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The Treasury  
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PARKES ACT 2600  
Via email: [consumerlaw@treasury.gov.au](mailto:consumerlaw@treasury.gov.au)

**Subject: Unfair trading practices**

Thank you for the opportunity to submit a response to the consultation on the design of proposed general and specific prohibitions against unfair trading practices in the Australian Consumer Law. NSW Farmers welcomes the progress on consultation of Option 4 to the 2022 Regulatory Impact Statement (RIS), which we supported in our submission as the most appropriate regulatory response.

Noting that the current consultation paper focuses largely on general and specific problems faced by individual consumers to be addressed, this submission goes chiefly to **Focus Question 35:**

**Application to business-to-business dealings.** It is NSW Farmers strong desire for general and specific prohibitions to be extended towards business-to-business dealings in law without delay.

In our submission to the RIS, we identified that there are approximately 55,000 small businesses operating in the agriculture, forestry or fishing industries, and that these businesses typically face extraordinary market power imbalances. The NSW Farmers submission to the National Competition Reform consultation further demonstrated that multiple input and output markets in the agricultural supply chain are highly concentrated, nationally and locally (see Table 1). In this respect, family farmers are more akin to households with respect to their vulnerability to deceitful trading or pricing strategies, including many of those outlined as problems to be addressed in the consultation paper.

*Table 1: Counts and approximate market share of major businesses in key industries in the agricultural supply chain.*

Commodity / Sector	# Large Players	Market Share
Grocery Retail	2	65% of consumer spend
Nursery Products	1	70% of consumer spend
Cotton	2	65% of cotton gins
Poultry meat	2	70% of output
Grain	3	90% of bulk handling
Smallgoods/Pork	3	55% of processing
Seafood	3	65% of processing
Airlines	1	91% of regional routes
	3	92% of city-regional routes

Farmers are often exposed to a range of other instances of unfair trading practices which should be included on any potential grey list of general prohibitions developed as part of the new laws. NSW

NSW Farmers

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Farmers original submission to the consultation on unfair trading practices exhaustively lists several type of unfair behaviour, however, in brief these include:

- Late payments in excess of 30 days for perishable produce
- Short-notice cancellation or rejection of orders for perishable produce
- Actual and threats of commercial retaliation by buyers, including blacklisting
- Hidden payments or fees, including deductions from invoices
- Refusal to negotiate prices
- Dishonest marketing, such as selling imported produce alongside or under the same quality markers as domestic produce
- Unfair misuse of contract terms, such as —
  - non-compete clauses that prevent farmers from supplying to alternative buyers
  - requiring suppliers to adhere to standards and guidelines without compensation, or expanding the scope of practices over time

NSW Farmers notes that under EU legislation on unfair trading practices in agricultural supply chains, the law recognises that trading practices that adversely impact farmers will ultimately affect consumers. As such, enterprises with a turnover less than EUR 350,000 are afforded general protections against unfair trading practices imposed upon them by larger businesses.

The consultation paper notes that *"introducing protections for businesses-to-business transactions could also carry significant risk and uncertainty especially where those businesses may already operate within... industry codes"*. NSW Farmers disagrees with the above statement, noting that industry codes of conduct typically address specific industry-specific issues, such as requirements for contracts to contain certain provisions or records to be kept or published for a given period. Insofar as the Australian Consumer Law sets a baseline for market behaviour, industry codes establish additional standards that address specific market failures.

As technology evolves and farming systems become increasingly digitised, farmers are utilising many of services that the consultation paper identifies as sources of concern. For example, farmers are often required to sign up for subscriptions for online services, and the ownership of the farm-data generated through such applications is often unclear or goes to the provider without the informed consent of the farmer. These types of issues are likely beyond the scope of an industry code but fall well within the provisions of the Australian Consumer Law.

Therefore, **NSW Farmers recommends that general and specific prohibitions against unfair trading practices be extended towards business-to-business dealings in law without delay. Or at the very least, that they be extended to small and medium-sized enterprises in the first instance.**

Should Treasury require further information from NSW Farmers for this inquiry, please contact NSW Farmers Head of Policy and Advocacy, Kathy Rankin via email at \_\_\_\_\_ or by phone on \_\_\_\_\_

Yours sincerely

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