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Grocery Code Review Secretariat
Market Conduct and Digital Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: GroceryCodeReview@treasury.gov.au

Dear Dr Emerson,

Re: GIA's response to the Interim Report, its recommendations & consultation questions

Greenlife Industry Australia (GIA) welcomes the opportunity to make comment and submit further information in response the Interim Report published as part of your review of the Food and Grocery Code of Conduct (the Code).

GIA has publicly welcomed your Interim Report and we support the recommendations it includes, particularly those concerning the enforcement of the mandatory Code, with meaningful penalties for serious breaches and specific protections for suppliers from retribution.

Thank you for considering the particular needs of the horticulture industry. We appreciate your recognition that markets for horticultural products, given their perishable nature, require targeted interventions. This logic applies equally to fruits and vegetables as it does nursery products and whilst we welcome the Interim Report's acknowledgement of the imbalance in market power in the plant retail sector, we remain deeply concerned that greenlife growers remain completely unprotected in their dealings with the dominant retailer of plants, Bunnings.

As the Interim Report acknowledges, codes of practice exist throughout Australian agriculture and horticulture with the general aim of regulating the trading environment between suppliers and retailers and/or wholesalers. Indeed, commercial growers of every kind benefit from protection under either the Food & Grocery Code of Conduct or the Horticulture Code of Conduct. There is one notable exception: greenlife growers are the **only** suppliers of horticultural products in Australia that are not protected by any code of practice because the dominant retailer of plants, Bunnings, is not a Code signatory.

One of the major catalysts for introducing a Code to the Australian grocery market was the behaviours that were being consistently and systemically demonstrated by major retailers towards the Australian grocery suppliers. The Code was launched shortly after the courts found Coles (then owned by Wesfarmers) guilty of unconscionable conduct in their dealings with small suppliers, in particular. A $10m fine was imposed and suppliers were awarded damages.

The issues that the Code sought to address in 2015 are exactly the same as those being experienced in 2024 by greenlife growers in their dealings with Bunnings, which is part of the Wesfarmers group. Greenlife growers' accounts of the power imbalance and its impact on their business, not to mention their personal well-being, are extensive and compelling. Bunnings has treated growers reprehensibly, for many years and without consequence. We are taking this opportunity to again emphasise the urgent need to see Bunnings covered by the Code. Failure to do so risks discriminating against one category of fresh produce – plants – and will leave greenlife growers out in the cold, whilst giving Bunnings a free pass.

There is widespread support for Bunnings' inclusion in the Code:

- Today's Senate Supermarket Inquiry Report recommends that the Treasury amend the mandatory Food and Grocery Code of Conduct to explicitly provide that greenlife industries are captured by the Code; and the Code includes any large retailer that stocks food and/or grocery products.

- Agriculture Minister Murray Watt, former ACCC Chair Alan Fels and Independent Code Reviewer, Chris Leptos, all agree that the case to admit Bunnings to the Code has been made.

- Woolworths says Bunnings should be subject to the Code on the basis that is competes with the major supermarkets in some categories of groceries.

- GIA's public petition, calling on the government to include Bunnings in the Code, is approaching 5,000 signatures from growers and people supporting them.

- Grower Nick Powell's video in which he recounts his experience as a Bunnings supplier has been viewed over 170k times, with 1,400+ public comments posted, 98% of which are supportive.

We know that Bunnings dominates the plant retail sector in Australia in the same way that Coles and Woolworths dominate the grocery sector. It is in the public interest for such big retailers to face some scrutiny to ensure they don't abuse their market dominance and that growers are not unreasonably disadvantaged by the power imbalance. Our ask of the Review is a simple one: to include Bunnings in the same Code of Conduct that regulates Coles and Woolworths. Bunnings has nothing to fear from signing such a Code, and growers would be able to continue supplying Bunnings safe in the knowledge that they are protected from abuses of power.

Finally, we make the special plea to encourage recommendations to government which address the inequities experienced by greenlife growers now and during this Review. Please do not ask greenlife growers to make do with a voluntary arrangement which would inevitably fail. Missing the opportunity to address the obvious inequity now guarantees that we will back here again in the foreseeable future asking successive governments to address it. Meanwhile, greenlife growers are on their knees and plant nurseries are going out of business.

We believe that this can be avoided by creating a Food & Grocery Code that delivers on its stated intention to strengthen protections for suppliers - and for suppliers of perishable products in particular - by creating an instrument of regulation that it genuinely fit for purpose, now and into the future.

Since greenlife growers do not currently benefit from protection by the Code, we are focussing this submission on making the case for Bunnings to be admitted to the Code. In this submission we:

1. address Bunnings' rationale for remaining outside the Code, including their claims that they do not dominate the plant retail sector

2. explain why a voluntary arrangement will not work

3. clarify why greenlife growers cannot be protected by the Horticulture Code of Conduct

4. make proposals as to how Bunnings might be included in the Food & Grocery Code of Conduct whilst avoiding unintended consequences on other retailers

5. provide statements made by greenlife growers describing their experience of supplying Bunnings

GIA would welcome further engagement before the Review reaches its final conclusions. If Dr Emerson and the Secretariat would like to hear directly from greenlife growers we can facilitate this. To receive assistance with this, or any other aspects of this submission, please contact Joanna Cave, Chief Executive either by email jo.cave@greenlifeindustry.com.au or phone on 0468 368961.

