



Perishable Agricultural Goods Inquiry Submission by Woolworths Group Limited

18 September 2020

1. Woolworths welcomes the opportunity to make a submission in relation to the ACCC's Perishable Agricultural Goods Inquiry.
2. Woolworths is committed to a vibrant and sustainable Australian primary produce sector, grounded in strong and mutually beneficial relationships with our suppliers of perishable agricultural goods. Our ability to meet our customers' needs effectively depends upon enduring relationships with suppliers, as is evidenced in our partnerships that extend back, in many instances for decades.
3. Ensuring fair and reasonable dealings between retailers and suppliers has been the subject of numerous previous inquiries in Australia and considerable regulatory and political scrutiny. Previous inquiries relating to perishable agricultural goods in Australia have been thorough and promoted improved practices across the supply chain. In recent times, they have identified no market failure, nor any root cause of market problems arising from the conduct of supermarkets. Existing effective regulation of the retail level of the agricultural supply chain, combined with the commercial imperative for retailers to be invested in the health and success of the agricultural sector are strong and effective drivers of fair dealing.

Woolworths' commitment to a healthy primary produce sector

4. Woolworths is one of the largest buyers of fresh food in Australia. Our ability to meet our customers' needs depends on vibrant, competitive, productive and sustainable agricultural supply chains. Simply put, without the success of our Australian agriculture supply partners, we cannot succeed.
5. Woolworths fully supports, and is invested in, a well-functioning primary produce sector. Since 1987 Woolworths has promoted itself as the "Fresh Food People", reflecting the importance of fresh produce to our customers and our business. Our store layouts are designed to promote and feature fresh fruit, vegetables, meat and other fresh produce for our customers, and to promote fresh food as an important part of our customers' dietary planning.



6. In keeping with our approach, we have delivered many significant initiatives to help suppliers of perishable agricultural goods. These include:
 - a. the Woolworths Dairy Levy to support the industry during recent drought conditions (nearly \$60 million distributed)
 - b. a \$30 million Woolworths Organic Growth Fund
 - c. the Woolworths “Odd Bunch” program (an initiative to reduce food waste and maximise farmer revenue from produce that would otherwise not be put on sale)
 - d. Woolworths Local Sourcing program, and
 - e. a raft of other initiatives to support individual farmers and suppliers encountering temporary difficulties as well as our direct support to numerous events and suppliers in our farming communities.

Examples of the assistance we have been able to provide are described in **Attachment A**.

7. More broadly, we are proud to support Australian fresh produce suppliers. We source 100% Australian fresh beef, lamb, pork, chicken, eggs and milk in our Australian stores, as well as 96% Australian fresh fruit and vegetables, from thousands of Australian suppliers. We only source products overseas when it is seasonally unavailable in the Australian marketplace or when volumes of available domestic produce cannot meet demand.

Woolworths’ strong relationships with suppliers of perishable agricultural goods

8. Woolworths has a long history of working with Australian fresh produce suppliers. More than 80% of these suppliers have been our partners for over a decade, and several of them have been our partners for more than 50 years. The longevity of these relationships underlines their positive and mutually beneficial character.
9. Our ambition is to be the preferred trading partner for our suppliers, and to do so through our continued focus on building collaborative and transparent relationships. Our performance as a trading partner is measured through two types of surveys:
 - a. an annual industry-wide survey of retailers and suppliers, which rates Woolworths against other retailers (not just major supermarket chains); and
 - b. a “Voice of Supplier” (VOS) survey, conducted bi-monthly, which asks suppliers to rate Woolworths only.



Both of these surveys are undertaken independently by global engagement experts, and their results are reported to the Woolworths Management team and the Board.

10. In the most recent 2020 annual Survey, Woolworths Supermarkets achieved an overall ranking of second (compared against 20 retail banners, large and small). We also achieved a top quartile ranking for “Dealing with suppliers in a fair and equitable manner”. Recent VOS results similarly attest to a strong supplier perception that Woolworths is fair and equitable to work with, and continually improving.

