.²³

1.54 I have previously raised concerns about the removal of this rebate and the impact it could have on small to medium sized enterprises.²⁴ As Australian producers may need to more aggressively pursue export markets in order to minimise their trade exposure to the major retailers, it is important that the Federal Government does not impose additional barriers to export. I support the Committee's recommendation in relation to developing an affordable cost environment for Australian producers and exporters, and believe consideration should be given to reinstating the rebate on AQIS certification charges.

1.55 The historical lack of innovation in Australia's food processing sector has resulted in it becoming one of Australia's least profitable sectors.²⁵ I agree with the Committee's view that the Federal Government must examine the current taxation and regulatory settings and ensure it encourages innovation in the food processing sector. More needs to be done to improve the accessibility of opportunities to engage in innovation for those involved in the food industry.

1.56 As referred to in paragraph previously, South Australian producers may be at an even greater disadvantage due to their inability to obtain funding through the Federal Government's 'Water for the Future' program. Irrigators are already too

²² Inquiry into Australia's Bio-security and Quarantine Arrangements, Additional Comments by Senator Nick Xenophon, p. 1.

²³ Summerfruit Australia Limited, *Submission 13*, p.8.

²⁴ Inquiry into Australia's Bio-security and Quarantine Arrangements, Additional Comments by Senator Nick Xenophon, p. 2.

²⁵ M. Cole and G. Ball, 'Global trends and opportunities in food and nutritional sciences, JR Vickery Address, 2010, 43rd Annual AIFST Convention, *Food Australia*, October 2010, pp. 461–462.

efficient to access funds through the ‘Sustainable Rural Water Use and Infrastructure Program’, which is in place to enable irrigators to increase their productivity. Worthwhile research and development opportunities, such as trialling new irrigation techniques by improving infrastructure,²⁶ have been denied funding as the Program does not fund research and development projects.²⁷

1.57 The Federal Government must act to ensure the continuation of funding for research and development for industries involved in Australia’s food supply chain. It must look beyond the current funding arrangements and programs delivered by the Cooperative Research Centres and ensure that Government money being directed through other programs, such as the Sustainable Rural Water Use and Infrastructure Program can be made available for research and development purposes.

1.58 Evidence before the Committee suggests that the current economic climate is presenting a barrier to companies investing in their own research and development. Low consumer confidence, increasing input costs and the high Australian dollar are making it more and more difficult for businesses to stay afloat and leaving little opportunity for funds to be directed towards research and development.²⁸ I believe that these issues need to be addressed and I propose that an inquiry be established to investigate the impact of the high Australian dollar on the Australian economy, particularly the manufacturing sector.

1.59 I am concerned by the potentially contradictory views of the Committee in respect of intellectual property and the growth of private labels. The majority report characterised the growth of private labels as an opportunity for food processors, yet when private labels are put in the context of intellectual property the Committee viewed them as a threat to investment in innovation. I am inclined to view private labels in the latter sense and believe more needs to be done to protect existing intellectual property rights of processors and foster future innovation in Australian products.

1.60 More must be done to protect the intellectual property rights of Australian producers who export overseas. Unfortunately some Australian producers are all too familiar with the integrity and quality of their brand being jeopardised in overseas markets. Australia’s wine industry has persistently been targeted by counterfeiters in China, with well known brands such as Penfolds and Jacobs Creek being promoted in Chinese wine fairs, sold in Chinese liquor stores and exported to other markets

²⁶ Rural and Regional Affairs and Transport References Committee, Management of the Murray-Darling Basin system, Mr Chris Byrne, *Committee Hansard*, 3 April 2012, p. 45.

²⁷ Department of the Environment, Water, Heritage and the Arts, ‘Guidelines for the private irrigation infrastructure program for South Australian’, November 2009, p. 7.

