

Resale price maintenance notification:  
supplementary submission

Lodged by:

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## 1 Introduction

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On 21 March 2023, Graco Australia Pty Ltd (**Graco**) lodged a Resale Price Maintenance Notification with the ACCC (**the Notification**). In the Notification, Graco proposed to require its distributors to advertise its airless and air assisted paint sprayers ranging from entry-level to professional trade products (**Paint Sprayers**) at or above a minimum advertised price (**MAP**) set by Graco. A list of the current airless and air assisted paint sprayers supplied by Graco in Australia is set out in Schedule 1 of the Notification.

This supplementary submission contains Graco's response to the oral submissions from interested parties lodged with the ACCC in response to the Notification. Information confidential to Graco is highlighted **[CONFIDENTIAL]**.

## 2 Executive summary

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In summary, the oral submissions and the other submissions the ACCC has received largely support the following arguments made in Graco's Notification:

- **Graco paint sprayers are complex and differentiated from traditional painting products such as rollers and brushes.**

In particular, this is pointed out in the submissions of Titan, GO Industrial, Dulux and Paint Access. Insofar as there is any alternative comments, these are largely related to less complex DIY products at the lowest end of the scale for Graco paint sprayers. As previously indicated, these are a very small portion of Graco's sales (less than **[CONFIDENTIAL]**), whereas the more complex products make up more than **[CONFIDENTIAL]** of Graco's sales.

- **Significant retail services are required when selling Graco paint sprayers.**

Without the proper training and demonstrations, customers will struggle to appreciate the complex features available on these products, and may cause damage due to incorrect usage of the product. Further, Graco paint sprayers require regular service and maintenance. All authorised Graco distributors are required to provide service for end-users, and maintain active service centres and staff including Graco-certified technical specialists to fulfill this requirement.

In the main, the submissions also support this point. In particular, GO Industrial, Paint Access, Dulux and Wager are strongly supportive of this. Even Hempel indicates that their focus is on distinguishing themselves by their service offering. Graco invests significantly in training distributor staff on Graco products, as evidenced by the large number of demonstrations that Graco runs.

- **Free-riding adversely impacts the viability of Graco's distribution model.**

There are many instances where Graco's full-service distributors invest a substantial amount of time and effort with a paint contractor, educating them about the product and its features, only to have the contractor purchase the product at a discounted price from an online distributor that is not investing in sufficient training. Such free riding threatens the viability of Graco's distribution model. This is because it encourages full-service distributors to reduce their investments in retail services and engage in 'race to the bottom' pricing to avoid losing sales. This leads to an ultimate reduction in the quality of services provided to end-customers and may damage the reputation of Graco's brand in the market. This is particularly pertinent with online advertising that can become the low benchmark price that distributors are pressured to match.

Graco has received significant complaints from a range of different distributors about the free-riding issue which has been increasing over the last few years. The majority of the submissions support this. Hempel indicates that a '*store cannot retain every customer that enters*'. That is correct, but the real concern here is that deep price discounts in online advertising are coming at the expense of investment in training and maintenance support for customers. This is what Graco is seeking to prevent, not to stop discounting entirely.

- **In order to continue to provide these services, distributors require a sustainable margin.**

Without a sustainable margin, Graco distributors will be reluctant to invest in the significant retail services that are required when selling Graco paint sprayers. This is supported by the submissions that the ACCC has received. In particular, a number of distributors have invested less in sales support for Graco paint sprayers due to 'free-riding', and have indicated that they would reduce the range of products stocked and accommodate customer requests on an as-needed basis, rather than stocking the entire range and risking aggressive pricing.

- **There is strong support for the MAP among distributors**

Graco considers that the most appropriate solution is to implement a MAP. This is supported by a number of the submissions including GO Industrial, Paint Access and Wagner.

By establishing a MAP, Graco will be able to ensure that full-service distributors will not be forced to match steeply discounted pricing of distributors that do not factor in appropriate costs such as training and service. In Graco's experience, similar policies have been effective in preventing the 'race to the bottom' in pricing that leads to the problems described above, while preserving price competition at the point of sale. Further, Graco has experience in successfully implanting such policies overseas. Where Graco introduced a MAP in the US, it allowed Graco Inc. to maintain a sustainable margin for distributors to invest in the appropriate training, demonstrations and safety procedures.