Yours faithfully

Joanna Cave
Chief Executive

Contents

1. Bunnings' rationale for remaining outside the Code

Bunnings is not a supermarket
Notwithstanding the fact that plants are defined as a grocery under the Code, it is true that Bunnings is not a supermarket business as the Code defines it.

However, Bunnings is Australia's dominant retailer of plants and plants are defined as groceries under the Code. Other mainstream grocery categories defined by the Code and sold by Bunnings include pet food, cleaning products, household goods, electrical appliances, kitchenware, do-it-yourself products, flowers and gardening equipment.

Bunnings has continued to extend its range of grocery products with the recent expansion of a comprehensive pet care offer – described in its 2023 Annual Report as '*the largest category expansion for Bunnings in almost 20 years'* and that typically occupies a complete aisle in store.

The same Annual Report also suggests it is highly likely that further mainstream grocery categories will be included in Bunnings' physical store and/or on-line marketplace over the next few years: *'Bunnings has evolved from a warehouse model offering around 34,000 hardware and home improvement products to an omnichannel business with over 110,000 home, commercial and lifestyle products across its instore, online and marketplace offers. Bunnings is expanding its brand reach through the opening and expansion of stores, growing specialist retail brands and digital innovation.'*

Since the Code was struck, the grocery market has changed significantly. Big box stores such as Bunnings and Costco and online retailers such as Amazon and Catch are now a large and growing part of the grocery retail landscape in Australia, albeit not in the form of traditional supermarket businesses and are competing with supermarkets in some categories of grocery sales. This trend is only likely to grow. As such, the Code Review presents an opportunity to recognise this development and ensure that the Code is fit for purpose now and for the future.

Unfortunately, greenlife growers suppling Bunnings experience similar trading inequities as growers of fruit and vegetables supplying supermarkets which have persisted for many years. If it is accepted that Bunnings dominates plant retail and that growers are disadvantaged as a consequence, including Bunnings in the Code is the most immediate and best means of addressing this.

The Interim Report acknowledges that the Code exists to address '*the heavy imbalance in market power'* between suppliers and retailers. Highlighted within the Report is extensive evidence that *'the perishable nature of fresh products exposes them to greater vulnerability arising from market power imbalances'.* An important group of suppliers, greenlife growers, whose products are perishable, are not protected by the Code because the dominant retailer of their products, Bunnings does not meet the definition of a supermarket business.

Including Bunnings in the Code would require some relatively simple modifications to the Code. We believe this can achieved without making the Code unwieldy or creating unintended consequences for other retailers. Our proposed approach is set out from page 10.

Bunnings treats growers well and receives few complaints
This is simply not true.

Over many years, growers have spoken to GIA about their frustrations in supplying Bunnings. Time and time again this has been raised as the number one concern for many, many growers of all sizes in all parts of the country. We have spoken to some growers who are content with their relationship with Bunnings. Unfortunately however, they are in a fortunate minority – the majority of growers engaging with GIA report a very different experience. We know that growers want to supply Bunnings and we have been careful to acknowledge this. GIA's aim in asking the Review to extend the Code of Conduct to greenlife is to encourage a trading environment for growers that is reasonable and fair. Growers' accounts of the power imbalance and its impact on their business, not to mention their personal well-being, are extensive and compelling. Bunnings has treated growers reprehensibly, for many years and without consequence.

Two growers, Ms Karen Brock and Mr Peter Smith, appeared before the Senate Select Committee in Canberra to give evidence about their experience as Bunnings suppliers. Copies of their statements, plus a statement made by grower Nick Powell, are included from page 13.

As these accounts illustrate, in the absence of meaningful competitors, Bunnings is able to:

- dictate terms of trade
- set the prices

and

- control the supply of greenlife products in the retail supply chain

The ability of individual growers to challenge any of these arrangements and find last minute alternative markets for their plants is almost nil.

Bunnings does operate a confidential complaints procedure for growers. Bunnings points to this process as evidence of its commitment to providing a safe way for growers to express concerns, make formal complaints and seek remedies. Bunnings say that the existence and integrity of its complaints procedure is one of the reasons why it is not necessary for Bunnings to be subject to regulation via a Code of Conduct.

In a recent meeting with GIA, Bunnings acknowledged that some aspects of its confidential complaints procedure are not, in fact, entirely confidential. In any case, it is unsurprising that growers feel vulnerable, uncomfortable and cynical about relying on a complaints procedure owned and controlled by the same organisation they wish to complain about.

The Review has received extensive evidence about why the complaints processes currently owned and operated by Coles and Woolworths are not trusted by the growers supplying these retailers. There is no reason to suppose growers supplying Bunnings feel any differently: greenlife growers are completely powerless in their relationship with Bunnings and operate in a 'smile to survive' culture. Without a code of practice, growers have no way of expressing concerns or raising a complaint. The fear of retribution leading to loss of business is genuine, deeply felt and has been experienced.

Growers have nothing to gain – and a lot to lose – by criticising Bunnings. They are doing so because Bunnings dominates the plant retail sector in Australia, to a significant degree, and growers are enormously disadvantaged by this power imbalance.

The Code is not fit for purpose for Bunnings

In 2015 Wesfarmers contributed to, and voluntarily agreed to participate in the Grocery Code. Multiple statements were made at the time that the impacted buying teams should hold themselves to the standards that the broader community would expect of them. It is incongruous that this expectation of good buyer behaviour should not apply to other parts of the Wesfarmers retail portfolio, then or now.

They understood the need in 2015, what has now?

The following table summarises the key issues faced by greenlife growers supplying Bunnings and how the Code would help address these. If admitted to the Code, Bunnings would need to make changes to some of its business practices and behaviour but we have no doubt that it would be able to take these in its stride.

