



PP 363

FINAL REPORT

**FROM THE PADDOCK TO THE
PLATE—A FAIR RETURN FOR
PRODUCERS**

97TH REPORT

OF THE

ECONOMIC AND FINANCE

COMMITTEE

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1 ESTABLISHMENT OF THE COMMITTEE

1.1 Membership

The Economic and Finance Committee ('the Committee') is established under section 4 of the *Parliamentary Committees Act 1991* (SA). Section 5 states that the membership of the Committee is to comprise seven Members of the House of Assembly. A Minister of the Crown is ineligible for appointment to the Committee.

Members of the Committee are appointed under section 20 of the *Parliamentary Committees Act 1991* (SA), and cease to be members pursuant to section 21 of this same Act.

The seventh Economic and Finance Committee was appointed by the House of Assembly on 6 May 2014, following the State Election, held on 20 March 2014. The following Members were appointed to this seventh Committee: Mr Lee Odenwalder MP; the Hon Paul Caica MP; the Hon Iain Evans MP; Mr Martin Hamilton-Smith MP; Ms Katrine Hildyard MP; Mr Chris Picton MP and Mr David Pisoni MP.

- On 15 May 2014 Mr Lee Odenwalder MP was nominated as the Presiding Member.
- On 27 May 2014 Mr Martin Hamilton-Smith MP resigned from the Committee.
- On 17 June 2014 Mr Dan van Holst Pellekaan MP was appointed to the Committee.
- On 30 October 2014 the Hon Iain Evans MP resigned from the Committee and Parliament.
- On 30 October 2014 Mr David Speirs MP was appointed to the Committee.
- On 10 February 2015 Ms Katrine Hildyard MP resigned from the Committee.
- On 10 February 2015 the Hon Jennifer Rankine MP was appointed to the Committee.
- On 27 January 2016 Mr Chris Picton MP resigned from the Committee.
- On 5 February 2016 Mr Dan van Holst Pellekaan MP resigned from the Committee.
- On 9 February 2016 Mr David Pisoni MP resigned from the Committee.
- On 9 February 2016 the Hon Tony Piccolo MP was appointed to the Committee.
- On 9 February 2016 Mr Vincent Tarzia MP was appointed to the Committee.
- On 9 February 2016 Mr Stephan Knoll MP was appointed to the Committee.
- On 29 March 2017 Mr David Speirs MP resigned from the Committee.

- On 29 March 2017 Mr Sam Duluk MP was appointed to the Committee.

1.1.1 Current membership and staff of the Committee

The following Members currently comprise the Economic and Finance Committee:

- Mr Lee Odenwalder MP (Presiding Member);
- The Hon Paul Caica MP;
- The Hon Jennifer Rankine MP;
- The Hon Tony Piccolo MP;
- Mr Stephan Knoll MP;
- Mr Sam Duluk MP; and
- Mr Vincent Tarzia MP.

Executive Officer to the Committee:

Mrs Lisa Baxter

Research Officer to the Committee:

Ms Peta Spyrou

1.2 Functions

The functions of the Economic and Finance Committee are set out in section 6 of the *Parliamentary Committees Act 1991* (SA). These functions are:

- (a) *to inquire into, consider and report on such of the following matters as are referred to it under this Act:*
 - (i) *any matter concerned with finance or economic development;*
 - (ii) *any matter concerned with the structure, organisation and efficiency of any area of public sector operations or the way in which efficiency and service delivery might be enhanced in any area of public sector operations;*
 - (iii) *any matter concerned with the functions or operations of a particular public officer or a particular State instrumentality or publicly funded body (other than a statutory authority) or whether a particular public office or a particular State instrumentality (other than a statutory authority) should*

continue to exist or whether changes should be made to improve efficiency and effectiveness in the area;

(iv) any matter concerned with regulation of business or other economic or financial activity or whether such regulation should be retained or modified in any area;

(b) to perform such functions as are imposed on the Committee under this or any other Act or by resolution of both Houses.

1.3 References

Pursuant to section 16(1) of the *Parliamentary Committees Act 1991* (SA), any matter that is relevant to the functions of the Committee may be referred to the Committee—

- (a) by resolution of the House of Assembly;
- (b) by the Governor, by notice published in the Gazette;
- (c) of the Committee's own motion.

This section is in addition to, and does not derogate from, the provisions of any other Act under which a matter may be referred to the Committee.

1.4 Ministerial Responses

Pursuant to section 19 of the *Parliamentary Committees Act 1991* (SA), if a report contains recommendations, the Minister with responsibility in the area concerned is required to respond within four months and include in the response statements as to—

- which (if any) recommendations of the Committee will be carried out and the manner in which they will be carried out; and
- which (if any) recommendations will not be carried out and the reasons for not carrying them out.

The Minister must cause a copy of the response to a Committee's report to be laid before the Committee's appointing House within six sitting days after it is made.

2 PRESIDING MEMBER'S INTRODUCTION

In November 2016, the Economic and Finance Committee ('the Committee') resolved to inquire into Issues Faced by South Australian Primary Producers ('the Inquiry'),¹ to investigate whether South Australia's primary producers were supplying competitively to retailers. Accordingly, the aim of this Inquiry was to inquire, consider and report on the economic development of local primary producers who produce, process and manufacture in the State's agriculture, horticulture and viticulture sectors. These sectors are integral to South Australia's development because, as noted by the Department of Primary Industries and Regions SA, South Australia's agriculture, food, wine and forestry industries account for the State's largest exports, generating 21 billion dollars annually. This is consequently an important inquiry because primary industries are a key component to our State's economic, social and financial development.

Given our State's reliance on primary industries and the vital role local primary producers play for the South Australian economy plus the broad scope of the Inquiry, the Committee employed a unique two-limbed investigation process for this Inquiry. This unique approach examined the current issues affecting the State's primary producers by giving affected and interested parties the opportunity to steer the Committee towards specific areas of interest.

The Committee, in stage one, asked parties to provide details about matters and issues the Committee should inquire, consider and report on in relation to the South Australian supply chains of primary producers. These submissions were initially required by **Friday 3 February 2017** but the Committee resolved to extend this deadline to **Friday 24 March 2017**. The Committee concluded this initial stage with the publication of its report: Issues Paper—Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply ('the Issues Paper').² This Issues Paper summarised the areas of concern and key issues faced by primary producers, as outlined by interested stakeholders. Moreover, this Issues Paper contained further specifics about:

¹ See chapter 4 for a copy of the Inquiry's initial Terms of Reference. See further chapter 5 for the Inquiry's final Terms of Reference for this Inquiry.

² To access this report please visit: Parliament of South Australia, *Economic and Finance Committee*, Parliament of South Australia <<http://www.parliament.sa.gov.au/EFC>>.

- The Inquiry and its importance;
- Background information on relevant issues affecting primary industries; and
- Recent developments made to support primary producers, as well as the affect these developments may have on our primary producing stakeholders.

As part of this initial phase, the Committee received 13 written submissions from interested parties which are publicly available on the Committee's website. These interested parties included the State's Small Business Commissioner, the Australian Competition and Consumer Commission, industry groups, a research institute and individuals.

In light of the outlined views in the submissions, the Committee tailored phase two to address directly the issues and concerns of stakeholders about the current structure and operation of our State's agriculture, horticulture and viticulture supply chains. These areas of concern led the Committee to focus on and investigate five key issues.

First, the imbalance of power that exists between local primary producers and retailers in supply chains. This involved an investigation of the occurrence and effect of unfair contractual dealings, as well as an analysis of how primary producers can have a better negotiating position through initiatives such as co-operatives and mutuals.

Secondly, the Committee considered the barriers preventing producers from entering larger supply chains. This required an analysis of how producers may meet the expectations of larger retailers, including in the areas of availability, quality and pricing requirements. In doing so, the Committee considered how produce markets and farmers' markets can assist primary producers in growing their enterprises. On this point, the Committee noted that the whole community benefits when consumers purchase local produce. Therefore, the Inquiry also focused on whether these benefits are communicated effectively to the public.

The third key issue pertaining to this Inquiry included an examination of the cost obstacles associated with the applicable supply chains. In considering this issue, the Committee explored whether there should be minimum prices imposed for certain produce.

Through phase one, the Committee recognised encouraging developments and current investigations aimed at giving a fairer go to producers at a federal level, and therefore, the fourth issue that the Committee examined in this Inquiry was a comparison of the *Horticulture Code of Conduct* and the *Grocery Code of Conduct* to determine whether South Australian primary producers were afforded adequate protections. The Committee specifically focused on

the potential shortcomings of these federal codes of conduct to determine whether action is required at a state level.

Lastly, the Committee inquired into whether the Essential Services Commission of SA had conducted a review of the grain supply chain.

The investigation of these issues in the second phase of the Inquiry involved the Committee receiving three additional submissions; one of these submissions remains confidential as per the author's request and pursuant to the Committee's consent. However, all other written submissions are publicly available on the Committee's website. In addition to these submissions, the Committee received oral evidence from 36 interested parties across seven public hearings, one of which was held at the Barossa Valley Council Chambers in Nuriootpa. Moreover, during this second phase, representatives from the Committee attended two conferences pertinent to this Inquiry. The first was the 2017 Farming Together National Forum held on 6 June 2017 at the Adelaide Convention Centre. The second conference was the Supermarket Power Symposium organised by the University of Melbourne's Law School and hosted by the State Library of Victoria on 27 October 2017.

Farming Together is a two-year pilot initiative funded by the Federal Government 'to provide farmers with knowledge, skills and materials on collaborative ideas, co-operative structures and collective strategies.'³ As part of this year's National Forum, the program launched its online Co-op Builder. This is a tool that helps farmers prepare the requisite documentation required for registration of a co-operative under Australian law.⁴

The Supermarket Power Symposium comprised three panel discussions which brought together a range of experts and stakeholders to consider the developments and opinions about the role and impact that the major supermarkets have on the Nation's grocery sector, economy and society.⁵ Of particular relevance was the interview played from Ms Christine Tacon, the Groceries Code Adjudicator in the United Kingdom. Although our federal *Food and Grocery*

³ Farm Co-operatives and Collaboration Pilot Program, *About the Program: The Facts* (2017) Farm Co-operatives and Collaboration Pilot Program <<https://agworks.com.au/about-the-program/the-facts/>>.

⁴ Ibid.

⁵ The University of Melbourne, Melbourne Law School, *Supermarket Power in Australia: Looking Back and Ahead Public Symposium*, (2017) The University of Melbourne, Melbourne Law School <http://law.unimelb.edu.au/_data/assets/pdf_file/0011/2399294/final-19735-MLS-Revised-SP-Program-3.pdf>.

Code of Conduct was modelled on the UK equivalent, Ms Tacon's interview explained that the two codes differed with regard to their 'enforcement architecture'. Whereas Australia's code focuses on dispute resolution, the Groceries Code Adjudicator employs a pragmatic approach to ensure compliance with the code. Therefore, Ms Tacon acts as an ombudsman, working collaboratively with retailers, compliance managers and the media to prevent breaches from arising. The Groceries Code Adjudicator also seeks to empower suppliers to bring issues to her but only investigates complaints after providing an opportunity for the retailer to remedy the issue or breach. The Committee acknowledges that it was suggested at this Symposium that next year's review into Australia's *Food and Grocery Code of Conduct* could examine whether the addition of UK's enforcement model could improve our code.

This Inquiry and its unique two-limbed approach afforded a valuable opportunity for stakeholders to highlight their issues and concerns about the current structure and operation of our State's agricultural, horticultural and viticultural supply chains. It, therefore, facilitated an important dialogue amongst interested stakeholders, aggrieved parties and the Committee.

On behalf of the Committee, I express my appreciation to those interested parties who provided submissions and/or oral evidence. I particularly thank those stakeholders who travelled considerable distances to appear before the Committee.

A handwritten signature in blue ink, appearing to read 'Lee Odenwalder', written in a cursive style.

Mr Lee Odenwalder MP

Presiding Member

Economic and Finance Committee

28 November 2017

3 RECOMMENDATIONS

Recommendation 1

(Page 33)

The Committee recommends that Primary Industries and Regions SA assist the Small Business Commissioner in promoting and advertising the services and functions offered by the Commissioner directly to the State's small primary producers including farmers. The Committee further recommends that this be achieved through the establishment of formal relationships with South Australia's Agriculture Bureaus.

Recommendation 2

(Page 34)

The Committee recommends that the functions of the Small Business Commissioner be expanded, with appropriate additional funding, to include an Advice Unit, which would allow primary producers to lodge offers of agreement with the Unit on a confidential basis and to obtain advice on whether the terms of the agreement are fair.

Recommendation 3

(Pages 55, 71 and 97)

The Committee recommends amending the 'Starting a Business' section of the sa.gov.au website to include relevant information on the benefits of forming co-operatives, including the benefits they have in increasing the market power of producers. In addition, the Committee recommends that the website should include information about how co-operatives can help producers operate in larger supply chains.

Recommendation 4

(Pages 55, 71 and 98)

The Committee recommends that the relevant South Australian Government Departments conduct an audit of the relevant legislative instruments and grant programs available to primary producers to determine whether co-operatives are considered equal candidates in the application process. The Committee recommends that any barriers to co-operatives in the grants application process be removed.

Recommendation 5

(Page 68)

The Committee recommends that Primary Industries and Regions SA and the Minister for Agriculture, Food and Fisheries consider making more frequent funding grants at smaller values available to primary producers.

Recommendation 6**(Page 68)**

The Committee recommends that Primary Industries and Regions SA and associated agencies establish formal partnerships with the State's Agriculture Bureaus and relevant Commonwealth Departments, agencies and programs to better facilitate the sharing of information with regard to relevant grant programs and resources available to primary producers. This includes the Commonwealth supported Farming Together project.

Recommendation 7**(Page 83)**

The Committee recommends that Primary Industries and Regions SA expand their current working relationships with bodies such as Food SA to collaborate with Brand SA in assisting with the promotion of campaigns such as 'I Choose SA'.

Recommendation 8**(Page 87)**

Given that planning restrictions are preventing some primary producers from engaging in value adding activities, the Committee recommends that the Minister for Planning undertake an immediate review of the relevant planning and development laws, regulations and policies that act as a barrier to the growth of artisan food and wine businesses in key tourism and primary production regions, with a view of encouraging investment in such business, in the same way changes have nurtured the small bar industry in the CBD. In conducting this review, the Committee recommends that the Minister also consult with council representatives in relevant areas, as well as with stakeholders from the Barossa Collaboration Project.

Recommendation 9**(Page 119)**

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.

Recommendation 10**(Page 119)**

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 the inclusion of civil penalty provisions for contravention of the Code's provisions.

Recommendation 11**(Page 120)**

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 *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013* (SA) within the Small Business Commissioner's current jurisdiction, to fill the gap caused by the inconsistencies between the *Horticulture Code of Conduct* and the *Grocery Code of Conduct*.

Recommendation 12**(Page 138)**

In light of the evidence the Committee received from Grain Producers SA, the Committee recommends that the Minister for Transport and Infrastructure investigate the insufficient supply of 20-foot containers in the State's grain industry.

Recommendation 13**(Page 138)**

In the Treasurer's consideration of the ESCOSA's Inquiry into the South Australian Bulk Grain Export Supply Chain Costs, the Committee strongly recommends that he consider the evidence received by this Committee during this Inquiry in relation to the current issues that face primary producers in the State's grain industry.

4 INITIAL TERMS OF REFERENCE

On 16 November 2016, the Committee resolved to inquire into and report on options for enhancing and supporting South Australian primary producers in competitively supplying to retailers, to ensure future local processing and manufacturing in the horticultural, viticultural and agricultural sectors.

The Committee sought submissions, in the first instance, from interested parties to further articulate those issues pertinent to specific industries by **Friday 3 February 2017**.

Upon receipt of the initial submissions, the Committee published the Issues Paper, which provided the specific Terms of Reference for the Inquiry in light of issues currently faced in relation to primary supply chains operating in South Australia (see **chapter 5** of this report for a summary of the Issues Paper).

5 SUMMARY OF ISSUES PAPER AND THE INQUIRY'S FINAL TERMS OF REFERENCE

The initial 13 submissions received during phase one of the Inquiry revealed many relevant issues impacting upon primary producers, however, they also indicated considerable developments and investigations at the federal level aimed at addressing some of the concerned areas. For example, the review of the *Horticulture Code of Conduct* which led to a new *Horticulture Code of Conduct* coming into effect as from 1 April 2017. As such, the Committee took this opportunity to ensure that South Australians are protected adequately through these changes. In light of this, the Committee focused primarily on issues that were not otherwise under significant development or investigation. The specific issues that the Committee focused on across South Australia's agriculture, horticulture, viticulture and associated sectors as described in the Issues Paper are as follows:

5.1 The occurrence and effect of unfair contractual dealings to address the inequitable bargaining power that exists between local primary producers and retailers in their respective supply chains.

- 5.1.1 *In investigating this issue, the Committee proposes to examine the occurrence and effect of one-sided, lock-in and exclusive contracts that exists between local producers and retailers.*
- 5.1.2 *The Committee is also committed to exploring how to increase the negotiating power of local producers. Themes to be explored include an investigation of the role of co-operatives and mutuals, and an 'examin[ation] [about] whether there are any legislative or regulatory barriers to the formation of co-operatives as viable businesses in South Australia and what can be done to address these systemic barriers'.⁶*

⁶ Business Council of Co-operatives and Mutuals, Submission No 7(a) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 1.

5.2 The barriers preventing producers from entering larger supply chains with a specific focus on how producers can better meet the availability, quality and pricing requirements of larger suppliers, including the impact and importance of centralised markets in this process.

- 5.2.1 *To investigate these issues, the Committee proposes to consider how local primary producers can be supported in commercialising their produce, including how producers can capitalise on the benefits of 'local' branding and how their entrepreneurial skills could be improved.*
- 5.2.2 *Addressing these problems may also require an investigation about the advantages of consumers purchasing local produce and how these benefits have been or could be communicated to consumers. This examination could require an analysis of the impact of programs and campaigns such as 'I Choose SA' and 'Pick a Local, Pick SA'.*
- 5.2.3 *This investigation may also entail an analysis of how discount supermarket chains, such as Aldi, are affecting the traditional supermarket duopoly in Australia and the impact this has on South Australian primary producers.*

5.3 How producers' production costs could be reduced or passed along the supply chain.

- 5.3.1 *To investigate this issue, the Committee proposes to seek ways in which the transparency of the supply chains of local primary producers can be increased in order to better measure the disadvantage of the State's primary producers.*
- 5.3.2 *In addition, the Committee may also need to consider whether there should be a minimum price imposed for produce including wine grapes.*
- 5.3.3 *Moreover, the Committee proposes to consider how retailers can better share their returns with producers and how risks may be distributed along the supply chain.*

5.4 A review of the recent changes to the federal codes of conduct to ensure the adequate protection of South Australian producers.

5.4.1 *The Committee proposes to address the concern of the State’s Small Business Commissioner that the ‘Federal Government has not adopted the recommendation to regulate transactions between growers and retailers where the retailer is not a signatory to the Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015 [(Cth)]’.*⁷

5.4.2 *Furthermore, the Committee proposes to inquire into whether the scope of the Horticulture Code of Conduct should be increased to cater to the ‘volume of transactions [that] remain outside the Code’,⁸ including whether ‘major supermarket chains ... [should be] covered by the [Code]’.*⁹

5.5 An update in relation to whether the Essential Services Commission of SA has conducted a review of the entire grain supply chain.

⁷ Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017, 3.

⁸ Horticulture Coalition of South Australia, Submission No 13 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 17 March 2017.

⁹ Ibid.

6 INQUIRY OVERVIEW

6.1 Introduction

This chapter of the report provides additional information about the Inquiry and its purpose.

6.2 Scope of Inquiry

The Inquiry incorporated the examination of South Australia's agricultural, horticultural, viticultural and associated processing sectors ('the relevant sectors'). The Inquiry had a particular focus on the existing organisational and market structures within these relevant sectors.

6.3 Defining the Relevant Sectors

There is unfortunately no universally accepted definition differentiating the Inquiry's relevant sectors. However, the term '**agriculture**' has been defined in Australia as '[t]he use or cultivation of land for any purpose of husbandry or horticulture, including the raising of livestock and the growing of crops.'¹⁰ In addition, plants grown in pots may also legally fall within this definition of agriculture.¹¹ Evidently, the term '**horticulture**' relates to a specific branch of agriculture, with the Horticulture Code of Conduct defining '**horticultural produce**' as 'unprocessed fruit, vegetables (including mushrooms and other edible fungi), nuts, herbs and other edible plants.'¹² Horticulture produce does not include nursery products.¹³ '**Viticulture**' is a sub-category of horticulture which specifically relates to the cultivation of grapes.¹⁴

¹⁰ LexisNexis, *Encyclopaedic Australian Legal Dictionary* (at 08 February 2017) Agriculture Environment.

¹¹ Ibid citing *Wym Pty Ltd v Sutherland Shire Council* (1990) 69 LGRA 322.

¹² See *Trade Practices (Horticulture Code of Conduct) Regulations 2006* (Cth) reg 3.

¹³ Australian Competition & Consumer Commission, *An Overview of the Horticulture Code* (31 August 2011) Publications <<https://www.accc.gov.au/publications/an-overview-of-the-horticulture-code>>. Further, this website indicated that '[t]he meaning of unprocessed will be determined by the circumstances of each case. The ordinary meaning of unprocessed is produce that has not been converted, altered or modified in some way for the purpose of making it into a new form.'

¹⁴ Oxford Dictionary, *Viticulture* (2017) English Oxford Living Dictionaries <<https://en.oxforddictionaries.com/definition/viticulture>>.

6.4 Aim of Inquiry

This Inquiry aimed to support the relevant sectors and their associated primary producers by highlighting issues within the relevant supply chains, including:

- The long term financial sustainability of producers to obtain a fairer deal for primary producers generally;
- Fair prices for consumers;
- Maximised employment opportunities in manufacturing;
- Supporting a competitive retail market; and
- Addressing/examining other issue(s) raised by stakeholders.

In light of the above objectives, this Inquiry ultimately intended to address the imbalance of power that exists between big retailers and primary producers. To achieve this, the Committee formulated a two-limbed approach. First, the Committee called for submissions from various stakeholders. The issues explained in all received submissions were consequently summarised in the Issues Paper. A copy of this initial report can be access via the Committee's website.¹⁵ The second stage of the Inquiry afforded stakeholders the opportunity to respond directly to the Issues Paper through the provision of further comments and the opportunity to give oral evidence before the Committee.

6.5 Background Issues

There are various issues pertaining to the supply chains of the relevant sectors, impacting primary producers, manufacturers, retailers and consumers alike. Sarah Keith highlighted the view that some of the problems include:¹⁶

- The impact big supermarkets have on regional and small-scaled supermarkets—for example the privatisation of food labels (i.e. home-brands);
- Supplying fresh produce from a 'demand-oriented' rather than a 'produce-oriented' position (i.e. stocking produce year-round instead of while in season); and
- The selling power, buying power and retail competition of big supermarkets.

¹⁵ See Parliament of South Australia, *Economic and Finance Committee*, Parliament of South Australia <<http://www.parliament.sa.gov.au/EFC>>.

¹⁶ Sarah Keith, 'Coles, Woolworths, and the Local' (2012) 2 *Locale: The Australasian-Pacific Journal of Regional Food Studies* 47, 47-70.

7 REPORT SUMMARY

The evidence received throughout this Inquiry indicates that some South Australian primary producers across the relevant sectors, face issues that affect their ability to supply competitively in their respective supply chains. For the purposes of this report and in light of the summary of the issues in the Issues Paper, these problems and concerns have been grouped broadly into the following categories:

- Inequitable commercial power;
- Barriers to larger supply chains;
- Cost obstacles within supply chains;
- Inequitable application and operation of the *Horticulture Code of Conduct* and the *Grocery Code of Conduct*; and
- Particular issues within the grain supply chain.

Despite receiving submissions and evidence from various stakeholders who represent different parties along the supply chains of the relevant sectors, the areas of concern have been analysed and framed in a manner relating directly to the impact on primary producers. The remainder of this report considers each of these above-mentioned categories on a chapter-by-chapter basis, offering recommendations to the problems that fall within the Inquiry's Terms of Reference throughout.

8 INEQUITABLE COMMERCIAL POWER

8.1 Introduction

The Committee heard and received evidence which suggested that some primary producers have little to no bargaining power with regard to their commercial dealings with retailers. In addition, the Committee heard that some large retailers are taking advantage of smaller producers through unfair contractual practices.¹⁷ Moreover, stakeholders informed the Committee that this contractual disadvantage may result for many reasons, including the fact that:

- Some producers lack the requisite level of understanding or preparedness with regard to the legal effect of their supply contracts;¹⁸
- Producers experience late or non-payment for their goods;¹⁹ and
- Producers are ‘price takers’, meaning that there is a general willingness on a producer’s behalf to take whatever contractual agreement the producer can get. Accordingly, some small to medium-sized producers are unable to negotiate favourable terms with suppliers.²⁰

The above issues indicate that from ‘an economic development perspective or economic development sense, there’s always a tension between the large players and the small players’.²¹

¹⁷ See, eg, Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 3. See also Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 37 (Anne Moroney, Chief Executive Officer, Regional Development Australia—Barossa).

¹⁸ Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 3.

¹⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 118 (Amy Williams, Executive Officer, Horticulture Coalition of South Australia).

²⁰ See, eg, Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90 (Associate Professor Svetlana, Ehrenberg-Bass Institute for Marketing Science at the University of South Australia). See also *ibid* 117.

²¹ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 37 (Anne Moroney, Chief Executive Officer, Regional Development Australia—Barossa).

Nonetheless, the Committee also heard positive stories from producers who have had optimistic commercial relations with a larger retailer.²²

This chapter first outlines the views of stakeholders about the inequitable bargaining power of some primary producers within the State in **part 8.2**. This section includes an examination of how the supermarket industry in Australia can impact upon a producer's bargaining power. As a result, this chapter at **part 8.2.1.1** provides evidence of producer's negative dealings with larger retailers, while **part 8.2.1.2** provides evidence of producer's positive dealings with larger retailers. This section is concluded by the Committee making two recommendations which are aimed at helping some primary producers understand the legal effect of their supply agreements. The chapter then goes on to examine the issue of unfair commercial dealings at **part 8.3**. This also involves an explanation about the recent federal initiatives that aim to address this issue. **Part 8.4** considers potential solutions that could strengthen the bargaining power of primary producers, which in turn, could minimise the occurrence of unfair commercial dealings.

8.2 Inequitable Bargaining Power

In its initial submission to the Committee, the Ehrenberg-Bass Institute for Marketing Science at the University of South Australia ('the Institute'), stated that it has gathered 'considerable anecdotal evidence' indicating smaller producers are taken advantage of contractually at the hands of larger retailers.²³ On this point, representatives from the Institute reiterated that some producers lack the requisite level of understanding or preparedness about the existence and effect of lock-in and exclusive contract terms. Put another way, it was argued by the Institute's Associate Professor Bogomolova, that some primary producers fail to understand the legal consequences of their contractual arrangements. Associate Professor Bogomolova noted that her research showed that,

²² This larger retail in both 'good news stories' was Woolworths. See Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 64 (Adrian Hoffmann, Director, Dimchurch Vineyards); Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 67–8 (Jamie Nietschke, Manager, Nietschke Moppa Estate).

²³ Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 3.

[some primary producers] [do] not understand the legal consequences, they [do] not understand contractual agreements. They [are] just ... happy to sign anything that [is] provided [by a big national distributor] ... without actually understanding it. [Producers do not] seek legal advice. As a result, ... people [get] into trouble.²⁴

In informing the Committee about a particular case where a South Australian primary producer was impacted adversely due to the producer's inequitable bargaining power, Associate Professor Bogomolova explained that this primary producer agreed to a lock-in, exclusive contract with a retailer. The producer agreed to this supply contract without understanding the legal ramifications. The outcome of this exclusivity term in the contract meant that,

even if it [was] a good year and the producer actually grew a lot more than what they contracted to this big retailer ... [the producer] had to destroy their own harvest because they were not able to sell it to anyone else (due to the contract with that large retailer). That was quite heartbreaking for [the producer], not to mention [the fact] that they were potentially robbed of the opportunity to earn more money.²⁵

Regional Development Australia—Barossa echoed similar concerns in its initial submission to the Committee, when it noted that the bargaining position between farmers and retailers is 'uneven and at times non-existent'.²⁶ Another issue pertaining to this inequitable market power is that small businesses are traditionally unable to extend produce on credit and find 'it difficult to negotiate favourable contract conditions'.²⁷ South Australia's Small Business Commissioner, Mr John Chapman, made a similar point in his initial submission to the Committee, when he stated that '[o]utdated payments [sic] systems often mean growers are

²⁴ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

²⁵ Ibid 90–1.

²⁶ Regional Development Australia—Barossa, Submission No 9 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 24 February 2017, 2.