²⁸ Mr Duncan Makeig, Group Sustainability Director and General Counsel, Lion Pty Ltd, *Committee Hansard*, 10 February 2012, p. 50.

overseas.²⁹ As China is Australia's fastest growing export market for wine, the Australian Government must ensure our brands are not irreparably damaged by poor quality and potentially hazardous imitations.

1.61 Australia's export capabilities are also being hampered by the high Australian dollar which is making imports cheaper and our exports more expensive. The Committee heard that processors in Western Australia who were highly exposed to changes in the export market have been forced to close recently.³⁰ Our market is also being exposed to higher levels of cheap imports, often from overseas industries whose food processors are supported by higher levels of government subsidies or protected by tariffs imposed on imports. I support the Committee's recommendation that the Federal Government lobbies for the reduction in tariff and non-tariff barriers to trade in Australian export destinations.

1.62 Cheap imports also pose a significant threat to our producers due to Australia's lax anti-dumping laws. Currently Australian producers and processors must prove that the products have been dumped and that they have suffered a material injury as a result. The Committee heard how pork products were dumped in Australia in 2006 but that proving the dumped products caused a 'material injury' to the pork industry was too complex and expensive for Australian producers. As a result no action was taken.³¹ This demonstrates a significant failure on the part of the Government to protect Australian producers.

1.63 I acknowledge that the Federal Government's proposed anti-dumping reforms go some of the way to protecting Australian producers and processors, however I believe these reforms need to go much further. I agree with Australian Pork Limited who believes reversing the onus of proof "*would make a huge difference in being able to technically determine whether dumping was taking place*"³² and I will continue to push for the onus of proof to be reversed in Australia's anti-dumping legislation.

Recommendation 10

1.64 Amend the *Customs Act 1901* to reverse the onus of proof so as to require an importer to prove the imported goods have not been dumped or subsidized for export.

²⁹ Jeni Port, 'Chinese fake it with counterfeit Australian wines', *The Sydney Morning Herald*, <http://www.smh.com.au/executive-style/top-drop/chinese-fake-it-with-counterfeits-of-australian-wines-20100823-13im7.html> and Meredith Booth, 'Fake SA wine market in China', *The Advertiser*, <http://www.adelaidenow.com.au/news/south-australia/fake-sa-wine-marketed-in-china/story-e6fre83-1226398023478> (accessed 9 August 2012).

³⁰ Mr Stuart Clarke, Director, Food Industry Development, Department of Agriculture and Food, Western Australia, *Committee Hansard*, 18 April 2012, p. 5.

³¹ Mr Andrew Spencer, *Committee Hansard*, 13 December 2011, pp .6–7.

³² Ibid.

1.65 For Coles to challenge Australian producers to be more proactive in their approach to accessing export markets is blatantly disrespectful and offensive to producers whose profit margins are already being squeezed by the major retailers.³³ If our producers really are able to take advantage of the opportunities presented by the growing middle class in Asia then we must act now to ensure our producers and processors are able to compete in our domestic market.

1.66 Current industry views indicate that DFAT and AQIS are not doing enough to assist Australian producers access overseas markets.³⁴ Reducing the regulatory compliance costs for exporters will go some of the way to assisting exporters, however I believe Government departments must be more proactive in their approach in establishing and improving relationships with export partners.

1.67 I believe Australia needs to reconsider its approach to free trade agreements (FTAs) by ensuring that we enter into agreements that serve our own best interests. In fact, the Australian Food and Grocery Council described our current approach to FTAs as “dumb” and believes the Federal Government must refocus the purpose of FTAs to achieve greater benefits to smaller producers.³⁵

1.68 I am encouraged by the discussions that took place during this inquiry and by the Committee’s recommendations. However this is not the time for complacency. The Federal Government must move to make a fairer operating environment for Australian food processors and priority consideration needs to be given to the divestiture of the grocery retail market. Australia’s current regulatory regime has made it too easy for the Coles and Woolworths duopoly to profit at the expense of producers and consumers. To that extent producers must be protected by effective laws against unfair contract terms and unconscionable conduct. Similarly, the *Competition and Consumer Act* needs to be strengthened to effectively deal with anti-competitive conduct and to ensure that a general divestiture power is available to break up monopolies and dominant companies that act to the detriment of competition and consumers. Australia’s future food security should not be put at risk by inadequate biosecurity laws and disadvantageous FTAs.