There is no doubt that a strengthened Code is fit for purpose.

Subject	Issue / behaviour	Grocery Code Solution
Contracts for supply	It is common practice that Bunnings do not issue contracts to greenlife growers. Indicative supply status is agreed with no commitment by Bunnings to volume or value with the supplier. Changes to agreements are often verbal, unilateral and applied retrospectively.	All suppliers must have a Grocery Supply Agreement (GSA) agreed in Good Faith by both parties. Clear provisions around how both parties do business together and what may be changed when and how. No retrospective variation to agreement allowed.
Acting reasonably & in good faith	Volume estimates are given to suppliers with an expectation for fulfilment. No written agreement is made. Changes to volumes, price and packaging are often made without consultation and reasonable notice. Suppliers are expected to absorb all costs associated with changes to supply conditions.	Good faith provisions prevent the retailer making unreasonable changes to an agreement. Reasonable notice must be provided to suppliers for any changes to orders or packaging. Retailer's costs cannot be offset to the supplier unless bi-laterally agreed in good faith.
Promotions	Promotions are generated by the retailer and funding of promotions is integrated into the condition of supply. Non-agreement to promotions would trigger cancellation of supply. Promotional funding is not agreed bilaterally between both parties and is not reflective of the risk and benefit to both parties.	Requiring supplier to fund promotions is prohibited unless both parties agree and the agreement is in good faith. The funding levels of the promotion by the supplier must be 'reasonable in the circumstances' – i.e. be commercially viable.
Payment for retailer's activities through rebates	Bunnings require suppliers to reduce their prices by 13-15% to a store whenever a new store is opened, a store has undergone an upgrade or minor refit. This is not an optional contribution. Recently Bunnings moved to an inhouse merchandising model. Suppliers were no longer able to access stores to assist in ordering and merchandising. Suppliers were charged an on-cost of 2% of invoice value to pay for the internal Bunnings resource. This was not optional.	The Code does allow a retailer to pass on operational costs to a supplier without the supplier explicitly agreeing. Merchandising is deemed to be an operational cost of the retailer. They may not unilaterally pass this cost on to a supplier.
Rejecting products	Plants are often rejected for arbitrary reasons. Reasons that are in many instances not documented or aligned with the supplier. There is evidence that some products are over-ordered from multiple suppliers and then some are rejected. The products rejected are not paid for and freight is charged to the supplier. It is not always clear on what grounds products have been rejected.	The Code requires clear product standards and specifications to be made available to all suppliers. Products can only be rejected if it can be clearly demonstrated that they fall short of a published specification. Product specifications can only be changed if the change is reasonable and timely notice provided to the supplier.
Packaging	Bunnings make regular changes to the packaging they require suppliers to provide plants in. This often includes size	Any changes to product packaging must be reasonable in the circumstances and shared in a timely manner.

	and colour of pots and the associated plant information labels. Little or no notice is given to suppliers of these changes and existing stock on hand of supplier's pots and labels is not considered. This represents a significant write down cost for suppliers.	If the product is deemed to be a private label product then the appropriate supply contract needs to make provision for changes to packaging.
Supply chain rebates	Pressure is put on suppliers by Bunnings to utilise their primary freight solution (i.e. delivery from nursery to store or DC). Non-agreement to the freight contract often leads to a reduction in orders from that supplier. For many suppliers the cost of the Bunnings primary freight agreement exceeds the cost of completing the deliveries themselves. The costs associated with the primary freight contracts are not representative of the actual freight costs incurred by Bunnings. Many suppliers have infrastructure in place to fulfil logistics.	The Code does not allow a retailer to put pressure on a supplier to agree to a primary freight agreement. Any agreements need to agreed in good faith and be reasonable in the circumstances. Not agreed to under duress. A reduction in orders through non-compliance to a freight agreement would likely be a breach of both the good faith and business disruption provisions with the Grocery Code. Any mutually agreed freight costs should be reflective of the costs incurred.

2. Bunnings' claims that that they do not dominate the plant retail sector

GIA firmly believes that Bunnings is the biggest retailer of plants in Australia, by a long way. We estimate that Bunnings' share of the plant retail market – that it, sales to the general public of plants for their homes, gardens and veggie patches – is approximately 70% of the national total.

Bunnings claims that it has a market share of 25-30%. This is not correct. Below we explain why:

Right number, wrong market

Bunnings bases its claim on the total value of the market, which they say is $2.9b. This is the right number, but the wrong market. In fact, it is the entire Australian nursery production sector that is valued at $2.9b. This number is the annual farm gate value of plant production, via multiple supply chains including retail, farms, landscape, revegetation and forestry.

The assessment of the value of the plant production sector at $2.9b is supported by GIA's industry data assembled over the past five years. This data has been independently collected by researchers Down to Earth Research and verified by economists ACIL Allen. GIA's data is also widely accepted as accurate by various government agencies including Hort Innovation Australia, ABARES and DAFF.

The same industry data values the Australian plant retail sector as worth $1.4b. It is this figure that is relevant to calculating Bunnings' share of the plant retail market. Bunnings is not part of the plant production sector, it is part of the plant retail sector.

How did Bunnings arrive at 25-30%?

It would appear that Bunnings has taken its annual plants sales data and calculated what proportion of $2.9b this represents to arrive at 25-30%. This calculation indicates that Bunnings' annual plant retail sales figures are $725m-$870m. Calculating these as a percentage of the correct market value of $1.4b shows that Bunnings' share of the plant retail market is between 52%-62%. This is much closer to our estimate of 70% than their claim of 25% and clearly demonstrates that Bunnings dominates plant retail, to a significant degree.