Our compliance culture and frameworks for handling any supplier concern

11. Woolworths has invested heavily over recent years in cementing a strong culture of doing the right thing, supported by our [Code of Conduct](#). Our published aim is to “*achieve a top quartile ranking in how we engage fairly and equitably with our suppliers as measured by independent supplier surveys*”. We believe our compliance culture is instrumental in driving the right behaviours and values in our supplier relationships, including in the area of perishable agricultural goods. As set out in our Code of Conduct we do seek to “*obtain the best value for money, but never by acting unethically or unfairly*”.
12. We are however acutely conscious that concerns may arise as part of the normal commercial negotiating process. That is not unique to perishable agricultural produce and is a common dynamic across many commercial landscapes. In our business however, if a supplier concern or complaint arises, we have in place several established channels by which a supplier may raise concerns with us, as shown below.

¹<https://www.woolworthsgroup.com.au/page/community-and-responsibility/group-responsibility/partners/a-fair-partner>



13. The first two channels are well established. The vast majority of all supplier concerns are resolved within our buying teams - consistent with our ambitions to be a valued business partner for our suppliers. The Food and Grocery Code of Conduct (**Grocery Code**) is currently being reviewed by the Federal Government - with publication of a revised Code imminent. The revisions will include a strengthened dispute resolution process and the introduction of a Code Arbiter and an Independent Reviewer to provide independent oversight. Woolworths was a founding signatory to the Grocery Code at its inception and will continue to adopt the Code in its dealings with all of its relevant suppliers.

14. Woolworths Supplier Speak Up is an independent and confidential avenue for raising a concern or complaint, and is available to suppliers and workers throughout our global supply chain. We continue to review and improve the service to ensure it is easily accessible and user friendly both by phone and online. We monitor the time taken to investigate and resolve complaints and the integrity and effectiveness of investigations. We appreciate that many fresh produce suppliers and workers in our supply chains are from non-english speaking backgrounds and we have this year translated our Speak Up Policy, our online intake form and our Speak Up promotional posters into several relevant languages. In responding to Speak Up complaints, we have careful controls to protect confidentiality and to ensure that there are no adverse repercussions for raising a report.



15. For more detail on this and our other relevant actions concerning complaint handling, please see Woolworths Speak Up Policy and Woolworths' 2020 Sustainability Report.²

Supply, demand, and previous inquiries

16. Woolworths recognises there are inherent challenges faced by primary producers in Australia. Many fresh produce categories experience misalignment in supply and demand. Most recently, this has been exacerbated by the effects of the Covid 19 pandemic, manifesting in fluctuating demand, transport and logistics restrictions, and limitations in available labour to pick crops. However even in 'normal' times fluctuations in supply and demand for perishable products will impact price. Further compounding this uncertainty is the reliance a number of these categories have on export markets. Australia exports around 70% of our agricultural production³ with prices and demand in export markets then influencing how much of our growers' product is available and pricing in the domestic market.
17. This uncertainty for fresh produce suppliers can be challenging to manage. To help overcome this challenge for growers, Woolworths issues demand forecasts to suppliers of its likely fresh produce requirements for a year or for a particular growing season. While these generally cannot be fixed contract volumes or prices (given the market dynamics described in paragraph 16 above), they are usually very close to actual outcomes, and consequently considered valuable guidance by producers.
18. Considerable government, parliamentary and regulatory resources - at both a Federal and State / Territory government level - have already been devoted to looking across the key agricultural supply chains, including the relative bargaining power of farmers, processors and retailers, and examining whether any market failure exists. Repeatedly, while a number of challenges for producers have been acknowledged, including problems at the processor level, no market failure has been found at the retail level of the agricultural supply chain. The key issues identified in numerous previous inquiries (including the [ACCC Dairy Inquiry](#), various Senate inquiries into the dairy industry and the food processing sector, and the [ACCC cattle and beef market study](#)) were generally at levels other than the retail level of the supply chain.

