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# MEMBER BRIEF

## UPDATE ON THE FOOD AND GROCERY CODE OF CONDUCT REVIEW

The Food and Grocery Code of Conduct (FGCC) review is being led by Professor Graeme Samuel, AC, with support from Treasury.

Last week at Food and Grocery Australia delegates heard first-hand the key areas Professor Samuel is considering require change within the FGCC and are likely to be included in the preliminary draft report. They are as follows:

- **Enhanced good faith provision**, as the primary provision within the FGCC, potentially re-naming fair dealing. The provision would provide general principles for dealings between retailers and suppliers and be in accordance with proper commercial relationships. It is anticipated that the enhanced provisions would not include high levels of specificity as a way to ensure flexibility with changing market structures and retail practices.
- **FGCC obligations** are likely to remain consistent with existing obligations with some strengthening in line with AFGC recommendations.
- The FGCC to **remain voluntary**, with political pressure applied to Metcash to become a signatory or risk a targeted mandatory outcome specific to their business should they not become a signatory.
- Enhancement of the code compliance processes to require each signatory retailer to have an independent **Code Adjudicator**. The role:
  - would be stipulated in the FGCC, including principles of operation,
  - needs to be senior, independent, objective, reputable, have the ability to go public, and be of a fixed term,
  - to be fully endorsed by the retail CEOs, who would need to adhere to the Adjudicator's recommendations,
  - will have public reporting requirements, and
  - can direct the retailer to change behaviour and pay compensation to suppliers.

Failure of the retailer to adhere to the recommendations or failure of the Adjudicator to perform as anticipated would attract ACCC investigation and prosecution.

- ACCC's role would require it to:
  - provide guidance on interpretation of good faith / fair dealing and other Code obligations,

- oversee the Code Adjudicator, including calling for their resignation if they don't perform the role in accordance with requirements, and
- investigate systemic problems.

The FGCC would be reviewed within 3-5 years, particularly the effectiveness of the Code Adjudicators and whether, if not effective, there is a need for a Government appointed Adjudicator.

Additionally Professor Samuel commented on the price adjustment process, highlighting the need for suppliers to justify price rises to the shopper only and allowing market economics to determine the acceptability of any price adjustment.

The draft report for the Code Review is expected to be released within the next couple of weeks, followed by further consultation. The final recommendations will be submitted to Government in September 2018.

### AFGC ACTION:

AFGC welcomes the review and has made a substantial submission into the review process. We have some concerns with the proposed retail Code Adjudicator model proposed by Professor Samuel and will continue to advocate for an independent Adjudicator. To this end we will shortly issue an industry poll to capture and understand your views on this issue. We encourage you to complete the poll.

If you require any further detail on the proposals put forward by Professor Samuel please do not hesitate in contacting [Samantha Blake](#) or myself.

**TANYA BARDEN**  
**CHIEF EXECUTIVE OFFICER**