



ACCC Supermarkets Inquiry

2nd April 2024



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About AUSVEG

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

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

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

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

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

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

In many instances, the prices being paid by supermarket retailers for Australian grown vegetables are not fair or sustainable and this is making it increasingly unviable for some farming businesses to continue operating. The situation is so dire that 37 percent of growers in January 2024 indicated to AUSVEG they are considering walking away from their vegetable farming businesses. Meanwhile, recent quarterly profit results show Australia's grocery retail sitting in the top 10 percent globally.

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

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

Large retailers are the most effective mechanism to get fresh produce to consumers with *Harvest to Home* citing 78 percent of retail fresh vegetables are sold through Coles, Woolworths, and Aldi.³ What should be a mutually beneficial arrangement is, in practice, the opposite with the imbalance of power heavily weighing in the retailers' favour.

In fact, the relationship is so flawed that growers fear commercial retribution should they raise any issues with the retailer, or any of the other complaints mechanisms available, including the Food and

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

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

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

Grocery Code arbiters, the Food and Grocery Code Independent Reviewer or the Australian Competition and Consumer Commission (ACCC).

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 price and volumes that prevents growers making informed long-term fiscal decisions;
- Ever increasing compliance (and cost) burden placed on growers;
- Opportunistic purchasing, and leveraging wholesale market prices and volumes to manipulate growers;
- Lack of negotiation power in the retailer-grower transaction; and
- Questionable behaviour by retailers through action such as unauthorised deductions, unplanned specials, late cancellation of home brand packed orders, and carrying stock through from discounted 'specials' weeks into 'non-specials' weeks, to name a few.

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

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

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

Despite these major increases in the cost of production, many growers can produce evidence that prices they are currently receiving from retailers are equal to, or less than, prices they were receiving five, 10, or even more, years ago.

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

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

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

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

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

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

Furthermore, supermarket behaviour is driving significant food waste through unreasonably stringent product specifications and seemingly arbitrary rejections, overcalculation of supply volumes which leads to crops being destroyed, and home branded product that is rejected and most often needs to be dumped as it is not financially viable to re-package.

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

Given the existential threat this issue represents, questionable behaviour by retailers is now the vegetable industry's top priority and must be addressed to ensure the ongoing viability of fresh food production in Australia. With 98 percent of the fresh vegetables consumed in Australia produced domestically, any reduction in fresh vegetable production capability would result in higher prices to consumers through either more expensive imported product, increased domestic prices driven by lack of supply, or a greater reliance on imported frozen or processed vegetables. Globally, less than five percent of vegetable production is traded⁵ largely due to the perishability of the product, and low value. However, declining viability of the Australian industry could see increased instances of vegetable imports from countries such as China, Thailand and New Zealand.

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 percent⁶ of Australian children consuming the recommended daily serve of vegetables in Australia,

⁵ Van Rijswijk, C. 2018. 'World Vegetable Map 2018', Rabobank. <https://research.rabobank.com/far/en/sectors/regional-food-agri/world-vegetable-map-2018.html>

⁶ 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

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’.⁷

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 or food preparation 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.

Retailers use fresh produce as ‘clickbait’ to attract customers into their stores. 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. This is also why AUSVEG is advocating for a Code of Behaviour to better improve the behaviour of supermarkets towards the fresh produce category.

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

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

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

Outcomes of the current inquiries and reviews into Supermarket Pricing, Competition, the Australian Food and Grocery Code, and a review by the ACCC, have the opportunity to shape what Australians put on their plates in the near future, however AUSVEG also supports the outcomes from the previous 2020 ACCC inquiry into Perishable Agricultural Goods.

While the balance of power between the supermarkets and suppliers is inequitable, the industry supports a strong and profitable retail sector. Whilst AUSVEG supports the introduction of divestiture powers, largely as deterrent, it does not support any legislative interventions to manage market share in the current retail landscape. AUSVEG cautions against overzealous or overly prescriptive market

⁷ 2022. ‘Shifting the dial on vegetable consumption’, FVC and KPMG.

<https://static1.squarespace.com/static/5ddca44a3ac7644d97d9757a/t/633e2e9e396cdd49ccfa3ee9/1665019635620/FVC+Report+Final+041022.pdf>

interventions that could have unintended consequences to both suppliers and consumers. Global examples demonstrate that the introduction of additional competitors is unlikely to fix the power imbalance and could in fact worsen the situation (for example, via a competitive ‘price war’ that artificially drives down retail prices in the short term).

Some growers reference that the introduction of Aldi into the Australian retailer market actually worsened wholesale pricing due to Coles and Woolworths trying to match lower fresh produce prices in Aldi. AUSVEG believes that without behavioural and attitudinal changes by the retailers, the issues will continue regardless of the number of competitors in the market.

If the current retail climate prevails, there is a risk of more growers exiting the industry, with the resulting decline in supply leading to retail price increases, or worse, higher volumes of lower-quality imported produce.

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

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

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

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

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

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

Terms of reference

Market structure

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

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.⁸

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

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

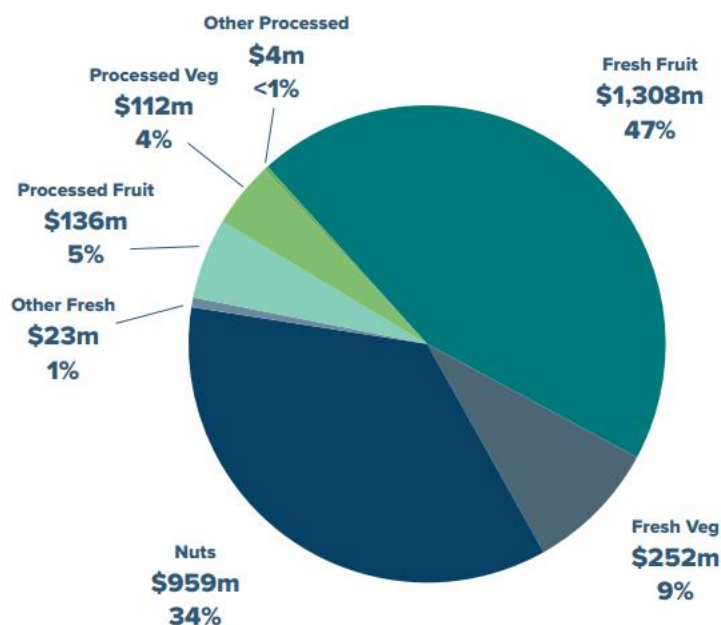


Figure 1: Australia’s fresh vegetable exports are only 9% of horticultural exports due to perishability.¹⁰

⁸ ‘Harvest to Home’, Hort Innovation. Viewed 18 Jan 2024. <https://www.harvesttohome.net.au/vegetables/latest-highlights/total-vegetables>

