



**Senate Select Committee's
Inquiry on Supermarket Prices**
February 2024



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About AUSVEG

AUSVEG is the prescribed Peak Industry Body representing the interests of the Australian vegetable, potato, and onion industry. AUSVEG is a not-for-profit, member-based organisation that is run by growers, for growers.

AUSVEG represents over 3,600 vegetable producers that account for 3.6 million tonnes of vegetable production, and an annual farmgate value of \$5.8 billion.

AUSVEG is a nationally federated body with the following members: AUSVEG VIC, AUSVEG SA, Queensland Fruit and Vegetable Growers, vegetablesWA, NSW Farmers, NT Farmers, WA Potatoes, and the TasFarmers.

The purpose of AUSVEG is to advocate on behalf of industry at local, state, and federal levels with the core purpose of enhancing the economic, social, and commercial environment for growers so that the industry can continue to produce outstanding vegetables, potatoes, and onions for Australian and international consumers.

AUSVEG also delivers services for growers around Australia in the areas of extension, communication, environmental sustainability, biosecurity, export development and market access, working closely with growers to ensure their needs are reflected in this work.

In partnership with the International Fresh Produce Association A-NZ, AUSVEG hosts Hort Connections, Australia's largest horticulture conference and trade show which attracts more than 3,500 delegates annually. This event brings growers, supply chain, government and industry members together to increase awareness and uptake of the latest industry innovations, research and development outcomes, and to facilitate vital industry networking opportunities.

Executive summary

The factors affecting supermarket pricing, and the associated impact on Australian consumers, cannot be sustainably addressed without first understanding and fixing a fundamental problem at the very beginning of the supply chain. That is, that in order to continue supplying the healthy fresh vegetables, potatoes and onions that feed the nation, vegetable growing businesses must be paid a fair and sustainable price for that produce. The vegetable sector does not have the negotiating power with retailers that many other grocery sectors have due to:

- lack of branding and consumer driven demand (unlike brands such as Cadbury or Coca Cola);
- high perishability of product (both in field due to narrow harvest window, and once harvested); and
- limited alternative markets such as export due to shelf life, logistics costs, and market access.

Australia's fresh produce supply chain is at tipping point and the future of the vegetable industry is in serious jeopardy due to a lack of profitability and compounding year-on-year losses for farming operations throughout the sector.

In many instances, the prices being paid by supermarket retailers for Australian grown vegetables are not fair or sustainable and this is making it increasingly unviable for some farming businesses to continue operating. The situation is so dire that 34 percent of growers have indicated to AUSVEG they are considering walking away from their farming businesses. Meanwhile, recent quarterly profit results show Australia's grocery retail sitting in the top 10 percent globally.

Furthermore, many of the tactics that supermarkets employ when they deal with suppliers may be considered manipulative and unconscionable, often resulting in significant additional costs to suppliers who already carry the vast majority of risk associated with growing and supplying produce. This includes growers having to: repack, dump or donate cancelled orders; plough in crops grown to retailer-estimated supply requirements but where significant volume is not required; dump or donate product that has been questionably rejected; and contend with what is akin to third line forcing across the supply chain.

The situation is not new, nor is it unique to Australia. There have been multiple reviews into the fresh produce supply chain including the 2008 [*Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*](#) and the ACCC's 2020 [*Perishable Agricultural Goods Inquiry*](#). In recent months there have been similar reports of unconscionable behaviour by retailers in the United Kingdom with the government also conducting a review of the fresh produce supply chain.¹ A survey of British farmers in July 2023 found that 53 percent considered their farm to be at financial risk with almost half (49%) believing they will have to give up their farm in the next 12 months.²

Large retailers are the most effective mechanism to get fresh produce to consumers with *Harvest to Home* citing 78 percent of retail fresh vegetables are sold through Coles, Woolworths, and Aldi.³ What should be a mutually beneficial arrangement, is in practice the opposite, with the imbalance of power heavily weighing in the retailers' favour. In fact, the relationship is so flawed that growers fear commercial retribution should they raise any issues with the retailer, or any of the other complaints mechanisms available, including the Food and Grocery Code arbiters, the Food and Grocery Code Independent Reviewer or the Australian Competition and Consumer Commission (ACCC).

¹ 'Contractual relationships in the UK fresh produce industry', UK Gov - Department for Environment Food and Rural Affairs. Viewed 30 January 2024. <https://consult.defra.gov.uk/supply-chain-fairness/contractual-relationships-in-the-uk-freshproduce-i/>

² 'Fairness in farming research overview', Get Fair About Farming. Viewed 30 January 2024. <https://getfairaboutfarming.co.uk/fairfarmingsurvey>

³ 'Harvest to Home', Hort Innovation. Viewed 18 Jan 2024. <https://www.harvesttohome.net.au/vegetables/latest-highlights/total-vegetables>

The [2022-23 Annual Report by the Independent Reviewer of the Food and Grocery Code](#) highlighted the mistrust that the fruit and vegetable category has with the complaints process.

Common issues consistently reported by vegetable growers include:

- Persistence of retailers to price match competitors, and consistently drive downward pressure on prices, to the detriment of grower returns;
- Retailer strategies that consistently de-values fresh produce in the eyes of the consumer;
- Lack of certainty and transparency around fresh produce price and volumes that prevents growers making informed long-term fiscal decisions;
- Ever increasing compliance (and cost) burden placed on growers;
- Opportunistic purchasing, and leveraging wholesale market prices and volumes to manipulate growers;
- Lack of negotiation power in the retailer-grower transaction; and
- Questionable behaviour by retailers through action such as unauthorised deductions, unplanned specials, late cancellation of home brand packed orders, and carrying stock through from discounted 'specials' weeks into 'non-specials' weeks, to name a few.

In recent years, Australian growers have been significantly challenged by the impacts of severe weather events, the COVID-19 pandemic and disruptions to the global supply chain, biosecurity incursions, workforce challenges, and significant increases in input costs.

At any one time, growers have millions of dollars of produce in the ground ready to harvest which cannot be insured, therefore they are bearing all the risk. This does not include the millions of dollars that have been invested in machinery and equipment, and state-of-the-art packing sheds. Vegetable growers are businesses, with all the operational costs and regulatory requirements of any other business. Unlike many other businesses they have no ability to set a price, and are instead dictated to, and at the mercy of, the retailers. Thirty-five percent of growers have indicated that over the next year their biggest concern is a lack of control over product pricing⁴ although a recent AUSVEG (February 2024) survey indicated that 51 percent of growers said '*poor retail pricing*' is a factor in their considerations to leave the industry.

Many growers have purchased additional farms and diversified into other states at the request of the retailers to ensure a 12-month supply of product or, ironically, to reduce the retailers' risk of not having stock through weather events or other issues that may affect entire growing regions. With rising interest rates and poor produce returns, growers are now faced with increasing debt. Given the current lack of viability within the industry it is likely that any vegetable farms sold in the current climate would transition to other agricultural activities such tree crops, broad acre, or animal production. Loss of prime peri-urban horticultural to land developers, such as around Virginia Plains (South Australia) and Clyde (Victoria), is increasingly common.

The prices that growers receive for their produce however is only one part of the equation. Many of the current issues are also the result of the margin squeeze due to substantial increases in the cost of production. Since 2020, the National Minimum Wage has increased from \$19.84 to \$23.23 (17 percent). Input costs have increased on average by 37 percent over the last three years, with key inputs such as fertiliser going up 107 percent⁵. Despite these major increases in the cost of production, many growers can produce evidence that prices they are currently receiving from retailers are equal to, or less than, prices they were receiving five, 10, or even more, years ago.

⁴ 2023. 'The Farm to Supermarket Food Waste Report 2023', Good & Fugly. <https://goodandfugly.com.au/pages/report2023>

⁵ 2023. 'Producer costs and prices report', Global Coalition of Fresh Produce. <https://producecoalition.net/wp-content/uploads/2023/09/Producer-Costs-and-Prices-Report.pdf>

In this context, AUSVEG notes the bumper profits reported by the big retailers are an underpinning theme of this inquiry.

Although Coles and Woolworths are quick to outline that their profit margins are small (Woolworths/Australian Food Group 3.6c in every dollar, and Coles 2.57c in every dollar) based on high volume and low margins, what is not clear is the distribution of income/profits across the store categories.

With industry-identified markups of over 300 percent (in some cases more), and given the seasonal variability in pricing, fresh produce appears an ideal category to make significantly better margins than some shelf staple, higher volume products.

Big retailers have long traded off the high-quality and appeal of fresh Australian vegetable produce, and many vegetable growers have long suspected those retailers are disproportionately benefiting from the hard work and risk they bear – not just in terms of attracting shoppers to stores, but also in terms of significantly bolstering profit margins via retail markups and the produce they supply.

Vegetable growers and the Australian public deserve to know to what extent the supermarket giants are profiting from the high-quality fresh vegetable produce supplied to them, at a time when many vegetable growing businesses are facing the threat of having to shut up shop due to lack of profitability. Offering growers prices at cost-of-production, or below, is also leading to significant health, safety, and welfare issues. Requirements imposed by retailers on suppliers in relation to the ethical treatment of workers is blatantly ignored when it comes to the farm business owners who are often working more than 10 hours per day, seven days a week to keep the enterprise running and satisfy their customers' daily demands.

Furthermore, supermarket behaviour is driving significant food waste through unreasonably stringent product specifications and seemingly arbitrary rejections, overcalculation of supply volumes which leads to crops being destroyed, and home branded product that is rejected and most often needs to be dumped as it is not financially viable to re-package. Research has also shown that cheap produce is undervalued, and consumers don't hesitate to throw these fresh food products away.

[The Farm to Supermarket Food Waste Report 2023](#) reported that the most common cause for supermarket rejections was appearance (68%), followed by size (37%), ripeness (26%) and pest infestation (9%). Nineteen percent of produce rejected by retailers was given away for free, whilst 19 percent was thrown away, with farmers losing an estimated 14 million kilograms of fruit and vegetables from rejected deliveries each year. This does not include the amount of product wasted on-farm through very tight product specifications leading to self-rejections either in the field or the packing shed.

Given the existential threat this issue represents, questionable behaviour by retailers is now the vegetable industry's top priority and must be addressed to ensure the ongoing viability of fresh food production in Australia. With 98 percent of the fresh vegetables consumed in Australia produced domestically, any reduction in fresh vegetable production capability would result in higher prices to consumers through either more expensive imported product, increased domestic prices driven by lack of supply, or a greater reliance on imported frozen or processed vegetables. Globally, less than five percent of vegetable production is traded⁶ largely due to the perishability of the product, and low value. However, declining viability of the Australian industry could see increased instances of vegetable imports from countries such as China, Thailand and New Zealand.

⁶ Van Rijswijk, C. 2018. 'World Vegetable Map 2018', Rabobank. <https://research.rabobank.com/far/en/sectors/regional-food-agri/world-vegetable-map-2018.html>

As retailers are the key purchasing point for vegetables in Australia, they also have a pivotal role in influencing the buying behaviours of consumers. With only 6.5 percent of Australian adults and 4.3 percent⁷ of Australian children consuming the recommended daily serve of vegetables in Australia, increasing vegetable consumption needs to be prioritised. Recent research findings led by the [Fruit and Vegetable Consortium \(FVC\)](#) and [KPMG Australia](#) provide evidence that 81 percent of Australians recognise increasing their vegetable consumption will improve their long-term health however 72 percent of consumers surveyed said that 'vegetables were too expensive'.⁸

Supermarkets have a responsibility to increase the value perception of fresh fruit and vegetables and stop de-valuing the category, particularly given that a vast majority of fresh produce is unbranded and commoditised so that growers are unable to promote health messages on their products. Supermarkets push their own generic, home-branded products in bland packaging, and use commodities such as carrots as loss-leaders. Given the power of the retailers to influence consumer buying behaviour in the fresh produce category they have a corporate social responsibility to drive vegetable consumption. The marketing and sales behaviours of retailers should be examined to ensure responsible marketing of fresh vegetable produce, given suppliers have little or no influence over these practices currently.

While farm gate prices that retailers pay to growers are being examined, the industry has also identified multiple retailer actions and requirements that exacerbate the financial losses that the industry is now bearing. Changes to these could ease the costs of production.

This includes, reducing the stringency of some product specifications, which would reduce both waste and production costs. Many fresh vegetable product specifications fail to recognise that vegetables are not widgets manufactured in a machine to uniform dimensions, but rather grow naturally to varying lengths, diameters and shapes. The industry supports specifications relating to flavour, food safety, shelf life, consumer expectations (such as no live insects), and, to some extent, cosmetic standards. However, some cosmetic standards have become unnecessarily stringent, resulting in significant additional wastage.

Overly-prescriptive size specifications are another area for attention, with retailer preferences to only order optimally-sized produce, often leading to produce marginally outside these size specifications selling for significantly less. For instance, out-of-spec fresh produce such as carrots, cucumbers, or celery used for juice or processing can sell for just a few cents in the dollar. Pre-packs of misshapen or 'not-quite-perfect' vegetables are often promoted by supermarkets as a way of reducing waste. Growers cite that these pre-packs often cost more to pack than regular products, still have high specifications so only reduce waste minimally, and are often substituted by the consumer for 'Class 1' products therefore no additional volumes are sold but the returns to growers are less.

Outcomes of the current inquiries and reviews into Supermarket Pricing, Competition, the Australian Food and Grocery Code, and a review by the ACCC, have the opportunity to shape what Australians put on their plates in the near future.

While the balance of power between the supermarkets and suppliers is inequitable, the industry supports a strong and profitable retail sector. AUSVEG cautions against overzealous or overly prescriptive market interventions. Global examples demonstrate that the introduction of additional competitors is unlikely to fix the power imbalance and could in fact worsen the situation (for example, via a competitive 'price war' that artificially drives down retail prices in the short term).