Senator Nick Xenophon

³³ Mr John Durkan, Merchandise Director, Coles Group Ltd, *Committee Hansard*, 15 May 2012, p. 1.

³⁴ Mr John Millington, Company Spokesman, Luv-a-Duck, *Committee Hansard*, 17 April 2012, p. 40.

³⁵ Australian Food and Grocery Council, *Submission 12*, pp. 18 and 20.

Appendix 1

Submissions

- 1 Growcom
- 2 Animal Health Australia
- 3 Lefcol and Leftrade
- 4 Mrs Mac's Pty Ltd
- 5 Greenpeace Australia Pacific
- 6 Department of Economic Development, Tourism and the Arts (Tasmania)
- 7 BusinessSA
- 8 Name Withheld
- 9 Australian Customs and Border Protection Service
- 10 AgriFood Skills Australia
- 11 Department of Innovation, Industry, Science and Research
- 12 Australian Food and Grocery Council
- 13 Summerfruit Australia Ltd
- 14 South Australian Horticultural Service
- 15 CCIWA/FIA Food Industry Advisory Group
- 16 Food Technology Association of Australia
- 17 Mr Chris Heislers
- 18 The Treasury
- 19 Ms Sue Saliba
- 20 Mr Maurice Schinkel
- 21 Australian Manufacturing Workers' Union
- 22 Coles

- 23 Dept of Agriculture and Food, Western Australia
- 24 South Australian Farmers' Federation
- 25 South Australian Government
- 26 Tasmanian Farmers and Graziers Association
- 27 Department of Health and Ageing
- 29 Mr Geoff Croker
- 30 Australian Pork Limited
- 32 Dr David McKinna
- 33 Lion
- 34 Campbell Arnott
- 35 Winemakers' Federation of Australia
- 36 Australian Meat Industry Council
- 37 Mrs Robyn Grace
- 38 Ms Norma Daisley
- 39 Department of Foreign Affairs and Trade
- 40 Professor Francis Fisher, Swinburne University
- 41 Mr Richard Nankin
- 42 Ms Carroll Knudson
- 43 Ms Sally Wylie, Consumers for GM Free Food
- 44 Coca-Cola Amatil
- 45 Citrus Growers of South Australia Inc.
- 46 Food Standards Australia New Zealand
- 47 Australian Dairy Industry Council
- 48 Gene Ethics
- 49 Mr Benjamin Judd

- 50 Name Withheld
- 51 D and M Stockfeeds
- 52 Food SA
- 53 Public Health Association of Australia
- 54 Ms Trish Norman
- 55 Victorian Peach and Apricot Growers' Association Inc
- 56 Australian Made, Australian Grown Campaign
- 57 McCain Foods
- 58 Webster Limited
- 59 Haigh's Chocolates
- 60 Mr Ian Hossack
- 62 Primary Employers Tasmania
- 63 Dick Smith Foods
- 64 Mr Ross Maddock
- 65 World Society for the Protection of Animals
- 66 Ms Dee Margetts
- 67 Name Withheld
- 68 Australian Olive Association Ltd
- 69 Confidential
- 70 Woolworths Ltd