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

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

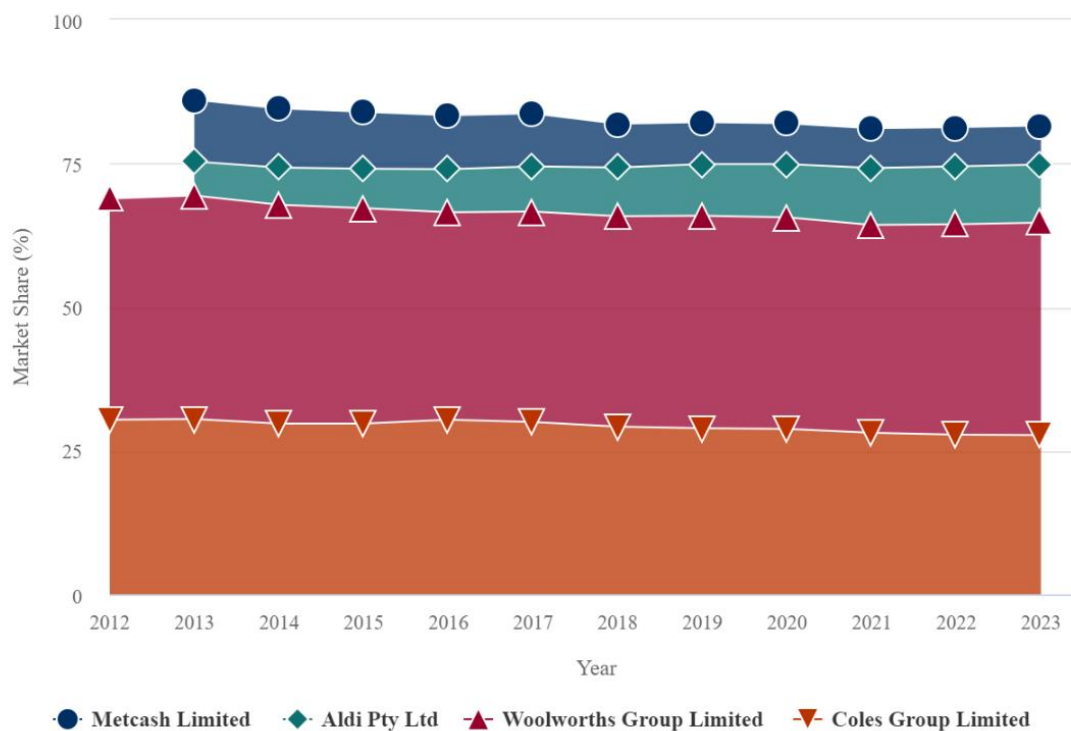


Figure 2: Coles and Woolworths hold 65% of the market share of supermarkets and grocery stores in Australia.¹¹

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

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

Data shows that 2023 supermarket profits in the UK and Europe have not been as high as Coles and Woolworths and the gap continues to widen. UK chains made up to 3.8 percent profit, while Australian retailers made up to a record high (doubling some UK profit margins) of 5.9 percent.¹² Various resources state that this is due to competition, but given factors such as the geography of Australia, and significantly less population, it is hard to make an exact comparison.

There are currently similar reports of unconscionable behaviour by retailers in the UK with the government also conducting a review of the fresh produce supply chain¹³. A survey of British farmers in July 2023 found that 53 percent considered their farm to be at financial risk with almost half (49 percent) believing they will have to give up their farm in the next 12 months¹⁴. Fruit and vegetable farmers are asking for five commitments by supermarkets to provide sustainable farming in the UK:

- Buy what you committed to buy
- Pay on time

¹¹ 'Australia Market Overview 2023', Hunt Export Advice. <https://www.huntexportadvice.com/post/australia-market-overview-2021>.

¹² Barrett, Jonathan. 27 July 2023. 'Australian food giants making more profit from grocery sales than overseas peers', The Guardian. <https://www.theguardian.com/australia-news/2023/jul/27/australian-supermarket-profits-rise-woolworths-coles>

¹³ 'Contractual relationships in the UK fresh produce industry', Department for Environment Food and Rural Affairs. Viewed 15 February 2024. <https://consult.defra.gov.uk/supply-chain-fairness/contractual-relationships-in-the-uk-freshproduce-i/>

¹⁴ 'Save British family farms', Get Fair About Farming. Viewed 24 January 2024. <https://getfairaboutfarming.co.uk/>

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

These points are very consistent with many of the issues being raised by Australian vegetable growers.

Furthermore, if the retailers behaved in a fair and reasonable manner growers in some cases could potentially make a profit without even having a price increase. Better behaviour would mean better value for consumers, and better pricing for suppliers. AUSVEG believes that Australian retailers, just like other retailers globally, use fresh produce as the leverage or lure to get customers in stores, or as we have said, they use it as 'clickbait', and because of the perishability and lack of market options, retailers have been able to screw growers down to the lowest prices. AUSVEG believes that additional competition will not see retailers' use of fresh produce category or treatment of suppliers improve.

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

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

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

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.

From discussion with industry it appears that both Coles and Woolworths treat their suppliers similarly and some of the issues, such as rebates, are common across both suppliers. Our research has found that in different states and in different categories, one or another supermarket may have a better or worse reputation, but this is not consistent across the country.

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

- a fair return for their produce
- greater equity in the relationship
- greater contractual certainty
- improved corporate behaviour and culture toward their suppliers.
- a code of behaviour that recognises the importance of the fresh produce category

Price and non-price competition

AUSVEG research and feedback from growers identifies that price matching is very common between the two large retailers, and also between the two large retailers and outlets like Aldi. There is constant

pressure on growers by the retailers to match their competitors specials even when the price for the weekly orders has been decided on.

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

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

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

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

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

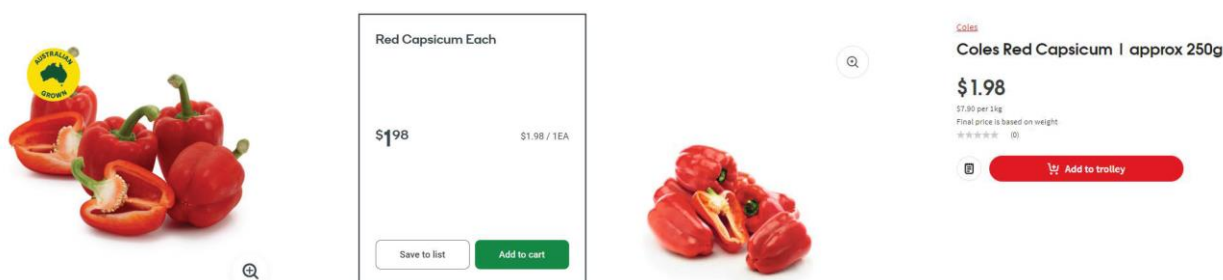


Image: Comparison of Woolworths and Coles red capsicums prices via online shopping December 2023.

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

As mentioned previously, the placement and pricing of fresh produce in a store is not accidental, and the weekly specials are always prominently displayed at the store entrance.

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

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

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

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

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

De-valuing the category

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

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

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

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

Staple vegetables such as potatoes and onions tend to have relatively low price elasticity, meaning that changes in price may not significantly impact consumer demand in the short term. Other vegetables, not viewed as staples, tend to have higher price elasticity. Weather induced shortages can see extraordinarily high prices at times, due to lack of availability, and therefore customers will seek cheaper alternatives, however little consideration is given to the pricing behaviours of supermarkets around very low pricing, and what we would call as irresponsible pricing.

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

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

attract customers, whilst squeezing extra profits out of farmers by paying low prices for fresh fruit and vegetables.¹⁵

These practices were formally legislated in 2023 under the Egalim 3 Act.¹⁶

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.