⁷ 2022. 'Dietary behaviour', Australian Bureau of Statistics. www.abs.gov.au/statistics/health/health-conditions-and-risks/dietary-behaviour/2022#childrens-fruit-and-vegetable-consumption

⁸ 2022. 'Shifting the dial on vegetable consumption', FVC and KPMG. https://static1.squarespace.com/static/5ddca44a3ac7644d97d9757a/t/633e2e9e396cdd49ccfa3ee9/1665019635620/FVC+Report_Final_041022.pdf

Some growers reference that the introduction of Aldi into the Australian retailer market actually worsened wholesale pricing due to Coles and Woolworths trying to match lower fresh produce prices in Aldi. If the current retail climate prevails, there is a risk of more growers exiting the industry, with the resulting decline in supply leading to retail price increases, or worse, higher volumes of lower-quality imported produce.

For Australian vegetable growers the fundamental issues to address are: ensuring they are getting fair and sustainable returns for their produce; establishing a more equitable balance in the grower-retailer relationship; and eliminating the systemic manipulation and unethical practices of supermarkets, that growers have been battling with for many years.

Action is required to secure fair prices for suppliers, to ensure that the Australian vegetable industry is economically viable and sustainable in the longer term. Otherwise, the risk is that retail prices will rise higher and higher in the future, as more and more vegetable growers go out of business.

In 2022, AUSVEG's [submission](#) to the House Standing Committee on Agriculture's [Inquiry into food security in Australia](#) highlighted the vulnerability of Australia's food supply chain, particularly in relation to fresh vegetables. Regional and remote communities, as well as lower socio-economic communities, already have issues accessing healthy, nutritious food at affordable prices.

National supply chain resilience, increases in cost of production (including labour and inputs), workforce shortages, biosecurity, and climate change were all cited as concerns for the future viability of vegetable production in Australia. At the time of writing the Food Security submission, \$12 lettuces were making the headlines, which highlighted the fragility of the supply chain. A more recent example is the canned beetroot shortage in Australia. With the relocation of Golden Circle's beetroot processing plant from Queensland to New Zealand, a significant percentage of canned beetroot processing has gone offshore. The 2023 storms in Hawkes Bay, New Zealand had a significant impact on beetroot production and a corresponding reduction of canned beetroot, which has resulted in the current shortage in Australian retailers today. Loss of sovereign capability is an ongoing concern for the vegetable industry, and with the current margin squeeze, it is likely that more vegetable producers or processors will exit the industry.

While there are a range of regulatory and legislative arrangements government can look at to improve relations between growers and retailers, AUSVEG also advocates that there are opportunities to upskill and educate industry, that will assist in addressing the power imbalance that currently exists.

It is acknowledged the focus of this inquiry is on supermarket prices. However, to fully address the long-term sustainability of Australia's vegetable industry, and by extension avoid future supply-driven upswings in retail prices, this issue needs to be understood in context of the challenging environment growers continue to operate in.

Across the country, vegetable growers are confronting a livelihood-threatening set of challenges including the high cost of inputs like fertiliser, fuel, power, and wages; workforce shortages; increased compliance costs; on top of severe weather events and the threat of biosecurity incursions.

The prices paid to growers are a key part of the equation, however they are only one part – just as competition law is only one aspect of the suite of legislative and policy settings the government has available to it.

To truly secure the long-term sustainability of the Australian vegetable industry, the government must consider and address all the current factors contributing to the margin squeeze threatening the viability of the vegetable producers that feed the country.

Terms of reference

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

Market concentration

Competition issues have been a contentious subject for Australian vegetable growers for decades, and the impact of a lack of competition across Australia's agricultural supply chains is worsening.

Market concentration has increased in Australia, meaning that vegetable growers have fewer places to buy inputs and source services (such as freight), and less places to sell their products, whether it be in the retail sector to supermarkets and wholesalers, or in the processing sector. This is detrimental because unlike many other agricultural commodities, the vegetable industry is particularly reliant on the Australian domestic market.

According to the *2022/23 Australian Horticultural Statistics Handbook* fresh vegetable exports in Australia make up only nine percent of trade volume⁹ due to their perishable nature and low value; therefore, the sector lacks opportunities to diversify risk by moving more product into export markets.

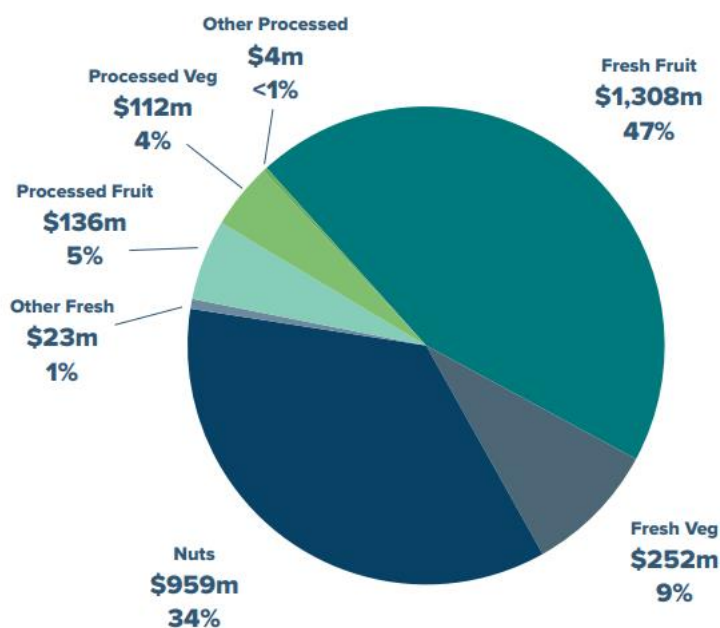


Figure 1: Australia's fresh vegetable exports are only 9% of horticultural exports due to perishability.¹⁰

The trade arrangements that growers have with retailers appear to be a varied, although the use of non-binding supply agreements appears widely utilised. Supply agreements typically contain forecast volumes specified by the retailer, the week of delivery, and the distribution centre the product is to be delivered to; but rarely the price. In accepting the supply agreement offer from the retailer, the grower agrees to grow and have produce available for the retailer as per the delivery schedule. When the full forecast volume of fresh vegetables, that the grower has already grown per the supply agreement, are not purchased by retailers, there are few viable alternative markets.

⁹ 'Australian Horticulture Statistics Handbook 2022/23', Hort Innovation. <https://www.horticulture.com.au/growers/help-your-business-grow/research-reports-publications-fact-sheets-and-more/australian-horticulture-statistics-handbook>

¹⁰ 'Australian Horticulture Statistics Handbook 2022/23', Hort Innovation. <https://www.horticulture.com.au/growers/help-your-business-grow/research-reports-publications-fact-sheets-and-more/australian-horticulture-statistics-handbook>

This is because food service is often on a contract basis with regular volumes, and wholesale market prices are easily distorted if growers dump excess produce on them, leading to very low returns.

Instead, often the only option is to plough the vegetables back into the soil leading to significant waste of inputs used to grow the crop, as well as substantial costs to the grower, including lost income.

As an example, if a grower must plough in 25 percent of a crop because the retailer did not order as per their forecast, the cost of the harvested crop goes up 33 percent, therefore rather than costing \$1000 per tonne to produce, the crop costs \$1333 per tonne to produce. Likewise, if a grower only harvests 50 percent of the harvestable crop, then the costs double to \$2000 per tonne.

If retailers forecasted their estimated volumes more accurately, and stayed within reasonable margins in accepting supply orders, then growers would not have to bear the costs of 'ghost crops'.

The number of direct vegetable vendors to the major retailers is unclear but potentially several hundred. For some product lines there may only be a handful of major suppliers to each retailer, and in other lines there could be many more. But there is imbalance in grower-retailer relationships with growers especially vulnerable to unfair practices because they have little control, and, relative to the retailers, significantly less market knowledge and intelligence available to them, in relation to terms of trade and prices for their products across the market.

Compare this to the retailer, who will be dealing with a multitude of individual suppliers and will have a comprehensive picture in relation to overall availability, location, supply, market conditions, consumer demand and price. The perishability of vegetables (as little as three days¹¹) further weakens growers' bargaining power, as they are often compelled to accept unfavourable terms to avoid crop losses, product spoilage and to maintain cash flow.

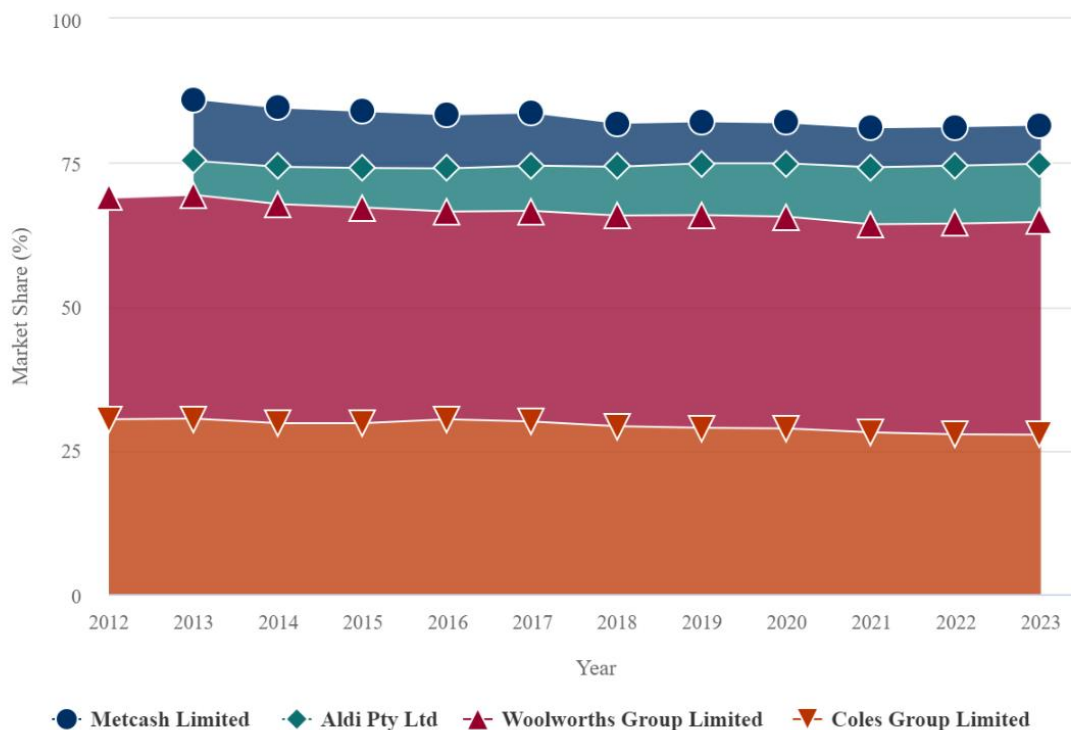


Figure 2: Coles and Woolworths hold 65% of the market share of supermarkets and grocery stores in Australia.¹²

¹¹ 'Fruits and vegetables that last: how to store produce properly', Queensland Government – Department of Environment, Science and Innovation. Viewed 16 January 2024 <https://www.des.qld.gov.au/our-department/news-media/down-to-earth/fruits-and-vegetables-that-last>

¹² 'Australia Market Overview 2023', Hunt Export Advice. <https://www.huntexportadvice.com/post/australia-market-overview-2021>.

Whilst market concentration could be perceived as a major issue to suppliers in the sector, the introduction of additional competition is unlikely to benefit suppliers. Market dilution could actually increase costs and reduce services to consumers.

In the United Kingdom (UK) there are approximately 4,000 horticulture (fruit, vegetable and ornamental) growers supplying to 16 supermarkets, however UK growers still struggle with some of the same unfair trading practices as Australian growers.

Data shows that 2023 supermarket profits in the UK and Europe have not been as high as Coles and Woolworths and the gap continues to widen. UK chains made up to 3.8 percent profit, while Australian retailers made up to a record high (doubling some UK profit margins) of 5.9 percent.¹³ Various resources state that this is due to competition, but given factors such as the geography of Australia, and significantly less population, it is hard to make an exact comparison.

There are currently similar reports of unconscionable behaviour by retailers in the UK with the government also conducting a review of the fresh produce supply chain¹⁴. A survey of British farmers in July 2023 found that 53 percent considered their farm to be at financial risk with almost half (49 percent) believing they will have to give up their farm in the next 12 months¹⁵. Fruit and vegetable farmers are asking for five commitments by supermarkets to provide sustainable farming in the UK:

- Buy what you committed to buy
- Pay on time
- Commit for the long term
- Agree on fair specifications
- Pay what you agreed to pay

These points are very consistent with many of the issues being raised by Australian vegetable growers. Furthermore, if the retailers behaved in a fair and reasonable manner in relation to the above points growers in some cases could potentially make a profit without even having a price increase. Better behaviour would mean better value for consumers, and better pricing for suppliers.

The entrance of Aldi into the retail market in Australia should have added to retail competition, however growers have found it has only dragged down their prices further, with Coles and Woolworths trying to match Aldi's low prices. Aldi's costing model is different to the duopoly, and growers cite that one product on sale for the same price in all three supermarkets will see a higher price paid to growers that supply Aldi.

Regardless of competition, it is unfair trading practices and lack of enforced compliance and punishment for retailers that leaves growers unprotected.

¹³ Barrett, Jonathan. 27 July 2023. 'Australian food giants making more profit from grocery sales than overseas peers', The Guardian. <https://www.theguardian.com/australia-news/2023/jul/27/australian-supermarket-profits-rise-woolworths-coles>

¹⁴ 'Contractual relationships in the UK fresh produce industry', Department for Environment Food and Rural Affairs. Viewed 15 February 2024. <https://consult.defra.gov.uk/supply-chain-fairness/contractual-relationships-in-the-uk-freshproduce-i/>

¹⁵ 'Save British family farms', Get Fair About Farming. Viewed 24 January 2024. <https://getfairaboutfarming.co.uk/>

Corporate power

The exercise of corporate power is evidenced in similar stories shared by growers Australia-wide. These highlight unfair trading practices, questionable conduct, and coercive behaviour from retail buyers.