²<https://www.woolworthsgroup.com.au/page/about-us/our-approach/corporate-governance/speak-up-policies>

https://www.woolworthsgroup.com.au/icms_docs/195782_2020-sustainability-report.pdf

³ ABARES insights https://daff.ent.sirsidynix.net.au/client/en_AU/search/asset/1030201/0



19. The ACCC's own rigorous 18-month Dairy Inquiry that looked in depth across the whole dairy supply chain is a key recent example in this context. The ACCC concluded in 2018 that the principal concerns (which it recommended be addressed with a new code) were at the processor level of the supply chain - not at the retail level (a conclusion reiterated emphatically in its 18 September 2018 media release). The ACCC's November 2019 submission to the Australian Parliament's [Senate Inquiry](#) into the performance and profitability of the dairy industry noted:

"...that the introduction of \$1 per litre milk or reductions in other dairy retail prices did not have an observable direct impact on farm numbers, output or profitability."⁴

20. The ACCC's cattle and beef market study in 2017 found that margin and profitability in the industry were driven by the export market, not by supermarket pricing:

"domestic retail beef sales account for less than 20 per cent of total sales by revenue, [such that cost and revenue data from processors and major supermarket chains] ... would only represent a relatively small segment of the cattle and beef industry. In contrast, information on costs and revenues for processors and exporters engaged in the export market would provide a more representative picture of margins and profitability for the industry as a whole."⁵

21. Retailers have made significant strides in the past 5 years in improving on past practices and cultural deficiencies which were the catalysts for the introduction of the Grocery Code in 2015. Historic concerns by suppliers towards supermarkets, related primarily to packaged groceries rather than perishable goods. Where conduct in the perishable goods market has come under scrutiny, it has been concerned with the lack of transparency between growers and the wholesale and central markets, not supermarkets, hence the development of the mandatory Horticulture Code applicable to that part of the supply chain. The investments made and positive actions taken by Woolworths and other retailers in their supplier relations more broadly was acknowledged in the Grocery Code Review. See for example, the extracts in paragraph 22 below.

22. The Grocery Code Review found in 2018 that retailer-supplier relations had improved considerably since the Grocery Code was introduced in 2015, resulting in fewer supplier concerns:

⁴ ACCC Submission to the [Senate Dairy Inquiry](#) into *Performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000*, 29 November 2019, page 3.

⁵ ACCC [Cattle and Beef Market Study Final Report](#), page 37.



“...broad feedback from stakeholders is that the Grocery Code has contributed to a significant improvement in retailer-supplier relations over the last three years. ... Coles and Woolworths have taken positive action and made changes to implement the Grocery Code requirements. They have revised their Grocery Supply Agreements, employed code compliance teams, and engaged in extensive training in the Grocery Code for their buying teams. ...

As a result, suppliers have reported significantly less issues with retailer practices that previously troubled the industry...

In addition to compliance with the Grocery Code, the major retailers have implemented additional initiatives to improve and measure the effectiveness of their supplier partnerships. ... The Review found that generally the Grocery Code has contributed to a change in business culture within the major retailers, which has been led by senior management of both organisations.”⁶