This means that some product prices increased at the supermarket, with an estimation of increased food costs for households up to three Euros per month. A national survey found that over half of consumers were willing to pay more for groceries, only if the margin made by supermarkets from increased prices went to paying farmers more.¹⁷

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

Branding

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

Branded produce can:

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

¹⁵ Elzas, Sarah, 2 January 2019. 'French supermarkets increase food prices – will farmers benefit?', Radio France Internationale. <https://www.rfi.fr/en/economy/20190201-french-supermarkets-increase-food-prices-will-farmers-benefit>

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

¹⁷ 'Many French shoppers willing to pay more for food to help farmers', Radio France Internationale. 25 July 2015. <https://www.rfi.fr/en/economy/20150725-many-french-shoppers-willing-pay-more-food-help-farmers>

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

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

Pricing and margins

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

There were examples of products retailing for less than the grower was paid, and other examples of markups in excess of 350 percent. AUSVEG acknowledges that there are many different elements to consider when setting a product's retail price, but in most retail settings the supplier sets the price and the retailer decides whether they can move the product and make margin. In supermarkets – and particularly for fresh produce – the retailer sets the price, often leaving the grower with few options but to take it.

The ACCC states that it is not illegal to respond to price competition by offering lower prices¹⁸. However, if supermarkets were honouring supply agreements and supplier relationships, and setting fair retail prices for consumers, it's unlikely that so many products would be exactly the same price in both supermarkets at the same time, unless supermarkets have compared and matched prices. These tactics, according to growers, are commonly used by retailers to push down the price paid to suppliers, by advising that they must drop their price because their competitor has. Rather than the retailer wearing the loss to hold an unplanned promotion, they force the supplier to take the loss instead.

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

AUSVEG supports Recommendation 4 of the ACCC's *Perishable Agricultural Goods Inquiry*, that "governments and industries should explore measures to increase price transparency in perishable agricultural goods industries."¹⁹

Controlling volume

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

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

¹⁸ 'Competition and anti-competitive behaviour', ACCC. Viewed 31 January 2024. <https://www.accc.gov.au/business/competition-and-exemptions/competition-and-anti-competitive-behaviour>

¹⁹ 'Perishable Agricultural Goods Inquiry – Final Report', ACCC. November 2020. Page 130. <https://www.accc.gov.au/system/files/Perishable%20Agricultural%20Goods%20Inquiry%20-%20Final%20Report%20-%20December%202020.pdf>

the wholesale market and buy from market agents, then advise the grower that the wholesale price is low, and therefore put pressure on the grower to accept lower prices.

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

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

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

Reports of this sort of behaviour have previously been raised with the ACCC which has noted that retailers are using harmful bargaining tactics by changing supply volumes for perishable products at very short notice, after volumes have been agreed to.²⁰

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

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

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

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

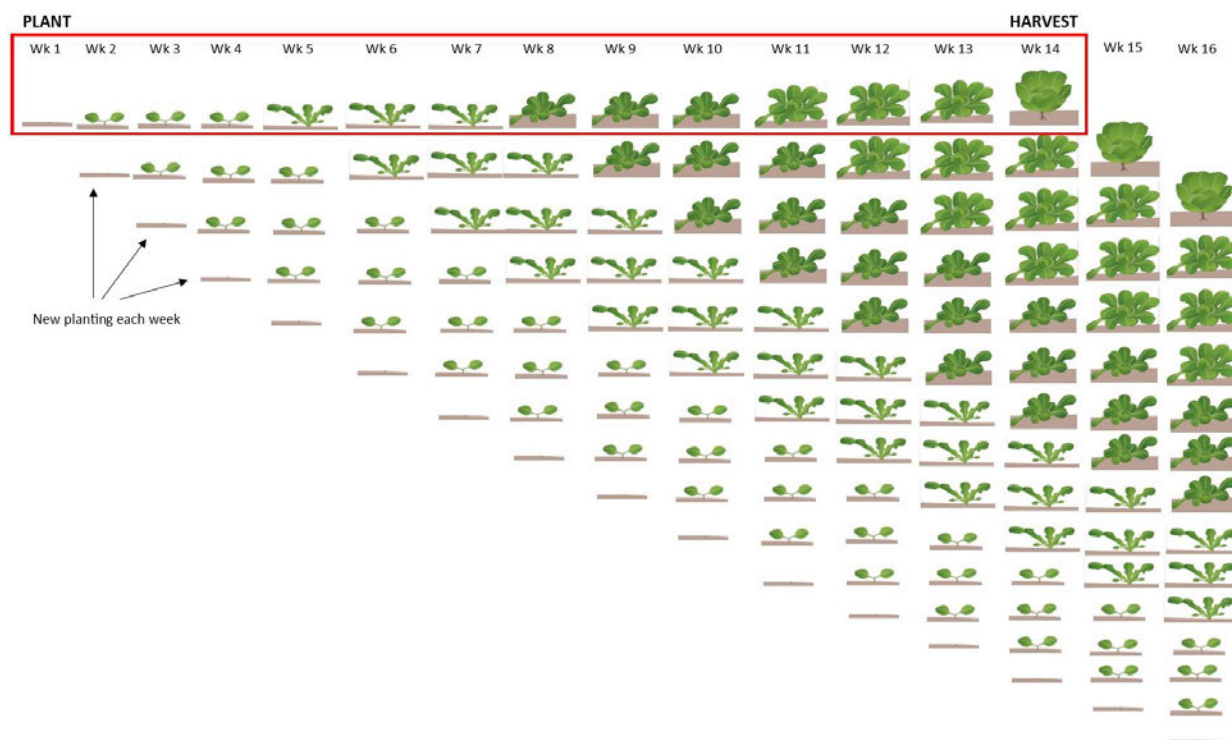


Figure 7. The lifespan of a lettuce crop.

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

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

Industry trends

Data

The retailers hold a vast amount of data from both a supply and demand perspective to optimize their operations, improve customer experience, and most importantly to increase profitability. Retailers also have the benefit of both real time data but also vast banks of historical data. Historical sales data and long term market trends assist in relatively accurate predictions on the future demand for products.

Sales data also helps supermarkets understand the price elasticity of various products, which refers to how sensitive customer demand is to changes in price. By analyzing sales data alongside pricing changes, supermarkets can determine the optimal price points that maximize revenue.

Unfortunately the data flow between retailers and suppliers is very asymmetrical, and suppliers are not able to access this data readily unless they are prepared to pay substantial fees to purchase the data from companies such as Cartology which is owned by Woolworths.

Online retailing

While online grocery shopping offers convenience and time-saving benefits, the tactile and sensory aspects of selecting fresh produce remain important factors that drive many shoppers to prefer in-store shopping, especially for items like fruits and vegetables. Data from Harvest to Home states that just 4%

of all fresh vegetables' dollar sales over the past year were purchased online, but it recorded a significant 31% dollar growth compared with the year prior.²¹

Whether this trend will continue depends on whether consumers opt for convenience over the ability to buy seasonal, fresh, produce that meets their sensory expectations.

Barriers to entry and expansion

As mentioned in our introduction, AUSVEG does not necessarily believe that the introduction of additional retailers into the landscape will improve the conditions for growers supplying to the existing retailers. Unlike some grocery lines there are multiple outlets for fresh produce such as farmers markets, independent retailers, greengrocers and the major retailers such as Costco, Aldi, IGA/Metcash, Coles and Woolworths. Therefore it could be argued that there is already a competitive environment for fresh produce.