²⁷ Ibid 3.

paid late and well after delivery of their produce.²⁸ In addition, the Small Business Commissioner is of the opinion that primary producers, despite being at the start of the food supply chains, are ‘at the mercy of the practices of large retailers and manufacturers who exercise an attitude of “take it or leave it”.’²⁹ With specific reference to South Australia’s wine industry, Regional Development Australia—Barossa noted that ‘[u]nless [the business] ha[s] a category leader [the] negotiating position is poor’.³⁰

Although the above concerns suggest that some smaller producers are generally vulnerable given their inequitable bargaining position, and can be subjected to ‘significant commercial malpractice’, the Committee received repeated evidence, in both written submissions and through oral evidence, suggesting that aggrieved stakeholders prefer not to report such misconduct for fear of retribution.³¹ This was a point echoed by the Horticulture Coalition of South Australia in its submission, when it stated that the Australian Competition and Consumer Commission (‘ACCC’) is aware of the ‘fear of raising complaints’ across the viticulture and horticulture sectors and the ‘[u]ncertainty in contracting practices’ is also of significance to these industries.³² In relation to this issue, the Horticulture Coalition of South Australia stipulated that ‘AUSVEG has been seeking meaningful whistle-blower protections for anyone looking to ... speak out against mistreatment’ and there is a need for stakeholders to be ‘protected from business reprisals’.³³ Ms Amy Williams, Executive Officer of the Horticulture Coalition of South Australia, further reiterated this issue when she appeared before the Committee. Ms Williams stated clearly that producers are ‘reluctan[t] to make complaints due

²⁸ Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017, 2.

²⁹ Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017, 1.

³⁰ Regional Development Australia—Barossa, Submission No 9 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 24 February 2017.

³¹ Including by being discriminated against through ‘future contracts and/or sales’. Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017, 3.

³² Horticulture Coalition of South Australia, Submission No 13 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 17 March 2017, 1.

³³ *Ibid* 2.

to fears of retribution'.³⁴ Moreover, the Small Business Commissioner stated that 'small business is very fearful of raising issues, particularly in terms of payment, because they are fearful that they will lose the contract.'³⁵

The oral evidence received throughout the Inquiry impliedly substantiates these retribution concerns given that the Committee heard from a few aggrieved primary producers, and one witness requested their evidence to be given 'in camera'. With that said, the Committee did hear from Ms Lisa Werner, General Manager of Jersey Fresh Milk, who substantiated that Jersey Fresh Milk was recently exposed to questionable commercial behaviours. In informing the Committee about this issue, Ms Werner stated that a family-owned supermarket chain, forced upon Jersey Fresh Milk 'an extension of trading terms and also a rise in the discount that [the supermarket took] upon payment'.³⁶ Ms Werner, therefore, highlighted the view that even smaller, family owned retailers are starting to replicate the hard-line negotiating tactics of bigger retailers. In doing so, the witness stated that as a supplier of fresh-food, Jersey Fresh Milk are legally entitled to seek seven-day trading terms, and although its local suppliers can manage this, larger metropolitan retailers 'laugh at [them] when [they] say "seven days"' trading terms.³⁷ On this point, Ms Werner informed the Committee that:

The pattern that we are seeing from some of those chain family-owned supermarkets is that they are trying to be more like Coles and Woolworths, and they are trying to tighten those screws on us ... For [the family-owned] supermarket to pay 14 days end of month, [Jersey Fresh Milk] need[s] to offer them a 4 per cent discount. It's not really offered; it's just what they take. The terms enforced on us by another big chain supermarket that we deal with are 30 days end of month and a 7 per cent discount, and part of that 7 per cent discount, they are

³⁴ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 118 (Amy Williams, Executive Officer, Horticulture Coalition of South Australia).

³⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 15 (John Chapman, Small Business Commissioner).

³⁶ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 49 (Lisa Werner, General Manager, Jersey Fresh Milk).

³⁷ Ibid.

*saying, is a rebate for doing instore demonstrations. [However Jersey Fresh Milk] don't do any instore demonstrations.*³⁸

Ms Werner also informed the Committee that Jersey Fresh Milk have been unable to fight this behaviour and have instead decided not to expand their products into more than the current three stores that are within that independent chain. The witness explained the rationale behind this in the following terms:

To get into more stores within that chain, [Jersey Fresh Milk] have to pay for shelf space. [Jersey Fresh Milk] have 12 weeks to prove that [their] product is viable; otherwise, [the supermarket] will pull it off the shelf, and [they] don't get that money back for shelf space ... [A]s we have just seen in the dairy industry, with everything that happened with the Murray Goulburn farmgate price crash, we are lost. We are very small players. We are possibly one of the smallest what you would call commercial dairy farms in Australia. Ninety cows is nothing. Jersey Fresh is the smallest factory in Australia. Our whole factory is in a 20-foot shipping container. So to our mind, our bargaining power is really small, and anytime we try to arc up and try to fight these trading terms, we're basically getting told, 'No, this is what we do. We're not changing our terms for you'.³⁹

8.2.1 The supermarket industry and the impact on bargaining power

8.2.1.1 Evidence of negative dealings within the supermarket industry

The Committee also received evidence to support the fact that large retailers have a significant market dominance which effects the bargaining power of some smaller producers. On this point, Metcash Ltd noted in its initial submission to the Committee that the ACCC had acknowledged that the major supermarket chains 'have a combined market share of 70% in Australia', and 'this high level of dominance in the grocery sector is a major constraint on the

³⁸ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 49–50 (Lisa Werner, General Manager, Jersey Fresh Milk).

³⁹ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 50 (Lisa Werner, General Manager, Jersey Fresh Milk).

pathways to market for SA producers.⁴⁰ Furthermore, Metcash Ltd was critical of contractual arrangements favouring large supermarkets through allowing the ‘expan[sion] [of large chains] into existing SA markets, often at the expense of independent retailers with SA Government assistance.’⁴¹ In support of this claim, Metcash Ltd provided two examples in which the State government sold land to Wesfarmers, which, because of land rezoning reforms, eventuated in the approval of ‘a shopping centre with a Coles supermarket’ being built in Victor Harbor,⁴² and the rumoured building of another Coles supermarket in the future at a large site in Panorama.⁴³ Moreover, it has been argued that ‘local economies suffer when big players dominate a national supply chain.’⁴⁴ With that said, South Australia’s supermarket industry is somewhat of an anomaly in that it has a strong independent supermarket presence. However, as indicated above through the extracts of Ms Warner’s evidence, the commercial practices of some independent retailers are starting to replicate the practices of larger retailers. This is of great concern to the Committee.

The inquiry process also found that the entry of discount supermarket, Aldi, into Australia’s retail sector has affected Australia’s traditional supermarket duopoly because Aldi has ‘pour[ed] \$700m into rolling out at least 120 stores in SA and WA’.⁴⁵ Throughout the Inquiry, the Committee examined the views of stakeholders with regard to the effect that new entrants have had on Australia’s supermarket duopoly. Mr Jordan Brooke-Barnett, State Manager of AUSVEG SA and Member of the Horticulture Coalition of South Australia, explained that he has heard mixed reports about the introduction of Aldi, Costco and other competitors, and their impact upon the supermarket duopoly. On this point Mr Brooke-Barnett stated:

⁴⁰ Metcash Trading Limited, Submission No 11 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017, 1.

⁴¹ Metcash Trading Limited, Submission No 11 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017, 1.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Business Council of Co-operatives and Mutuals, Submission No 7(a) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 1.

⁴⁵ Eli Greenblat, ‘Aldi Set to Take Bigger Bite of Grocery Market’, *The Australian* (Australia), Tuesday 28 March 2017, 21.

There are concerns in South Australia because we have such a strong independent sector. I would have to get the exact figure, but I think about 40 per cent is Foodlands and small, family, independent grocers. So, there is a concern in South Australia that [new entrants] might run some of those people out of the market. Aldi, certainly, have been very, very aggressive with their pricing.

But long-term, structurally, having another major player challenging Coles and Woolworths is, I feel, potentially a good thing. It's yet to be seen, but I have heard some growers say that they think it's going to be a good thing, moving forward ... So, it is yet to be determined, but I think having a large-scale competitor to Coles and Woolworths will hopefully be a good thing for Australia as a whole.⁴⁶

Moreover, Mr Angelo Demasi, Chief Executive Officer of South Australian Produce Markets Ltd, stated that:

One of the key areas that I encourage both sides of government is in terms of the new entrants. Aldi has provided mixed stories in terms of good and bad relating to Growers supplying them and I have no comment on that. It has provided competition to the duopoly but it has also provided a downward pressure on price which is led by Coles and it's going through the supply chain.

If you look at the IBISWorld data, we are outshopped in South Australia. I would encourage that not too much leeway is made for supermarkets like Aldi to establish new supermarket precincts and that if they want to enter that they purchase existing shopping centres or existing shops, because we are already outshopped in this state.⁴⁷

⁴⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 119 (Jordan Brooke-Barnett, State Manager of AUSVEG SA and Member of the Horticulture Coalition of South Australia).

⁴⁷ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 02 August 2017, 130–31 (Angelo Demasi, Chief Executive Officer, South Australian Produce Market Ltd).

Therefore, Mr Demasi is arguing that there are too many supermarkets for South Australia's population. Mr Demasi further notes that:

The other option is to bring in another half a million people to South Australia and then that's fine because there's plenty to go around. However, at the moment, I think there are enough. If you have a look at the IBISWorld data comparing Sydney, Melbourne and how many shops per capita—don't quote me on the figures because I think it's updated now—we are certainly up there. Whilst it does provide competition to the duopoly, it also provides an issue with price disparity and the number of shops in the marketplace.⁴⁸

On the same topic, Associate Professor Bogomolova highlighted the view that there is little consensus with regard to the role of government in addressing the impact of new entrants into Australia's supermarket industry and noted that '[s]ome people say that [a] free economy is something the government shouldn't really interfere in.'⁴⁹ Nonetheless, Associate Professor Bogomolova was of the view that government intervention is potentially required because,

in this particular country and situation, I think the balance in terms of the size of the retailers versus the size of their suppliers is so uneven that I probably wouldn't call it a free economy anymore, in that idealistic term.

Perhaps the role of the government, particularly the South Australian government ... is to try to minimise that gap [between larger retailers and smaller suppliers] ... In my professional opinion, [the inclusion of new entrants to the supermarket industry] ... is good. Any competition that disrupts the current state is actually good, particularly if there's a way to communicate the value of local products on all supermarket shelves. We have seen that Aldi has tried to supply some local products, in a minimal way, but they are still trying. Costco, which

⁴⁸ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 02 August 2017, 131 (Angelo Demasi, Chief Executive Officer, South Australian Produce Market Ltd).

⁴⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 92 (Associate Professor Svetlana, Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

*everyone knows is an American chain, still has the little leaflets saying, 'We have 20 local South Australian products.' It's a bit of a laughing thing, but still [Costco] are trying [to promote local producers].*⁵⁰

Associate Professor Bogomolova's research showed that South Australian consumers are more likely to support local, state-based produce and producers, when compared with their consumer counterparts in New South Wales and Victoria.⁵¹ Ms Nicole Richards, Research Associate from the Institute, also echoed these sentiments by stating that '[South Australians] are more likely to support local food, local farmers, and are pretty parochial.'⁵² It could, therefore, be argued that even new entrants to the supermarket industry are focusing on promoting local primary producers, even if their marketing campaigns are merely tokenistic. This is at least true for the German owned retailer, Aldi, in that '[i]ndependent audits have confirmed that 91 per cent of Aldi's fresh fruit and vegetables are Australian grown',⁵³ and the retailer maintains that it only sources overseas products when it cannot locate the product in Australia.⁵⁴ Aldi's commitment in supporting Australian made produce is also featured on its website with the following marketing campaigns (**see overleaf**):

⁵⁰ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 92 (Associate Professor Svetlana, Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

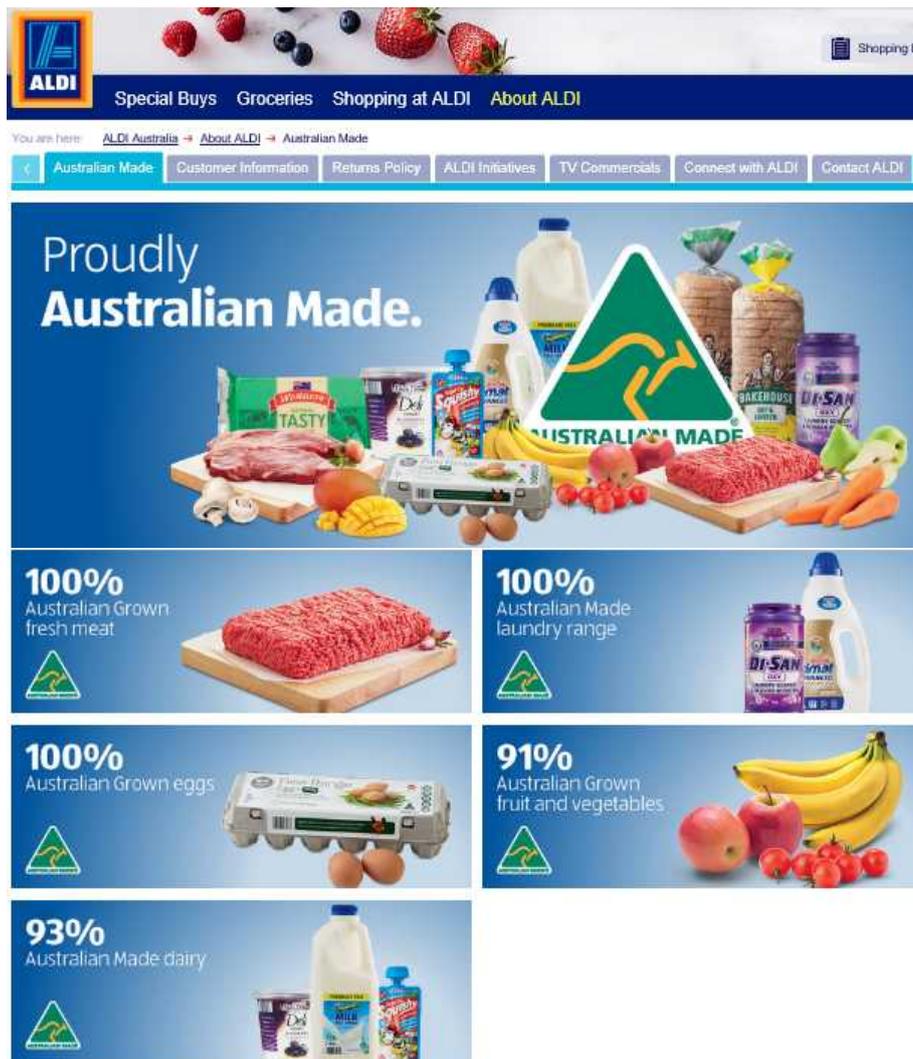
⁵¹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 92 (Associate Professor Svetlana, Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

⁵² Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 92 (Nicole Richards, Research Associate, Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

⁵³ Dana McCauley, 'Aldi Unveils Bold new Fresh Food Buying Strategy' *News.com.au* (online), 13 September 2017 <<http://www.news.com.au/finance/business/retail/aldi-unveils-bold-new-fresh-food-buying-strategy/news-story/3f7d7abefd9096b87ea731171b15c88d>>.

⁵⁴ *Ibid.*

Figure 1: Aldi’s online marketing campaigns



Source: Aldi, *Australian Made* (2017) <<https://www.aldi.com.au/en/about-aldi/australian-made/>>.

In noting the power imbalances in the relationships between smaller producers and larger retailers, Ms Anne Moroney, Chief Executive Officer of Regional Development Australia—Barossa stated that ‘if [the big supermarkets] won’t play with us, we [need to] go and play with someone else. They have their business model. They work with it. We know it doesn’t work for everyone.’⁵⁵

Moreover, Associate Professor Bogomolova, stressed the importance of primary producers understanding their contractual agreements by providing the following example:

⁵⁵ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 45 (Anne Moroney, Chief Executive Officer, Regional Development Australia—Barossa).

[Primary producers] could have an agreement saying that [their] produce has to come in certain packages, and not just consumer packages but something that works with the supply chain of a particular store size, so certain boxes. So, the producer would go out and invest a huge amount of money to design that particular box, only to find out that next year they have to redesign it all over again because the store changed their mind, or something. What it means for a local producer, a smaller producer, is that they could potentially lose their business because that is a huge cost for them.

These are just some examples of what we have seen, which are the result of the imbalance of power in those relationships. What we are signalling in our submission is that maybe there are opportunities for local producers to get together and have some mutual interests together so that they could have a level playing field in those negotiations.⁵⁶

8.2.1.2 Evidence of positive dealings within the supermarket industry

Conversely, however, the Committee also heard from producers who have had positive commercial relationships with larger retailers. On this point, Mr Adrian Hoffmann, Director of Dimchurch Vineyards, stated that:

From my business point of view, we actually have a fairly good relationship with Woolworths with our brand, Chris Ringland. We have given them more rights. In saying that, we get paid 100 per cent 30 days after our bottling, we have no storage fees and we have no marketing costs after that, but we have given them a larger percentage of the profit. Most wineries are trying to get around that 30 to 35 per cent. We have given them 40 per cent straight off the cuff, but these are our conditions of it, and that relationship has worked quite well for the last five years.⁵⁷

⁵⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 91 (Associate Professor Svetlana, Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

⁵⁷ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 64 (Adrian Hoffmann, Director, Dimchurch Vineyards).

Although Mr Hoffmann noted that his business has had positive commercial dealings with Woolworths, he went on to note that,

*some other wineries ... struggle with those negotiations, and holding on to stock, how they distribute the stock and where it goes, because we really only have the two major players with Coles and Woolworths. Even though people are negative on it, especially the guys who have to use them, they still think it's not unfair what's happening.*⁵⁸

Furthermore, Mr Jamie Nietschke, Manager of Nietschke Moppa Estate, also informed the Committee that he currently has a positive commercial relationship with Woolworths. In recounting this positive relationship, Mr Nietschke stated that:

*Woolworths approached our group [to supply under its Farmers' Own brand, which in South Australia is the Farmers' Own Barossa Mid North brand]. We actually have a cooperative up here, which, effectively, nowadays is still officially a cooperative but is more a collective bargaining group. Woolworths approached our group and asked us if we were interested in supplying, partly because it's the Barossa Mid North dairy farmers' co-op and because they are looking for a region of well-known provenance.*⁵⁹

Despite these examples of positive commercial dealings between two smaller producers with the large retailing giant that is Woolworths, the Committee also heard that even if some smaller producers currently had favourable contract terms with larger retailers, there is a potential that this could change in the future because,

it won't be until those contracts for the higher-value branded food with the large chains are being renewed next time and the time after that we understand whether it's a long-term positive impact or not ... You offer somebody something nice for a little while and then when the contract

⁵⁸ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 64 (Adrian Hoffmann, Director, Dimchurch Vineyards).

⁵⁹ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 67–8 (Jamie Nietschke, Manager, Nietschke Moppa Estate).

comes to be renewed and you have the market sewn up you say, 'We can't afford that today'.⁶⁰

Even Mr Nietschke noted that the Barossa Mid North brand may be potentially vulnerable to the 'take it, or leave it' commercial attitude of Woolworths given that Nietschke Moppa Estate's supply contract is up for renewal within the coming months because the collective bargaining group was unsuccessful in negotiating 'a rolling contract'.⁶¹

As a means of rectifying the issues pertaining to commercial misconduct, the Small Business Commissioner suggested the Committee investigate this allegation with a view to providing legislative recommendations to prevent such conduct.⁶² Moreover, the Horticulture Coalition noted that notwithstanding the changes to the *Horticulture Code of Conduct*, which came into force on 1 April 2017, there are 'a substantial volume of transactions' that are outside the ambit of the *Code's* changes.⁶³ This is because the *Code's* changes address the concerns relating to the contract of producers with traders, but it fails to extend to the dealings of growers with other stakeholders in their supply chains.⁶⁴ This issue is further addressed in **chapter 11**.

8.2.1.3 *Concluding remarks on the supermarket industry and the impact on bargaining power*

Evidently, in light of the above evidence, it could be argued that there is a culture of underreporting commercial misconduct across South Australia's agriculture, horticulture and viticulture sectors, and, therefore, there is a potential for larger retailers to engage in unconscionable behaviour without ramifications. Mr Con Sciacca, Chief Executive Officer, of Impeach Pty Ltd, trading as Foodland Supermarkets, noted that 'unconscionable conduct is when you use your market power to influence or put undue influence on a party that is of less

⁶⁰ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 46 (Anne Moroney, Chief Executive Officer, Regional Development Australia—Barossa).

⁶¹ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 68 (Jamie Nietschke, Manager, Nietschke Moppa Estate).

⁶² '[I]ncluding criminal prosecution [options] for intimidation and/or coercion.' See Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017, 3.

⁶³ Horticulture Coalition of South Australia, Submission No 13(a) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 17 March 2017, 2.

⁶⁴ *Ibid.*

power'.⁶⁵ With regard to the issue of unconscionable behaviour, Mr Sciacca alluded to the fact that it is a notion which is linked closely to the inequitable bargaining position of smaller producers, as opposed to larger retailers. In doing so, Mr Sciacca stated that the,

*whole debate is based on retailer power over supplier. What is really interesting is that in my view is there is a case to be answered around supplier power over smaller retailers ... every organisation is there to maximise their profit. So, when you have two major players like Coles and Woolworths with the market share that they have, they are almost untouchable from a negotiation perspective. As they seek to leverage more value out of the value chain and their relationship with the supplier, suppliers have to look for alternatives to balance or margin mix that value chain, and so they look to the smallest player, the people that have the lowest power in the power equation, and seek to either erode their contribution to those for the value they create, or not support those businesses at the same level as major chains ... [this] is a pretty systemic behaviour across most major suppliers.*⁶⁶

When asked how smaller producers, such as Jersey Fresh Milk can be better supported in increasing their negotiating position, Ms Werner stated that:

I feel we just need a ... coach, a bit of a backup, to actually fall back on some regulations and say, 'No, actually this is what the law states,' and have somebody in our corner. Whether we need to actually contact a member of parliament and say, 'Can you come into bat for us,' or whether there needs to be some stricter regulations ... I would love to just have someone in our corner. I know it sounds like a really flippant way out, but it is having some backing. It is ... being able to ... say, 'Please help us. Please either give us the legal help that we need or

⁶⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 104 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

⁶⁶ Ibid 105.

*come in fighting for us and give us a stronger voice’.*⁶⁷

In analysing this evidence, the Committee concludes that some primary producers need support in understanding the legal effect of supply agreements. As a result, the Committee makes the following recommendations:

Recommendation 1

The Committee recommends that Primary Industries and Regions SA assist the Small Business Commissioner in promoting and advertising the services and functions offered by the Commissioner directly to the State’s small primary producers including farmers. The Committee further recommends that this be achieved through the establishment of formal relationships with South Australia’s Agriculture Bureaus.

The Committee received evidence in this Inquiry from primary producers who stated they were unaware of the services and functions of the Small Business Commissioner. This is particularly concerning given that the Commissioner offers a range of services to small businesses, including farmers, in the areas of dispute resolution and mediation. Furthermore, the Small Business Commissioner has the power to ‘[m]onitor, investigate and (where it is prescribed) enforce non-compliance with an Industry Code that may adversely affect small businesses’.⁶⁸ One of these Codes is the *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013* (SA). In addition, the role of the Commissioner can include:

*Disseminating information to small businesses to assist them in making decisions relevant to their commercial dealings with other businesses and their dealings with State and Local government bodies. This will primarily occur via various electronic means.*⁶⁹

⁶⁷ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 51 (Lisa Werner, General Manager, Jersey Fresh Milk).

⁶⁸ Small Business Commissioner South Australia, *Our Services and Legislation* (31 July 2017) Small Business Commissioner South Australia <https://www.sasbc.sa.gov.au/about_us/our_services>.

⁶⁹ Ibid.

Recommendation 2

The Committee recommends that the functions of the Small Business Commissioner be expanded, with appropriate additional funding, to include an Advice Unit, which would allow primary producers to lodge offers of agreement with the Unit on a confidential basis and to obtain advice on whether the terms of the agreement are fair.

The Committee heard that the current services and functions of the Small Business Commissioner are centred predominantly on a dispute or issue arising basis. In light of the above evidence the Committee gathered with regard to the inequitable bargaining power of some primary producers, the Committee is of the view that primary producers could generally benefit from a service in which they could obtain confidential advice on their offers of agreements with retailers and distributors. As a result, the Committee recommends the establishment of an Advice Unit within the Office of the Small Business Commissioner.

The inequitable bargaining power experienced by some primary producers is an issue that is closely linked to the occurrence of unfair commercial dealings.

8.3 Unfair Commercial Dealings

In addition to the evidence provided by the Institute, the Small Business Commissioner also informed the Committee that some producers are being subjected to ‘one-sided contracts’ which fail to ‘share risk and returns’ between the contracting parties.⁷⁰ Moreover, the Commissioner noted the increasing practice of growers and retailers not having a contract in writing, ‘let alone any agreement about prices’.⁷¹ This appears to be a particular issue to South Australia’s viticulture sector as the Small Business Commissioner noted that,

there is widespread frustration that the risks and returns are not fairly shared. Late price signals mean there is little option for the grower to not proceed to harvest (thereby incurring costs), whereas an earlier price signal of poor return would allow the grower to reconsider their options to progress the crop to harvest, renegotiate the contract, or perhaps find an alternative market. Grape growers have expressed

⁷⁰ Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017, 2.

⁷¹ Ibid.

*concern that price signals are only given once many production costs have already been incurred.*⁷²

To address the issues of unfair contractual arrangements in the viticulture sector, the Small Business Commissioner's submission invited the Committee to consider, 'whether there should be a minimum price structure paid for wine grapes'.⁷³ This recommendation was given with specific reference to the Minister's power to set prices for wine grapes.⁷⁴ The Committee followed the Commissioner's advice and accordingly inquired into whether there should be minimum prices imposed. This issue is discussed in **chapter 10** of this report.

8.3.1 Legislative protections

Mr Rod Sims, Chairman of the Australian Competition and Consumer Commission ('ACCC'), indicated to the Committee in his initial submission that 'the ACCC is currently undertaking work on a number of issues in the agriculture sector',⁷⁵ including in the area of 'business-to-business unfair contract terms'.⁷⁶ In explaining this development, Mr Sims noted that a new federal law was introduced on 12 November 2016, 'to protect small business, which may include farmers, from unfair terms in standard form contracts [and which] ... aims to address some of the power imbalances in business-to-business transactions'.⁷⁷ These types of contracts are defined as 'standard form contracts' because they are 'prepared by one party to the contract' and then offered to the other party 'on a "take it or leave it" basis'.⁷⁸ Therefore, the other party is left with little to no opportunity to negotiate,⁷⁹ which may include lock-in or other exclusivity clauses. Mr Sims further noted that '[i]t appears likely that many agreements between primary

⁷² Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017, 2.

⁷³ Ibid.

⁷⁴ Ibid 2–3 citing and quoting *Wine Grapes Industry Act 1991* (SA) ss 5–6.

⁷⁵ Australian Competition and Consumer Commission, Submission No 12 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 17 March 2017, 1.

⁷⁶ Ibid.

⁷⁷ Ibid 3 referring to *Competition and Consumer Act 2010* (Cth) sch 2 The Australia Competition Law pt 2–3 ss 23–8.

⁷⁸ Ibid 3–4.

⁷⁹ Ibid 4.

producers and buyers of their produce will be standard form contracts for the purpose of the law'.⁸⁰

Under this law, a 'small business contract' is void if it is both deemed to be 'unfair' and the contract is a 'standard form contract'.⁸¹ For the purposes of this protection, a small business contract is defined under section 23(4) of the Australian Consumer Law. Accordingly, a small business contract includes contracts that are created by at least one party that employs 'fewer than 20 persons' and upfront price payable under the contract is \$300,000 or less, or the contract has upfront price payable under \$1,000,000 for contracts that exceed 12 months.⁸² Section 24 of the Australian Consumer Law governs whether a contract is unfair. Accordingly, a small business contract is unfair if:

- (a) *it would cause a significant imbalance in the parties' rights and obligations arising under the contract;*
- (b) *it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and*
- (c) *it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.*⁸³

The ACCC's initial submission to the Committee also noted that:

*In order for the ACCC to form a view on whether specific contract terms are unfair, the ACCC must undertake a detailed assessment of the specific contracts and all the surrounding circumstances. In recognising that, the ACCC has an open mind as to how the unfair contract provisions might apply.*⁸⁴

⁸⁰ Australian Competition and Consumer Commission, Submission No 12 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 17 March 2017, 4.

⁸¹ *Competition and Consumer Act 2010* (Cth) sch 2 *The Australia Competition Law* pt 2–3 ss 23 (1) (a) and (b).

⁸² *Ibid* sch 2 *The Australia Competition Law* pt 2–3 ss 23 (4) (b) and (c)(i)–(ii).

⁸³ *Ibid* ss 24 (1) (a)–(c).

⁸⁴ Australian Competition and Consumer Commission, Submission No 12 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 17 March 2017, 4.