Answers to Questions on Notice

- 1 Answer to Question on Notice 1 from The Treasury, public hearing, 13 December 2011, Canberra, received 6 February 2012.
- 2 Answer to Question on Notice 2 from The Treasury, public hearing, 13 December 2011, Canberra, received 6 February 2012.
- 3 Answer to Question on Notice 3 from The Treasury, public hearing, 13 December 2011, Canberra, received 6 February 2012.
- 4 Answer to Questions on Notice 1 from Australian Pork Ltd, public hearing, 13 December 2011, Canberra, received 24 January 2012.
- 5 Answer to Questions on Notice 2 from Australian Pork Ltd, public hearing, 13 December 2011, Canberra, received 30 January 2012.
- 6 Answer to Questions on Notice 1 and 2 from Winemakers' Federation of Australia, public hearing, 13 December 2011, Canberra, received 19 January 2012.
- 7 Answer to Question on Notice from Coca-Cola Amatil, public hearing, 10 February, Sydney, received 2 March 2012.
- 8 Answer to Question on Notice from Campbell Arnotts, public hearing, 10 February, Sydney, received 28 February, 2012.
- 9 Answer to Question on Notice from Public Health Association Australia, public hearing, 10 February, Sydney, received 21 February, 2012.
- 10 Attachment 1, outlets and violence, from Public Health Association Australia, public hearing, 10 February, Sydney, received 21 February, 2012.
- 11 Attachment 2, TV advertising to children, from Public Health Association Australia, public hearing, 10 February, Sydney, received 21 February, 2012
- 12 Attachment 3 legal definitions for advertising, from Public Health Association Australia, public hearing, 10 February, Sydney, received 21 February, 2012
- 13 Attachment 4, World Health Organisation, Marketing to Children, public hearing, 10 February, received 21 February
- 14 Answers to Questions on Notice from Lion, public hearing 10 February, Sydney, received 14 March, 2012
- 15 Answers to Questions on Notice from Australian Dairy Industry Council, public hearing 9 March, Shepparton, received 20 April, 2012

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- 16 Attachment 1 from ADIC, Report to Food Technology Association of Australia on Demand for Food Science and Technology Graduates, received 20 April, 2012
 - 17 Attachment 2 from ADIC, Dairy Australia, Workforce Development Final Report, received 20 April, 2012
 - 18 Attachment 3 from ADIC, Letter to state agriculture ministers on food labelling, received 20 April, 2012
 - 19 Attachment 4 from ADIC, Dairy Australia submission to FSANZ, received 20 April, 2012
 - 20 Attachment 5 from ADIC, Dairy Manufacturing Scholarship, received 20 April, 2012
 - 21 Answers to supplementary Questions from DIISRTE, Private Briefing, 19 August 2011, updated, received 3 April 2012
 - 22 Answers to Questions on Notice from DEEWR, private briefing 13 December 2011, received 2 April 2012
 - 23 Attachment1, DEEWR, Agricultural labour market, received 24 Jan 2012
 - 24 Answers to Questions on Notice from McCain, public hearing, 12 April 2012, Devonport, received 11 May 2012.
 - 25 Answers to Questions on Notice from Business South Australia, public hearing 17 April, 2012, received 16 May 2012.
 - 26 Answers to Questions on Notice from the Australian Competition and Consumer Commission, public hearing, 15 May 2012, Canberra, received 28 May 2012
 - 27 Answer to Questions on Notice from Department of Economic Development, Tourism and the Arts, Tasmania, public hearing 12 April 2012, received 22 May 2012
 - 28 Answers to Questions on Notice from Department of Agriculture, Fisheries and Forestry, public hearing 11 May 2012, received 31 May 2012
 - 29 Attachment, Department of Agriculture, Fisheries and Forestry, public hearing 11 May 2012, received 31 May 2012
 - 30 Answer to Questions on Notice from Produce Grocery Industry Ombudsman, public hearing, 15 May 2012, received 31 May 2012.
 - 31 Answer to Questions on Notice from Coles, Negotiation Principles, public hearing, 15 May 2012, received 1 June 2012.