- **The MAP will encourage innovation**

By reducing the extent of advertising price competition between Graco distributors through the MAP, distributors will be encouraged to compete for customers on the basis of retail services without losing the ability to discount for customers in store. For example, the Notified Conduct will encourage competition in relation to sales support, service support, product knowledge, training, demonstrations, trade shows and repairs.

Equally, following the introduction of the MAP, distributors will be more incentivised to invest in the new products that often come with innovative patented technology and stock a range of Graco products, rather than reduce them. This is because these distributors will have a sustainable margin through the MAP, which will allow them to effectively promote Graco's new technologies and innovations.

- **Consumers will not pay above market price due to the MAP and there will still be intra-brand competition**

Graco is not seeking to prevent discounting entirely in relation to its products, but rather to take the edge of the race to the bottom in an online space, so as to support its distributors to provide the demonstrations, training and service that are appropriate for its technical and complex products. For example, the MAP will *not* apply to:

- (i) Any in-store merchandising, quotes or contracts;
- (ii) Secure internet sites that are not viewable by the public and that are used to conduct business-to-business transactions; and
- (iii) Items in internet "shopping carts" after the customer places the product in the cart by clicking "order", "add to cart" or a similar command.

- **Price competition will remain between Graco and alternative suppliers of paint sprayers**

The advertised price of Graco's products alone will not sufficiently incentivise other market participants to unilaterally increase their respective prices, as they will be constrained by the availability of alternative products at different price points (in addition to Graco's products which can be discounted at points of sale). For example, other suppliers include airless paint sprayers manufactured by Rongpeng, Ningbo (DP Airless), as well as a variety of other airless sprayers manufactured in China and sold on eBay in Australia. Further, the countervailing power exercised by large distributors such as Phillro Industries and Dulux will also ensure that inter-brand price competition is maintained.

In these circumstances, and given the support from interested parties, Graco is of the view that the ACCC should allow the Notification to stand.

Set out below are some specific comments on each of the submissions from interested parties.

### 3 GO Industrial (GO)

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GO's submission makes a number of arguments that strongly reinforce Graco's rationale for the proposed MAP. These include:

- GO notes that the Graco paint sprayers require technical expertise to operate safely. It suggests that even tradespeople may have '*big gaps in knowledge around paint sprayers as this is an emerging technology*'. As a result, if demonstrations and training are not provided to end-customers, '*these tools can be dangerous*'. GO outlines that Graco offers '*a good training program and resources*' to distributors, including a dedicated, local technical support team which is available year-round;
- GO also makes the point it commonly deals with customers for years after a sale, as this is the '*nature of this technical equipment*'. As such, with the MAP in place, GO could continue to provide the right advice and after sales support;
- GO agrees that freeriding poses a significant and growing threat to its distribution business. It suggests that, currently, '*every online retailer has Graco products on special all the time*' and that the discounts are '*significant*' – generally between 25-30%; and
- GO indicates that its sale volumes decreased when it previously sold Graco paint sprayers at the recommended retail price. GO is now testing the market to meet prices advertised online. Consequently, '*the sales volumes are up but the trade off is staff are run off their feet trying to uphold the same service standard*'.

Therefore, GO supports the proposed MAP. GO considers that the MAP would allow its business to compete on the basis of its high-quality customer services, instead of sacrificing service quality to price match with online retailers. GO also indicates that introducing an alternative to the proposed conduct such as altering or enforcing Graco's distribution model raises '*complexities*', given some distributors – especially in regional areas – would lack the requisite resources to do so.

## 4 Paint Access

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Paint Access' submission makes a number of arguments which support the proposed MAP. In particular:

- Paint Access argues that the complexity of Graco paint sprayers requires that end-customers receive training on their appropriate use and maintenance prior to purchase. For example, Paint Access outlines that *'it is very important to educate [customers] about how to do the troubleshooting – everything is much easier if they have that fundamental knowledge'*. To this end, Paint Access outlines that it has staffed its stores with employees who have been trained by Graco to provide informed pre-sale advice to customers as well as significant after-sales support, and *'this is why margins are very important for Paint Access'*; and
- Paint Access agrees with Graco that the MAP would allow full-service distributors *'to retain more of the margin'* and avoid competitors *'undercutting each other'* in a manner which is *'not sustainable'*. Although Paint Access would not change its current stocking decisions if the MAP were implemented, it observes that customers are *'price sensitive'* and that the MAP would support its ability to provide, and compete on the basis of, its high-quality customer services.

