



**Food and Grocery Code of Conduct  
Review 2023–24  
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 worth of \$5.8 billion in farmgate value.

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.

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## Executive summary

AUSVEG welcomes the current review into the Australian Food and Grocery Code of Conduct (the Code), which comes at a pivotal time amid multiple other reviews and inquiries into the grocery supply sector.

For Australian vegetable growers to continue supplying the healthy fresh vegetables, potatoes and onions that feed the nation, vegetable growing businesses must remain financially viable.

The current operational dynamic between Australian vegetable growers and supermarket retailers is not sustainable, and the power imbalance that defines these relationships is making it increasingly unviable for many farming businesses to continue operating. The situation is so dire that 37 percent of growers have indicated to AUSVEG they are considering walking away from their farming businesses within the next 12 months.

The vegetable sector does not have the negotiating power with retailers that many other suppliers to the grocery sectors have due to:

- a lack of access to branding and consumer driven demand opportunities (unlike major consumer brands);
- the 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.

Some of the tactics that supermarkets employ when they deal with vegetable suppliers may be considered by a reasonable person to be manipulative and unconscionable. These practices often result 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.<sup>1</sup>

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.<sup>2</sup> 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).

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<sup>1</sup> '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/>

<sup>2</sup> 'Harvest to Home', Hort Innovation. Viewed 18 January 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-value fresh produce in the eyes of the consumer;
- Lack of certainty and transparency around fresh produce prices and volumes that prevent 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 actions 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.

The Independent Reviewer's report provided numerous insights for the fresh produce sector and AUSVEG congratulates Mr Chris Leptos AO (the Reviewer) on the addition of a 'dashboard' to understand the results more easily. The interactive dashboard highlighted that the fresh fruit and vegetable sector was one of the most, if not the most, aggrieved of all supermarket supply categories. Some insights into the survey data showed fruit and vegetables had the:

- highest dissatisfaction rating for 'Fair and reasonable dealings towards suppliers'
- highest dissatisfaction rating for 'Wholesaler/retailer deals in good faith toward suppliers'
- highest dissatisfaction rating for 'Percentage of suppliers who consider their issue was satisfactorily addressed' (noting 100 percent of fruit/vegetable respondents were not satisfied)
- highest rating for 'Fear of retribution'

Vegetable growers are businesses, with all the operational costs and regulatory requirements of any other business. Unlike others they have no ability to set prices, 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 pricing<sup>3</sup> 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.

Supermarket behaviour is also 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. [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%).

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.

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<sup>3</sup> 2023. 'The Farm to Supermarket Food Waste Report 2023', Good & Fugly. <https://goodandfugly.com.au/pages/report2023>

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 percent<sup>4</sup> 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’.<sup>5</sup>

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, marginally 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.

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.

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.

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<sup>4</sup> 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](http://www.abs.gov.au/statistics/health/health-conditions-and-risks/dietary-behaviour/2022#childrens-fruit-and-vegetable-consumption)

<sup>5</sup> 2022. ‘Shifting the dial on vegetable consumption’, FVC and KPMG. [https://static1.squarespace.com/static/5ddca44a3ac7644d97d9757a/t/633e2e9e396cdd49ccfa3ee9/1665019635620/FVC+Report\\_Final\\_041022.pdf](https://static1.squarespace.com/static/5ddca44a3ac7644d97d9757a/t/633e2e9e396cdd49ccfa3ee9/1665019635620/FVC+Report_Final_041022.pdf)

Whilst there are a range of actions that AUSVEG is advocating for in this Review, there are four key outcomes that we would like to achieve:

1. The Food and Grocery Code of Conduct must be mandatory for supermarkets;
2. Appropriate arbitration/mediation policies and processes must be designed and implemented to protect suppliers (growers) from fear of commercial retribution, including the independent appointment of Code Arbiters;
3. Significant civil pecuniary penalties must be put in place for businesses and individuals that breach the Code; and
4. Compensation must be paid to growers who have been significantly affected by Code breaches.

In hand with the Food and Grocery Code of Conduct Review, AUSVEG would like to see greater power, scope and flexibility given to the ACCC to investigate retailer behaviour. Many of the issues growers raise are common, or around similar themes, such as unprogrammed specials or inflated supply agreements. Giving the ACCC power to investigate a broader issue, rather than a specific incident, could also address some of the discomfort growers have in reporting non-compliances with the Code or other poor behaviour.

Amid the need for change, it is important to acknowledge that many Australian vegetable growing businesses have enjoyed productive relationships with retailers over the years, and that a vibrant and thriving retail sector is also key to the success of the Australian vegetable industry.

While the current power imbalance must be addressed, there is also a need to proceed cautiously, to avoid interventions that artificially distort the market, and further disadvantage vegetable growers.

Every business across the supply chain – from vegetable growers to the retailers – has felt the recent impacts of the high-inflation environment, and every business across the supply chain also needs to be profitable to keep operating.

There is a balance to be struck to promote what can, and should be, a mutually beneficial relationship between growers and retailers.

That relationship is currently tenuous, and a lot needs to be done to build trust and respect. Improving, expanding, and strengthening the Code will hopefully be a first step in better balancing the interests of both growers and retailers.

# Consultation questions and responses

## Overview of the Code

### Purpose of the Code

1. *What, if any, other objectives should guide the Code to improve relations between supermarkets and their suppliers?*

The Code should cover the entire relationship between retailer and supplier – not just the transactional relationship between a buyer and a seller. The pervasive nature of supermarket power and influence over the Australian fresh produce industry goes even deeper, with the big retailers dictating produce specifications, crates/packaging and compliance requirements, while stifling branding and new varietal opportunities.

The Code covers a vast range of products across multiple supermarket categories from health and beauty to confectionery to fresh fruit and vegetables. Fresh produce is distinct among many other categories, due to its perishability amongst other factors. In acknowledgment of these specific characteristics, AUSVEG is advocating for the Code to be amended with additional sections or provisions that specifically address the unique issues that confront the fresh produce sector.

With Australia's four major supermarkets comprising up to 82 percent of the grocery sector's market share, they have a corporate social responsibility to their suppliers and their customers.

AUSVEG would like to see the introduction of 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 and marketing tactics. A code of behaviour could include:

- Retailers and suppliers working together to promote fresh produce to improve the dietary behaviours and healthy eating habits of Australians.
- Elimination of retailer strategies that consistently de-value fresh produce in the eyes of the consumer, such as loss-leaders.
- Consideration of vegetable specifications to reduce waste, and to stop the retailers increasing consumer expectations around 'perfect' vegetables.
- Promotion of seasonality and 'bountiful buys' (reflecting strong seasonal supply) rather than specials.
- Consideration of pricing policies that reflect responsible pricing based on known price elasticity data.
- Promotion of Australian-grown produce.

