



QUEENSLAND FRUIT
& VEGETABLE GROWERS

Food and Grocery Code of Conduct review 2023-24

29 February 2024

TABLE OF CONTENTS

About Us.....	5
Representation	5
Context	5
Recommendation Summary	6
Response to the Review of the Food & Grocery Code of Conduct	8
Final words from a grower:	15



29 February 2024

The Hon Dr Craig Emerson
Independent Reviewer
Review of the Food and Grocery Code of Conduct
The Treasury
Langton Crescen
PARKES ACT 2600

By email via: GroceryCodeReview@treasury.gov.au

RE: Food and Grocery Code of Conduct Review 2023-24

Dear the Hon Dr Emerson,

On behalf of the growers of fresh fruit, vegetables, and nuts in Queensland we welcome the opportunity to make a submission in response to the review of the Food and Grocery Code of Conduct (FGCC).

We would like to say from the outset that as a sector we sincerely acknowledge the value of the current signatories to the code in our fresh produce supply chain as they afford the majority of Australians accessibility to fresh produce. We also understand their role as major employers and appreciate their responsibility to maximise profit for their shareholders.

An enduring relationship between these large-scale providers of fresh produce and the growers who provide the food for them to distribute, is essential to get right for future generations of Australians.

We are grateful that this government has recognised that it is in the national interest to ensure its people can, at all times, avail themselves of fresh produce given that humans cannot survive for more than several weeks without the nutrients derived from fresh fruit, vegetables, and nuts.

Beyond their role as a major employer and their responsibilities to shareholders, the pivotal role supermarkets have assumed in the provision of an essential human need—fresh produce—means they cannot shirk their *duty of care* to Australians.

Our domestic markets have for some time been failing to deliver the fairness and equity Australians demand from those who play a role in national food security.

In 2023, Queensland Fruit & Vegetable Growers adopted **profitability of growers** as our number one priority, as it became increasingly evident that the industry was on a knife-edge.

The prices that growers receive for their produce is only one part of the equation. Growers' margins have also been squeezed through substantial increases in the

cost of production. Growers have been operating in a business environment where there has been very little increase in revenue for many years with some growers reporting no price increases on their crop for 15 years while absorbing input cost increases between 30 and 65%.

In any business model, this projection would be unsustainable for all who operated in it. Growers by their very nature are both risk takers and optimists. The more we investigated growers of all size across multiple commodities, the more we worked out that in the sector, regardless of size and scale, growers have nothing left.

Maintaining the status quo is not an option. This term of government must use findings from these inquiries to implement fundamental changes to redress this imbalance.

Growers see these inquiries as the only ray of hope left.

We look forward to furthering your understanding of the issues and unpacking some of the deep rooted, systemic, and sneaky supermarket behaviours which impact our growers, both in terms of their profitability as well as their mental wellbeing.

As state members of AUSVEG and APAL and members of the National Farmers' Federation, we also strongly support their submissions to the Inquiry.

We would welcome an opportunity to further discuss any part of our submission and draw your attention to our **We Give a Fork** campaign launched in November 2023.

The campaign covers all the abovementioned issues, and more:

www.wegiveafork.com.au

Please contact Rachel Chambers, CEO QFVG via email rchambers@qfvg.com.au or phone 0488 034 344.

Kind regards,



Rachel Chambers
QFVG CEO

About Us

Queensland Fruit & Vegetable Growers (QFVG) is the state industry body representing Queensland's commercial fruit, vegetable, and nut growers. To us, horticulture is the most vital industry in the world. We exist to ensure strength in the horticultural industry for generations to come. We provide the trusted voice for horticultural growers in Queensland and are a valued service delivery partner.

Queensland grows over 100 different fruit, vegetable, and nut crops, from Stanthorpe in the south to Cooktown in the far north. Queensland supplies one-third of the nation's fruit, one-fifth of the nation's vegetables, and one-tenth of the nation's nuts.

Queensland is the key producer of Australia's Pineapples – 99%, Ginger – 98%, Bananas – 94%, Avocados – 70%, Capsicum – 66% and Macadamias – 66%.