## 5 Bunnings

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In the last 12 months, Bunning has commenced selling Graco paint sprayers as part of its 'special order' service. It is still trialling the sale of Graco paint sprayers online. Bunnings' submission supports the view that the viability of supplying paint sprayers in-store is undermined by aggressive discounting by online retailers. For example, Bunnings declined to supply Graco paint sprayers in-store approximately 18 months ago. According to Bunnings, it was not commercially viable at the time for Bunnings to sell Graco products given the level of online discounting of these products and Bunnings' approach of always seeking to offer the lowest price on an item.

Graco addresses some further points that Bunnings has made in respect of the MAP below.

- **Online sales:** Bunnings states that since it has started to supply Graco products online, it has not experienced problems with having to price match heavily discounted online prices of Wagner paint sprayers in store. As indicated, Bunnings has only recently started selling Graco products and only sell a limited range at the DIY end of product range.
- **In store training:** Bunnings states that if it were to ultimately provide Graco products in-store, compliance with Graco's display and service obligations under a distributor agreement would be *'problematic'* for Bunnings. In particular, Bunnings states that its sale volumes have not been hampered by the fact that it only offers products online and does not offer in-store support.

The DIY sprayers that Bunnings sell are less likely to have the full post sale treatment such as setup and a demo on how to use, as they are a lower cost item that are less complicated. Pre-sales discussion and demonstration are of higher importance for the more complex Graco paint sprayers, as is post-sales care. For completeness, Graco estimates that DIY end-users comprise less than [CONFIDENTIAL] of its customer base, while contractors comprise more than [CONFIDENTIAL].

- **Impact of a MAP:** Bunnings makes the comment that *'Bunnings may experience challenges if the MAP price is set below its current online price'*. Graco considers that this is a reasonable concern, but in practice, it is highly unlikely to eventuate. This is because the very purpose of the MAP is to avoid the race to the bottom on prices. Instead, the MAP is intended to allow businesses selling these Graco products to obtain a sustainable

margin, to ensure that appropriate pre and post-sales support for the relevant Graco products is offered to customers.

## 6 Phillro Industries (*Phillro*)

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Phillro is a distributor of Graco's contractor range of Paint Sprayers. Previously, it was a wholesale distributor of Graco products until Graco cancelled that arrangement approximately two years ago, and was previously Graco's biggest distributor for around six – seven years. It is possible that some of Phillro's comments may be driven by its changed relationship with Graco.

There are aspects of Phillro's submission that are supportive of the proposed MAP. For example, Phillro agrees with Graco that '*paint sprayers are technical equipment and staff require training to be able to provide the correct advice to customers in the initial sale process*', as well as to provide ongoing maintenance and repairs services. Phillro's staff receive training through Graco's 'online university' and Phillro also notes that Graco also provides onsite training across its network of distributors via dedicated sales representatives.

However, Phillro provides certain reasons why the proposed MAP is either undesirable or unnecessary to achieve the purpose of the proposed rationale. Graco sets out these reasons below, as well as its responses to each.

- **Currently margins are not sustainable:** Phillro's submission suggests that the proposed MAP is not necessary because the retail margins of distributors '*are alright overall*'. However, Phillro itself concedes that the discounting behaviour of online retailers has been growing heavier over the last 2 years, and Phillro does not express any view on whether distributor margins would remain '*alright*' if that trend were to continue. In any event, Phillro accepts that the MAP, even if not necessary, would be beneficial as '*a higher retail margin on Graco paint sprayers would help cover the cost of training staff*'.
- **The importance of in person service:** Phillro suggests that it is unnecessary to protect full-service, in-person offerings because '*customer interaction and instruction is just as easy when the sales are online*'. Further, it notes that instructional videos relating to the use of Graco products can be accessed online by end-customers. Graco agrees that online customer services and video tutorials may act as an effective *complement* to in-store services. However, they cannot adequately serve as a wholesale substitute for the latter services for three reasons:
  - as noted in Phillro's submission, Phillro is a specialised equipment store, and it has been a Graco distributor for 35 years. In these circumstances, it is far easier for Phillro to provide the necessary instruction online or over the phone, as it can draw on its extensive experience. This is not the same for all distributors;
  - there are many variables in spray applications that can only be properly demonstrated through an in-person testing. These include: the paint type used, the type of spray machine (small, medium, large), the type of substrate that is being sprayed (roof, door, walls, ceilings etc.), and the level of experience of the painter/ applicator (beginner, advanced). Phillro itself maintains in-person demonstration equipment at its retail site, including a 'spray room' which it states is in fact used by contractors to test Graco paint sprayers; and
  - even if the initial sales process could be effectively conducted entirely online, it is still necessary for distributors to have in-store repair services.
- **The MAP would prevent aggressive online discounting:** Phillro considers that the MAP would not prevent aggressive discounting behaviour. It states that distributors could continue to discount by sending discount codes to their existing customer base.