AUSVEG has further listed several actions in [Appendix 1](#) to be considered for addition to the Code, including independent assessors for fresh produce rejections, restrictions on exclusive dealings, and greater access to free, timely retail data.



Whilst there are a range of actions that AUSVEG is advocating for in the review of the Code there are four key outcomes that we are seeking from this review:

1. The Food and Grocery Code of Conduct must be mandatory for supermarkets;
2. Appropriate arbitration/mediation policies and processes must be designed and implemented to protect suppliers (growers) from fear of commercial retribution, including the independent appointment of Code Arbiters;
3. Significant civil pecuniary penalties must be put in place for businesses and individuals that breach the Code; and
4. Compensation must be paid to growers who have been significantly affected by Code breaches.

2. *Does the Code effectively address issues between supermarkets and their suppliers stemming from bargaining power imbalances?*

Advice from growers is that there is significant power imbalance under the Code, due to its voluntary nature.

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 pressure suppliers into selling for such a low price that their business becomes unviable.

There is a range of behaviours that supermarket buyers and category managers utilise, which may not be unconscionable or non-compliant with the Code, but which most reasonable people would label unethical.

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

In a recent survey conducted by AUSVEG, growers wanted to see greater transparency around total volumes allocated to growers through GSAs. There are concerns from growers that the power retailers wield in relation to overall volume via supply agreements with many individual growers, is resulting in potentially deliberate market distortion by the retailers creating oversupply conditions that lead to reduced prices.

Other key areas for attention raised by growers include:

- the need for greater transparency on weekly pricing by retailers or a mechanism to establish fair pricing through the tender system; and
- replacing GSAs with appropriately designed fresh produce contracts to provide more certainty in price, volume and trading terms, especially the use of promotions around unprogrammed specials and price-matching.

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.

An appropriate price transparency mechanism could ensure a more equitable power balance during price negotiations between retailers and growers, whilst still maintaining competition and free-market dynamics.

### Background to the Code

#### 3. *Is it agreed that there is an imbalance in market power between supermarkets and all suppliers, or only some suppliers and/or some product types?*

The vegetable sector does not have the negotiating power with retailers that many other grocery sectors have due to:

- a lack of access to branding and consumer driven demand opportunities (unlike major consumer brands);
- limited domestic market options;
- the 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.

Produce in the field has typically been planted to harvest during a particular weekly window and once harvested can have a short shelf life - sometimes as little as three days.

The trade arrangements that growers have with retailers appear to be 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.

*Figure 1* below (page 11) shows the typical course of action when the weekly negotiations are undertaken however there are several scenarios that can play out:

- a) the offer from the supermarket meets the grower's expectations and the grower harvests and packs the product to the supermarket's purchase orders.
- b) occasionally the grower sticks to their price but only gets orders for a fraction of the crop available for harvest.
- c) the offer from the supermarket does not meet the grower's price expectations, however the grower accepts the offer as they need cash flow in the business.
- d) the offer from the supermarket does not meet the grower's price expectations and they harvest and pack the crop for alternative markets, such as the wholesale market.
- e) the offer from the supermarket does not meet the grower's price expectations and they plough the crop back in.

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.

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.

If a grower ploughs 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 forecast 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’.

### Grower - Retailer Supply Relationship

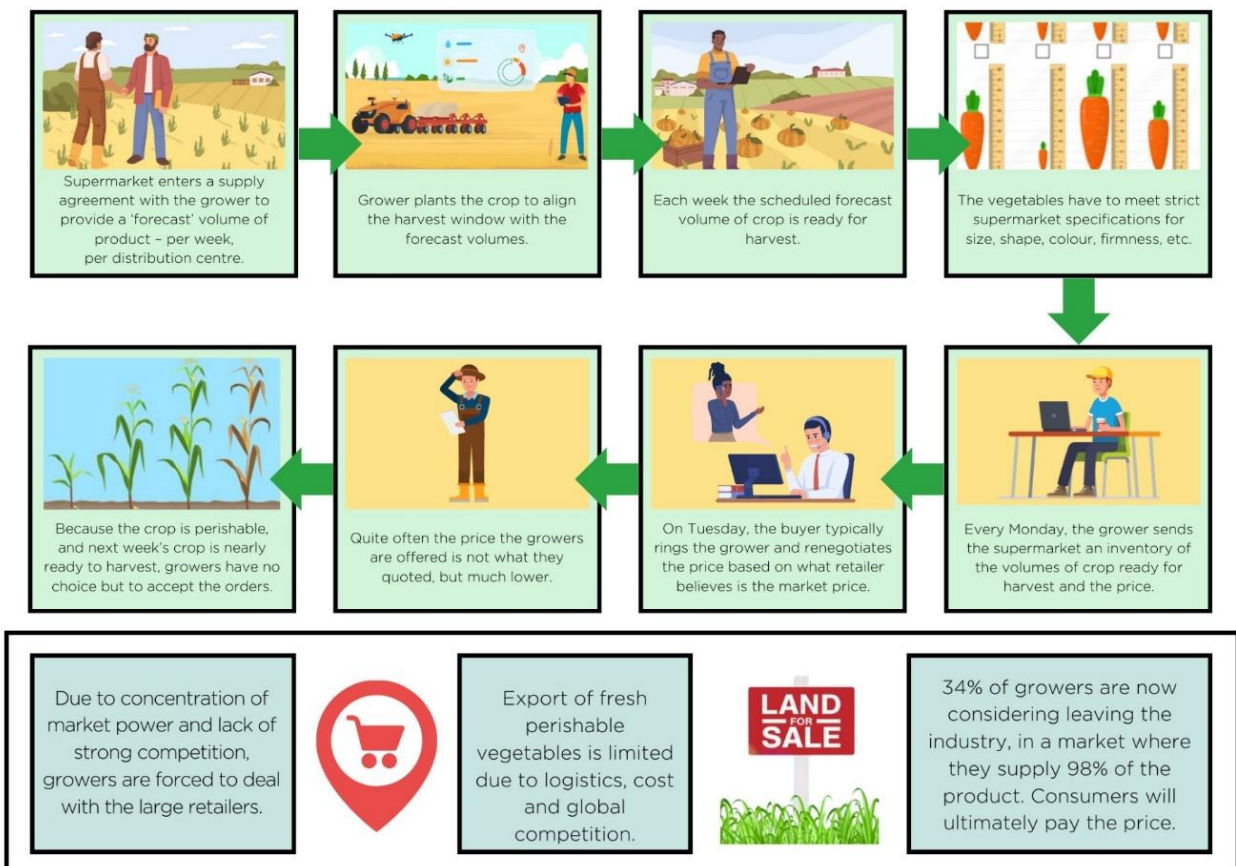


Figure 1. A common scenario in the relationship between growers (suppliers) and retailers, from initial agreement through to harvest.

4. Should the same rules apply to all supplier interactions covered by the Code, or should additional requirements apply where a greater power imbalance exists?

