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**Submission in response to  
Australian Competition and Consumer  
Commission Supermarket Inquiry Issues Paper**

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## Introduction

1. eastAUSmilk is the voice of dairy farmers in New South Wales and Queensland. It was formed from the amalgamation of Dairy Connect in New South Wales, and Queensland Dairyfarmers' Organisation.
2. We thank you for the opportunity to make a submission on the issues paper produced as part of the Australian Competition and Consumer Commission inquiry into the supermarket sector.
3. Thank you, too, for accommodating our late submission.
4. We hope there will be an opportunity to discuss this submission and your inquiry with appropriate Australian Competition and Consumer Commission officers before you are required to provide your interim report to Government.
5. This eastAUSmilk submission follows our submissions to the following inquiries:
  - a. Review of the Food and Grocery Code of Conduct 2023-4 (Emerson review)<sup>1</sup>, and
  - b. Senate Select Committee on Supermarket Prices 2024<sup>2</sup>.
6. Those two submissions are attached to, and form part of, this submission, and we ask that they be considered as part of our response to the issues paper.
7. We anticipate making submissions within the next week to:
  - a. The Department of Agriculture, Fisheries and Forestry Review of the Dairy Industry Code<sup>3</sup>, and
  - b. The Queensland Legislative Assembly Supermarket Pricing Select Committee<sup>4</sup>.
8. While there is significant overlap between those submissions and this, the focus of each is different.
9. Dairy farmers, daily, are in contact with milk processors and supermarkets: their staff and contractors, and, often enough, their managers. eastAUSmilk frequently has contact with a similar range of people. In many of those conversations, issues are raised, and things said, which processors and supermarkets will not say publicly. Much of those submissions referenced above, and part of this submission, is based on those conversations.
  - a. Those individuals (farmers, and staff and contractors of processors and supermarkets) would be most reluctant to make even an anonymous submission to any inquiry, for the same reason as their reluctance to make public comment: certainty and fear of retaliation.
  - b. We are also told that historically, supermarkets find it far too easy to find out what has been said when their suppliers or farmers talk with public servants or

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<sup>1</sup> <https://treasury.gov.au/review/food-and-grocery-code-of-conduct-review-2023>

<sup>2</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Supermarket\\_Prices/SupermarketPrices](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Supermarket_Prices/SupermarketPrices)

<sup>3</sup> <https://www.agriculture.gov.au/about/news/dairy-industry-code-survey>

<sup>4</sup> <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=252>

Members of Parliament – confidentiality is often promised but not always delivered, so the risk of even confidential submissions or discussions is too great.

- c. Some of our discussions are with senior staff of processors – we are not simply repeating the kind of gossip which might flow between under-informed and more junior staff.
- d. We have consequently addressed the issue of retaliation in some depth.

## In Summary

10. eastAUSmilk believes there is adequate evidence available to the Australian Competition and Consumer Commission through this inquiry to adopt the conclusions identified in this submission in paragraphs 32 to 38.
11. eastAUSmilk supports, and urges, in response to the issues paper, that Australian Competition and Consumer Commission support and press upon Government:
  - a. making the Food and Grocery Code of Conduct mandatory,
  - b. requiring major supermarkets to report their product line margins in real time, and
  - c. encouraging parties to the Code to embed policies, practices, and training, which are effective in eliminating retaliatory and bullying behaviour.

## **The Circumstances of Dairy Farmers**

12. Rather than repeating them here, we refer you to our comments headed 'The Circumstances of Dairy Farmers' in our submission to the Emerson Review of the Review of the Food and Grocery Code of Conduct 2023-4.

## **Dairy Industry Code**

13. Rather than repeating them here, we refer you to our comments headed 'Dairy Industry Code' in our submission to the Emerson Review of the Review of the Food and Grocery Code of Conduct 2023-4.

## **Dairy Farmers, Processors, and Supermarkets**

14. Rather than repeating them here, we refer you to our comments headed 'Dairy Farmers, Processors, and Supermarkets' in our submission to the Emerson Review of the Review of the Food and Grocery Code of Conduct 2023-4.



## Processors, Suppliers, and Supermarkets

15. Rather than repeating them here, we refer you to our comments headed 'Processors, Suppliers, and Supermarkets' in our submission to the Emerson Review of the Review of the Food and Grocery Code of Conduct 2023-4, but those comments are supplemented directly below.

16. At paragraph 31 in our submission, we said:

*We also note that the current lack of confidence in supermarkets has driven multiple inquiries aimed at pressuring those supermarkets to moderate their profits.*

- a. *If they do so voluntarily and such a tactical and cynical moderation is seen as making it unnecessary to regulate their behaviour, then the Government will have let down the community.*

17. We think the entire Australian community is entitled to be cynical about this news story <https://www.news.com.au/lifestyle/food/eat/coles-drops-prices-on-more-than-300-products-across-meat-bakery-and-pantry-goods/news-story/e26cc8186f6e36f8ea3236695789bb80> and view it as a late and transparent attempt to avoid negative findings in various reviews, and consequent changes to the Food and Grocery Code which reduce the market power of supermarkets.

- a. See also our comments at paragraph 20.

