SUBMISSION

SENATE SELECT COMMITTEE

ON SUPERMARKET PRICES

[redacted]

Forward:

The main focus of this submission deals with the following price setting practices as detailed in the terms of reference:

(a) The effect of market concentration and the exercise of corporate power on the price of food and groceries.

(b) The pattern of price setting between large supermarket retail chains.

(c) Frameworks to protect suppliers when interacting with the major supermarkets.

This submission is not intended to be a beat-up on the retail supermarket chain channel to market, rather to highlight the implications of modern marketing practices that have shifted the balance of power too far into the control of the retail buyer of all sizes, not just the large three retailers. The supply chain system is broken and needs attention. The traditional price setting mechanism through the capital city central markets has become outdated with arguably over 70% of all fresh produce bypassing these entities. Even within this central market system, there needs to be scrutiny and critical changes to the makeup of the functioning of this part of the supply chain.

This submission is written from an Australian National perspective and confined to the primary production in the market segment of horticulture (fruit and vegetables), being highly perishable with short shelf life. The facts, conclusions, and recommendations have been correlated with the input of number of regional producers and verified. Many regional areas are dependent on horticulture for their local economies, employment, and the associated ancillary industries that exist solely from supplying products and services to agriculture.

The Retail Channel to Market Model:

The various channels to market between the primary producers and the end user consumers have been unchanged for decades and typically consist of:

1. ***Capital City Wholesale Markets:***
   The commodity travels from the primary producer to “central markets” in capital cities where it is sold by Primary Wholesalers, who can act as merchants or agents and predominantly work on a commission basis (typically a percentage of sale price of 15+%). The price of the commodity can be considered the spot price on the day and is predominantly based on supply and demand within this small overall market segment. The traditional wholesale markets remain the closest to a free market channel. This channel will always play an important role in the trading of fresh fruit and vegetables due to small grocer and providore scaling issues among other considerations, even though the commodity volumes being sold have been declining.

   Within this supply system, Primary Wholesalers can supply to a range of different customers, including secondary wholesalers, providores, food service businesses, large retailers and independent grocers, and more. In this case, the supply chain from producer to consumer (final sale) can have between three (Producer -> Primary Wholesaler -> Retailer) and five links in the supply chain (Producer -> Primary Wholesaler -> Secondary Wholesaler -> Providore -> Retailer/Commercial Customer). This is without accounting for the common occurrence of trading between Primary Wholesalers, inter-state trading, and cash sales where all transparency is lost. This gives rise to common occurrences of arbitrage, predatory pricing, opportunistic purchasing, all resulting in the degradation of the efficiency of the supply chain.

Most of the medium to smaller size retailers (IGA through Metcash and various buying groups, Drakes, Harris Farms, ALDI, etc.) procure through these channels. This is without any form of supply agreement or contracts the producer is aware of or included in. It is extremely rare for there to be any form of supply contract with producers and any Primary Wholesaler that outlines even indicative volumes, let alone prices. This is usually because there is no supply agreement between the Primary Wholesaler and the secondary customer (Secondary Wholesaler, small to medium retailer, Providore, etc.) outlining these contractual terms.

This lends towards day-to-day trading, putting all the pricing and negotiating power within the Primary Wholesaler's customer base. This is the true mechanism towards the "price-taking" model of the Horticulture industry. This is despite the lead time from planning a crop, ordering seed/seedlings, to harvesting and packing being approximately 4-6 months for short term crops. This lead time is years for tree crops such as fruit trees, nuts, etc.

With no producer involvement in any contractual agreements, it allows for Primary Wholesalers to change, shift, and alter which producer they use for the supply to their customer. This further degrades the ability of producers to secure their supply chains and therefore the fundamental basis to their demand. With no formal supply agreements in place, the central market system also acts as a 'dumping ground' for all the volumes and poor quality which are not accepted by the retailers. This over supply or inferior quality obviously depresses the central market pricing which, as established is negotiated daily and impacts retailer supply pricing, regardless of supply chain channel. This causes a continual event of oversupply, and reduced pricing, leading to a "race to the bottom" system.