- 32 Answer to Questions on Notice from Coles, Unconscionable Conduct, public hearing, 15 May 2012, received 1 June 2012.
- 33 Answer to Questions on Notice from Coles, Whistleblower Policy, public hearing, 15 May 2012, received 1 June 2012.
- 34 Answer to Questions on Notice from Coles, Code of Conduct, public hearing, 15 May 2012, received 1 June 2012.
- 35 Answers to Question on Notice from Department of Education, Employment and Workplace Relations
- 36 Answers to Questions on Notice from Department of Industry, Innovation, Science, Research and Tertiary Education, public hearing, 11 May 2012, received 1 June 2012: Food labelling and strategies for productivity
- 37 Answers to Questions on Notice from Woolworths, public hearing, 15 June 2012, Canberra, received 4 June 2012
- 38 Answer to Question on Notice 1 referred to the Treasury from the Australian Competition and Consumer Commission, public hearing, 15 May 2012, Canberra, received 5 June 2012
- 39 Answer to Question on Notice from the Treasury, public hearing, 15 May 2012, Canberra, received 10 July 2012
- 40 Answer to Question on Notice from Food SA Inc, public hearing, 10 February, Sydney, received 16 March 2012.
- 41 Answer to Questions on Notice from Luv-a-Duck, public hearing, Adelaide, 17 April 2012, received 5 June 2012

Additional information received

- 1 Australian Food and Grocery Council, 13 December 2011: Graphs presented to the committee.
- 2 Food SA, 10 February 2012: Water Quality, pictures presented to the committee.
- 3 Food SA, 10 February 2012: Market share, graphs presented to the committee
- 4 Australian Made, Australian Grown Campaign, 13 February 2012: Submission to Senate Economics Committee on Truth in Labelling Laws, 2009
- 5 Australian Made, Australian Grown Campaign, 13 February 2012: Submission to Senate Economics Committee on Australia Consumer Law, 2012

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- 6 Australian Made, Australian Grown Campaign, 13 February 2012: Submission to Blewett Review of Food Labelling Law and Policy, 2010
 - 7 Fruit Growers Victoria, 8 March 2012: country of origin labelling, presented to committee
 - 8 Fruit Growers Victoria, 8 March 2012: statistics on wages and exchange rates, presented to the committee.
 - 9 Food Technology Association of Australia, 9 March 2012: book presented to committee.
 - 10 Tasmanian Agricultural Productivity Group, 12 April 2012: information on TAPG presented to committee
 - 11 Citrus Growers of South Australia Inc, 1 May 2012: Overview of key issues.
 - 12 Food SA, 8 May 2012: Key Issues
 - 13 Coles, 15 May 2012: Australia First Sourcing brochure
 - 14 Coles, 15 May 2012: Australian Made Booklet
 - 15 Coles, 15 May 2012: Bega Cheese partnership
 - 16 Coles, 15 May 2012: Media release on frozen vegetables
 - 17 Coles, 15 May 2012: Market share
 - 18 Coles, 15 May 2012: Food producers market share
 - 19 Coles, 15 May 2012: Shelf space allocation
 - 20 Coles, 15 May 2012: Tamar Valley yoghurt for Coles
 - 21 Coles, 15 May 2012: Great Ocean Road Australian dairy products
 - 22 Professor David Hughes, 15 May 2012: UK Grocery Code of Conduct
 - 23 Department of Education, Employment and Workplace Relations, 11 May 2012: Information about Horticulture Award
 - 24 Department of Education, Employment and Workplace Relations, 11 May 2012: Fact Sheet on incentives for employing older Australians
 - 25 Tasmanian Farmers and Graziers Association, 26 April 2012: Comments supplementary to submission 26.
 - 26 Additional information on difficulties of skilled migration, provided by Luv-a-Duck following hearing on 17 April 2012, received 5 June 2012

- 27 Department of Industry, Innovation, Science, Research and Tertiary Education,
11 May 2012: Client Journeys

