Greenlife Industry Australia

PO Box 9002, Deakin ACT 2600
www.greenlifeindustry.com.au
info@greenlifeindustry.com.au
1300 95 95 13

Greenlife Industry Australia Limited | ABN 59 634 584 017

30 April 2024

Gina Cass-Gottlieb
Chair
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By submissions portal on the ACCC website

Dear Ms Cass-Gottlieb,

**RE: ACCC Supermarkets Inquiry, 29 February 2024**

Greenlife Industry Australia (**GIA**) welcomes the opportunity to make a submission in response to the Issues Paper the Australian Competition and Consumer Commission (**ACCC**) released on 29 February 2024 as part of your inquiry into Australia's supermarket sector (**Inquiry**).

GIA is the peak national body representing commercial growers of plants (known as greenlife growers) across all states and territories of Australia. The greenlife industry is a significant component of the Australian horticultural sector employing over 25,000 people and generating a farm gate value of $2.8 billion annually. GIA belongs to the NFF Horticulture Council and is a committee member of its Competition Taskforce; a body that is engaged in making the case for improved regulation of the domestic markets for suppliers of fruit, vegetables and plants.

1. **Bunnings monopolises plant retail**

The first and most important point we wish to make on behalf of greenlife growers relates to the scope of this inquiry, namely to *'examine competitive dynamics in the retail supply of groceries and associated supply chains…with particular regard to how prices are set at different levels of the supply chain, and the associated margins'.*

On behalf of greenlife growers, GIA is asking that the scope of the ACCC's inquiry is expanded to include Bunnings. Bunnings is by far the biggest retailer of plants to the general public, maintaining a national market share of 70%, which outstrips the combined market power of the two major supermarkets, Coles and Woolworths. In 2023, Bunnings reported a revenue increase of 4.4% to $18.5 billion. By volume of units sold in Bunnings stores, plants are second only to tins of paint.

The market for greenlife products is almost wholly domestic with virtually no export market. Many of the plants greenlife growers supply such as seedlings, herbs, food plants and annuals are as perishable as fresh fruit and vegetables and must be dispatched within days of reaching maturity and unlike fruit and vegetables cannot be cold-stored to preserve shelf life. Typically, these plants are low value, commoditised products that must be sold in high volumes to be profitable.

The much smaller remainder of the greenlife retail market is made up of garden centres, markets and lifestyle stores. Greenlife growers also supply the landscaping sector but this is small and specialised when compared to the retail market.

Given the extent to which Bunnings dominates the plant retail market, the vulnerability and perishability of plants, along with the high volume and low value of greenlife products, there are few alternative markets for greenlife growers in Australia. If a greenlife grower is determined to make a living growing plants commercially for the retail supply chain, it is likely that they will supply Bunnings, as the majority of growers do.

**2. Growers smile to survive**

Unfortunately, greenlife growers selling plants to Bunnings experience trading inequities similar to those reported by growers of fruit and vegetables supplying supermarkets. In the absence of meaningful competitors, Bunnings is able to dictate terms of trade, set the prices and control the supply of greenlife products in the retail supply chain. The ability of individual growers to challenge any of these arrangements and find last minute alternative markets for their plants is almost nil.

Greenlife, or nursery production, is the only industry within horticulture that is not protected by either a voluntary prescribed or mandated code of practice. Consequentially, greenlife growers are completely powerless in their relationship with Bunnings. They have no safe way of expressing concerns or raising a complaint and the fear of retribution leading to loss of business is genuine, deeply felt and has been experienced. Greenlife growers supplying Bunnings operate in a smile to survive culture.

**3. As Bunnings has expanded, competition in plant retail has contracted**

Bunnings' market power has impacted the independent retail sector which has shrunk as Bunnings's footprint has expanded. In some areas of the country, the Bunnings' expansion at the expense of competing businesses has extended their share of the plant retail market to worrying degrees: in WA, with so few independent garden centres remaining, Bunnings share is now estimated to have grown to 80%. Recent news of the closure of the last remaining independent garden centre in Darwin means that Bunnings' share of the plant retail market is now over 90% in the Northern Territory.

**4. Bunnings, Coles and Woolworths have a lot in common**

GIA has made multiple submissions to both the Senate Select Committee on Supermarket Prices and Dr Craig Emerson's Review of the Food & Grocery Code of Conduct. In these, we seek to demonstrate how Bunnings' scale, business model, market dominance and treatment of greenlife growers has far more in common with the major supermarkets than it does with independent garden centres.

In 2015, one of the major catalysts for introducing the Food & Grocery Code to the Australian grocery market was the behaviours that were being consistently and systemically demonstrated by the retailers towards the Australian grocery suppliers. At this time, Coles was owned by Wesfarmers, also owners of Bunnings. The Code was launched shortly after the courts found Coles guilty of unconscionable conduct in their dealings with, in particular, small suppliers. A $10m fine was imposed and suppliers were awarded damages.

Both Coles and Woolworths contributed to the development of the voluntary prescribed Code. Multiple statements were made at the time that the impacted buying teams should hold themselves to the standards that the broader community would expect of them. It was agreed that the Food &

Grocery Code represented a set of rules and behaviours that were '*in line with community expectations'* with respect to the retailers' behaviours towards suppliers.

The issues that the Grocery Code sought to address in 2015 are exactly the same as those being experienced in 2024 by greenlife growers in their dealings with Bunnings. It is incongruous that this expectation of good buyer behaviour should not apply to other parts of the Wesfarmers retail portfolio, then or now.