Another overlay of this system (outside of the lack of pricing, supply and customer transparency) is that there is a lack of commonality around compliance and food safety/assurance. Producers in this segment of the market have little to no requirement for quality assurance or quality systems standards that are commonplace for large retail supply (e.g. Freshcare, HARPS, SQF, BRC, as well as ethical sourcing standards such as SEDEX or Fair Farms). This gives rise to producers supplying produce that is of a high standard and robust quality systems (and therefore cost implications), against producers that have little to no quality systems. Because most customers within this system are not held to quality systems and requirements of their own, this creates not only a cost structure imbalance between producers, but also gaps and large discrepancies in the assurance of supply of safe, ethically sourced produce between suppliers, that the end consumer will never be aware of. The volatile and constantly shifting supply, demand, and therefore pricing of the "central markets" due to the lack of these supply chain assurances, leads to and exacerbates the fragility of the producer's negotiating power.

The impact of this discrepancy cannot be understated. Within the same industry and industry segment, there is both uncontrolled (central market system) and controlled (major retailers) supply chain avenues. This is unique to horticulture in both its operation and the scale of the discrepancy. Retail customer requirements which continue to increase have become extensive and have added significant cost to their supply base. With the central markets still being used as the tool to determine retailer buying prices the additional costs to supply a retailer directly are ignored/not considered.

It is important to note that this is not a criticism of regulation and ensuring high standards of compliance, food safety requirements, or employee protections. It is the lack of consistency within the industry that allows for both regulated and unregulated production in this matter that creates a false economy. Additionally, when changes are made at either a compliance standard (Freshcare, HARPS, BRC, SQF) or governmental regulation level, there is no consideration to the impact of cost of production to the producer. A large part of the degradation in producer margin has been the steep increase in compliance and regulation, without adequate consideration to cost implications, in an environment where these regulations and compliances are not mandatory or ubiquitous through the industry. This leads to a disadvantage to those producers aiming for industry best practices, a juxtaposition of progression in the industry makeup.

Primary Wholesaler's customers (commonly known as "buyers") can also use their ability to change the Primary Wholesaler they deal with, the amount they order, and when they order to influence market pricing. This market power is intensified by the constant inflow of produce on a daily basis. The perishability of the final product and the lack of any formality in agreement between these "buyers" however large or small, contributes significantly to the volatility and suppression of the market pricing. This is how even small buyers from a national volume perspective, can have significant influences on the national pricing of fruit and vegetables.

Primary Wholesalers can also have major retailer vendor numbers and serve the major retailers with producers' goods. When a Primary Wholesaler (AKA "Agent", "Intermediary", "Aggregator") sells directly to a major retailer, this can be seen as a different channel of the supply chain. For the purposes of this document, this will be known as the "Aggregator Market Channel". All aggregators are Primary Wholesalers, however, not all Primary Wholesalers are Aggregators. The definition of an Aggregator for this document would be a Primary Wholesaler with at least one direct supply agreement with a Major Retailer. Some wholesalers have also become growers in order to tick a direct supply box with retailers.

2. ***Aggregator Market Channel:***
   This channel sits between the primary producer and the large retail customer. This constitutes a three-link supply chain (Producer -> Aggregator -> Retailer). Aggregators can have supply agreements with producers, which can in cases include volume and in more rare cases, price for a specific commodity. This supply agreement, if in place and if quantified, is usually the sum of the agreements or contracts between the Aggregator and the large retailer. It is not uncommon for there to be a supply agreement in excess of the sum of these specific supply agreements, so to create a buffer for the Aggregator to ensure supply continuity. This is an additional point of inefficiency in the supply chain.

   Aggregators can achieve price stability in some cases through having total control of an agricultural commodity through PBR's (plant breeder rights) which is a form of intellectual property ownership. PBR's give additional market power to the Aggregators because the retailer cannot source the same commodity from any other supplier and create price competition. It also limits the producer's market power in this instance as the Aggregator hold control of the supply and demand of the product grown through the PBR. Retailers do not like this power shift away from them, however use their influence to remain tough on price negotiations.