As in [Question 3](#), the fresh vegetable industry has specific requirements and is more susceptible to the power imbalance in retailer relationships due to the perishability of the product.

Currently the Code does not address the needs of the fresh produce category, and this was highlighted in the AUSVEG [submission](#) to the [Review of Part 5 \(Dispute Resolution\) of the Food and Grocery Code of Conduct](#). The Final Report of this review (published in January 2024) suggests that “the next review of the

*Food and Grocery Code consider more broadly whether the Code is accessible and useful to suppliers of fresh produce as suppliers of non-perishable products”.*<sup>6</sup>

Therefore, AUSVEG is advocating now for greater contractual certainty for growers. Contracts should be designed based on productivity and yield, which can be highly variable due to seasonal weather variations (for example wet summers and warm winters) but also due to more extreme weather events such as hail, floods, heat waves, snow, frost and so on.

## **Operation of the Code**

### **5. *Should the Code be extended to cover other aspects of the food and grocery supply chain?***

There have been issues raised with AUSVEG around whether the Code should be extended to cover major food service operators.

AUSVEG does not consider these provisions as urgent, but would like to reserve the right to further examine these aspects if they formed part of a future recommendation.

### **6. *Should some or all alcoholic beverages be included in the scope of the Code?***

NA

### **7. *Is the coverage of the Code to the current signatories sufficient to address bargaining power issues across the supply chain? For instance, should the Code’s signatories be extended to more wholesalers that sit between the retailers and producers of food and grocery products?***

The threshold should be reduced to cover the likes of Ritchies, Drakes and potentially other operators such as 7/11, and Amazon, as the scope of retail food delivery changes.

AUSVEG would like to see the definition of a ‘wholesaler’ more clearly defined in terms of what constitutes the ‘purpose of resale’. For instance, if there is any value adding included in the definition of a wholesaler – i.e. repacking from bulk to smaller items.

We also note the Horticulture Code of Conduct (HCC) also applies to the fresh produce sector. Whilst the HCC is scheduled to be reviewed, AUSVEG believes that the review should not occur until the current reviews have made their recommendations.

## **Code provisions**

### **8. *Do the provisions set out under the Code ensure it is fit for purpose?***

AUSVEG does not believe that the Code is fit for purpose, and has created a table ([Appendix 1](#)) detailing the Code provisions, issues with each relevant provision, and potential resolutions.

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<sup>6</sup> ‘Food and Grocery Code of Conduct Review 2022-23 – Final Report’, The Treasury – Australian Government. 9 January 2024. <https://treasury.gov.au/publication/p2023-479632-final-report>

The key outcomes AUSVEG seeks from the Review are:

- appropriate arbitration/mediation policies and processes must be designed and implemented to protect suppliers (growers) from fear of commercial retribution, including the independent appointment of Code Arbiters;
- for the Food and Grocery Code to be made mandatory;
- for Code Arbiters to be appointed independently of retailers;
- significant civil pecuniary penalties for retailers and individuals that breach the FGCC, and compensation for growers affected by breaches of the FGCC.

9. *Which provisions under the Code help or hinder suppliers? How can the provisions be improved?*

Please refer to the [Appendix 1](#), as per Question 8.

10. *Does the interaction of the Code operate effectively with other sectoral codes of conduct, particularly in the agricultural sector, and how can this operation be improved?*

Many of the challenges that suppliers (growers) have with retailers are not as evident in the relationship between growers and market agents and merchants. This is largely due to the Horticulture Code of Conduct (the Horticulture Code) which is also administered by the ACCC. The Horticulture Code is mandatory and there are penalties for non-compliance – neither of these aspects currently feature in the Food and Grocery Code of Conduct.

Most significantly, the Horticulture Code has more rigour around price determination and therefore growers are not as vulnerable as they are with the retailers.

Some of the retailers have stated in their submissions to the Senate Select Committee on Supermarket Pricing that they do actively source product from the wholesale market. This does have implications as the Food and Grocery Code of Conduct excludes supply agreements between wholesalers and retailers, but under the Horticulture Code there is an arrangement between the wholesalers and the growers.

For the purposes of the Review, we are advocating for the improvements to the Food and Grocery Code of Conduct to be implemented, with consideration of how the Horticulture Code may interact (or be amended to interact) to occur at a later date.

### **International approaches**

11. *What international approaches to regulating the conduct of supermarkets in relation to their suppliers should be considered in the Australian context, including lessons learned?*

The most relevant example is in neighbouring country New Zealand, with the mandatory [Grocery Supply Code \(NZGSC\)](#) being legislated in August 2023 after inquiries found that stifled competition was creating poor circumstances for consumers.<sup>7</sup>

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<sup>7</sup> '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>

There are clauses within the NZGSC and the Code which are particularly pertinent, as issues surrounding these matters have frequently been raised by Australian growers in response to this Review. These are:

- Retailers must pay suppliers fairly by paying as per their agreement, not set off costs, and include clear written communication about any actions contrary to the norm which is agreed to by both parties<sup>8</sup>.
- Retailers must not make suppliers pay for their business activities including artwork and design of packaging<sup>9</sup>; Australian growers pay for packaging plates and new artwork design for retailers.
- Retailers must not make suppliers pay for instore promotions<sup>10</sup>, and if they do agree to contribute, must not cancel the order, or reduce the order's volume by more than 10 percent<sup>11</sup>. There are many stories from growers detailing how this is currently happening.
- Retailers must take into consideration current stock held by suppliers if requesting a change to packaging<sup>12</sup>; Australian growers are often not extended this courtesy and frequently asked to make minor changes to packaging resulting in significant cost and waste.

There are clauses within the NZGSC that are not included in Australia's voluntary provisions of the Code, which should be considered based on grower feedback, for example, retailers must not require suppliers to use a particular transport or logistics service<sup>13</sup>. This is currently enforced by major supermarkets in Australia who also own the transport companies.

The NZGSC also imposes penalties of up to \$200,000 for an individual, \$3 million, or three percent of turnover, as well as compensation to the grower.<sup>14</sup>

In addition to New Zealand, the United Kingdom introduced the [Groceries Supply Code of Practice \(UKGSCP\)](#) in 2009 in response to the power imbalance between retailers and suppliers and the need to strengthen the supply chain.

The UKGSCP includes two clauses which would be of benefit to protect Australian growers from risk, financial loss, and waste:

- Clause 10 states that retailers must forecast with due care, must communicate how the forecast is calculated, and must fully compensate a supplier for any cost incurred for over forecasting.
- Clause 14 states that retailers must take due care not to over order from suppliers at a discounted rate for promotions. For any product not sold under the promotion, the retailer must compensate the supplier with the increased margin made by selling the product at full price.