The introduction of Aldi into the market, saw additional price pressures on growers as Coles and Woolworths tried to price match Aldi's fresh produce offering.

AUSVEG maintains that regardless of the number of competitors it is the retailers' behaviour, and treatment of fresh produce that actually needs to improve.

Consumer experiences

Whilst Australian consumers may be attracted to specials this does not necessarily translate to increased consumption overall. In 2022, 97 percent of men and 90 percent of women did not eat the recommended daily serve of vegetables²², and this trend is on the decline compared to 2017-2018.

The prevalence of supermarket specials²³ is not promoting or encouraging Australians to meet the Australian Dietary Guidelines by consuming more vegetables. To increase vegetable consumption a behavioural change campaign is required, supported with a range of measures such as product labelling and product promotions. The current commoditisation of vegetables by retailers is not supporting health awareness or vegetable consumption. Further, their current policies do not support growers or industry to advocate for increased vegetable consumption.

Grocery supply chains

The supply paths of fresh produce into retailers is varied although without having transparency of retailers' supplier base it is hard to know the exact breakdown. However, it appears that a majority of the fresh produce provided to retailers comes through direct supply arrangements from vertically integrated supplier businesses. Whilst these suppliers may grow some or all of the produce, they may source product through contracts with other growers/suppliers, or more flexible/ad-hoc supply arrangements. These suppliers are typically 'preferred suppliers' and implement a range of requirements to meet the retailers supplier expectations, such as food safety programs.

Further to vertically integrated supply businesses, retailers source product from 'preferred supplier' wholesalers, often based in the wholesale markets. Suppliers are also aware that the retailers will source product from other suppliers (growers, packers or wholesalers) that are not 'preferred suppliers'.

²¹ <https://www.harvesttohome.net.au/vegetables/case-studies/alternative-channels>

²² 'Dietary behaviour', Australian Bureau of Statistics. 15 December 2023. <https://www.abs.gov.au/statistics/health/health-conditions-and-risks/dietary-behaviour/latest-release>

²³ 'Coles helps make "healthier living" easier and more affordable', Coles. 10 February 2021. https://www.colesgroup.com.au/FormBuilder/Resource/module/ir5sKeTxxEONDzd00hWJw/file/100221_Media_Release_Coles_helps_make_healthier_living_easier_and_more_affordable.pdf

Once again, without retailer intelligence it is hard to estimate how many direct vegetable suppliers there are to the major retailers but it thought that there may be several hundred, given the large number of SKUs within the vegetable sector.

There does appear to be a significant variation in the number of suppliers providing single SKUs. As far as AUSVEG can ascertain, for some vegetable lines there may be only a few major suppliers, but in other vegetable lines there could be 20 or more.

It does appear that the number of suppliers is also manipulated by the retailers to provide market tension and competition, with growers saying that once they have identified that they may be a major supplier with some influence in the retailer relationship, the retailer will try and introduce additional suppliers to add some competition and reduce the power of the supplier. There have been multiple reports of this happening over the last 12 months, which is causing some destabilisation in the industry as growers are becoming wary of investing in new plant and equipment based on their current arrangements with suppliers.

Competition in grocery supply chains

Retailers are reducing competition along the supply chain through either nominating a single service provider that it requires its suppliers to use (such as fresh produce crates) or by becoming service providers in the supply chain (such as freight).

Retailers are also putting additional costs on suppliers through enforcing extended leasing arrangements for items such as produce crates and pallets. Retailers have between seven and 30 days to return pallets to the pallet provider once they have been delivered into the store, and it is the supplier which foots the bill for the duration of leasing period. This may make sense for shelf stable products that may sit on pallets for days, if not weeks, but much fresh produce has a very short shelf life and therefore de-hire time frames are unethical. It could be conceived that fresh produce is actually subsidising shelf stable products given the very long de-hire days for Costco and Aldi.

There are wide ranging stories about freight costs for growers and the use of retailer freight companies such as Primary Connect. In some regions in Australia there are very few freight options available, and growers are already disadvantaged due to lack of competition. Growers advise that in some regions Primary Connect contracts services through local freight companies, and there have been increases in their freight costs.

Trading arrangements

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

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

Compare this to the retailer, who will be dealing with a multitude of individual suppliers and will have a comprehensive picture in relation to overall availability, location, supply, market conditions, consumer demand and price. The perishability of vegetables (as little as three days²⁴) further weakens growers' bargaining power, as they are often compelled to accept unfavourable terms to avoid crop losses, product spoilage and to maintain cash flow.

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

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

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

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

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

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

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

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

Contracting practices

Grower suppliers who become 'preferred suppliers' to the retailers typically have a vendor agreement they sign at the start of the supply arrangement which sets out the terms of trade and then they have supply agreements which reflect supply arrangements. Neither the 'vendor agreement' or the 'supply agreement' provide contractual certainty for fresh produce suppliers. Grocery supply agreements typically include indicative or forecast volumes of produce which is to be provided on a weekly basis. Supply agreements typically don't include price, which is usually negotiated on a weekly basis at the time of harvest. Many of these supply agreements are only for three or six-month periods although

²⁴ 'Fruits and vegetables that last: how to store produce properly', Queensland Government – Department of Environment, Science and Innovation. Viewed 16 January 2024 <https://www.des.qld.gov.au/our-department/news-media/down-to-earth/fruits-and-vegetables-that-last>

some longer-term supply agreements (12 months) do exist, particularly for ‘hard vegetables’ (potatoes, onions and carrots).

The lack of longer contracts or supply certainty make it very difficult for suppliers to make long-term business or investment decisions. Growers are seeking more certainty in their supply agreements and would like specifically designed contracts that reflect the seasonal nature of fresh produce, as well as some the complexities of growing and harvesting fresh produce (such as weather events).

How the weekly price negotiations are undertaken is explained below however prices agreed on include freight to the nominated DC.

Rebates

One of the most contentious issues for growers is the issue of rebates. When suppliers sign their vendor agreements they commit to payment terms which either includes a rebate or not. All growers that AUSVEG has spoken to have an agreement which includes a rebate. Rebates seem to vary between growers, the basis for the calculation of the rebate is unclear, but terms between 2.5% - 5% seem to be typical, although we are aware of rebates as high as 7%.

The rebate is deducted from the final invoice for what suppliers reference as ‘early payment’. For some growers this is 7-days, others 14-days and some longer. It is unclear what the payment terms are if suppliers do not opt for the rebate option, although 60 or 90 days has been mentioned by growers.

A common experience outlined by growers is that growers need to elect at the start of their vendor agreements with retailers whether they are going to opt into the rebate option or not. Many of the growers that AUSVEG has consulted with signed their vendor agreements years ago and are not exactly sure what the options were, apart from advising AUSVEG that payments terms without a rebate were very long, and therefore not a consideration.

Suppliers to the retailers do not understand why rebates exist if agreed payment terms are negotiated in good faith – some growers have conveyed the view that retailers are effectively ‘double dipping’ – given the regular and robust price negotiations that occur weekly. Given the highly perishable nature of many fresh vegetables, and short ‘best before’ or ‘use-by’ dates, suppliers are baffled as to why payment terms without rebates are excessive (30 days, 60 days or more).