Appendix 2

Public Hearings: Witnesses

13 December 2011, Canberra

Australian Pork Limited

Mr Andrew Spencer, CEO

Winemakers Federation of Australia

Mr Stephen Strachan, Chief Executive

Mr Andrew Wilsmore, General Manager, Policy and Govt Affairs

Australian Food and Grocery Council

Ms Kate Carnell, Chief Executive

Mr Geoffrey Annison, Deputy Chief Executive

The Treasury

Mr Andrew Deitz, Manager

Ms Kirsten Embrey, Manager, Markets and Regulation Unit

Mr Bruce Paine, Principal Adviser, Infrastructure, Competition and Consumer Division

10 February 2012, Sydney

Australian Manufacturing Workers' Union

Ms Jennifer Dowell, National Secretary, Food and Confectionary Division

AgriFood Skills Australia

Mr Arthur Blewitt, Chief Executive Officer

Mr Michael Claessens, General Manager, Workforce Development and Analysis

FoodSA

Ms Catherine Barnett, Chief Executive Officer

Australian Meat Industry Council

Mr Gary Burridge, Chair

Mr Roger Fletcher, Chair, Sheepmeat

Ms John Langridge, Veterinary Counsel

Mr Stephen Martyn, National Director, Processing

Public Health Association of Australia

Adjunct Professor Michael Moore, Chief Executive Officer

Dr Deborah Gleeson, Convenor, Political Economy of Health Special Interest Group

Dr Christina Pollard, Co-convenor, Food and Nutrition Special Interest Group

Dr Anne-Marie Thow

Coca-Cola Amatil

Mr Vincent Pinneri, Managing Director SPC Ardmona, Food Services Division of Coca-Cola Amatil (Aust) Pty Ltd

Australian Made, Australian Grown Campaign

Mr Ian Harrison, Chief Executive

Lion Pty Ltd

Mr Duncan Makeig, Group Sustainability Director and General Counsel

Campbell Arnott's

Mr Craig Funnell, Vice President Supply Chain

8 March 2012, Shepparton

Fruit Growers Victoria and also representing Victorian Peach and Apricot Growers' Association:

Mr John Wilson, General Manager

Mr Christian Turnbull, Director

Mr Roger Lenne, Member

General Mills Australia and New Zealand

Mr Andrew Redman, Regional Quality and Regulatory Operations Manager

H W Greenham & Sons Pty Ltd:

Mr Peter Greenham, Executive Chairman

Mr Grant Ryan, Joint Managing Director

Greater Shepparton City Council

Councillor Geoff Dobson

Mr Gavin Cator, Chief Executive Officer

Mr Dean Rochfort, General Manager Sustainable Development

9 March 2012, Shepparton

Food Technology Association of Australia

Mr Peter Bush, Executive Officer

Goulburn Valley Food Action Committee

Mr Leslie Cameron, Chairperson

Mr Ross Freeman, Member

Australian Dairy Industry Council

Mr Chris Griffin, Chairman

Mr David Losberg, Representative

Hazeldenes Chicken Farm Pty Ltd
Mr John Hazeldene, Managing Director

Lefcol
Mr Dale Sumner, General Manager

Ms Helen Hubble

12 April 2012, Devonport

Tasmanian Agricultural Productivity Group
Mr Terry Brient, Executive Officer
Mr Mark Kable, Director
Mr Les Murdoch, Chairman and Director
Mr Keith James, Director
Mr David Stirling, Board Member

Tasmanian Farmers and Graziers Association
Ms Jan Davis, Chief Executive Officer
Mr Andrew Heap, Policy Adviser, Economics and Trade

Petuna Seafood
Mr Tim Hess, General Manger Sales and Logistics

Simplot
Mr Callum Elder, Executive General Manager, Quality & Innovation

McCain Foods (Aust) Pty Ltd
Mr Graham Harvey, Regional Vice-President Integrated Supply Chain APMEA
Mr Tony Rasman, Public Relations Consultant, Fleishman-Hillard