<sup>8</sup> Clause 12, Schedule 2. Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2023. <https://www.legislation.govt.nz/regulation/public/2023/0220/latest/whole.html#LMS881097>

<sup>9</sup> Clause 16 (1) (2)(b), Schedule 2. Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2023. <https://www.legislation.govt.nz/regulation/public/2023/0220/latest/whole.html#LMS881097>

<sup>10</sup> Clause 17 (1), Schedule 2. Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2023. <https://www.legislation.govt.nz/regulation/public/2023/0220/latest/whole.html#LMS881097>

<sup>11</sup> Clause 20 (3)(b), Schedule 2. Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2023. <https://www.legislation.govt.nz/regulation/public/2023/0220/latest/whole.html#LMS881097>

<sup>12</sup> Clause 21 (7), Schedule 2. Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2023. <https://www.legislation.govt.nz/regulation/public/2023/0220/latest/whole.html#LMS881097>

<sup>13</sup> Clause 11, Schedule 2. Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2023. <https://www.legislation.govt.nz/regulation/public/2023/0220/latest/whole.html#LMS881097>

<sup>14</sup> 'Factsheet: The Grocery Supply Code', Commerce Commission New Zealand. Viewed 12 February 2024. [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0022/329710/Commerce-Commission-Grocery-supply-code-factsheet-28-September-2023.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0022/329710/Commerce-Commission-Grocery-supply-code-factsheet-28-September-2023.pdf)

The NZGSC and the Code appear more robust than the UKGSCP which has seen improvement in supplier-retailer relations over the past decade, but which was recently petitioned to be amended in the UK Houses of Parliament<sup>15</sup>.

Current issues cited with the UKGSCP include:

- It does not cover the relationship between farmers and any processors or intermediaries, and retailers use intermediaries to get around complying with the UKGSCP. It only applies to the 14 biggest retailers in the UK, and to direct suppliers.
- It does not cover pricing, and cannot, due to legislation. There is coercion from retailers for growers to reduce prices so retailers can cover the cost of packaging, marketing, and overheads.
- There remains an imbalance of power and risk, as farmers are only receiving a one percent profit.
- The Groceries Code Adjudicator (GCA) acts as both an adjudicator and an arbitrator, and is under resourced. The cost of one investigation exceeds the annual budget. The GCA is funded by the retailers so doesn't feel independent.

Rather than amending the current Code, the Minister for Food, Farming and Fisheries and government are using the Agriculture Act established in 2020 to review each grocery sector and implement codes of practice. Horticulture's review closed on 22 February 2024.

Lastly, learnings can be taken from the French Government; recently they legislated practices to protect farmers in their commercial relations with large retailers under the Egalim 3 Act<sup>16</sup> after testing changes via increasing regulations such as the Resale Below Cost (RBC) threshold which began in 2017<sup>17</sup>.

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.

<sup>15</sup> 'Groceries Supply Code of Practice', Parallel Parliament. 22 January 2024. <https://www.parallelparliament.co.uk/debate/2024-01-22/commons/westminster-hall/groceries-supply-code-of-practice>

<sup>16</sup> 'EGALim 3 law in France', Rödl & Partner. 2 October 2023. <https://www.roedl.com/insights/france-egalim-3-law-update-trade-negotiations-change>

<sup>17</sup> de La Hamaide, Sybille and Vidalon, Dominique. 'France's move to raise minimum food prices, limit promotions', Reuters. 22 December 2017. <https://www.reuters.com/article/france-politics-food/explainer-frances-move-to-raise-minimum-food-prices-limit-promotions-idUSL8N1OL4UE/>

## Food and Grocery Code: voluntary or mandatory?

### Key issues

#### 12. *What dispute resolution model would most effectively facilitate positive outcomes for the industry, while also allaying suppliers concerns of retribution?*

To make suppliers feel comfortable, safe, and protected from retribution if they raise an issue relating to a retailer, the model needs to be genuinely independent, easy to access, quick to respond, and confidential. Furthermore, any future model must also be accompanied by an education and communications process to ensure that suppliers are aware of the dispute resolution process and how it operates.

AUSVEG would like to see a stepped approach to dispute resolution. Firstly, there should be an internal process with the retailer through a complaint mechanism and mediation process. If this fails, or the supplier does not feel safe (through fear of commercial retribution) then an independent arbitration process should occur, and/or a pathway to report to the ACCC.

AUSVEG lodged a [submission](#) into the Review of the Dispute Resolution Provisions in the Food and Grocery Code in February 2023 and all recommendations made at that time are still relevant.

Any dispute resolution process must take into consideration the perishability for fresh produce.

#### 13. *What benefits could a mandatory code bring to suppliers?*

Making the Code mandatory, enforced by a penalty-based system, would provide more incentive for supermarkets to commit to the Code for fear of significant financial loss.

The major supermarkets have already been caught out several times for misconduct and fined by the ACCC however being publicly named and shamed seems to have little effect on them or their brand, given there are limited options available to shop for groceries.

Substantial new penalty provisions in a revised version of the Code and enforced compliance will provide a more even balance of power for growers when it comes to retailer negotiations.

Making the Code mandatory will offer growers more clarity on the terms by which supermarkets must operate when it comes to their retailer-supplier relationship, giving them leverage to highlight discrepancies with retailers directly before having to take the situation further.

To further support growers, Grocery Supply Contracts should replace Grocery Supply Agreements and be enforced legally under the Code, giving growers more security in the volume and price of produce. This will create opportunities for more successful long term planning including farm innovation and sustainability, not to mention more time for growers to manage the changing industrial relations landscape in Australia which is much more time consuming and costly than it has ever been. It will also make it difficult for supermarkets to punish growers for reporting misconduct, as they are legally locked into a contract that cannot be adjusted in the short-term, giving growers more security.

Supermarkets have had nine years to adjust to operating by the Code, however instead of shaping policies and procedures to comply with the expectations of the Code, they have showed blatant contempt. They have not proven that the Code is positive for suppliers, and benefiting consumers, which was the reason for the Code being introduced in 2014. Based on suppliers' experiences, and deteriorating relationships with the supermarkets, the Code must transition from voluntary to mandatory.



If supermarket buyers continue to seek ways to exploit suppliers under a mandatory Code, we will see the same issues – growers exiting industry, diminished regional economies and livelihoods, decreased competition in Australian fruit and vegetables, increased cost of fresh Australian produce, increased waste and damaging environmental impact.

Implementing a mandatory version of the Code has been supported recently by 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." (Recommendation 3)<sup>18</sup>
- House of Representatives Standing Committee on Agriculture's *Inquiry into food security in Australia*, "make the Food and Grocery Code of Conduct mandatory." (Recommendation 6)<sup>19</sup>
- Australian Council of Trade Union's *Inquiry into price gouging and unfair pricing practices*, "The Food and Grocery Code Review should be fully mandatory." (Recommendation 4.13)<sup>20</sup>

It would be irresponsible to continue funding inquiries and reviews into this matter and continue to ignore those that have already taken place, providing recommendations to the Australian Government to make the Code mandatory.