These crops are produced by 3,500 agribusinesses and 25,000 direct workers. Indirectly, the primary production of horticulture provides significant direct and flow on economic benefits in regional areas.

Representation

QFVG supports, represents, and coordinates grower members across each of the core growing regions including:

- Lockyer Valley – Lockyer Valley Growers
- Granite Belt – Granite Belt Growers
- Wide Bay Bundaberg – Bundaberg Fruit & Vegetable Growers
- Central Queensland
- North Queensland – Bowen Gumlu Growers
- Far North Queensland – FNQ Growers

QFVG is a key member of the Queensland Farmers' Federation (QFF) and National Farmers' Federation Horticulture Council (NFF Horticulture Council), and is the state member for AUSVEG, Apple & Pear Australia Ltd (APAL), and Freshcare.

Context

What's the problem all of a sudden?

Through a consumer lens: Australians are experiencing a cost-of-living crisis with the majority of us most noticing the impact in our grocery basket.



Through a grower lens: Growers have experienced dramatic increases in cost of production without significant revenue increases. Grower returns have remained relatively unchanged for over a decade and throughout most of this time, input costs also remained relatively stable. Since 2020, however, supply chain disruptions and global issues have impacted the sector with all growers reporting input cost increases of between 30 and 65% since that time.

Simple business 101 says that if income stays constant whilst expenses increase, a business will go backwards. This has been the case now for approximately three years with growers reporting that they have now expended all their reserves with nothing else left to draw upon. Growers are now in crisis.

Recommendation Summary

The code is made mandatory. However this action will not be effective on its own and will need to be combined with:

- Significantly strengthened penalties (to the level they would impact shareholders).
- A guarantee that the process of dispute resolution was timely and not financially burdensome for growers (given the greater legal resourcing of retailers along with the perishability of produce).
- Arbiters were fully independent and perceived as so, of those they were reporting on.
- Significant civil pecuniary penalties for individuals employed by the signatories who breach the code.
- Compensation for growers who have been significantly affected by a code breaches.
- Empowerment of ACCC to act, even if they don't ever need to – as it would serve as a deterrent into the future.

Considerations:

- Consider how real-time price data may provide unintended consequences such as collusion or other anti-competitive practices.
- QFVG opposes the idea of 'real-time' price data but acknowledges the value of periodic information disclosure to an impartial entity to act as a 'watch dog'.
- Consider an extension of the code through the supply chain.
- Ensure perishability is adequately addressed in any proposed solution.
- Consider the possibility of needing a new code for fresh produce or a separate provision within the current code to address perishability nuances.

- Consider implementing the need for agreements and contracts to be legally binding documents as is accepted practice in other agricultural sectors, to protect both parties.
- Consider government funding of industry to support growers in increasing their capability and understanding of retail practices and negotiation skills through training and other activities.
- Consider reviewing the role of retailers in a duty of care to Australians to promote healthy eating.
- Consider viewing oversupply as underconsumption to reframe the conversation to one of nutrition and the consequent health impacts.
- Consider how promoting seasonal produce may help change market dynamics.

Recommendations for further investigation:

1. Investigate the role of supermarkets in how they contribute to fresh produce oversupply and thus waste.
2. Investigate how actual grower cost of production is factored into negotiations.
3. Investigate growers' agreements to ascertain how these may contribute to oversupply and lack of ability to plan. Investigate how growers who aren't afforded even indicative agreements are currently planning their operations.
4. Investigate the quantum of supermarket cost shifting to growers: Growers are paying for CHEP pallets, stickers, modern slavery reporting, promotions, and compliance to name a few.
5. Investigate governments' own role in the impact of policies, regulations and legislation as part of the burden on growers' shoulders, "we can't get the income to pay for the expectations."
6. Investigate the use of promotions or 'specials' in fresh produce ie. how they are managed, who bears the expense and whether they are overused.
7. Investigate claims of third party forcing within the supply chain.
8. Investigate payment terms for CHEP Pallets: supermarkets charging practices for pallets and their care of and duration of use.
9. Investigate instances of retailers imposing conditions requiring suppliers to also acquire goods or services from a third party (forcing them to do business with them). Examples of this include freight, pallets, bins, crates, compliance programs. In addition, investigate the mechanics of claims/ reimbursals due to negligence or fault.
10. Investigate the allocation of compliance costs between growers and supermarkets, particularly regarding modern slavery obligations, ESG and product labelling.
11. Investigate rebates and conditions to reveal any imposition of rebates by supermarkets on growers for various conditions and their impact on fair trade practices.
12. Investigate Tier 2 and 3 growers including the role of wholesale markets in retail supply chain pricing.

