



# Tasmanian Farmers and Graziers Association

## Submission on: Food & Grocery Code of Conduct

September, 2014



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## AGRICULTURE IN TASMANIA

The total Tasmania gross state product (GSP) was \$23.9 billion for the 2012 year. The GVP of agriculture, forestry and fishing collectively amounted to almost 9% of this total – before input supply services and value-adding, which is well above that for the nation as a whole.

In 2010/11, the farm gate value of production (GVP) of agriculture, forestry and fishing was \$1.98 billion. This comprised:

- agriculture - \$1.150 billion;
- forestry - \$235million; and
- fishing - \$597 million.

This is before considering input supply services and value-adding. Taking into account basic multiplier factors, this means the farm-dependent economy contributes more than \$5.0 billion to the gross state economy - in spite of adverse pressures on the forestry industry.

Over the past 25 years, the average annual rate of increase in farm gate GVP has been close to 4%. Average growth in the farm GVP over the recent past has been slightly slower than average, as a result of reduced export returns due to the high value of the \$A and increasing cost pressures along the value chain.

Milk and milk products followed by livestock and livestock products were the main sector contributors to farm production value. However, this was partly offset by reduced vegetables output associated with severe wet weather at harvest in the first quarter of 2011.

Some 10,500 people were employed directly in agriculture forestry and fishing. A further 8,500 people were employed in services to agriculture and food and fibre value-adding. This is close to 9% of the working population in Tasmania.

The preliminary Tasmanian government Scorecard data for 2010-11 (prepared by DPIPW) indicates the wholesale value of food and beverage production has remained steady, roughly in line with the previous year at \$2.7billion This demonstrates the important role that the processing sector plays in adding value to farm gate returns and the fortunes of those who live and work in the farm dependent sector.

Furthermore, the inclusion of forestry as a long cycle crop enterprise in farming businesses in the state means that the overall economic contribution must include these figures too. Our best estimate is that in 2009/10 this added a further \$400 million to farm gate income. Clearly, as a result of the uncertainty currently evident in this sector, that figure has fallen significantly since then. Nonetheless, on a long term outlook, forestry remains an integral part of a diversified farm business.

Compared to the previous year, growth in agriculture GVP has broadly offset the fall in forestry GVP.

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The vast bulk of our agricultural product is sold interstate and overseas. Farm exports in 2010/11 easily exceeded \$550m (farm gate equivalent value) when account is taken of pharmaceutical products. The share of exports to Asian destination exceeded 50%. In addition, it is estimated that a further \$1.8 billion of raw and value-added product was shipped to the mainland.

In 2011/2012, total exports from Tasmania were valued at \$3.196 billion. Agricultural products represented some 30% of that total – approximately \$1 billion. Almost 25% of total exports (\$502 million) were destined for ASEAN countries. Agricultural products valued at approximately \$121 million represented 25% of that total. ASEAN countries have become increasingly important destinations too, with overall exports increasing marginally over the past three years; and food exports alone increasing significantly from \$71 million to \$96 million over the period 2009/2010 through 2011/2012. Major products exported to ASEAN countries included dairy (\$42 million); seafood (\$32 million) and wood products (\$20 million estimated from private forestry sector). Key destinations included Japan (35%), China (21%), and Hong Kong (21%).

Farmers are also significant land managers in the state, with almost a third of Tasmania's land area of 68,300 sq. km committed to agriculture.

These figures clearly confirm the importance of the sector as an economic driver for the state's economy – and also demonstrate that agriculture is a more significant contributor to the Tasmanian economy than in any other state. With this in mind, it is clear that Tasmania needs to ensure that the agricultural base of the state remains competitive and profitable.

## **ABOUT THE TFGA**

The TFGA is the leading representative body for Tasmanian primary producers. TFGA members are responsible for generating approximately 80% of the value created by the Tasmanian agricultural sector.

Operationally, the TFGA is divided into separate councils that deal with each of the major commodity areas. As well, we have a number of standing committees that deal with cross-commodity issues such as climate change, biosecurity, forestry, water and weeds. This structure ensures that we are constantly in contact with farmers and other related service providers across the state. As a result, we are well aware of the outlook, expectations and practical needs of our industry.

With our purpose being to promote the sustainable development of Tasmanian primary industries, the TFGA is committed to ensuring that the agriculture sector in Tasmania is profitable and sustainable. We are also committed to promoting the vital contribution the agricultural sector makes to the environmental, social and economic fabric of the Tasmanian community.

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## COMMENT

The TFGA welcomes the opportunity to provide a submission to the Treasury's consultation paper on 'Improving commercial relationships in the food and grocery sector'.

The TFGA is anticipating that the purpose of the code, as set out in the exposure draft, is attainable. The purpose of this code is:

- a) to help to regulate standards of business conduct in the grocery supply chain and to build and sustain trust and cooperation throughout that chain; and
- b) to ensure transparency and certainty in commercial transactions in the grocery supply chain and to minimise disputes arising from a lack of certainty in respect of the commercial terms agreed between parties; and
- c) to provide an effective, fair and equitable dispute resolution process for raising and investigating complaints and resolving disputes arising between retailers and suppliers; and
- d) to promote and support good faith in commercial dealings between retailers and suppliers.

The Tasmanian vegetable industry is made up of fresh, packed and processed sectors. The fresh vegetable sector is growing and it is beginning to rival the size of the processed (frozen vegetable) industry in Tasmania. While across Australia most vegetable production is for the wholesale fresh market, in Tasmania approximately 56 per cent (2010) of vegetables grown are for processing.