In this instance, the producer simply grows the PBR commodity for a price that is dictated by the Aggregator, who has negotiated with the customer/retailer/providore. This is a commercial agreement the producer enters into with the Aggregator, with usually no punishment on breaking the agreement other than agreed restrictions on the use or supply of competitive products (as part of the supply agreement). However, this style of agreement has in the past lead to real instances of producers not receiving a price increase from the Aggregator in 17 years. The producer has remained in business solely through efficiency gains and volume output which is now maxed out. Aggregators often have tight control on their seed stock and seedling and arrange for delivery direct to the primary producer in order to protect their intellectual property rights.

The true inefficiency in this supply chain (through PBR or normal supply channels), comes from the Aggregator creating supply chains with multiple producers and overestimating demand, to ensure supply to their retailer is assured including in periods when there are supply issues from one or multiple producers. Whilst a reasonable step to ensure continuity of supply, the issue here lies in the risk and financial encumbrance that lies with the producer. The producer takes the financial risk as supply agreements are handed down to the producer, with no financial guarantee, forward payment, or similar outlay from the Aggregator or customer/retailer. Financial transactions only take place once producers' supply final product within the parameter of the quality specifications for the respected customer/retailer, taking into consideration the payment terms of both the customer and the Aggregator (on average, three weeks from delivery and acceptance of the final product). In most cases this can be between two to three months of production costs before delivery to customer, with risk in not only market influences, but environmental impacts that can increase cost of production or reduce yield to the same effect. All of this occurs while the producers do not have full visibility/transparency of the total demand from the customers/consumers of the PBR. In instances of oversupply, most Aggregators have a secondary outlet in the central markets to supply stock through the above-mentioned supply chain. This is a 'second bite of the cherry' for the Aggregator, where the Aggregator can still earn their commission on alternative sales, though this exacerbates the oversupply issue stated above for the central market system, dragging overall industry pricing down. Alternatively, when these avenues are exhausted, the Aggregators simply do not accept the volumes available to them by the aggregate of the supply base they have created, leading to significant loss on the part of the producer. There is no financial responsibility or risk, other than the potential for less commission gained through a suppressed market in pricing.

3. ***Farm Direct to Grocery Retail Chain:***

Producers also supply directly to final commercial customers and retailers, through a partially closed supply base. This is because only producers or Aggregators with an approved vendor number can supply the major retailers. Supply agreements typically take the form of a 6 month or 12 month contract/supply agreement for a given agricultural commodity (or SKU). The contract specifies the commodity, quality parameters for acceptance of the final product (the specification), and the agreed supply volumes on a weekly, monthly, or six-monthly basis. Most agreements also include a clause to recognise the volatility of the supply and demand, plus or minus volume range, for example + or - 15%. Producers regularly receive orders outside the agreed contact volume range from the retail customer, such as under ordering. As is the case in a PBR Aggregator case, the producer assumes the production and financial risk of the excess commodity. Given the supply agreement terms, this could constitute a breach of contract by the retailer. The price submitted by the supplier (producer or aggregator) includes all costs to deliver the final product to the distribution centre.

Growers need to be awarded damages where this is demonstrated to be the case and where over stating volumes in schedule agreements is proven there must be a mechanism where growers are awarded damages resulting from that supply manipulation.

Producers were left with little choice other than to adopt the direct supply model due to “bad behaviour” of Primary Wholesalers and Aggregators in the traditional central market. It provided advantage to both retailers and growers, enabling a better understanding of each other's businesses through direct supply relationships which were previously kept in the dark. The term “contract” is legally debatable. They are generally referred to as “Supply Agreements” however in practical terms a contract is agreed between the 2 parties. This is where change could be implemented where the retailers are required to take more risk by contractually committing to a volume and a minimum return (price) to the grower unconditionally.

