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RE: Food and Grocery Code of Conduct Review 2023–24 - Interim Report

The Australian Chamber of Commerce and Industry is Australia's largest and most representative business association. Our members are all state and territory chambers of commerce, which in turn have 430 local chambers as members, as well as over 70 national industry associations. Together, we represent Australian businesses of all shapes and sizes, across all sectors of the economy, and from every corner of our country.

ACCI welcomes the opportunity to comment on the interim report on the Independent Review of the Food and Grocery Code of Conduct. We acknowledge the efforts of the reviewer, the Hon Dr Craig Emerson in carefully considering the issues around competition in the supermarket sector.

We believe that a strong and competitive food supply sector is in the interests of all businesses. A competitive environment ensures businesses that perform well have the best chance of growing, it ensures consumers get competitive prices, and it results in an efficient business environment that's good for the economy as a whole. With the high cost-of-living it is essential that supermarkets remain competitive and provide the lowest prices to their customers.

ACCI considers the recommendation to apply a mandatory code of conduct to the supermarket sector represents heavy-handed regulation that can have unintended consequences. The major supermarket chains — Coles, Woolworths, Aldi and Metcash — are already signatories to a voluntary Food and Grocery Code of Conduct, which sets out minimum obligations and behavioural standards for their conduct with suppliers. This appears to have been effective until now. Introducing a mandatory code of conduct would increase the regulatory burden in the sector and has the potential to decrease competition and inhibit innovation.

We insist the government must be cautious in introducing such significant regulatory requirements in instituting a mandatory code. This sets significant precedent, which can lead to regulatory contagion. There needs to be further consideration of the likelihood that measures introduced for one sector will create an expectation of equivalent regulatory extensions to other areas of the economy. Equally, ACCI

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cautions against recommendations to simply extend the scope of the Code to retail businesses that may sell some food and grocery lines as part of their retail offering. Already we have seen calls of a mandatory code of conduct to be applied to a wide range of sectors that currently function effectively as competitive markets, where no policy problem of the kind the Food and Grocery Code was introduced to address has been identified.

It remains crucial today, as it was when the Food and Grocery Code was first developed, that the Code achieves fair and efficient dealings between food and grocery suppliers and major supermarkets in Australia, but does not impose an excessive regulatory burden. A regulatory burden that would be incredibly excessive if imposed on retailers more broadly. As such, ACCI supports a continued voluntary code to apply to major supermarkets. If something is required, a threshold could be introduced to determine whether a supermarket business should be covered by the Code, set at a level that properly identifies supermarket businesses that may have significant bargaining power with food and grocery suppliers and are an important avenue for selling grocery products at scale in Australia. Any threshold should not require those that do not meet this threshold, including those with very small share of supply, to incur the compliance costs and regulatory burden. This would avoid the potential decrease in competition and innovation that could otherwise result.

The report identifies the fear of retribution as a major obstacle to the Code's effectiveness. It asserts that key performance indicators and bonus structures heavily incentivise reducing costs and increasing margins, which drives buyers/account managers to squeeze their suppliers as hard as possible. It is claimed that where suppliers reasonably reject requests or make complaints, they face retribution in the form of being offered less advantageous trading terms, reduced volume orders, poor shelf location limits on distribution across stores or having their products delisted altogether. However, the distinction between retribution and the commercial decisions of a business are unclear. As the report also identifies, supermarkets should be able to undertake actions for genuine commercial reasons without being seen to be undertaking retributory conduct.

ACCI accept that it is important that safeguards are in place to ensure the balance of power in negotiations between the large supermarkets and their smaller suppliers. ACCI agrees that to address perceptions of retribution, there is benefit in senior managers having greater oversight of the commercial decisions of their buying teams and category managers and to be made aware of instances where a supplier has made a complaint. This can readily be included in a voluntary code of conduct.

Outside the code of conduct, where there is egregious behaviour of supermarkets towards their suppliers, there is a place for an independent anonymous complaint mechanism. However, this already exists, as it is a core function of the ACCC. There



is little additional benefit making an explicit reference to this in the code as proposed in recommendation 6.

Ultimately, it must be recognised that supermarkets provide an essential service to all Australians. It is important that they treat their suppliers fairly. Equally so, they must be free to make commercial decisions without the burden of excessive regulation, to ensure they operate efficiently, effectively and competitively, and provide the lowest prices to their customers.

We look forward to further consultation on the Food and Grocery Code of Conduct to ensure the final position that is reached is workable for both the supermarkets and their suppliers.

Yours sincerely

Peter Grist
Director Economics, Industry and Sustainability