Growers supplying retailers are in the best position to know
Growers selling plants into the retail supply chain are best placed to judge how the market is made up. Simply put, it is only growers who know with certainty how many plants they are supplying to each retailer in the market. Growers also supply other plant retailers such as Mitre 10, IKEA, garden centres, supermarkets and lifestyle stores but together these retailers purchase a fraction of the plants that Bunnings buys.

Growers are unequivocal in their assessment that Bunnings dominates the plant retail market: it is not unusual for growers to depend on Bunnings for 80%+ of their business. Not one single grower we have spoken to accepts Bunnings' claims that its share of the plant retail sector is 25-30%. Most growers agree that 70% is about right - with some growers claiming it is higher.

The plant retail market is the sales of plants – and nothing else – to the general public
Bunnings describes their market as 'greenlife supplies' or' horticultural products'. These categories include products besides plants. Bunnings sells many garden-related items in addition to plants but these are not relevant to the debate. GIA's focus is on Bunnings as Australia's predominant retailer of plants. We make no comment about their sales of other products such as patio furniture, tools and decorative pots.

Including other sectors besides plant retail is misleading
Bunnings is suggesting that the plant retail and landscaping markets should be considered as one. We believe that they make this claim to try and demonstrate that growers have alternatives to Bunnings.

The idea that our ornamental production nurseries, growing plants for the retail supply chain, can pivot and sell these same plant products into the landscape, revegetation, fruit, vegetable or forestry supply chains does not reflect reality. Imagine a grower who has grown 20,000 indoor plants for Bunnings, who then declines to take them, trying to sell those same plants to a landscaper? Or a grower trying to persuade a council to buy 100,000 herb seedlings that Bunnings did not end up buying?

In the world of commercial plant production, this does not happen because plants produced for the various sectors that make up the nursery industry are specific to each supply chain, requiring different cropping infrastructure, investments, plant varieties, conditions, lead times and expertise. Rarely, if ever, are these supply chains interchangeable; nor do various supply chains have a common intersection point in the way that Bunnings suggests.

Bunnings says it has many competitors in plant retail: the opposite is true
Bunnings claim that it is but one of many plant retailers in Australia and that growers have plenty of other options for selling plants in what they repeatedly described at the Senate Supermarket Inquiry as a *'vibrant'* market. This misrepresents the truth which is that as Bunnings has expanded, the number of independent plant retailers in Australia has contracted.

Whilst independent garden centres and nurseries are an important part of the retail sector, they cannot compete with Bunnings either individually or collectively.

As a former Bunnings supplier, Boomaroo Nursery gave evidence at the Senate Supermarket Inquiry. At the end of their relationship with Bunnings, they were left with 60,000 plants that had been grown for Bunnings. Despite their very best efforts they could not find a single independent retailer able to take any meaningful number of these – even free of charge – and had to throw them away.

In truth, if Bunnings declines to take plants a grower has grown for them, which they reserve the right to do, the grower is left with very few options:

- no other plant retailers want – or can take – the same volumes of plants

- the landscaping and urban planning sectors are not alternative markets for plants grown for the general public
- there is no export market for plants

Bunnings is the biggest plant retailer in Australia in a highly concentrated market. This is why the majority of ornamental plant growers in Australia supply Bunnings. It is not unusual for such growers to depend on Bunnings for 80%+ of their business.

3. Why a voluntary arrangement will not work

We note the findings of the Interim Report that states that *'the existing Code is not effective'* and the firm recommendation that the Code *'be made mandatory'*. The Interim Report makes several observations about the *'compelling evidence that fears of retribution are real for most suppliers, especially smaller suppliers, and act as a powerful deterrent to making formal complaints under a voluntary Code*'.

It is for precisely these reasons that we believe any suggestion made to leave Bunnings outside the Code and instead rely on a voluntary arrangement negotiated between Bunnings and growers stands no prospects of success whatsoever. Bunnings has stated publicly and privately that it has no interest in being subject to a Code of Conduct. Even if GIA could overcome this, it is impossible to envisage any voluntary arrangement succeeding, given the failure of the current Code. Indeed, the voluntary Code has been widely condemned as a failed experiment. In its recommendations to strengthen the Code, it would appear that the Review agrees that a voluntary arrangement has failed suppliers supposed to protect.

Why, in these circumstances, would greenlife growers be asked to make do with a voluntary arrangement or Code?

4. Why greenlife growers cannot be protected by the Horticulture Code of Conduct

The Horticulture Code of Conduct aims to regulate wholesale markets. There are no such markets in the greenlife supply chain: typically, greenlife growers supply Bunnings and other retailers directly. Without substantial re-writing, the Horticulture Code cannot help greenlife growers. To test our understanding, we consulted the Department of Agriculture, Fisheries and Forestry who confirmed that greenlife growers supplying Bunnings cannot be protected by the Horticulture Code.

By contrast, greenlife growers' dealings with Bunnings are close in almost every respect to those experienced by growers of fruit and vegetables supplying the major supermarkets. A revised Food & Grocery Code of Conduct offers the best fit for greenlife growers and would be effective in addressing most of the inequities they experience.