Where the Supply Agreement includes pricing for each pack type, i.e. loose or packed into the retailers own brand etc. It is common for the original volumes forecast for each pack type to have different prices due to added packaging and processing costs, however when it comes to actual orders the retailer switches volume from one pack type to a lower cost line like loose to compete with other retailers for market share and the grower looses significant revenue while having planted, grown, harvested, purchased packaging materials and secured labour for packing operations to have this all changed with little notice or negotiation. There are also frequent examples of retailers offering lower prices to “compete with competitors”.

Supply agreements generally do not include a price for the commodity, outline pricing mechanisms such as weekly negotiated or fixed as prices are set weekly based off suppliers (both producer and Aggregator) quoting their product to the retailer. Even with a small supply base, due to the perishable nature of the product and the lack of transparency from a true supply/demand perspective, pricing can become extremely competitive. The repetitive nature and high frequency of the negotiations also allows for repeated quoting by the entire supply base, which again given the perishability and general nature of supply, acts as a potent tool to suppress pricing and increase competition between suppliers. The price negotiation has no linkage to grower cost of production and freight to the retailer, this has lead to a significant period of below cost returns to growers across a broad range of produce.

Major retailers have developed new digitalised quoting systems. Suppliers are required to submit weekly tendered pricing which provides the retailer with national supply pricing information in a single page. This enables them to manipulate this information to their advantage. It is only visible to them. It should be a mandated requirement for all suppliers to see this. Suppliers are forced/pressured to meet the lowest quoted price. An outlying price may have been submitted based on an individual suppliers circumstances such as quality, volume or age of farm stock/pressure. Everyone else is forced to meet the lowest common denominator (if 1 producer can do it why can’t all of you do it - approach) or risk/threatened to have reduced volumes or left out completely. The retailer will direct supply volumes towards the cheapest supplier away from the others, regardless of the supply agreement volume splits.

Due to the aforementioned design of the Aggregator and central market systems, there is a natural tendency for pricing to be dictated by the central market pricing, as this is the most liquid pricing structure in the horticulture market. Primary producers on supply agreements submit prices on the Monday and receive email confirmation or adjustment requests on Tuesday where the retail customer advises the market price, however there is no verification mechanism to confirm the retail customer is sharing correct or accurate market price information with primary producer, other than the central market pricing. There is NO verifiable transparency mechanism to confirm the customer is quoting the price for a very small consignment of poorer quality or the market average for retail quality.

Retail customers can also issue primary producer volume contracts for a commodity in the knowledge the total contract volume is greater than the market size, just as Aggregators and Primary Wholesalers. They do this to hedge against crop failure and to reduce business risk and guarantee supply. This is compounded by the fact Aggregators are both supplier to the retail customers and customer to the producer. If producers have high yields and low disruption in supply (like the last 12-18 months), all the volume is available for sale and there is oversupply. In this situation it is observed that customers can essentially collapse the market price for the commodity without bearing any of the responsibility. The losses remain with the producer. The retailer walks way bearing none of the responsibility for their actions.

Additionally retailers are in competition with each other and with broader smaller competitors, each major retailer prepares their own business/market strategy and sets the volumes to be supplied by their approved growers. If all three major retailers have locked in a market share growth strategy of 10%, the total volume indicated to the grower base will be a total of 30% over the market actual volumes required, this in itself will result in significant over planting by the grower supplier group, which then plays to the major retailers using price discounting to growers prices due to this over supply, this does not always result in lower shelf prices to consumers. Retailers also can force growers to produce different pack types for example reducing orders for pre-packed sku's and increasing orders for loose to attract consumers to purchase. The growers can have significant committed input costs in preparation for the forecasted volumes of each pack type, but then be required to produce loose to allow the retailer to gain market share.

General industry perception is that in historical times of National shortages of supply (due to natural occurrences) have significantly raised market prices and created limited availability. Retailers have nothing to sell or very small amounts at highly inflated retail prices. This does not go well with retail customers. Retailers desire to avoid these situations for the obvious reasons. Note should be taken to major retailers who have drastically increased their supply base (vendor numbers) after *force majeure* events/seasons such as 2022 floods, and criticism could be levelled at the appropriateness of this and the underlying foundation to these decisions. Increasing their supply base and committed supply partners after freak events under the guise of continuity of supply can be looked at septically, given the nature of the issue preceding these decisions, the prevalence of this type of issue, the resulting consequence of the change in supply base on the industry and over viability of the producing businesses within.

