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Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

To the Committee,

RE: Inquiry into 'big box' retailer price setting

Greenlife Industry Australia (GIA) would like to thank the Senate for referring to the Committee an inquiry into and report on the price setting practices and market power of 'big box' retailers in Australia.

GIA is the national peak body established in 1948 to represent commercial plant growers (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 $2.9 billion annually.

Thank you for recognising the need to consider the particular vulnerabilities of horticultural producers (or greenlife growers) in their trading relationships with big box retailers. In Australia, big box retailers that sell plants to the public for their homes, gardens and veggie patches include IKEA, Mitre 10, CostCo and the biggest of all, Bunnings. Plants are also sold by the major supermarkets, Coles, Woolworths, Aldi and others in the Metcash group. The remainder of the plant retail market is significantly smaller, comprising garden centres, markets and lifestyle stores.

Many of the plants greenlife growers supply to the retail sector, 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. Unlike fruit and vegetables, plants cannot be cold-stored to preserve shelf life. Typically, the plants produced by our growers are low value, commoditised products that must be sold in high volumes to be profitable. The Australian market for greenlife products is almost wholly domestic with virtually no export market.

Domestically, plants have become increasingly important for Australian consumers. The number of people growing their own food, investing in their gardens and establishing indoor and balcony gardens in urban environments grew exponentially during the COVID pandemic and continues to rise. The importance of plant life and gardening in the health and wellbeing of humans is well-documented. There is no doubt that consumers want ready access to a wide range of good quality, affordable plants for their gardens, homes and allotments.

Big box chains have recognised this opportunity and now dominate the retail market that traditionally belonged to independent garden centres. Bunnings, which is part of the Wesfarmers group, is the most successful big box plant retailer in Australia, turning over $19b in 2023. It operates 513 stores across Australia and New Zealand[1] (with the majority of those stores located in Australia) the vast majority of which include substantial plant outlets. These outlets are supplied by more than 220+ greenlife growers. By volume of units sold in Bunnings, plants are second only to tins of paint. As Bunnings itself states: *‘we are viewed by our customers as a destination for plants’*[2]. Most people who have visited the garden section of a Bunnings store would struggle to dispute such a claim.

By comparison, Bunnings’ closest big box competitor, Metcash, which includes the Mitre 10 franchise, submits that fewer than 30% of its stores include a garden section. Mitre 10 franchise owners purchase most plants directly from growers, in the same way that independent garden centres do, and do not therefore compete with Bunnings in terms of buying power or volumes[3]. IKEA, in its submission to this Inquiry, claims that it sells plants in all 10 of its stores nationally and that 100% of its plants are supplied by only two growers[4].

Codes of practice throughout Australian agriculture and horticulture regulate the trading environment between suppliers and retailers and/or wholesalers. Indeed, commercial growers of every kind benefit from protection under either the Food & Grocery Code of Conduct, or the Horticulture Code of Conduct

There is one notable exception: greenlife growers are the only suppliers of horticultural products in Australia who are not protected by the Food & Grocery Code of Conduct, Horticulture Code of Conduct, or any other code of practice in their dealings with the big box retailers such as Bunnings.

It is in the public interest for big box retailers such as Bunnings to be scrutinised to ensure they don’t abuse their market dominance and that growers are not unreasonably disadvantaged by the obvious power imbalances in their trading relationships.

Bunnings dominates the plant retail sector in the same way that Coles and Woolworths dominate the grocery sector. GIA believes that Bunnings’ share of the plant retail market is approximately 70% of the national total. Our detailed evidence in support of this claim was accepted by the Senate Supermarket Inquiry and the Food & Grocery Code Review. Bunnings’ 70% share of the market was also accepted and widely reported, presumably after fact checking, throughout the extensive national media coverage of these public inquiries. Nonetheless, Bunnings continue to claim that it does not dominate plant retail, has plenty of competitors and only has a market share of 25%. GIA firmly believes this is not correct and later in this submission we will explain why.