5. Proposals for including Bunnings in the Food & Grocery Code of Conduct whilst avoiding unintended consequences on other retailers

The Interim Report acknowledges that the Code exists to address '*the heavy imbalance in market power'* between suppliers and retailers. Highlighted within the Report is extensive evidence that *'the perishable nature of fresh products exposes them to greater vulnerability arising from market power imbalances'.* Yet an important group of suppliers, greenlife growers, whose products are perishable, are not protected by the Code because the dominant retailer of their products, Bunnings, is not included in the Code.

Since the Code was struck, the grocery market has changed significantly. Big box stores and online retailers are now a large and growing part of the grocery retail landscape in Australia, albeit not in the form of traditional supermarket businesses. The biggest examples of these, such as Bunnings and CostCo, are competing with supermarkets in some categories of grocery sales. This trend is only likely to grow. As such, the Code Review presents an opportunity to recognise this development and ensure that the Code is fit for purpose now and for the future.

Consultation Question 8 in the Interim Report asks *'What additional protections are needed specifically for suppliers of fresh produce?'*. The answer for greenlife growers – the only suppliers within Australian horticulture who are without any protection - is to extend the Code to them by including Bunnings within it.

Including Bunnings in the Code would require some relatively simple modifications to the Code, as proposed below:

1. All retailers captured by the Code must meet the turnover threshold of $5b+ (as recommended in the Interim Report);

2. The first category of retailer, as already defined within the Code, should be amended to captures the retail supply of groceries in environments not traditionally thought of as supermarket, such as big box stores

3. The definition of supermarket business be changed to mean a business that sells material volumes of groceries including fresh produce, such as fruit, vegetables and/or plants;

4. Material volumes of groceries should be defined as annual sales of $500m+;

5. For the avoidance of doubt, only those categories of groceries defined under the Code should be subject to regulation;

6. These suggestions are made on the basis that the existing definition of groceries is not significantly altered.

Here is how these proposed changes might appear in a revised Code:

3 Definitions

In this code:

……….

"retailer" means a corporation with an annual turnover of $5b or more:

(a) to the extent that it carries on a supermarket business (including in environments not traditionally thought of as supermarkets) in Australia for the retail supply of groceries;

Or

(b) to the extent that it carries on a business of purchasing groceries from suppliers for the purpose of resale to a person carrying on a supermarket business in Australia for the retail supply of groceries;

"supermarket business" means a business under which a person sells ~~bread, breakfast cereal, butter, eggs, flour, fresh fruit and vegetables, fresh milk, meat, rice, sugar and other packaged food or most of those~~ a material volume of groceries including fresh produce, such as fruit, vegetables and/or plants.

"Material volume" means annual sales of $500m+ of groceries.

Including Bunnings in the Code whilst avoiding unintended consequences for other retailers

Our proposed changes would achieve several things:

- The annual turnover threshold of $5b+ would capture only those retailers that dominate the grocery sector and, through that dominance, create a heavy imbalance of market power between suppliers and retailers. Smaller retailers would not be impacted;

- Recognising retailers that supply groceries in environments not traditionally thought of as supermarket businesses, such as big box and online stores enables the Code to capture significant retailers that compete with the supermarkets and have the potential to dominate markets. This will also ensure the Code is able to keep pace with the changing retail sector rather than facing calls for more reviews in the near future;

- The requirement that supermarket businesses must sell fresh produce in their material volumes of groceries for the Code to apply is consistent with the Interim Report's recognition of the particular inequities experienced by the suppliers of perishable goods and would ensure Bunnings is captured;

- Limiting the application of the Code only to the groceries retailers sell would ensure that any non-grocery parts of their business will not be subject to regulation;

- No one will be left behind – greenlife growers would no longer be the only sector within Australian horticulture without code of practice protections;

- Unintended consequences on other parts of the retail sector would be avoided;

and

- The revised Food & Grocery Code, strengthened as envisaged in the Interim Report, would comprehensively address the failings of the current prescribed voluntary Code, thus ensuring it is fit for purpose, not just now but for the future.

If these changes were implemented today, only Bunnings would likely be admitted to the Code under the new definitions of retailers with annal revenue of $5b+ and supermarket businesses selling material volumes of groceries.

In years to come, as its revenue increases, CostCo would likely also meet the criteria. Major retailers of pharmaceuticals would not be captured, nor would online retailers such as Amazon and Catch unless and until they start to sell fresh produce. Alcohol retailers would remain outside the scope of the Code as alcohol is not defined as a grocery under the Code.

The Code could helpfully be renamed: The Food, Grocery & Fresh Produce Code of Conduct.

6. Statements made by greenlife growers describing their experience of supplying Bunnings

Bunnings almost broke us: why we had to walk away as told by Brocklands Nursery

Brocklands Nursery is a wholesale nursery supplying plants grown in our laboratory in Winkleigh, Tasmania. We grow a wide range of berry plants, fruits rootstocks and ornamentals.

Established in 1996, Brocklands is managed by my husband Tim Phillips and me. Today we employ eight regional staff and turn over $750,000 per year. We are an accredited nursery with a reputation as a high-health specialist grower, using the latest technology to propagate plants of a consistently high standard to supply to the agribusiness sector.

In 2003, we started supplying plants to Bunnings. We quickly became a preferred Bunnings supplier: we grew high quality plants which were locally produced rather than imported from the mainland. Demand grew quickly as Bunnings expanded across the state, opening new stores in Burnie and North Launceston and later in Mornington and Kingston. At the peak of our activity with Bunnings, our plants occupied 26% of the available store space in Tasmanian Bunnings stores.