Issues range from supply prices being driven down to below cost of production with retail mark ups of 200-300 percent, through to loss leader strategies where supermarkets drop the retail price to below the supply price in order to attract customers.

In one example, a grower was pressured into selling their product for \$4 per tonne which was then supplied to consumers at a price margin of 4,000 percent for the retailer. If it's possible for the retailer to sell at this price, it shouldn't be necessary for them to push suppliers into selling for such a low price that their business becomes unviable.

Many horticultural producers have no contractual certainty to make long-term business or investment decisions, as grocery supply agreements are indicative only and price is usually negotiated at the time of harvest. Many of these supply agreements are only for three or six-month periods, with some growers supplying directly to retailers stating they have no written supply agreement at all.

Growers' trust in retailers is at a low point with many saying that they are reticent to purchase new farms or upgrade plant and equipment due to the lack of commitment by retailers, and what some growers cite as duplicitous behaviour.

Unfair contract terms

The new Unfair Contract Terms (UCTs)¹⁶ reforms that commenced in 2023 are a good step forward, however they do not typically address anti-competitive behaviours in the horticultural supply chain or broader economy.

This occurs as UCTs apply only to contracts and therefore cannot address behaviours that fall outside of a contract. As stated previously, Australian vegetable growers negotiate 'supply agreements' or 'supplier commitments' with the major retailers that are not necessarily deemed contracts.

These agreements commit the grower to providing produce on a scheduled basis; the actual volumes ordered by the retailer may vary in line with consumer demand (special occasions, weather etc.), pricing, in-store specials/promotions, and other factors. At the time of agreeing to the supply agreement, typically no price is included, and growers are forced to negotiate price on a weekly basis at the time of harvest.

Whilst the growers submit their weekly quotation with volumes and price, they are frequently advised by retailers that they will not receive any orders unless they reduce their price to one indicated by the retailers as being competitive with other quotes. There is no transparency around this process and for all the growers know, the price they have been advised is entirely arbitrary.

Even when a price has been agreed to, there is ongoing pressure for growers by the retailers to reduce prices for unscheduled promotions, or to match retailer competitor prices. The below infographic showcases a common scenario in the relationship between vegetable growers and retailers.

¹⁶ 'Unfair contract terms reforms commence', Australian Securities & Investments Commission ASIC. 9 November 2023.
<https://asic.gov.au/about-asic/news-centre/news-items/unfair-contract-terms-reforms-commence/>



Figure 3. A common scenario in the relationship between growers (suppliers) and retailers, from initial agreement through to harvest.

The example in Figure 3 understandably is a cause of ongoing and undue stress for growers.

Unfair trading practices

Australian Consumer Law (ACL) currently does not have adequate protections against the multiple unfair trading practices that are known to occur in Australia. As outlined in the Consultation Regulation Impact Statement¹⁷, there are a number of examples that cause harm to businesses that are not captured under existing provisions in the ACL. These include practices that:

- Are not misleading or deceptive but still distort consumer or business choice;
- Do not reach the threshold of unconscionable conduct;
- May result in financial or other detriment but relates to:
 - Matters that do not form part of a standard form contract; or
 - Actions relating to entering into terms and conditions, rather than their content.
- Are not a specific practice currently prohibited by the ACL.

AUSVEG is hoping that The Treasury's consultation on unfair trading practices in 2023, for which we lodged a [submission](#), will result in positive changes for the horticultural sector.

¹⁷ 2023 'Protecting consumers from unfair trading practices', Australian Government - The Treasury. Page 11.
<https://treasury.gov.au/sites/default/files/2023-08/c2023-430458-cris1.pdf>

Fear of commercial retribution

Regardless of the mechanisms available to suppliers there needs to be a dispute resolution process that provides a safe environment for suppliers to report misconduct or unconscionable behaviour. Due to market concentration, vegetable growers are unlikely to challenge unfair contract or trading terms because of their reliance on retail or processor companies to provide them with ongoing trading agreements. As such, challenging unfair trading terms exposes individual growers to commercial retribution through various action such as punitive treatment, reduced orders, or cancelled future contracts.

As the *2022-23 Annual Report from the Grocery Code Independent Reviewer* confirmed, 23 percent of fruit and vegetable suppliers fear retribution if they raise an issue with their retailer buying team.¹⁸

Fear of retribution: all respondents by product category

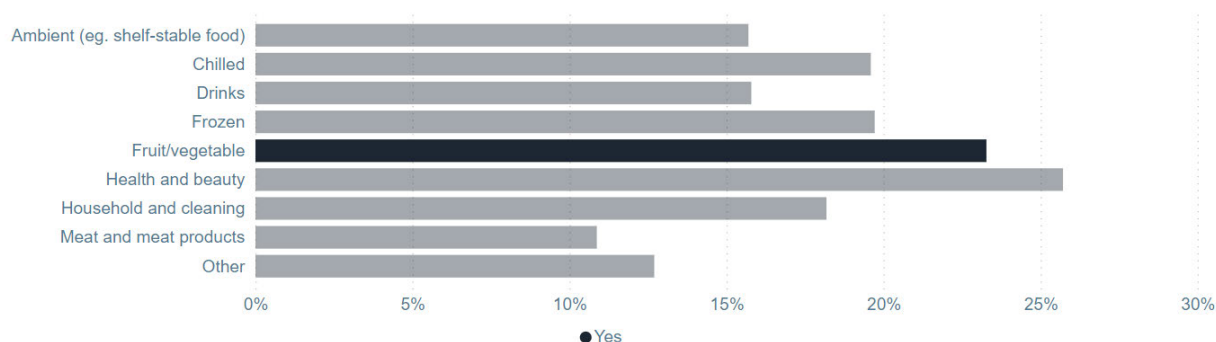


Figure 4: Bar graph depicting that 23% of fruit and vegetable growers fear retribution if they raise an issue with their retailer buying team.¹⁹

Solutions:

- The Australian Food and Grocery Code of Conduct (FGCC) must be made mandatory to provide growers with a viable mechanism to report the unconscionable behaviour of retailers without fear of commercial retribution. It needs to be amended and strengthened to:
 - Respond in a timely manner to fresh produce issues (with consideration of perishability in as little as three days);
 - Appoint arbiters independently of retailers so there is no conflict of interest (real or perceived);
 - Broaden the scope and the powers of the FGCC, ACCC and the Independent Reviewer; and
 - Include strong penalties for bad behaviour, and compensation for suppliers detrimentally affected by retailer misconduct.
- Amend Australian Consumer Law to update unfair trading practices to provide better protection to supermarket suppliers.
- Standardise documentation, terminology and supply arrangement processes to reduce confusion.

¹⁸ '2022-23 Annual Report', Australian Government – Food and Grocery Code Independent Reviewer.
<https://grocerycodereviewer.gov.au/reports/annual-reports/2022-23-annual-report>

¹⁹ '2022-23 Annual Report', Australian Government – Food and Grocery Code Independent Reviewer.
<https://grocerycodereviewer.gov.au/reports/annual-reports/2022-23-annual-report>

AUSVEG supports Recommendation 3 of the ACCC's *Perishable Agricultural Goods Inquiry*, "that the Food and Grocery Code should be strengthened, including by making it mandatory for retailers and wholesalers, and by introducing significant penalties for contraventions"²⁰ and Recommendation 6 of the House of Representatives Standing Committee on Agriculture's *Inquiry into food security in Australia*, "make the Food and Grocery Code of Conduct mandatory."²¹

This step has already been taken in New Zealand, where the government announced a new Grocery Supply Code in August 2023 after finding that stifled competition was creating poor circumstances for consumers.²²

Neil Rechlin, Director at [NextGen Group](#), and educator in retail negotiation skills has been working on the New Zealand Grocery Supply Code.

"One of the dynamics of that system is the ability to fine retailers \$3 million or three percent of their annual turnover, plus award damages or compensation to suppliers. Individuals can also be fined up to \$200,000 for code breaches. In Australia we have no ability to fine a retailer or an individual, and there really are very few teeth for the powers-that-be to apply breaches of the Code.

"As a result of no punishment, there is consistent poor behaviour and no consequences to those behaviours. The ability to police and fine retailers for poor behaviour would be a significant step forward [in Australia] that can only be achieved through making [the FGCC] a mandated code as the current voluntary prescribed mechanics doesn't allow, under the legal framework, for fines to be levied against retailers for a breach."

The ACCC also found in its *Perishable Agricultural Goods Inquiry* that:

"Where there are not sufficient penalties available to deter non-compliance with industry codes, and in particular where there are no penalties for non-compliance at all, then an industry code risks being not just irrelevant but actively detrimental because it gives a misleading impression that a problem has been addressed through regulation when this is not the case, and, by doing so, it undermines public confidence in the ACCC and the [Competition and Consumer Act 2010's] ability to fairly and effectively regulate misconduct."

Loss leaders and other sales tactics

A loss leader strategy involves selling a product below its cost of production with the intention of enticing customers to visit the store and potentially make additional purchases. Major supermarkets can afford to price a product with no margin because they have other products they can sell for higher profit margins to make up for the loss.

Supermarkets often use vegetables as loss leaders for several reasons; they are essential items in most households, have a high demand, and give the perception of value when first entering the supermarket. Displays of fresh, colourful produce are strategically positioned at the front entrance as they are aesthetically pleasing and when consumers see discounted prices on vegetables, they tend to perceive the entire store is offering competitive prices.

²⁰ 'Perishable Agricultural Goods Inquiry – Final Report', ACCC. November 2020. Page 127.
<https://www.accc.gov.au/system/files/Perishable%20Agricultural%20Goods%20Inquiry%20-%20Final%20Report%20-%20December%202020.pdf>

²¹ 'Australian Food Story: Feeding the Nation and Beyond', Parliament of Australia. November 2023. Page 6.
https://www.aph.gov.au/Parliamentary_Business/Committees/House/Agriculture/FoodsecurityinAustralia/Report

²² 'Govt enforcing fair conditions for supermarket suppliers', Beehive.govt.nz. 1 September 2023. <https://www.beehive.govt.nz/release/govt-enforcing-fair-conditions-supermarket-suppliers>



As a result of consumer demand, Australian retailer Coles launched 83% more vegetable items in 2017 than in 2015. ©iStock

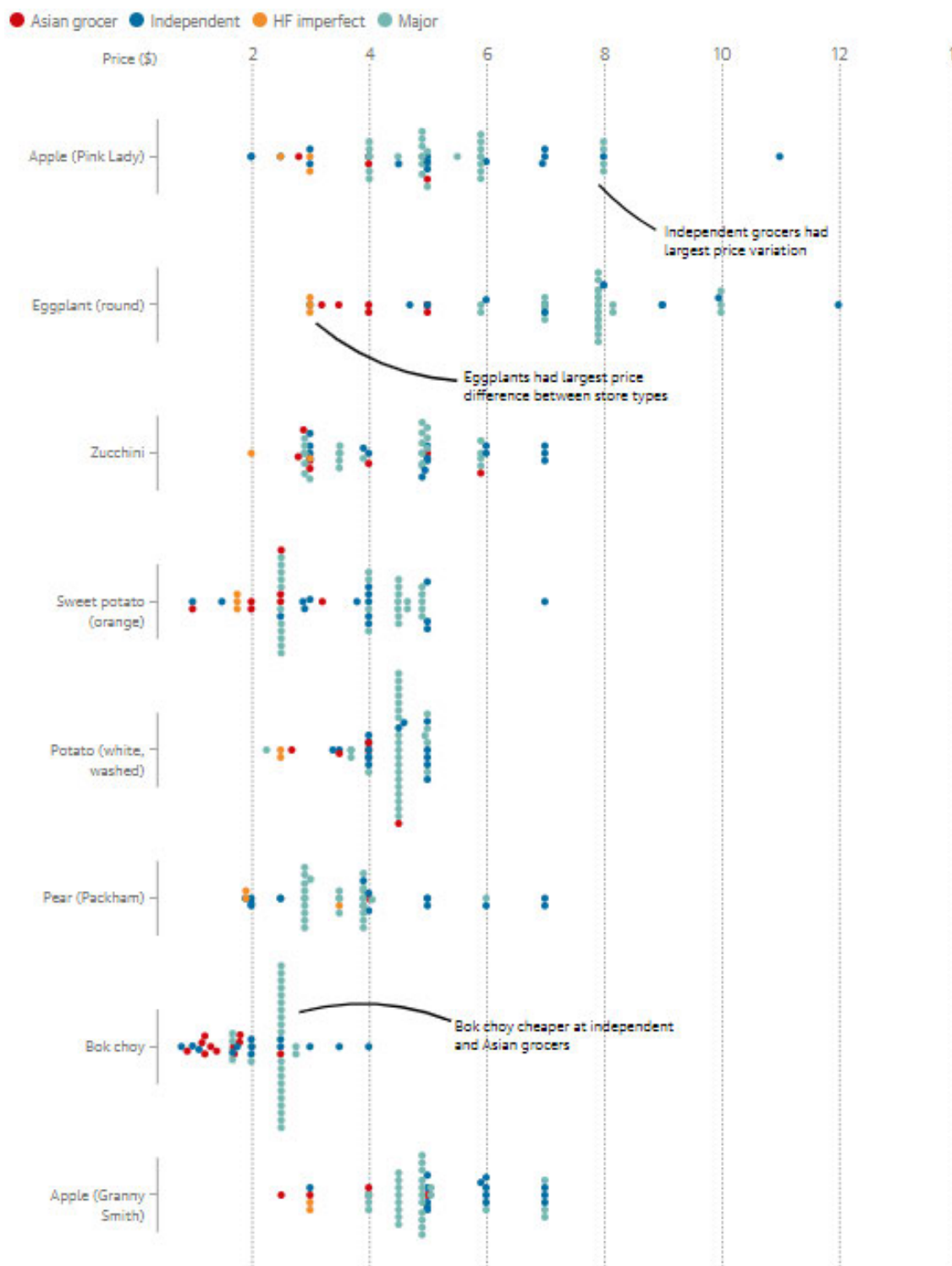
Image: Entrance of a Coles retail supermarket using the aesthetic of colourful fruit and vegetables to attract customers.²³

This strategy helps supermarkets build customer loyalty and encourages repeat visits. Moreover, it reinforces the notion that the supermarket provides affordable options, giving them a competitive edge over other retailers.