Despite this legislative framework, the ACCC indicated that it ‘rarely becomes involved in individual consumer or small business disputes and does not provide mediation services.’⁸⁵ Evidently, a lacuna exists between ACCC’s enforcement powers and its powers under the *Competition and Consumer Act 2010* (Cth). As a result, even if aggrieved primary producers lodge a complaint with the ACCC, it is unlikely that their claim will be investigated.⁸⁶ In referring to this legislative development, the Small Business Commissioner, Mr John Chapman, stated that this is a mechanism that can address the issue posed by unfair contract terms, however, Mr Chapman informed the Committee that he is of the view that the law does not go far enough.⁸⁷ On this point, Mr Chapman stated,

*[t]o me, the barrier is still too low. Myself and my interstate colleagues argued very strongly from the original proposition that was put forward to have that raised and we got some of the way there ... Too low in terms of who can actually access it because, with some of the contracts and the sizes, you can still be a small business but you are ruled out of the unfair contract laws. The other question that I am also grappling with at the moment is the access to that process because, while it is all very well to have unfair contract laws—and I think that’s good—they are only going to be tested when it goes to court, and for a small business to take the matter to court is going to be somewhat problematic. We are looking at that. I am certainly talking to the ACCC on a regular basis about some of those issues because I am keen to see those laws tested, and I’m sure the respective parliaments are as well.*⁸⁸

Mr Chapman also stated that while unfair contractual behaviour is unlawful, the enforcement of protections, including this legislation, will be costly and it is,

⁸⁵ Australian Competition and Consumer Commission, response to questions on notice, 15 June 2016, 1.

⁸⁶ The Committee notes, however, that the ACCC has recently begun to trial an online tool for individuals to lodge anonymous agriculture complaints. For more information please see Australian Competition and Consumer Commission, *Report an Agricultural Issue Anonymously*, Australian Competition and Consumer Commission <<https://app.whispli.com/accc-report-an-agricultural-issue-anonymously>>.

⁸⁷ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 13 (John Chapman, Small Business Commissioner).

⁸⁸ Ibid.

most likely [that small primary producers will] lose out of that equation and that's the part that is somewhat problematic. I am dealing with one case at the moment where a small—actually it's not a small company, it's probably medium-sized, but there's an imbalance of power, and they are not being paid and the big company's version of 'sorting it out' was just to drop about \$100,000 into the account and say, 'It's settled.' Now, this is for over half a million dollars. No, that's not how it should work. But we are still trying to navigate a path, because, while I can weigh into the equation, the last thing I want to do is destroy a relationship if there is a way that we can actually keep the relationship and get the business paid.⁸⁹

As a result, Mr Chapman recommended that the Committee might like to consider imposing criminal prosecution because '[l]egislative measures, for me at the moment, seem to be the only way you can actually try to capture and change some of the behaviours and cultures.'⁹⁰

In addition to this legislative development, the federal parliament has also recently enacted the *Competition and Consumer Amendment (Misuse of Market Power) Act 2017* (Cth). The relevant effect of this legislation is that it amends section 46 of the *Competition and Consumer Act 2010* (Cth) by including an 'effects test' in the determination of whether a corporation has engaged in a misuse of their market power by lessening competition to a substantial degree.⁹¹ This amendment came as a result of a recommendation that was made by the 2014 Harper Review. This was a review commissioned by the Australian Government to conduct a "root and branch" review of Australia's competition framework'.⁹² The revised explanatory memorandum of the relevant bill provides an explanation about the distinguishing features between the new and old provisions as follows:⁹³

⁸⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 15 (John Chapman, Small Business Commissioner).

⁹⁰ Ibid.

⁹¹ *Competition and Consumer Amendment (Misuse of Market Power) Act 2017* (Cth) sch 1.

⁹² Explanatory Memorandum, *Competition and Consumer Amendment (Misuse of Market Power) Bill 2016* (Cth) 5 [1.4].

⁹³ Revised Explanatory Memorandum, *Competition and Consumer Amendment (Misuse of Market Power) Bill 2016* (Cth) 7

Figure 2: Comparing the new and old elements of section 46 of the *Competition and Consumer Act 2010* (Cth)

| <i>New law</i> | <i>Current law</i> |
|---|---|
| <i>Section 46 only applies to corporations with substantial market power.</i> | <i>Section 46 only applies to corporations with substantial market power.</i> |
| <i>The conduct must have the purpose, effect or likely effect of substantially lessening competition.</i> | <i>The conduct must have one of three specific purposes, related to damaging an actual or potential competitor.</i> |
| <i>The conduct must occur in a market where there is an actual or likely supply or acquisition of goods or services, by the corporation or another prescribed entity.</i> | <i>The conduct may occur in any market.</i> |
| <i>The conduct does not need to ‘take advantage’ of substantial market power.</i> | <i>The conduct must ‘take advantage’ of substantial market power.</i> |
| <i>There is a general provision only, with no specific prohibition on predatory pricing or other forms of conduct (however described).</i> | <i>Predatory pricing and other specific forms of conduct are expressly prohibited.</i> |

Source: Revised Explanatory Memorandum, Competition and Consumer Amendment (Misuse of Market Power) Bill 2016 (Cth) 7.

As these legislative instruments are in their infancy and are legal frameworks under the federal level, the Committee is reluctant to make recommendations aimed at addressing the occurrence of unfair commercial dealings. With that said, the Committee is focused on preventing these issues from arising. As a result, the next section makes recommendations that are aimed at strengthening the bargaining power of South Australian producers.

8.4 Potential Solutions to Prevent the Inequitable Bargaining Power and Unfair Commercial Dealings of Primary Producers

To address the inequitable bargaining power of some primary producers and the fact that some producers are subject to commercial malpractice, the Committee heard that primary producers could change their corporate structure and accordingly form a co-operative which would increase the producer’s bargaining power. On this point, Ms Melina Morrison, Chief Executive Officer of the Business Council of Co-operatives and Mutuals, noted in her initial submission that,

co-operatives have an important role to play in increasing the bargaining power of food producers and food consumers and in the

*retention and development of the food supply chain in local regions of South Australia. Co-operatives provide concomitant benefits including reinvestment in local and State economies, long term, sustainable employment, increased consumer choice and local procurement. It is the unique organisational structure of co-operatives, as member-owned and controlled enterprises, that allows producers to collectively bargain with retailers and retain ownership and returns from value-added products in the market supply chain.*⁹⁴

Ms Morrison indicated that producer co-operatives, as well as retail co-operatives ‘have a role to play’ in the relevant sectors.⁹⁵ The role of collaborative partnerships amongst producers relates to the work of the State’s 2008 Thinker in Residence, Professor Andrew Fearne, whose work centred on value chain thinking and sustainable food and wine value chains. Professor Fearne made five recommendations relating to:

1. *Global thought leadership program in value chain management;*
2. *Integrated market intelligence and consumer insight service;*
3. *Cross-agency food policy to support the implementation of a more holistic State Food Plan;*
4. *Root-and-branch review of the current provision in education and training (primary, secondary, tertiary, higher and ‘executive’) available to the South Australian food and wine industries; and*
5. *Strengthen the role of regional stakeholder groups in building innovative communities and securing greater engagement from young people in the development of sustainable food and wine value chains.*⁹⁶

Of particular relevance to the Committee’s Inquiry is Professor Fearne’s finding that there ‘is a fundamental lack of understanding of value chain principles amongst senior managers, in

⁹⁴ Business Council of Co-operatives and Mutuals, Submission No 7(a) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 1.

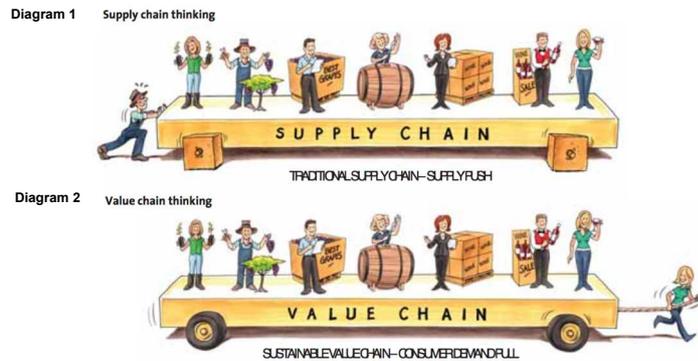
⁹⁵ Ibid.

⁹⁶ Andrew Fearne, ‘Sustainable Food and Wine Value Chains’ (2009) *Government of South Australia Thinkers in Residence* 34.

government and industry’.⁹⁷ Professor Fearne stated in his report that ‘collaborative relationships facilitate the effective flow of information ... rational decision-making and effective resource allocation, for the benefit of the chain as a whole’.⁹⁸ Professor Fearne further advocated for organisations and stakeholders to apply ‘value chain thinking’ to their commercial ventures in the food and wine sector in South Australia. This, however, as Professor Fearne puts it, would ‘requir[e] a paradigm shift in thinking (from supply “push” to demand “pull”), and a collaborative re-allocation of resources and responsibilities amongst all stakeholders in the value chain’.⁹⁹ In unpacking this principle, Professor Fearne, stated that,

[t]he starting point on the journey to sustainable competitive advantage is a change in mindset that places the consumer first and everything else subordinate to their wants. Consumer preferences ... are not always consistent with customer needs ... or policy objectives ..., but whether we are trying to build loyalty for individual brands or more sustainable communities and environments, changing peoples’ behaviour begins by understanding what motivates them. The ability to do that requires a paradigm shift in the way we view the value chain—from supply push to demand pull.¹⁰⁰

Figure 3: Diagrams comparing the differences between supply chains and value chains



Source: Andrew Fearne, ‘Sustainable Food and Wine Value Chains’ (2009) *Government of South Australia Thinkers in Residence* 9.

⁹⁷ Andrew Fearne, ‘Sustainable Food and Wine Value Chains’ (2009) *Government of South Australia Thinkers in Residence* 34.

⁹⁸ Ibid 5.

⁹⁹ Ibid 8.

¹⁰⁰ Ibid.

In referring to the diagrams included on the previous page, Professor Fearn explained that under a ‘**supply chain thinking**’ perspective, shown above in diagram 1, primary producers focus on getting their products out to consumers ‘through as many distributions channels as possible’.¹⁰¹

This means that the primary producers are,

*heavily reliant on wholesalers and agents, building distribution and sales and exchanging transactional data (eg sales orders, delivery notes, invoices) with little interest in behavioural drivers (eg attitudes, perceptions, motivations). In these chains, ... businesses do whatever it takes to cut costs (including the abuse of market power). Information is viewed as a cost, which means it can be cut and the only information exchanged is transactional. Relationships are ‘arms length’, due to the lack of trust and commitment between opportunistic buyers and sellers. Success in these chains is measured by the margin each stakeholder manages to generate over their costs—for commodity suppliers this will vary according to factors largely beyond their control (eg exchange rates and world stock levels). The end result is a race to the bottom (lowest cost) in which there is little incentive to invest in anything but scale—commodity production and supply chain thinking is a hard addiction to kick.*¹⁰²

This model is contrasted against a ‘**value chain thinking**’ approach, which is replicated in diagram 2 (see page 41). Professor Fearn states that this latter way of thinking and approach to production requires producers to identify and accordingly focus on opportunities which help them differentiate their products from those of competitors. Fearn further notes that under this model producers,

cu[t] costs where necessary (hence the removal of wholesalers and agents) but ad[d] value wherever consumer preferences make so doing profitable. In these chains information is regarded as a critical success

¹⁰¹ Andrew Fearn, ‘Sustainable Food and Wine Value Chains’ (2009) *Government of South Australia Thinkers in Residence* 8.

¹⁰² Ibid.

factor in which businesses invest and are willing to share with like-minded trading partners—those with whom trust has been built through commitment over time and with whom conversations focus on where the opportunities for adding value exist and how the benefits of collaborative cost reduction and differentiation can be shared for the longer term benefit of all stakeholders in the chain. Notice also that in value chains the barriers between firms (inter-organisational silos) that are so prominent in traditional supply chains, dissolve over time as the chain learns to pull together, as one, united in the focus on the final consumer and the sustainability of the chain as a whole.

This value chain thinking approach, therefore, relies heavily on the flow of information between relationships within the chain and also requires stakeholders within the chain to **collaborate**, ‘which in turn demands aligned objectives, open communication, sharing of resources, risks and rewards.’¹⁰³ Fearne, also indicates that ‘[f]irms can only create successful value propositions by understanding what it is that consumers value in the products and services they create, and subsequently adapt to suit specific target segments’.¹⁰⁴

Accordingly, and as Professor Fearne states,

*the primary difference between a supply chain and a value chain is a fundamental shift in focus, from the supply base and producers to the customer base and consumers. Both ends of the chain are highly heterogeneous ... failure to understand and meet the wants of final consumers will result in both suppliers and buyers losing ground to competitors who have likewise satisfied customer needs but present a stronger and more carefully targeted consumer value proposition.*¹⁰⁵

In applying this theory to the evidence received during this Inquiry, it could be argued that the majority of retailers deal with producers from a **supply chain perspective**, given their focus on securing the lowest possible cost and as substantiated by Ms Warner’s evidence included

¹⁰³ Andrew Fearne, ‘Sustainable Food and Wine Value Chains’ (2009) *Government of South Australia Thinkers in Residence* 9.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid 9–10.

above. This was also a point echoed by Mr Con Sciacca, Chief Executive Officer of Foodland Supermarkets, where Mr Sciacca stated that ‘the current landscape of the competitive market ... is a race to the bottom [price]’.¹⁰⁶

In explaining how Regional Development Australia—Barossa has been working to implement some of Professor Fearne’s recommendations, Ms Anne Moroney, noted that Regional Development Australia—Barossa has attempted to,

*implement ... a collaborative innovation network for young people in agriculture, [but] [i]t takes a while to get people to work together across different sectors, because the graziers and others want to work together, but innovation happens at the intersection of these industries, so I think there is still a lot of work to do.*¹⁰⁷

Although Ms Moroney indicated that the implementation of this recommendation requires more work, Professor Fearne foreshadowed that collaborative relationships through the value chain thinking model are ‘not easy and [change] cannot happen overnight, particularly when the dominant paradigm, which has served so many businesses so well in the past, is diametrically opposed to value chain thinking.’¹⁰⁸ Despite these difficulties, the Committee heard evidence from and about some producers who have embraced this value chain thinking approach through the formation of formal co-operatives or collaborative projects, as well as through value-adding activities and ventures. Specifically, in Ms Morrison’s initial submission, she noted that ‘South Australia ... has a strong co-operative pedigree.’¹⁰⁹ In support of this assertion, Ms Morrison provided a list of the State’s top co-operative and mutual enterprises. Of particular relevance to this Inquiry are the following:

- *Almondco Ltd;*

¹⁰⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 98 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

¹⁰⁷ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 47 (Anne Moroney, Chief Executive Officer, Regional Development Australia—Barossa).

¹⁰⁸ Andrew Fearne, ‘Sustainable Food and Wine Value Chains’ (2009) *Government of South Australia Thinkers in Residence* 9.

¹⁰⁹ Business Council of Co-operatives and Mutuals, Submission No 7(a) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 4.

- *Lenswood Cold Stores Co-operative Ltd;*
- *CCW Co-operative Ltd; and*
- *Community Co-op Store Nuriootpa.*¹¹⁰

8.4.1 Co-operative business models

Co-operatives and mutuals are the main business structures in Australia that are member-owned.¹¹¹ Co-operatives have been explained as ‘a business model which refuses to “divorce economic activity from its societal consequences”’.¹¹² Co-operatives are different to ‘other member-based organisations (collectively referred to as “mutuals”)’ because of their ‘adoption of a set of internationally recognised co-operative values and principles’.¹¹³ Accordingly, the international values of co-operatives are those of,

*self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.*¹¹⁴

In addition, co-operatives are governed by seven international principles which seek to practically implement the above-mentioned values.¹¹⁵ These principles are:

1. *Voluntary and open membership;*
2. *Democratic member control;*
3. *Member economic participation;*
4. *Autonomy and independence;*
5. *Education, training and information;*

¹¹⁰ Business Council of Co-operatives and Mutuals, Submission No 7(a) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 4.

¹¹¹ Ann Apps, ‘Legislating for Co-operative Identity: The New Co-operatives National Law in Australia’ (2016) *Company and Securities Law Journal* 6, 6.

¹¹² Ibid 8 quoting Anthony Webster and Rachael Vorberg-Rugh, *Building Co-operation: A Business History of the Co-operative Group* (Oxford University Press, 2013) 3.

¹¹³ Ibid citing International Co-operative Alliance, “Statement on the Co-operative Identity”, adopted at its Centennial Congress in Manchester (UK) on 23 September 1995.

¹¹⁴ International Co-operative Alliance, *Co-operative Identity, Values and Principles* International Co-operative Alliance <<https://ica.coop/en/whats-co-op/co-operative-identity-values-principles>>.

¹¹⁵ Ibid.

6. *Co-operation among co-operatives; and*

7. *Concern for the community.*¹¹⁶

In Australia, all ‘States and Territories entered into the Australian Uniform Co-operatives Law Agreement (‘AUCLA’) to implement a scheme to promote uniform or consistent legislation and systems of administration for co-operatives.’¹¹⁷ This scheme commenced in 2012, and included ‘a template known as the [Co-operatives National Law]’.¹¹⁸ It should be noted, however, that given Australia’s process of federation, and the wording of the *Australian Constitution*, the Commonwealth does not have the power to enact legislation ‘with respect to the formation of companies and co-operatives and the power to regulate financial mutuals (as opposed to banks) [because this power] remain[s] with the States’.¹¹⁹ Despite the Australian Uniform Co-operatives Law Agreement, only some Australian jurisdictions have enacted legislation adopting the Co-operatives National Law.¹²⁰ With that said, South Australia did enact the *Co-operatives National Law (South Australia) Act 2013* (SA) and the *Co-operatives (South Australia) Regulations 2015* (SA), which give effect to the Co-operatives National Law and which commenced on 22 May 2015.¹²¹ Ms Melina Morrison, Chief Executive Officer, Business Council of Co-operatives and Mutuals Noted that ‘[i]n the eyes of the law, co-operatives are a specific form of state-registered limited liability corporation, regulated by a co-operative Registrar.’¹²² In South Australia’s context and pursuant to section 23 of the *Co-operatives National Law (South Australia) Act 2013* (SA), the Corporate Affairs Commission is the designated Registrar. Despite this legislative framework in South Australia, Ms Morrison noted that,

¹¹⁶ International Co-operative Alliance, *Co-operative Identity, Values and Principles* International Co-operative Alliance <<https://ica.coop/en/whats-co-op/co-operative-identity-values-principles>>.

¹¹⁷ Apps, above n 111, 12–3.

¹¹⁸ Ibid 13.

¹¹⁹ Ibid 14.

¹²⁰ Ibid 15.

¹²¹ Business Council of Co-operatives and Mutuals, Submission No 7(b) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 2. See also ibid 7.

¹²² Business Council of Co-operatives and Mutuals, Submission No 7(b) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 2.

*some co-operatives and almost all mutual enterprises choose to use the company form, and are therefore regulated at the Federal level under the Corporations Act. Whether a company is a co-operative or mutual will depend on the contents of its constitution, rather than the legislation under which it is registered. It is worth noting that mutual banks and credit unions, irrespective of what State they are based in, have been moved under the Corporations Act.*¹²³

Professor Mehdi Doroudi, Deputy Chief Executive of Primary Industries and Regions SA, echoed the importance of co-operatives in the following terms,

[PIRSA] strongly believe[s] a cooperative and collaborative approach, cooperation, can help and support some of our small producers. We did have examples of that, ... as part of the Australian government agribusiness, a white paper has been issued that talks about farm cooperatives and collaboration pilot programs ... Primary producer cooperatives have been able to access specific government loans since the 1970s. PIRSA has managed some of those loans since 1993, and the scheme was transferred from the State Bank to what we are doing. The loans to cooperative schemes enables eligible primary production based cooperative companies to access taxation benefits under sections 117 to 120 of the Income Tax Assessment Act, essentially allowing principal loan payments to be tax deductible. There are some mechanisms that perhaps we could encourage and go through to just support the small producers and retailers ... Lenswood Apples is one of the [co-op] success stories. I will just quickly highlight the benefits: investment in grading, allowing products targeted for different markets, such as prepacked smaller apples, and growing premium branded unique varieties such as Rockit, Redlove and MiApple. They have shown initiative and been innovative in terms of helping and supporting each other to be able to achieve and have access to better markets.

¹²³ Business Council of Co-operatives and Mutuals, Submission No 7(b) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 2 [footnotes omitted].

*Almondco is another example, which comes back to our almond industry. They have been a good example of a collaborative approach.*¹²⁴

8.4.2 Collaborative initiatives

The Committee was also informed about the Barossa Collaboration Project. This project seeks to undertake a number of initiatives through the collaboration of representatives from Barossa Food, Barossa Grape and Wine Association, Regional Development Australia—Barossa, Tourism Barossa and the Light Regional and Barossa Councils.¹²⁵ These initiatives include:

- *A review of the State's regulations on planning and licensing of artisan food production;*
- *The expansion of the 'Trust Mark' initiative;*
- *The creation of a 'Barossa Prospectus' tasked with the responsibility of investing in food and creative art ventures;*
- *A review of the effectiveness or otherwise of the ... 'Be Consumed' marketing campaign which is an event in Melbourne;*
- *The prospects of creating a 'culinary excellence' project; and*
- *The development of the local government's rate limiter initiative.*¹²⁶

In her appearance before the Committee, Ms Jan Angas, Chair of the Barossa Collaboration Project, explained the project in the following terms:

*[T]his project allows us to actually bring all the engine rooms to the table and all the people who affect those engine rooms. We are made up of chairs and CEOs of our local tourism, our local wine and grape growing, our local food and both the council areas that are within that character reserve.*¹²⁷

¹²⁴ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 3 (Mehdi Doroudi, Professor, Deputy Chief Executive of Primary Industries and Regions SA).

¹²⁵ Anita Butcher, 'Barossa Collaboration Funding Boost', *SA News* (online) 2017 <<http://flowfm.com.au/barossa-collaboration-funding-boost/>>.

¹²⁶ *Ibid.*

¹²⁷ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 09 August 2017, 133–34 (Jan Angas, Chair, Barossa Collaboration Project).

Ms Angas further stated that:

*There is a number of projects that we are taking on, but our first step that we are in the process of completing is brand management. That sounds pretty elementary but it is actually much more complex when you come to it. We have to really cement agreement on the brand essence. We all know that the Barossa is very good at projecting what they are, but having deeper agreement in bodies where it actually filters everything that they do is work that is yet to be done. It will be done quickly, but I say that as a clarity that Barossa would be known for its exceptional brand management, but getting it right down through all levels still has a small amount of work to be done.*¹²⁸

This concept of brand management is further explained at **part 9.4** of this report; however, the Committee notes at this point that the Barossa Collaboration Project is yet another initiative that supports some of Professor Fearné's recommendations.

In addition, the Committee was also informed about the concept of 'packaged tourism experiences' and how this initiative is assisting some stakeholders to engage in value-adding ventures. On this point, Ms Anne Moroney stated,

*Packaged tourism experiences around food and wine are a major conduit to demand. That is where the artisanal food is really important for the region. We are going to package up these experiences to bring people in—you might bring them for a cycling holiday, which they will come for—where food and wine is championed.*¹²⁹

On this concept of using tourism as a means of primary producers engaging in value-adding, Mr Adrian Hoffmann, Director of Dimchurch Vineyards, stated that,

there are a number of wineries now starting to build helipads out the backs of their places so that, when people fly in to Adelaide, they can

¹²⁸ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 09 August 2017, 134 (Jan Angas, Chair, Barossa Collaboration Project).

¹²⁹ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 42 (Anne Moroney, Chief Executive Officer, Regional Development Australia Barossa).

literally chuck them on a helicopter, bring them down here and create a whole experience for 24 or 48 hours. ... Two Hands has an experience now where you can jump in a four-wheel drive and taste the wine from that vineyard as you drive around. I think it's \$600. It's a five-wine tasting, and you go to the vineyards where it is actually produced in a luxury four-wheel drive. That's an experience you get to have. From my point of view, I am looking at doing exactly the same thing but, once again, especially when you start talking rural, outside of the mainstream towns and things like that, it starts becoming a little bit harder having function areas and tasting areas. Especially from a grower point of view, there is a lot of red tape for me to get my head around because I'm a grape grower. I nearly need to employ someone to do a lot of that work for me.¹³⁰

Ms Angus echoed these issues when she stated that,

[w]e currently have some value-adding going on with primary production. There is often a planning hurdle to that that you have to meet. If we take the really controversial one ... which is abattoirs and small-scale production, currently, you have to meet very large-scale production, even if you are only doing 10 or 15 animals or carcasses a week. The rulebook is very set for a scale that we are not talking about, and there are reasons why it's there, but all the health and hygiene and EPA and all of that still has to be met. We have rules in there that make it financially unattainable ... We believe that if we can reduce those barriers but keep all the safety, not only will we enhance the existing agriculture business, we will attract others who have money to spend and money to invest into the region.¹³¹

¹³⁰ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 65–6 (Adrian Hoffmann, Director of Dimchurch Vineyards).

¹³¹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 09 August 2017, 135 (Jan Angas, Chair, Barossa Collaboration Project).

Evidently, planning regulations and approval processes are issues that affect the ability of some primary producers to engage in value-adding activities. This is an issue that is examined further at **part 9.5.1**.

Ms Anne Moroney also explained that Regional Development Australia—Barossa has sought to implement Professor Fearne’s recommendations by,

work[ing] with business in regional development, ... [through] a framework that we either enable, value-add or diversify I say to the staff who work with me, that if someone wants to use something and it doesn't fit within enabling a business to do better, with helping them to value-add, or helping a business or the economy to diversify, we have to question why we are doing it, It sounds simple, three things, but there is so much within all that, especially diversification, which gets down to helping start-ups, to helping people find export markets, to working through local specialisations to identify where the next industry might come from that is related to the current one. There is a heap of work to do to keep this ticking over, and I think value-adding for artisan food production is certainly something worthwhile. The Barossa is in a particular place to make value from this, but it is a global trend ... As we move to mass production, industrialisation, especially around food, there is a growing number of people who are more interested in provenance, in connecting with the food story, in understanding it. I think that level applies even locally; the more you connect people with their food supply, how it is produced, who produces it, and the role that plays in your life and your community there are multiple values for government, including mental health values.¹³²

¹³² Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 40 (Anne Moroney, Chief Executive Officer, Regional Development Australia Barossa).

8.4.3 AlmondCo case study

The Committee also heard from Mr Simon Lane, Chairman of Almondco about the benefits of forming a co-operative. Mr Lane stated that:

I don't know of any industries that do not use the cooperative business model in the agricultural area. What I can tell you in relation to the almond industry is how it works, and Almondco is a very successful company now operating on cooperative principles. Almondco has as its members 85 per cent of all almond growers in Australia. We have growers in Western Australia, New South Wales, Victoria and South Australia.

The way it works is that individual almond grove owners do everything until the point where they deliver their product to Almondco. So, they plant their trees, they irrigate them, they fertilize them, they prune them, they harvest them and they deliver the product to one of Almondco's processing plants at Lyrup. At that point, title in the almond product passes to the company and the company then takes off the outer hull, it then takes off the shell and then, with the resulting kernel, it transfers that across the river to Renmark, where the pasteurising occurs, the grading, the sizing, etc.—value adding—and then Almondco is entirely responsible for marketing that product.

At the end of the process, Almondco deducts from the total revenue it receives the cost of doing of those various functions, and all the proceeds, bar just a tiny little amount that goes back by way of shareholder dividend, the overwhelming majority of the net proceeds go back proportionately to the people who delivered the almonds.

Some risk can be managed by the company. We are responsible for not only the processing but the marketing, so we deal directly with the supermarkets here in Australia; we deal directly with import agents overseas. We export to 35 countries. We are doing all of that role on behalf of the growers. They don't have to have any role in face-to-face communications with any entity that's buying their product.

Source: Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 109 (Simon Lane, Chairman Almondco).

In explaining the benefit that Almondco has had over the years, Mr Lane expressed that it is somewhat due to the strong relationship and support it has received from PIRSA. On this point, Mr Lane stated:

*We have all talked about some of the problems we've had, but I do want to put on the record that Almondco has had a very, very constructive relationship with PIRSA here in South Australia. Over the years, we have found them to be very understanding of our business and they have gone to the trouble of understanding the way we work. It has been a very effective relationship and, in a sense, that reinforces what I was saying earlier that perhaps we have been lucky with the individuals within PIRSA we've worked with. It is all about ensuring that people at senior level within government in this state understand cooperatives and understand the way they work, and build relationships with those very successful cooperatives. It is ultimately beneficial to the state.*¹³³

8.4.4 Regulatory and legislative barriers to co-operatives

Although co-operatives have proven to be effective business models in addressing some of the issues affecting primary producers within the relevant sectors, namely with regard to increasing the bargaining power of producers, the Committee received evidence outlining the view that there are some regulatory and legislative barriers to this important business structure in South Australia. On this point, Mr Egelstaff, Corporate Affairs Adviser of the Business Council of Co-operatives stated:

*What is missing at the South Australian level, and this is true typically around the country, so we are not having a pot shot at South Australia specifically, if you go to the sa.gov.au website, the entry portal for the South Australian government, I think the second section down is 'Starting a business'. You click on that and then a couple of options down is choosing your business format, choosing your type of business or structuring your business.*¹³⁴

Moreover, Mr Lane, Chairman of Almondco, stated that:

¹³³ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 115 (Simon Lane, Chairman Almondco).

¹³⁴ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 113 (Mark Egelstaff, Corporate Affairs Adviser, Business Council of Co-operatives).