14. *If the Code were made mandatory, what should be the threshold for supermarkets to be included in the Code?*

AUSVEG would like to the threshold for supermarkets lowered to include some of the larger independents, potentially reducing the threshold to a \$1 billion turnover.

15. *Would it be possible to keep all, or some, of the arbitration model of the current Code if it were made mandatory? If so, how?*

Please see [Appendix 1](#) for issues and solutions in regard to Part 5, Division 1 (Retailer's or wholesaler's Code Arbiter) of the Code.

AUSVEG understands through conversations with growers that any mechanism that addresses a single supplier's issue is unlikely to be utilised due to fear of retribution or commercial damage. Supermarkets may only have a few suppliers for some vegetable lines, so it would be easy to identify who has made a complaint.

A model that appears to be strongly supported is that growers can report Code non-compliances (or bad behaviours) to an independent body (such as an independently appointed Code Arbiter or the Code Reviewer), or other organisation (such as a peak body). The complaint is logged, along with all other complaints from other suppliers, and when a threshold is reached (such as five complaints on the same issue), the matter could be referred to the ACCC for an investigation – not on the specific complaints but on the broader subject issue. For example, if five growers raise an issue about non-programmed specials

<sup>18</sup> 'Perishable Agricultural Goods Inquiry – Final Report', ACCC. November 2020.

<https://www.accc.gov.au/system/files/Perishable%20Agricultural%20Goods%20Inquiry%20-%20Final%20Report%20-%20December%202020.pdf>

<sup>19</sup> 'Australian Food Story: Feeding the Nation and Beyond', Parliament of Australia. November 2023.

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Agriculture/FoodsecurityinAustrali/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Agriculture/FoodsecurityinAustrali/Report)

<sup>20</sup> 'Inquiry into price gouging and unfair pricing practices – Final Report', Australian Council of Trade Unions. February 2024.

[https://pricegouginginquiry.actu.org.au/wp-content/uploads/2024/02/InquiryIntoPriceGouging\\_Report\\_web.pdf](https://pricegouginginquiry.actu.org.au/wp-content/uploads/2024/02/InquiryIntoPriceGouging_Report_web.pdf)

the ACCC could launch a broader investigation on non-programmed specials across all retailers and all fresh fruits and vegetables.

### **Market power and suppliers' fear of retributive action**

#### *16. Are Code Arbiters perceived to be independent from the supermarkets that they oversee?*

AUSVEG made a [submission](#) to the dispute resolution provisions in the Review of Part 5 of the Food and Grocery Code of Conduct<sup>21</sup> in 2023. In the submission, AUSVEG referenced the fact that growers had no trust in the current dispute resolution process, and did not believe that the arbiters would act confidentially. Many indicated they did not know who their Code Arbiter was nor how to make contact with them.

The fact that the Code Arbiters are recruited and paid for by the supermarket, is interpreted as though they will act in the best interests of the supermarkets and that Code Arbiters will breach confidentiality by informing the supermarkets of the details of the complaints.

The trust in Code Arbiters was also reflected in the Independent Reviewer's report and the associated interactive dashboard. Fruit and vegetable growers had the highest response (from all categories) in believing that the Code Arbiter would not resolve their issue. However, only 40 percent understood they could raise an issue with the Code Arbiter without making a formal complaint, with 50 percent of respondents not aware who their Code Arbiter was.

#### *17. If not, how could the reality and perception of independence of Code Arbiters be enhanced?*

As per the AUSVEG [submission](#) into the dispute resolution provisions in Part 5 of the Food and Grocery Code of Conduct in 2023, Code Arbiters should be appointed independently of the supermarkets.

A single Code Arbiter, appointed by the ACCC, would provide a more transparent dispute resolution process, and would bring consistency to the role of Code Arbiter. Supermarkets may not feel comfortable with one arbiter having insights across all supermarkets, and separate independent arbiters may need to be appointed, but there does need to be consistency across all arbiters.

The supermarkets could fund the services of the arbiter through an annual fee to the ACCC.

#### *18. Could the voluntary Code be amended to address the fear of retribution by supermarkets and if so, how?*

The fear of retribution by growers comes from the limited competition available for them to sell their produce, and the perishable nature of the products. Any form of complaint is likely to lead to fear, as the grower is at the mercy of the supermarket for their livelihood.

Replacing Grocery Supply Agreements with Grocery Supply Contracts will provide growers with more certainty as to the volume and price that supermarkets are obligated to purchase from them, therefore providing them with more power in their relationship with supermarkets.

In addition, providing the ACCC with greater power, scope and flexibility to investigate industry complaints relating to supermarket/retailer behaviour, as well ability to undertake investigations on

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<sup>21</sup> 'Food and Grocery Code of Conduct Review 2022-23 – Final Report', The Treasury – Australian Government. 9 January 2024. <https://treasury.gov.au/publication/p2023-479632-final-report>

aspects of the Code such as supplier agreements, deductions etc. will further strengthen the growers' position so that if they complain, they feel more likely that a fair resolution will take place.

Please refer to Question 15 and further solutions in [Appendix 1](#).

### **Compliance penalties**

*19. Is there evidence of suspected breaches of the Code that are not being enforced due to a lack of civil penalty provisions?*

Please refer to [Appendix 1](#) for issues with the provisions of the Code and potential solutions.

*20. Should civil penalties be available for breaches of the Code?*

AUSVEG has key four key outcomes that it wishes to see from this Review, one of which is meaningful civil penalties.

To ensure better behaviour from the supermarkets AUSVEG is advocating for significant civil pecuniary penalties for business and individuals that breach the Code.

AUSVEG recommends that appropriate penalties be enforced commensurate with the size of the corporation, whilst considering the impact on the supplier. Application of penalties should also consider whether breaches of the Code or Competition and Consumer Act represent systemic or persistent practices.

Further to the ability to fine a business, there should also be the ability to fine individuals, particularly where systematic and persistent breaches of the Code's practices have been identified.

AUSVEG would also like to see appropriate provisions introduced to pay compensation to affected growers. AUSVEG knows that non-compliances of the Code are costing Australian growers millions of dollars, whether that be through unprogrammed specials, artwork costs, late cancellations or questionable rejections. Fining a corporation may improve future behaviour of the supermarkets but growers still should not be out-of-pocket for supermarket breaches of the Code.

*21. If civil penalties are to be applied to the Code, what penalties are appropriate?*

Penalties could be financial (such as the NZ Food and Grocery Code which is three percent of annual turnover) or include other disincentives such as a cap on future expansion of market share (for a period of 12 months for instance) and divestiture powers which can be used in cases of gross market power imbalances.

Even if these enforcement tools are rarely used, the objective is to act as powerful disincentive against harmful behaviour.