Although Bunnings consistently purchased high volumes of plants from us, they did this without any contractual commitment. What this meant in practice was that we were encouraged by Bunnings to grow huge volumes of plants whilst they reserved the right to buy only some – or none - of these. At the peak of our business with Bunnings, 95% of the plants we produced were set aside for Bunnings – but without any certainty at all. This was a huge source of worry for us: if Bunnings didn't buy the plants we had grown for them, there was nowhere else for us to sell them.

Bunnings asked Brocklands to start growing water lilies for them. We were reluctant to do this as it required investment from us to set up the right growing facilities without any certainty that Bunnings would take the plants. Over three years, Bunnings pressurised us and eventually we gave in and agreed to invest $10,000 and started growing water lilies. Bunnings praised the quality of the plants and purchased every water lily we could grow in the first year. In the second year, we experienced a shock when, having allocated 5,000 water lilies to Bunnings due to their popularity, they purchased only 500 of these, despite having opened new stores in the meantime.

This was not the only time we risked an investment without any certainty of being able to recoup it. At the peak of our activity, we spent $150,000 on a robotic planter to so we could produce the volume Bunnings said it needed. Making such investments on the basis of informal arrangements posed a serious risk to our business: at one point we had $750,000 of plant stock grown for Bunnings without any contract from them to buy any of it.

On another occasion, Bunnings asked us to grow 700 plants for a special promotional campaign. There was huge build up to the campaign and we were put under pressure to ensure we had the plants ready on time. We were devastated when they took only six plants – and obliged us to deliver them to store, at our own cost. Obviously, we made a huge loss on that campaign: the 'no-ties' relationship with Bunnings hurt us again.

The obligations Bunnings place on growers to supply plants into stores are very unfair. We were required to deliver to any store in any location in Tasmania, at our own cost. Because Bunnings refused to commit to a minimum order, we sometimes found ourselves delivering only a handful of plants to Hobart (a six hour round trip), should the store require it. We were also required to supply plants at a discount whenever a new store opened or when an existing store was refurbished. Typically, the discounts demanded were 15%, plus the cost of transport. Often, we made a loss. A variation to the trading agreement by us for a minimum order of $300 was rejected.

When we first started supplying Bunnings, they only agreed to pay us on a monthly basis if we gave them a 'prompt payment discount' on our plant prices. We agreed to do this because we needed the cash flow. Once in place, we were paid promptly by Bunnings every time. The certainty of this payment kept us hooked; we told ourselves it compensated for the money we were losing – but it didn't.

After years of increasing uncertainty, we asked Bunnings for a contract. They refused. After ten years of supplying Bunnings without receiving any price increase at all, despite our own costs going up, we requested a price increase. It was refused. In total, Brocklands supplied plants to Bunnings for 13 years. In all this time, we succeeded in negotiating only one price increase which meant that we were selling plants at a loss for much of the time.

We noticed that whenever we raised a concern or challenged Bunnings' behaviour, they reduced the plants they purchased from us. I have no doubt that this was a form of punishment and a way of reminding us that Bunnings held all the power in the relationship. From 2012, Bunnings adopted an even tougher attitude to us. They became hostile and unpleasant to deal with and we were under enormous pressure to keep growing plants without knowing where we stood. The stress was so extreme I was genuinely worried that it would kill my husband Tim.

Eventually, in 2016 we realised that we could not continue supplying Bunnings. The lack of certainty, the obligations placed on us to give Bunnings discounts all the time and Bunnings' refusal to recognise our own cost increases meant our business was on the brink of collapse. We took the difficult decision to stop supplying Bunnings. This was a huge risk as we had to rebuild the business almost from scratch. As Bunnings dominates the plant retail market in Tasmania there were very few other places we could sell our plants. We opened a seasonal pop- up shop to sell plants directly to the public whilst we expanded our propagation business. We now specialise in growing plants from tissue culture in a lab. It was a huge gamble to break from Bunnings: in our fifties we were effectively starting again. But we don't regret it: it saved our mental health, our livelihood and our marriage.

We know many, many other growers still supplying Bunnings who suffer the same treatment we experienced. Because these businesses rely on Bunnings for their survival and they know that Bunnings has a reputation for being vindictive, they are too scared to speak out. At the time we were dependant on Bunnings, we would have felt the same way. It is only now that we are free of Bunnings that we can tell our story without fear of retribution.

We know that Bunnings exists to make a profit and we have no problem with this. In many ways, their expansion and success have been impressive to observe. However, our experience with Bunnings illustrates that they aggressively chase profit at the expense of growers' viability, well-being and even survival. They can do this because they are all-powerful and are able to exercise this power without any scrutiny at all.

If the government believes the supermarkets warrant regulation, we beg them to also consider the same approach to Bunnings. Just like fruit and vegetables, greenlife products are perishable: they require time and skill to grow and must be sold in high volumes to be profitable. Every grower I know agrees that Bunnings has a huge share of the plant retail sector in Australia: we estimate it to be 70% nationally and probably higher than that in Tasmania.

Government-mandated accountability is the only way Bunnings will do the right thing for the growers they rely on to put plants in their stores, for the benefit of home gardeners everywhere.

Karen Brock, owner Brocklands Nursery, 28 March 2024

Stepping off the Bunnings cliff as told by Boomaroo Nurseries

Starting as a small family market garden, Boomaroo Nurseries has grown into one of Australia's most prominent and thriving vegetable seedling and greenlife suppliers. In over 30 years of business, we have opened facilities in Lara, Victoria and Southbrook, Queensland, spanning over 17 hectares and employing 140 employees, with customers in Victoria, New South Wales, Queensland, South Australia and Tasmania.