*With the greatest respect to anyone in the public sector, ... I honestly don't think many people at ministerial and senior bureaucratic level know anything about cooperatives. I am a barrister myself in my professional life, and very few lawyers understand what they are. Not a lot of accountants understand what they are. Bankers certainly don't understand what they are.*¹³⁵

Professor Derek Baker, Professor of Agribusiness and Value Chains at the University of New England, made similar critiques when he informed the Committee that,

*Australian agriculture for various reasons has not really been a wholesale adopter of cooperative principles to the same extent as some European countries or Canada ... The cooperative role has not really gelled well with a certain individualistic, pioneer kind of attitude to agriculture historically. That's not to say that that will be long lasting. Australian farmers are also tremendously better educated than most farmers in the world and able to grasp and take account of opportunities. There's nothing to say that resistance to co-operatives will go on forever. In the sense of whether cooperatives implement changes so as to overcome the scale issues and implement cost changes, I think there are barriers there in the sense that cooperatives' approach to something like risk management for investments has been shown by research to be a bit different from that of an investor-owned firm, because cooperatives are basically there for their livelihoods. It's not a disembodied investment decision. There are certain other things, like can cooperatives essentially run by their owners who are farmers, can they really be expected to keep up with the changes in something like social media strategies?*¹³⁶

In analysing the evidence received with regard to this part of the report, the Committee concludes that there is a possibility some primary producers are unaware of the potential

¹³⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 113 (Simon Lane, Chairman Almondco).

¹³⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 07 June 2017, 33 (Derek Baker, Professor of Agribusiness and Value Chains, University of New England).

advantage in forming a co-operative business model. Moreover, there is evidence which suggests that some primary producers are unaware of the benefits of working collaboratively with traditional competitors as a means of addressing their possible exposure to inequitable commercial powers. As a result, the Committee makes the following recommendations:

Recommendation 3

The Committee recommends amending the ‘Starting a Business’ section of the sa.gov.au website to include relevant information on the benefits of forming co-operatives, including the benefits they have in increasing the market power of producers. In addition, the Committee recommends that the website should include information about how co-operatives can help producers operate in larger supply chains.

The Committee makes this recommendation as a result of the written and oral evidence it received from representatives from the Business Council of Co-operatives and Mutuals, and agrees that the information provided on starting a co-operative should be accessible on the government’s ‘starting a business’ website. This recommendation is also in line with a suggestion made by the Business Council of Co-operatives and Mutuals, in their supplementary submission to the Committee.¹³⁷

Recommendation 4

The Committee recommends that the relevant South Australian Government Departments conduct an audit of the relevant legislative instruments and grant programs available to primary producers to determine whether co-operatives are considered equal candidates in the application process. The Committee recommends that any barriers to co-operatives in the grants application process are removed.

The Committee makes this recommendation due to the evidence provided by the Business Council of Co-operatives and Mutuals, in their supplementary submission to the Committee.¹³⁸ Moreover, Professor Derek Baker argued that there are barriers to producers forming co-operatives and operating co-operatives, which means there are barriers to co-operatives

¹³⁷ See Business Council of Co-operatives and Mutuals, Submission No 7(b) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 6.

¹³⁸ Business Council of Co-operatives and Mutuals, Submission No 7(b) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 6.

actually being able to implement change so they can overcome scale issues.¹³⁹ This point about how co-operatives or collaborative partnerships can address the issues posed by insufficient economies of scale is discussed further at **page 96–7** of this report.

¹³⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 07 June 2017, 33 (Derek Baker, Professor of Agribusiness and Value Chains, University of New England).

9 BARRIERS TO LARGER SUPPLY CHAINS

9.1 Introduction

Throughout this Inquiry, the Committee heard that larger producers have an advantage in being able to enter into and operate in larger supply chains.¹⁴⁰ This is generally attributed to a variety of factors, including the economies of scales of these larger producers and the fact that these producers typically have a greater ability to meet the ‘four Ps of marketing’, which are factors that make-up the marketing mix of a particular product.¹⁴¹ The four Ps, is a marketing concept that was developed originally by academic E Jerome McCarthy.¹⁴² This ‘robust’ concept requires decision makers within an enterprise to understand correctly the **Product**, **Place**, **Promotion** and **Price** of their particular product and implement appropriate marketing strategies to communicate the product’s advantages to the public (the target consumer) in accordance with these four factors. Although this concept has developed over time, ‘the basic structure of the four P’s represents an essentially valid construct that can effectively be used’ today.¹⁴³ Therefore, the core component to this marketing concept continues to be the focus on the customer, which accords with the value chain thinking approach mentioned above. Accordingly, for primary producers to be successful in their respective supply chains, they need to implement the four Ps of marketing and ‘produce *products* that [are] desired by consumers at a *price* that would be attractive, using *promotion* to indicate the advantages they offe[r] over the competition, and making them available at a *place* of the customers’ choosing’ and which

¹⁴⁰ See especially Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 38 (Anne Moroney, Chief Executive Officer, Regional Development Australia Barossa).

¹⁴¹ See Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 2–5. See also Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90–1 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

¹⁴² Julian Yudelson, ‘Adapting McCarthy’s Four P’s for the Twenty-First Century’ (1999) 21(1) *Journal of Marketing Education* 60, 60.

¹⁴³ *Ibid* 66.

is convenient.¹⁴⁴ The value chain thinking model can, therefore, influence what products are made and how they are promoted to consumers.

The Committee heard that this marketing theory is affected by a variety of issues, including:

- ‘[S]mall-scale production’;¹⁴⁵
- Inability to ‘scale up’ produce to be ‘market-ready’ through either insufficient skills or an absence of understanding;¹⁴⁶
- ‘[L]imited promotional resources’;¹⁴⁷
- The high standards and quantity requirements of large retail chains;¹⁴⁸ and
- Labelling requirements.¹⁴⁹

This chapter summarises the evidence received by the Committee, which prevent some smaller producers from transitioning into larger supply chains. In doing so, this chapter highlights the view that there are various issues preventing some primary producers in South Australia from transitioning into larger ‘mainstream’ supply chains and are, therefore, unable to achieve their ‘ultimate goal’ of accessing and operating in larger supply or value chains.¹⁵⁰

In considering these barriers, this chapter in **part 9.2** considers how the commercial practices, behaviours and attitudes of large retailers can affect the four Ps of marketing, and thereby prevent smaller producers from entering larger supply chains. **Part 9.3** then considers the impact and role farmers’ and produce markets can play in addressing these barriers. This chapter also highlights current initiatives that help producers market their products and in doing so, reiterates the importance of commercialisation. The chapter also provides an analysis about

¹⁴⁴ Julian Yudelton, ‘Adapting McCarthy’s Four P’s for the Twenty-First Century’ (1999) 21(1) *Journal of Marketing Education* 60, 61.

¹⁴⁵ Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 3.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid 5.

¹⁴⁸ Ibid 3.

¹⁴⁹ Ibid 2.

¹⁵⁰ Ibid 3.

the importance of supporting local producers through purchasing their produce and accordingly examines existing initiatives that aim to extend support to South Australian primary producers.

9.2 The Commercial Practices of Large Retailers and their Effect on the Four Ps

Evidence received in this Inquiry from retailers indicated that primary producers, particularly smaller primary producers, are confronted with a range of issues which prevent them from getting their products into larger supply chains, such as national supermarket shelves. Anecdotally, these barriers relate to the following three categories:

1. Quality requirements;
2. Availability requirements; and
3. Competitive pressures.¹⁵¹

This assertion was substantiated when Mr Con Sciacca, Chief Executive Officer of Foodland Supermarkets, informed the Committee that,

[t]hese barriers have been quantified with research that Foodland undertook in 2016 to identify the drivers and barriers of purchasing local food. When asked what the barriers to buying local food are, 61 per cent of [surveyed] South Australians said that higher prices were the greatest deterrent followed by the lack of availability (54 per cent) and variable quality (19 per cent).¹⁵²

The issues associated with these three categories prevent some primary producers from supplying to supermarkets because of the effect they have on the Four Ps of marketing.¹⁵³ This section will now consider how the ‘quality’ category is closely linked with the first marketing P of **Product**.

¹⁵¹ Foodland Supermarkets Ltd, Submission No 3 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 02 February 2017, 1.

¹⁵² Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 97–8 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

¹⁵³ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90–1 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

9.2.1 Quality requirements

As the Institute's submission to the Committee put it, '[f]irst and foremost, the [producer's] product must be good. No amount of government push will entice consumers to buy a local product if it does not meet their needs'.¹⁵⁴ Associate Professor Bogomolova expanded upon this concept when she appeared before the Committee to explain what her research has found. Professor Bogomolova stated that producers need,

*to have a good product, and what we have realised [through undertaking anecdotal research] is that ... in this country, primary producers do have some support in terms of producing products. There are some innovation initiatives, there is some help and service support in [the areas of] product development and innovation.*¹⁵⁵

Such initiatives involved or currently include the following government grants, loans and funds developed and administered by Primary Industries and Regions SA:

- The South Australian Wine Industry Development Scheme;
- The Advanced Food Manufacturing Grants Program;
- The Regional Cluster Fund;
- The Agribusiness Growth;
- The Regional Development Fund; and
- The Irrigation Industry Improvement Program ('3IP').¹⁵⁶

Although funding grants can assist successful primary producers in a variety of ways, including through helping producers to develop their products, the Committee received evidence indicating that some primary producers, particularly 'small food producers and farmers wanting to value-add' are not benefiting from grant programs, including the Future Jobs Fund

¹⁵⁴ Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 2.

¹⁵⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

¹⁵⁶ Government of South Australia, Primary Industries and Regions SA, *Grants and Assistance* (29 January 2016) Government of South Australia, Primary Industries and Regions SA <http://www.pir.sa.gov.au/grants_and_assistance>.

grants,¹⁵⁷ because there is limited flexibility in the minimum grant that they can apply for.¹⁵⁸

On this point, Ms Moroney noted that:

Even with the new Future Jobs Fund grants, the minimum is \$100,000 and you have to match it ... A lot of people do not need quite that much. They say that a \$20,000 grant with minimum cash matching is where you will get the majority of your benefit for the small food producers value-adding, generating more jobs.

*They are still going to need somebody to sell this stuff, if the farmers are out there growing it, to create the jobs and to create that extra value back to their business. I know that small grants administration can be difficult. It is time-consuming to manage. We have put forward that that is something government can use their regional development frameworks for. It still has to be acquitted, it still has to be audited and the outcomes still have to be there, but the actual administration of those grants could be done by RDAs, because we have a vested interest in seeing the community grow. We don't mind doing the extra work to manage those things because we can see the benefits being delivered.*¹⁵⁹

The need for smaller funding amounts was a point echoed by Mr Michael Wohlstadt, Chair of Barossa Food, who is also a farmer specialising in on-farm processing at the southern end of the Barossa.¹⁶⁰ On this point, Mr Wohlstadt stressed ‘the importance of small amounts of funding to take some of the edge off the risk associated with engaging in food production’.¹⁶¹

Mr Wohlstadt noted that:

¹⁵⁷ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 45 (Anne Moroney, Chief Executive Officer, Regional Development Australia Barossa).

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 55 (Michael Wohlstadt, Chair, Barossa Food).

¹⁶¹ Ibid 57–8.

*Through the 3IP program, run through PIRSA, which is the water buyback program, I was personally able to access \$90,000 out of an investment of about \$300,000. That meant I could buy specialist equipment from overseas, Austria and Germany to move into the butter and cream production.*¹⁶²

In substantiating the benefit that he received from this funding program, Mr Wohlstadt stated that without the funding program:

*To get to where I have in the period I have, would have been a much slower process. I might still be at the experimental stage rather than the production. I think that those small amounts of money ... \$20,000 or \$30,000 [would be beneficial] to explore some of the process questions that are associated with food production.*¹⁶³

Despite the available supports and initiatives to help producers develop the first marketing P of **Product**, the Committee also heard that the quality specifications of supermarkets present a barrier to some primary producers. For example, Mr Sciacca stated that although Foodland prides itself in promoting South Australian producers and,

*maintains a strong local ethos, [Foodland] also prides itself on having the best quality products available. The simple truth is, for some fresh produce lines, our retailers can only acquire a superior product interstate that better reflects the quality position of Foodland ... seasonality plays a role in this sphere.*¹⁶⁴

Mr Sciacca further informed the Committee that quality is determined objectively on a three-class system.¹⁶⁵ Mr Sciacca explained this framework by providing an example about how the class system relates to an apple:

¹⁶² Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 58 (Michael Wohlstadt, Chair, Barossa Food).

¹⁶³ Ibid.

¹⁶⁴ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 98 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

¹⁶⁵ Ibid 100.

Effectively, anything that has a blemish or a discolouration on the skin that is outside the acceptable tolerance would become class 2. It's only the product that is free of all those blemishes within a tolerated level, and within the size specifications that have been deemed to be the right size, that is deemed to be class 1. We buy from what I call reputable produce suppliers ... We go out and visit those organisations to ensure their [quality] standards are consistent with our philosophy of what we take to market, so we often visit third-party providers to ensure that their processes meet our requirements of quality. It is about what the consumer wants. Our view is that you could buy an apple that you can sell far cheaper than a class 1 apple and you will attract a certain clientele for that, but long-term sustainability is how long that apple lasts in your fridge at home and your satisfaction five days beyond the purchase point.¹⁶⁶

Mr Sciacca further clarified that this class system purely considers the appearance of the produce and not its nutritional value.¹⁶⁷

As a means of circumventing these high quality standards in a manner which supports primary producers, Woolworths implemented a program in which they stock produce in lower classes and sell them for reduced prices as part of a particular campaign. This campaign is 'The Odd Bunch' line, which relates to fresh produce that is still nutritionally sound, however, the produce looks 'odd'.¹⁶⁸ In teaming up with celebrity chef Jamie Oliver, the Odd Bunch line has been advertised as produce that is,

[j]ust as beautiful on the inside, The Odd Bunch's real difference is their incredible value. And every time you save money [by purchasing

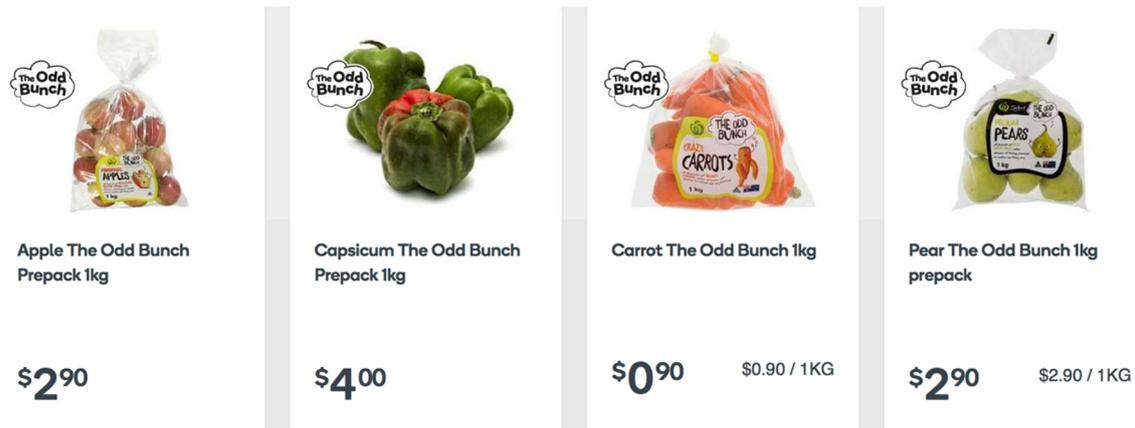
¹⁶⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 100–01 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

¹⁶⁷ Ibid 101.

¹⁶⁸ Woolworths, *Save a Bunch: The Odd Bunch* Woolworths <<https://www.woolworths.com.au/Shop/Discover/our-brands/the-odd-bunch>>.

*the Odd Bunch produce], you'll help our farmers sell more too. There's nothing odd about that.*¹⁶⁹

Figure 4: At the time of writing this report, the current Odd Bunch lines included:



Source: Woolworths, *Save a Bunch: The Odd Bunch* Woolworths
 <<https://www.woolworths.com.au/Shop/Discover/our-brands/the-odd-bunch>>.

In explaining the Odd Bunch line, Associate Professor Bogomolova stated that:

*I think that now [Woolworths] are stocking up to 10 lines of different products in [the Odd Bunch line]. So, the free market works in this particular situation. I was surprised, but they sell [these lines] only about 20 per cent cheaper—I would have expected more, to be honest—but even at 20 per cent they are actually growing and expanding their lines. Consumers have responded to that very positively.*¹⁷⁰

Associate Professor Bogomolova further informed the Committee that campaigns such as Woolworth's Odd Bunch has been implemented overseas in 'a couple of French retail chains (such as Carrefour)' and these initiatives have seen 'great success as well'.¹⁷¹ This witness went on to note the marketing theory behind these initiatives in the following terms:

This is just a matter of repositioning the product. I think the problem [with high quality standards] ended up with retailers historically

¹⁶⁹ Woolworths, *Save a Bunch: The Odd Bunch* Woolworths
 <<https://www.woolworths.com.au/Shop/Discover/our-brands/the-odd-bunch>>.

¹⁷⁰ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 93 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

¹⁷¹ Ibid 93–4.

having too much power and there being too much competition between the big ones, where they had to escalate the entry barrier ... A 100-point aesthetic requirement has nothing to do ... with the nutrition, quality or consumer characteristics—it's just the look of it. I think that was a product of that intense competition.

I think the free market is about marketing those products and giving them a fair price. Consumers would respond very well because they know. They understand—you don't need a huge education campaign about it—because everyone can see that it's a good fruit product. ... It is about free economy. You reduce the pricing for slightly misshapen produce, but it's fresh and still ready to go. Consumers would respond to that.¹⁷²

In addition to campaigns such as the Odd Bunch line, an innovative South Australian primary producer has sought to address the issue posed by these high quality standards by value-adding to otherwise rejected produce. Ms Joy White, a South Australian producer from Mannum,

experiments with 'ugly' food that no-one wants, [by] turning it into food powder [by] ... dehydrat[ing] a variety of produce for hours, before powdering and packaging the end result and selling it online and at markets. From pickles, peaches, raspberries and even Brussels sprouts, the powder is seeing a growing demand in barbeque rubs, or [as] a substitute in smoothies or desserts.¹⁷³

Furthermore, a recent documentary which aired on the ABC entitled War on Waste, went some of the way in educating the general public about how supermarket's quality specifications results in the wastage of some fresh produce. In this three-part documentary series, Craig

¹⁷² Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 93–4 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

¹⁷³ Tom Nancarrow, 'Experimental SA Producer Turning Ugly Food into Powdered Product', *ABC Rural* (online), 8 June 2017 <<http://www.abc.net.au/news/rural/2017-05-10/experimental-sa-producer-turning-produce-into-powder/8509648>>.

Reucassel highlighted the view that the cosmetic requirements of supermarkets are leading to good bananas being thrown away.¹⁷⁴ This documentary series noted that,

*[a]ccording to Coles and Woolworths, Australians won't buy bananas that are 'too bent'. Or too straight. Too long, short, fat or skinny ... retailers blame customers for being fussy. Yet their customers are appalled once they learn the truth. Rejecting perfectly edible bananas, they say, is ridiculous. Not to mention struggling farmers, whose margins are already wafer-thin. Or the fact that food waste in landfill creates greenhouse gases 25 times more potent than car fumes.*¹⁷⁵

The image below in **figure 5** was taken from the documentary and shows presenter Craig Reucassel and a banana producer inspecting the number of bananas that are discarded after just one day of harvest because they fail to meet the specifications for retail supply.

Figure 5: Image of wasted bananas shown in documentary, War on Waste



Source: Charis Chang, 'War on Waste: Craig Reucassel Reveals the Shocking Truth about our Bananas', *news.com.au* (online), 16 May 2017 <<http://www.news.com.au/finance/business/retail/war-on-waste-craig-reucassel-reveals-the-shocking-truth-about-our-bananas/news-story/ddd59b65712f4649fc74b3f803520776>>.

¹⁷⁴ Michael Lallo, 'War on Waste: Craig Reucassel Confronts Supermarkets over "Ugly" Bananas', *The Sydney Morning Herald* (online), 14 May 2017 <<http://www.smh.com.au/entertainment/tv-and-radio/war-on-waste-craig-reucassel-confronts-supermarkets-over-ugly-bananas-20170510-gw16i1.html>>.

¹⁷⁵ Ibid.

On this topic of banana wastage, Mr Angelo Demasi, Chief Executive Officer of South Australian Produce Markets Ltd, noted that:

We have been trying to work with the Royal Adelaide Show to actually get those bananas and provide them in the Yellow Brick Road bag. There is resistance there from even the industry because they say they do not want to portray bananas as being 'that odd banana' because consumers have been educated by supermarkets to have a nice banana, ... it is certainly a marketing role that the larger supermarkets have played in terms of making it shiny, and they have gone from waxed to un-waxed, and it's basically a marketing ploy. I think it is supply and demand. If a retailer is seeking product that the consumer is demanding, then that's what they are going to sell. That's probably one of the challenges we are currently facing, but we are across that, especially after the ABC episode about all the waste, especially in the banana industry—that was an atrocity.¹⁷⁶

Although these initiatives ultimately seek to educate the public about the misconceptions about a link between the appearance of fresh produce and its nutritional value, and which promote and aim to support primary producers, Mr Sciacca highlighted the view that campaigns such as the Odd Bunch line, stand to change the perception that consumers have on the retailer.¹⁷⁷

On this point, Mr Sciacca stated that,

the reality is that every attempt I have experienced in my many years of retailing to move to providing both a class 1 and class 2 product only damage[s] your overall business because the perception of quality [is] lost ... If [consumers] buy something that they might be dissatisfied with, whether consciously or unconsciously, because it doesn't look as appealing as it did, that actually impacts your brand.¹⁷⁸

¹⁷⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 02 August 2017, 125–26 (Angelo Demasi, Chief Executive Officer, South Australian Produce Market Ltd).

¹⁷⁷ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 101 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

¹⁷⁸ Ibid 101.

As a result, Mr Sciacca's evidence indicates that Foodland will not stock produce that is below a class 1 classification.

In analysing this evidence, the Committee concludes that some primary producers need support in ensuring that they are producing products that meet the quality requirements of larger supply chains. As a result, the Committee makes the following recommendations:

Recommendation 5

The Committee recommends that Primary Industries and Regions SA and the Minister for Agriculture, Food and Fisheries consider making more frequent funding grants at smaller values available to primary producers.

The Committee makes this recommendation to ensure that South Australia's primary producers can benefit from the opportunity that funding grants provide in that they can help producers develop their product lines. These funding initiatives means that primary producers have a greater chance of meeting the marketing P of **Product**.

Recommendation 6

The Committee recommends that Primary Industries and Regions SA and associated agencies establish formal partnerships with the State's Agriculture Bureaus and relevant Commonwealth Departments, agencies and programs to better facilitate the sharing of information with regard to relevant grant programs and resources available to primary producers. This includes the Commonwealth supported Farming Together project.

The Committee makes this particular recommendation because it has received evidence during this Inquiry which suggests that some primary producers are unaware of relevant funding grants or resources and services offered by Government departments and agencies.

9.2.2 Availability requirements

Another barrier to primary producers entering large retail supply chains can be the retailer's availability requirements. This evidently affects a producer's ability to meeting the marketing Ps of **Place** and **Production**. In explaining this barrier, Mr Sciacca informed the Committee that seasonality impacts upon these marketing Ps because 'there are some lines which are not grown or produced at certain times in South Australia. For such lines, these products need to

be sourced from interstate producers.¹⁷⁹ Sarah Keith notes that this seasonality topic is an issue that arises because retailers are supplying fresh produce from a ‘demand-oriented’ rather than a ‘produce-oriented’ position.¹⁸⁰ This means that supermarkets are choosing to stock produce year-round instead of while it is in season.¹⁸¹ What is interesting to note is that some commentators have argued that the distribution structures of larger retailers can impact upon the supermarket’s quality perception.¹⁸² On this point, Keith notes that Wardle and Baranovic argue that,

*longer travel times and long-storage systems required by such distribution diminish the available range of fresh produce in these supermarkets, and furthermore mean that the food may be ‘nutritionally compromised by the time it reaches the consumer’.*¹⁸³

The distribution practices of larger retailers are clearly a barrier that primary producers need to overcome if they wish to operate in larger supply chains. In explaining how the distribution channels of larger retailers are a barrier, Mr Sciacca informed the Committee that,

*Foodland finds that some local South Australian producers have quality stock but cannot service our entire network of 118 stores. In this instance, our stores will stock some local produce coupled with produce received from interstate.*¹⁸⁴

Furthermore, Mr Sciacca stated that:

The majority of customers are now buy-as-[they]-need, and they have

¹⁷⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 98 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets). See also Foodland Supermarkets Ltd, Submission No 3 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 02 February 2017, 2.

¹⁸⁰ Keith, above n 16, 49.

¹⁸¹ Ibid.

¹⁸² Ibid citing Jon Wardle and Michael Baranovic, ‘Is Lack of Retail Competition in the Grocery Sector a Public Health Issue?’ (2009) 33(5) *Australia and New Zealand Journal of Public Health* 477, 479.

¹⁸³ Ibid 49–50.

¹⁸⁴ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 98 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets). See also Foodland Supermarkets Ltd, Submission No 3 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 02 February 2017, 2.

*a repertoire of supermarket brands they shop at. Effectively, the majority of people are making their needs decisions somewhere in the early afternoon, ... they determine what their requirements are going to be then location or distance to location is a critical component. Secondly, how best that brand meets the needs and wants of what they are seeking for that particular shopping trip. What we used to call the loyal customer, the customer who shopped to replenish the pantry, is progressively diminishing. We have, effectively, become the pantry for the consumer today. People will make their decisions on the day and shop for those needs on the day and they will look at a repertoire of brands to do that.*¹⁸⁵

Associate Professor Bogomolova echoed similar sentiments in explaining the theory behind this barrier:

*The average time we shop is about 2.5 times per week. Back in the day, it used to be one big shop a week. You would plan and you would have a list. Now, we call the supermarket a communal pantry. It's so convenient because it's open all the time. You just pop in and get one item—the most common number of items purchased is one. People go to a huge supermarket and grab one item and walk out.*¹⁸⁶

In analysing the above evidence provided by Mr Sciacca and Associate Professor Bogomolova, it could be argued that larger retailers are wanting consistency in terms of what is stocked in each of their individual supermarkets to ensure that their loyal customers can find what they are looking for. As a result, primary producers will have to service a retailer's entire network of stores. To address this issue of availability requirements and the beneficial impact it can have on the marketing Ps of **Place** and **Production**, stakeholders reiterated to the Committee the benefits that co-operative or collaborative practices can have. This is because farmers who produce the same products can work together to pull their products or share distribution costs,

¹⁸⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 103 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

¹⁸⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 94 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

which in turn, means that these producers can potentially supply to larger retailers (see **part 8.4** for further information on the advantages of co-operatives and cooperative relationships).¹⁸⁷ Given these advantages, the Committee reiterates its third and fourth recommendations.

Recommendation 3

The Committee recommends amending the ‘Starting a Business’ section of the sa.gov.au website to include relevant information on the benefits of forming co-operatives, including the benefits they have in increasing the market power of producers. In addition, the Committee recommends that the website should include information about how co-operatives can help producers operate in larger supply chains.

The Committee makes this recommendation as a result of the written and oral evidence it received from representatives from the Business Council of Co-operatives and Mutuals, and agrees that the information provided on starting a co-operative should be accessible on the government’s ‘starting a business’ website. This recommendation complements the suggestion made by the Business Council of Co-operatives and Mutuals, in their supplementary submission to the Committee.¹⁸⁸

Recommendation 4

The Committee recommends that the relevant South Australian Government Departments conduct an audit of the relevant legislative instruments and grant programs available to primary producers to determine whether co-operatives are considered equal candidates in the application process. The Committee recommends that any barriers to co-operatives in the grants application process be removed.

The Committee made this recommendation due to the evidence provided by the Business Council of Co-operatives and Mutuals, in their supplementary submission to the Committee.¹⁸⁹ Moreover, Professor Derek Baker argued that there are barriers to producers forming co-operatives and operating co-operatives, which means there are barriers to co-operatives

¹⁸⁷ See eg, Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 91 (Associate Professor Svetlana, Ehrenberg-Bass Institute for Marketing Science at the University of South Australia).

¹⁸⁸ See Business Council of Co-operatives and Mutuals, Submission No 7(b) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 6.

¹⁸⁹ Ibid.

actually being able to implement change so they can overcome scale issues.¹⁹⁰ This point about how co-operatives or collaborative partnerships can address the issues posed by insufficient economies of scale is discussed further at **pages 96–7** of this report.