Bunnings also claims that greenlife growers have the option to supply other markets, such as the landscaping sector. In this submission, we will provide evidence to refute Bunnings’ assertion

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[1] https://www.wesfarmers.com.au/our-businesses/bunnings
[2] Page 10, Bunnings Submission, Big Box Inquiry
[3] Metcash Submission, Big Box Inquiry
[4] Page 3, IKEA Submission, Big Box Inquiry

that greenlife growers, growing plants for the retail supply chain, can pivot and sell these same plants into the landscape, revegetation, fruit, vegetable or forestry supply chains.

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 and the limited alternative markets, choices are limited 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, either directly or via third party suppliers.

Bunnings and other big box retailers are an essential part of the Australian plant retail market. Greenlife growers have a keen and vested interest in the ability of these retailers to thrive and prosper. In the absence of meaningful competitors however, Bunnings can dictate terms of trade, set the prices and control the supply of greenlife products in the retail supply chain. It is almost impossible for individual growers to challenge any of these arrangements or to find last minute alternative markets for their plants. Growers genuinely and deeply fear retribution leading to loss of business and some growers have experienced this.

Without a code of practice, greenlife growers have no way to safely express concerns or raise complaints. While greenlife growers are reluctant to raise concerns or make complaints directly with Bunnings, many have shared accounts of their experiences with GIA on the condition of anonymity, some of which we reference in this submission.

The recent Senate Supermarket inquiry recommended that big box retailers such as Bunnings be admitted to the Food & Grocery Code. In his recent review of the Code, Dr Craig Emerson declined to take up this recommendation on the basis that Bunnings is not a supermarket. While GIA does not dispute this point, in this submission we address the reasons why the continued absence of a code of practice protecting greenlife growers leaves them powerless in their relationships with Bunnings.

In recent months, we have observed that the public interest in and parliamentary scrutiny of Bunnings’ treatment of growers has prompted the retailer to review some of its trading terms and engage more positively with its suppliers. These developments are welcome, but to ensure growers can rely on them, we need a mechanism to gurantee such changes are not temporary. A code of practice is the best and most obvious way of achieving this.

Meanwhile, in lieu of inclusion in the Food & Grocery Code, Dr Emerson recommended that GIA and Bunnings negotiate an industry framework which incorporates the relevant elements of the Code and that will be subject to review in two years’ time. This recommendation was reinforced by the government in its formal response to Dr Emerson’s report. While regulation would provide more certainty for greenlife growers, GIA is actively pursuing this alternative with Bunnings . In doing so, we aim to improve greenlife growers’ experience as Bunnings suppliers in a framework that is tolerable to Bunnings. We hope that this Inquiry will provide the necessary momentum to encourage a positive outcome in this process.

Growers have nothing to gain – and a lot to lose – by criticising Bunnings. They are doing so because Bunnings dominates the plant retail sector in Australia, to a significant degree, and growers are enormously disadvantaged by this power imbalance. On their behalf, we hope that this Inquiry serves to drive positive change and create a fair and reasonable trading environment for growers supplying plants to Bunnings and other big box retailers.

GIA would welcome further engagement with the Inquiry. If the Committee would like to hear directly from greenlife growers we can facilitate this. We would recommend in particular that the Committee seeks out the direct testimony of those who have previously or currently supply Bunnings and other big box retailers and put in place arrangements for them to do so anonymously. 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 faithfully

[redacted]

Joanna Cave
Chief Executive

Senate Inquiry: Big Box retailer price setting

Submission by GIA

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1. Why Bunnings' claim to 25% of the market is incorrect

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

Bunnings claims its market share is 25-30%. We do not believe that this is not correct.

Right number, wrong market

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

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

The same industry data values the Australian plant retail sector at $1.4b. It is **this** figure that is relevant to calculating Bunnings' share of the plant retail market.

Bunnings is not part of the plant production sector; it is part of the plant retail sector.

How Bunnings arrived at 25%

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

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

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

Defining the plant retail market

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

Bunnings suggests that the plant retail and landscaping markets should be considered as one. We believe they make this claim in an attempt to demonstrate that growers have alternative supply options to Bunnings.

The idea that greenlife production nurseries, growing plants for the retail supply chain, can pivot and sell these same plant products into the landscape, revegetation, fruit, vegetable or forestry supply chains does not reflect reality. Significantly, suppliers into these markets typically operate under supply agreements making spontaneous entry by a non-contracted grower into the alternate market almost impossible.