Unfair contract terms

The new unfair contract terms (UCTs)²⁵ reforms that commenced in 2023 are a good step forward, however they do not typically address anti-competitive behaviours in the horticultural supply chain or broader economy.

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

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

Whilst the growers submit their weekly quotation with volumes and price, they are frequently advised by retailers that they will not receive any orders unless they reduce their price to one indicated by the

²⁵ ‘Unfair contract terms reforms commence’, Australian Securities & Investments Commission ASIC. 9 November 2023. <https://asic.gov.au/about-asic/news-centre/news-items/unfair-contract-terms-reforms-commence/>

retailers as being competitive with other quotes. There is no transparency around this process and for all the growers know, the price they have been advised is entirely arbitrary.

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



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

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

Unfair trading practices

Australian Consumer Law (ACL) currently does not have adequate protections against the multiple unfair trading practices that are known to occur in Australia. As outlined in the Consultation Regulation Impact Statement²⁶, there are a number of examples that cause harm to businesses that are not captured under existing provisions in the ACL. These include practices that:

- Are not misleading or deceptive but still distort consumer or business choice;
- Do not reach the threshold of unconscionable conduct;
- May result in financial or other detriment but relates to:

²⁶ 2023 'Protecting consumers from unfair trading practices', Australian Government - The Treasury. Page 11. <https://treasury.gov.au/sites/default/files/2023-08/c2023-430458-cris1.pdf>

- Matters that do not form part of a standard form contract; or
- Actions relating to entering into terms and conditions, rather than their content.
- Are not a specific practice currently prohibited by the ACL.

AUSVEG is hoping that the Treasury’s consultation on unfair trading practices in 2023, to which we lodged a submission, will result in positive changes for the horticultural sector.

Fear of commercial retribution

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

As the *2022-23 Annual Report from the Grocery Code Independent Reviewer* confirmed, 23 percent of fruit and vegetable suppliers fear retribution if they raise an issue with their retailer buying team.²⁷

Fear of retribution: all respondents by product category

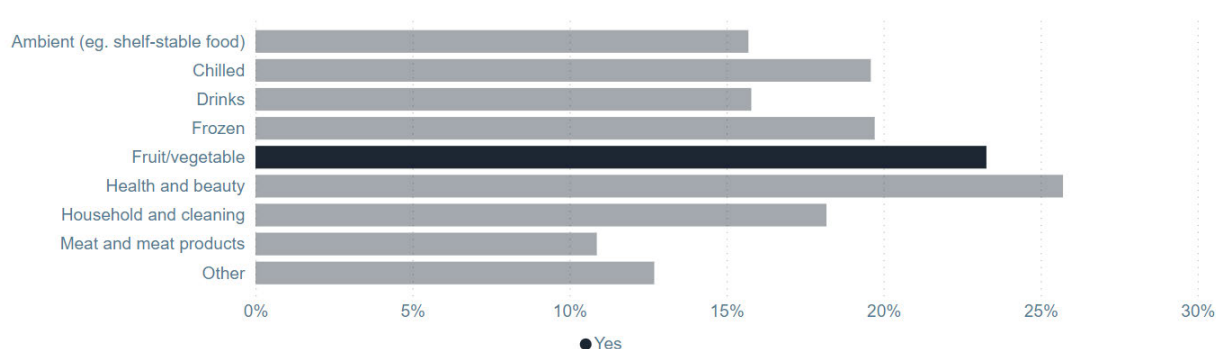


Figure 4: Bar graph depicting that 23% of fruit and vegetable growers fear retribution if they raise an issue with their retailer buying team.²⁸

Buyer power

Supermarket buyers wield significant influence over suppliers through their purchasing decisions, requirements, and negotiation tactics. Whilst suppliers must carefully manage these relationships to ensure profitability, sustainability, and long-term success in the retail supply chain, they are at a disadvantage due to the asymmetrical data and information flow.

Growers are aware that supermarket buyers must meet KPIs as this is often relayed to the grower when buyers are exerting undue pressure on the grower. However the buyer behaviour is also linked to the supply and demand of the product at the time, and what other retailers are doing.

Restrictive trading

²⁷ ‘2022-23 Annual Report’, Australian Government – Food and Grocery Code Independent Reviewer. <https://grocerycodereviewer.gov.au/reports/annual-reports/2022-23-annual-report>

²⁸ ‘2022-23 Annual Report’, Australian Government – Food and Grocery Code Independent Reviewer. <https://grocerycodereviewer.gov.au/reports/annual-reports/2022-23-annual-report>

Restrictive trading occurs when a retailer imposes a condition requiring the supplier to acquire goods or services from a particular, unrelated, third party. The conditional supply may relate to the product itself or to the supply of the product at a particular price or discount.

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

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

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

Respond to shocks or changes in the operating environment.

Vegetable growers often face challenges when adverse weather events occur, as these can significantly impact their crops and livelihoods. Whilst some vegetable crops are able to be grown under protective cropping a large percentage of vegetable crops are still grown in-field, and therefore susceptible to weather conditions.

Whilst weather events can have a catastrophic impact on growers it is, to some extent, part of normal farming operations. What is increasingly difficult for growers is a) the increasing number of adverse weather events due to climate change, and b) the inability to recoup losses due to relentless downward price pressure from retailers. These factors combined are now causing growers financial strain and the financial resilience of vegetable growers is potentially the lowest it has ever been.

However, there are other shocks in the operating environment that growers would rate as a higher risk than weather events. In recent years this includes significant changes to industrial relations, the Pacific Australia Labour Mobility scheme, migration and labour costs. Further a survey in 2023 by the Global Coalition of Fresh Produce that Australian vegetable growers had a 37% increase in input costs over the last two years. Global events continue to have a dramatic impact on input prices, largely due to the fact the a majority of farming inputs come from overseas, such as fuel, fertilizers, chemicals, seeds and packaging.

Retailers have been quick to point in the media that grocery price increases are due to the high-inflation environment, wages and whilst they state that suppliers have made requests for price increases, they fail in their submissions to the Senate Inquiry to actually clarify how many of the price increase requests they accepted.

Impediments to undertaking investment necessary to support your business

As mentioned, the lack of contracts, and longer-term agreements, as well as lack of long term price indications, makes financial planning and forecasting very difficult for vegetable suppliers. Further, growers cite compliance and regulation, lack of an appropriate labour source, and lack of appropriate resources (land, water, energy) as additional barriers to making investments in their businesses.

In the recent AUSVEG survey, 31 percent of growers said one of the key reasons for exiting the industry is “Lack of operating profit to undertake capital improvements and innovation”.

Managing risk and uncertainty is becoming increasingly difficult and is a key reason vegetable growers are looking to diversify or exit the industry altogether. With unprecedented input cost increases, weather events and relentless margin squeeze the industry is at a critical juncture.

OTHER ISSUES

Compliance

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

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

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

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

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

Duplication and multiple complexities

There are multiple examples along the supply chain where the specific needs of the major retailers create duplication and additional complexities for growers. For example, Coles and Woolworths both have separate fresh produce crate requirements, so any grower supplying to both retailers has to have two different crate accounts. A recent AUSVEG survey showed that 71 percent of growers believed standardising crates would have a positive or very positive impact on their business.