9.2.3 Competitive pressures

Another category that impacts upon the ability of some primary producers to transition into larger supply chains relates to the competitive pressures of larger retailers. On this point, Mr Sciacca argued that ‘when examining the current landscape of the competitive market, it is clear that it is a race to the bottom.’¹⁹¹ This argument further substantiates the earlier point that was made in **part 8.4** (see **page 39**) of the report, in that the practices of larger retailers replicates **a supply chain model** as opposed to a **value chain thinking approach**. Mr Sciacca further explained upon how this focus on the lowest possible price is a barrier to some primary producers:

When it comes to price, competing with both major national and international chains, Foodland faces marketplace pressures to stay competitive on price. With fresh food a bastion of the modern supermarket, Foodland is in a constant battle to offer the customers competitive prices yet still follow a sustainable price strategy. Where the national and international supermarkets are large enough to purchase directly from the producer, amortising costs across the network, at Foodland we do not purchase directly from the producer. Rather, we purchase from the provedores supporting the Adelaide Produce Markets, which in turn adds costs to the cost of goods that naturally are passed down to the end consumer. Calling ourselves the Mighty South Australians is more than just a marketing tag line. It is our ethos. It is what our 35 independent retailers are passionate about.

¹⁹⁰ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 07 June 2017, 33 (Derek Baker, Professor of Agribusiness and Value Chains, University of New England).

¹⁹¹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 98 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

*They live and work in the South Australian community, so it is in their best interests to support and grow the South Australian market.*¹⁹²

9.3 The Role of Farmers' and Produce Markets in Addressing these Barriers

The Committee heard evidence that farmers' and wholesale produce markets are important mechanisms enabling producers to transition into larger supply chains. Essentially, their importance pertains to their ability to assist primary producers to meet and address the marketing P of **Place**.¹⁹³ This is because these markets give producers the chance to distribute the product or produce more effectively. With specific reference to the benefits of farmers' markets, the Committee heard that they are a mechanism which allows primary producers to meet all four of the marketing Ps. This is because farmers' markets can help primary producers move into larger supply chains because they help producers fine-tune their **product** range, receive consumer feedback, establish **pricing**, develop their brand (**Promotion**) and facilitate a shop location (**Place**). Ms Esther Barnett, Manager of the Barossa Farmers Market, substantiated these points in her response to the Committee's questions on notice by stating that:

The Barossa Farmers Market has been a shop for many primary producers who don't have the ready capital to open their own shop. It also gives the producers the ability to be able to focus on what they do do [sic], without putting pressure on to make rent, pay outgoings which are associated with business ... they can focus on growing and looking after their product and grow their brand organically without the additional stress. This benefits the community as the Barossa Farmers Market is the first point for many who are wanting to see if there is a market for their product, and who want to bring some extra income into their families. The Barossa Farmers Market brings opportunity for

¹⁹² Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 98 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

¹⁹³ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

*those who have a dream and desire to create, grow and sell their product.*¹⁹⁴

Therefore, both wholesale and farmers' markets provide important pathways that can help producers better develop and implement methods of production and marketing strategies that assist the producer engage in scaling up initiatives, which in turn, provides an opportunity for a producer to reach and operate in larger supply chains, such as State or national distribution. The importance of these markets as avenues for producers to enter larger supply chains is 'hierarchical' in nature and accordingly 'depend[ant] on the size of a producer.'¹⁹⁵ In explaining this concept to the Committee, Associate Professor Bogomolova expressed that the smaller the producer is, the more important it is for that producer to 'work with the local farmers' market'.¹⁹⁶ The Institute's submission indicated that 'small cottage-industry producer[s] [who want to become state or national-scale producers] typically g[o] through [five] stages of retail presence (each being an essential part of the development and path to retail)'.¹⁹⁷ Of particular relevance at this stage of the report is the second phase of the path to retail in that it relates to the role and importance of farmers' markets. This stage has been defined as 'a "breeding ground" and essential retail outlet for most producers starting out. [This is because] [m]arkets help producers to fine-tune their product range, get direct customer feedback, establish pricing and develop the brand'.¹⁹⁸ After producers have been able to learn from this farmers' market stage, Associate Professor Bogomolova explained to the Committee that the natural progression is for producers to attempt to distribute to local IGAs, Foodlands and other independent retailers.¹⁹⁹ Although these retailers still have inherent barriers that relate

¹⁹⁴ Esther Barnett, Manager, Barossa Farmers Market, response to questions on notice, 07 July 2017.

¹⁹⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

¹⁹⁶ Ibid.

¹⁹⁷ Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 3.

¹⁹⁸ Ibid.

¹⁹⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

to quality, availability and competitive pressures (see the discussion in **part 9.2**), independent retailers ‘are smaller, so they can actually help [producers] understand [essential elements to larger-scale production, including] ... for example, [what] a shelf-stable packaging [is]. [This] is a learning curve for the industry, but it is essential.’²⁰⁰ This third stage ‘can [also] lead to knowledge about ... up-scaling production and the importance of pricing and promotion campaigns. It is at this stage where local producers may start working with wholesalers and direct contractors.’²⁰¹ After producers have successfully transitioned into this independent market place, which has a key focus on promoting local primary producers, the natural progression is for producers to seek State or national distribution. Associate Professor Bogomolova describes this transition from independent supermarkets to national ones as a ‘huge jump’.²⁰² This is because,

*State or national distribution is commonly achieved through contracts with large retail chains. This is a very appealing prospect as it can lead to long-term, secure income for producers. However, considerable anecdotal evidence shows that contracts with large retailers can disadvantage smaller producers [see **chapter 8**]. As a small entity, often with little experience in dealing with large companies, they can be taken advantage of—for example suffering significant financial loss due to sudden changes to terms or cancellations of contracts.*²⁰³

Put another way, these larger distribution channels mean that the issues surrounding quality, availability and competitive pressures (discussed at **part 9.2**) are exasperated because larger retailers find it even more ‘difficult to source stock from a large number of small producers

²⁰⁰ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

²⁰¹ Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 3.

²⁰² Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

²⁰³ Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 3.

and will opt to stock from fewer large ones instead. This preference can lead to interstate or overseas suppliers being selected over South Australian producers.²⁰⁴ The Institute's submission reiterated the fact that:

*Consistent supply can be a big challenge for small-scale producers (for example, due to factors out of their control, such as seasonality or weather). This can present a problem with retailers who require a set amount of stock to be delivered every week.*²⁰⁵

In substantiating the importance of wholesale produce markets, Con Sciacca noted that:

*the majority of [Foodland's] supply [of fresh produce] comes from the Adelaide fresh food markets, which is quite different when you contrast that with [the buying practices of] our competitors ... Coles, Woolworths and Aldi and, to a lesser extent, Costco. They predominantly take costs out of the value chain by bypassing those sorts of market environments and have direct contract relationships with growers, and that takes costs out of the market for them [but produce markets] ... enables ... smaller producers to ... come to market and get a route to market. If that didn't exist, I would suggest that many of the smaller producers would not be commercially viable to come to market.*²⁰⁶

In addition, Mr Demasi noted that,

[t]raditionally, the wholesale market is just that: Growers can produce and growers can send the product at all different grades and all their products can be sold. Some markets have a retail aspect to them, so they are open to the public. We are currently working on that aspect, as well in Fresh Food promotion precinct, but the important factor to

²⁰⁴ Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 3.

²⁰⁵ Ibid.

²⁰⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 98 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

*understand is one of the reasons why wholesale markets exist is so that the growing sector can clear the vast and fluctuating production volumes they grow. What I would say is that industry and government work closely with wholesale markets to ensure that continues to occur, because if wholesale markets didn't exist, then you are going to have more and more of those sorts of issues.*²⁰⁷

Although produce markets and farmers' markets are beneficial tools that can help producers enter larger supply chains, their retailing models are not perfect and are instead subject to their own issues and shortcomings. On this point, Associate Professor Bogomolova stated that:

*[t]he biggest barrier [to the efficiency of these pathways to market relates to] ... the ease of getting there. As consumers, it is getting easier and easier for us [to undertake our grocery shopping and] ... Farmers' markets are not convenient. They ... [have] restricted hours of operation. Often, if it's Saturday or Sunday, it would clash with either sporting, social activities or church activities, so it's not ideal in both cases, and it's only a short amount of time. That's something that is definitely problematic ... It is about understanding because when we think of a farmers' market traditionally we say, 'It's on the weekend and I can never get there,' but it would be better if an organiser of the farmers' market actually said, 'Alright, when is the most convenient time for consumers?' Similar with retail places, they should ask, 'What is the most convenient place to get to?' I know in Parafield there is a farmers' market right next to Bunnings. So, if you are going to Bunnings you might as well go to the market.*²⁰⁸

In considering these issues, Associate Professor Bogomolova suggested a need for farmers' markets to be run like larger retailers. On this point, this witness stated that:

²⁰⁷ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 02 August 2017, 125 (Angelo Demasi, Chief Executive Officer, South Australian Produce Market Ltd).

²⁰⁸ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

The most important factors are still prime location and prime time, but the next one is trust. It has been raised that some of the produce in the farmers' market hasn't been genuine in terms of it actually being from a farm, for example, almost like a reject from somewhere else, like from the Pooraka business to business market where it was actually thrown away and then people would collect and sell it. Similarly, people who are selling there (you said the same) are actually not farmers ... They are actually resellers. Some form of monitoring and probably checking of that would actually help to build consumer trust—I have some knowledge of the Barossa farmers market and they have very strict guidelines. ... the Barossa farmers market in Angaston, ... are trying to say, 'Here is the Barossa—Gawler is not the Barossa.' They are trying to be too strict and I think that is actually to their detriment.²⁰⁹

As a means of addressing some of the inherent obstacles posed by traditional farmers' markets, Mr John Koutouzis, an innovative South Australian primary producer has sought to 'introduce South Australian products to the [Adelaide CBD] ... to expose all regions of South Australia'.²¹⁰ This is a market stall located outside the Myer Centre in Rundle Mall and is open on Monday, Tuesday, Wednesday and Saturday from 8am to 6pm (**see overleaf for an image of this stall and Mr Koutouzis**).²¹¹ Mr Koutouzis continues to live in Berri, but 'commutes the two and a half hour drive a few times a week ... [in an] effort to put the spotlight on smaller producers.'²¹²

The Farmer's Secret Garden stall focuses on promoting smaller producers as a means of assisting these individuals to operate in larger supply chains and thus circumvent some of the inherent barriers that exist in supplying to larger retailers. In referring to the stall's stockers, Mr Koutouzis noted that:

²⁰⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 95 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

²¹⁰ Johnny von Einem, 'Introducing the Farmer's Secret Garden' *Indaily CityMag* (online), 23 March 2017 <<https://citymag.indaily.com.au/commerce/business-profile/introducing-farmers-secret-garden/>>.

²¹¹ Ibid.

²¹² Ibid.

*We've got Riverland, we've got Adelaide Hills, we have Virginia, Flinders Ranges ... They're all small farmers as well, so we don't do those big farmers, so it's more like the small guys, helping them out, helping us out.*²¹³

Figure 6: Image of the Farmer's Secret Garden stall and its owner



Photographer: Julian Cebo **Source:** Johnny von Einem, 'Introducing the Farmer's Secret Garden' *Indaily CityMag* (online), 23 March 2017 <<https://citymag.indaily.com.au/commerce/business-profile/introducing-farmers-secret-garden/>>.

Although the Committee supports the Farmer's Secret Garden stall as a positive initiative, and echoes the importance that farmers' markets have in helping producers transition into larger supply chains, the Committee acknowledges that consumers will continue to shop based on convenience. On this point, Associate Professor Bogomolova stated that:

While it's important that we support farmers' markets ... it is important to understand that supermarkets in this country are the primary place where people provision their food, so if it's not there, consumers are

²¹³ Johnny von Einem, 'Introducing the Farmer's Secret Garden' *Indaily CityMag* (online), 23 March 2017 <<https://citymag.indaily.com.au/commerce/business-profile/introducing-farmers-secret-garden/>> quoting Mr John Koutouzis.

*less likely to go out of their way trying to find it somewhere else.*²¹⁴

The Committee also notes that some farmers' markets in other states have experimented with their opening hours as a means of addressing their lack of convenience. On this point, Ms Richards, Research Associate to the Institute noted that:

*Some farmers' markets [interstate] have been trialling ... open[ing] on a Wednesday afternoon to get the people who might not be at work, or who can pop in after work. So, it's open until five or six so then there are more people who are able to go during the week rather than on the weekends when people are busy.*²¹⁵

In any event, Associate Professor Bogomolova indicated that the operators of farmers' markets can make strategic decisions to increase their chances of success, which, in turn, could mean that the primary producers that supply to these markets could be more profitable or competitive. Although a recommendation on this point is ultimately outside the scope and functions of this Committee, the Committee notes the evidence provided by Associate Professor Bogomolova that '[e]ach [farmers' market] makes their own decision [about trading hours], but essentially they need to start thinking like retailers. What is the prime location? What is the prime time?'²¹⁶

9.4 Commercialisation of Products and the Benefits of Supporting Local Producers

The Committee also heard that the commercialisation of local products and the promotion of the benefits of supporting local producers are important components in producers being able to move into larger supply chains. This is because it simply relates to the economic principles of supply and demand, which is linked to the Four Ps of marketing. On this point, Professor Mehdi Doroudi, Deputy Chief Executive of Primary Industries and Regions SA ('PIRSA'), stated that:

²¹⁴ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 90 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

²¹⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 94 (Nichole Richards, Research Associate, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

²¹⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 95 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

My understanding overall is that wherever demand is, supply obviously is going to go. A lot of our dairy products have been utilised and consumed locally—traditionally and historically—while a lot of other products that we have had, again traditionally and historically, have never been heavily locally utilised. I give the examples of rock lobster and southern bluefin tuna. From the first day, they were mainly export products.²¹⁷

With regard to the concept of appropriate commercialisation of South Australian produce, Professor Doroudi, stressed the importance of South Australian’s producers marketing their goods appropriately if they want to be players on an international level because of the increased global competition.²¹⁸ In referring to this challenge, Professor Doroudi, explained how PIRSA is currently ‘working on identifying and highlighting the brand of South Australia and South Australian products under a number of different initiatives’,²¹⁹ to ensure that there is international recognition for the State’s primary producers and their products. Professor Doroudi stated that these initiatives include,

the Great Wine Capitals network, ... the premium food and wine credential programs ... the Agribusiness Growth Program ... [Moreover PIRSA] ha[s] [also] gone into contractual arrangements with Food SA to help and support, to identify again small food manufacturers [that] may need to have a better business plan, they may need to have a better marketing plan—and what would be the next step for them in terms of the business ... [PIRSA] is also working closely with some of these peak bodies, like Food SA, the South Australian Wine Industry Association, AUSVEG and the Horticultural Coalition, all of those are helping the department and us to really shape our policies for the future ... We are working with a number of dairy companies right now. I have recently been working with Blue Lake Dairy just to provide

²¹⁷ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 8 (Mehdi Doroudi, Professor, Deputy Chief Executive of Primary Industries and Regions SA).

²¹⁸ Ibid 7.

²¹⁹ Ibid 4.

*support for what they need to do to establish markets overseas. Quite a few of them are looking into Chinese markets, and the Australian government is going to the authorities in China to be able to get the proper approvals for their products to be exported there. The more of that we do, we hope we would get more share of exports.*²²⁰

The Committee was also informed about the Barossa Trust Mark. In explaining this initiative, Ms Jan Angas, noted that,

*the Trust Mark is the only mark in the world that actually has five pillars measuring to it, and the one pillar that is not anywhere else in the world is community. No-one can get a Trust Mark unless they have some investment into their supporting the community. So that's a point of difference that's of high value ... The Trust Mark is working hard in its marketing, and I think there has been perhaps a 'try to be everything to start' mistake being made, and I think now it has identified going forward in a much more solid manner for the Trust Mark to really represent endorsement of what you do, rather than a gong for what you have done; and endorsement for what you do allows it to grow much more rapidly. It means people can have multiple Trust Marks within their portfolio of produce, rather than just their key Grange or their key Hill of Grace, or something. They are broadening that to give it the better capacity, and I think there is certainly some consideration being given to a Trust Mark stand-alone store in the Barossa with a company at the moment, and that would be kind of everything in one spot for you to then filter out to everybody. There is a problem with that at the moment, and that is the liquor licensing laws—but that's on our list.*²²¹

In also referring to this Barossa branding project, Mr Wohlstadt stated that:

²²⁰ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 4 and 8 (Mehdi Doroudi, Professor, Deputy Chief Executive of Primary Industries and Regions SA).

²²¹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 09 August 2017, 137 (Jan Angas, Chair, Barossa Collaboration Project).

*The Barossa Trust Mark is a response to the fact that many people are seeking to trade off the Barossa brand without a Barossa connection. Is there a legislative framework for that? There is the ACCC question or an industry response question? Ours is an industry response question. It is a collaboration of tourism, food, wine and grape. There is a separate adjudication panel, which is completely independent, chaired at the moment by Paul Henry.*²²²

Mr Angelo Demasi also talked about how programs like Pick A Local, Pick SA and I Choose SA are also trying to support local growers. Although these initiatives are positive developments, Mr Demasi warned the Committee that,

*we would need to ensure that we don't dilute what 'I Choose SA' is about, if we are trying to pick local winners. Supermarkets have large budgets and they can promote their own products. I see Coles have now also gone promoting the 'I Choose SA', so it becomes a marketing ploy for everyone. That is why we have got 'Pick A Local, Pick SA!' It is only for independents like the Chapley's, and so forth, so we can have a difference in terms of picking local. We will work with and encourage 'I Choose SA' to work with us, too, because that is certainly one of the things we would like to continue, to encourage consumers to shop at their local independent stores purchasing local produce.*²²³

Recommendation 7

The Committee recommends that Primary Industries and Regions SA expand their current working relationships with bodies such as Food SA to collaborate with Brand SA in assisting with the promotion of campaigns such as 'I Choose SA'.

²²² Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 59 (Michael Wohlstadt, Chair, Barossa Food).

²²³ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 02 August 2017, 131 (Angelo Demasi, Chief Executive Officer, South Australian Produce Market Ltd).

9.5 Other Barriers

In addition to the quality, availability and commercial pressure barriers preventing some primary producers from accessing larger supply chains, the Committee heard evidence that producers are effected by a number of other issues. These issues include:

- Planning restrictions;²²⁴
- Electricity prices;²²⁵
- Mobile phone connectivity;²²⁶
- Foreign investment;²²⁷
- Water quality and use;²²⁸
- Soil health;²²⁹
- Transport issues.²³⁰

The Committee acknowledges the information provided by witnesses on these topics; however, it specifically highlights the compelling evidence received from stakeholders that planning rules and laws are a barrier to some primary producers entering larger supply chains. These planning regulations are a significant issue for some of our primary producers because these regulations and restrictions are preventing some producers from engaging in value adding activities.²³¹ The resulting recommendation on **page 87** of the report addresses this issue in

²²⁴ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 52–3 (Lisa Werner, General Manager, Jersey Fresh Milk). See also Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 56–7 (Michael Wohlstadt, Chair, Barossa Food).

²²⁵ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 69 (Jamie Nietschke, Nietschke Moppa Estate).

²²⁶ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 41 (Anne Moroney, Chief Executive Officer, Regional Development Australia Barossa).

²²⁷ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 63 (Adrian Hoffmann, Director of Dimchurch Vineyards).

²²⁸ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 47–8 (Anne Moroney, Chief Executive Officer, Regional Development Australia Barossa).

²²⁹ Ibid 48.

²³⁰ Ibid 46.

²³¹ See especially Ms Angus' evidence on **page 50** of this report.

light of the evidence the Committee received during stage two of the Inquiry.

In explaining the planning issues some stakeholders are encountering due to planning restrictions, Mr Wohlstadt, Chair of Barossa Food, stated that:

*The same sorts of limitations that existed on wineries in the Barossa Valley exist for food production. Food production is, for planning terms, considered to be an industrial process and in most rural locations you will find industries to be in the category of noncomplying and extremely difficult, costly and time consuming to get a consent.*²³²

Mr Wohlstadt further explained the significance that planning issues have by noting that they ‘are a limitation to small niche artisans and producers.’²³³ In offering a suggestion for improvement, Mr Wohlstadt explained that the compliance framework and relevant government agencies ‘should not only be about compliance but be about persistence as well, and the small capital grants can be very effective.’²³⁴ In addition, Mr Wohlstadt also advocated for a relaxation of the rules governing how animals can be slaughtered on properties.²³⁵

Ms Lisa Werner, General Manager of Jersey Fresh Milk, further explained that planning restrictions are preventing Jersey Fresh Milk from expanding, which ultimately impacts upon its ability to implement value adding procedures and initiatives. On this point, Ms Werner stated,

we are a family-run business wholly and solely—have a great emotional connection to our little town of Greenock. As I mentioned, our factory is quite small. We are on the cusp of needing to expand; we are rapidly growing out of our factory. We would like to be building a larger facility. We have the land to do it, but everything we want to do is noncompliant and is causing us a great deal of fight. I would love to keep our business in Greenock. I have great plans for something which

²³² Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 57 (Michael Wohlstadt, Chair, Barossa Food).

²³³ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 58 (Michael Wohlstadt, Chair, Barossa Food).

²³⁴ Ibid.

²³⁵ Ibid 57.

*will not only increase employment in our area but also work with other businesses and give other dairy businesses a space to actually process safely, cleanly and not in their backyard. I also feel that we have a tourism aspect. I would love to do a milk bar and a milking machine museum and hone in on the touristy angle. Greenock is becoming a tourist town very quickly ... [Greenock is] becoming quite a vibrant little community. I know the tourists will come and I know that we could have this awesome, on-farm production facility, which is also a tourism venture very much like what Alexandrina Cheese do on their own property. However, every application that we would put in would be noncompliant and would have to go to Planning.*²³⁶

Ms Warner further noted that:

*We, in the Barossa, have a really unique dynamic. We have the food, we have the wine, we have some really unique tourism, and I would love for our business and other businesses like it to add to that. To be quite honest, if we can't do what we want to do at Greenock, we will consider going elsewhere with it ... We could do what we do in other regions of the state, and do it quite successfully, without all of the constraints against us. It is something that I think needs to be considered. Yes, we don't want to burden the Barossa with houses. We don't want that awesome landscape to change and we don't want big industrial estates here, there and everywhere. But what we are trying to do is quite sympathetic to the landscape. It is going to add to the economy, it is going to add to employment. I feel it would be a massive bonus, not just for Greenock, but for the entire Barossa and Light region.*²³⁷

Moreover, Mr Charles Teusner from C&K Teusner Nominees Pty Ltd, echoed similar concerns with regard to planning restrictions when he stated:

²³⁶ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 52 (Lisa Werner, General Manager, Jersey Fresh Milk).

²³⁷ Ibid 52–3.

We are not allowed to do any form of intensive agriculture. Like most small farming areas ... because where we are we are landlocked—small farming areas traditionally get involved in value-adding. You will have intensive feedlots like either sheep or cattle, like lambs or cattle, or they have chicken sheds or pig sheds, things like that. Since the mid-1980s, we have been prevented from doing that. That started when there was a state land freeze by the then Bannon government which put a freeze on areas like Rosedale, Concordia, McLaren Vale and I think Mount Barker, Two Wells and Roseworthy ... All of these restrictions came in because they were trying to look for a future site for a city. That all fell through in the end but all of those restrictions were then taken over by local government. Every one of those restrictions saying that you couldn't do this and you couldn't do that were all endorsed by the Barossa Council. Since the mid-1980s, we have not been able to do any intensive agriculture. So, we find it very frustrating that in the Barossa people can grow some grapes, they can turn it into wine, bottle it and market it and yet all we are allowed to do is to grow a bulky commodity, as in wheat, barley, beans, chickpeas, or something like that, and sell it by the truckload.²³⁸

Recommendation 8

Given that planning restrictions are preventing some primary producers from engaging in value adding activities, the Committee recommends that the Minister for Planning undertake an immediate review of the relevant planning and development laws, regulations and policies that act as a barrier to the growth of artisan food and wine businesses in key tourism and primary production regions, with a view of encouraging investment in such business, in the same way changes have nurtured the small bar industry in the CBD. In conducting this review, the Committee recommends that the Minister also consult with council representatives in relevant areas, as well as with stakeholders from the Barossa Collaboration Project.

²³⁸ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 09 August 2017, 139–40 (Charles Teusner, C&K Teusner Nominees Pty Ltd).

The Committee reiterates that it makes this recommendation as a result of the compelling evidence it received which indicated that planning and development laws, regulations and policies are preventing some primary producers from participating in value adding activities.

10 COSTS OF PRODUCTION

10.1 Introduction

The Committee heard and received evidence during this Inquiry which suggested that some primary producers are exposed to issues surrounding their costs of production or input costs. The Committee was informed that these cost issues prevent some primary producers from supplying competitively in their respective supply chains. On this point, one stakeholder noted these issues are linked directly to a liquidity problem.²³⁹

This chapter will summarise the evidence the Committee has received by first considering how a lack of sufficient cash flow impacts upon some producers in **part 10.2**. **Part 10.3** of this chapter then considers pricing issues that affect some producers. As a means of addressing these issues, the Committee inquired into whether minimum prices should be imposed for produce to ensure producers are paid appropriately for their goods. This topic is considered at **part 10.4** of the chapter.

10.2 Cash Flow Problems

Ms Werner explained the difficulties that Jersey Fresh Milk face with regard to its cost of production and input costs, and argued that this contributes to a liquidity problem.²⁴⁰ On this point, Ms Werner noted that a lack of cash flow is an issue faced by many agricultural businesses, Jersey Fresh Milk included, and it is an issue that is,

*affected by high power prices, a bad season, or just a bit of a sales slump, our cashflow is our biggest problem and it leads us to then have to turn around to our suppliers and talk sweetly and kindly explain[ing] to them, 'Look, I'm really sorry but we are going to have to push our trading terms out. This is when we can get you the money, but it's not going to be within your terms.'*²⁴¹

²³⁹ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 50 (Lisa Werner, General Manager, Jersey Fresh Milk).

²⁴⁰ Ibid.

²⁴¹ Ibid 50–1.

This liquidity problem means that businesses such as Jersey Fresh Milk cannot pay their suppliers on time. Therefore, they cannot pay their stockfeed suppliers or their packing suppliers for their labels and caps.²⁴² Ms Werner stated that this is,

*an embarrassing situation to be in, and ... it reflects really poorly on some really dynamic Barossa businesses ... [and] [t]hat's not fair on their [supplier] businesses. My favourite overdue sticker is: keep the cycle going—pay us so we can pay them so they can pay you.*²⁴³

Evidently, insufficient cash flow is a cyclical issue affecting producers and their suppliers. The Committee was also informed that stakeholders are concerned with the mark-ups on inputs costs including machinery parts and animal feed additives.²⁴⁴ It is accordingly conceivable that suppliers are inflating the prices of these input expenditures as a means of safeguarding against potential late payments as a result of the producer's potential liquidity problems.

10.3 Pricing Issues

During phase one of the Inquiry, stakeholders noted that local producers are sensitive to competitive pricing in 'the retail space' because 'producers are often forced to use discounting and low prices as a way to compete, which negatively affects their profit margins'.²⁴⁵ These issues are potentially compounded by producers having a 'lack of ... control [over setting] costs post farm gate',²⁴⁶ and the fact that 'major supermarket chains ... are still not covered by the federal *Horticulture Code of Conduct*'.²⁴⁷ In substantiating this position, the Horticulture Coalition of South Australia stated that:

²⁴² Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 51 (Lisa Werner, General Manager, Jersey Fresh Milk).

²⁴³ Ibid 50–1.

²⁴⁴ Malcolm and Andrew Lucas, Submission No 4 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017.

²⁴⁵ Ehrenberg-Bass Institute for Marketing Science, University of South Australia, Submission No 5 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 4.

²⁴⁶ Letter from Hon Rob Kerin, Chair of Primary Producers SA to Economic and Finance Committee, 03 February 2017, 1.

²⁴⁷ Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017.

*Horticultural producers are generally ‘price takers’, positioned at the end of the supply chain and often unable to fully pass on costs. Therefore maximising grower returns is critical to ensuring the industry.*²⁴⁸

With particular regard to the Barossa wine industry, the Committee was informed that ‘thin margins challenge the producer’, and therefore, these businesses are sensitive to competitive pricing.²⁴⁹ Furthermore, ‘[t]he other problem for premium producers can be the discounting of premium product by these chains and consequential damage to credibility in all channels.’²⁵⁰

Pricing issues also result when local vegetable growers are competing against the ‘sustained national over production of their commodities’.²⁵¹ In addition, South Australian growers are sensitive to cheaper imports, which has particularly affected the State’s olive producers because they are competing with ‘cheap European imports of both table olives and olive oil’.²⁵²

Moreover, the Horticulture Coalition of South Australia noted that the ACCC is aware of the concerns of stakeholders in the horticulture and viticulture industries in relation to issues concerning ‘late and non-payment of growers’, but the Coalition hopes that these issues will be addressed by the new ‘mandatory *Horticulture Code of Conduct*’, which came into force on 1 April 2017.²⁵³

With that said, the Small Business Commissioner took the issue of price sensitivity a step further by informing the Committee about ‘one-sided contracts’ which fail to ‘share risk and returns’ amongst the contracting parties (see further **part 8.2** of this report).²⁵⁴ In addition, the Small Business Commissioner noted the increasing practice of growers and retailers not having

²⁴⁸ Horticulture Coalition of South Australia, Submission No 13 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 17 March 2017.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017.

a contract in writing, ‘let alone any agreement about prices.’²⁵⁵ This appears to be a particular issue to South Australia’s viticulture sector because,

*there is widespread frustration that the risks and returns are not fairly shared. Late price signals mean there is little option for the grower to not proceed to harvest (thereby incurring costs), whereas an earlier price signal of poor return would allow the grower to reconsider their options to progress the crop to harvest, renegotiate the contract, or perhaps find an alternative market. Grape growers have expressed concern that price signals are only given once many production costs have already been incurred.*²⁵⁶

The Small Business Commissioner also noted that the reorientation of South Australian export markets towards more quality produce has meant that there has been an encouraging growth in the State’s exports with regard to our wine sector.²⁵⁷ This, in turn, removes some of the pricing pressures on these producers; however, export markets are also sensitive. On this point, Mr Chapman stated that:

*we have seen the booms and busts [of export markets] before and that’s why I think, again, [this Inquiry] is an opportunity for the committee to look at whether there should be a safety net baseline, recognising that it is a commercial marketplace but also recognising that the producers are right over there at the far end of the equation and taking a lot of the risk.*²⁵⁸

As a means of inquiring into ways in which producers can sell their produce without heavily discounting their high-quality South Australian produce, the Committee examined whether minimum prices should be imposed for produce. The chapter will now detail the evidence the Committee received with regard to this potential solution.

