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**Small Business  
Commissioner**  
SOUTH AUSTRALIA

Mr Tom Dickson  
Principal Adviser, Structural Reform Group  
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Dear Mr Dickson

**Independent Review of the Food and Grocery Code of Conduct  
South Australian Small Business Commissioner's submission on the final report**

I refer to [REDACTED]'s email dated 30 November 2018 inviting me to provide a submission on the recommendations set out in the final report of the Review of the Food and Grocery Code of Conduct.

In my submission I address two recommendations that relate to a report "*From the Paddock to the Plate – a Fair Return for Producers*" prepared by the Economic and Finance Committee of the Parliament of South Australia dated 28 November 2017.

**Recommendation 1 of the Review of the Food and Grocery Code of Conduct**

***The Grocery Code should remain as a prescribed voluntary code.***

***The Government should consider introducing a targeted mandatory code for industry participants with significant market power that refuse to become signatories.***

The South Australian Parliament's Economic and Finance Committee (the SA Committee) makes the following recommendation at page 119 of its report *From the Paddock to the Plate*:

*"Recommendation 9*

*The Committee suggests that the statutory review of the Grocery Code of Conduct, to be conducted at the request of the responsible Commonwealth Minister in 2018, should consider recommending that the Code be mandatory in nature."*



I am pleased that the Review's final report has considered whether the Grocery Code should be made mandatory.

I note that the Review is of the opinion that a single code is preferable for the industry and that it should remain voluntary, having made the following findings:

- the current coverage of the code is sufficient to drive positive outcomes across the industry;
- a voluntary code opens the door to more dispute resolution options as opposed to a mandatory code; and
- the current voluntary code allows industry participants to become an integral part of the regulatory solution, thereby fostering strong cultural change.

I further note the Review's recommendation that the Government consider introducing a separate targeted mandatory code if recalcitrant industry participants do not sign up to the Grocery Code.

I support Recommendation 1 introducing a separate targeted mandatory code as it provides an opportunity to capture all participants in the industry, which will ensure protection for suppliers across the board.

### **Recommendation 7 of the Review of the Food and Grocery Code of Conduct**

***The ACCC should also consider adopting a collaborative approach with signatories, Code Arbiters and the Independent Reviewer to encourage more active compliance with the Grocery Code.***

Compliance and enforcement, including civil pecuniary penalties, are considered at section 7 of the final report.

The SA Committee considered this issue and recommended that:

*"the statutory review of the Grocery Code of Conduct, to be conducted at the request of the responsible Commonwealth Minister in 2018, should consider recommending the inclusion of civil penalty provisions for contravention of the Code's provisions."*

I note the Review has taken the view that civil pecuniary penalties are unnecessary given that:

*"substantial pecuniary and infringement notices are already available to the ACCC to address serious and egregious misconduct by retailers and wholesalers against suppliers. Retailers and wholesalers are prohibited from engaging in unconscionable conduct under the Australian Consumer Law, which attracts penalties of up to \$1.1 million (for corporations)."*

It is my view that civil penalties under the Code are warranted and I concur with the ACCC's argument that the implementation of civil pecuniary penalties would act as a deterrent against contraventions of the Code. I am therefore unable to support Recommendation 7 without a specific recommendation that civil penalties be introduced.

**State-based Mandatory Code**

I reiterate my comments made in my previous submission to the Review's draft report regarding the views of the SA Committee in its report *From the Paddock to the Plate*, specifically Recommendation 11:

*"In the absence of Commonwealth reform to the Grocery Code of Conduct, the South Australian Government should institute a state-based mandatory Code or add to the current Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013 (SA) within the Small Business Commissioner's jurisdiction, to fill the gap caused by the inconsistencies between the Horticulture Code of Conduct and the Grocery Code of Conduct."*

I remain of the view that a state-based mandatory code should be introduced in South Australia if the necessary federal reforms are not implemented. I emphasise that this would be subject to the consideration of the South Australian Government, which is yet to provide its views on the SA Committee's report.

**Authority to publish**

I consent to my submission being made publicly available on the Treasury website.

If you would like to discuss my submission in further detail, please do not hesitate to contact me on [REDACTED] or [REDACTED]

Thank you for the opportunity to comment on the final report on the Review of the Food and Grocery Code of Conduct.

Yours sincerely



John Chapman  
**Small Business Commissioner**

4<sup>th</sup> December 2018