Moreover, it states that price-sensitive customers would drive sustained discounting behaviour by seeking the best prices in-store. This submission evinces a misunderstanding on the part of Phillro about the purpose and likely effect of the MAP. As stated in the Notification, the proposed MAP does not seek to prevent distributors from discounting Graco products or engaging in individual negotiations. Rather, it seeks to prevent deep discounting online that then has to be matched by 'bricks and mortar' and full-service distributors.

- **The MAP would not result in DIY customers paying higher prices:** Phillro provides that that *'perhaps'* the MAP will result in DIY customers paying higher prices for Graco paint sprayers. Graco considers that this does not present a compelling argument against the implementation of the MAP. Primarily, as Phillro itself notes, DIY customers represent a small proportion of Graco's customer base. Further, as set out above, the MAP would not prevent individual discounts in store.
- **Phillro's comments on Bunnings:** Phillro notes that Bunnings has started selling Graco paint sprayers in their DIY category, and it does not currently have dedicated shelf space for Graco paint sprayers in store. As outlined above, it is only in the last 12 months that Bunning has commenced selling Graco paint sprayers as part of its 'special order' service. In particular, its sales of Graco paint sprayers are still in a trial phase, and *'any decision to expand the Graco product range or to start stocking paint sprayers in store is some time off'*.

## 7 Hempel

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Graco's relationship with Hempel (Wattyl) is relatively new – Graco has only been supplying Hempel with paint sprayers for around two years. Graco understands that Hempel does not sell paint sprayers online, and only supplies Graco paint sprayers in some of their stores. This is supported by Hempel's comments in its submission that *'paint sprayers represent a very small proportion of overall sales revenue'*.

Graco sets out some comments in respect of certain points made in Hempel's submission below.

- **The issue of free-riding:** Hempel suggests that free-riding behaviour is inevitable (a store *'cannot retain every customer that enters'*) and that, in any event, tradespeople prefer to purchase in-store. However, Hempel implicitly concedes that the pricing patterns of online retailers may affect the purchasing behaviour of customers and the pricing patterns of in-store distributors. It states that, even if it does not necessarily *'price match'* online retailers, it *'seeks to remain competitive'* with online retailers. Moreover, Hempel explicitly acknowledges that at least certain customers will make purchases based off price, rather than service offering. The impact of free-riding is particularly felt by smaller and mid-sized distributors that may not have the large product range of suppliers like Hempel and Bunnings.
- **Why the MAP is required:** Given's Hempel's business model, Graco agrees with Hempel's submission that the proposed MAP policy is unlikely to significantly impact its business. However, this is only because paint sprayers represent a very small proportion of Hempel's sales revenue, and Hempel does not currently sell any Graco products online (and for this reason for not need to change its advertising). These two points do not undermine Graco's overall arguments that a MAP is required due to the complexity of its products and to address the issue of free-riding.
- **Graco's training of Hempel staff:** Finally, Graco agrees with Hempel that it is Graco's role to help train Hempel staff about Graco products. However, Graco disagrees with

Hempel's assessment that '*Graco is not particularly proactive in this regard*'. In Hempel's own submission it acknowledges that Graco staff have attended the majority of Hempel special trade events in the last 12 months, and that Graco Australia offers an online training portal that Hempel staff use.