²⁵⁵ Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017.

²⁵⁶ Ibid.

²⁵⁷ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 12–3 (John Chapman, Small Business Commissioner).

²⁵⁸ Ibid 13.

10.4 Setting Minimum Prices for Produce

As alluded to above and at **part 8.3** of this report, the Small Business Commissioner's initial submission invited the Committee to consider, 'whether there should be a minimum price structure paid for wine grapes'.²⁵⁹ This recommendation was given with specific reference to the Minister's power to set prices for wine grapes.²⁶⁰ This ministerial power is sourced to sections 5 and 6 of the *Wine Grapes Industry Act 1991* (SA). These sections state that:

5—*Indicative price*

- (1) *The Minister may, by order, recommend a price (expressed as an amount per tonne) for wine grapes grown in the production area and sold to a processor.*
- (2) *The price may vary according to the variety of wine grapes.*

6—*Terms and conditions of payment*

- (1) *The Minister may, by order, fix terms and conditions relating to—*
 - (a) *the time within which payment for wine grapes must be made by processors;*
 - and*
 - (b) *payments (which are to be regarded as payments in the nature of liquidated damages) to be made by processors in default of payment within that time.*
- (2) *In determining terms and conditions, the Minister must not differentiate between processors.*
- (3) *Any terms and conditions fixed under this section are implied in every contract for the sale of wine grapes to a processor and any provision of a contract or other instrument is void to the extent of any inconsistency with those terms and conditions.*²⁶¹

These sections, therefore, allow the Minister to make an order recommending a per tonne price for different varieties of wine grapes that are grown within certain areas and which are sold to

²⁵⁹ Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017.

²⁶⁰ *Ibid* 2–3 citing and quoting *Wine Grapes Industry Act 1991* (SA) ss 5–6.

²⁶¹ *Wine Grapes Industry Act 1991* (SA) ss 5–6.

processors. Such orders allow the Minister to impose terms and conditions which govern when payment needs to be paid by processors to producers.

The Small Business Commissioner, Mr Chapman, expanded upon this position when he appeared before the Committee and stated,

[t]he issue of wine grape pricing is quite complex. The difficulty that I've encountered in talking to some of those involved in the wine-grape sector is the heavy investment that they need to make early to a secure crop, potentially in six months' time, with no underpinning of that price unless they have some rather exceptional contractual arrangements with producers. I did find it interesting that the mechanism was there obviously at a point in time the parliament had taken the view that there was a need for that. I suppose in raising it I don't necessarily have a fixed view of where it should apply, but I think the work of the committee in bringing all these issues to the surface and questioning the various players in the industry may actually inform the committee and allow the committee to come to a view of where that should apply. I don't think I have enough information at the moment to say it should be applied on 30 November if no price has been set.²⁶²

The Committee also asked the Small Business Commissioner about whether the *Australian Wine Industry Code of Conduct* should be mandatory in nature and whether it should impose a mandatory deadline by which price guidance on grapes needs to be set.²⁶³ In response to this query, the Small Business Commissioner stated,

without seeing a code it's ... difficult to say whether you would support a mandatory code. However, my leaning is towards there being a line in the sand that gives the growers the opportunity to say, 'Well, I will produce a crop this year,' or, 'No, I won't,' and they can make a

²⁶² Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 12 (John Chapman, Small Business Commissioner).

²⁶³ See Australian Wine Industry Code of Conduct, Winemakers' Federation of Australia and Wine Grape Growers' Australia, *The Australian Wine Industry Code of Conduct* (December 2014) <<https://www.wfa.org.au/assets/industry-code-of-conduct/AWICOC-Final-dec2014.pdf>>.

*decision on that. ... I do believe that there needs to be a safety net there to provide some support to growers.*²⁶⁴

Through the Committee's investigation into this potential solution, the Committee received conflicting evidence from various stakeholders. This section will now detail the reasons for and against minimum prices.

10.4.1 Reasons for minimum prices for some produce

Mr Nietschke, Manager of Nietschke Moppa Estate, which is a mix dairy and vineyard farm,²⁶⁵ outlined the view that it 'would be fantastic' if a minimum price could be imposed for some agricultural produce, including dairy products; however, it is a solution that 'is probably ... unrealistic to achieve' due to the inter-state trade of produce.²⁶⁶ In expanding upon this position, Mr Nietschke stated:

*[South Australia] did have regulation in the white milk market, that prevented the \$1 per litre milk issue that we have today. South Australia would have liked to have kept that, but we were only a small player in the whole national market, and I guess anything that happens in the industry is going to happen nationally. As far as what influence we have state-wise and as a state government it is a little bit difficult, I guess, when it is a national commodity [to impose minimum prices].*²⁶⁷

Mr Nietschke went on to inform the Committee that his family-owned and operated farm addressed the issues associated by their cost of production through increasing their economies of scale. Professor Derek Baker, stressed the importance of the role that scale can play in the following terms:

²⁶⁴ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 13 (John Chapman, Small Business Commissioner).

²⁶⁵ Courtney Fowler, 'Barossa Family-Owned Farm Mixing Grapes with Milk a Point of Difference in Wine Region' *ABC Rural News* (online), 30 March 2017 <<http://www.abc.net.au/news/rural/2017-03-20/dairy-vineyard-going-strong-barossa-valley/8365088>>.

²⁶⁶ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 69 (Adrian Hoffmann, Director, Dimchurch Vineyards).

²⁶⁷ Ibid.

The scale of operation is vital in the food and fibre industries for all kinds of reasons. Essentially, the inability to achieve scale reduces the capacities of particular actors to reduce costs, to attract and retain customers and to exert any kind of bargaining power. A lack of being able to achieve scale really puts an actor behind the eight ball ... People say that perhaps scale is not so much a problem because what firms need to be doing is differentiating products, for example; expanding their production lines (expanding brands across different product ranges); using alternative channels to the consumer (not worrying too much about a supermarket duopoly, but going in through the internet or a home delivery and so on); moral suasion of the kind that we saw during the dairy industry crisis where social media could be used to affect customer behaviour; whole chain actions of various kinds, ... data-related innovation, where customers can be more directly targeted; access to finance; using complementarity of export and domestic markets and so on. All of this ... is very strongly dependent on fixed costs. They are not costs associated with individual units of product, they are big investments that need to be made by the firms ahead of time and therefore, sadly, are enabled by scale all over again. So we have a direct influence of scale, and we have substantial indirect influence of scale.²⁶⁸

On this point on the importance of scale, Mr Nietschke stated that Nietschke Moppa Estate needed to expand to survive because:

There is no way that we can guarantee that our milk prices are going to even keep up with CPI increases. The only thing that farmers have always had is to increase production. I guess the frustrating thing is that we have been told for years and years that, 'You've just got to get more efficient. You've just got to reduce your costs. You've got to do this, you've got to do that.' Farmers are continually doing that, but we just keep chasing our tails all the time because there is always one

²⁶⁸ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 07 June 2017, 28 (Derek Baker, Professor of Agribusiness and Value Chains, University of New England).

*pressure after the other and you just have to keep getting bigger, with higher costs. Particularly now, with what is in the media at the moment concerning utilities and the cost of electricity. That's a big thing for dairy farmers as well, particularly those on irrigation who use electricity for pumps and that, which is not this area. They would have massive increases, but even just running the dairy is a big cost.*²⁶⁹

In referring to how these scale issues could be addressed, Professor Baker stated that there are a few approaches that producers can take. The first approach that the witness talked about is 'the mimicry of scale' principle. In his explanation of this principle to the Committee, Professor Baker noted that this approach is,

*where small firms get together and act as if they have some scale because they are combining volumes. There are cooperatives which do this in a formal way, there's collaboration (which is perhaps a less formal form of cooperation), and then there are technical issues like pooling, and these are used in marketing and transport and things like that.*²⁷⁰

In light of Professor Baker's evidence, the Committee once again echoes its third and fourth recommendations which pertain to addressing the potential barriers on producers accessing information about the benefits of co-operatives.

Recommendation 3

The Committee recommends amending the 'Starting a Business' section of the sa.gov.au website to include relevant information on the benefits of forming co-operatives, including the benefits they have in increasing the market power of producers. In addition, the Committee recommends that the website should include information about how co-operatives can help producers operate in larger supply chains.

The Committee reiterates the importance of this recommendation in light of the evidence it received from the Business Council of Co-operatives and Mutuals, which outlined the view

²⁶⁹ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 69 (Jamie Nietschke, Nietschke Moppa Estate).

²⁷⁰ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 07 June 2017, 29 (Derek Baker, Professor of Agribusiness and Value Chains, University of New England).

that there is insufficient information about the benefits of starting co-operatives.²⁷¹ The Committee reiterates that without this information, some primary producers could be prevented from addressing the scale issues that affect some primary producers.

Recommendation 4

The Committee recommends that the relevant South Australian Government Departments conduct an audit of the relevant legislative instruments and grant programs available to primary producers to determine whether co-operatives are considered equal candidates in the application process. The Committee recommends that any barriers to co-operatives in the grants application process be removed.

As discussed at **page 55** of this report, the Committee makes this recommendation to ensure that primary producers who operate co-operatives are not disadvantaged through accessing government grants and, therefore, prevented from addressing potential scale issues.

The next approach that Professor Baker stated could help producers address the scale issue is their ability,

*to contract out certain functions within the supply chain. Here, in particular, we think about things like transport operations, processing operations, distribution, where they can be contracted out to a third party who then employs economies of scale by performing for a number of client actors.*²⁷²

Professor Baker also stressed the fact that initiatives can be taken at the state and regional level to address the issues posed by insufficient economies of scale and stated that this is through things like the promotion of ‘the South Australian brands initiative and fine quality foods and so on.’²⁷³ The Committee takes this opportunity to further endorse the Barossa Collaboration Project’s focus on promoting the Barossa Trust Mark (see further **part 8.4.2**).

²⁷¹ See Business Council of Co-operatives and Mutuals, Submission No 7(b) to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 03 February 2017, 6.

²⁷² Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 07 June 2017, 29 (Derek Baker, Professor of Agribusiness and Value Chains, University of New England).

²⁷³ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 07 June 2017, 29 (Derek Baker, Professor of Agribusiness and Value Chains, University of New England).

10.4.2 Reasons against minimum prices for grapes

Conversely, however, when questioned about whether there should be a minimum price imposed for grapes, Mr Nietschke stated that the price of grapes was not an issue for Nietschke Moppa Estate.²⁷⁴ Mr Nietschke clarified this position by stating that:

*Going back 30 or 40 years ago, yes, it would have been great to have a minimum price for the Barossa but, for us, we are growing grapes only in the top few per cent, quality wise ... Our price ... gradually creeps up, but it hasn't dropped. If you are growing in the commodity grape market, as it were, or standard quality, yes, it may be an issue, but for the particular market that we are growing for, it's actually not really relevant.*²⁷⁵

On the issue of imposing a minimum price for grapes, Mr Sam Dahlitz, who represented the Lone Pine Agriculture Bureau in providing evidence before the Committee stated that:

*A minimum price sounds good, but as to everyone in our industry agreeing on standards—it's not like grain where there's a defined quality standard; it's too subjective in our industry—I don't quite know how you would come up with [a minimum price].*²⁷⁶

In referring to whether winemakers and large corporate wine companies should give market information about indicative grape prices for the coming year, and if so, what the ideal timeframe would be, Mr Jesse Auricht, who represented the Rowland Flat Agriculture Bureau in providing evidence before the Committee stated that,

the timing, in my experience, has been the prices usually coming out in January, which is quite late. Probably 80 or 90-plus per cent of your input costs have already been realised, so the timing is very late. Certainly, if they came out earlier, it would give an indication of whether we need to be pulling back or what we need to be doing. It is a

²⁷⁴ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 70 (Jamie Nietschke, Nietschke Moppa Estate).

²⁷⁵ Ibid.

²⁷⁶ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 74 (Sam Dahlitz, Lone Pine Agriculture Bureau).

*bit of a case by case basis, depending on the winemaker-grower relationship and whether that is buffered or whether you have a direct communication with winemakers. The smaller winemakers are probably in more communication with the growers and can tailor a result earlier.*²⁷⁷

On this same topic, Mr Mark Grossman, who represented Angaston Agriculture Bureau in providing evidence before the Committee stated that grape prices ‘only really come out in January. By the time vintage starts in February, it’s a very short period for growers to adjust to any alterations in their potential for that crop.’²⁷⁸ Mr Sam Dahlitz stated that it would be ‘nice’ to know this price in ‘November’.²⁷⁹

The Committee also heard evidence that the price of grapes is variable because it is dependent on the quality of the grapes and the area in which they are grown. In explaining this variability, Mr Grossman stated that the price of grapes is totally varied,

*[a]cross the whole scale of wineries across the valley, from the big corporates to the boutique wineries. For a lot of that product sold on a quality basis, the wineries have determined what bottle range that will be going into.*²⁸⁰

Mr Steve Schiller, from the Rowland Flat Agriculture Bureau, stated that the price of grapes depends on,

[s]upply and demand. That comes back if we’ve had a dry year and they know that the yield is going to be down, but I suppose the prices are more set. There are probably two or three of the big wine companies, and then the smaller ones tag along to see where their numbers are.

²⁷⁷ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 74 (Jesse Auricht, Rowland Flat Agriculture Bureau).

²⁷⁸ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 74 (Mark Grossman, Angaston Agriculture Bureau).

²⁷⁹ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 74 (Sam Dahlitz, Lone Pine Agriculture Bureau).

²⁸⁰ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 74 (Mark Grossman, Angaston Agriculture Bureau).

*Sometimes they get released, and then they will actually go up, too, when they realise where things are going.*²⁸¹

In considering the above evidence, it is clear that although the ability to set minimum prices for certain produce was viewed as a potential positive solution, there are issues with the administration of such a policy. The Committee accordingly declines to make a recommendation on this point.

²⁸¹ Evidence to Economic and Finance Committee, House of Assembly, Barossa Council Chambers, Tanunda Road, Nuriootpa, South Australia, 28 June 2017, 74 (Steve Schiller, Rowland Flat Agriculture Bureau).

11 CODES OF CONDUCT

11.1 Introduction

Throughout the Inquiry, the Committee received submissions and heard evidence for a variety of concerned stakeholders highlighting the view that they are concerned with the inequitable application of the *Horticulture Code of Conduct* and *Grocery Code of Conduct*. These Codes are federal instruments which seek to promote fair business dealings between stakeholders in primary producing industries.

This chapter explains the similarities and differences between these Codes by first providing a legislative overview about how they operate. This explanation is given in **part 11.2** of the chapter, which also includes a case study about the ACCC's enforcement approach. **Part 11.2.2** of this section considers the difference between voluntary versus mandatory codes of conduct, before considering the operational differences between the *Horticulture Code of Conduct* and *Grocery Code of Conduct* at **part 11.2.3**. This chapter concludes with a summary of the evidence the Committee received with regard to these legislative instruments. In light of the evidence the Committee received, including the specific opinion of the Small Business Commissioner, the Committee recommends that the statutory review of the *Grocery Code of Conduct*, to be conducted by the relevant Commonwealth body, and due to be commenced in 2018, should consider recommending that the code be mandatory in nature and the inclusion of civil penalties for contravention of the Code's provisions. In the absence of these reforms at the Commonwealth level, the Committee maintains that the South Australian Government should institute a state-based mandatory Code to fill the gap caused by the inconsistencies between the *Horticulture Code of Conduct* and the *Grocery Code of Conduct*.

11.2 Legislative Overview

Under the *Competition and Consumer Act 2010* (Cth) (*'the Act'*), a corporation needs to comply with applicable industry codes.²⁸² *The Act* defines **applicable industry code** in the following terms:

²⁸² *Competition and Consumer Act 2010* (Cth) s 51ACB.

- (a) *the prescribed provisions of any **mandatory** industry code relating to the industry;*
and
- (b) *the prescribed provisions of any **voluntary** industry code that binds the corporation.*²⁸³

In addition, *the Act* allows the ACCC to enforce applicable industry codes by:

- **Issuing infringement notices** to persons where there are ‘reasonable grounds’ to suspect that the individual has breached one or more of the code’s civil penalty provisions;²⁸⁴
- **Issuing writing public warning notices** where there are ‘reasonable grounds’ to suspect that an individual has breached the code, the ACCC considers that a person has suffered or will suffer a detriment as a result and it is in the public interest to issue such a warning;²⁸⁵
- **Seeking a court order** ‘to redress loss or damage’ on behalf of non-parties to an applicable industry code.²⁸⁶

Industry codes are ‘prescribed’ through their own separate regulations, which can be either **mandatory** or **voluntary** in nature (see **part 11.2.2** of this report for an explanation about the difference between the two).²⁸⁷ The ACCC can also assist industry groups in developing their own code of conduct.²⁸⁸ In summarising the ACCC’s enforcement powers about breaches to prescribed industry codes, Mr David Salisbury, General Manager of Consumer and Small Business Strategies with the ACCC informed the Committee that the ACCC is,

able to issue infringement notices for businesses [that breach one of the prescribed codes]—\$9,000 for business, \$1,800 for individuals. We could also seek a penalty of \$54,000 in court for breaches of certain

²⁸³ *Competition and Consumer Act 2010* (Cth) s 51ACB [emphasis added].

²⁸⁴ *Ibid* s 51ACD. See generally *ibid* pt IVB div 2A.

²⁸⁵ *Ibid* s 51ADA.

²⁸⁶ *Ibid* s 51ADB. See generally *ibid* pt IVB div 4.

²⁸⁷ *Ibid* s 51AE (1) (b).

²⁸⁸ Australian Competition and Consumer Commission, *Industry Codes* Australian Competition and Consumer Commission <<https://www.accc.gov.au/business/industry-codes>>.

*code provisions, [but] not all the code provisions. Now, action by the ACCC will be influenced by our compliance and enforcement policy, which we publish on our website and really use to apply our compliance and enforcement resources efficiently.*²⁸⁹

The ACCC's current compliance and enforcement policy stated that one of its priorities is to, *ensur[e] small business receives the protections of:*

- *industry codes of conduct, including the Franchising Code, the Food and Grocery Code and the Horticulture Code, and*
- *the new unfair contract terms law.*²⁹⁰

In the ACCC's appearance before the Committee for this Inquiry, representatives noted that although these codes of conduct are 'important instruments' because they work and exist in addition to 'the general law [that] still applies to businesses that are subject to the code[s]'.²⁹¹ On this point, Mr Marcus Bezzi, Executive General Manager of Competition Enforcement with the ACCC stated,

[t]he Australian Consumer Law continues to apply. Obligations like the business to business unfair contract term obligations continue to apply. The general competition law continues to apply. In a sense, if you comply with the code as a business, what you are doing is giving yourself a better chance of complying with the general law. In that sense, it's probably wise for businesses to sign up to the code and comply with its terms. If they don't sign up to the code, their focus now

²⁸⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 20 (David Salisbury, General Manager of Consumer and Small Business Strategies, ACCC).

²⁹⁰ Australian Competition and Consumer Commission, *2017 ACCC Compliance and Enforcement Strategy* (February 2017) Australian Competition and Consumer Commission <<https://www.accc.gov.au/system/files/ACCC%20Compliance%20and%20Enforcement%20Policy%202017.pdf>> 4.

²⁹¹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 22 (Marcus Bezzi, Executive General Manager of Competition Enforcement, ACCC).

*from an enforcement point of view is very much on whether they are compliant with the broader law, the general law.*²⁹²

Notwithstanding these priorities and enforcement powers, as noted at **part 8.3** of this report (see page 34), the ACCC ‘rarely becomes involved in individual consumer or small business disputes and does not provide mediation services’.²⁹³ Evidently, there is a potential gap that could exist between the ACCC’s enforcement powers for contravention of these codes under the *Competition and Consumer Act 2010* (Cth). As a result, even if aggrieved primary producers lodge a complaint with the ACCC, it is unlikely that their claim will be investigated.²⁹⁴

11.2.1 Case study showing the enforcement approach of the ACCC

The recent case of *ACCC v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405 (22 December 2014), the supermarket giant, Coles, admitted to treating five of its suppliers unconscionably in 2011.

Justice Gordon accordingly ordered that Coles pay pecuniary penalties to the Commonwealth of Australia under section 224 of the Australian Consumer Law, in the following amounts:

- 7.1. in the case of Austech, the sum of \$700,000;
- 7.2. in the case of Oates, the sum of \$800,000;
- 7.3. in the case of Paton’s, the sum of \$800,000;
- 7.4. in the case of Stuart Alexander, the sum of \$700,000; and
- 7.5. in the case of Tru Blu, the sum of \$700,000.

In addition, Coles was ordered to pay the ACCC \$1 million towards its costs of proceedings.

Justice Gordon noted at [102–106] of the judgment that she,

²⁹² Ibid.

²⁹³ Australian Competition and Consumer Commission, response to questions on notice, 15 June 2017.

²⁹⁴ A copy of the ACCC’s current compliance and enforcement policy is available at <https://www.accc.gov.au/system/files/ACCC%20Compliance%20and%20Enforcement%20Policy%202017.pdf>.

reject[ed] Coles' submission that these contraventions are somehow distinguishable, or of a less serious nature, because they did not involve vulnerable consumers. Coles' conduct did not involve vulnerable consumers. Coles' conduct did involve vulnerable suppliers—some of Coles' smaller suppliers... **Indeed, their lack of size was one of the reasons why they were classified as Tier 3 Suppliers and targeted by Coles.** These vulnerable suppliers were up against Coles – the second largest retailer of grocery products in Australia. It is unsurprising that Coles admits that it had substantially stronger bargaining power. It is difficult to envisage circumstances involving a larger disparity in bargaining power.

Coles' conduct was also serious because the admitted unconscionable conduct was difficult for the ACCC to detect due to the reluctance of smaller suppliers to report complaints about, and assist the ACCC with investigations into, the conduct of major retailers, when they rely on these retailers for the ongoing viability of their businesses. The contraventions also showed a failure of Coles' internal compliance systems and processes, which had the potential to impact a number of suppliers with whom representatives of Coles had dealings.

Coles' misconduct was serious, deliberate and repeated. Coles misused its substantial bargaining power. Its conduct was 'not done in good conscience'.

Coles accepted that in its dealings with the five suppliers it treated them in a manner inconsistent with acceptable business practice, was not respectful of the suppliers' needs for full and timely transparency, and nor did it properly respect the responsibility attached to Coles' bargaining power.

The [Australian Consumer Law] provides for significant penalties for these contraventions. It is a matter for the Parliament to review whether the maximum available penalty of \$1.1 million for each contravention of Pt 2-2 of the [Australian Consumer Law] by a body corporate is sufficient when a corporation with annual revenue in excess of \$22 billion acts unconscionably. The current maximum penalties are arguably inadequate for a corporation the size of Coles.

Source: *ACCC v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405 (22 December 2014) [7–8] and [102–06] [emphasis added].

This case study illustrates how the ACCC's compliance and enforcement strategy works in a practical sense. It is important to note that this case proceeded the introduction of the *Grocery Code of Conduct*, which only came into force in March 2015. In referring to this case, Mr Salisbury, noted that it,

*was an essential case ... all about the way in which Coles had dealt with buyers ... The time line is that this voluntary code of conduct was proposed and struck following that successful litigation by ourselves, so we do have measures of what is conduct that is beyond the pale.*²⁹⁵

11.2.2 The differences between voluntary and mandatory codes of conduct

11.2.2.1 Mandatory industry codes

Mandatory industry codes apply automatically to their relevant participants. For example, the mandatory *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017* (*‘Horticulture Code of Conduct’*) applies to traders and growers.

11.2.2.2 Voluntary industry codes

Participants need to elect to be bound by voluntary codes of conduct. This choice needs to be conveyed to the ACCC in writing, and in doing so, must comply with the code for the entire duration in which they elect to be a member of it. The *Competition and Consumer (Industry Codes – Food and Grocery) Regulation 2015* (*‘Grocery Code of Conduct’*) is an example of a voluntary code and therefore it only applies to grocery retailers and wholesalers that agree to be bound by it.

Therefore, as Mr Marcus Bezzi, Executive General Manager of Competition Enforcement with the ACCC put it,

*[t]he difference with a mandatory code is that in a voluntary code a business can give notice that it will leave the voluntary code. That’s the difference. It’s not voluntary in the sense that it voluntarily complies with the code.*²⁹⁶

²⁹⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 23 (David Salisbury, General Manager of Consumer and Small Business Strategies, ACCC).

²⁹⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 21 (Marcus Bezzi, Executive General Manager of Competition Enforcement, ACCC).

11.2.3 The differences between the *Horticulture* and *Grocery* Codes of Conduct

11.2.3.1 *The Horticulture Code of Conduct*

The mandatory *Horticulture Code of Conduct* applies to **traders** and **growers**.²⁹⁷ Therefore, farmers who sell their ‘horticulture produce’ to an **agent** or **merchant** must comply with the code by having a **horticulture produce agreement** in writing.²⁹⁸

Under this code, horticulture produce includes:

- (a) *unprocessed fruit;*
- (b) *unprocessed vegetables, including mushrooms and other edible fungi;*
- (c) *unprocessed nuts;*
- (d) *unprocessed herbs; and*
- (e) *other unprocessed edible plants.*

However, **horticulture produce** does not include nursery products ... [these] include the following:

- (a) *trees, shrubs, plants, seeds, bulbs, corms and tubers (other than edible tubers);*
- (b) *propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts or cut flowers or foliage;*
- (c) *cut flowers or foliage.*²⁹⁹

The horticulture produce agreement must have certain provisions, including:³⁰⁰

²⁹⁷ The statutory definition of **trader** is ‘an agent or a merchant’. An **agent** is ‘a person who sells horticulture produce on behalf of a grower to a person for a commission or fee.’ The relevant definition of ‘merchant’ ‘means a person who purchases horticulture produce from a grower for the purpose of resale of that horticulture produce, but does not include a person who purchases the produce for export by that person, or a person who purchases the produce for retail sale by that person.’ See *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017* (‘*Horticulture Code of Conduct*’) sch 1 div 1 cl 5.

²⁹⁸ Australian Competition and Consumer Commission, *Horticulture Code of Conduct* Australian Competition and Consumer Commission <<https://www.accc.gov.au/business/industry-codes/horticulture-code-of-conduct>>.

²⁹⁹ *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017* (Cth) (‘*Horticulture Code of Conduct*’) cl 7.

³⁰⁰ *Ibid* cl 16.

- Whether the **trader** is an **agent** or a **merchant**—(a trader cannot be both under the same agreement);
- The delivery, quality and quantity requirements, if any;
- How the quality of the produce will be determined, including FreshSpecs Produce Specifications;
- How the trader can deal with produce that does not satisfy specified quality or quantity requirements (if any). Furthermore, the trader can ‘pool ... horticulture produce with other produce’, however, for this to happen, the agreement must specify the quality requirements relating to the produce to be pooled and the specifications that will be used to determine the quality of the produce to be pooled;
- The circumstances in which the trader can reject the grower’s produce. Under the code, the reasons for the rejection of produce must be communicated to the grower in writing within 24 hours of the rejection;³⁰¹
- The extent to which a trader’s insurance policy covers the produce, if at all, noting that insurance is not mandatory;
- How long the agreement will last and how it can be varied or terminated;
- The payment terms;
- The contact details of a person who the parties can turn to in the event a dispute arises under the agreement; and
- What records need to be kept, how long and by whom.

This contract ultimately aims to protect farmers by increasing the ‘transparency around [the] relationship with the agent or merchant.’³⁰² The *Horticulture Code of Conduct* also requires parties to deal with each other in good faith and imposes financial penalties and infringement notices for non-compliance with 15 clauses.

The code also ‘allows merchants and growers to use a method or formula to price horticulture produce under an agreement, as opposed to only a fixed price’ and enables the ACCC to investigate and conduct audits on the compliance of the code.³⁰³

³⁰¹ *Horticulture Code of Conduct* cl 22 (3) and (4).

³⁰² *Ibid* cl 22 (3) and (4).

³⁰³ *Ibid*.