Evidence in a survey conducted in 2023 however, finds that major Australian supermarkets almost never have the cheapest fresh produce (see *Figure 5*).²⁴

²³ Wan, Lester. 24 July 2018. 'Veggie-might: Coles launches more vegetable products to meet growing consumer demand', FoodNavigator Asia. <https://www.foodnavigator-asia.com/Article/2018/07/18/Veggie-might-Coles-launches-more-vegetable-products-to-meet-growing-consumer-demand>

²⁴ Evershed, Nick & Rachwani, Mostafa. 27 July 2023. 'Revealed: major Australian supermarkets almost never the cheapest place for your fresh produce', The Guardian. <https://www.theguardian.com/australia-news/datablog/2023/jul/27/cost-of-living-grocery-store-price-rises-cheapest-fresh-produce-australia-woolworths-coles>



Guardian Graphic | Source: Guardian Australia survey of food prices. Imperfect fruit and vegetables from Coles and Woolworths were not included as the items on the survey were either not available or only sold in bulk. All other prices are for items sold either by the bunch or by the kilo, rather than in bulk bags

Figure 5. Comparison of fresh produce prices at Australian retailers in July 2023.

Prices can also be seen below, comparing the average retail price for Australian carrots against the CPI adjusted price of carrots. *Figure 6* shows that the retail price has remained at \$1.80 per kilogram in 2023 whereas the CPI price indicates over \$2.00 per kilogram.

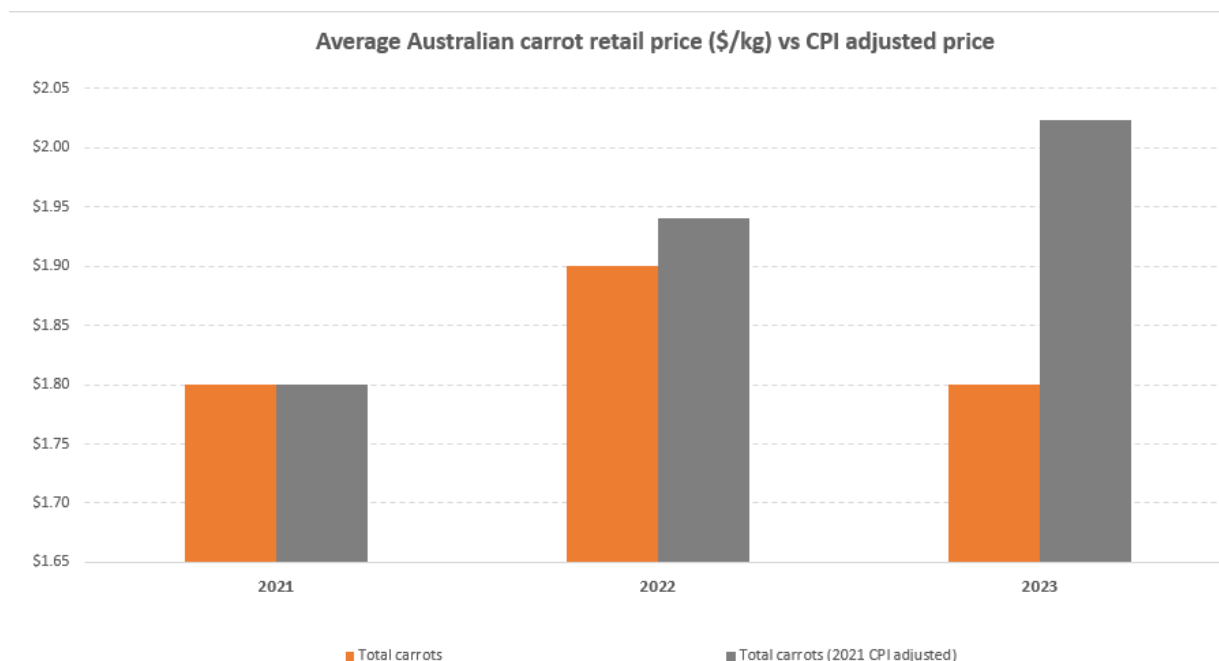


Figure 6. Average Australian carrot retail price (\$/kg) vs CPI adjusted price.²⁵

Whilst loss leading practices are not illegal, they represent an unfair playing field whereby the strength of negotiation skills and retail practices of buyers leave suppliers in a disadvantaged position. This creates an unsustainable environment of exploitation in Australia's food supply chain.

A recent AUSVEG survey indicated that over 91 percent of growers feel very positive about reforms that would bind retailers to an enforceable 'code of behaviour' to improve their utilisation of fresh produce in consumer settings (including addressing the overuse of 'specials', 'loss leaders', commoditisation and undervaluing of fresh produce etc.)

Solutions:

- Protect suppliers from retailer's forced low prices and weekly renegotiations by:
 - Providing greater transparency in weekly price negotiations within the 'group' of affected parties through a mechanism/platform that enables fairness; and
 - Implementing a mechanism to ensure that weekly pricing is above an industry market floor price.
- Establish a Code of Behaviour for retailers to improve the utilisation of fresh produce in consumer settings, including addressing the use of 'loss leaders', overuse of 'specials' and other promotions, commoditisation of fresh produce, and increased ability to promote fresh produce and build trust with the consumer.

Explanations by retailers for low pricing are not transparent and growers often have no option but to sell at the lowest price regardless of volume, quality, and other factors.

²⁵ Source: NielsenIQ Homescan, Vegetables, Data to 31/12/2023

AUSVEG supports Recommendation 4 of the ACCC's *Perishable Agricultural Goods Inquiry*, that "governments and industries should explore measures to increase price transparency in perishable agricultural goods industries."²⁶

Compliance

Suppliers find it unfair that they bear the weight of so much risk and cost when it comes to meeting the international standards of ethical labour, food safety, and sustainability, and Australia's reputation of producing clean and green produce.

Retailers demand that these high standards are met if they are to accept growers as vendors, but often do not respect the effort, money and time required to comply. This is evident through the lack of contracts with growers, the weekly renegotiation of prices previously agreed to, and the expectation that growers accept prices from retailers that do not reflect the true value of the produce.

Retailer compliance demands are at times tokenistic and not reflected in the retailers' own behaviour. Retailers do not value suppliers who meet the standards of ethically and sustainably grown produce and when convenient, will purchase from suppliers that do not have the same rigorous standards in place. Evidence suggests that retailers have also been known to send internal auditors to the same high-standard suppliers each time so that audits will be passed on record, but never to suppliers who do not meet required standards, but who will offer them produce at a cheaper rate.

Furthermore, standards that retailers demand from their suppliers' businesses are often not practiced by the retailers – for example, bullying and practices that do not promote reduction of waste are concerns regularly reported by growers.

Growers have also raised concerns about inexperienced and combative buyers and category managers who do not understand the supply chain, the produce they are managing, or the logistics of growing, processing, and packing vegetables.

Solutions:

- Review the vendor requirements for preferred suppliers in relation to the implementation, and changes to, compliance systems, including:
 - Harmonisation and rationalisation of supplier compliance schemes to reduce time, energy and money wasted on unnecessary repeat audits.
 - Greater collaboration between suppliers and retailers in relation to adoption and/or changes to compliance systems.
- Increased training and education of retailer buyers, category managers and quality control staff to better understand vegetable production, packing and processing, practical implementation of compliance systems, biosecurity, post-harvest, and supply chain logistics.

²⁶ 'Perishable Agricultural Goods Inquiry – Final Report', ACCC. November 2020. Page 130.
<https://www.accc.gov.au/system/files/Perishable%20Agricultural%20Goods%20Inquiry%20-%20Final%20Report%20-%20December%202020.pdf>

b. The pattern of price setting between the two major supermarket chains

AUSVEG conducted an anonymous and confidential price transparency survey in late 2023 to get a better understanding of prices growers were receiving relative to retail prices. The survey established that there is considerable variation in markup percentages across fresh vegetables, and even across the same product line. The variation in markups changed from store-to-store, and week-to-week.

There were examples of products retailing for less than the grower was paid, and other examples of markups in excess of 350 percent.

There were clear examples of price-matching which was evident in the sales of two kilogram brushed white potatoes in August 2023. Price monitoring showed that up until late August 2023, Coles and Woolworths were selling home branded two kilogram washed white potatoes for \$7.50 per bag and Aldi were selling the same for \$5.99 per bag. As part of Woolworths 'Spring Price Drop' promotion they reduced the price of their potatoes from \$7.50 per bag to \$4.00 per bag for 13 weeks, and the following week Coles and Aldi dropped their prices to match - \$4.00 and \$3.99 respectively.

The timing of the 'Spring Price Drop' promotion is likely not coincidental given it came one week after Woolworths announced record profits. In a cost-of-living crisis, a price reduction of nearly 50 percent on a staple item would be welcomed by many consumers but what was the impact on suppliers?

This is just one example of many. Unfortunately, due to confidentiality considerations and growers' fear of retribution, AUSVEG is unable to tell the story many fresh produce growers who supply the supermarkets and find themselves caught up in marketing games to win over consumers or gain some positive consumer publicity.

On 21 December 2023, the two major supermarket chains - Coles and Woolworths - were selling at least 10 types of fresh vegetables online for the same price.

Whilst Woolworths advertises their fresh produce per unit (each), Coles advertises some fresh produce per a random weight – which may equal one unit. In the below example, Woolworths sells red capsicums for \$1.98 *each*, whilst Coles sells red capsicums for \$1.98 *per (approximately) 250 grams*.

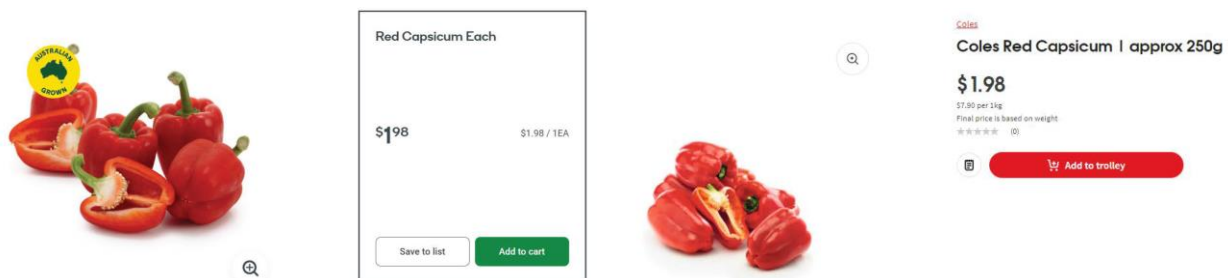


Image: Comparison of Woolworths and Coles red capsicums prices via online shopping December 2023.

On 16 January 2024 the situation was similar with matched prices identified across eight products, including some of the original products still on special in both stores.

There are many different elements to consider when setting a product's retail price.

The ACCC states that it is not illegal to respond to price competition by offering lower prices²⁷. However, if supermarkets were honouring supply agreements and supplier relationships, and setting fair retail prices for consumers, it's unlikely that so many products would be exactly the same price in both supermarkets at the same time, unless supermarkets have compared and matched prices. These tactics,

²⁷ 'Competition and anti-competitive behaviour', ACCC. Viewed 31 January 2024. <https://www.accc.gov.au/business/competition-and-exemptions/competition-and-anti-competitive-behaviour>

according to growers, are commonly used by retailers to push down the price paid to suppliers, by advising that they must drop their price because their competitor has. Rather than the retailer wearing the loss to hold an unplanned promotion, they force the supplier to take the loss instead.

Controlling volume

Market manipulation and distortion via supply arrangements is becoming an increasing concern for suppliers, as retailers are entering into supply agreements where they nominate 'forecast' weekly volumes, with no obligation to accept that forecast volume.

A significant percentage of growers have shared that the full forecast volume in supply agreements is rarely ordered by retailers and sometimes as little as 50 percent will be purchased by the retailer. This means the grower is either forced to plough the surplus crop back into the soil or put it into the wholesale market which causes oversupply and drops the price. Retailers, who actively monitor prices in the wholesale market and buy from market agents, then advise the grower that the wholesale price is low, and therefore put pressure on the grower to accept lower prices.

Growers are aware that additional suppliers are being added by retailers, often with no variation to existing supply arrangements.

Are the retailers deliberately manipulating the market and causing an oversupply through over-inflated supply agreements?

This is a very serious allegation, but many growers have confidentially informed AUSVEG that they believe deliberate market distortion is occurring. As growers are not allowed to discuss their individual supply arrangements amongst themselves, they have little way of proving it. The asymmetrical nature of the relationship gives all the power to the retailers – they know the suppliers, they know the volumes of produce available, they know the market conditions. Retailers can manipulate supply through supply agreements and by extension, they have the power to influence the price – they can dictate the supply, and therefore demand, and consequently the price.