Department of Economic Development, Tourism and the Arts (Tasmania)
Mr Anthony McHugh, Senior Project Manager, Food and Agribusiness

Swift Premium Beef (JBS-SA)
Mr John Berry, Director and Manager Corporate and Regulatory Affairs

Tasmanian Suppliers Collective Bargaining Group
Mr Philip Beattie, Spokesman

Tasmanian Farmers and Graziers Association, Vegetable Council
Mr Andrew Craigie, Chairman

17 April 2012, Adelaide

Business SA

Mr Antony Clarke, Senior Policy Adviser
Ms Barb Cowey, Senior Policy Adviser

South Australian Farmers Federation

Mr Peter White, President

Citrus Growers of South Australia Inc

Mr Ron Gray, Committee member
Mr Mark Pickering, Committee member

Elders Group Ltd

Mr Malcolm Jackman, Chief Executive Officer and Managing Director

Luv-a-Duck

Mr John Millington, Spokesperson, Community Relations

18 April 2012, Perth

Department of Agriculture and Food, Western Australia

Mr Stuart Clarke, Director Food Industry Development

Food Industry Advisory Group of the Chamber of Commerce and Industry, Western Australia

Mr David Harrison, General Manager Advocacy
Ms Deborah Pett, Food Industry Adviser
Ms Lyn Bentley, Member
Mr Ben Allen, Member
Mr Richard Pace, Member

Mrs Mac's Pty Ltd

Mr Murray Beres, Chief General Manager
Mrs Merilyn Elson, Senior Marketing Manager

11 May 2012, Canberra**Dick Smith Foods**

Mr Dick Smith, Owner

Department of Agriculture, Fisheries and Forestry

Mr Jeremy Cook, Acting Assistant Secretary, Food Branch Agricultural Productivity Division

Mr Allen Grant, First Assistant Secretary, Agricultural Productivity Division

Dr Colin Grant, First Assistant Secretary, Plant Biosecurity

Mr Greg Read, First Assistant Secretary, Biosecurity Food Division

Dr Jammie Penn, Assistant Secretary, Agricultural Commodities and Trade

Mr Mark Phythian, Director, Imported Food Program

Department of Education, Employment and Workplace Relations

Mr Malcolm Greening, Branch Manager Workplace Relations Policy Group

Dr Alison Morehead, Group Manager, Workplace Relations Policy Group

Ms Monica Sapra, Director, Workplace Relations Policy Group

Department of Industry, Innovation, Science, Research and Tertiary Education

Dr Russell Dean, Manager, Food Industry Policy

Ms Ann Bray, General Manager, Food and Chemicals Branch

Dr Russell Edwards, General Manager Clean Technology Investment AusIndustry

Mr Michael Eyles, Senior Adviser, Food, Health and Life Science Industries Group, CSIRO

Ms Julia Freeman, Manager, Competition, Industry and Small Business Policy Division

Ms Lyndall Milward-Bason, Manager Customs Policy Section, Trade & International Branch

Mr Anthony Murfett, General Manager, Cooperative Research Centres Program

Mr Paul Trotman, General Manager, Trade and International Branch

Ms Jane Urquhart, General Manager, Business Improvement Branch, Enterprise Connect Division

Ms Linda White, General Manger

Department of Foreign Affairs and Trade

Ms Jan Adams, First Assistant Secretary, Free Trade Agreements Division

Mr Christopher Langman, First Assistant Secretary, Trade and Economic Policy Division

Mr Ravi Kewalram, Assistant Secretary Trade Law Branch, Office Trade Negotiations

Ms Judith Laffan, Executive Officer, Agrifood Research, Agriculture and Food Branch, Office Trade Negotiations

SA Horticultural Services and Summerfruit

Mr Trevor Ranford, Consultant

15 May 2012, Canberra

Coles Group Ltd

Mr Robert Hadler, General Manager, Corporate Affairs
Mr John Durkan, Merchandise Director