## APPENDIX 1 - Provisions, issues and solutions for the Food and Grocery Code of Conduct

Part 2 - Grocery Supply Agreements (GSA)				
Provision		Issue	Solution	
7	Grocery supply agreements must be in writing	i	<p>Confusion is often created as there are multiple documents created in the supplier-retailer relationship. Whilst the sole provision of actual basic supply may be covered under a GSA, growers have advised that specifics such as the additional compliance requirements, logistics, and terms of trade, are often in different documents including the 'Vendor Agreement'. There is often a lack of clarity around what constitutes being a preferred supplier (over and above the product quantity and weekly schedule). This includes a lack of certainty on matters such as payment terms, implementation of required compliance schemes, packaging, sustainability, specifications, rejections etc.</p>	<p>Clear and concise terminology adopted by all retailers in relation to documentation.</p> <p>Requirement for retailers to clearly explain how documentation interacts. E.g. An overarching 'Terms of Trade' document with 3-monthly or 6-monthly supply contracts.</p>
		ii	<p>Preferred suppliers are those suppliers that agree to supply to the supermarkets and meet all their compliance requirements. The cost of being a preferred supplier can be substantial. Growers advise that, when convenient to the retailers, the retailers will purchase cheaper product from non-preferred suppliers. Preferred suppliers want retailers to be obliged to exhaust all procurement options with preferred suppliers before sourcing from non-preferred suppliers. In a perfect world, preferred suppliers should get paid a premium for the costs that they bear to implement all the supermarkets' requirements.</p>	<p>Requirement for retailers to commit in GSAs to purchase from preferred suppliers, over and above non-preferred suppliers.</p>
		iii	<p>Some growers advise that they have no GSA at all.</p>	<p>Enforcement of growers' rights to have a written GSA. The right to a written agreement is currently in the Code however growers need to:</p> <ul style="list-style-type: none"> <li>a) be informed that it is their right to have a written agreement; and</li> <li>b) have a mechanism to enforce the provision in the Code.</li> </ul>

		iv	Three- or six-monthly supply agreements provide no long-term certainty for growers, and often no price. This makes basic budgeting difficult, as well as planning for capital improvements, innovation, and workforce requirements, among other issues.	Requirement that GSAs be written to provide greater, longer-term supply, therefore providing financial certainty for suppliers.
		v	GSAs need to be specifically designed contracts that provide protections to growers in relation to price and volume, while also recognising crop variability that can occur due to weather.	Growers have suggested a range of measures that may help address the power imbalance in the grower-retailer relationship. There is appetite among some growers to set a minimum floor price, with other suggestions including contracts that include x% of crop at a set agreed price, and y% of crop at a variable price. Other mechanisms include a 'tool' to provide greater transparency in relation to retailer price tendering systems. There needs to be more equity in the relationship, while also maintaining a competitive/free-market dynamic.
		vi	Growers have expressed concern that supermarkets are potentially overinflating supply agreements and causing oversupply conditions. Distorting supply, and consequently price, is a serious allegation but it is widely reported in Australia and also occurs in other jurisdictions such as the UK.	As per the UK Code - Requirement for retailers to forecast with due care, communicate how the forecast is calculated, and fully compensate a supplier for any cost incurred as a result of over forecasting.
8	Matters to be covered by an agreement	i	Confusion is often created as there are multiple documents created in the supplier-retailer relationship. Whilst the sole provision of actual basic supply may be covered under a GSA, growers advise specifics such as the additional compliance requirements and terms of trade, are often in different documents such as the Vendor Agreement. There is also often a lack of clarity around what constitutes being a preferred supplier (over and above the product quantity and weekly schedule). This includes a lack of certainty on matters such as payment terms, implementation of required compliance schemes, packaging, sustainability, specifications, rejections etc.	As per 7 (i)

		ii	Quantity of product to be supplied to the retailer in a supply agreement is only a 'forecast', and there is no obligation for the supplier to take the stated volume. Some GSAs indicate some parameters to the volume (for example +/- 10%) however nearly every grower AUSVEG spoke to had volumes ordered significantly lower than the forecast amount and/or volumes were consistently lower than the forecast, week in/week out.	As per 7 (v) and (vi)
		iii	Growers should not have to negotiate rebates to get earlier payments.	See (12)
9	Unilateral variation of agreement		Given the issues raised in (7) and (8) - there are obvious issues around variations of agreements, or lack of rigorous agreements that would apply.	<p>Protections against unilateral variations of agreements are currently in the Code however growers need to:</p> <p>a) be informed that it is their right to have a written agreement; and</p> <p>b) have a mechanism to enforce the provision in the FGCC.</p>
10	Retrospective variation of agreement	i	Unprogrammed price-matching specials were frequently mentioned by growers. This occurs when a retailer calls a grower advising them that a competitive retailer has a certain product on special and that the grower must take a reduced price so that the retailer can match the price special. This is after the weekly price has been agreed and orders have already been dispatched to the grower for packing. Some growers cite that if they do not accept the discounted price that their orders are reduced or cancelled.	This is currently in the Code however growers need to have a mechanism to enforce the provision that protects their business relationship without fear of retribution.
<b>Part 3 - Conduct generally</b>				
<b>Provision</b>			<b>Issue</b>	<b>Solution</b>
12	Payments to Suppliers	i	Growers relate incidences of retailers deducting unauthorised amounts from payments.	Prohibition of unauthorised deductions is currently in the Code however growers need to have a mechanism to enforce these provisions, that protects their business relationship without fear of retribution.

		ii	Growers relate incidences of retailers not paying within the time frame set out.	The Code currently contains provisions in relation to timely payment, however growers need to have a mechanism to enforce those provisions, that protects their business relationship without fear of retribution.
		iii	Growers relate incidences of retailers deducting credits from future payments (for example for rejected produce) rather than from the payment it relates too.	Provisions relating to this are not clearly documented in the Code. A supplier will often agree to a deduction (12.2) but not to that deduction coming off earlier payments. Protection against this needs to be included in the Code.
		iv	Growers have a lack of clarity around rebates, how the % of the rebate is calculated, and what the rebate is used for. Growers understand that similar growers have different % rebates. The rebate appears to be linked with early payment terms and is negotiated at the commencement of trade. The use of rebates is a very grey area.	The supply agreements/vendor agreements should set the purpose of the rebate, amount of the rebate and what triggers a variation to the % of rebate, and the ability to review rebates annually.
14	Payments for wastage		AUSVEG has not been informed of any cases of this happening in vegetables - although we note that it is referenced by other horticulture bodies.	This is currently in the Code however growers need to have a mechanism to enforce the provision, that protects their business relationship without fear of retribution.
17	Payments for retailers' or wholesalers' business activities		Growers that supply pre-packed goods in home brand supermarket packaging are required to pay for any packaging design changes including artwork and new printing plates. Growers report that these design changes can be frequent. While growers are more than happy to supply bags, they feel that design changes to home brand packaging should be at the expense of the retailer. Further, growers can be forced to dump thousands of dollars worth of unusable plastic packaging, when designs change before stock is exhausted.	This is currently in the Code however growers need to have a mechanism to enforce the provision that protects their business relationship without fear of retribution.
18	Funding promotions		Promotional activities within the vegetable sector are not common.	