Product specifications that vary between all retailers for some SKUs also create duplication. Whilst there are some positives to having varying specifications, there are also significant disadvantages such as packed produce which meets one retailer's specifications cannot be guaranteed to meet another's.

Waste

Vegetables and bagged salads are two of the top five most wasted foods in Australia.²⁹

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

²⁹ 'Food waste facts', OzHarvest. Viewed 30 January 2024. <https://www.ozharvest.org/food-waste-facts/>

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

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

Twenty-eight percent of fruit and vegetable growers in a recent survey indicated that their biggest business concern in 2023-2024 was the amount of produce that was going to be rejected by commercial buyers over the next 12 months, and that 23 percent of commercial buyers often reject an entire pallet over one 'bad apple'.³⁰

Where does milk come from?

Australian supermarkets have pushed the increasing divide between consumers and agriculture, through their mismanagement of the fresh produce category. Multiple surveys in Australia prove the increasing ignorance of consumers in relation to where their food comes from, how it is produced, when and where it is produced, and the vulnerability of the supply chain.

Recent media has highlighted several examples of consumer outrage at having to pay \$9.90 for a head of cabbage, \$11 per kilogram for broccoli, or why no one can buy a tin of beetroot in Australia. Consumers have grown to expect that vegetables, like washing powder or cooking oil, should be available seven days a week, 52 weeks a year.

Consumers do not understand that brassicas are largely a winter crop, and that supply during the peak of summer can be limited, or that a storm across a key growing region such as Gippsland or the Lockyear Valley could destroy hundreds of acres of crops and cause a shortage of supply.

The floods in Australia in late 2022 saw head lettuce selling for \$12 each, and once again outrage from consumers that their hamburger staple was being replaced with cabbage or there was no iceberg lettuce in their green salad. Combing through the news stories and online comments, there was little concern or consideration for growers who had been wiped out and suffered millions of dollars of property damage.

AUSVEG believes that the retailers have been reckless in their management of the fresh produce category, including devaluing the category through pricing, promotion and other retail management strategies. AUSVEG wants to see a 'Code of Behaviour' introduced to prevent ongoing mismanagement of the category and to increase the value perception of the category by Australian consumers.

³⁰ 'The Farm to Supermarket Food Waste Report 2023', Good & Fugly. <https://goodandfugly.com.au/pages/report2023>

Appendix 1: SUMMARY OF ISSUES AND ACTIONS

NO.	ISSUE	MECHANISM FOR REFORM	ACTIONS
1	<p>Power Imbalance in the grower/retailer relationship</p> <p>Growers believe that there is no viable mechanism to report unconscionable behaviour of the retailers without fear of commercial retribution.</p> <p>Growers believe the relationship with retailers is not equitable and that the retailer holds all the power in the negotiations around price.</p>	FGCC/ACCC	<ul style="list-style-type: none"> • FGCC needs to be amended and strengthened to: <ul style="list-style-type: none"> ◦ Respond in a timely manner to fresh produce issues (perishable product); ◦ Appoint Code Arbiters independent of the retailers; ◦ Be mandatory, with strong penalties for bad behaviour for both businesses and individuals, and compensation for suppliers detrimentally affected by retailer behaviour. • ACCC needs greater power, scope and flexibility to investigate industry complaints relating to supermarket/retailer behaviour, as well ability to undertake investigations on aspects of the FGCC such as supplier agreements, deductions etc. • Establish a confidential portal for supplier complaints which would then trigger retailer issue-specific investigations, rather than individual cases.
2	<p>Supply agreements that are non-binding</p> <p>Growers cite that fresh produce agreements with retailers are not adhered to by retailers, and commonly do not include price. Growers are planting large volumes of crops without certainty of price or volume. Forecast volumes in supply agreements are often significantly different to the volumes ordered, to the detriment of the grower who has invested substantial money to plant crops to the forecast volume.</p>	<p>Unfair Trading Practices OR Unfair Contract Terms</p> <p>ACCC/FGCC</p>	<ul style="list-style-type: none"> • Make FGCC mandatory. • Appropriate supply contracts for fresh produce, noting weather events, perishability etc. • Contracts could include two tiers; <ul style="list-style-type: none"> ◦ one tier of x% guaranteed supply at a nominated price; ◦ second tier of the remaining y% at a negotiable price. • Contracts must state that price paid cannot be below cost of production, unless negotiated in good faith with the supplier, and the broader industry. • Price cannot be changed after planting, unless negotiated in good faith with the supplier. • Implement a mechanism that compels equitable negotiation of weekly prices by retailers. • Amend Australian Consumer Law to update Unfair Trading Practices to provide better protection to suppliers. • Standardise documentation, terminology and supply arrangement processes to reduce confusion across retailers.
3	<p>Market manipulation/distortion through inflated supply arrangements</p> <p>Market distortion continues to be a concern for suppliers. A significant percentage of growers say that the forecast volumes are rarely fulfilled, and they are either forced to plough the surplus crop in or put it into the wholesale market which causes oversupply and drops the price.</p> <p>Of concern, is that retailers leverage the wholesale price to drop prices with direct suppliers (noting that they do also purchase from wholesales).</p> <p>Growers also know that additional suppliers are being added by retailers, often with no variation to existing supply arrangements.</p>	ACCC/FGCC	<ul style="list-style-type: none"> • Appropriate supply contracts for fresh produce, noting weather events, perishability etc. • Ability for ACCC to investigate deliberate distortion of markets through designed oversupply. • Supply agreements of contracts should contain clauses which force retailers to commit to the supply volumes within a nominated percentage (i.e. 10%). • Penalties in the FGCC for deliberate distortion of markets through over-supply by retailers (such as in the UK Grocery Code of Practice) • Strong penalties for bad behaviour for both businesses and individuals known to deliberately create oversupply conditions, and compensation for suppliers detrimentally affected by the behaviour.
4	<p>De-valuing fresh produce</p> <p>Lack of branding, product information, point of sale material, unappealing home brand packaging, price strategies etc are devaluing the perceptions of fresh produce in the eyes of consumers.</p> <p>Suppliers have no ability to connect with consumers, or mechanisms to grow their product category.</p>	ACCC/FGCC	<ul style="list-style-type: none"> • Introduce a 'Code of Behaviour' to ensure that retailers act in the best interest of the fresh produce sector and the consumer through more prudent use of specials, marketing tactics, branding etc.
5	<p>Compliance prerequisites</p> <p>Retailer compliance demands are at times tokenistic and not reflected in the retailers' own behaviour. Retailers do not value the quality of suppliers who meet standards of ethically and</p>	ACCC/FGCC	<ul style="list-style-type: none"> • Make FGCC mandatory. • Change 'agreements' to 'contracts' to stabilise supply arrangements and provide greater certainty. • Harmonisation and rationalisation of compliance schemes.