There is no central wholesale market in Tasmania, which means producers predominately rely on supplying through an agent to market or directly to supermarkets.

### **Part A – What is the Policy Problem to be Solved?**

The TFGA agrees with the concerns in the consultation paper regarding the problems that the food and grocery sector is facing. Retailing in Australia is unique, with a higher concentration of market ownership in the sector than anywhere else. Two dominant companies control the majority of the retail space; and this degree of concentration has caused the conduct of the two main supermarkets to come in to question.

The impact of the duopoly of the two major supermarkets on the fresh produce supply chain is significant. The majority of growers provide their goods through an agent or merchant. While this Code doesn't seek to cover the market relationship between producers and wholesalers, it does make an important step in ensuring continued transparency throughout the supply chain.

There is a role for government intervention to address the concerns of the market to provide equalisation of market power wherever there is market failure.

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A good example is the Canadian Competition Commissioner, who can engage directly with a dominant party to develop voluntary agreements if the party's behaviour is lessening competition in the marketplace.

## **PART B – Grocery Code Requirement and Implementation**

The Code demonstrates who it will apply to and the scope of the relationships it will cover. The only clarification that is needed is under the definition of 'supplier':

*supplier means a person carrying on (or actively seeking to carry on) a business of supplying groceries to a retailer.*

The current wording doesn't take into account that there are three very different levels of suppliers:

1. Large suppliers, ie. Kelloggs
2. Smaller suppliers, ie. Harvest Moon
3. Producers

The TFGA agree with the introduction of the 'Grocery Supply Agreements' that specifies six fundamental matters.

The Code has the opportunity to improve the transparency and provide suppliers with a degree of protection from variations that aren't provided in their agreement. This should overcome the issue where the current agreements can lack transparency in contractual terms and this change also should ease the ability for retailers to vary the arrangements.

There are a number of issues that were highlighted in the consultation paper including self-promotion of home brand products, the risk of de-listing, the potential for additional payments required from suppliers and the ability for a retailer to reject goods at a supplier's cost.

While the Code has set out the requirements to regulate these issues, the risk that a retailer could still use undue force to allow for provisions in agreements that a supplier does not find favourable is possible. The TFGA would like to see the Code's initial implementation closely monitored to minimise the risk of retailers taking undue advantage of suppliers during the early agreement discussions.

The TFGA supports the inclusion of the duty of faith provision, as it should have the capacity to improve commercial relationships. To make sure this does occur, it would be prudent to ensure compliance from both parties from the beginning, so no party is seen to be at disadvantage.

### *Dispute resolution & enforcement*

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The thresholds outlined in the discussion paper for retailer obligations in mediation or arbitration are needed to ensure that code compliance managers, mediators or arbitrators are using their time to effectively deal with the complaints they receive.

The availability of the avenues of direct complaints to the retailer, mediation or arbitration and to the ACC should provide effective, fair and equitable processes. The system will only work if people bring forward their complaints.

The remedies for breaches of the Code, which is a breach of the *Competition and Consumer Act 2010* (CCA), are appropriate. While the remedies available are suitable for many breaches of the Code, allowing for pecuniary penalties to be issued should be included. Allowing pecuniary penalties to be enforced by a court, as opposed to just punitive penalties, would have a more influential effect on ensuring retailers adhere to the Code, the agreements and the duty of good faith.

### **PART C – What are the likely costs and benefits?**

The Food and Grocery Code has the potential to address some of the remaining supply chain interactions and redress the failings of other industry codes eg the Horticulture Code.

The Horticulture Code is a mandatory industry code prescribed under the *Competition and Consumer Act 2010*. Growers and traders trading in horticulture produce must comply with the Horticulture Code.

However, the Horticulture Code lacks sufficient transparency around contracts and the prices received for goods; and it has failed to deal effectively with disclosure about the method of sales engagement (ie whether a sales relationship is on a merchant or an agent basis). There are also many exemptions to this Code.

Importantly, it is obvious that there has been insufficient resourcing provided to the ACCC to police and enforce the Horticulture Code. This has contributed to the lack of successfully prosecuted outcomes. As a result, people are unwilling to bring complaints forward, as they fear that they may lose their contract or be ‘punished’ in some other way.

Based on experience across a range of voluntary codes, our clear preference would be for this to be a mandated code. It would be all too easy for companies the size of Woolworths and Coles to express lip service to a voluntary code whilst finding ever more creative ways to subvert its intent. Of course, mandatory codes only work when properly resourced, so there would also need to be sufficient commitment from government to provide the required funding and mandate.

However, we recognise this is a potentially costly process and one which will no doubt be vigorously opposed by the wider food and grocery industry.

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On that basis, we would be prepared to support the introduction of the proposed Food and Grocery Code as a voluntary opt-in model whereby once a retailer opts-in, the code will have the same effect as a mandatory code.

This would address concerns about over-regulation of retailers and also minimise costs of both regulation and enforcement.

Having said that, we would wish to see trigger points for review of the Code to ensure that it is appropriately structured and meeting its desired outcomes. At the time of scheduled review or tripping a trigger review, consideration can be given as to whether the Code is delivering clear results that address market failures.

If not, then the government has an opportunity to revise the code and, if appropriate, prescribe it as mandatory.