13. Investigate if Australia really has an oversupply issue, whether supply is being artificially manipulated or if it is in fact is an under-consumption issue and how if we considered it in this light, our thinking and actions may be different.
14. Investigate how/if natural disaster events are captured in growers' cost of production – is one state different to another and how does/should that impact cost of production?
15. Investigate how efficient is the model of supermarket operations and how much is this adding to consumer costs eg. outdated distribution centres and logistics.
16. Investigate transfer of ownership, risk, and liability along the supply chain.
17. Investigate how supermarkets account for the distribution of income and profits across all store categories.
18. Investigate how modern slavery statements apply or do not apply to growers as suppliers.

Response to the Review of the Food & Grocery Code of Conduct

QFVG understands the intent or purpose of the Code is to address ***harmful practices*** in the grocery sector stemming from an *imbalance of bargaining power* between supermarkets and their suppliers. It does this through:

1. helping to regulate *standards of business conduct* in the grocery supply chain and to build and sustain trust and cooperation throughout that chain;
2. ensuring *transparency* and *certainty* in commercial transactions in the grocery supply chain and to *minimise disputes* arising from a *lack of certainty in respect of the commercial terms* agreed between parties;
3. providing an *effective, fair, and equitable dispute resolution process* for raising and investigating complaints and resolving disputes arising between retailers or wholesalers and suppliers; and
4. promoting and supporting *good faith in commercial dealings* between retailers, wholesalers, and suppliers.¹

Through *protecting suppliers against business behaviours* that affect the *growth and sustainability* of the grocery industry, the Code is intended to *prevent harms* passed on through the supply chain to Australian consumers.

¹ [Section 2, Schedule 1, Food and Grocery Code of Conduct.](#)

Addressing key consultation questions

To speak frankly, the relationship between supermarkets and their "fresh produce" suppliers bears resemblance to Corporate Stockholm Syndrome, characterised by a significant power imbalance. In this dynamic, growers find themselves tethered to retailers but are hesitant to address legitimate concerns for fear of jeopardising their relationship.

To improve relations the Code needs to clearly articulate workable processes which demonstrate understanding of the below elements specific to horticulture.

Objectives should include:

- A Code which demonstrates deep understanding of the perishability of fresh produce as different from other shelf stable products.
- A Code which demonstrates deep understanding of how the power imbalance is currently being used against growers who have no viable alternative markets.
- A Code which demonstrates intimate knowledge of the inner workings of buyer/supplier dynamics.
- A Code which growers trust will protect their commercial interests and reputation.
- A code that imposes penalties in the event of unacceptable behaviour but does not affect the system when no unacceptable behaviour is present.
- A Code that doesn't put extra legal burden or costs on growers.
- A Code that is fast, cheap, fair, and safe.

Recommendations include:

The Code is made mandatory however this action will not be effective on its own and will need to be combined with:

- Significantly strengthened penalties (to the level they would impact shareholders).
- A guarantee that the process of dispute resolution was timely and not financially burdensome for growers (given the greater legal resourcing of retailers along with the perishability of produce).
- Arbiters were fully independent and perceived as so, of those they were reporting on.
- Significant civil pecuniary penalties for individuals who breach the Code.
- Compensation for growers who have been significantly affected by a code breaches.
- Empowerment of ACCC to act, even if they don't ever need to – as it would serve as a deterrent.
- The Code potentially could address some of the imbalances **IF** the process of the Code was trusted and used by those it attempts to protect. However, the

overwhelming evidence is that the code's processes are *not being used*, make for a solid argument that it does nothing to address the very real issues which exist.