Further, it is Graco's policy that once its goods are in stores, it will run a series of product training events, demonstrations and sales training events conducted throughout the store network to upskill the staff and ensure they are able to provide the correct product to best meet the application needs of the customer. Graco has done this in Hempel stores, including in Hempel stores that are less active in relation to sales of Graco products. Further, Graco is currently conducted a whole range review with Hempel, and part of this review is ensuring that adequate training is provided to Hempel staff.

## 8 Wagner/Titan

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Wagner's submission strongly supports Graco's proposed MAP. In its submission, Wagner notes that it has a similar MAP policy in the US, and that introducing Graco's MAP in Australia would '*be advantageous to the wider industry*'. In addition, Wagner makes a number of supplementary arguments in support of the proposed MAP which include:

- **Competent sales staff are key:** Wagner agrees with Graco that paint sprayers are technical products. As such, Wagner outlines that is necessary for retail salespeople to have the technical competency to communicate the features and benefits of the products, as well as to outline safety measures and set up. This will allow these staff to recommend the most suitable equipment for consumers. Like Graco, Wagner considers that such full-service support adds credibility to the sales process and gives the end-user greater confidence in the product they have purchased. Moreover, Wagner notes that if more resellers have competent and well-trained staff, '*more equipment would be sold and more end user satisfaction would be a result*';
- **Online support is not a substitute:** Wagner agrees that entirely online sales services do not constitute a suitable substitute for full-service, in-store offerings. For example, it states that although '*[s]ome issues can be troubleshooted over the phone*', if basic troubleshooting does not work, the end user will be required to visit an authorised service centre. Further, Wagner emphasises that contractor paint equipment should be serviced regularly (ie, every six months on average, depending on use). This is difficult to achieve through an online only sales process;
- **Online free-riding:** Wagner also agrees with Graco that 'online only' retailers can reduce the value of the brand by offering aggressive pricing, which in turn reduces the margins of 'bricks and mortar' distributors who invest in stock, training and after-sales service. However, Graco considers that Wagner's assessment that online sales only constitute a minority of sales of paint sprayers misses the nuance of Graco's argument. Even if these sales constitute the minority of sales now (and this may change in the future), there is high visibility and accessibility of these online prices. This means that, if a particularly low price is offered online, it creates a reference point for other 'bricks and mortar' distributors who are then forced to match the price, notwithstanding the investments they have made in providing good service and product demonstrations; and
- **Likely impact of the MAP on consumers:** Wagner correctly identifies that the proposed MAP would still allow 'bricks and mortar' resellers to aggressively compete on price in store. This is because the customers will still be able to walk in and negotiate a price. However, what the MAP will do is eliminate the aggressive price matching that occurs '*from online stores not offering a "like for like" sales processes and after-market services.*'



As noted in the Notification Wagner/Titan are Graco's closest competitors for the supply of paint sprayers in Australia, and therefore, Wager/Titan would be facing similar issues to Graco. In these circumstances, Graco considers that the ACCC should give particular weight to Wagner's submission.

## 9 TRADEgear

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There are aspects of TRADEgear's submission that are supportive of the proposed MAP. For example, TRADEgear agrees with Graco's assessment of paint sprayers when it noted they are *'technical equipment that require explanation about their use and maintenance'*. Further, TRADEgear acknowledges that *'ongoing maintenance is a significant issue for all paint spraying equipment'*.

Graco addresses some further points that TRADEgear has made in respect of the MAP below.