In 2013 a decision was made to expand into greenlife products, starting with Cyclamen and later increasing the range to indoor foliage, ferns and succulents, which we supplied to Bunnings as the predominant retailer of plants in Australia.

In the beginning, Boomaroo's established vegetable seedling business arm subsidised the fledgling greenlife business unit. Bunnings actively encouraged us to expand our greenlife production, saying the more products it grew, the more likely Bunnings was to order from us. However, Bunnings refused to enter into contracts with us and instead asked us to grow plants for them in "good faith".

This gave us no security whatsoever and was not the way that we usually did business, but as newcomers to the greenlife sector, we accepted it. We were confident that as a sophisticated and experienced operator, we would be able to make it work. Ten years later our greenlife business was generating $8.5 million in annual sales, producing over 1.3 million units, 80% of which went to Bunnings. However, even though Boomaroo's plants were among the best quality on the market, the greenlife side of the business continued to run at a loss: our analysis showed us that it was break-even at best, and more typically ran at a loss.

We were carrying out a thorough analysis of why we were losing money, and in doing so identified the impact that Bunnings were having on the mental health of our team, the quality of our range and our profitability. The absence of a commitment to purchase was the biggest challenge. This way of working does not provide the clarity required to grow a living product to specification, in the correct volumes and at the right time. We were effectively growing huge volumes of plants entirely speculatively, which is in complete contrast to the way our vegetable business works.

Endless discounts

Bunnings operates a system of discounts (or rebates) which eroded our profit margins. For example:

- We had a 2% volume rebate and 1% marketing allowance, effectively a 3% deduction.
- We had to discount any plants purchased by Bunnings to supply a new or refurbished store, usually at a rate of 15%.
- We had to discount our plants by 5% if we wanted Bunnings to pay within 14 days, 3% payment in 30 days. If we accepted 60-day payment terms, no discount was required – but this meant the plants had likely sold to a consumer before we were paid for them.
- The more Bunnings purchased from us (% level above last year), the greater the price discount we had to make. 0.5% volume discount (known as LTI (Long Term Incentive) was not unusual, and as high as 1.5% in some years.

Some of these discounts might have been acceptable had we received from Bunnings a commitment to purchase from us but in the absence of this it made it very difficult to plan with accuracy and preserve profit margins.

Unreasonable demands

Bunnings also imposed operating requirements on us that we regarded as unreasonable. For example:

- Bunnings preferred that we used their transport system to get stock into store. This required us to deliver our plants to their nominated cross dock by whatever means possible and at our own cost. Bunnings then charged us an "agreed greenlife logistics fee" for transporting our plants into their individual stores by imposing further discounts on our plant prices, ranging from 15% to 28% depending on the requested store location. These costs and discounts were hard to predict and had a major impact on our margins.

- Over the years there were constant rule changes. We were asked by Bunnings to change pots and labels at the drop of a hat and at our own expense, and although we always agreed, these demands were disruptive and costly.

- We were encouraged by Bunnings to invest in the business to become more productive. We discussed with Bunnings our idea to invest in a new $4.5 million greenlife production facility, potting shed and equipment. They encouraged the investment and on this basis we went ahead. However, when we proudly invited them to tour our new facilities, they were completely disinterested. We were utterly deflated by this response which felt like a power game: it seemed to us that Bunnings didn't want us to feel in any way important to them.

Price increases

During and after COVID, Boomaroo's labour costs and input costs increased significantly, which was driving the need for a price increase in products we were losing money on. In August 2023, which was much later than we hoped, we met with Bunnings and openly explained the basis of our rising costs. We requested clarity from Bunnings on their planned orders (especially on plants with lead times of six months plus grow time), which we should have received by this time, and we requested feedback on our request for an increase in our plant prices which had been submitted some weeks earlier, acknowledging that if some were not achievable we would remove them from our range.

In response to the pricing issue, Bunnings advised that they were "not offended" by the proposal, and they gave us the impression they would strongly consider it, which gave us hope for the future. However, at the same meeting, Bunnings instructed us to cease production of indoor plants. This came as a shock to us and left with a stockpile of the inputs we had purchased to grow the indoor plants, including plugs that we are still taking delivery of 8 months later. Bunnings' decision, which came unexpectedly, immediately stripped $2.7 million of forecast revenue from our bottom line. We were also informed that the SA and NSW Bunnings stores would be taking considerably less volume from us as they had found local supply, and we would need to focus on Victoria from now on. During the same meeting Bunnings advised that our 'delivery in full on time' performance (known as DIFOT) had been poor over the last 12 months and that if it failed to improve, we could be dropped as a supplier. It's an unreasonable stipulation: without firm orders or prices, it's almost impossible to deliver in full on time.

By November 2023, nothing had improved for us and the losses on the products we supplied to Bunnings continued to accumulate. We were also carrying over $700k of stock that we had grown but had not been taken by Bunnings. Despite multiple requests to Bunnings, we had still not received a response to our requests for firm orders or feedback on a price increase. By November 2024, our losses were in excess of $600k and the nursery was in an untenable position.

The next team meeting at Boomaroo was grim. We made the decision to stop producing greenlife products. Over the following four weeks, we redeployed as many staff as we could but there were inevitable redundancies. One worker who we made redundant had been a valued employee for over 20 years. It was a heartbreaking time for us.