Holistic Market Analysis:

With the different approaches of supply for producers to undertake, the supply system can be underlined by a lack of rigour in the scope, breadth and specificity of the supply agreements therein. A lack of formality and completeness of the supply agreements allows for the degradation of the supply chain and the 'free market' the producers work within. Where there is only a portion of the market's demand linked to supply agreements, the excess, no matter the portion, can lead to excess supply, inevitably leading to a false economy and unviable market conditions for producers.

Multiple links in the supply chain from producer to consumer allow for compounding of continuity buffers, which can lead to oversupply even in products and commodities that have supply agreements. If the supply chain has three links, and each link provides a buffer (above required supply volume) of 20%, this leads to a final supply that is 172% of the original demand for the particular commodity. A distinction needs to be made between these "continuity buffers" and buffers created for growth/reductions in commodity lines from a purchasing, final consumer perspective, which should not be stifled. These increases/decreases in supply agreement relating to consumer purchasing growth or decline should be quantified and fundamentally demand driven.

Finally, the operations of the central market system allow for unplanned and additional volume to be dumped on the market on a daily basis, leading to systemic oversupply, depressing pricing. Add to this, the buffering overproduction compared to demand in what controlled markets there are, can lead very easily to oversupply of in excess of 200% of original demand for a commodity. This systemic issue relates to not just pricing and retailer power dynamics, but also contributes significantly toward food waste, overproduction, excess in use of fertilizers and chemicals. This input resource expenditure is not limited to impacting the agricultural industry, and has negative externalities, through production there has never been a market for. Environmental and supply chain benefits can be created through better control of this system, not just commercial realities. As established above, due to the competitive nature of the central market system, combined with both producers and Aggregators being part of the same market system, as well as quoting/supplying major retailers, this supply chain dynamic leads to the central market system, comprising of approximately 30% of the total national demand, being a key price driver for the other 70% of the market. This complete failure in the integrity of the market allows for sustained and continued destruction of the producer base from a financial perspective.

The key concepts to take from this analysis relates to the risk taken/assumed by each part of the supply chain, the demand and pricing power attributed within the supply chain, which contradicts this allocation of risk, and the significant variation in the functioning and formality of the different supply chain methods (formal requirements, vs unregulated and controlled markets). Vision needs to be taken of this issue from an industry-wide perspective if true and progressive change is to be achieved.

Current Situation:

Primary producers Nationally have not been in profit for the last 12 to 18 months. The prices they are receiving for horticultural commodities have not changed since Pre-Covid. Post-Covid, production inputs such as fuel, fertiliser, and labour costs have all risen significantly and producers (the industry) have been unsuccessful in passing these cost increases onto the retail channel to market. The horticultural industry historically operates on single digit margins.

Producers have funded the shortfall in cost recovery from their balance sheet equity, overdraft, and cash reserves. The financial situation is now at crisis point and cracks are appearing. The financial impacts are now flowing backwards up through the supply chain with key suppliers of inputs also having to carry the load with their accounts receivable and days outstanding increasing because growers cannot settle due to negative net margins.

Many regional economies are dependent on agriculture for their prosperity, literally thousands of jobs are in the balance.

Supporting Data Retail Channel to Market:

PRODUCER 1 Inputs	Pre Covid-19 Indexed	Present Day Post Covid-19
Fertiliser	100	166.7
Seed/Transplants	100	122.2
Diesel	100	136.9
Labour	100	120.1
Transport	100	128.5
*Note: indexed changes are on a per unit basis (i.e. labour $/hr, this does not account for the significant reduction in productivity that is also contributing to the industry's issues) and thus are underrepresented as a measure of change in cost of production.		