Reports of this sort of behaviour have previously been raised with the ACCC which has noted that retailers are using harmful bargaining tactics by changing supply volumes for perishable products at very short notice, after volumes have been agreed to.²⁸

The time sensitivity of the fresh produce supply chain is a tool that can be leveraged against growers. Retailers know that growers need to harvest their produce, and that growers need cash flow, even if they are making no profit, they still need to salvage some of the production costs, including labour. Those growers who employ PALM workers are obliged to give them 30 hours per week of work, so growers will harvest crops to at least offset the labour requirements. Some cash flow is better than no cash flow.

At any one time, a grower has millions of dollars' worth of produce planted in order for it to be ready for harvest when the retailer calls.

See *Figure 7* below. The life span of a lettuce is 14 weeks, and must be harvested within that time (pending weather effects), otherwise it will grow outside the retailer specifications and the taste will change. Therefore, every week a fresh crop of lettuce must be harvested, and a new crop planted, to ensure that when an order comes in, there is always a crop ready to go.

²⁸ 'Perishable Agricultural Goods Inquiry – Final Report', ACCC. November 2020. Page 49.
<https://www.accc.gov.au/system/files/Perishable%20Agricultural%20Goods%20Inquiry%20-%20Final%20Report%20-%20December%202020.pdf>

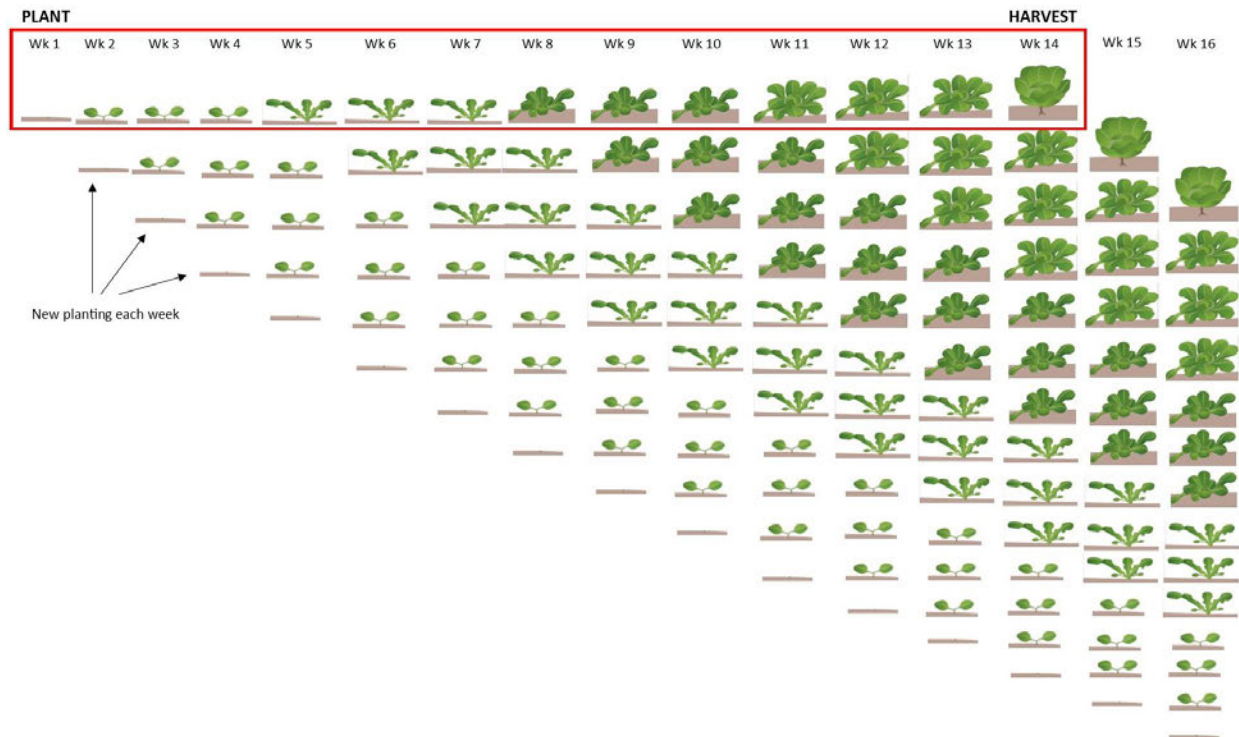


Figure 7. The lifespan of a lettuce crop.

In addition, state-of-the-art packing shed facilities that meet Australian compliance standards require enormous capital investment.

The failure to pay growers fair and sustainable prices for their produce places enormous financial stress on their business, workers and suppliers.

Solution:

Protect suppliers from becoming victims of retailer price matching and price wars by:

- Enabling the ACCC to investigate deliberate distortion of markets through designed oversupply;
- Including penalties in the FGCC for deliberate distortion of markets by retailers; and
- Introduce appropriately designed supply contracts for fresh produce with greater certainty and accuracy around price and volume.

c. Rising supermarket profits and the large increase in price of essential items

A profitable retail sector is important for both Australian suppliers and consumers. While there has been commentary around the magnitude of the large retailers' profits, the main focus for vegetable growers is:

- a fair return for their produce
- greater equity in the relationship
- greater contractual certainty
- improved corporate behaviour and culture toward their suppliers.

d. The prevalence of opportunistic pricing, price mark-ups and discounts that are not discounts

Supermarkets run specials on vegetables every week for consumers. Whilst this seems positive, the long-term impact of constant specials is damaging to both the supplier and the consumer.

Growers' experiences show that by putting one product on special (e.g. broccoli) and selling more of that product, in response, another product (e.g. zucchini) sells less. In economics and consumer theory, this is called 'substitution' and means that consumers see a product that can be used in place of another.

Loss leaders, specials and other promotions (2 for 1) are often used by retailers to be competitive with other retailers, generate footfall by attracting shoppers, and can change value perceptions of shoppers once they are in the store. Whilst specials can provide opportunities for the supplier to move larger volumes, their indiscriminate use by retailers is frequently referred to by growers.

Supermarkets have detailed data on consumer shopping behaviour, including price elasticity. We all understand that as the price of a product rises the demand of a product declines, and as a price of product declines the volume increases, however at a certain point no matter how low the price, no additional volume is sold. Growers often complain that some of the prices that vegetables are being sold for is not driving commensurate increases in sales, and that retailers should be more discriminate in their pricing strategies.

Aside from previously mentioned challenges with retailers in the UK, there is also evidence of opportunistic pricing and retailer promotions negatively impacting farmers in France, which the government has since acted on.

In 2017, France introduced the Resale Below Cost (RBC) threshold for two years, along with new regulations for minimum food prices and the limit of bargain sales in supermarkets. This was to rebalance trade relations and protect farmers in their commercial relations with large retailers. Supermarkets were forbidden from selling popular items like Nutella and Coca-Cola at discount prices to attract customers, whilst squeezing extra profits out of farmers by paying low prices for fresh fruit and vegetables.²⁹

These practices were formally legislated in 2023 under the Egalim 3 Act.³⁰

In brief, changes include:

- a threshold of minimum 10 percent earnings for suppliers on each sale, after the cost of transport for product delivery to retailer;
- retailer discounts on food products have been limited to 34 percent of a product's price, and only for a maximum of 25 percent of available volumes;
- raw farm products are non-negotiable;
- there is a three-month window from December to March each year where prices must be set, and will remain in place for one year, until renegotiations occur the following year;
- retailers are required to ensure that prices fluctuate with the natural curves of commodity market prices, which means that consumers save when there is a natural oversupply.

²⁹ Elzas, Sarah, 2 January 2019. 'French supermarkets increase food prices – will farmers benefit?', Radio France Internationale. <https://www.rfi.fr/en/economy/20190201-french-supermarkets-increase-food-prices-will-farmers-benefit>

³⁰ 'EGALim 3 law in France', Rödl & Partner in France. 2 October 2023. <https://www.roedl.com/insights/france-egalim-3-law-update-trade-negotiations-change>

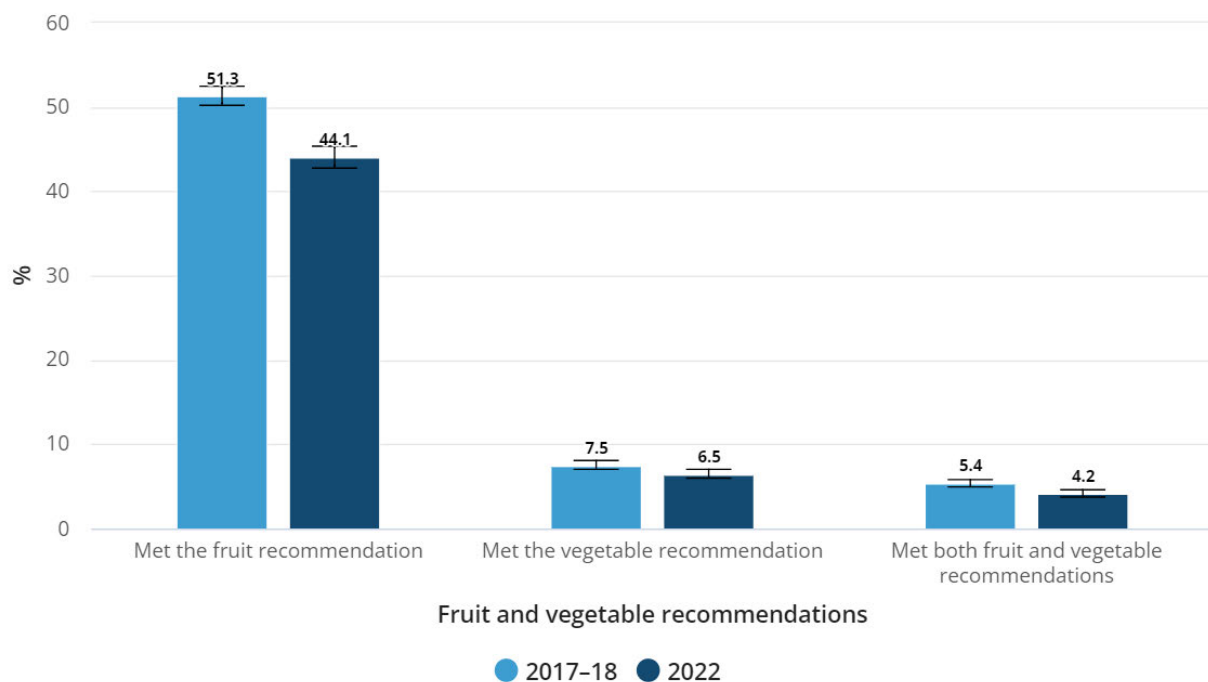
This means that some product prices increased at the supermarket, with an estimation of increased food costs for households up to three Euros per month. A national survey found that over half of consumers were willing to pay more for groceries, only if the margin made by supermarkets from increased prices went to paying farmers more.³¹

Whilst results have been difficult to measure due to the short timeframe, the impact of COVID-19, and the Ukraine-Russia conflict, this example reflects the lengths that the French government was required (and willing) to go to, to create change within the supermarket oligopoly in response to similar issues being faced by Australian growers.

Solution:

Require a timely right of recourse for vegetable suppliers, through an appropriate dispute resolution process in the Food and Grocery Code of Conduct (FGCC).

Whilst Australian consumers may be attracted to specials this does not necessarily translate to increased consumption overall. In 2022, 97 percent of men and 90 percent of women did not eat the recommended daily serve of vegetables³², and this trend is on the decline compared to 2017-2018, as can be seen in *Figure 8*. In 2018, over one-third of disease burden was potentially preventable, which could have saved the government health services and the Australian economy many millions of dollars.³³



*Figure 8. Proportion of adults who met the daily fruit and vegetable recommendations as per the Australian Dietary Guidelines in 2022, compared to 2017-2018.*³⁴

³¹ 'Many French shoppers willing to pay more for food to help farmers', Radio France Internationale. 25 July 2015.

<https://www.rfi.fr/en/economy/20150725-many-french-shoppers-willing-pay-more-food-help-farmers>

³² 'Dietary behaviour', Australian Bureau of Statistics. 15 December 2023. <https://www.abs.gov.au/statistics/health/health-conditions-and-risks/dietary-behaviour/latest-release>

³³ 'Australia's health 2022: in brief', Australian Government – Australian Institute of Health and Welfare. Viewed 19 January 2024. <https://www.aihw.gov.au/reports/australias-health/australias-health-2022-in-brief/summary>

³⁴ 'Dietary behaviour', Australian Bureau of Statistics. 15 December 2023. <https://www.abs.gov.au/statistics/health/health-conditions-and-risks/dietary-behaviour/latest-release>

The prevalence of supermarket specials³⁵ is not promoting or encouraging Australians to meet the Australian Dietary Guidelines by consuming more vegetables. To increase vegetable consumption a behavioural change campaign is required, supported with a range of measures such as product labelling and product promotions. The current commoditisation of vegetables by retailers is not supporting health awareness or vegetable consumption. Further, their current policies do not support growers or industry to advocate for increased vegetable consumption.

The major retailers are also acting irresponsibly when it comes to managing the enormous supply of fresh food they control across Australia. By potentially creating a market oversupply, increased use of resources such as fertilisers and fuel, and increased emissions through decomposition of waste, they are also increasing Australia's carbon footprint whilst squeezing growers on price, thereby preventing investment in more sustainable farming methods.

Solution:

Amend the FGCC to tighten structure and compliance around promotions by:

- Reviewing the use of 'specials' in fresh produce, how effectively retailers manage 'specials' and whether they are overused;
- Introducing a 'Code of Behaviour' to ensure that retailers act in the best interest of the fresh produce sector and the consumer through more prudent use of specials, marketing tactics etc.;
- Promoting seasonality and 'bountiful buys' (promote when there is oversupply and market price has dropped);
- Reviewing the role of retailers in promoting healthy eating and increasing vegetable consumption based on their sales strategies and pricing; and
- Promoting Australian grown products.

e. The contribution of home brand products to the concentration of corporate power

A vast majority of fresh vegetables in Australian supermarkets are unbranded or generic so growers completely miss out on the benefits afforded to branded products. It also gives retailers complete control by pushing all growers to compete in one market, despite the array of quality available.

