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Competition Policy Unit
Treasury
Langton Cres
Parkes ACT 2600

PO Box 636
Collins Street West
Melbourne, Victoria 8007

Via: fgc@treasury.gov.au

info@freshproduce.org.au
www.freshproduce.org.au

RE: AFPA Feedback to Mandatory Food and Grocery Code: exposure draft regulations

The Australian Fresh Produce Alliance (AFPA) welcomes the opportunity to provide feedback to the exposure draft regulations of the Mandatory Food and Grocery Code of Conduct (the draft Regulations).

The AFPA actively engaged in Dr Craig Emerson's independent review of the Code (the Review) and recognises that feedback provided was taken into consideration when developing the Review's findings and final recommendations. The AFPA recognise that several ideas tested in this process were not progressed for good reason, as they would have adverse and unintended consequences on suppliers.

Key recommendations presented or supported by the AFPA included the inclusion of the \$5 billion threshold for all supermarkets and wholesalers subject to the mandatory code; that the Food and Grocery Code of Conduct remains separate to and independent of the Horticulture Code of Conduct, as they are complementary, but cover two distinctly different parts of the supply chain; and dispute-resolution remain independent and as efficient as possible. These recommendations have been appropriately reflected in the draft Regulations.

More broadly, the softening demand for fresh produce, due to current cost-of-living pressures, and increasing production costs, coupled with other challenges experienced by many growers, including extreme weather events and supply-chain disruptions, has created an incredibly difficult operating environment for many fresh produce businesses. The pressure to supply food 'cheaply' to Australians as a result of the cost of living crisis has further compounded these challenges and tested industry's resilience.

Between 2019 and 2023, the cost of producing fruit and vegetable increased by 18.9%, largely driven by increases in labour (20.7%), energy (20.0%), capital (22.3%) and other production input costs (19.3%), such as fertiliser, freight and packaging. Labour, which accounts for around 52% of the total cost of production on average, has continued to increase significantly across 2024 and is anticipated to continue to rise in 2025, further increasing production costs.

Increasing production costs cannot be absorbed by producers and must be passed on through the supply chain, therefore the changes introduced by this legislation that ensure the grocery trading environment remains fair and equitable are welcome and needed.

With respect to the impact analysis undertaken to support the draft Regulations, Treasury's supplementary analysis on net benefits of reform of the Code¹ outlines:

¹ Office of Impact Assessment, Supplementary analysis on net benefits: <https://oia.pmc.gov.au/published-impact-analyses-and-reports/independent-review-food-and-grocery-code-conduct>

“There is also a risk that some of the additional costs imposed by the Code, and an improvement in bargaining power of suppliers, will increase costs for consumers. It is difficult to quantify this impact as it is unclear how much supermarkets will be able to pass through these costs. The current environment of relatively high inflation and cost-of-living pressures is likely to reduce supermarkets’ ability to pass these costs on if supermarkets continue to be under scrutiny from the media, the Government and the ACCC. Offsetting this, the ability for suppliers to earn a reasonable return could actually result in lower prices over time...”

Given that the fresh produce industry has experienced a 18.9% increase in input costs over the last four years, and to the extent the Review has demonstrated that the fresh produce industry has limited bargaining power with major supermarkets, there should be a reasonable expectation that the price of food should increase to support fairer returns to producers in line with improved bargaining power anticipated through these draft Regulations. There should not be an unintended consequence of this Review, and associated draft Regulations that additional scrutiny placed on supermarkets, supply chains and bargaining power should result in suppressed prices for farmers.

Further, while not within the scope of the review of the draft Regulations, and also largely uncovered in the Review, Government must pay close attention to escalating food production costs and the policy levers available to Government to reduce these costs; assisting to address the cost of living crisis being experienced by all Australians. This includes careful consideration of policy that addresses industry’s access to a productive workforce; impacts of environmental legislation across packaging, water and emissions; and energy policy more broadly including access to power, fuel and impacts on freight and transport costs.

To ensure that the Code, operationalised through the draft Regulations, is utilised to improve bargaining power for suppliers within the grocery industry, the AFPA continue to recommend that Government conduct an extensive communication and education campaign to better inform fresh produce suppliers of the Code and its protections once the regulatory process is complete. Such an initiative will be crucial to ensuring that suppliers, particularly smaller operators, fully understand their rights and the support mechanisms available to them under the Code.

The importance of suppliers understanding their rights and recourse under the Code is also highlighted in Treasury’s supplementary analysis on net benefits of reform of the Code, noting: *“In particular, the recommendations in the Final Report are expected to increase confidence in the Code, increase supplier understanding of their rights under the Code, increase suppliers’ willingness to exercise their rights under the Code, increase compliance, and contribute to a more effective Code that works to protect suppliers and contribute to a more sustainable and vibrant grocery industry.”*¹ In order to ensure this net benefit is achieved, it will be important that an extensive communication and education campaign amongst suppliers is undertaken.

Beyond the Code itself, the AFPA urges the Government to consider additional measures to support competition within the fresh produce industry. For example, the Government should focus on improving international market access for Australian fresh produce, which would diversify market opportunities for growers and reduce their dependency on a limited number of domestic retailers. Greater access to export markets would empower growers to negotiate fairer terms and prices for their produce, foster buyer competition, and drive innovation in the retail sector.

Furthermore, improving international market access would contribute to a more resilient and competitive fresh produce industry, benefiting not only growers but also domestic consumers through increased supply, better price stability, and enhanced product offerings driven by greater economies of scale.

The AFPA supports the ongoing, periodic review of the Food and Grocery Code to ensure that it remains relevant and effective in addressing the existing and evolving challenges faced by the fresh produce industry. We appreciate the opportunity to provide feedback on the draft Regulations and look forward to continued engagement with the Government on these important issues.

Yours sincerely,



Claire McClelland
CEO
Australian Fresh Produce Alliance