Woolworths

Ms Nathalie Samia, Group Manager, Government Relations and Industry Affairs
Mr Ian Dunn, Head of Trade Relations

Australian National Retailers Association

Mrs Margy Osmond, Chief Executive
Mr Russell Goss, Policy Manager

Produce and Grocery Industry Ombudsman

Mr David Newton, Produce and Grocery Industry Ombudsman
Ms Bianca Keys, Assistant Produce and Grocery Industry Ombudsman

The Treasury

Mr Geoff Francis, Principal Advisor, Competition and Consumer, Infrastructure, Competition and Consumer Division
Mr Phil Garton, Senior Adviser, Macro Financial Linkages, Macroeconomic Policy Division
Ms Kathryn McCrea, Senior Adviser, Competition Policy Unit Infrastructure, Competition and Consumer Division

Australian Competition and Consumer Commission

Ms Rayne de Gruchy, Deputy Chief Executive Officer, Competition and Consumer
Mr Scott Gregson, Group General Manager, Enforcement Operations Group
Mr Nigel Ridgway, Group General Manager, Compliance Operations Group
Mr David Jones, Director, Adjudication

Emeritus Professor David Hughes, Professor of Food Marketing at Imperial College London

Appendix 3

Employers' Recruitment Experiences in the Food Processing Sector

Table 1: Employers' recruitment experiences, 12 months prior to being surveyed

12 months prior to being surveyed	Agriculture, Forestry and Fishing Industry	Food Beverage and Tobacco Product Manufacturing sectors	All Industries (12 months to September 2011)
Proportion of employers who recruited	65%	77%	71%
- to increase staff	65%	56%	53%
- to replace staff	73%	90%	86%
Vacancies per 100 staff	39	18	22

Source: Department of Education, Employment and Workplace Relations, Answers to Questions on Notice, private briefing 13 December 2011, received 2 April 2012.

Table 2: Employers' recruitment experiences, most recent recruitment round

Most Recent Recruitment Round	Agriculture, Forestry and Fishing Industry	Food Beverage and Tobacco Product Manufacturing sectors	All Industries (12 months to September 2011)
Unfill rate	3.4%	6.1%	10.6%
Average no. of applicants per vacancy	2.7	4.1	6.0
Average no. of suitable applicants per vacancy	1.4	1.5	2.0
Had difficulty recruiting	46%	45%	47%

Source: Department of Education, Employment and Workplace Relations, Answers to Questions on Notice, private briefing 13 December 2011, received 2 April 2012.

Table 3: Employers' recruitment expectations, 12 months following being surveyed

Following 12 months (Future)	Agriculture, Forestry and Fishing Industry	Food Beverage and Tobacco Product Manufacturing sectors	All Industries (12 months to September 2011)
Expects to recruit	56%	63%	52%
Expects to increase staff numbers	29%	40%	29%
Expects to reduce staff numbers	4%	6%	4%
Expects future recruitment difficulty	47%	37%	47%

Source: Department of Education, Employment and Workplace Relations, Answers to Questions on Notice, private briefing 13 December 2011, received 2 April 2012.

Appendix 4

Relevant Extracts from New Zealand's *Fair Trading Act* 1986

Part 1

9 Misleading and deceptive conduct generally

No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

10 Misleading conduct in relation to goods

No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods.

.....

13 False or misleading representations

No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services,—

(j) make a false or misleading representation concerning the place of origin of goods.

(pp 11–12)

.....

Part 2

27 Consumer information standards

(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations prescribing, in respect of goods or services of any description or any class or classes of goods or services, a consumer information standard or 2 or more consumer information standards relating to all or any of the following matters:

- (a) the disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion, or supply of the goods or services;
- (b) the form and manner in which that information must be disclosed on or in relation to, or in connection with, the supply or resupply, or possible supply or resupply, or promotion of the supply of the goods or services.

(pp 21–22)