However, the appeal of fresh produce is not lost on Woolworths – “The fresh food people” – and their ‘organic- fresh produce’ logo, which leverages the connection between consumers and fresh produce. Brad Banducci (CEO, Woolworths) says that the Woolworths brand logo is an “icon in the Australian landscape”³⁶. The irony of one of the most successful global re-brands, is that it leverages the benefits and appeal of being ‘fresh food people’, while at the same time growers are denied the opportunity to brand, and connect with consumers.

³⁵ ‘Coles helps make “healthier living” easier and more affordable’, Coles. 10 February 2021.

https://www.colesgroup.com.au/FormBuilder/Resource/module/ir5sKeTxxEondzdh00hWJw/file/100221_Media_Release_Coles_helps_make_healthier_living_easier_and_more_affordable.pdf

³⁶ ‘Revolutionising ‘The Fresh Food People’’, Hulsbosch. Viewed 15 February 2024. hulsbosch.com.au/work/woolworths/

Branded produce can:

- Tell a story and develop a 'relationship' with the consumer
- Establish provenance, and country/region of origin
- Reinforce messaging such as healthy eating habits
- Promote brand credentials – such as food safety
- Provide product information – recipes, preparation tips, storage etc.
- Enable the consumer to reengage when the experience is positive
- Link to social media to promote/inform/educate etc.

The inability of Australian vegetable growers to connect directly to consumers is a major barrier to increasing vegetable consumption, and is facilitating ongoing disconnection between city consumers and rural growers.

Growers can influence their crops through agronomic and varietal tools to produce vegetables that are different in size, colour, shape, and taste, and appealing to the different tastes of consumers. However, growers have reported that it is nearly impossible to get major supermarkets to adopt branded product lines.

Impacts of home brand packaging

Another major issue for suppliers is that packaged vegetables (carrots, onions, potatoes, salad mix and so on) are typically sold in retailers' home-brand packaging. There are no restrictions on how many times a retailer can make changes to packaging design, and all costs including new printing plates and design work are typically met by the supplier.

This process also leads to significant waste, with suppliers having to throw out or destroy unused packaging each time there is a design change.

Whilst the FGCC has provisions for changes to packaging and design, this appears to be another example of non-compliance with the Code.

Home brand packaging also limits the ability of growers to find alternative markets for pre-packed product that is a result of orders being reduced, cancelled (after packing) or rejected. Excess packed home brand product typically either gets dumped or donated to food charities (at the cost of the supplier).

f. The use of technology and automation to extract cost-savings from consumers and employees

Due to the competitive nature of major supermarket retailers, new systems – whether it be in logistics or compliance – are regularly implemented. By extension, suppliers are also required to learn and create new systems, produce new resources and train staff. These increased costs are ultimately charged to the consumer.

This would be less of an inconvenience if there was more structure and consistency with sales via supplier contracts (as opposed to non-regulated agreements), and standardisation of crates across all retailers.

Advanced analytics and artificial intelligence are also new technologies being used by major retailers to extract further savings from suppliers, and drive supply prices down with constant promotions.

In the past few years, both major supermarkets have built and installed new information infrastructure to bring together national finance, supply chains and retail data. Woolworths worked with Google and in 2019 announced that their software can use natural language processing to read correspondence and data for them, analysing their first 80 billion rows of data in as little as 45 minutes.³⁷

This is not technology that suppliers can compete with. Over 30 percent of Australian farmers have indicated that they have not taken up new farming technology as they have no access to the internet, with vegetable growers representing the highest number without connection.³⁸ They struggle to upload picking data each day to reconcile piece rate pay, or to take calls from buyers if they are not in the house with a landline, often citing that they must drive to ‘that corner’ or up a nearby hill to use the phone.

This leaves many suppliers in an impossible position when trying to compete in weekly negotiations with retailers.

The agriculture industry has advocated for many years for improved telecommunication infrastructure in regional farming areas not only for business purposes but for safety. As a result of the inquiry into food security in Australia, it has been recommended that the Australian Government incorporate measures to eliminate food waste into the proposed National Food Plan which include improving data sharing across the food supply chain (Recommendation 18).³⁹

Solution:

Increase industry capability by:

- Funding industry to assist farming businesses increase capability and understanding of retail practices and negotiation skills through training and other activities; and
- Amend or put in place a collective bargaining mechanism where growers can collectively bargain without fear of retribution from retailers, and which has a high enough threshold to include the whole vegetable industry.

g. Improvements to the regulatory framework to deliver lower prices for food and groceries

There have been many inquiries into the relationship between retailers and suppliers, specifically supermarkets and farmers, the most recent of which all support improving the regulatory framework of the Australian Food and Grocery Code and making it mandatory in order to force compliance.

There have been findings of Australian major supermarkets acting in bad faith and practicing illegal pricing policies that negatively impact the lives of farmers and consumers. Some examples are listed in the table below.

³⁷ Crozier, Ry. ‘How Woolworths uses Google to power its massive analytics uplift’, itnews. 10 April 2019.

<https://www.itnews.com.au/news/how-woolworths-uses-google-to-power-its-massive-analytics-uplift-523639#:~:text=Woolworths%20is%20set%20to%20use,large%2Dscale%20project%20revealed%20today.>

³⁸ 2018. Dufty, Niki and Jackson, Thomas. ‘Information and communication technology use in Australian agriculture’, Australian Government – Department of Agriculture Water and Resources (ABARES).

<https://www.agriculture.gov.au/sites/default/files/sitecollectiondocuments/abares/ict-use-australian-agriculture.pdf>

³⁹ ‘Australian Food Story: Feeding the Nation and Beyond’, House of Representatives Standing Committee on Agriculture - Parliament of Australia. November 2023.

https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/RB000221/toc_pdf/AustralianFoodStoryFeedingtheNationandBeyond.pdf

Headline	Subject	Date
ACCC takes action against Woolworths for alleged unconscionable conduct towards supermarket suppliers	WW asked suppliers to pay them up to \$1.4M each (total to \$60M) outside of supply agreements, otherwise deemed suppliers “not supportive of WW”; in an effort to increase WW profit margin.	December 2015
ACCC concerned over implementation of the Food and Grocery code	WW and Aldi coerced suppliers to sign agreements to pay for retailer waste (for example) and gave the impression that suppliers were unable to negotiate.	September 2015
Coles refunds over \$12 million to suppliers following ACCC action	Unconscionable conduct, forcing suppliers to pay for Coles’ losses in bargaining purchase price, markdowns and waste, and pressuring suppliers to pay rebates in order to supply Coles.	June 2015
New fair-trading law needed to enhance Australia's perishable agricultural markets	ACCC recommends unfair trading practices prohibition due to market concentration affecting farmer bargaining power, income, and commercial retribution.	December 2020
New law on unfair contract terms to provide protections for farmers and agriculture businesses	Imbalances in bargaining power and unfair contracts, forcing growers to ‘take it or leave it’ when dealing with the few retailers available.	July 2016
ACCC's new Agriculture Unit to focus on supply chains	Ag Unit required to address the anti-competitive conduct and unfair trading practices taking place within the supply chain.	March 2016

There are many, many more articles published about unconscionable conduct and unfair trading within other parts of the supply chain, all where farmers are worse off – whether they be in vegetables, fruit, dairy, wine, or meat.

Being at the bottom of the supply chain, it is the farmer who wears the risk and loses the most, which has been stated throughout this submission. Freak weather events such as hail and storms can write off millions of dollars worth of harvestable product in literally minutes.

After over a decade of poor prices and control by retailers that has decimated the dairy industry, the Dairy Code of Conduct was finally made mandatory in 2020.⁴⁰ We must heed the lessons learned from the dairy industry make the FGCC mandatory before it is too late for the Australian vegetable industry.

For more background, please see [“The effect of market concentration and the exercise of corporate power on the price of food and groceries”](#).

Solutions:

- Establish a taskforce to investigate the farm gate to retail store supply chain costs for opportunities to reduce costs and duplication - potentially saving both supplier and consumer money.
- ACCC should investigate claims of potential third line forcing across the supply chain.
- ACCC should have greater power to ensure that retailers acquisitions or establishment of businesses along the supply chain does not negatively impact suppliers.

⁴⁰ ‘About the dairy code’, ACCC. Viewed 24 January 2024. <https://www.accc.gov.au/business/industry-codes/dairy-code-of-conduct/about-the-dairy-code#:~:text=The%20Dairy%20Code%20of%20Conduct,conduct%20on%20processors%20and%20farmers.>

h. Frameworks to protect suppliers when interacting with the major supermarkets

AUSVEG's recent consultation with growers has found that the number one ask to improve their situation is for supply contracts to be compulsory between supermarkets and suppliers.

This would provide greater certainty for growers in terms of volume and price. It would allow them to manage their budgets, plan workforce, upgrades and innovation, reduce waste, and better manage risks such as the extreme weather events that have been prevalent in recent years.

Under the voluntary FGCC, suppliers receive Grocery Supply Agreements (GSAs). The uncertainty and non-binding nature of many of these agreements compared to the benefit of retailers paves the way for further questionable and unconscionable retailer behaviour that threatens the viability of Australian vegetable growing businesses.

The unethical business behaviour being reported covers a wide scope of retailer misdemeanours including:

- unapproved deductions
- deducting rejections from earlier payment runs
- cancelling purchase orders when product is already packed to order
- refusing to commit verbal communications in a written format

Some of the examples provided by suppliers about supermarket conduct may be in breach of the FGCC, for example:

- Part 2, clause 9, subclause 1 of the FGCC states that "The retailer or wholesaler must not vary a grocery supply agreement without the consent of the supplier concerned", and
- Part 3, clause 12, subclauses 1 and 2 include statements that the retailer must pay the supplier for all grocery products delivered and accepted, must pay on time, and must not set off any amount against the invoice unless the supplier has consented in writing.

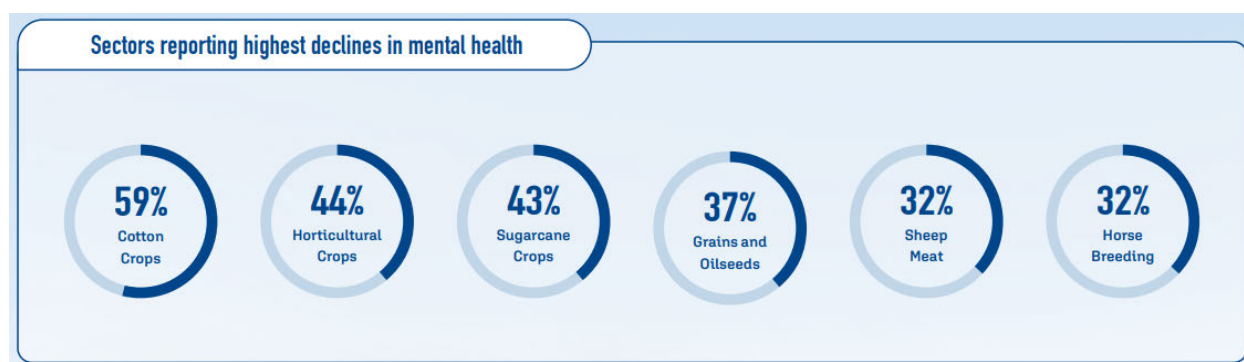
There is also a section on determining whether the retailer has acted in good faith, a number of points in which could conflict with reports provided by suppliers. This includes retailers acting arbitrarily, capriciously, or recklessly, and whether there has been recognition of the need for certainty in relation to production, delivery and payment.

The misleading and deceptive conduct of retailer buyers raised with AUSVEG by suppliers indicate current arrangements are not working.

A recent article in *The Australian* remarked that due to inquiries into supermarket pricing "...it will be a minor miracle if supermarkets CEOs have time to run their businesses."⁴¹ Suppliers experience such pressure regarding their pricing negotiations with retailers every week.

⁴¹ Garcia, Luis M. 'It's open season on CEOs and supermarkets', *The Australian*. Viewed 21 January 2024.
<https://www.theaustralian.com.au/business/retail/its-open-season-on-ceos-and-supermarkets/news-story/36515dba2fe810e01f101670397d1b46>

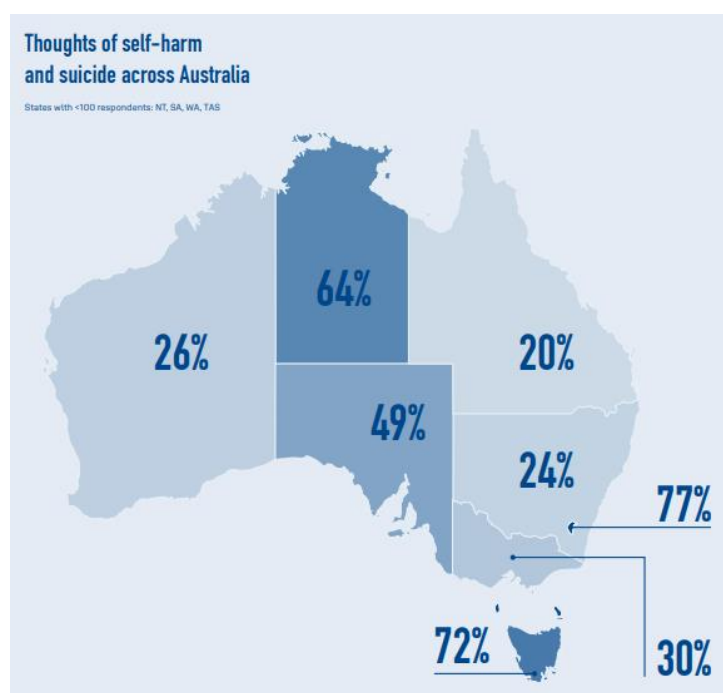
Only last year the National Farmer Wellbeing Report was released, showing the suicide rate among Australian farmers is almost 59 percent higher than the general population, with horticulture growers reporting the second highest decline in mental health (44%)⁴² – see *Figure 9*.