**5. Bunnings' trading terms & practice**

Growers of all sizes in all parts of the country have disclosed to GIA examples of Bunnings trading terms and practices that fall below the standards of what is fair and reasonable:

- **Asymmetry of information about price**: whereas the big box retailer has access to every price offered by every grower of each product line they stock and can make use of this information to exert downwards pressure on price, the growers themselves cannot discuss or share information about their prices, costs or terms without risking collusion. This often encourages a "take it or leave it" attitude on the part of Bunnings and without alternative markets for their products, growers typically take the price – even if this means selling at a reduced margin or loss.

- **Absence of contractual commitments** from Bunnings to volumes by, for example, limiting their buying commitment to non-binding product allocations rather than supplier agreements. Bunnings reserve the right to take fewer or none of the plants allocated to them with some growers reporting that over 12 months, less than 50% of the plants grown for and allocated to Bunnings were actually purchased by them.

  This means that growers are obliged to bear all the risks of investing in their businesses and plant large volumes of greenlife products, often with the encouragement of the buyer or category manager, in the hope - rather than expectation - that they will be sold.

  Other tactics reported included limiting the retailer's contractual commitment to one single plant or requiring growers to re-tender (at short notice) to become a preferred supplier.

- **Perishability of products**. The markets for fresh produce are quite different even from other perishable agricultural products, let alone shelf stable items such as processed foods, pet food, cosmetics, and cleaning products. Many of these products are typically sold under longer-term agreements that define both price and volume. For fresh produce, including plants, both price and volume can remain uncertain until the day of dispatch which gives all the bargaining power to the retailer.

  Further, suppliers of perishable, low-value goods such as fruit, vegetables and plants are especially disadvantaged since they typically have no alternative markets in which to sell their product within the limited time available before the life of the product expires.

- **Imposition of home-branding and commoditisation** of greenlife products by for example, requiring growers to repackage their plants in generic black unbranded containers and replace their own plant labels with home brand labels. Increasingly, Bunnings specifies non-standard container sizes, rather than the standard industry sizes. It is not unusual for such demands to be made at short notice – as little as 24 hours' notice has been reported - with the entire cost burden of changing to home branding and non-standard sizes falling on the grower.

Such tactics, which are widespread, deny the grower the ability to control their brand, capitalise on investments they may have made in sustainable growing methods and promote their best practice accreditations. Growers have no alternative market for home branded plants packaged in non-industry standard sized containers and growers carry all the risk of being left with redundant stock.

- **Questionable behaviour** by Bunnings through actions such as asking growers to sell at or below cost of production from time to time to demonstrate that they are a "team player" with the implication that if they don't agree, they will be excluded from the team.

- **Prevalence of informal, verbal arrangements** in place of enforceable contracts. Many growers report difficulties obtaining detailed supplier agreements from Bunnings with some examples of growers supplying large volumes of plants without any written agreement whatsoever. Even those with supplier agreements report that variations to such agreements are common but are rarely documented.

- **Rebates are a common feature** of the trading relationship between growers and Bunnings, whereby growers are required to accept further discounts on their prices in certain circumstances that 'advantage' the grower. Examples where the grower is required to give the retailer a rebate include supplying into a new store, subjecting their products to in-store merchandising and participating in special promotions (such as Mother's Day, Valentine's Day etc). Whilst it might seem reasonable for the retailer to charge for some of these initiatives, rebates are sometimes imposed on growers, whether or not they want the associated benefit, resulting in a further margin squeeze on the prices growers receive.

- **Third line forcing**, for example in relation to freight. Many growers supplying Bunnings have been obliged to switch to retailer mandated freight arrangements. We have received many reports of growers' costs increasing significantly as a result, whilst other growers report examples of the negative consequences they experience, such as the cancellation of product allocations, if they reserve the right to continue to use their own freight.

- **Complete imbalance of power** in the Bunnings - nursery grower transaction. Fear of retribution is genuine and widespread amongst growers: being dropped as a supplier has the potential to be absolutely catastrophic for their business. This has been painfully demonstrated by some growers who have ceased trading as a direct consequence of being dropped by Bunnings.

**6. Consumers**

Bunnings' business model relies on its promise to consumers to offer 'lowest prices every day'. It is this commitment to low pricing, combined with the heavy imbalance in power, which limits the ability of growers supplying Bunnings to receive fair prices for their products. GIA is aware that consumers are increasingly expressing concern about Bunnings' commercial conduct generally and its treatment of growers in particular. In common with farmers supplying supermarkets, there is growing awareness of the disparity between the price growers receive for their plants and the retail price paid by consumers.

## 7. Our recommendations

### 7.1 Expand the breadth of the inquiry to include Bunnings

- Ensure ACCC has proper powers and resources to properly monitor retailers such as Bunnings, including document discovery powers

### 7.2 Empower the regulator

- Increase the powers of the ACCC to be able to effectively prosecute retailers for anticompetitive behaviour – current legislation is too restrictive and not practical
- Dramatically increase the fines associated with anti-competitive behaviour so they act as incentives for change
- Make senior executives and board members liable for any anti-competitive behaviour
- Introduce legislation to control duopolies and monopolies

### 7.3 Create a policy to protect the horticulture sector

- Introduce a 'simple to use' Class Exemption (under CCA) for the horticulture sector
- Protect growers from commercial retribution
- Add supplier welfare as an objective of the Australian Consumer Law
- Allow growers to brand their own produce

### 7.4 Ensure the major retailers behave ethically

- Regulate rebates and fees imposed by major retailers
- Properly monitor the buying teams and category managers
- Ensure Supplier Agreements are negotiable
- Furnish the ACCC with the powers to monitor prices and gross margins.

GIA would welcome further engagement with the ACCC through the course of its Inquiry.

To receive assistance with this, or any other aspects of this submission, please contact Joanna Cave, Chief Executive either by email [redacted] or phone on [redacted].

Yours sincerely

[redacted]

**Joanna Cave**
**Chief Executive**