Recently, there have been two reviews of this code—an independent review and a review conducted by the ACCC itself.³⁰⁴ These reviews led to a new *Horticulture Code of Conduct*, which came into force on 1 April 2017. Under this code, traders are required to ‘prepare, publish and make publicly available their terms of trade. Traders have been given a 12-month transition period to comply with the new Code. However, if existing terms of trade are varied before 1 April 2018, the new Code will apply from the date they are varied.’³⁰⁵ In explaining the application of this new code, the ACCC noted on its website:

*If you have an existing written [horticulture produce agreement] signed before 1 April 2017, you have until 1 April 2018 to make sure it includes the things the Code says it should include. This includes all [agreements] entered into prior to 15 December 2006 when the original Code was introduced. If a Horticulture Produce Agreement is changed before 1 April 2018, the whole Code will apply from the date it is changed. Some parts of the Code will apply to all [agreements] from 1 April 2017. These parts include the obligation to deal in good faith and the dispute resolution procedure.*³⁰⁶

Further information on this Code can be found at the following website: <https://www.accc.gov.au/business/industry-codes/horticulture-code-of-conduct>.

11.2.3.2 *Grocery Code of Conduct*

The voluntary *Grocery Code of Conduct* controls ‘certain conduct by grocery retailers and wholesalers in their dealings with suppliers. It has rules relating to grocery supply agreements, payments, termination of agreements, dispute resolution and a range of other matters.’³⁰⁷

³⁰⁴ *Horticulture Code of Conduct* cl 22 (3) and (4).

³⁰⁵ Australian Competition and Consumer Commission, *Horticulture Code of Conduct* Australian Competition and Consumer Commission <<https://www.accc.gov.au/business/industry-codes/horticulture-code-of-conduct>>.

³⁰⁶ *Ibid.*

³⁰⁷ Australian Competition and Consumer Commission, *Food and Grocery Code of Conduct* Australian Competition and Consumer Commission <<https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>>.

According to the ACCC's website, the following companies have elected to be bound by this voluntary code:

- *About Life Pty Ltd (retailer) (signed up on 19 May 2015);*
- *ALDI (retailer) (signed up on 15 June 2015);*
- *Coles Supermarkets Australia (retailer) (signed up on 1 July 2015); and*
- *Woolworths Limited (retailer) (signed up on 1 July 2015).*³⁰⁸

The code defines retailers, wholesalers and suppliers in the following terms:

- a **retailer** means a corporation that carries on a supermarket business;
- a **wholesaler** is a corporation that purchases groceries from suppliers to resupply to a supermarket; and
- a **supplier** is someone who is carrying on (or seeking to carry on) a business of supplying groceries for retail sale by another person (including another business).³⁰⁹

It is important to note that if a party under this code is also a party to the *Horticulture Code of Conduct* or the *Franchising Code of Conduct*, the terms of the *Grocery Code of Conduct* will not apply in the event of a conflict or inconsistency with these other codes.³¹⁰

The code affords protection to suppliers by mandating certain conduct standards. For example, the code:

- sets out minimum obligations for retailers and wholesalers relating to the making of grocery supply agreements;
- requires retailers and wholesalers to act lawfully and in good faith;
- prohibits retailers from threatening suppliers with business disruption or termination without reasonable grounds;

³⁰⁸ Australian Competition and Consumer Commission, *Food and Grocery Code of Conduct* Australian Competition and Consumer Commission <<https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>>. See also Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 22 (David Salisbury, General Manager of Consumer and Small Business Strategies, ACCC).

³⁰⁹ Ibid referring to *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015* (Cth) ('Grocery Code of Conduct') cl 3.

³¹⁰ Australian Competition and Consumer Commission, *Food and Grocery Code of Conduct* Australian Competition and Consumer Commission <<https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>> referring to *Grocery Code of Conduct* cl 3.

- establishes minimum standards of conduct by a retailer when dealing with suppliers, such as payment, de-listing, standards and specifications for fresh produce, and the allocation of shelf space;
- requires retailers and wholesalers to provide annual training to employees whose role includes direct involvement in buying grocery products, and their managers, on the requirements of the Code; and
- sets out a dispute resolution mechanism.³¹¹

If a retailer or wholesaler agreed to be bound by this code, they are required to have a grocery supply agreement which controls how groceries are supplied ‘for the purposes of a supermarket business.’³¹² These agreements need to be in writing and must include:

- any delivery requirements;
- the circumstances in which the retailer or wholesaler can reject the groceries;
- the payment period, and circumstances in which payment may be withheld or delayed;
- the term of the agreement (if the agreement is intended to operate for a limited time);
- any quantity and quality requirements; and
- the circumstances (if any) in which the agreement may be terminated.³¹³

If there is a pre-existing agreement between the parties and the retailer or wholesaler has subsequently decided to be bound by the *Grocery Code of Conduct*, the code allows for these agreements to be ‘transitioned’ into compliance with the code, however, in the event that this occurred:³¹⁴

retailers have 6 months, and wholesalers have 18 months, to offer to vary existing agreements to comply with the Code. The agreement must be varied within 6 months of the supplier accepting the variation. If an agreement is not varied, the entire Code applies to a retailer 12 months and to a wholesaler 24 months after they agree to be bound. However,

³¹¹ Australian Competition and Consumer Commission, *Food and Grocery Code of Conduct* Australian Competition and Consumer Commission <<https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>> referring to *Grocery Code of Conduct* cl 3.

³¹² Ibid.

³¹³ Ibid.

³¹⁴ Ibid.

*the good faith (and freedom of association) obligations apply immediately upon the retailer or wholesaler agreeing to be bound.*³¹⁵

If parties want to vary an agreement, they need to be aware that:

*The Code limits when retailers or wholesalers can unilaterally or retrospectively vary an agreement. These variations can only occur where (among other things) the agreement expressly provides for the variation and sets out the circumstances where the variation can be made, and the variation is reasonable in the circumstances.*³¹⁶

With regard to payments to suppliers:

*A retailer must pay a supplier for products delivered and accepted in accordance with a grocery supply agreement within the time agreed (or within a reasonable time).*³¹⁷

Moreover, the code prohibits retailers from seeking payments from suppliers for shrinkage; ‘a loss of grocery products that occurs after a retailer has taken possession of them’.³¹⁸ However, retailers can seek payments for suppliers for the following as long as that is in the grocery supply agreement and must be reasonable:

- payments for wastage;
- payments as a condition of being a supplier;
- payments for better positioning of groceries or an increase in allocation of shelf space;
- payments for retailer’s activities (e.g. a buyer’s visit to the supplier, artwork or packaging design, consumer or market research or opening or refurbishing a store); and

³¹⁵ Australian Competition and Consumer Commission, *Food and Grocery Code of Conduct* Australian Competition and Consumer Commission <<https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>> referring to *Grocery Code of Conduct* cl 3.

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ Ibid.

- funding for promotions.³¹⁹

For each of these payments, the Code sets out additional criteria that must be met before a retailer can request the payment.³²⁰ This Code is due to be reviewed at some stage during 2018.

Further information on this code can be found at the following website: <https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>.

11.3 Evidence Received Regarding these Federal Codes of Conduct

The Committee received written submissions outlining concerns about discrepancies between the *Horticulture Code of Conduct* and the *Grocery Code of Conduct*.³²¹ These concerns specifically pertained to the inconsistent nature and operation of these codes.³²² For example, in the South Australian Produce Markets' initial submission to the Committee, Mr Angelo Demasi, noted that 'major supermarket chains ... are still not covered by the federal *Horticulture Code of Conduct*'³²³ and stated that there are application variances between the *Horticulture Code of Conduct* and the *Grocery Code of Conduct* with regard to their mandatory versus voluntary natures. Mr Demasi further suggested that this operational discrepancy potentially exasperates the uneven bargaining power between small independent retailers and larger retailers due to inconsistencies between the codes of conduct. Mr Demasi explained that this operational discrepancy occurs because small independent retailers usually purchase produce through central produce markets, which obtain their goods from wholesalers. These

³¹⁹ Australian Competition and Consumer Commission, *Food and Grocery Code of Conduct* Australian Competition and Consumer Commission <<https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>> referring to *Grocery Code of Conduct* cl 3.

³²⁰ Ibid.

³²¹ See especially South Australian Produce Market Ltd, Submission No 2 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 31 January 2017; Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017 3. See also Australian Competition and Consumer Commission, Submission No 12 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 17 March 2017 4–5; Horticulture Coalition of South Australia, Submission No 13 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 17 March 2017; Primary Industries and Regions SA Submission No 14 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 22 May 2017 14–5.

³²² South Australian Produce Market Ltd, Submission No 2 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 31 January 2017.

³²³ Ibid.

wholesalers are subjected to the mandatory *Horticulture Code of Conduct*,³²⁴ while supermarkets operate under the voluntary *Grocery Code of Conduct*, and therefore, elect to be bound by the code.³²⁵ The Small Business Commissioner, Mr John Chapman, shared similar concerns in his initial submission to the Committee. Mr Chapman was specifically concerned with the fact that the new *Horticulture Code of Conduct* failed ‘to adopt the recommendation to regulate transactions between growers and retailers where the retailer is not a signatory to the [code]’.³²⁶ These concerns were further expanded upon through the evidence the Committee received during hearings.

When Mr Demasi appeared before the Committee, he noted that ‘there is a bit of a disparity in the market place’ given that the *Horticulture Code of Conduct* ‘only applies to 50 per cent of the supply chain—which is the independent and wholesaling sector’, and fails to apply or ‘take into account retailers, exporters or processors’.³²⁷ Mr Demasi went on to note that the *Grocery Code of Conduct* also fails to apply to all stakeholders because it,

*is voluntary and again it does not capture everybody. ... the mandatory code does [however] include wholesalers, and it includes Metcash now. It didn't before, but it does include Metcash because they are wholesalers.*³²⁸

Mr Demasi also explained that the *Horticulture Code of Conduct* does not apply to,

supermarkets, and it does not include dealings with growers where they have a direct connection to supermarkets, exporters, processors and the like, so those guys are obviously reliant on the voluntary grocery code which does not provide the robust mechanism, as does the new mandatory code, which is hefty penalties, which is good protection for

³²⁴ South Australian Produce Market Ltd, Submission No 2 to Economic and Finance Committee, Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply, 31 January 2017.

³²⁵ Ibid citing the *Grocery Code of Conduct*.

³²⁶ Small Business Commissioner South Australia, Submission No 10 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 14 March 2017 3.

³²⁷ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 02 August 2017, 123 (Angelo Demasi, Chief Executive Officer, South Australian Produce Market Ltd).

³²⁸ Ibid.

*growers.*³²⁹

The *Horticulture Code of Conduct* was also viewed as a positive tool and an ‘advantage’ to the supply chain of produce markets ‘because growers can deal in our market system and know that there is protection of the mandatory code.’³³⁰ Mr Demasi went on to note that he supports the mandatory code but takes issue with the fact that supermarkets are not required to operate under the same conditions. On this point, the witness noted:

*We have no issue with [the mandatory code] but we do take umbrage with the supermarkets which are causing a lot of the lower price pressures in the marketplace in terms of not having a mandatory code like Wholesalers do in our markets.*³³¹

It should also be noted that Foodland is not a signatory to the voluntary *Grocery Code of Conduct*. When questioned on this, the supermarket’s representatives reiterated the fact that Foodland Supermarkets ‘don’t have a direct impact on the suppliers to the same extent [the other larger retailers have because] [t]he relationship is predominately with Metcash.’³³² And as noted above, Metcash are subject to the mandatory *Horticulture Code of Conduct*.

Although supermarkets are not bound by a mandatory code, the Committee acknowledges the earlier point that About Life Pty Ltd, Aldi, Coles and Woolworths have all chosen to be bound by this Code.³³³ Moreover, the Committee notes Mr Demasi’s support for the recent amendments to the Australian Consumer Law through the inclusion of an ‘effects test’ to section 43, as a mechanism in addressing the potential unfair commercial actions of retailers (see **part 8.3** for further information on this amendment).³³⁴

³²⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 02 August 2017, 123 (Angelo Demasi, Chief Executive Officer, South Australian Produce Market Ltd).

³³⁰ Ibid.

³³¹ Ibid 124.

³³² Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 104 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

³³³ Ibid. See also Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 24 May 2017, 22 (David Salisbury, General Manager, Consumer and Small Business Strategies, ACCC).

³³⁴ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 104 (Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets).

Mr Demasi ultimately concluded, however, that under the current state of affairs,

there are no controls in over production without a discrete purchase order from the retail chains dictating who stays in business. Growers do need other alternatives, and the central markets plays a pivotal role. Unfortunately, sometimes it means—and I think my colleague Jordan, from AUSVEG, highlighted this—that our market has become a dumping ground for supermarkets. Again, that causes an issue of price disparity and we certainly do not want to see that.

I think in the markets in South Australia we are very lucky because growers can come and sell in our market or they can choose to give it to a wholesaler, and 80 per cent of our wholesalers are actually growers, and that is probably something unique compared to most of the other states. I think Melbourne is probably closer to us in terms of that.³³⁵

In comparing the *Horticulture Code of Conduct* and the *Grocery Code of Conduct*, representatives from the Horticulture Coalition of South Australia noted that there is a,

need for consistency and equity in the application of codes of conduct across the sector, where the Horticulture Code of Conduct is mandatory, binding wholesalers, while the Food and Grocery Code of Conduct is a voluntary code applying only when retailers elect to be bound by the code.³³⁶

Associate Professor Bogomolova stated that:

Part of the issue that we find with local producers, depending on how sophisticated they are, is quite often they don't even know that a code of conduct exists. The level of their sophistication in business matters is quite low, we find ... they don't know what tools are available to them to potentially avoid that in the future, or even where to go, after they

³³⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 02 August 2017, 124 (Angelo Demasi, Chief Executive Officer, South Australian Produce Market Ltd).

³³⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 117 (Amy Williams, Executive Officer, Horticulture Coalition of South Australia).

*have been found in this position, so I think there is a certain lack of information or understanding. They feel quite alone in this situation, so perhaps there is more room for some communication, education and information for them: 'This is what you do before you sign. This is what you do after you sign and find yourself in trouble.'*³³⁷

Associate Professor Bogomolova also stated that governments could assist in addressing these issues by helping the ACCC enforce the codes of conduct 'and making sure that people actually comply with [them]'.³³⁸

Mr Jordan Brooke-Barnett, State Manager of AUSVEG SA and Member of the Horticulture Coalition of South Australia, stressed that given the infancy of the new *Horticultural Code of Conduct*, it is yet to be determined whether it will make any material differences to 'improv[ing] the relationship between the growers and wholesalers'.³³⁹ Mr Brooke-Barnett went on to critique the *Grocery Code of Conduct*, because it neglects to consider the relationship between smaller retailers and larger retailers, and wholesalers and retailers. The witness also noted that no single code controls these relationships and is the reason 'why the industry groups under the Horticultural Coalition of SA have been proponents of having a single code for fresh produce or agriculture, which governs all trading relationships'.³⁴⁰ In explaining this gap, Mr Brooke-Barnett, provided the following example:

It might be that in a supermarket in South Australia, one of the buyers, has overbought on pumpkins, or there has been a really good season and they have got a flood of produce, they had ordered a certain amount and they are 20 per cent oversubscribed or over ordered, so they just knock 20 per cent out of their QA. With no rhyme or reason, they will knock it out of their QA, and then they will drop it and dump it on

³³⁷ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 93 (Svetlana Bogomolova, Associate Professor, the Ehrenberg-Bass Institute for Marketing Science, University of South Australia).

³³⁸ Ibid.

³³⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 120 (Jordan Brooke-Barnett, State Manager of AUSVEG SA and Member of the Horticulture Coalition of South Australia).

³⁴⁰ Ibid.

*wholesale markets and then the wholesalers have to deal with that dumped produce, which is competing against the produce that they have brought in for the season. So, the actions of the supermarkets have a flow-on effect through the entire supply chain and on smaller retailers.*³⁴¹

To address this issue, the witness advocated for reform at the federal level to control these relationships,

*maybe through the ACCC or at the state level, I don't know ... With the horticultural code of conduct, the ACCC were hearing a lot of complaints from Queensland between wholesalers and growers in the north. I guess it was the low-hanging fruit to fix up the horticultural code of conduct. I think it is yet to be seen how serious they are about improving trading conditions with our industry and whether they are willing to take on the supermarkets and other trading relationships that exist within the industry.*³⁴²

In light of the above evidence the Committee makes the following recommendations:

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.

Recommendation 10

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 the inclusion of civil penalty provisions for contravention of the Code's provisions.

³⁴¹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 25 July 2017, 120 (Jordan Brooke-Barnett, State Manager of AUSVEG SA and Member of the Horticulture Coalition of South Australia).

³⁴² Ibid.

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*.

The Committee makes these recommendations on the basis of the evidence that it received. Mr Angelo Demasi, Chief Executive Officer of South Australian Produce Market Ltd noted that, 'I think maybe somehow by imposing some of the provisions from the mandatory code in the voluntary code may provide more protection to the Growers.'³⁴³ Mr Demasi further reiterated the fact that there are 'no penalties attached to [the *Grocery Code of Conduct*] ... apart from the normal breaking of the ACCC consumer law.'³⁴⁴ Mr Trevor Ranford, Deputy Chair of the Horticulture Coalition of South Australia, stressed that the arguments around mandatory versus voluntary codes of conduct becomes redundant when there are plans in place that ensure that the marketplace is profitable and operates effectively because,

*if all of our farmers and growers are profitable and making good returns out of it, many of the issues like mandatory codes actually disappear in real terms. That is one of our biggest problems at the present moment: our growers are not necessarily as viable as they were two decades ago or a decade ago, and we need to change that.*³⁴⁵

³⁴³ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 02 August 2017, 125 (Angelo Demasi, Chief Executive Officer, South Australian Produce Market Ltd).

³⁴⁴ Ibid 126.

³⁴⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 02 August 2017, 130 (Trevor Ranford, Deputy Chair, Horticulture Coalition of South Australia).

12 GRAIN SUPPLY CHAIN ISSUES

12.1 Introduction

Given the correspondence the Committee received in stage one of this Inquiry, namely a letter from the Hon Rob Kerin, Chair of Primary Producers SA, the Committee included an item in its Terms of Reference to provide an update in relation to whether the Essential Services Commission of SA (ESCOSA) had conducted a review of the entire grain supply chain.³⁴⁶ Mr Kerin's letter indicated that this review of the entire grain supply chain was a recommendation that was made in the 2012 *Final Report of the Select Committee on the Grain Handling Industry*.³⁴⁷ This chapter provides an update with regard to this review and details the evidence the Committee has received in relation to the current issues in the State's grain supply chain.

This chapter provides this information by first summarising the findings of the State's Select Committee on the Grain Handling Industry in **part 12.2.1**. This section also considers the recommendation that led to the ESCOSA review. **Part 12.2.2** of this chapter then considers the ESCOSA review in more detail and explains its Terms of Reference. The Committee notes that the final report for this review is due before 30 March 2018. This chapter, in **part 12.3**, then summarises the evidence it received from stakeholders that noted concerns in relation to the State's grain industry. The Committee notes that these submissions were received subsequently to the publication of the Committee's Issues Paper. The chapter concludes by making two recommendations: first, that the Minister for Transport and Infrastructure investigate the insufficient supply of 20-foot containers. Secondly, that the Treasurer consider the final report of the ESCOSA grain inquiry in conjunction with the evidence the Committee has received in this report.

³⁴⁶ Letter from Hon Rob Kerin, Chair of Primary Producers SA to Economic and Finance Committee, 03 February 2017.

³⁴⁷ Ibid quoting a recommendation made by the Select Committee on the Grain Handling Industry. See South Australia, *Final Report of the Select Committee on the Grain Handling Industry*, Parl Paper No 225 (2012) 8.

12.2 Review of the entire grain supply chain

12.2.1 Summary of the State's Select Committee on the Grain Handling

Industry

In March 2011, Mr Adrian Pederick, Member for Hammond, moved a motion in the House of Assembly, in the State's 52nd Parliament, calling for an 'appointment of a select committee to investigate the Grain Handling Industry in South Australia.'³⁴⁸ This Select Committee was created in response to the 'widespread dissatisfaction of farmers with Viterro's management of the 2010/11 harvest.'³⁴⁹ As part of this motion, there was an obligation for the Select 'Committee to report on 14 September 2011'.³⁵⁰ The Select Committee met this obligation by tabling its 'Interim Report on 14 September and sought the approval of the House of Assembly to continue its inquiry into 2012'.³⁵¹ In total, the Select Committee made 14 recommendations; four in its Interim Report and 10 in its final report (see **Appendix 3** for a list of these 14 recommendations).

For present purposes, however, the relevant recommendation for this Inquiry is the following suggestion:

*That the State Government authorise the Essential Services Commission of South Australia (ESCOSA) to undertake a review of the entire grain supply chain with the objective of establishing arrangements that provide the basis for pricing of and access to grain storage and bulk handling facilities (including up-country services) that are consistent with the requirements of a competitive and deregulated wheat export market.*³⁵²

³⁴⁸ South Australia, Final Report of the Select Committee on the Grain Handling Industry, Parl Paper No 225 (2012) 1.

³⁴⁹ Ibid 5.

³⁵⁰ Ibid 1.

³⁵¹ Ibid 2.

³⁵² Ibid 8, 25.

In arriving at this recommendation, the Select Committee noted that ESCOSA had made similar suggestions in its 2007 Review of Ports Pricing and Access and in its Draft Report of the 2012 Review (June 2012).³⁵³ Accordingly, the Select Committee,

strongly recommend[ed] that the Government act on the recommendations of ESCOSA to ‘consider the question of whether or not grain storage and bulk handling facilities should be subject to access regulation as part of a broader review, having regard to the entire grain supply chain.’ Such a review should not assume that access regulation is essential. There should be a broad approach that examines all options with reference to the general policy framework that falls under the umbrella of ‘Competition Policy.’ The proposed review should refer to the Productivity Commission’s findings (2010) that access regimes discourage innovation and investment. The review should also consider the relevance of the Maritime Services (Access) Act 2000 in the context of competition principles and the legislation’s impact on the development of ports in South Australia ...

*The need to establish a legislative regime that sets the base for competitive and viable port services is important for the future of the grains industry in South Australia. The issue requires leadership from both levels of Government.*³⁵⁴

12.2.2 Update regarding ESCOSA’s review of the entire grain supply chain

In a letter dated 16 March 2017, the Hon Tom Koutsantonis MP, Treasurer wrote to ESCOSA advising that he, in accordance with section 35 of the *Essential Services Commission Act 2002* (SA), requested ESCOSA undertake an inquiry in relation to the bulk grain supply chain, and subject to the following Terms of Reference:

- a) *In part 1 the Commission is to inquire into the South Australian bulk grain export supply chain (farm gate to export vessel) costs including vessel loading charges over the past 10 years, having regard to:*

³⁵³ South Australia, Final Report of the Select Committee on the Grain Handling Industry, Parl Paper No 225 (2012) 23–4.

³⁵⁴ Ibid.

- (i) *the components of the bulk grain export supply chain costs (including vessel loading charges) and their efficiency*
 - (ii) *harvest trends in South Australia over the past 10 years*
 - (iii) *the basis upon which road and rail components of the bulk grain export supply chain costs are recovered.*
- b) *As part 2 of the Inquiry, should the Commission find areas where bulk grain supply chain costs are identified as inefficient, options should be provided for addressing those inefficiencies.*

These Terms of Reference were altered recently to include an analysis of the results of a study that have been undertaken by the Australian Export Grains Innovation Centre. As a result, a draft report of ESCOSA's inquiry will be provided to the Hon Tom Koutsantonis MP, by 30 November 2017. The final report is now due by 30 March 2018.³⁵⁵

In their initial submission to the Committee, Grain Producers SA noted that it, along with five other interested parties, have currently made submissions to the ESCOSSA inquiry.³⁵⁶ Grain Producers SA also noted specific concern that 'there are unexplained differences in charges between harvest receivals and third-party storage deliveries in charge differentials relative to the cost of providing the receival service.'³⁵⁷

In explaining the importance of this long awaited reviewed into the State's grain industry, Mr Wade Dabinett, Chairman of Grain Producers SA, noted in his evidence before the Committee that:

The pathways for grain producers to their markets are controlled by monopolies, ... and we hope that ESCOSA's inquiry will prove South Australia's bulk grain export supply chain costs over the last 10 years have been inefficient, and we can look forward to finding ways to address those inefficiencies. The ESCOSA review came out of a recommendation from a previous select committee. While it took some

³⁵⁵ Essential Services Commission of SA, *Inquiry into the South Australian Bulk Grain Export Supply Chain Costs* <<http://www.escosa.sa.gov.au/projects-and-publications/projects/inquiries/inquiry-into-the-south-australian-bulk-grain-supply-chain-costs>>.

³⁵⁶ Grain Producers SA, Submission No 16 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 21 July 2017, 4.

³⁵⁷ Ibid.

*time to get the inquiry underway, we certainly welcome that it is here now.*³⁵⁸

This chapter will now summarise the submission and evidence it received from Grain Producers SA and other relevant stakeholders.

12.3 Summary of Evidence Received from Stakeholders

The Committee received a submission from Grain Producers SA, which explained the importance of the State's grain industry to South Australia's economy and export earnings,³⁵⁹ noting that there was 'an estimated 3,000 grain producing businesses for the 2016/17 season of 11.1 million tonnes'.³⁶⁰ This submission responded directly to the Committee's Issues Paper, noting concerns pertinent to the following areas:

1. The occurrence and effect of unfair contractual dealings and the inequitable bargaining power that exists between primary producers and retailers in supply chains;
2. The barriers preventing producers from entering larger supply chains with a specific focus on how producers can better meet the requirements of larger suppliers; and
3. Supply chain issues.

This chapter will now summarise each of the above mentioned issues, incorporating additional evidence the Committee received through hearings as well.

12.3.1 Inequitable bargaining power

Grain Producers SA's initial submission noted that South Australian grain producers can choose to sell to a grain pool, which leaves pool providers responsible for using their knowledge and expertise to market and sell the producer's grain.³⁶¹ In return, these pool providers afford producers with an estimated pool return or estimated silo return. However, Grain Producers SA's submission informed the Committee that these estimated amounts are not guaranteed returns. Their submission accordingly indicated that despite the industry's self-

³⁵⁸ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 156 (Wade Dabinett, Chairman, Grain Producers SA).

³⁵⁹ Grain Producers SA, Submission No 16 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 21 July 2017, 1.

³⁶⁰ Ibid.

³⁶¹ Ibid.

regulatory frameworks, including codes of conduct, pool providers are under no obligation to pay the estimated returns.³⁶² As a result, some grain producers are essentially ‘price takers’, meaning that these farmers have little to no negotiating power. On this point, Mr Peter Grocke, a Barossa Primary Producer further supported this position when he stated that ‘there is a lack of negotiating power from even major stakeholder groups’.³⁶³ With that said, some pool providers are members of Grain Trade Australia, which promotes the following self-regulating codes of practice:

- Australian Grain Industry and associated technical guidelines;
- Grain Transport; and
- Port Access.³⁶⁴

The *Australian Grain Industry Code of Practice* refers to technical guideline documents that among other things govern the operating standards of pool providers.³⁶⁵ For non-Grain Trade Australia members, this is a **voluntary code**. Furthermore, the technical guideline document, ‘does not currently contain penalty provisions in the event a Member breaches the Code ... [but it] does have a dispute resolution service’.³⁶⁶ A subcommittee of Grain Trade Australia is currently reviewing this document.

As a possible solution to this inequitable bargaining power, Grain Producers SA suggested that a guaranteed pool return ‘should be the only price advice the Pool Provider provides and the minimum price paid to Pool Participants net of all Pool Provider charges at a designated price basing point, i.e. country silo, track or fee in store.’³⁶⁷

Mr Dabinett, expanded upon these issues when he appeared before the Committee and noted that ‘[g]rain producers ... have no opportunity or right to negotiations over port charges. It is

³⁶² Grain Producers SA, Submission No 16 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 21 July 2017, 2.

³⁶³ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 09 August 2017, 144 (Peter Grocke, Barossa Primary Producer).

³⁶⁴ Grain Trade Australia, *Codes of Practice* Grain Trade Australia <<http://www.graintrade.org.au/grain-industry-codes>>.

³⁶⁵ Grain Producers SA, Submission No 16 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 21 July 2017, 2.

³⁶⁶ Ibid.

³⁶⁷ Ibid 3.

purely another cost deducted from us.³⁶⁸ Mr Mark Modra, Chairman of SA Barley Advisory Committee and an Eyre Peninsula Farmer, further substantiated this position by informing the Committee that ‘[o]ne of the main problems is that the grain industry is not able to get accurate grain stock information from [the] monopoly for this system to work.’³⁶⁹ Mr Modra went on to explain this issue by providing the following example:

[W]e sell [barley] in two main grades: one is feed and goes to livestock and the other one is to malt and goes into good old beer, and there is a premium for that. But we are finding that a lot of that feed barley is being sold as malt into some of the markets ... [but] [w]e only get paid as feed. That premium can be anywhere from \$5 to \$60 per tonne. So, if you are looking at a million tonnes going into that market—we are not even sure of these figures, which is part of the problem; we are not able to see what these grain stocks are—we are looking at \$5 million to \$60 million each year that the communities, growers and the government through taxes are missing out on ...