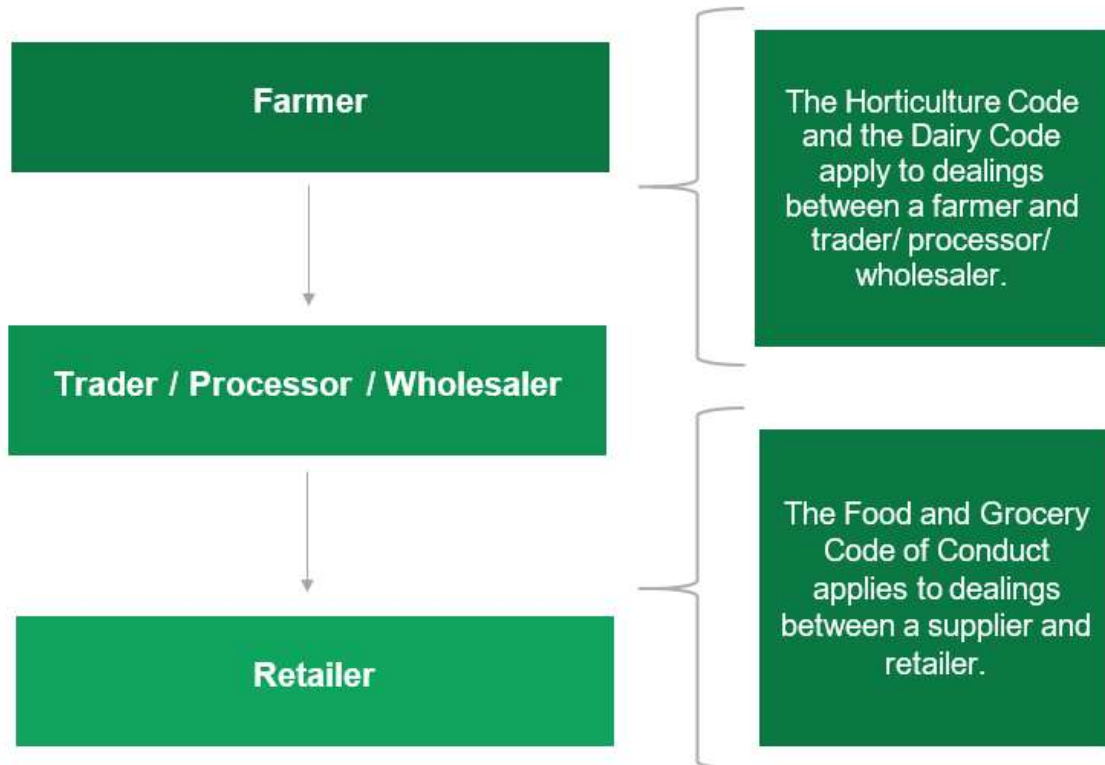
23. Woolworths is of the view that there already exists today sufficient, effective regulation covering the supply and procurement of agricultural products through the supply chain. This includes both mandatory and voluntary industry-led regulation, such as the Grocery Code, recognising the commitment of signatories to support good behaviors and practices when dealing with suppliers.

24. Key existing laws and regulations that apply to trade relations across the agricultural products supply chain are shown below. The ACCC is a strong and effective enforcement agency with considerable oversight and powers in this space. Woolworths was a founding signatory to the Food and Grocery Code in 2015.

⁶ [Grocery Code Review Final Report](#), page 16.



The Competition and Consumer Act 2010 (*Cth*) (**CCA**), including the Australian Consumer Law, applies to trade and commerce throughout the supply chain.



25. This regulatory framework operates to regulate trade, ensure transparency and clarity of transactions, and to provide fair and equitable complaints handling and dispute resolution procedures and options. At the retail level of the supply chain, principal elements of the regulatory framework are well known:

- The Competition and Consumer Act 2010 (Cth), including the Australian Consumer Law, which apply to trade and commerce throughout the supply chain. Importantly, the conduct these laws prohibits includes unconscionable conduct, misleading or deceptive conduct, unfair contract terms and misuse of market power.
- The Grocery Code, which places industry specific obligations on grocery retailers when dealing with suppliers. While the Code has been found to be working well in the most recent review by former ACCC Chairman Mr Graeme



Samuel AC, it is imminently to be enhanced by amendment regulations. These will, for example, enhance the good faith requirement and strengthen the dispute resolution framework. Code Arbiter and Independent Reviewer roles will be established to drive further compliance with the Code including by authority to make binding decisions on retailers to resolve issues, conducting an annual survey, publishing an annual report and guidance materials, and working with industry to identify any systemic issues.

26. As referenced above, the ACCC has not identified concerns at the retail level of the dairy supply chain warranting sector-specific regulation. Instead, the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019* focus on addressing imbalances of bargaining power at the dairy farmer/ processor level of the supply chain.

Progress of the Inquiry

27. We hope this submission is of assistance to the Commission in conducting its inquiry. We would be happy to discuss it with you and we would be grateful to be consulted on any recommendation that the ACCC may consider making that might affect Woolworths.