- **Similarities of paint sprayers:** Graco disagrees with TRADEgear's assessment that *'Graco and Wagner products are very similar and once you know how to use a paint sprayer, you can use any brand'*. As outlined above, while Wager/Titan are Graco's closest competitors for the supply of paint sprayers, Wagner supplies significantly more DIY paint sprayers, which are less complicated and offer less features than the contractor range of products that Graco specialises in. It is for this reason that training and after sales support are particularly important for Graco products.
- **Online discounting:** TRADEgear outlines that it has not observed a lot of tradespeople requesting price matching for Graco products sold online, and that price matching requests it receives are often in relation to prices offered by Dulux. While this may be true, as outlined in the Notification, the reason for Dulux's significant price decreases to the Graco products it supplies in store is to match the discounted pricing offered online. Further, as a result of these discounts that Dulux has offered, Dulux expects it will incur a significant loss in margins for these discounted products this year. Graco has also received complaints from a number of other distributors in this regard.
- **Training and demonstrations:** Graco considers that TRADEgear's comment that *'tradespeople are most interested in getting the best price, not a demonstration'* is too simplistic. While price is clearly an important part of the competition for paint sprayers, so too are training and demonstrations. This point is explicitly acknowledged by TRADEgear on page 1 of its submission when it notes that it *'take[s] the shop to the customer'* and *'demonstrates Graco Paint Sprayers [and] runs training events for end users'*. Moreover, TRADEgear acknowledges that its Graco business is growing *'because of its business model of putting TRADEgear sales representatives in front of the trade.'*
- **Impact of the MAP:** TRADEgear notes that the MAP is unlikely to impact the way that it currently supplies Graco products. Graco considers that this is only because TRADEgear already supports distribution models like Graco's which provide high service levels. Nonetheless, Graco still considers that the MAP will be beneficial for distributors like TRADEgear, as it will provide them with more sustainable margins, which will allow them to invest even more in high service levels and compete more vigorously in this respect.

## 10 Dulux

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Dulux makes a number of comments in its submission which support Graco's arguments in the Notification. These include:

- **Technical nature of paint sprayers:** Dulux agrees with Graco's argument that paint sprayers are quite complicated products. For example, in Dulux's submission, it notes

that *'paint sprayers are not easy equipment to use'*, and that certain paint sprayers *'can result in serious injuries if used incorrectly'*.

- **The importance of sales support:** Because of the technical nature of paint sprayers, Graco argued in the Notification that training is both important and sought after by customers. Dulux makes a similar observation in its submission that *'there is a lot of demand from painters for proper training'*. In addition to customer demand for training and sales support, Dulux clearly considers it to be an important part of its sales process noting that it is *'offering a service rather than just a product'*. The importance that Dulux places on sales support for Graco products can also be seen from Dulux's statements that it is *'investing heavily in this area and in training its staff on sprayers'*, and that *'Dulux staff normally spend 1-1.5 hours with a customer purchasing a paint sprayer'*, as well as the fact that Dulux runs 'spray days', has informal paint training and runs expos / events to show off spray equipment.
- **In person training is preferable to online substitutes:** Dulux notes that while there are a lot of YouTube videos which provide some training on paint sprayers, *'there are none on how to help the end user, whether a DIY or trade painter, select the right machine'*. Further, it is clear from Dulux's investment decisions that it is strongly in favour of the in-person training that underpins the proposed MAP. This is because Dulux has a spray stand in nearly all of its 105 stores and 12 service centres for paint sprayers (as well as a further 8 service centres at Inspirations Paint stores, which are Dulux Trade Agencies). This is the kind of support that Graco wants to encourage and have continued in the future.
- **Aggressive online discounting and undercutting sales support:** Dulux makes the point that it is now the online market that is setting the price for Graco products. It argues that *'no matter how great Dulux's expertise is, the floor price online is the price.'* Graco agrees with these points and argued in the Notification that this aggressive online discounting is not sustainable. Clearly Dulux agrees as it notes that margins on paint sprayers are already low, and *'then typically online sales offer 25% which further eats into the margins'*. The unsustainability of the current margins is further emphasised by Dulux's comment that *'customers will come to a Dulux store and ask for training on equipment for a machine they have bought online from another distributor'*. Dulux also notes that Wagner products are discounted online, but not to the same extent as Graco's products.
- **Impact of the MAP:** Graco agrees with Dulux's point that if the MAP goes ahead, *'the floor price will be higher'* which will reflect *'the contact and service considerations...'* Further, Graco considers that Dulux is right in that the MAP won't prevent stores from *'emailing customers or advertising with the promise of great deals if they sign up for a trade account'*. This is because the proposed MAP does not seek to prevent distributors from discounting Graco products or engaging in individual negotiations. Rather, it seeks to prevent deep discounting online that must be matched by 'bricks and mortar' and full-service distributors. Finally, Dulux notes that the market for paint sprayers in Australia is *'immature but has high growth potential'*. Graco agrees and considers that the key to unlocking this growth is further investment in sales support, demonstrations, training for staff to offer that service, and trade days, all of which will be far more achievable with the proposed MAP.