20	Funded promotions		<p>Promotional activities within the vegetable sector are not common. Issues do arise when supermarkets try and price match funded promotions that their competitors are running. Whilst growers that signed on to the original funded promotion have done so at their own will, the growers supplying the other retailers are not prepared for the special. In August 2023 Woolworths ran a 13-week special on 2kg washed potatoes; Coles and Aldi then acted to reduce their prices to meet Woolworths price. Price matching is not illegal but if the supermarket is not prepared to wear the cost of the promotion, they will exert pressure on their suppliers to absorb some or all on the price reductions.</p>	<p>Amend the Code to include provisions to protect suppliers when supermarkets price match.</p>
21	Fresh produce standards	<p>i</p> <p>Questionable rejections of produce by retailers are often raised by growers. As growers are often hundreds of kilometres away from a retailer Distribution Centre (DC), they are unable to check the produce themselves. Growers have advised that delivery trucks are told to wait outside the DC until a quality check has been done on produce and within a short time the truck load of produce has been rejected. Growers want independent verification of rejections - an independent assessment could be triggered once certain criteria are met, for example for rejections over a \$10,000 threshold.</p> <p>ii</p> <p>Interpretation of specifications differs across retailers' DCs. A single pack out that might go to five different DCs can be accepted in four and rejected in one. Growers cite that questionable rejections often occur after a 'specials' week (when there is a carryover of cheap stock) or when a store has over ordered. Further the same produce (from same packout) can be accepted one day, and rejected by the same QC the next day.</p> <p>iii</p> <p>Growers are concerned about the ongoing tightening of specifications - reducing variations in produce to minimal. Many of the variations (tightening) are purely cosmetic i.e. reducing tolerable variations in product diameter and length. The more specifications are tightened the more the pack out of first grade product declines. This leads to less money for growers and more waste. Retailers also change specifications based on 'consumer feedback', while providing no data or research to validate this.</p>	<p>Appoint independent quality assessors in each major capital city to assess rejections at supermarket DCs that the supplier considers unjustified.</p> <p>See 21 (i).</p> <p>Review supermarket specifications to give greater consistency, especially in lines where there is no commercial or other advantage/disadvantage. Current specifications across some product lines are too unrealistic. Further, supermarkets should be required to provide evidence as justification for further tightening vegetable specifications.</p>	



		iv	Packaged fresh produce (potatoes, carrots, onions etc.) and higher value packed produce (corn, capsicums etc.) must meet the minimum weight requirements of the packaging. If, when packing a bag, it is slightly underweight, growers must add another item which will often take it well over the required minimum weight, and the grower 'gives away' a lot of product. The other scenario is when product loses moisture during transit and the weight can drop below the nominated weight by a fraction, but it is non-compliant unless the 'e' system was in place.	The 'e' or average weight system is widely adopted in many countries but not used to any great extent in fresh produce in Australia. The 'e' system is ruled by tight guidelines and standards, but the industry would like to see this system adopted across packaged products, which would reduce rejections, reduce waste, and reduce the amount of 'free' product growers must give away.
		v	As previously mentioned in (17), changes to packaging often occur with short lead times and growers are left with large amounts of home brand packaging that they cannot use.	This is currently in the Code however growers need to have a mechanism to enforce the provision that protects their business relationship without fear of retribution.
		vi	Growers cite that some basic product specifications vary across retailers. For instance, the acceptable length or diameter of a vegetable is slightly different across Aldi, Woolworths, and Coles. This means that a load of Class 1 produce for one retailer, cannot be placed with another retailer as it does not meet the specifications.	Review supermarket specifications to give greater consistency, especially in lines where there is no commercial or other advantage/disadvantage.
22	Changes to supply chain procedures		AUSVEG has not been informed of any cases of this happening in vegetables - although we note that it has been raised by other horticulture industries.	
23	Business disruption	i	AUSVEG has been advised of various incidents of threatening behaviour by buyers. Some growers say that the buyers don't explicitly state that they would terminate or disrupt business but imply that such action could occur. AUSVEG believes that provisions against threatening behaviour in the Code should be expanded to include both real and perceived threats.	Provision (23) should include a threat, both real and perceived.
24	Intellectual property rights	i	AUSVEG has not been informed of any cases of this happening in vegetables - although we note that it has been raised by other horticulture industries.	

25	Confidential information	i	Growers and suppliers consistently provide confidential information to the retailers on production volumes and price. Growers cite that retailers use other growers' volumes and pricing as leverage to lower prices during the weekly price tender negotiations. This asymmetric data flow leaves all the power with the retailer, and little with the grower.	Establish a mechanism which allows greater price transparency during the weekly price negotiations, while also maintaining competitive, free market dynamic.
27A	Price increases	i	<p>Many growers outline that price is rarely part of their GSA with retailers and is negotiated on a weekly basis.</p> <p>AUSVEG is advocating for contracts that give more certainty around price.</p>	There have been many suggestions by growers how contracts could move forward to rebalance the grower-retailer relationship. There needs to be more equity in the relationship, while still maintaining a competitive/free-market dynamic. AUSVEG is advocating for specially designed fresh produce contracts that provide greater certainty for price and volume.
		ii	For those growers that have a price in their GSA, but provide fresh product on a weekly basis, a five-day period for acceptance is too long: 24-48 hrs is more appropriate - which is approximately the duration of weekly price tenders.	27A (1)(c) - The period for price negotiations should be reduced to 24-48 hours.
		iii	<p>Growers advise that price is rarely part of the GSA. This provides uncertainty to the industry and prevents long term planning and investment.</p> <p>The weekly price tender is also stressful and combative for some growers.</p>	There have been many suggestions by growers how contracts could move forward to rebalance the grower-retailer relationship. There needs to be more equity in the relationship, while still maintaining a competitive/free-market dynamic. AUSVEG is advocating for specially designed fresh produce contracts that provide greater certainty for price and volume.
29	Freedom of association		AUSVEG advocated in its Senate Select Committee submission that 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.	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, not just those businesses under \$10 million.