PRODUCER 2 Inputs	Pre Covid-19 Indexed	Present Day Post Covid-19
Fertiliser	100	139.7
`Seed/Transplants	100	139.5
Diesel	100	129.8
Labour	100	132.3
Transport	100	N/A

PRODUCER 3 Inputs	Pre Covid-19 Indexed	Present Day Post Covid-19
Fertiliser	100	151.2
Seed/Transplants	100	131.5
Diesel	100	134.9
Labour	100	131.0
Transport	100	127.0

PRODUCER 4 Inputs	Pre Covid-19 Indexed	Present Day Post Covid-19
Fertiliser	100	194.0
Seed/Transplants	100	111.0
Diesel	100	132.0
Labour	100	126.0
Transport	100	158.0

Agricultural Commodity	Pre Covid-19 Cost per Unit $	Pre Covid-19 Sell per Unit $	Net Margin %	Present Day Post Covid-19 Cost per Unit $	Present Day Post Covid-19 Sell per Unit $	Net Margin %
A	$16.45	$17.46	5.7%	$23.28	$18.83	-23.6%
B	$21.81	$27.49	20.6%	$28.77	$23.23	-20.8%
*Note: cost includes freight but no overheads such as insurance and administration. 2019 full calendar year used for pre-covid and 2023 used for present day based on indexed prices to grocery customers.						

Other Issues:

- Observation that perhaps large retailers are employing a strategy of reducing commodity sales volumes while maximising profits. Have observed on shelf mark-ups ranging from 100% to 400% for fresh horticulture products. Mark-ups of this magnitude and duration are previously unheard of.
- The impact of the Natural Disasters Feb in 2021, resulted in major shortages of leafy vegetables, with the humble Iceberg lettuce at $12 each. Retailers experienced periods of NIL supply and high retail prices of limited stock.
- Retailers learnt through the recovery phase following Natural Disasters that small volumes at high retail prices made just as much return for them with much less work handling small volumes. Why would a retailer want to handle large volumes pressuring their network and make same or less returns .

General Comments:

- Producers take all of the risk within the supply chain, yet other parties have all the power and control.
- Skin in the game – long well-established family businesses - stewards of the lands, ancestral ownership - are being dictated, controlled and manipulated by short term employees of large corporations who make decisions/take actions/ and behaviours which can be destructive to farming businesses. These men and women suffer no harm directly. How do we better share the risk?
- Governments should not escape their responsibilities for the current commercial crisis. All 3 levels from Local, State and Federal are playing a key role in destroying small, medium and large businesses. From local planning enforcement and oversight to State taxes/stamp duties and licensing requirements, wanting control of natural resources such as water and carbon in the air, and federally the destruction of the modern workforce through creation of unreasonable expectations of the worker – rights, wages and conditions. This is not just about the retailers. All levels of Government are working for the same masters and support each other. All the problems are created by individuals making decisions in Government, public service and large corporations and these men and women have no accountability for the decisions they make. They are not directly impacted or hurt. They can simply walk away without a scar.

Author Statements Recommendations for Consideration by the Senate Select Committee:

1. Talking from experience in other industries (non-agriculture) when a supplier and customer enter a written contract, the contract normally specifies product volume, specification, delivery conditions, term, and price.

   Recommendation: *The Senate Committee mandate that retail contracts/supply agreements with their supply include price, so producers can perform a profitability analysis prior to accepting the contract with the retailer. Moreover, mechanisms should be put in place for not just major retailers, but also central market customers and Aggregators should be required to have supply agreements with suppliers and producers with the same stipulations, to reduce pricing volatility in the market.*

   Pricing in supply agreements between producer and customers (of all types), should reflect at minimum the length of time required for the product to be produced (e.g. 6 monthly pricing agreements, rather than weekly or daily pricing structures). As noted above, retailers need to commit to a minimum return back to the grower over the supply period irrespective of what the market forces dictated. These supply agreements should also have a requirement of timing related to the producer's lead time for growing (i.e. supply agreement changes should be required to align with the ability for producers to make production adjustments. This will avoid situations of over/undersupply in the market due to significant changes at times where production is already planned, in place and growing). This will avoid some current practices of handing down updated supply agreements after production decisions have been made by producers, adding to the lack of planning ability and shifting the power dynamic further away from producers.