Further, the products these supply chains require are completely different: imagine that a grower has produced 20,000 indoor plants for Bunnings, which Bunnings then declines to take. Now imagine the grower trying to sell those same plants to a landscaper. Or imagine a grower trying to persuade a council to buy 100,000 herb seedlings that Bunnings did not end up buying.

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

Who competes with Bunnings?

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

While independent garden centres and nurseries are an important part of the retail sector, they cannot compete with Bunnings either individually or collectively. Sadly, there is evidence that the independent sector is in general decline, as more and more garden centres close and owners sell the land to developers.

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

- no other plant retailers want – or can take – the same volumes of plants.
- the landscaping and urban planning sectors are not generally alternative markets for plants grown for the home garden.
- there is no export market for Australian plants.

2. Bunnings’ price setting practices & market dominance

Over many years, growers have spoken to GIA about their frustrations in supplying Bunnings. Time and time again this has been raised as the number one concern for many, many growers of all sizes in all parts of the country. We have also spoken to some growers who are content with their relationships with Bunnings. Unfortunately, however, they are in a fortunate minority – most growers engaging with GIA report negative experiences.

GIA has received extensive evidence from growers providing examples of Bunnings’ practices and behaviour that unreasonably disadvantage growers. Growers’ accounts of the power imbalance and its impact on their business, not to mention their personal wellbeing, are extensive and compelling. Growers have provided their evidence to GIA on the condition of anonymity, due to fear of retribution from Bunnings. Some information provided by growers is included verbatim below.

Growers want to supply Bunnings. GIA’s aim in participating in this Inquiry is to encourage a trading environment for growers that is reasonable and fair.

Absence of contractual commitments

Bunnings issues trading terms[5] to growers that set out suppliers’ obligations to Bunnings. These must be accepted by growers for them to supply Bunnings. The trading terms are effectively a one-sided agreement: Bunnings offers no commitments to growers on standard contractual terms such as price, volume or term of supply.

In its submission to this Inquiry, Bunnings states:

…if Bunnings commits to a volume under a supplier’s trading terms, that commitment is honoured[6].

The value of this statement is undermined completely by Bunnings’ current trading terms, which under a heading titled The Way We Do Things state:

Suppliers should be aware that Bunnings does not make any representations that it will continue to deal with any Supplier or continue to buy any particular volume of any product[7]’

Growers report that their individual ability to negotiate terms are limited.

Supplier # 13 states:

Their trading terms are completely one sided and drawn up all in their favour. There are many draconian measures that you have to accept otherwise they won't buy from you.

At the Supermarket Inquiry public hearing, Bunnings was asked what arrangements it has in place with growers that involve a commitment to purchase a set number of plants at a set price. Bunnings admitted that it does not provide such commitments. Instead, they submitted that *‘the*

[5] Supplier Trading Terms 2024/25
[6] Page 7, Bunnings Submission, Big Box Inquiry
[7] 1.2 page 4 Supplier Trading Terms 2024/25,

level of information that we provide suppliers is to support them to manage volumes'. We believe this was a reference to the stock tracker that Bunnings issues to growers is used to determine plant allocations.

GIA has seen examples of the stock trackers Bunnings issues to growers who have described to us how it works. It is our understanding that stock trackers do not constitute contracts but might be better characterised as a stock list that the grower provides to Bunnings, setting out what the quantity of plants it would like to supply, when they will be ready and for what price. Bunnings uses the stock tracker to determine its plant allocations. It is our understanding that allocations do not constitute purchase orders.

Growers say that the biggest risk for them is that Bunnings can determine allocations at any time in the growing cycle, including when the plants have been propagated, grown and prepared for delivery. If Bunnings accepts allocations as the growers propose, all is well but if Bunnings reduces or deletes allocations (a common occurrence) it can be catastrophic for the grower. Bunnings reserves the right to take all, some or none of the plants allocated. This means that growers are obliged to bear all the risks of investing in their businesses and planting large volumes of greenlife products, often with the active encouragement of the Bunnings buyer or category manager, in the hope - rather than the expectation - that Bunnings will buy them.