The other problem is that these competitors are not able to actually compete. If they knew that that stack had so much screenings into a protein, or whatever, they could compete and pay more for that grain and then give us growers a fairer price. Because they don’t have that information, they aren’t willing to bid to a higher level for the whole industry to benefit.³⁷⁰

The Committee notes that ESCOSA has recently concluded its review of the State’s port access regime, which is an appraisal that ESCOSA is required to undertake once every five years as per the South Australian *Maritime Services (Access) Act 2000* (SA).³⁷¹ In this year’s final report

³⁶⁸ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 156 (Wade Dabinett, Chairman, Grain Producers SA).

³⁶⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 162 (Mark Modra, Chairman of SA Barley Advisory Committee and an Eyre Peninsula Farmer).

³⁷⁰ Ibid.

³⁷¹ Essential Services Commission of South Australia, *Ports Pricing and Access Review* (2017) Essential Services Commission of South Australia <<http://www.escosa.sa.gov.au/projects-and-publications/projects/ports/ports-pricing-and-access-review-2017>>.

into the State's port access regime, ESCOSA considered whether there was a potential for the port service providers of Flinders Ports and Vitorra to use their 'expected future market conditions' and accordingly have market power.³⁷² ESCOSA determined that:

*Both ports service providers are vertically integrated and operate both regulated and unregulated port activities. [ESCOSA] concluded that both operators continue to have the potential to exercise market power. Furthermore, from the evidence available at this time, on balance, it is unlikely that the potential to exercise market power will change substantially over the next prescribed period.*³⁷³

Although ESCOSA's port access review indicated that both Flinders Ports and Vitorra have a potential to exercise market power, ESCOSA concluded that there was 'no evidence to suggest that port operators are exercising such market power'.³⁷⁴ The report, therefore, concluded that the current regimes pertaining to both port access and pricing should remain the same until the next review in five years.³⁷⁵ With that said, ESCOSA did offer two 'additional recommendations' which are aimed at enhancing access and price regulation of South Australia's ports, and which were made in light of 'the objective of preventing the exercise of market power at the least regulatory cost'.³⁷⁶ These additional recommendations are

- *to examine the alignment of the services in scope of the Access and Pricing Regime;*
and
- *to examine opportunities to better integrate transport infrastructure access regimes.*³⁷⁷

With regard to these additional suggestions, Mr Dabinett stated that,

³⁷² Essential Services Commission of South Australia, *Final Report Ports Pricing and Access Review* (11 September 2017) Essential Services Commission of South Australia <<http://www.escosa.sa.gov.au/ArticleDocuments/1026/20170911-2017PortsAccessAndPricingReview-Final.pdf.aspx?Embed=Y>>.

³⁷³ Ibid 45.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Ibid 46.

³⁷⁷ Ibid.

ESCOSA formed the view that there are some areas where consideration should be given to improving the ports access regime and the ports pricing regime. These include the level and type of infrastructure covered by the regimes, the consistency of services in scope of the regimes, and integrating the regimes in a statewide transport regime.

[Grain Producers SA] believe the merits of a statewide transport access regime should be explored to include elements that are currently excluded from coverage in the existing regimes, such as the receipt, storage and handling of our state's grain commodities and that the interests of grain producers be recognised in any regime reviews that involve movement or sale of grain.³⁷⁸

12.3.2 Barriers in transitioning into larger supply chains

Grain Producers SA's initial submission to the Committee also noted that the grain industry has inefficient transport and packaging processes, which affects the producer's earnings and the industry's reputation. On this point, the stakeholder noted that there has been an increase in the supply of 40-foot containers and a decrease in 20-foot containers.³⁷⁹ Producers are not filling the 40-foot containers because there are limited packers that can handle the 40-foot containers due to 'road weight restrictions'.³⁸⁰ In addition, Grain Producers SA suggested that there is not an export market for 40-foot containers because 'potential customers throughout Asia don't have the infrastructure to manage the larger boxes'.³⁸¹ This was a position echoed by Mr Shane Gale, Policy Officer of Grain Producers SA, in his evidence before the

³⁷⁸ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 156 (Wade Dabinett, Chairman, Grain Producers SA).

³⁷⁹ Grain Producers SA, Submission No 16 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 21 July 2017, 2.

³⁸⁰ Ibid.

³⁸¹ Ibid.

Committee. On this point, Mr Gale stated ‘[t]he lack of containers is affecting our ability to export grain commodities.’³⁸² Mr Gale also noted that:

Internationally, there has been some big change in organisations or companies running containers between continents. We saw a lot of containers end up in western Asia. Essentially, you have one port here, so you need something coming in on a 20-foot container to ensure that someone else sending something out can send it out.

*A lot of stuff now comes in 40-foot containers. The market overseas is mainly for 20 foot containers, for handling. If you go up a river in China, you want a 20-foot container to handle when you get there. Probably more work needs to be done to be able to prove that containers or vessels are deliberately missing in Adelaide.*³⁸³

Mr Chris Heinjus, Agribusiness Consultant and Lower Mid North Farmer, further expanded upon this issue when he appeared before the Committee and noted that,

*we have a market that is very sensitive around containers around Fremantle, Melbourne, Brisbane and Sydney. When we bring in an industrial dispute that disrupts that market, it has an injurious effect far greater than the actual industrial dispute. Basically, the market says that it’s unreliable to bring a container in here so, therefore, we want it. So, the net impact of that dispute is far longer than what it is just for the actual period of the dispute.*³⁸⁴

In further explaining the issue posed by this container situation, Mr Garry Hansen, Director of Grain Producers SA, indicated that it is an issue preventing smaller producers from entering larger supply chains because,

the lack of 20-foot containers is it is not allowing start-up companies to get into the export market because, basically, you have to put your toe

³⁸² Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 165 (Shane Gale, Policy Officer, Grain Producers SA).

³⁸³ Ibid 164–5.

³⁸⁴ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 165 (Chris Heinjus, Agribusiness Consultant and Lower Mid North Farmer).

*into the water first. A container tray allows smaller operators to put their toe in the water. There's a lot of demand coming out of China for grains: feed grains, malt grains, wheat, everything. We can't compete here. We are unable to get those guys to come here to try to compete with our monopoly.*³⁸⁵

The Committee also heard that this lack of 20-foot containers is even affecting the positive 'big swing' towards the demand of South Australian pulses. In explaining this, Mr Wade Dabinett, Chairman of Grain Producers SA stated:

*One very positive thing that we have seen in the South Australian grains industry is a big swing into pulses. We are quite a sustainable producer of good food-grade pulses, namely being lentils. It was International Year of the Pulse last year and we certainly delivered on that year. But, again, there is a restriction on the amount of containers that can accompany that growth, so what we see is a lot of the pulses soak up the containers first and there is very little left over to enable barley and wheat producers to participate in that market. That is pushing the lower-grade commodities into the bulk supply chain when there is an appetite for it to actually come out of that supply chain.*³⁸⁶

Another barrier to some primary producers transitioning into larger supply chains pertains to transport issues more broadly. On this point, Mr Heinjus noted:

As we see rail infrastructure depreciate, the cost of actually maintaining that depreciation goes up, which then puts more traffic on road. If you do the rough sums at the moment—and this would actually impact on every single electorate right throughout South Australia—if we see seven million tonnes of grain per year going onto road, we suddenly have a very, very significant issue around the maintenance of roads. We are then going to have a depreciated asset with roads in 10

³⁸⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 165 (Garry Hansen, Director, Grain Producers SA).

³⁸⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 165 (Wade Dabinett, Chairman, Grain Producers SA).

years' time ... I would argue that we already have a depreciated asset with roads. So, the market actually determines when it's more economic to flow on to road versus when it is on rail, and that freight market is a whole market in its own right ...

as you see increased truck traffic, with the risk of trucks, the risk of injury and all that sort of stuff. So, the issue we have here, particularly around transport, is far greater than the grains industry in which we sit and represent because, essentially, if you start to see increased road traffic, you are going to see increased maintenance of roads.³⁸⁷

In comparing South Australia's transport network to that of Western Australia's Mr Heinjus explained,

the actual rail network in WA is much more efficient than the rail network in South Australia. I have recently come back from a Canadian study trip, and if you look at their rail network, and you are moving grain 1,500 kilometres from the plains over a couple of hills, the infrastructure that balances that off is amazing to see when you compare it to our infrastructure.

If I pick on ... the Eyre Peninsula—and I often joke about the 10 railcars doing five km/h an hour as you go through Cummins—it is hugely inefficient. That is a cost of the underpinning infrastructure that is costly to run. Then you get into the example of who pays for that infrastructure, and that's a monopoly that controls the infrastructure. Viterra will hide behind the Flinders Port monopoly or they will hide behind the rail monopoly, and so the issue with which we sit here is actually enormously complex without any simple solution.

Clearly, we are seeing a movement into road. We are seeing a movement into road trains and we are now seeing a lot more activity in the Mid North, in the Mallee on road train activity, as we should, but

³⁸⁷ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 163 (Chris Heinjus, Agribusiness Consultant and Lower Mid North Farmer).

*we are seeing more road traffic: more road traffic, more cost of infrastructure.*³⁸⁸

The Committee notes that these issues are of great concern given that the Western Australian grain industry, although similar to our industry, is arguably more profitable because as noted by Mr Hansen that,

*our supply chain costs are substantially higher than the supply chain costs in WA ... They export a much higher percentage than us, so you imagine that their supply chain costs should possibly be a bit higher because we have a little bit of domestic competition over here. Somehow ... we have become out of whack here.*³⁸⁹

12.3.3 Supply chain issues

Grain Producers SA initial submission also stated three areas of concern that impact upon supply chains within the grain industry. These areas of concern relate to:

- milling wheat;
- genetically modified grain based products; and
- feed barley versus malt barley.

Before expanding upon these issues, the Committee notes that the supply chain of the grain industry is quite complex. This is because, as Mr Heinjus noted in his evidence before the Committee, South Australia's grain supply chain has a few,

*main exporters and [these exporters then] subcontract the use of the supply chain, but that supply chain cost is actually quite inelastic and, relative to other states, our supply chain cost is relatively more expensive.*³⁹⁰

³⁸⁸ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 163–4 (Chris Heinjus, Agribusiness Consultant and Lower Mid North Farmer).

³⁸⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 161 (Garry Hansen, Director, Grain Producers SA).

³⁹⁰ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 158 (Chris Heinjus, Agribusiness Consultant and Lower Mid North Farmer).

In the interest of providing context to the current structure of the State's grain supply chain, the Committee also notes that the Australian grain industry was initially regulated, however, in 2008, the industry started to undergo a process of deregulation. The Commonwealth's *Wheat Export Marketing Amendment Act 2012* (Cth) saw the completion of this transition, and therefore, the grain industry is now deregulated. This Act gave effect to the Productivity Commission's recommendations that were made in its report into the wheat export industry by,

*amending the Wheat Export Marketing Act 2008 to transition the wheat export industry to full deregulation [through] abolishing the Wheat Export Accreditation Scheme and the wheat export charge on 10 December 2012; winding up Wheat Export Australia on 31 December 2012; and removing the access test requirements for grain port terminal operators on 30 September 2014. [This Act] [a]lso makes consequential amendments to the Criminal Code Act 1995 and repeals the Wheat Export Marketing Act 2008.*³⁹¹

In noting the State's current monopolistic supply chain, Mr Gale informed the Committee that it would be very difficult for there to be a disruption to the supply chain because the,

chain ... evolved over many decades. The ports are in the right spots. There are five good ports. The up-country locations where grain is delivered by farmers, that 80 per cent that goes to the ports, are located in the right spots, so you have a very well-positioned supply chain through to the ports.

For a competitor to come in, they have to put a lot of money upfront. How can they compete directly with what is there now? What is there now is really good. Farmers are looking for convenience at harvest. Eighty per cent of that grain is going to export. They have to get it off and get it in. Give us convenience. Give us efficiencies. The incumbent there now can do that. They can take the whole harvest of South

³⁹¹ See Parliament of Australia, *Wheat Export Marketing Amendment Bill 2012* Parliament of Australia <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4783>.

*Australia in, as they did last year in a peak year, and do that quite easily.*³⁹²

With regard to milling wheat, Grain Producers SA expressed that ‘[m]illing wheat has traditionally been viewed as a standardised commodity that is traded on price [and] ... is purchased at the same market price regardless of quality level provided a minimum grading standard is met.’³⁹³ As a result, there is no incentive for producers to produce high quality grain because they ‘are not financially rewarded for [it] ... [thus] [t]he quality distribution will be based on the lowest possible effort’.³⁹⁴ This means that wheat millers are sensitive to quality variability.³⁹⁵ Therefore, Grain Producers SA maintains that there is no supply chain management in relation to bread wheat.³⁹⁶ This submission further noted that unlike some other Australian jurisdictions, South Australia prohibits the use of genetically modified crops until at least September 2019. The stakeholder accordingly suggested looking into whether the supply chains of grain producers could benefit from being ‘GM-free’ with regard to price and marketing.³⁹⁷

In relation to the State’s barley industry, Grain Producers SA indicated that there is a need for standards to be relaxed with regard to less complex beers entering markets including China. This is because there is a market for ‘lower-grade fair average quality barley’.³⁹⁸

A further issue pertaining to the supply chains of South Australian wheat products is how the price is determined for this commodity. On this point, Mr Darren Arney, Chief Executive Officer of Grain Produces SA explained to the Committee that the price of bread wheat or bread varieties suitable for bread wheats is determined on its international price, irrespective

³⁹² Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 159 (Shane Gale, Policy Officer, Grain Producers SA).

³⁹³ Grain Producers SA, Submission No 16 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 21 July 2017, 5.

³⁹⁴ Ibid.

³⁹⁵ Ibid.

³⁹⁶ Ibid.

³⁹⁷ Grain Producers SA, Submission No 16 to Economic and Finance Committee, *Inquiry into Issues Faced by South Australian Primary Producers in Retail Supply*, 21 July 2017, 6.

³⁹⁸ Ibid.

of whether the wheat is destined for domestic consumption.³⁹⁹ Mr Arney informed the Committee that South Australia produces approximately 4 million tonnes of bread wheat or bread varieties suitable for bread wheats per annum. Of that amount, Mr Arney estimated that 80 per cent is exported. The witness further explained:

There are a number of domestic producers of flour from bread wheats [sourced from the State's Mid North or Upper South-East Mallee areas], but the domestic price for [the commodity] is determined by what the export price is, less the supply chain costs, back to the point of farm gate. So, a domestic user of bread wheat will pay, effectively, the international price, less those supply chain costs ...

The global world market for all wheat is over 750 million tonnes of wheat produced, of which South Australia is producing four million tonnes and we export around about 80 per cent of our wheat. The price determined is dependent on what international wheat prices are doing at that time. At the moment, wheat prices are around about ...

270 traded yesterday, so that price is determined on the international price for wheat less the supply chain fobbing costs to get it onto a vessel and then the transport costs back up-country. The supply chain costs then dictate what the domestic market is prepared to pay because a farmer can't sell it internationally at the higher number; they have to take the international price.⁴⁰⁰

When asked whether those supply chain costs were calculated on a farmer-by-farmer basis or whether it was a standard rate, Mr Arney explained,

supply chain costs are charged to the exporter or the trader. The farmer at point of delivery into the export supply chain or into the bulk handling is charged back to the trader who transacts that grain. The

³⁹⁹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 157 (Darren Arney, Chief Executive Officer, Grain Produces SA).

⁴⁰⁰ Ibid.

*farmer doesn't pay the supply chain costs in effect: it is deducted from the price they receive.*⁴⁰¹

Mr Arney went on to inform the Committee that there is a federal code of conduct which acts as 'a mechanism for reference pricing for wheat.'⁴⁰² The witness further noted that this code is **mandatory** in nature but it only relates to reference prices and, therefore, 'the farmer doesn't have a way of negotiating what that price is. It's up to the exporter to negotiate that price, not on behalf of the farmer but on behalf of the exporter.'⁴⁰³ The Committee further inquired into whether that price was variable. Mr Arney responded by reiterating the point made above at **part 12.3.1**, that some grain producers have little to no negotiating power. On this point, Mr Arney noted:

*With the reference pricing in South Australia, it's difficult to say whether [price is] negotiable because the major exporter is the bulk handling company. In Victoria and in Western Australia, that price is negotiable. It's difficult to determine how those exporters go about negotiating that price here in South Australia. If they are able to negotiate a better deal, whether that's passed back to growers, again, there is uncertainty around that, but it's difficult to determine.*⁴⁰⁴

Mr Heinjus did inform the Committee that there is some confusion about why South Australia's supply chain costs are more expensive. In explaining this inconsistency, the witness compared South Australia's grain supply chain with that of Western Australia's; such a comparison can be drawn because SA and WA both have predominately export markets.⁴⁰⁵ Mr Heinjus accordingly stated:

We compare ourselves with WA a lot and the WA farmers' cash price. In a simplistic world, the market determines the value of the price at the

⁴⁰¹ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 157 (Darren Arney, Chief Executive Officer, Grain Produces SA).

⁴⁰² Ibid 158.

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.

⁴⁰⁵ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 159 (Chris Heinjus, Agribusiness Consultant and Lower Mid North Farmer).

*port, inclusive of all the issues ... The WA farmers will receive, on average, between 10 and 15 [per tonne] over South Australian farmers ... Market forces will determine what is happening, but in that you have a supply chain cost that is rather inelastic. In South Australia particularly, and in WA, the holder of the supply chain is actually a monopoly. In WA, the monopoly is actually a cooperative that is a grower-owned cooperative.*⁴⁰⁶

In light of the above issues, the Committee makes the following recommendations:

Recommendation 12

In light of the evidence the Committee received from Grain Producers SA, the Committee recommends that the Minister for Transport and Infrastructure investigate the insufficient supply of 20-foot containers in the State's grain industry.

Recommendation 13

In the Treasurer's consideration of the ESCOSA's Inquiry into the South Australian Bulk Grain Export Supply Chain Costs, the Committee strongly recommends that he consider the evidence received by this Committee during this Inquiry in relation to the current issues that face primary producers in the State's grain industry.

⁴⁰⁶ Evidence to Economic and Finance Committee, House of Assembly, Parliament House, South Australia, 27 September 2017, 159 (Chris Heinjus, Agribusiness Consultant and Lower Mid North Farmer).

APPENDIX 1

WRITTEN SUBMISSIONS RECEIVED

| No | Name | Position | Organisation |
|----------------------------------|---|----------------------------------|--|
| 1 | Joseph Carli | | |
| 2 | Angelo Demasi | Chief Executive Officer | South Australia Produce Market Ltd |
| 3 | Con Sciacca | Chief Executive Officer | Foodland Supermarkets |
| 4 | Malcolm and Andrew Lucas | Farmers | Ludale Pty Ltd |
| 5 | Associate Professor Svetlana Bogomolova, Professor Larry Lockshin and Nicole Richards | | Ehrenberg-Bass Institute of Marketing Science at the University of South Australia |
| 6 | Tim Bond on behalf of Frank Brennan | Manager, Planning and Evaluation | Natural Resources South East |
| 7(a) Initial submission | Melina Morrison | Chief Executive Officer | Business Council of Co-operatives and Mutuals |
| 7(b) Supplementary submission | Melina Morrison | Chief Executive Officer | Business Council of Co-operatives and Mutuals |
| 8(a) Initial letter | Rob Kerin | Chair | Primary Producers SA |
| 8(b) Submission | Rob Kerin | Chair | Primary Producers SA |
| 9 | Anne Moroney | Chief Executive Officer | Regional Development Australia—Barossa |

| | | | |
|---------------------------------------|-------------------------|-------------------------------------|---|
| 10 | John Chapman | Commissioner | Small Business Commissioner South Australia |
| 11 | Luke Mackenzie | Manager, Government Relations | Metcash Trading Ltd |
| 12 | Rod Sims | Chairman | Australian Competition and Consumer Commission |
| 13 (a) Initial submission | Amy Williams | Executive Officer | Horticulture Coalition of South Australia |
| 13 (b) Supplementary submission | Amy Williams | Executive Officer | Horticulture Coalition of South Australia |
| 14 | | | Primary Industries and Regions SA |
| 15 | Confidential submission | | |
| 16 | Wade Dabinett | Chairman | Grain Producers SA |
| 17 | Charles Teusner | Farmer | C & K Teusner Nominees Pty Ltd |

APPENDIX 2

LIST OF HEARINGS

| Date | Witness |
|---|--|
| 24 May 2017 | <ol style="list-style-type: none"> 1. Professor Mehdi Doroudi, Deputy Chief Executive PIRSA 2. Mr John Chapman, Small Business Commissioner 3. Mr Marcus Bezzi, Executive General Manager, Competition Enforcement with the ACCC 4. Ms Gabrielle Ford, General Manager, Agriculture Unit of the ACCC 5. Mr David Salisbury, General Manager, Consumer & Small Business Strategies with the ACCC |
| 07 June 2017 | <ol style="list-style-type: none"> 6. Professor Derek Baker, University of New England, Professor of Agribusiness and Value Chains |
| 28 June 2017 (Barossa Valley Council Chambers) | <ol style="list-style-type: none"> 7. Ms Anne Moroney, Chief Executive Officer of Regional Development Australia – Barossa 8. Ms Lisa Werner, Owner of Jersey Fresh Milk 9. Mr Michael Wohlstadt, Chair of Barossa Food 10. Mr Adrian Hoffmann, Director of Dimchurch Vineyards 11. Mr Steve Schiller, Rowland Flat Agriculture Bureau 12. Mr Jesse Auricht, Rowland Flat Agriculture Bureau 13. Mr Mark Grossman, Angaston Agriculture Bureau 14. Mr Jamie Nietschke, Koonunga Agriculture Bureau 15. Mr Sam Dahlitz, Lone Pine Agriculture Bureau |
| 25 July 2017 | <ol style="list-style-type: none"> 16. Associate Professor Svetlana Bogomolova, Ehrenberg-Bass Institute (UniSA) 17. Ms Nicole Richards, Research Associate, Ehrenberg-Bass Institute (UniSA) 18. Mr Con Sciacca, Chief Executive Officer, Impeach Pty Ltd trading as Foodland Supermarkets 19. Mr Christopher Villani, Marketing Manager, Impeach Pty Ltd trading as Foodland Supermarkets |

| | |
|-------------------|--|
| | <p>20. Ms Melina Morrison, Chief Executive Officer, Business Council of Co-operatives and Mutuals</p> <p>21. Mr Mark Egelstaff, Corporate Affairs Adviser, Business Council of Co-operatives and Mutuals</p> <p>22. Mr Simon Lane, Chairman, Almondco</p> <p>23. Ms Amy Williams, Executive Officer, Horticulture Coalition of South Australia</p> <p>24. Mr Jordan Brooke-Barnett, State Manager, AUSVEG SA and Member, Horticulture Coalition of South Australia</p> |
| 02 August 2017 | <p>25. Mr Angelo Demasi, Chief Executive Officer, SA Produce Markets</p> <p>26. Mr Trevor Ranford, Deputy Chair, Horticulture Coalition of South Australia</p> |
| 09 August 2017 | <p>27. Ms Jan Angas, Chair, Barossa Collaboration Project</p> <p>28. Confidential witness</p> <p>29. Mr Charles Teusner, Farmer</p> <p>30. Mr Peter Grocke, Farmer</p> |
| 27 September 2017 | <p>31. Mr Darren Arney, Chief Executive Officer, Grain Producers SA</p> <p>32. Mr Wade Dabinett, Chairman, Grain Producers SA</p> <p>33. Mr Shane Gale, Policy Officer, Grain Producers SA</p> <p>34. Mr Garry Hansen, Director, Grain Producers SA</p> <p>35. Mr Chris Heinjus, Agribusiness Consultant and Lower Mid North Farmer</p> <p>36. Mr Mark Modra, Chairman, SA Barley Advisory Committee and Eyre Peninsula Farmer</p> |

APPENDIX 3

LIST OF RECOMMENDATIONS MADE BY STATE SELECT COMMITTEE ON THE GRAIN HANDLING INDUSTRY

Source: South Australia, Final Report of the Select Committee on the Grain Handling Industry, Parl Paper No 225 (2012) 7–8.

INTERIM REPORT

The Select Committee reiterates the recommendations made in the Interim Report tabled on 14 September, 2011, namely:

That GTA (Grain Trade Australia) be required to mandate that, in the case of a disputed grain classification, an objective measurement is made available to the farmer at the sampling point.

That the relevant Commonwealth and State Ministers be requested to provide direction to the industry on the implementation and enforcement of a dispute resolution process that mandates the use of objective tests.

That grain handling and storage operators be required to publish an annual management plan for receival sites prior to each harvest. The management plan is to be prepared in consultation with Silo Committees, Local Government and other relevant stakeholders.

That information re stock levels and grades is made available in a timely manner to farmers and traders to ensure transparency and fairness.

FINAL REPORT

In this the Committee's Final Report, the Select Committee strongly recommends:

That the Federal Government initiate a review of the 'Wheat Export Marketing Amendment Bill, 2012' that is currently before the Federal Parliament with the objective of developing policies and legislation that will ensure the benefits of deregulation are fully realised within a competitive and innovative framework that provides the basis for a viable and successful industry.⁴⁰⁷

⁴⁰⁷ This Bill was said to give effect to the Productivity Commission's recommendations that were made in its report into the wheat export industry. The Bill, therefore, sought to 'amen[d] the *Wheat Export Marketing Act 2008* to transition the wheat export industry to full deregulation [through] abolishing the Wheat Export Accreditation Scheme and the wheat export charge on 10 December 2012; winding up Wheat Export Australia on 31 December 2012; and removing the access test requirements for grain port terminal operators on 30 September 2014. [This Bill] [a]lso makes consequential amendments to the *Criminal Code Act 1995* and

That the Federal Government establishes an independent body to oversee the classification of grain. The independent body would develop and implement classification policies and procedures, set grain standards, accredit grain classifiers and their training, undertake audits to ensure compliance with mandated procedures and, generally ensure the reputation of Australian grain. The body to be funded from existing charges paid by the industry.

The Select Committee further recommends that:

That the State Government review the costs and benefits of establishing an agreement with the Government of Western Australia for participation in the Australian Export Grains Innovation Centre.

That the State Government establish formal arrangements for consulting with the grains industry and local councils on planning for each harvest, rationalisation of grain receival centres (strategic sites) and, designation of access routes (rail and road) to ports. This arrangement would extend to providing annual reports to the Parliament through an appropriate Standing Committee.

That the State Government authorise the Essential Services Commission of South Australia (ESCOSA) to undertake a review of the entire grain supply chain with the objective of establishing arrangements that provide the basis for pricing of and access to grain storage and bulk handling facilities (including up-country services) that are consistent with the requirements of a competitive and deregulated wheat export market.

That the State Government undertake a review of the Maritime Services (Access) Act 2000 to determine the effectiveness of the legislation in providing the basis for competitive services and investment in port facilities. The proposed review would also clarify the interaction between Commonwealth and State regulations to eliminate possible duplication and simplify the procedures that are imposed on industry participants.

That the State Government in consultation with Local Councils, transport operators and appropriate grain industry representatives establish a project group to:

repeals the *Wheat Export Marketing Act 2008* on 1 October 2014.’ See Parliament of Australia, *Wheat Export Marketing Amendment Bill 2012* Parliament of Australia <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4783>. Please note that this Federal Bill has subsequently passed and therefore became an Act in December 2012. See *Wheat Export Marketing Amendment Act 2012* (Cth). Therefore, the grain industry is now deregulated.

- *identify a coherent network of local government roads which provide direct and appropriate access for heavy vehicles between main roads, storage sites, railheads and port in all council areas;*
- *produce an agreed single policy document for the operation of heavy vehicle on access roads over all Councils;*
- *provide a forum for local councils, transport operators and the industry to work collaboratively to identify priority needs thus maximising the benefits of road infrastructure funding;*
- *provide a single voice for local councils to present a logical and consistent argument to the State and Federal Government for road infrastructure planning and funding of heavy vehicle access routes;*
- *seek to rationalise and reduce duplication over the network; and,*
- *report to an appropriate Standing Committee of Parliament on its operation.*

That the services offered by the Small Business Commissioner be made known to farmers through the relevant groups representing the interests of farmers in South Australia; and that the Small Business Commissioner in preparing the Current Code of Practice on Farming notes the recommendations from the Committee.

That the South Australian Parliament establishes a Standing Committee on Primary Industries with the following objectives:

- *to ensure that Primary Industries continue to be a vital part of the State's growth and economic success;*
- *to assist in developing policies and practices that promote the State as a producer of Premium Food from a clean environment.*

That the State Government establishes a formal working arrangement with Glencore International to ensure a seamless transition from Viterra to Glencore avoiding disruptions to the grains industry and setting the basis for cooperation in introducing measures to improve the industry.

APPENDIX 4

GLOSSARY

| | |
|----------------------------------|---|
| ACCC | Australian Competition and Consumer Commission |
| ESCOSA | Essential Services Commission of South Australia |
| Food and Grocery Code of Conduct | <i>Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015 (Cth)</i> |
| Horticulture Code of Conduct | <i>Competition and Consumer (Industry Codes—Horticulture) Regulations 2017 (Cth)</i> |
| PIRSA | Primary Industries and Regions SA |
| The Institute | Ehrenberg-Bass Institute for Marketing Science at the University of South Australia |

APPENDIX 5

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