## Supply Chain Margins

18. Rather than repeating them here, we refer you to our comments headed ‘Supply Chain Margins’ in our submission to the Emerson Review of the Review of the Food and Grocery Code of Conduct 2023-4, but those comments are supplemented directly below.
19. Elements of that part of our submission were in some respects specific to the dairy industry, but we believe the arguments in favour of monitoring of margins apply equally to most supermarket products but in particular perishables such as fresh produce.
20. Evidence being seen in public<sup>5</sup> and provided, or to be provided, to the inquiries referenced at paragraph 5 above makes clear that whether their relationship with producers is direct, or via distributors/processors, the market power of the major supermarkets sees them exert enormous influence on farmgate prices, and the margins applied at each stage of the supply chain.
21. The 3 April 2024 announcement by Coles of reductions in prices of 300 products <https://www.news.com.au/lifestyle/food/eat/coles-drops-prices-on-more-than-300-products-across-meat-bakery-and-pantry-goods/news-story/e26cc8186f6e36f8ea3236695789bb80> needs to be examined closely.
  - a. It may indicate either that Coles’ margins include fat which can be trimmed, or Coles may attempt to restore their margin by pressuring their suppliers or producers to share the pain of the revenue cut.
  - b. We are advised by suppliers that this is a common approach of the big supermarkets when they implement price reductions – offsetting supermarket losses from price cuts by pressuring other parts of the supply chain to reduce their pricing or cross-subsidise other supermarket activities such as marketing.
    - i. Processors have outlined to us a range of tactics employed by supermarkets to reduce the profit margin impact of consumer price cuts by shifting some of their costs to suppliers, as is mentioned in our submission to the Emerson Review of the Review of the Food and Grocery Code of Conduct 2023-4.
    - ii. The underlying threat is, of course, impairment of the supplier’s business relationship with the supermarket, if they decline to participate in this cost-shifting.
22. There is no doubt that major supermarkets keep an eye on the prices of their competitors, and adjust their own pricing or other offers accordingly. However, this competition does not result in consistently lower prices or consistently smaller margins for the supermarkets, but, rather, major supermarkets continue to see large profits each year.
23. The ‘competition’ between them is clearly very narrow in scope and sits on top of a base which persists in providing the kind of margins that deliver the excessive profits currently seen. There seems to be an understanding that none of the supermarkets will

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<sup>5</sup> E.g. the Four Corners program referenced in our submission to the Emerson Review.

attempt to secure a long-term increase to market share through offering prices which undermine that high-profits-market-share.

24. We can estimate (from information provided anecdotally by members and processors) the margins applying in the dairy product supply chain, and we are aware supermarkets deliberately keep the margins lower on their private label dairy products so that they are significantly cheaper than equivalent branded products.
- a. This is done to increase private label product turnover and decrease branded product turnover.
  - b. Lest anyone suspect this is done largely to provide a more affordable product to consumers,
    - i. Supermarkets are constantly seeking to drive down the costs and of their private label supply chain, and the margins for farmers and processors,
    - ii. While their margin may be lower for private label products, the higher volume of sales driven by lower prices, and their efforts to keep the purchase price down by pressuring farmgate and processor prices and margins, produces a satisfactory margin and profit, and
    - iii. There is no doubt that the prices of equivalent private label and branded products are carefully managed so as to maximise profit.
25. There is no reason to believe supermarkets behave this way in relation to dairy products alone.
26. We are presuming the ACCC has the capacity and interest to develop a good picture of the margins along the supply chain for many different products sold by supermarkets.

## Retaliation

27. Rather than repeating them here, we refer you to our comments headed 'Retaliation' and 'Best Practice in Eliminating Retaliatory Behaviour' in our submission to the Emerson Review of the Review of the Food and Grocery Code of Conduct 2023-4, but those comments are supplemented directly below.
28. In that submission, we addressed the important issue of retaliation at some length, because this goes to the heart of the capacity of the big supermarkets to subvert the business-like relations between them and their suppliers which are critical to effective competition and an effective market.
29. This pattern described to us is seen as pervasive, and a product of a bad culture driven from the top.
30. We also addressed what might be the components of a best-practice approach to eliminating fear of retaliation from food and grocery supply chains.
31. We raised, addressed, and stressed, these issues in our submission to the Emerson Review because it became clear to us in our discussions with processors that they feared to raise them themselves. We were doing what they would not.

## Conclusions

32. The fear of retaliation is the framework which defines and regulates the relationship between the big supermarkets and their suppliers, not the Food and Grocery Code of Conduct.
33. The market power of the big supermarkets allows them to adopt many different methods of pressuring their supply chains to keep prices higher than they need be, keep the supplier/supermarket margin higher than it needs to be, and maximise profits.
34. The analytical capacity of the big supermarkets allows them to manipulate pricing, shelf space, shelf position and more, of products competing with their private label products, to balance the sales volumes of the competing products so as to maximise profit.
35. Unless and until the fear of retaliation by supermarkets is eliminated from the relationship with their suppliers, the full extent and pattern of supermarket tactics and behaviour will not be known.
36. The Code must embed an obligation for the big supermarkets to embed in their business operations policies, practices, and training, which are effective in eliminating retaliatory and bullying behaviour.
37. The Food and Grocery Code of Conduct is completely ineffective as it is and must be mandatory.
38. The only way for the social license for big supermarkets to be restored, and for the community to have confidence into the future that they are not being ripped off, is for real-time reporting of product line margins.