*Figure 9. Agricultural sectors reporting highest declines in mental health in Australia, with horticultural growers at 44% decline.*⁴³

On average, close to half of Australian farmers (45%) have had thoughts of self-harm or suicide, almost a third (30%) have attempted to harm themselves or take their own lives, and 34 percent know a fellow farmer who has taken their own lives. See *Figure 10* for a breakdown per state.

These statistics are alarming and hopefully provided a reality check to price makers within the supply chain who continue to take advantage of growers.



*Figure 10. Percentage of farmers who've had thoughts of self-harm and suicide across Australia, by state.*⁴⁴

Seventy-six percent of farmers said they feel undervalued by the Australian public, and their top three triggers for stress included financial (36%) and cost pressures (35%).

⁴² 'National Farmer Wellbeing Report 2023', Norco & National Farmers Federation. https://norcofoods.com.au/wp-content/uploads/2023/03/1212_Farmer-wellbeing-report_Navigation_FINAL.pdf

⁴³ 'National Farmer Wellbeing Report 2023', Norco & National Farmers Federation. https://norcofoods.com.au/wp-content/uploads/2023/03/1212_Farmer-wellbeing-report_Navigation_FINAL.pdf

⁴⁴ 'National Farmer Wellbeing Report 2023', Norco & National Farmers Federation. https://norcofoods.com.au/wp-content/uploads/2023/03/1212_Farmer-wellbeing-report_Navigation_FINAL.pdf

The uncertainty of running a business provides a level of stress for any owner, however when that business is also where you live, an employer of your family and located in a remote location, the pressures compound, even more so when that business is at the mercy of mother nature, and the risk of extreme weather events.

To help alleviate these pressures, growers need supplier contracts to be included in a mandatory FGCC to provide some certainty for the running of their businesses, and to ensure that they can continue providing quality fresh vegetables to Australian supermarkets.

Solution:

Replace Grocery Supply Agreements with Grocery Supply Contracts and enforce compliance under a mandatory FGCC.

- Contracts could include two tiers: one tier of 'x' percent guaranteed supply at a nominated price, second tier of the remaining 'y' percent at a negotiable or market price.
- Contracts must state that price paid to the supplier cannot be below cost of production, unless negotiated in good faith with the supplier, and the broader industry.
- Indicative price cannot be changed after planting, unless negotiated in good faith with the supplier.
- Contracts should contain clauses that force retailers to commit to the supply volumes within a nominated percentage (i.e. 10 percent).
- Ensure acceptable business behaviours are embedded in the FGCC.

j. Other related matters

Waste

Vegetables and bagged salads are two of the top five most wasted foods in Australia.⁴⁵

Fresh produce specifications are often interpreted inconsistently across national supermarket distribution centres, leading to abhorrent levels of waste.

Feedback from vegetable growers is that they can't be sure whether their freight will be rejected upon arrival at the distribution centre, as the quality controllers seem to reject produce capriciously, rather than following a quality standards checklist that is consistent across all distribution centres.

Another significant issue raised by growers is the rejection of prepackaged products that are underweight, even by the most negligible of margins. Growers have reported instances where just one marginally underweight prepackaged item, has resulted in the rejection entire consignments. This places yet more pressure on the grower to oversupply, further impacting their margins. This is also why the industry supports the introduction of the Average Quantity System and 'e' symbol.

Twenty-eight percent of fruit and vegetable growers in a recent survey indicated that their biggest business concern in 2023-2024 was the amount of produce that was going to be rejected by commercial buyers over the next 12 months, and that 23 percent of commercial buyers often reject an entire pallet over one 'bad apple'.⁴⁶

⁴⁵ 'Food waste facts', OzHarvest. Viewed 30 January 2024. <https://www.ozharvest.org/food-waste-facts/>

⁴⁶ 'The Farm to Supermarket Food Waste Report 2023', Good & Fugly. <https://goodandfugly.com.au/pages/report2023>

Growers also feel that many of these rejections are not due to quality, or failure to meet specifications, but because the retailer has overestimated the amount of produce they require. Retailers participate in programs to donate left over produce in an effort to reduce waste, however waste could be minimised by improving the quality and consistency of QC's, and implementing a commonsense approach.

Another issue raised by growers is that retailers will often take public credit for donations of rejected produce, when it is the grower who has shouldered all the costs of production, and should be acknowledged for the donation.

Vegetable growers have conveyed to AUSVEG the need for an Independent Quality Assessor that can independently evaluate fresh produce rejections from retailers, that the supplier deems are unfair or unconscionable. Growers often relate stories of anomalies between distribution centre quality checks, or interpretation of product specifications, unjustified or questionable rejections, which due to the perishable nature of goods, and the current system of dealing with complaints, leave the grower with no alternative but to donate the produce to a charity or return home to dump.

Another significant challenge for growers regarding waste is that each major retailer has different specifications and packaging requirements for their produce.

Specifications refer to visually appealing characteristics such as length, girth, size, shape, weight, colour, and superficial markings (scratches or blemishes). Meeting specifications is a challenge for growers because vegetables naturally grow in different shapes and sizes and are not factory produced to be identical. Despite this, many suppliers have invested in hi-tech machinery to sort produce so that these specifications can be matched in each bag. Failing to meet specifications leads to rejection from retailers, whereby produce is freighted back to the supplier at the suppliers' cost.

AUSVEG has seen photographic evidence of cosmetic rejections such as:

- one corn cob being slightly smaller than the other two cobs, despite the package meeting the weight requirement specifications; and
- one carrot being slightly out of specification in size, despite the other carrots being in specification and the package meeting the weight requirements.

The supplier can sell their produce elsewhere; however, this will require different packaging for individual items with the retailer's brand, different freight materials and a different trucking company or method of delivery.

Often the cost of making the change is not worth the lower price the supplier will get paid, or the money lost in trying to donate the food due to cost of transportation. Instead, it's more cost effective for the grower to dispose of the produce and record it as a loss to their business.

Solution:

Reducing waste along the supply chain not only has environmental benefits but also financial benefits to suppliers, retailers, and consumers. Initiatives should include:

- An introduction of tax incentives by the Federal Government to permit growers to offset a percentage of costs related to food donations from taxable income; and
- A review by the Federal Government of the use of labelling practices such as 'best before' and 'use-by' dates.

One in five large growers in Australia have indicated that they are losing more than 30 percent of what they grow through self-rejection – disposing of produce at the source, rather than wasting resources in

harvesting and distributing, only for freight to be returned from supermarket distribution centres at the expense of the supplier.

One in five farmers report that rejected produce is given to supermarkets for free, and one in four stated that supermarkets expect imperfect produce for free.⁴⁷ Therefore, rejection of produce could also be a method for retailers to manipulate growers into providing low cost or free produce, whilst still setting high retail prices.

Farmers lose almost \$30 million a year due to supermarkets rejecting deliveries, with one in 10 farmers reporting a loss of \$50,000 or more as a result. This is an unnecessary loss for growers, and more so a substantial waste of food and resources that could be reduced to protect the environment from unnecessary emissions.

Retailers promote their company sustainability goals to reduce emissions, minimise food waste, eliminate, reduce, reuse and recycle plastic packaging, improve efficiency of water use, and meet [Scope 1 and 2 greenhouse gas emissions reductions \(energy and fuel\)](#); unfortunately these values do not always align with suppliers' experiences when dealing with retailers.

In an effort to push purchase prices down each week when negotiating with suppliers, retailers inevitably and unnecessarily increase waste in all of the above methods.

This occurs in several ways:

- Rejecting edible and high-quality produce that doesn't look perfect. This leads to emissions from vegetable waste. Fruit and vegetables in Australia are seven times more likely to be rejected by supermarkets for appearance, than they are for infestation by pests and diseases.⁴⁸ Globally, the emissions from food waste (10%) are worse than those for flying (1.9%) or producing plastic packaging (3.8%).⁴⁹ In addition to making use of left over vegetables by donating them, retailers should be accepting the vegetables they have ordered be produced in their GSAs.
- Creating an oversupply of vegetables by seeking out more vendors than necessary for vegetable production, to get the best price. This also leads to emissions from vegetable waste, 25 percent of which never leaves the farm. Only 19 percent of farmers believe they are paid a fair price for their produce. Retailers should be preventing this by allowing supplier contracts with consistent volumes, whilst floating a portion of their needs on the wholesale market, stopping them from having too many suppliers and growing too much produce.
- The packaging which is destroyed by the supplier each time a retailer changes or cancels their order, and each time they ask suppliers to pay for new materials and design work to create new packaging – throwing the old ones out with no care for the level of waste produced. Retailers should set limitations on changing packaging design, rejecting, and changing orders by sticking to contracted volumes.
- The amount of water used to grow a crop, manage a farm, and run a packing shed / processing plant, which is wasted with each rejected vegetable. The water 'footprint' of a single lettuce is approximately 60 litres.⁵⁰ Retailers could prevent water waste by better managing their orders based on data available from annual sales.

⁴⁷ 'The Farm to Supermarket Food Waste Report 2023', Good & Fugly. <https://goodandfugly.com.au/pages/report2023>

⁴⁸ 'The Farm to Supermarket Food Waste Report 2023', Good & Fugly. <https://goodandfugly.com.au/pages/report2023>

⁴⁹ 'Food waste facts', OzHarvest. Viewed 30 January 2024. <https://www.ozharvest.org/food-waste-facts/>

⁵⁰ Madel, Robin. 2022. 'Virtual Water in Food', Water Footprint Calculator. <https://www.watercalculator.org/news/articles/virtual-water-in-food/>

- The direct energy used to grow, harvest, pack, process and keep the lights on, and indirect energy via production of fertiliser, herbicides and pesticides which is wasted with each rejected vegetable. The estimated impact of energy costs by vegetables against the Australia agricultural sector is 4.5 percent. Retailers must take more responsibility in the role they play in food production when they ultimately choose to purchase only some of it.
- The theory around having central distribution centres (DC) is logical in many instances. However, there are multiple anecdotes of produce travelling thousands of kilometres to a regional DC, only to return to a supermarket just down the road from the grower (and several days later). Noting that the grower pays for the produce to be transported to the DC and not the retailer. This wastes fuel and increases emissions, with trucks travelling more frequently on the roads leading to increased traffic, road accident risk, road damage, and air pollution in regional areas. Globally, nearly half of food emissions come from road transport, with Australia sitting second in the world for the level of food transport emissions produced, one third of which are from transporting fruits and vegetables.⁵¹ The additional time in transit also reduces shelf life and quality of the product and can increase waste.

Solutions:

- Review fresh produce specifications to loosen some parameters (i.e. size, shape etc.) without adversely affecting the quality of the product or consumer demand, saving resources and costs to consumers and the supply chain.
- Adopt greater use of the 'e' symbol (Average Quantity System) in Australia, including in the FGCC and ensure that there are relevant resources and education available for consumers to explain the Average Quantity System.
- AUSVEG is advocating for a taskforce to investigate mechanisms to reduce costs and duplication along the supply chain.

Recommendation 15 of *Australian Food Story* actually suggests the development of a transport resilience plan by the Australian Government which includes the optimal location of retailer distribution centres, which would reduce the need for the level of transport and freight currently required in the country.

It also states that the Government must support efforts to reduce agricultural emissions and improve the sector's sustainability to combat the real threat of climate change and food security in Australia. Reducing food waste will help to achieve the nation's target of Net Zero by 2050.⁵² The number of inputs sought and paid for by growers only for the outcome be disposed of with complete disregard and poor judgement by retailers is shameful and must be stopped.

Whilst retailers share some great initiatives on their websites for how consumers can reduce food waste at home (which is also a real problem), there is a lot more they could be doing to prevent waste in their relationships with fresh produce suppliers.

⁵¹ 'Fifth of global food-related emissions due to transport', The University of Sydney. 21 June 2022. <https://www.sydney.edu.au/news-opinion/news/2022/06/21/fifth-of-global-food-related-emissions-due-to-transport.html>

⁵² 'Australian Food Story: Feeding the Nation and Beyond', Parliament of Australia. November 2023, pg. 6. https://www.aph.gov.au/Parliamentary_Business/Committees/House/Agriculture/FoodsecurityinAustralia/Report

Suppliers and retailers should be working together with fair pay to assist growers to:

- invest in protecting farms from extreme weather events, ensuring food security;
- invest in innovation to protect against biosecurity which leads to waste;
- educate and invest in climate friendly methods, caring for soil to put more nutrients back into food; and
- educate consumers on what real vegetables look like so growers don't need to overplant in order to meet superficial expectations.

Third line forcing

Third line forcing occurs when a supplier of goods or services imposes a condition requiring the buyer to also acquire goods or services from a particular, unrelated, third party or refuses to supply because the buyer will not agree to that condition. The conditional supply may relate to the product itself or to the supply of the product at a particular price or discount.⁵³

Retailers use different freight companies (or have established their own) and specialised containers (pallets, bins, crates) for the delivery of vegetables, which causes duplication and inefficiencies across the supply chain. Retailers also have other prescriptive requirements on suppliers such as around compliance systems.

Retailers often have specifications around the use of such items as labels, packaging and reusable plastic crates (UPCs). For instance, growers would like to see standardisation of UPCs across retailers to reduce paperwork and duplication, as well as greater competition within the crate supply market. Currently many growers are forced to use CHEP UPCs for Coles and PACT UPCs for Woolworths with no ability to find more competitive solutions.