Examples of issues currently not being addressed by the code include, but are not limited to:

Perishability used as a weapon.

The perishable nature of their produce leads to a power imbalance and unequal negotiation power. Perishability forces growers into decisions they otherwise wouldn't make. Yes, growers always have the right to refuse but when they've already spent the money to that point and the options available to them at the point of sale are limited, many times a less than production amount is accepted by the grower just to help with cashflow.

Verbal negotiations, take precedence over written negotiations, offering supermarkets a level of protection. This makes it very difficult to find written evidence of unconscionable behavior even though we are absolutely certain that these behaviours exist and are widespread and systemic. These verbal negotiations also ensure that evidence is effectively kept from arbiters.

This lack of transparency suggests a tactic whereby buyers could provide untrue facts about the market leaning on the grower to lower pricing. Growers have no way of knowing if the buyer is being truthful about the market forces and buyers have no accountability to tell them the truth.

Again, these tactics also keeps key evidence from arbiters.

Why do growers plant so much and cause an oversupply?

As previous stated, growers are negotiating in a supply and demand market without any data on supply and demand, other than what is on their own farms. Whilst retailers enjoy having all the data in regard to both available supply and consumer demand.

We've been asked why growers plant so much if oversupply impacts price? And in short – **the lack of data available to them to make good decisions.**

Trust us, growers don't want to overplant as an oversupply drives down prices. However, retailers need consistency of supply. In fact, the optimal result for a retailer is to have an oversupply situation. Not only does this then ensure supply but it would also have the additional benefit of driving down buy price.

We are now questioning how retailers may be *manipulating free market conditions* by using supplier agreements as one tactic to purposely ensure oversupply.

Once there is deemed to be not retail market for the produce the grower is left with perishable product and only three options.

1. Put the produce on the wholesale market – which then floods the central market retail spec produce which then heavily impacts pricing right across the central markets;
2. Plough in the waste (only if they haven't already picked and packed it);
3. Donate to hunger relief charities (at grower cost).

From the data given to us by growers we are seeing a pattern emerging – with the figure of only 60% of the agreed upon supply being taken as committed in the agreement.

What it means for supermarkets

- Consistency of supply – no risk
- Ability to negotiate growers down due to oversupply in market

What it means for growers

- Causes a marketplace surplus which causes market prices to fall
- Multimillion dollar losses
- Food waste

Promotions/specials

It is alleged that a long-time buying tactic for category buyers is to simply put on more promotions than reasonable to help achieve a lower average price for the year in their own category.

We would argue that it is not really a free market if prices are decided six months out, nor being agreed to by the growers.

Supermarkets can also use pricing to suppress demand.

Lack of contracts

Growers are offered supplier **agreements not contracts**. And not all growers are offered agreements. In fact, it is not unusual for growers to operate without any formal agreements or contracts in place.

For those who do have an agreement, these contain indicative production volumes without pricing or volume commitments. The agreements also have many exit options for the supermarket usually based around price, quality, and service.

Can you imagine pouring money into a business with no idea if, when and how much you may get paid?

The power in the agreement firmly sits with the buyer. We would argue the legality of such an agreement.

Commercial retribution (either real or perceived)

We have been asked by media whether commercial retribution is real or perceived. Our question is – does it matter?

Isn't a threat or intimidation not acceptable in any Australian workplace?

Reduction of quantity

Changes in quantity can be made with extremely limited notice. Reductions of an average of 40% has been evidenced by multiple growers. This figure is now a pattern in our collection of data.

With each reduction in quantity comes an increase in the unit cost of production to the grower for example if it costs \$1,000 to grow 500 lettuces and they all are sold each lettuce has cost \$2 to grow.

However, if you grow the same 500 lettuces but only sell 250 and dump the rest – each of those lettuce now has a cost of production of \$4 each.

Options to growers when an remains unsold/ploughed back in/donated to hunger relief/sent to wholesalers.

Rebates

Rebates of between 3.5% and 5% have been widely reported across the sector as an “unfair cost” of doing business with the retailers. Rebates are used as charges to grower invoices and can determine how quickly you can be paid.

