Submission to the Senate Inquiry into the Constitutional Corporations (Farm Gate to Plate) Bill 2011

Department of Economic Development, Tourism and the Arts

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This is the Tasmanian Government's submission to the Senate's Economic Committee inquiry into the Constitutional Corporations (Farm Gate to Plate) Bill 2011.

This submission was prepared by the Department of Economic Development, Tourism and the Arts (DEDTA) with input from the Department of Primary Industries, Parks, Water and Environment, the Department of Justice (Consumer Affairs and Fair Trading division), several large food producing/processing businesses and several industry organisations, including the Tasmanian Food Industry Advisory Committee, the Tasmanian Agricultural Productivity Group and the Tasmanian Farmers and Graziers Association (TFGA).

A recently released State Economic Development Plan (the Plan) charts clear economic development priorities over the next ten years, taking a whole-of-government approach that aligns strategies on skills, infrastructure, environment, energy and other elements critical to Tasmania's economic development. Because of Tasmania's comparative advantages (i.e. climate, water resources, relative pest and disease freedom etc) and capacity to substantially increase food and agriculture output and become a major supplier of premium food products to both domestic and international markets food and agriculture is a priority focus area under the Plan.

As part of this focus on Tasmania's key economic strengths, the government has supported initiatives such as the 'Taste is in our nature' campaign which includes a website that, among other functions, allows consumers to search for local supermarket and non-supermarket retailers of Tasmanian produce.[1]

The Tasmanian Government understands the concerns of some primary producers and consumers that have led to the tabling of this Bill. There is a perception that the two major supermarket chains have too much market power and that this leads to higher prices for consumers, yet drives down returns to producers.

The Tasmanian Government supports policies that encourage competition, maintain a growing, viable farm sector and ensure consumers have access to information on the products they purchase.

For reasons outlined below, **The Tasmanian Government does not support the proposed Constitutional Corporations (Farm Gate to Plate) Bill 2011.** This position is supported by key stakeholders within the Tasmanian food and agriculture industry; although DEDTA notes the position of the TFGA which supports the *intent* of the Bill (because of the lack of transparency in the fresh fruit and vegetable supply chain) but acknowledges that it would be 'almost impossible to implement'. The TFGA also supports for the introduction of a supermarket ombudsman and a groceries supply code of practice, similar to that being introduced in the UK.[2]

[1] http://www.tasteisinournature.com.au/
[2] Refer http://www.guardian.co.uk/business/2010/jan/13/consumer-affairs-supermarket-ombudsman

There are a number of significant practical and theoretical issues that will need to be resolved if the Bill is to become law and meet the objective of enabling "consumers to understand the pricing practices of grocery retailers".

Difficulty in determining the farm gate price

The food supply chain is often complex and is difficult to thoroughly and accurately analyse. Between the producer and the consumer it can include any number of intermediaries such as processors, wholesalers and distributors, each with variable costs and profit margins. For example, there are many small to medium freight and other businesses owned and operated in regional Australia that form part of the supply chain. Like the farmers they service these businesses are often embedded in regional economies and must operate profitably. When all inputs are considered complexities associated with supply chain analysis make calculating the 'farm gate price received by farmers' extremely challenging, if not impossible.

The major supermarkets purchase some produce from wholesalers making it extremely difficult for the supermarkets themselves to determine the price paid further down the supply chain to the producer and raising questions about who will capture this information and how it will be done. Additionally, produce is often consolidated, graded, packed or processed by an intermediary which may be sourcing from multiple growers, adding complexity to the process of determining the 'farm gate' price.

Even when major retailers do source produce directly from growers, there is generally more than one supplier involved and they are rarely paid the same price, even for the same produce on the same day. Determining an average 'farm gate' price in these circumstances could again prove a relatively lengthy, involved and potentially costly exercise.

Finally, measures outlined in the Bill do not appear to make any allowance for geographical distance or other cost variation. Modelling this variation would be extremely complex, if not impossible and this raises the problem about the value of comparison. Across the market, there may be a wide variety in differential pricing that has nothing to do with profit margins and may render the value of the farm gate price invalid as a comparative measure.