Growers are also forced to hire crates and pallets for time periods well outside of the shelf life of the product. For example, vegetable products that have a shelf life of three days are forced to hire a crate for 10 days.

Solutions:

- The ACCC should investigate claims of potential third line forcing across the supply chain.
- The ACCC should have greater power to ensure that retailer's acquisitions or establishment of businesses along the supply chain do not negatively impact suppliers.

Bottom line

Whilst AUSVEG is advocating for a fair price for growers for their products, many of the business behaviours, policies and practices (both conscionable and unconscionable) of the retailers are creating excessive and unnecessary costs for the suppliers. If the retailers were to undertake a review of some of the practices outlined in our submission, they could not only save money for suppliers, but also for consumers and themselves, and improve sustainability and other social benefits, such as increased vegetable consumption.

Appendix 1 is a summary of some of the issues affecting vegetable growers and potential actions that could solve the issues. Issues 2,3,7,8,9,12,15,17,19, and 20 could potentially improve growers' profitability if addressed through either changes in retailer behaviour, or other mechanisms such as tax incentives.

⁵³ 'Exclusive dealing notification guidelines', ACCC. December 2022.
<https://www.accc.gov.au/system/files/Exclusive%20dealing%20guidelines.pdf>

Appendix 1: SUMMARY OF ISSUES AND ACTIONS

NO.	ISSUE	MECHANISM FOR REFORM	ACTIONS
1	Growers believe that there is no viable mechanism to report unconscionable behaviour of the retailers without fear of commercial retribution.	FGCC ACCC	- FGCC needs to be amended and strengthened to: - Respond in a timely manner to fresh produce issues (perishable product); - Appoint Code Arbiters independent of the retailers; - Be mandatory, with strong penalties for bad behaviour for both businesses and individuals, and compensation for suppliers detrimentally affected by retailer behaviour. - ACCC needs greater power, scope and flexibility to investigate industry complaints relating to supermarket/retailer behaviour, as well ability to undertake investigations on aspects of the FGCC such as supplier agreements, deductions etc
2	Supply agreements for fresh produce between retailers and suppliers are not adhered to by retailers, and commonly do not include price. Growers are planting large volumes of crops without certainty of price or volume. Forecast volumes in supply agreements are often significantly different to the volumes ordered, to the detriment of the grower who has invested substantial money to plant crops to the forecast volume.	Unfair Trading Practices OR Unfair Contract Terms ACCC FGCC	- Make FGCC mandatory. - Appropriate supply contracts for fresh produce, noting weather events, perishability etc. - Contracts could include two tiers; - one tier of x% guaranteed supply at a nominated price; - second tier of the remaining y% at a negotiable price. - Contracts must state that price paid cannot be below cost of production, unless negotiated in good faith with the supplier, and the broader industry. - Price cannot be changed after planting, unless negotiated in good faith with the supplier. - Implement a mechanism that compels equitable negotiation of weekly prices by retailers. - Amend Australian Consumer Law to update Unfair Trading Practices to provide better protection to suppliers.
3	Market manipulation/distortion through inflated supply arrangements are becoming an increasing concern for suppliers, as retailers entering into supply agreements with growers typically nominate 'forecast' weekly volumes. A significant percentage of growers say that the forecast volumes are rarely fulfilled and they are either forced to plough the surplus crop in or put it into the wholesale market which causes oversupply and drops the price. Retailers then often cite that the wholesale price is low (noting that they do also purchase from wholesales), and therefore drop the retail price offering. Growers also know that additional suppliers are being added by retailers, often with no variation to existing supply arrangements.	ACCC FGCC	- Appropriate supply contracts for fresh produce, noting weather events, perishability etc. - Ability for ACCC to investigate deliberate distortion of markets through designed oversupply. - Supply agreements of contracts should contain clauses which force retailers to commit to the supply volumes within a nominated percentage (i.e. 10%). - Penalties in the FGCC for deliberate distortion of markets through over-supply by retailers. - Strong penalties for bad behaviour for both businesses and individuals known to deliberately create oversupply conditions, and compensation for suppliers detrimentally affected by the behaviour.
4	Retailer compliance demands are at times tokenistic and not reflected in the retailers' own behaviour. Retailers do not value the quality of suppliers who meet standards of ethically and sustainably grown produce and, when convenient, will purchase from suppliers that don't have the plethora of systems that preferred suppliers have. Furthermore, standards that the retailers expect within their suppliers' businesses are not practiced by the retailers – for example, bullying (Industrial relations) and practices that exacerbate waste (narrow produce specifications, cancelling packed orders etc) (sustainability). It is important to also note that many growers will not report bullying tactics by category managers and buyers due to fear of commercial retribution.	FGCC	- Make FGCC mandatory. - Change 'agreements' to 'contracts' to stop distortion. - Harmonisation and rationalisation of compliance schemes. - FGCC should enable suppliers to lodge complaints around unjustified changes to compliance systems including clauses that bind retailers to justify the cost/benefit return of changes. - Preferred suppliers that adopt the range of retailer-required compliance systems should be recognised by retailers over and above non-preferred suppliers.
5	Some retailers place undue pressure on suppliers to reduce prices to compete against other retailers. These price reductions to growers are unplanned and outside normal supply agreements	FGCC Unfair Contract Terms and/or	Contracts or more rigorous supply agreements to create stability in pricing and production, reducing waste.

	or programmed specials. Retailers should reduce their profit margins to compete on unscheduled specials.	Unfair Trading Practices	- Improving FGCC to ensure greater equity between growers and retailers when negotiating prices and specials. - Introduce a 'Code of Behaviour' to ensure that retailers act in the best interest of the fresh produce sector and the consumer through more prudent use of specials, marketing tactics etc
6	Retailers negotiate pricing after the growers have submitted their weekly tenders for price and volumes. Pricing offered is often below the prices that the growers have quoted. Explanations by retailers for the low pricing are not transparent and growers are forced to sell at the lowest price regardless of volume, quality, or other factors.	ACCC FGCC	- Appropriate supply contracts for fresh produce, noting weather events, perishability etc - Contracts could include two tiers; one tier of x% guaranteed supply at a nominated price, second tier of the remaining y% at a negotiable price. - Greater transparency and equity in weekly price negotiations – reduce the asymmetrical information flow. - Mechanism to ensure that weekly pricing is above an industry market floor price.
7	Unethical business behaviour covers a wide scope of retailer misdemeanours including unapproved deductions, deducting rejections from earlier payment runs, cancelling purchase orders when product is already packed (to order), and refusing to commit verbal communications in a written format. Growers complain about the unfair costs involved in pallet and crate hire terms. Growers are forced to hire crates and pallets for time periods well outside of the shelf life of the product. For example, if a vegetable only has a 3-day shelf life why are they forced to hire a crate for 7 days?	ACCC FGCC	- Arbiters should be appointed independently of the retailer so there is no conflict of interest (real or perceived). - Broaden scope and powers of the FGCC and the independent reviewer. - Ensure acceptable business behaviours are embedded in the FGCC. - Strong penalties for bad behaviour for both businesses and individuals known to deliberately create oversupply conditions, and compensation for suppliers detrimentally affected by the behaviour.
8	Growers supplying the retailers have raised several concerns in relation to fresh produce specifications including: - Fresh produce specifications are often interpreted inconsistently across national distribution centres causing inconsistent rejections. - Retailers have different specifications and packing requirements which lead to duplication and waste. - Overly tight specifications reduce the amount of crop 'in spec', condition consumers to demand 'perfect' produce and significantly increase waste. - Retailers change (tighten) specifications based on 'consumer feedback'. while providing no data or research to validate this Tightening specifications increases waste and reduces returns to growers.	FGCC	- Require a right of recourse for growers on a timely basis, through a dispute resolution process reflective of fresh produce shelf life. - Appoint independent inspectors (through the FGCC) to assess fairness of produce rejections. - Review produce specifications and, where suitable, reduce overly tight criteria. - Review produce specifications and, where suitable, a national standard should be considered. - Taskforce to investigate collaboration between retailers and suppliers that could reduce or eliminate duplication and waste. - Produce specifications should not be changed without a cost/benefit study taking in to consideration the growers' costs, waste etc.
9	Due to the competitive nature of the retailers they consistently want to implement their own systems – whether that be in logistics or compliance systems. This results in duplication and inefficiency across the supply chain.	Federal Government	Taskforce to investigate mechanisms to reduce costs and duplication along the supply chain.
10	Changes to 'home brand' packaging are a cost to the growers (new printing plates, design work etc) and can occur too frequently causing excessive waste (destroying all old packaging).	FGCC	- Retailers should be responsible for design changes and costs incurred. - Changes in packaging should have long lead times to ensure that excess stock does not have to be destroyed.
11	An unfair playing field in relation to negotiation skills and retail practices is also disadvantaging suppliers.	Federal Government - Increase industry capability	Industry funded to assist farming businesses increase capability and understanding of retail practices and negotiation skills through training and other activities.
12	Inexperienced buyers and category managers often exacerbate the problem. Growers frequently complain about retail staff not understanding the supply chain, the produce they are managing, or logistics of growing, processing and packing vegetables.	Retailer best practice	Retailers should ensure that staff are appropriately trained and should have some understanding of agricultural production, packaging and process, practical implementation of compliance systems, post-harvest, biosecurity, and supply chain logistics.
13	The collective bargaining mechanism under the ACCC is not an appealing or suitable mechanism for the vegetable industry due to the \$10 million cap and disclosure requirements.	ACCC	Amend or put in place a collective bargaining mechanism where growers can collectively bargain without fear of retribution from the retailers, and which has a high enough threshold to include the whole vegetable industry.

14	There is a need for greater understanding and transparency around consumer behaviour. For example, growers' experiences show that by putting one product on 'special' (eg broccoli) and selling more of that product, that another product (eg zucchini) sells less. This is called substitution so ultimately no additional product is sold – the consumer just switched buying behaviour. Also, retailers fully understand the price elasticity of products and frequently sell product well below what they know consumers are willing to pay.	FGCC	- Review the use of 'specials' in fresh produce and how effectively retailers manage 'specials'. This should include whether 'specials' are overused. - Introduce a 'Code of Behaviour' to ensure that retailers act in the best interest of the fresh produce sector and the consumer through more prudent use of specials, marketing tactics etc. - Promote seasonality and 'bountiful buys'. - Review the role of retailers in promoting healthy eating and increasing vegetable consumption – based on their sales strategies and pricing. - Promote Australian grown product.
15	The use of the 'e' symbol (Average Quantity System) ⁵⁴ is rarely utilised in Australia for fresh produce but widely adopted in many other countries and regions. The use of the 'e' symbol is underpinned by strict guidelines and tolerances, and results in negligible disadvantage to consumers but benefits to the packers of fresh products. The Average Quantity System reduces 'giveaways', depending on packing process, can reduce waste and labour costs, and can be advantageous to some products that are prone to moisture loss, and may dip marginally below the exact product weight on occasions.	FGCC Retailer practice	- Clearly embed the adoption of the <i>Average Quantity System</i> in the FGCC. - Retailers should encourage the adoption of the 'e' symbol and ensure that there are relevant resources and education available for consumers to explain the Average Quantity System.
16	The ACCC in its current format doesn't have the ability to address many of the issues affecting suppliers and consumers. Alternatively, when the ACCC has made a finding, there is no penalty or ability to enforce a finding through the current mechanisms.	ACCC	- Give ACCC greater power, scope and flexibility to investigate retailer pricing and behaviour. - Give ACCC the ability to undertake investigations on aspects of the FGCC such as supplier agreements, deductions etc.
17	Third line forcing occurs when a supplier of goods or services imposes a condition requiring the buyer to also acquire goods or services from a particular, unrelated, third party. Third line forcing is illegal if the restriction is likely to have the purpose, effect or likely effect of substantially lessening competition. Growers would like to see the ACCC review retailers' actions in relation to suppliers' use of crates, pallets, freight, compliance systems and other goods/services.	ACCC	- ACCC should investigate claims of potential third line forcing across the supply chain. - Taskforce to investigate mechanisms to reduce costs and duplication along the supply chain.
18	Growers have raised concerns about the increasing power of retailers along the supply chain through acquisitions or the establishment of new supply chain business that then force growers to utilise the retailer owned business. For example, Woolworths' Primary Connect freight logistics business has had a negative cost impact on some regional growers.	ACCC	ACCC should have greater power to ensure that retailers' acquisitions or establishment of businesses along the supply chain does not negatively impact suppliers.
19	Declaration of waste product to food charities should be attributed to the supplier not the retailer, and the value of the product donated should be tax deductible. ⁵⁵ Product rejected from retailers' Distribution Centres (DCs) is either returned to the grower for repacking, resale, manufacturing or dumping, OR can be donated to food charities. Products such as pre-packed home brand vegetables which cannot be on-sold in 'branded' packaging are an example of product that can be gifted to food charities.	Federal Government	Federal Government should introduce tax incentives to permit growers to offset a percentage of costs related to food donations from taxable income.
20	Claiming 'shrinkage', under the FGCC, is not supposed to be permitted although the issue has been raised by some growers. The broader issue of "use-by" and 'best before' dates should be discussed under the current inquiry into supermarket pricing, as a review of these practices has the ability to greatly reduce waste (and cost) to retailers, consumers, and suppliers.	Federal Government	Review the use of labelling practices such as 'best before' and 'use-by' dates.

FGCC = Australian Food and Grocery Code of Conduct

⁵⁴ <https://www.industry.gov.au/publications/guide-average-quantity-system-australia>

⁵⁵ <https://www.foodbank.org.au/food-donation-tax-reform/?state=vic>