



FMA | FRESH MARKETS
AUSTRALIA

SUBMISSION TO

Response to the

Food and Grocery Code

Exposure Draft

Competition Policy Unit

Treasury

Langton Cres

Parkes ACT 2600



Submission on the Exposure Draft of the Competition and Consumer

(Industry Codes—Food and Grocery) Regulations 2024

Fresh Markets Australia (FMA), as the peak industry body representing wholesalers and supporting businesses across Australia's six central fruit and vegetable markets, appreciates the opportunity to provide feedback on the exposure draft of the Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024. Our members play a critical role in the fresh produce supply chain, collectively employing over 8,000 individuals and generating an annual turnover of \$8 billion at wholesale prices.

FMA has actively participated in consultations on the Food and Grocery Code review, advocating for a regulatory framework that effectively addresses supermarket-supplier power imbalances, particularly in the fresh produce sector. This submission builds on our previous recommendations and reflects shared industry perspectives, aiming to strengthen the regulatory framework and enhance fairness in trading practices.

In our view, the Mandatory Food and Grocery Code is crucial for addressing the considerable market power concentrated in the supermarket sector, including large wholesalers. The measures outlined in the Exposure Draft, such as the two-tier penalty system, are tailored specifically to tackle the unique power imbalances that can distort trading conditions and relationships within this sector. By focusing on the distinct dynamics of the supermarket sector, the Code aims to ensure fair trading, transparency, and accountability where they are most needed.

SUPPORT FOR THE EXPOSURE DRAFT

FMA acknowledges that the Exposure Draft reflects key aspects of the feedback provided during the consultation process, including a shift towards a more robust regulatory framework for the food and grocery sector. FMA supports the following aspects of the draft.

Mandatory Code Implementation

FMA welcomes the transition to a mandatory code, which ensures that supermarkets and large wholesalers comply with fair trading practices. This step is vital for addressing power imbalances and ensuring the Code's provisions are enforceable and effective.

Good Faith Obligations

The inclusion of good faith obligations aligns with FMA's call for consistent standards across related industry codes, promoting fairness in commercial dealings throughout the supply chain.

Protections for Wholesalers Who Are Suppliers

The draft extends protections to wholesalers acting as suppliers, which FMA supports as a critical improvement for the fresh produce sector. FMA also supports the \$5 billion threshold for defining a "large wholesaler," which distinguishes larger entities with significant market influence from other wholesalers. This distinction is a positive step toward tailoring the Code's protections to reflect the different roles and risks associated with businesses of varying sizes.



Dispute Resolution Mechanisms

FMA endorses the draft's dispute resolution framework, which includes mediation and arbitration processes aimed at resolving disputes effectively, especially in the perishable fresh produce market.

Increased Transparency and Penalties

FMA supports the requirements for detailed grocery supply agreements and endorses the introduction of a two-tier penalty system, which helps deter non-compliance. We note that a Bill is currently being developed to amend the Act and apply a similar two-tier penalty approach to this Code. Given the significant market power held by supermarkets and large wholesalers, a stringent penalty framework is warranted in this context to ensure accountability and compliance.

REFINEMENTS TO FURTHER STRENGTHEN THE CODE

While the exposure draft presents significant progress, further refinements are recommended to strengthen the Code's effectiveness.

Incorporating Reporting Requirements for Large Players

To enhance transparency and accountability, FMA recommends introducing mandatory compliance reporting for large entities with substantial market power. Drawing from the UK's GSCOP, annual reports would require supermarkets and large wholesalers to document adherence to the Code, including staff training, dispute resolution practices, and corrective actions. This aligns with the two-tier penalty system rationale, where entities with significant market influence should meet higher transparency standards. Public disclosure of certain compliance aspects would improve market integrity, while ACCC oversight would ensure rigorous enforcement.

Enhanced Guidelines for Fresh Produce Provisions

The Code would benefit from more specific guidelines tailored to the characteristics of fresh produce, such as rapid dispute resolution for quality issues and protocols for managing rejected goods.

Shorter Review Intervals for Fresh Produce Provisions

Given the dynamic nature of fresh produce markets, a shorter review cycle for the new Mandatory Food & Grocery Code, of two years would help assess the impact and allow for timely adjustments to the Code.

Clarifying Standards for Reasonableness, Pricing, and Volume Forecasting

The definition of "reasonableness" should include clear, objective criteria, such as consistency with industry norms and fairness in supplier dealings, to reduce ambiguity and promote predictable outcomes.

Strengthening Confidentiality and Data Use Protections

The Code should include measures to protect suppliers' confidential information, ensuring it is used only for purposes agreed upon within supply agreements.

OUR CONTINUED INVOLVEMENT



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As the peak body for wholesalers in central markets, FMA wishes to take a leading role in supporting the rollout of the Mandatory Food and Grocery Code to educate wholesaler suppliers about their protections under the Code, while also highlighting the obligations that supermarkets/large wholesalers must meet. This includes providing training and resources to help suppliers understand their rights and how to ensure supermarkets are held accountable for compliance. FMA seeks to collaborate with government and industry to ensure the regulatory framework adapts to market needs. Our involvement, subject to appropriate funding, will support the interests of the fresh produce sector, promoting long-term resilience and transparency in the industry.

By actively contributing to the refinement of the Code and monitoring its adoption, FMA will help ensure that the intended outcomes are realised, and any emerging issues are promptly addressed. This proactive approach will support the long-term integrity and resilience of Australia's central markets, ensuring that fair trading practices are upheld and that suppliers can effectively navigate the protections afforded to them.

CONCLUSION

FMA commends the progress in the Exposure Draft and supports the proposed changes, including the \$5 billion threshold for defining large wholesalers and the two-tier penalty system. Incorporating structured reporting requirements, especially for large players with significant market influence, would further enhance transparency and accountability. This approach aligns with the principles underpinning the two-tier penalty framework, ensuring that regulatory obligations reflect the scale and impact of market power.

For further information or to discuss this submission in more detail, please contact:

[Name] | [Title] | Fresh Markets Australia | Phone: [Phone Number] | Email: fma@freshmarkets.com.au

We welcome ongoing dialogue and look forward to continued engagement on this important regulatory reform.



FMA State Bodies



The Queensland Chamber of Fruit & Vegetable
Industries Co-operative Limited



NSW Chamber of Fresh Produce Limited



Fresh State Limited



Chamber of Fruit and Vegetable Industries in Western
Australia Inc.



South Australian Chamber of Fruit & Vegetable
Industries Inc.