Costs of compliance

Given the likely difficulties associated with the implementation of the various components of this Bill there are likely to be significant costs associated with compliance. It is unlikely that the major supermarkets will absorb this cost burden; more likely, compliance costs would be pushed back to the producer or, perhaps less likely, forwarded to the consumer.

Alternatively, if the documentation and compliance costs are carried by the retailer, many smaller food retailers will find that, proportionally, the costs far outweigh any potential benefits.

Effect on consumers

It is not known what effect displaying the price paid to producers alongside the retail price will have on consumers. Given the costs incurred in the supply chain post farm-gate, it is likely that it will cause confusion rather than enabling 'consumers to understand the pricing practices of grocery retailers'.

As detailed throughout this submission, given the various steps in the supply chain, it is not likely that the simple display of the producer price will provide the consumer with an accurate understanding of whether the retailer is over-charging for the particular item, or conversely, if the retailer has not paid the producer a fair and reasonable price.

The suggested use of an average 12-month 'producer price' is also likely to prove unworkable and inaccurate. For example, the price of bananas spiked after Cyclone Larry in 2006 and after the Queensland floods of January 2011. A short to medium term price rise such as this would not be likely to have an immediate effect on a 12 month average 'producer price' for bananas. So a consumer looking to buy bananas may see a 'producer price' that is significantly lower than the actual price paid for the product being retailed. When seeing this large discrepancy between the producer price and the retail price the consumer may make various incorrect assumptions and make purchasing decisions accordingly.

It is also important to note that consumers who are concerned about the pricing practices of the major supermarkets have a range of alternative sellers from which to purchase. Horticulture Australia Ltd has indicated that 60-65 per cent of the total fruit and vegetables sold in Australia go through supermarkets.[3] Alternative retail channels such as farmers markets are growing in popularity and, along with farm gate sales and independent grocers, offer the opportunity for consumers to buy products from closer to their source. Anecdotal evidence suggests that people are also increasingly choosing to grow their own fruit and vegetables.

[3] Public Submission to ACCC Grocery Inquiry by Horticulture Australia Ltd on 11th March 2008, available via: http://www.google.com.au/url?sa=t&rct=j&q=hal%2Bmsc%2Baccc&source=web&cd=2&ved=0CCEQFjAB&url=http%3A%2F%2Fwww.accc.gov.au%2Fcontent%2Fitem.phtml%3FitemId%3D812901%26nodeId%3D458e27418e64a1ead0f17c37e479643d%26fn%3D092%2520-%2520Horticulture%2520Australia%2520Ltd%2520(110%2520pages).pdf&ei=s6akTq_zN4iUiAf4n4zYBg&usg=AFQjCNGO2z_EOYCDsSVXeTwPN0-gALT7bA, pg 13, last accessed 24 October 2011

Competition as the Best Determinant of Price

It is commonly accepted that major retailers in the Australian food market are operating with business margins in the order of one to four per cent, which is lower than what would be considered acceptable in many businesses, although margins vary from item to item and fresh produce has been reported to be delivering the highest gross margin of any category in the supermarket.[4] Nonetheless, it is unusual to require the disclosure of profit margins in business transactions although there are cases where commissions are disclosed, but this usually occurs in the financial or insurance industries where the policy imperatives are different.

Generally, it is accepted that price should be determined by the operation of supply and demand. Existing consumer laws are based on the widely accepted assumption that efficiently operating markets ensure competition and the key question in the retailing sector is whether there is anti-competitive conduct that results in the inflation of market prices. This has been the subject of a number of national inquiries and there are comprehensive existing laws to deal with anti-competitive behaviour.

[4] Public Submission to ACCC Grocery Inquiry by Horticulture Australia Ltd on 11th March 2008, available via: http://www.google.com.au/url?sa=t&rct=j&q=hal%2Bmsc%2Baccc&source=web&cd=2&ved=0CCEQFjAB&url=http%3A%2F%2Fwww.accc.gov.au%2Fcontent%2Fitem.phtml%3FitemId%3D812901%26nodeId%3D458e27418e64a1ead0f17c37e479643d%26fn%3D092%2520-%2520Horticulture%2520Australia%2520Ltd%2520(110%2520pages).pdf&ei=s6akTq_zN4iUiAf4n4zYBg&usg=AFQjCNGO2z_EOYCDsSVXeTwPN0-gALT7bA pg 10, last accessed 24 October 2011