Is a grower prepared to lose 4% to be paid earlier? It's a question growers grapple with when cashflow is a huge issue. However, why should growers pay supermarkets to be paid in a reasonable period?

Retail Specifications

Retail Specs are an important piece in retailers' ability to reject grower produce. The supermarkets can adjust their own specs to suit their own needs. Growers view this as double standards and a breach of their own standards.

Growers also site issues with retailers not using like for like quality and ethical sourcing specifications as a basis to their purchase price. Ie. using the whole of market (including wholesale market quantities) to base pricing even when this market won't meet their own retail spec. This creates price leveraging.

Unbranded/home brands

We pose that there has been a systematic and purposeful removal of all identity to disconnect the consumer from the grower and to promote the supermarket.

The impacts of which include but would not be limited to:

- The grower unable to identify their produce quality.
- The grower unable to tell their story and develop a trusted relationship with the consumer.
- The grower unable to establish provenance and region of origin.
- The grower unable to have messaging on their produce.
- The grower who used to grow for quality now must accept they are only growing for supply.

Grower wellbeing

We are extremely concerned for our grower's wellbeing. Who would currently choose to be a grower of fresh produce in Australia?

If a job ad for a grower went online the ad would read something like this:

Wanted:

Risk taker. Generous nature required as the entire supply chain will need to be paid prior to yourself. Internal fortitude a non-negotiable as repeated natural disasters and inclement weather events will be inevitable. Project management, finance, IR, HR, marketing, and global political experience required. Strong negotiation skills necessary to have a fighting chance of making a profit in a price taking industry. Cost of production not a factor in sell price. Unbreakable spirit given the reputation of the industry is one of exploitation of others.

Weekend work; must work public holidays, actually no holidays are guaranteed.

Salary not guaranteed.

However, growers are not considered workers. If they were – retailers would have to consider the treatment of them in a different light due to their own modern slavery statements.

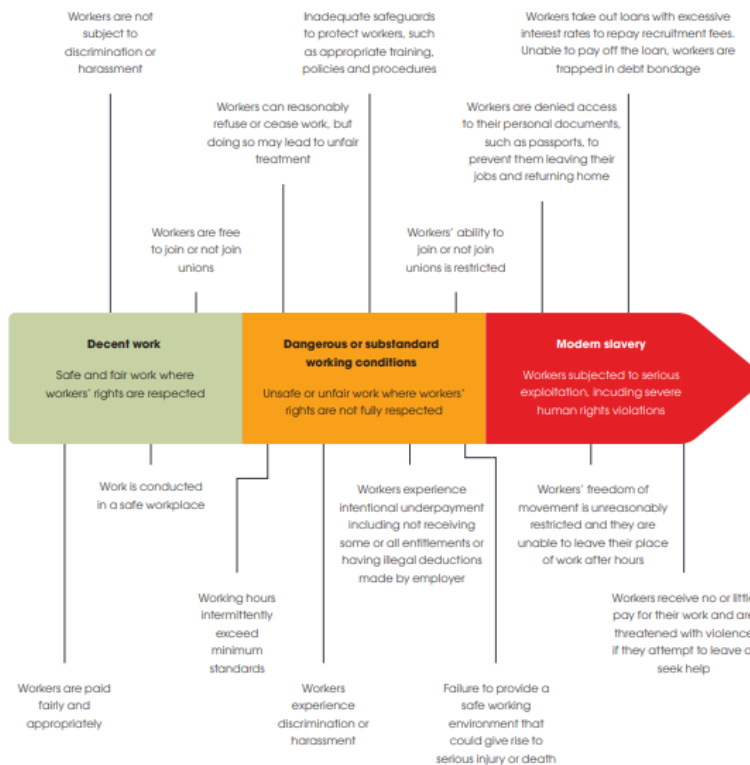
Aren't our growers, humans too? Don't they deserve a system which allows them to be paid fairly?

Wherever the word 'worker' is mentioned in the diagram below, "Identifying modern slavery risks" replace it with the word 'supplier (grower)' and see how much work we have to do to get this right.