Supplier # 13 states:

At one stage, we had a greenlife category manager ask us to grow 60,000 plants for them for the following year (the product takes an average 18 months and a lot of financial outlay to reach maturity) only to be told when we had done all the work growing it that the product wasn't wanted anymore because they could get it cheaper elsewhere.

Supplier # 2 states:

The main concern trading with Bunnings is the lack of written contracts to grow stock. The risk is all on the grower to grow enough to cover the anticipated sales - Bunnings takes no risk in this. It is left to the discretion of the buyer if they take the stock offered or not.

Growers are consistent in their reports that Bunnings offers no meaningful commitments to suppliers which places them unreasonably exposed to risk and extremely vulnerable. Bunnings has told GIA that because its suppliers are so diverse, a one-size-fits-all contract would be unsuitable for its business. Whilst we acknowledge this, we feel confident that a solution can be found that will enshrine the fundamental principles of a supply agreement and provide growers with reasonable levels of certainty that would enable them to plan effectively, invest in their business and manage risks.

Bunnings' claim that most growers do not ask for, or even want, formal commitments is untrue.

Asymmetry of information

Bunnings has access to every price that every grower for each product line it stocks and can make use of this information to exert downwards pressure on price while growers cannot share information about their prices, costs or terms without risking collusion. This means Bunnings' buyers often make "take it or leave it" offers and without alternative markets for their products, growers must typically take the price – even if this means selling at a reduced margin or loss.

Supplier # 25 states:

Bunnings used unfair pressure dozens of times over the last 5 years

Supplier # 32 states:

Bunnings behaves like a bully and makes it very difficult for suppliers to have a fair interaction

Many growers report that securing price increases from Bunnings is difficult, if not impossible, even when they comply with Bunnings' required 'written notification and substantiation of all price changes'[8].

Supplier # 54 states:

Bunnings take 6 months or more to negotiate on price increases which puts pressure on suppliers.

Supplier # 14 states:

We are forced to sell at the same price today as we did in the early 1990's even though production costs have risen significantly since then.

Supplier # 22 states:

We no longer grow and supply some products to Bunnings due to their refusal of a price rise. We requested an increase in price after all of our supplier costs increased, wages, superannuation, fertilisers, pots and fuel and our request was refused.

Rebates are unfair and unclear

Growers supplying Bunnings are required to provide rebates, or discounts on their prices, in certain circumstances, such as when they might receive a form of benefit. In its current trading terms, Bunnings lists 14 different rebates[9] that 'may be negotiated with each supplier'. Examples of situations where the grower is required to give Bunnings 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 or Valentine's Day). While it might seem reasonable for Bunnings to charge for some of these initiatives, rebates are sometimes imposed on growers, regardless of whether they want the associated benefit, resulting in a further margin squeeze on the prices growers receive.

Supplier # 1 states:

[8] Bunnings Supplier Trading Terms 2024/25 2.1 Finance and payment
[9] Bunnings Supplier Trading Terms 2024/25 2.2 Rebates

Our business is subject to multiple rebates and charges imposed by Bunnings, including 1% marketing rebate, 1% greenlife rebate, 15% new store opening discount, and 15% cross-dock usage charges. These deductions are applied to our invoices without detailed explanations or transparency for which orders, making it difficult for us to assess their fairness or accuracy.

Supplier # 26 states:

Rebates are hefty and unfair. Claims are unjustified and automatically taken out on settlement of accounts.

Supplier # 7 states

Their long incentive rebate is a dis-incentive. The more we sell the less margin we make as they demand an exponential rebate.

Rebates also feature prominently in the major supermarkets trading models with their suppliers. The practice of imposing rebates on suppliers was criticised during the Senate Supermarket Inquiry and perhaps it was for this reason that Bunnings has recently placed its new/refurbished store opening rebate under review and suspended its long-term incentive rebate for its small suppliers.

Third-line forcing

Many growers supplying Bunnings have been obliged to switch to the retailer's mandated freight arrangements, known as Cross Docks. We have received many reports of growers' costs increasing significantly as a result of this, while other growers report examples of the negative consequences they experience, such as Bunnings cancelling their product allocations, if they reserve the right to continue to use their own freight.