<b>Part 5 - Dispute resolution</b>			
<b>Division 1 - Retailers or wholesalers Code Arbiter</b> <i>(Please also refer to the previous AUSVEG submission of Part 5 - Dispute Resolution)</i>			
<b>Provisions</b>		<b>Issues</b>	<b>Solutions</b>
31	Retailer or wholesaler must appoint a Code Arbiter	Growers have no trust in the current system and fear that should their private information be deliberately or accidentally leaked to the supermarkets, commercial retribution will occur.	Code Arbiters to be appointed independently of the retailers and not by the retailers. Retailers to pay the costs of the independent arbiter via a mechanism (fund) but not pay the arbiter directly.
32	Who can be appointed	No issues have been raised by growers on this matter.	
33	Function of the Code Arbiter	Consistency across Code Arbiters should be achieved, noting that AUSVEG seeks to have one independently appointed Code Arbiter.	The written complaints handling procedure should be developed by the Independent Reviewer and should be consistent across all arbiters.
34	Referral of complaints to Code Arbiter	Provision for suppliers to raise preliminary complaints and concerns with the arbiter before making any formal written complaint.	Better communication to suppliers about the complaints process is required - noting results from the Independent Reviewers report.
		Confidentiality is difficult when the arbiter needs to raise an issue with a retailer but there are limited suppliers within a category - the small number makes identification very easy.	Growers need a mechanism that supports enforcement of provisions in the Code, that protects their business relationship without fear of retribution.
36	Determination by Code Arbiter	Confidentiality is difficult when the arbiter needs to raise an issue with a retailer but there are limited suppliers within a category - the small number make identification very easy.	Growers need a mechanism that supports enforcement of provisions in the Code, that protects their business relationship without fear of retribution.
<b>Division 2 - The Code's Independent Reviewer</b>			
37E	Annual Report	The addition of the dashboard in 2023 was excellent. Based on (37F) AUSVEG would like to see the dashboard expanded.	Independent Reviewer to seek input from industry associations around the annual survey questions.

37F	Annual Survey		The annual survey is a good mechanism for growers to provide feedback. AUSVEG would like to see more questions added to the survey to both growers and retailers. More detailed questions around Code compliance would be insightful as well as questions such as ' <i>What percentage of fresh produce did you reject from your DCs?</i> '.	Independent Reviewer to seek input from industry associations around the annual survey questions.
<b>Division 3 - Mediation and arbitration</b>				
38	Supplier may seek mediation and arbitration		Fear of retribution	An appropriate arbitration/mediation process that protects suppliers (growers) from fear of commercial retribution. This should include, but not be limited to, Code Arbiters appointed independently of the supermarkets
39	Conduct of mediation and arbitration		Fear of retribution	An appropriate arbitration/mediation process that protects suppliers (growers) from fear of commercial retribution. This should include but not be limited to, Code Arbiters appointed independently of the supermarkets
<b>Part 6 - Compliance</b>				
<b>Provisions</b>			<b>Issues</b>	<b>Solutions</b>
40	Duty to train staff		Whether some of the issues raised by suppliers (growers) about contraventions of the Code by supermarket staff is caused by lack of understanding of the Code is unclear.	
42	Keeping records		No issues have been raised by growers on this matter.	
<b>New additions</b>				
	<b>Independent Assessor for rejected produce</b>		See 21 (i) and (ii).	
	<b>Training standards for supermarket buyers and managers</b>		Inexperienced buyers and category managers often exacerbate tensions in the grower-retailer relationship. Growers frequently complain about retail staff not understanding the supply chain, the produce they are managing, or the logistics of growing, processing and packing vegetables.	Supermarkets should implement minimum training standards for fresh produce buyers/category managers.

	<b>Retailers bound to supply sales and market data to suppliers</b>	<p>Retailers collect a plethora of data from their sales. The data helps identify trends, price elasticity etc. The data can be purchased at a significant cost. Access to the data in a timely manner could assist growers and retailers strengthen their relationship, plan price and volume, and work collaboratively to grow the fresh produce sector.</p>	<p>Add a provision for the supermarkets to provide timely sales data and work with suppliers to leverage data for mutual benefit.</p>
	<b>Retailers bound by a Code of Behaviour to better support and promote fresh produce</b>	<p>AUSVEG would like to see the introduction of 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 and marketing tactics. A code of behaviour could include:</p> <ul style="list-style-type: none"> <li>• Retailers and suppliers working together to promote fresh produce to improve the dietary behaviours and healthy eating habits of Australians.</li> <li>• Eliminate retailer strategies that consistently de-value fresh produce in the eyes of the consumer, such as loss-leaders.</li> <li>• Consideration of vegetable specifications to reduce waste, and to stop retailers increasing consumer expectations around 'perfect' vegetables.</li> <li>• Promotion of seasonality and 'bountiful buys' (reflecting strong seasonal supply) rather than specials.</li> <li>• Consideration of pricing policies that reflect responsible pricing based on known price elasticity data.</li> <li>• Promotion of Australian grown product.</li> </ul>	<p>Establish a 'Code of Behaviour' as a specific provision within the Code.</p>
	<b>Compliance systems</b>	<p>Supermarkets demand for compliance systems, over and above, what is 'reasonable' is a constant issue with growers. This is due to:</p> <ol style="list-style-type: none"> <li>a) the cost of the audits;</li> <li>b) resources required to implement the compliance schemes;</li> <li>c) the cost of upgrading equipment, facilities etc. to comply; and</li> <li>d) skills and training of employees required to comply.</li> </ol> <p>In some areas the compliance required is over and above legislative requirements.</p>	<p>Supermarkets should have some controls placed on them to reduce the ongoing compliance burden they are placing on suppliers.</p> <p>See also 7 (ii).</p>
	<b>Average Quantity System 'e'</b>	<p>The use of the 'e' symbol (Average Quantity System) 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</p>	<p>Clearly embed the adoption of the Average Quantity System in the Code for the fresh produce sector.</p>

		results in negligible disadvantage to consumers but significant 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.	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.
	<b>Exclusive dealings</b>	The retailers often dictate to growers, goods or services which they must use if they are supplying to the retailer. This may include crates, pallets, and freight logistics. Hire terms for pallets or crates are often well in excess of the shelf life of a product but growers know that they have no bargaining power as the crate supplier is the only supplier of crates for that particular retailer. Further, growers advise that the introduction of retailer owned freight and logistics has negatively impacted freight logistics, particularly in regional areas.	Prohibit retailers forcing suppliers to only use one service - such as crate companies, freight logistics etc. Competition across the supply chain should exist.
	<b>Greater power, scope and flexibility for the ACCC</b>	Whilst this does potentially not come under the Code review, AUSVEG believes that giving the ACCC greater power, scope and flexibility to investigate retailer behaviour could protect individual growers and address systemic issues. For instance, if the Code Arbiter/s or Independent Review have numerous complaints about a similar issue, the ACCC could investigate the issue rather than the individual complaints. This would remove some of the fear of commercial retribution.	Broaden the power, scope and flexibility of the ACCC to address potential systemic poor behaviour in supermarkets. AUSVEG also wants to see the ACCC adequately funded to ensure they have the resources to undertake required activities.
	<b>Unfair Trading Practices</b>	AUSVEG prepared a submission for the Treasury’s Consultation Regulatory Impact Statement on Unfair Trading Practices. In the AUSVEG submission we supported Option 4.	Implement Option 4 from Treasury’s Consultation Regulatory Impact Statement on Unfair Trading Practices.