The end of Boomaroo Greenlife

Finally, after months of ignoring us, we received a phone call from Bunnings demanding to know why we had not told them about of our plans to shut down the greenlife branch and insisting Bunnings would have helped us, had they known. This response seemed ludicrous, given how candid we had been about our situation at the August meeting. Bunnings had actively avoided our numerous requests for feedback ever since.

We explained that the actions of Bunnings had forced us into a decision to stop greenlife production and to issue over 20 redundancies in total, as well as mothballing the facilities we had only recently invested in. Bunnings warned us, in cold and threatening language, against letting others in the industry know what had happened and said if we used words like 'closure' we "would never be let back in." We understood the message to be a threat and we realised we were facing a potential blacklisting.

In a call the following day, Bunnings adopted a more conciliatory tone and asked us to continue trading. We said that the only way we could consider this would be if Bunnings make substantial changes including issuing us with a fair, written contract that outlined products and quantities, with a shared responsibility for the waste generated through orders not taken. We said any future relationship would need to be a true partnership.

I made a note of the chilling response I received: "We are Bunnings. We do not do partnerships. We have suppliers. We think about our customers". I was appalled by this attitude and said so.

Our final engagement with Bunnings happened when they contacted us to offer the price increase we had requested months before and that they would purchase our remaining stock. This was insulting, in the circumstances, and felt an act of damage control on Bunnings' part rather than a genuine gesture. Nonetheless, we felt we had no option but to accept it to help mitigate our losses, as there are no other retailers large enough to purchase the volume of stock that we had grown for Bunnings. This was how our relationship with Bunnings ended.

I really thought we could build a solid relationship with Bunnings – but they are like an abusive partner who makes you feel like you're inadequate all the time, and then, when confronted, tries to make you feel small. Bunnings 'cliffs people'. That is, it constantly keeps you on the edge – emotionally and financially – and you can never be sure when they might push you off. I know Bunnings is a business and needs to make a profit – but they can surely balance making a lot of money with treating growers fairly and professionally and ensuring the future supply to their business.

Boomaroo continues to have a successful vegetable seedling business and we will survive our experience with Bunnings. But our experience took its toll on the business, our suppliers, and our staff. Boomaroo stands to gain nothing at all from sharing our story. But we know others in the greenlife industry who experience the same poor treatment from Bunnings. If there is a chance that our account influences the government to support smaller business owners that supply to Bunnings and improve and secure the future of the Australian Greenlife industry, then we are glad to contribute.

Peter Smith, CEO Boomaroo Nursery, 29 March 2024

The mental anguish of dealing with Bunnings as told by Stanmore Horticultural

I started Stanmore Horticultural in a cow paddock in the mid-1990s when my Fire Service career ended due to cancer. At its height, the nursery's annual turnover was around $1 million. After a chance meeting with Bunnings, I was signed up to supply general nursery lines and continued to do so for 17 years. Over time, I learnt that Bunnings' only interest is make money.

At first, the relationship with Bunnings worked reasonably well. They gave me verbal encouragement to build up my nursery, promising to buy more stock if I could provide more plants. Whereas I signed an agreement outlining my obligations to them, Bunnings' contract was unwritten – without as much as a handshake. Little did I know this is their standard practice, designed to control growers and ensure they are slaves to the corporation with no way out.

So, I expanded my business and didn't give much thought to other customers. It wasn't long before the realisation dawned that diversity in the retail nursery industry had suffered as Bunnings gradually depleted national competition by price undercutting through size dominance, supply chain control and aggressive marketing.

As Bunnings grew, their method of dealing with us hardened appreciably. Prices offered to my nursery were constantly pressured downward in real terms as inflation ate into profit margins and I had no bargaining power. On top of this, Bunnings made deductions from my invoices for items such being paid within 60 days. Plant purchases progressively lost continuity and thus affected not only cash flow to meet commitments but crucially prevented planning. Given that the production time for some plants was as much as 2–3 years, it was virtually impossible to plan appropriately to remain viable. A neighbouring nursery was crippled when Bunnings chose not to purchase the plant allocation they had made. This was a sobering moment for me.

Pressure further mounted as Bunnings issued more directives controlling conformity with pricing, labelling, presentation and delivery methods. The final straw for Stanmore Horticultural occurred when Bunnings denied us the right to deliver our own plants to stores. By developing their own freight systems, Bunnings imposed on each nursery whatever cost they desired to cover this expense (from memory it was between 15% and 20%).

This was the turning point for me. The mental strain of dealing with Bunnings had become unbearable – the uncertainty of no written contract, the risk of them not honouring their orders, the lack of capacity to plan, the increasing demands, the lowball pricing that meant it was hard to produce quality plants and still turn a profit.

In the end, I had to reduce staff to service debt and cope with reduced orders. After years of this financial and mental strain, I could not take it anymore. I said to my Nursery Manager, 'We need to stop dealing with Bunnings or it's going to kill us.' I meant it.

I spent time and money with my manager driving around the Eastern seaboard trying to get enough customers to survive without Bunnings. After 12 months of effort, I was finally able to inform Bunnings I would no longer deal with them. The long-term viability of my business is still impacted by Bunnings because they have driven so many smaller nurseries out of business but at least I no longer suffer the mental anguish of dealing directly with Bunnings.

It is beyond comprehension how the regulators allowed this behemoth was to enter the marketplace knowing that so many small businesses would go to the wall as a result. Over the past 30 years I learnt to cope with leukaemia, prostate cancer, lymphoma and other medical issues but not the unconscionable dealings of Bunnings.

Nick Powell, owner Stanmore Horticulture, 2 April 2024