Identifying modern slavery risks

The complexity of our operations and breadth of our supply chains means we are exposed to a range of potential modern slavery risks. We focus on identifying and understanding these risks, including assessing how they could occur in the retail sector and the ways that our actions and other factors may shape our risk profile.

Modern slavery describes situations of serious exploitation which happen when 'coercion, threats or deception are used to exploit victims and undermine or deprive them of their freedom'. Modern slavery occurs at the most serious end of the labour exploitation continuum. The boundaries of this continuum are not clear, which means it may be challenging in practice to understand whether a particular situation of exploitation meets the threshold for modern slavery. We recognise that exploited workers may not identify themselves as victims of modern slavery and that their experiences may move up or down the continuum over time.



SOURCE:

www.colesgroup.com.au/FormBuilder/_Resource/_module/ir5sKeTxxEondzd00hWJw/file/Modern_Slavery_Statement.pdf

Our growers are trapped in debt, trapped in plantings, trapped in capital investment, trapped in generational decisions, trapped in a job they love and they're really good at.

It's this sense of entrapment that we worry will detrimentally impact the mental health of Australia's growers.

Final words from a grower:

"Last year we produced 446,204 kg of leafy veg and wasted a heap more, but no one thought I was worth feeding."

"I paid leave, personal leave, redundancy payments, public holidays, even pay when we didn't have work because of weather, but I wasn't worth giving a holiday."

"We are always understaffed for the task but overstaffed for the bank balance."

"I pay super, but I can't earn it. The farm is our super."

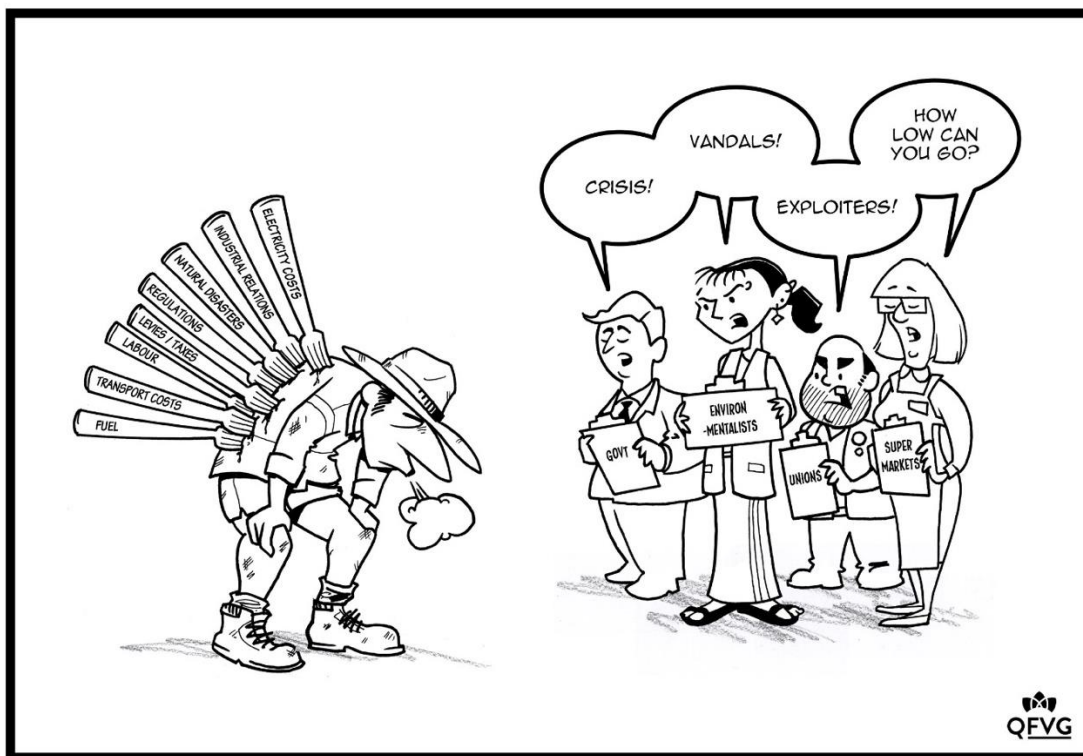


Figure 1 How a grower feels in 2024 – “Forked”.