   Producer Comment: *This should go to the next level where a price and $ value is guaranteed back to the supplier assessed at the end of the contract period. If returns have been less than the retailer must make it up. Retailers manipulate sale volumes by the margin they set on the COGS and where the retail price sits on the demand scale. They have the power to stop demand by setting a high retail price causing a market to crash with oversupply quickly generated by slow demand. I think there should be some control/limitation on retail margins on COGS. The 2 big retailers are feeling the pressure from ALDI and try to compete on retail pricing. Their business models are much less efficient than ALDI so in order for them to compete and maintain their margins to cover their higher costs, suppliers are being forced to reduce their supply prices even further.*

2. As stated previously, primary producers on supply contracts submit prices on the Monday and receive the phone call on the Tuesday where the retail customer advises the market price, there is no verification or transparency the market price quoted is accurate. Negotiations are generally done by email. Phone calls are used after if agreement is not reached or a broader issue.

   Recommendations:

   (i) Form an industry body whose role it is to publish the wholesale market net prices (after rebates) to the producer and the retailer sell prices on a weekly basis for agricultural commodities in the public domain.

   (ii) Pricing in supply agreements between producer and customers (of all types), should reflect at minimum the length of time required for the product to be produced (e.g. 6 monthly pricing agreements, rather than weekly or daily pricing structures).

3. The issue of different markets requiring and allowing different levels of food safety compliance standards and regulatory compliance standards needs to be addressed. Inconsistencies here lead to differences in requirements to supply food to the same end consumer, which is not represented at a retail level to the consumer. This difference in standard adhered to between suppliers can have significant impacts on cost of production. This can create a bureaucratic disadvantage or artificial impediment to producers that adhere to a higher standard, with real negative financial consequences. This rewards producers with lower/lesser compliance levels.

   Recommendation: *Review regulatory and food safety standards and create a mandatory level of food and business compliance to produce horticultural products from a producer perspective. This needs to be done and administered, regardless of customer and supply chain to create homogeneity in the supply base of Australian grown food.*

4. The ACCC has previously taken both Coles and Woolworths in the Federal Court for unconscionable conduct under the Competition and Consumer Act 2010 which resulted in fines of $10 million.

   Recommendation: *Fines in this order could be viewed as just another cost of business when compared to annual profits over $1 billion. Significant increases could induce a change of behaviour.*

5. As stated previously, retail customers issue primary producer volume contracts for a commodity in the knowledge the total contract volume is greater than the market size which collapses the market price for the commodity.

   Recommendation: *The Senate Committee mandate that retail must take the commodity volume as specified in the contract if the commodity conforms with the specification. This would be provide significant protection to primary producers, especially if combined with point 1. A guaranteed return to producers would stop retailers from over committing on volumes*.

6. The author acknowledges (as do most primary producers) that under the current system, there are times the market price for a commodity is under the cost of production for short periods of time. However, market prices for horticultural agricultural commodities have been under the cost of production for over 18 months. Producers basically beg the retailers for a price increase weekly and substantiating the reasons with cost of production input data, only to be told they are out of the money and the market price this week is $X. The author considers this a total misuse of market power by the retailers, it is illegal to force a producer (industry) into a position to supply under cost for sustained periods of time.

   Recommendation: *The Senate Committee refer this market behaviour to the ACCC to be dealt with under the new* Unfair Contract Term Laws that have just come into effect.

7. The ACCC Inquiry into "Perishable Agricultural Goods" (November 2020) made some practical findings and recommendations. Unfortunately, the implementation and prosecutions have been slow off the mark. One reason for this is primary producers as are terrified of pay-back or retribution from retailers if they lodge a complaint with the ACCC, so they hope for the best that the situation will improve. It has not improved, and the industry is now in crisis. There are many examples where this has occurred, it may not happen straight away, but producers will lose their supply contract within a 2 year period.

   Recommendation: *The Senate Committee recommends giving the ACCC additional powers and introduces some form of whistle blower status that protects the identity of complainants.*