Supplier # 1 states:

The stringent transportation requirements and associated costs imposed by Bunnings are severely impacting our profitability and sustainability. Current transport costs are already straining our finances, with projected increases expected to further erode our margins. This situation puts our business at risk and limits our ability to invest in growth or adapt to changing market conditions effectively.

Home-branding and commoditisation

Like supermarkets, Bunnings has increased its use of home branding requiring growers to repackage their plants in generic black unbranded containers, sometimes in non-standard sizes and replace their own plant labels with home brand labels. It is not unusual for Bunnings to make such demands at short notice – as little as 24 hours' has been reported to GIA - with the entire cost burden of changing to home branding falling on the grower.

Such tactics deny growers the ability to control their brands, 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.

Supplier # 25 states:

Bunnings… would not take certain plants from us any more unless we changed to a certain pot size, would not take plants from us anymore if we didn't move to black pots and change our labels. Both of these at significant cost in time and resources to our business.

Supplier # 9 states:

Bunnings have pushed and pushed growers with no considerations for costs…. Move to a different pot size otherwise we won't buy those products from you anymore. Change your labels and remove your branding otherwise we won't buy from you anymore. Change to black pots otherwise we won't buy from you anymore. All of these requests over 5 years cost hundreds of thousands of dollars, and they won't approve a price rise!

Following the Senate Supermarket Inquiry, which examined the commoditisation of growers' products, Bunnings has reviewed its requirements that suppliers switch to home branding and is providing growers more time to make the transition.

Complete imbalance of power

Growers have reported questionable behaviour by Bunnings. For example, the retailer has asked growers to sell at or below cost of production from time to time to demonstrate that they are 'team players' – the implication being that if they don't agree, they will be excluded from the team.

It is not uncommon for growers to report that more than 80% of their business relies on supplying Bunning, which means that being excluded from supplying Bunnings has the potential to be catastrophic. This has been painfully demonstrated by some growers who have ceased trading as a direct consequence of being excluded by Bunnings.

Supplier # 16 states:

I dealt with Bunnings for approximately 17 years. The trading relationship was reasonably fair to begin with and I was able to build the nursery with Bunnings promises of increasing business if I expanded. This allowed expansion and an increase in staff for a while. After a year or two Bunnings began squeezing my business with inadequate price increases and more and more onerous requirements to deal with them. In the end I had to reduce staff to service debt and cope with reduced orders, more costly impositions placed on production of my green life, having to pay Bunnings for their new plant distribution scheme and on top of all this pay Bunnings their unfair settlement discount in order just to be paid.

Supplier #13 states:

I have had huge issues trading with Bunnings as have many others in the nursery industry …They have grossly abused their market power and still continue to do right up the present day. They were ruthless in the early years when building their empire and nearly sent us bankrupt on two occasions.

Supplier # 82 states:

They are bullies and are careful to never put anything in writing that would catch them out. All *of the questionable activity is done verbally. Would love for there to be true competition in the marketplace.*

Supplier # 44 states:

Bunnings holds all of the power

Inability to safely complain

Bunnings operates a complaints procedure and a whistleblower service that growers can use. Bunnings points to these processes as evidence of its commitment to providing a safe way for growers to express concerns, make formal complaints and seek remedies. Bunnings claim that the existence and integrity of its complaints process is one of the reasons why it is not necessary for it to be subject to regulation via a Code of Conduct.

Bunnings has not disclosed if any growers have used these services and if so, how their complaints were resolved. Growers repeatedly tell GIA that they do not feel able to raise concerns or complaints with Bunnings for fear of the adverse consequences on their business.

Supplier #13 states:

Dealing with Bunnings over the years we have continuously felt intimidated and afraid to make waves as they could get nasty and hurt us financially as we had experienced on a number of occasions in the past

The Senate Inquiry and Code Review received extensive evidence about why the complaints processes currently owned and operated by Coles and Woolworths are not trusted by the growers supplying these retailers. There is no reason to suppose growers supplying Bunnings feel any differently: greenlife growers are completely powerless in their relationship with Bunnings and operate in a ‘smile to survive’ culture.