	<p>sustainably grown produce and, when convenient, will purchase from suppliers that don't have the plethora of systems that preferred suppliers have.</p> <p>Further, retailers are consistently changing and adding additional requirements that are not based on a defensible risk-based analysis (noting that compliance systems deal with managing risks, not trying to reduce risks to zero).</p> <p>Furthermore, standards that the retailers expect within their suppliers' businesses are not practiced by the retailers – for example, bullying (industrial relations) and practices that exacerbate waste (narrow produce specifications, cancelling packed orders etc) (sustainability).</p> <p>It is important to also note that many growers will not report bullying tactics by category managers and buyers due to fear of commercial retribution.</p>		<ul style="list-style-type: none"> • There should be a process to enable suppliers to lodge complaints around unjustified changes to compliance systems including clauses that bind retailers to justify the cost/benefit return of changes, and based on managing risks and not eliminating risks. • Preferred suppliers that adopt the range of retailer-required compliance systems should be recognised by retailers over and above non-preferred suppliers.
6	<p>Unplanned price reductions/price matching</p> <p>Retailers place undue pressure on suppliers to reduce prices to compete against other retailers. These price reductions to growers are unplanned and outside normal supply agreements or programmed specials. Retailers should reduce their profit margins to compete on unscheduled specials.</p>	FGCC Unfair Contract Terms and/or Unfair Trading Practices	<ul style="list-style-type: none"> • Contracts or more rigorous supply agreements to create stability in pricing and production, reducing waste. • Improving FGCC to ensure greater equity between growers and retailers when negotiating prices and specials. • Introduce a 'Code of Behaviour' to ensure that retailers act in the best interest of the fresh produce sector and the consumer through more prudent use of specials, marketing tactics etc.
7	<p>Pricing negotiations/changes to prices after agreement on weekly price</p> <p>Retailers negotiate pricing after the growers have submitted their weekly tenders for price and volumes. Pricing offered is often below the prices that the growers have quoted. Explanations by retailers for the low pricing are not transparent and growers are forced to sell at the lowest price regardless of volume, quality, or other factors.</p>	ACCC/FGCC	<ul style="list-style-type: none"> • Appropriate supply contracts for fresh produce, noting weather events, perishability etc • Contracts could include two tiers; one tier of x% guaranteed supply at a nominated price, second tier of the remaining y% at a negotiable price. • Greater transparency and equity in weekly price negotiations – reduce the asymmetrical information flow. • Mechanism to ensure that weekly pricing is above an industry market floor price.
8	<p>Breaches of the Food and Grocery Code of Conduct</p> <p>Unethical business behaviour covers a wide scope of retailer misdemeanours including unapproved deductions, deducting rejections from earlier payment runs, cancelling purchase orders when product is already packed (to order), and refusing to commit verbal communications in a written format.</p>	ACCC/FGCC	<ul style="list-style-type: none"> • Establish a confidential portal for supplier complaints which would then trigger retailer issue-specific investigations, rather than individual cases. • Arbiters should be appointed independently of the retailer so there is no conflict of interest (real or perceived). • Broaden scope and powers of the FGCC and the independent reviewer. • Ensure acceptable business behaviours are embedded in the FGCC. • Strong penalties for bad behaviour for both businesses and individuals known to deliberately create oversupply conditions, and compensation for suppliers detrimentally affected by the behaviour. • Independent Quality Assessor that can independently evaluate fresh produce rejections from retailers, that the supplier deems are unfair or unconscionable.
9	<p>Rebates</p> <p>Rebates are one of the most contentious issues for vegetable growers. The amount of the rebate varies across growers and retailers, and furthermore the purpose of the rebate appears unclear. Whilst growers understand that rebate may be for 'early payment', feedback would suggest that growers would prefer a transparent process with reasonable payment terms negotiated up front. Rebates are a hidden cost to supplier businesses and they need to be removed from contract negotiations.</p>	ACCC/FGCC	<ul style="list-style-type: none"> • FGCC should consider banning rebates, or alternatively require transparency in relation to rebate percentages, basis for calculation, and purpose. • ACCC should launch an inquiry specifically to examine supermarket rebates and their purpose. • Negotiated payments terms should be fair and timely, without requiring discounts for 'early' payments.
10	<p>Retail employees KPIs</p> <p>Some of the behaviours of the supermarket buyers or category managers, growers call bullying, threatening and coercive. Suppliers understand, and are told by retail employees, that the driver for this behaviour is employees meeting company targets and individual KPI's.</p>	ACCC	<ul style="list-style-type: none"> • ACCC investigate the role of KPIs and other metrics within retailers that drive behaviour by employees in contravention of the Food and Grocery Code of Conduct, and other laws such as Unfair Contracts and Unfair Trading Practices. • Strong penalties for individuals acting in bad faith and in a coercive manner, and compensation for suppliers detrimentally affected by the behaviour.

11	<p>Produce specifications Growers supplying the retailers have raised several concerns in relation to fresh produce specifications including:</p> <ul style="list-style-type: none"> • Fresh produce specifications are often interpreted inconsistently across national distribution centres causing inconsistent rejections. • Retailers have different specifications and packing requirements which lead to duplication and waste. • Overly tight specifications reduce the amount of crop 'in spec', condition consumers to demand 'perfect' produce and significantly increase waste. • Retailers change (tighten) specifications based on 'consumer feedback'. while providing no data or research to validate this Tightening specifications increases waste and reduces returns to growers. 	FGCC	<ul style="list-style-type: none"> • Require a right of recourse for growers on a timely basis, through a dispute resolution process reflective of fresh produce shelf life. • Appoint independent inspectors (through the FGCC) to assess fairness of produce rejections. • Review produce specifications and, where suitable, reduce overly tight criteria. • Review produce specifications and, where suitable, a national standard should be considered. • Taskforce to investigate collaboration between retailers and suppliers that could reduce or eliminate duplication and waste. • Produce specifications should not be changed without a cost/benefit study taking in to consideration the growers' costs, waste etc.
12	<p>Supplier requirements Due to the competitive nature of the retailers they consistently want to implement their own systems – whether that be in logistics or compliance systems. This results in duplication and inefficiency across the supply chain, as well as an additional and unfair compliance burden and cost on suppliers.</p>	Federal Government	<ul style="list-style-type: none"> • Taskforce to investigate mechanisms to reduce costs and duplication along the supply chain. • Legal mechanisms in place to prevent retailers placing unfair conditions on suppliers without any monetary benefit or offsets.
13	<p>Packaging costs incurred by suppliers Changes to 'home brand' packaging are a cost to the growers (new printing plates, design work etc) and can occur too frequently causing excessive waste (destroying all old packaging).</p>	FGCC	<ul style="list-style-type: none"> • Retailers should be responsible for design changes and costs incurred. • Changes in packaging should have long lead times to ensure that excess stock does not have to be destroyed.
14	<p>Negotiation Skills An unfair playing field in relation to negotiation skills and retail practices is also disadvantaging suppliers.</p>	Federal Government - Increase industry capability	<ul style="list-style-type: none"> • Industry funded to assist farming businesses increase capability and understanding of retail practices and negotiation skills through training and other activities.
15	<p>Inexperienced Retail Staff Inexperienced buyers and category managers often exacerbate the problem. Growers frequently complain about retail staff not understanding the supply chain, the produce they are managing, or logistics of growing, processing and packing vegetables.</p>	Retailer best practice	<ul style="list-style-type: none"> • Retailers should ensure that staff are appropriately trained and should have some understanding of agricultural production, packaging and process, practical implementation of compliance systems, post-harvest, biosecurity, and supply chain logistics.
16	<p>Lack of ability to engage with other suppliers on price or volume Growers have no insight into the price or volume of vegetables lines in any given week and are unable to speak to other growers because that is considered collusion. 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.</p>	ACCC	<ul style="list-style-type: none"> • A price transparency mechanism which doesn't distort the market but does provide equity in the retailer – grower relationship. • 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.
17	<p>Retailer data There is a need for greater understanding and transparency around consumer behaviour. For example, growers' experiences show that by putting one product on 'special' (eg broccoli) and selling more of that product, that another product (eg zucchini) sells less. This is called substitution so ultimately no additional product is sold – the consumer just switched buying behaviour. Also, retailers fully understand the price elasticity of products and frequently sell product well below what they know consumers are willing to pay.</p>	FGCC	<ul style="list-style-type: none"> • Review the use of 'specials' in fresh produce and how effectively retailers manage 'specials'. This should include whether 'specials' are overused. • Introduce a 'Code of Behaviour' to ensure that retailers act in the best interest of the fresh produce sector and the consumer through more prudent use of specials, marketing tactics etc. • Promote seasonality and 'bountiful buys'. • Review the role of retailers in promoting healthy eating and increasing vegetable consumption – based on their sales strategies and pricing. • Promote Australian grown product.
18	<p>Average Quantity System The use of the 'e' symbol (Average Quantity System)³¹ is rarely utilised in Australia for fresh produce but widely adopted in many other countries and regions. The use of the 'e' symbol is</p>	FGCC/ACCC Retailer practice	<ul style="list-style-type: none"> • Clearly embed the adoption of the <i>Average Quantity System</i> in the FGCC. • Ensure that the guidelines for use of the 'e' symbol are referenced in consumer law, where applicable