Attachment A

Woolworths' Initiatives to Help Suppliers of Agricultural Goods

The Woolworths **dairy levy**, which collects 10c per litre on our Own Brand 2L and 3L fresh milk, has provided **close to \$60 million** to more than 450 dairy farmers in our processors' supply chains since it was introduced in September 2018 as a drought-specific measure. Over the course of FY21 for which it has been extended, it is expected to contribute a further \$30 million to the dairy industry. In addition, and in response to higher farmgate prices during the recent drought, Woolworths helped **return tens of millions of dollars into the dairy supply chain** by agreeing to multiple wholesale cost increases from our milk processors across the dairy cabinet.

The Woolworths **Organic Growth Fund** was established in 2018 in partnership with Toowoomba-based Heritage Bank. The Fund will allocate up to \$30 million over 5 years in grants and interest free loans to organic fruit and vegetable growers looking to expand their operations, and to those who are wishing to enter the industry. As well as providing financial assistance, the Fund also supports growers through long term supply contracts and guaranteed purchase volumes. Most recently, we awarded more than \$1 million to four farming families including a \$500,000 grant to Kalafatis Produce in Shepparton, Victoria, who are transitioning into Organics and have been supplying Woolies for over 50 years.

The Woolworths **Odd Bunch program** accepts fruit and vegetables that may not meet the visual quality expectations of customers. All existing and new growers are invited to participate in the Program and, as Odd Bunch products are a by-product of main harvests, farmers achieve an average 30% higher yield from their crop. In FY19, there were more than 25 products in the Odd Bunch Program with average sales volumes of 700,000kg.

Woolworths' **Local Sourcing Program** allows Woolworths to buy from local supply partners in small, sustainable volumes. Josh began selling Josh's Free Range Eggs to Woolworths at nine years of age. Since joining the Woolworths Supermarkets Local Sourcing Program, Josh has expanded his brood to more than 9,500 hens and sells an estimated \$30,000 of eggs each week to Woolworths Supermarkets in Victoria.

Woolworths also supports events and industry programs that are important for our farming communities. We have been proud partners of both **Nuffield** and the **Australian Rural Leadership Foundation** for over a decade as well as more recently contributing to Rural Aid through the drought and to our existing community partners, Salvation Army, Food Bank and OzHarvest. We have been supporting the **Sydney Royal Easter Show** since 1968 and have been the naming rights sponsor of the Woolworths Fresh Food Dome for over 20 years. Equally, we have been sponsors of the **Brisbane 'Ekka'** for over 20 years.



Bega Valley Eggs, owned and operated by Tom and Joscelin McMillan on the NSW South Coast, lost two-thirds of their hens to smoke and stress following the bushfires in early 2020. Their relationship with Woolworths gave them the confidence to rebuild their business to previous production levels, knowing there would be a consistent demand for supply from three local stores. Within only a few months, Bega Valley Eggs has now expanded to seven Woolworths stores in the South Coast area.

Fleurieu Milk Company, owned by three dairy farming families in Myponga, SA lost 30% of sales when food service providers shut their doors due to Covid-19. Almost overnight, they were left with excess milk and an uncertain future for their 55 employees. Woolworths is committed to selling local produce where possible and approached the families to offer them a secure channel for their product. The company's full fat, skim and flavoured milk range is now sold in 34 Woolworths stores across SA allowing the company to invest in infrastructure upgrades and expand their overall operations.

During the Covid crisis, Woolworths has assisted some major fruit and vegetable processors and manufacturers with **early payment** of their accounts, to give them funds to buy fresh produce, particularly potatoes, while their businesses suffered cash flow shortages due to their food service and hospitality customers being shut down.

Boundary Bend, or more commonly known as Cobram Estate has achieved significant growth in 16 years to become the number 1 supplier of cooking oil for 2019. However in 2018, they suffered an 8 million litre loss due to frost from the previous year as well as being hit with record high water prices. We reduced our payment settlement days from 60 to 30 days to assist with their cash flow as well as establishing a strategic and joint plan which saw Woolworths take a significant percentage of Cobram's oil production, giving them business certainty moving forward. Boundary Bend was Woolworths' Supplier of the Year in 2019.