One of the most significant changes to the Food & Grocery Code of Conduct will be the strengthening of the mechanism by which suppliers of major retailers can complain. In his Report, Dr Emerson found that

many suppliers, especially smaller suppliers, fear retribution from supermarkets if they exercise their rights under the Codes or raise complaints against supermarkets.

Dr Emerson’s Report recommends addressing this in several ways, including the specific prohibition of retributory behaviour and the significant strengthening of complaints and mediation processes so that these can be anonymously accessed by suppliers and have independent oversight. The mandatory status of the reviewed Code will oblige all its signatories to comply with these requirements.

Meanwhile, without any equivalent code of practice, greenlife growers have no way to express concerns or raise a complaint. The fear of retribution leading to loss of business is genuine, deeply felt and has been experienced.

Supplier # 1 states:

Fear of repercussions for questioning these charges creates additional stress and uncertainty in our business dealings with Bunnings.

3. Should big box retailers be included the Food & Grocery Code of Conduct?

The Food & Grocery Code of Conduct exists to address harmful practices in the grocery sector stemming from an imbalance of bargaining powers between retailers and their suppliers**.** Plants are defined as groceries in the Code and, while supermarkets do sell plants, Bunnings and other big box stores are the largest plant retailers. Since the Code was designed to provide regulation in markets where retailers hold most of the power, extending the provisions of the Code to Bunnings, whose relevant market share is greater than that of Coles and Woolworths combined, is logical and appropriate. Big box retailers might not be supermarkets, but they share many of the same characteristics, including scale, market dominance and buying power.

The stated objectives of the Code, as currently legislated, go to the heart of what is absent in the greenlife sector and form the basic wish list for plant growers supplying big box retailers:

- help regulate standards of business conduct in the supply chain and build trust and cooperation throughout that chain
- ensure transparency and certainty in commercial transactions in the supply chain and minimise disputes arising from a lack of certainty
- provide an effective, fair and equitable dispute resolution process for raising and investigating complaints and resolving disputes
- promote and support good faith in commercial dealings between retailers and suppliers.

The Review of the Food & Grocery Code provided the opportunity to extend these protections to greenlife growers. Some amendments would have been needed to make this possible but these could easily have been achieved while other features of the Code were remade. There has been widespread support for Bunnings’ inclusion in the Code:

- The Senate Supermarket Inquiry Report recommends that the Food and Grocery Code of Conduct be amended to explicitly provide that greenlife industries are captured by the Code; and that the Code includes any large retailer that stocks food and/or grocery products.

- The then Agriculture Minister Murray Watt and former ACCC Chair Alan Fels agreed that the case to admit Bunnings to the Code has been made.

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

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

Big Box retailers have a lot in common with supermarkets

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

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

Bunnings has continued to extend its range of grocery products with the recent expansion of a comprehensive pet care offer that typically occupies a complete aisle in store. In its 2023 Annual Report, Bunnings describes this extension as ‘*the largest category expansion for Bunnings in almost 20 years’*.

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

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

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

The issues that the Code sought to address in 2015 are exactly the same as those being experienced in 2024 by greenlife growers in their dealings with Bunnings, which is part of the Wesfarmers group.

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

They understood the need in 2015, what has changed now?

If it is accepted that Bunnings dominates plant retail and that growers are disadvantaged as a consequence, including Bunnings in a code of conduct is the most immediate and best means of addressing this. Including big box retailers in the Food & Grocery Code would require some relatively simple modifications. We believe this can achieved without making the Code unwieldy or creating unintended consequences for other retailers. An alternative approach would be to recognise the gap in regulation and establish a new Big Box Code of Conduct.

4. How code of practice could help greenlife growers

The following table summarises the key issues faced by greenlife growers supplying Bunnings and how a code of practice would help address these. Most of the existing Food & Grocery Code could be applied directly, with only minor changes. Alternatively, a new code could be constructed that borrows the applicable parts of the Food & Grocery Code.