³¹ <https://www.industry.gov.au/publications/guide-average-quantity-system-australia>

	underpinned by strict guidelines and tolerances, and results in negligible disadvantage to consumers but benefits to the packers of fresh products. The Average Quantity System reduces 'giveaways', depending on packing process, can reduce waste and labour costs, and can be advantageous to some products that are prone to moisture loss, and may dip marginally below the exact product weight on occasions.		<ul style="list-style-type: none"> 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.
19	Greater power, scope and flexibility for the ACCC The ACCC in its current format doesn't have the ability to address many of the issues affecting suppliers and consumers. Alternatively, when the ACCC has made a finding, there is no penalty or ability to enforce a finding through the current mechanisms.	ACCC	<ul style="list-style-type: none"> Give ACCC greater power, scope and flexibility to investigate retailer pricing and behaviour. Give ACCC the ability to undertake investigations on aspects of the FGCC such as supplier agreements, deductions etc. ACCC must be appropriately resourced to ensure that they have the capacity to operate effectively
20	Restrictive trade practices Restrictive trade practices occur when a supplier of goods or services imposes a condition requiring the buyer to also acquire goods or services from a particular, unrelated, third party. In this instance the supermarkets require their suppliers to only utilise the services of one or a limited number of third-party services. This practice substantially lessens competition. Growers would like to see the ACCC review retailers' actions in relation to suppliers' use of crates, pallets, freight, compliance systems and other goods/services. Growers complain about the unfair costs involved in pallet and crate hire terms. Growers are forced to hire crates and pallets for time periods well outside of the shelf life of the product. For example, if a vegetable only has a three-day shelf life why are they forced to hire a crate for seven days?	ACCC	<ul style="list-style-type: none"> ACCC should investigate claims of restrictive trade practices along the supply chain. Taskforce to investigate mechanisms to reduce costs and duplication along the supply chain.
21	Vertical integration by retailers Growers have raised concerns about the increasing power of retailers along the supply chain through acquisitions or the establishment of new supply chain business that then force growers to utilise the retailer owned business. For example, Woolworths' Primary Connect freight logistics business has had a negative cost impact on some regional growers.	ACCC	<ul style="list-style-type: none"> ACCC should have greater power to ensure that retailers' acquisitions or establishment of businesses along the supply chain does not negatively impact suppliers.
22	Tax offsets for suppliers' donation of produce to food charities /false and misleading claims on food donations Declaration of donated waste product to food charities should be attributed to the supplier not the retailer, and the value of the product donated should be tax deductible. ³² Product rejected from retailers' Distribution Centres (DCs) is either returned to the grower for repacking, resale, manufacturing or dumping, OR can be donated to food charities. Products such as pre-packed home brand vegetables which cannot be on-sold in 'branded' packaging are an example of product that can be gifted to food charities. One in five farmers report that rejected produce is given to supermarkets for free, and one in four stated that supermarkets expect imperfect produce for free. ³³ Farmers lose almost \$30 million a year due to supermarkets rejecting deliveries, with one in 10 farmers reporting a loss of \$50,000 or more as a result. This is an unnecessary loss for growers	Federal Government	<ul style="list-style-type: none"> Federal Government should introduce tax incentives to permit growers to offset a percentage of costs related to food donations from taxable income. Retailers should facilitate donations to charities as part of their ESG requirements but should not claim the value of the donations unless they pay the supplier the nominated amount – otherwise claim re the value of donations to food charities is false and misleading.
23	Review use of 'Use by' and 'Best before' Claiming 'shrinkage', under the FGCC, is not supposed to be permitted although the issue has been raised by some growers. The broader issue of "use-by" and "best before" dates should be discussed	Federal Government	<ul style="list-style-type: none"> Review the use of labelling practices such as 'best before' and 'use-by' dates.

³² <https://www.foodbank.org.au/food-donation-tax-reform/?state=vic>

³³ 'The Farm to Supermarket Food Waste Report 2023', Good & Fugly. <https://goodandfugly.com.au/pages/report2023>

	under the current inquiry into supermarket pricing, as a review of these practices has the ability to greatly reduce waste (and cost) to retailers, consumers, and suppliers.		
24	2020 Perishable Agricultural Goods Inquiry The 2020 Perishable Agricultural Goods Inquiry made recommendations and observations that are still relevant. Four years on from the inquiry there has been no improvement in supplier/retailer relationships, in fact relations have probably worsened.	ACCC	<ul style="list-style-type: none"> Revisit recommendations of the Perishable Agricultural Goods Inquiry, in consideration of the current supermarket/code inquiries
25	Unfair Trading Practices AUSVEG lodged a submission into the CRIS on Unfair Trading Practices supporting Option 4.		<ul style="list-style-type: none"> Adopt Option 4 from Treasury's Consultation Regulatory Impact Statement on Unfair Trading Practices.
25	Coercively designed supply agreements The Food and Grocery Code includes many subclauses that state that the (previous) subclause does not apply if it is written out of grocery supply/vendor agreements. AUSVEG has sighted agreements recently that write out numerous contentious clauses. For example, the agreements state that the supplier must pay for artwork and design, which is not the preferential position under the Food and Grocery Code. Growers feel that this overriding of the Food and Grocery Code gives them little choice and that they risk commercial retribution if they ask retailers to remove the wording from the agreements.		<ul style="list-style-type: none"> Supply agreements or contracts should initially exclude all variations from the Food and Grocery Code, and should only be added in to an agreement when the supplier and the retailer have reached an equitable and mutual understanding.

FGCC = Australian Food and Grocery Code of Conduct