Subject	**Issue / behaviour**	**Code solution**
Contracts for supply	It is common practice that Bunnings do not issue contracts to greenlife growers. Indicative supply status is agreed with no commitment by Bunnings to volume or value with the supplier. Changes to agreements are often verbal, unilateral and applied retrospectively.	All suppliers must have a Supply Agreement agreed in Good Faith by both parties. Clear provisions around how both parties do business together and what may be changed when and how. No retrospective variation to agreement allowed.
Acting reasonably & in good faith	Volume estimates are given to suppliers with an expectation for fulfilment. No written agreement is made. Changes to volumes, price and packaging are often made without consultation and reasonable notice. Suppliers are expected to absorb all costs associated with changes to supply conditions.	Good faith provisions prevent the retailer making unreasonable changes to an agreement. Reasonable notice must be provided to suppliers for any changes to orders or packaging. Retailer’s costs cannot be offset to the supplier unless bi-laterally agreed in good faith.
Promotions	Promotions are generated by the retailer and funding of promotions is integrated into the condition of supply. Non-agreement to promotions would trigger cancellation of supply. Promotional funding is not agreed bilaterally between both parties and is not reflective of the risk and benefit to both parties.	Requiring supplier to fund promotions is prohibited unless both parties agree and the agreement is in good faith. The funding levels of the promotion by the supplier must be ‘reasonable in the circumstances’ – i.e. be commercially viable.
Payment for retailer’s activities through rebates	Bunnings require suppliers to reduce their prices by 13-15% to a store whenever a new store is opened, a store has undergone an upgrade or minor refit. This is not an optional contribution. Recently Bunnings moved to an inhouse merchandising model. Suppliers were no	The Code does not allow a retailer to pass on operational costs to a supplier without the supplier explicitly agreeing. Merchandising is deemed to be an operational cost of the retailer. They may not unilaterally pass this cost on to a supplier.

	longer able to access stores to assist in ordering and merchandising. Suppliers were charged an on-cost of 2% of invoice value to pay for the internal Bunnings resource. This was not optional.	
Rejecting products	Plants are often rejected for arbitrary reasons. Reasons that are in many instances not documented or aligned with the supplier. There is evidence that some products are over-ordered from multiple suppliers and then some are rejected. The products rejected are not paid for and freight is charged to the supplier. It is not always clear on what grounds products have been rejected.	The Code requires clear product standards and specifications to be made available to all suppliers. Products can only be rejected if it can be clearly demonstrated that they fall short of a published specification. Product specifications can only be changed if the change is reasonable and timely notice provided to the supplier.
Packaging	Bunnings make regular changes to the packaging they require suppliers to provide plants in. This often includes size and colour of pots and the associated plant information labels. Little or no notice is given to suppliers of these changes and existing stock on hand of supplier’s pots and labels is not considered. This represents a significant write down cost for suppliers.	Any changes to product packaging must be reasonable in the circumstances and shared in a timely manner. If the product is deemed to be a private label product then the appropriate supply agreement needs to make provision for changes to packaging.
Supply chain rebates	Pressure is put on suppliers by Bunnings to utilise their primary freight solution (i.e. delivery from nursery to store or DC). Non-agreement to the freight contract often leads to a reduction in orders from that supplier. For many suppliers the cost of the Bunnings primary freight agreement exceeds the cost of completing the deliveries themselves. The costs associated with the primary freight contracts are not representative of the actual freight costs incurred by Bunnings. Many suppliers have infrastructure in place to fulfil logistics.	The Code does not allow a retailer to put pressure on a supplier to agree to a primary freight agreement. Any agreements need to agreed in good faith and be reasonable in the circumstances. Not agreed to under duress. A reduction in orders through non-compliance to a freight agreement would likely be a breach of both the good faith and business disruption provisions with the Grocery Code. Any mutually agreed freight costs should be reflective of the costs incurred.

If admitted to the Code, Bunnings would need to change some of its business practices and behaviour. These changes would not be onerous and would not harm to Bunnings. Bunnings would continue to flourish in the same way that Woolworths, Coles and Aldi continue to proposer despite being Code signatories. Bunnings has nothing to fear from signing such a Code, and growers would be able to continue supplying Bunnings, safe in the knowledge that they are protected from abuses of power.

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

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

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

5. Recommendations

Given the clear market power of Bunnings, the disturbing evidence of individual greenlife growers heard in the Senate Supermarket Inquiry and referenced in this submission, the complete absence of protections for growers supplying big box retailers such as Bunnings and the benefits arising from markets that are fairer and more equitable, GIA recommends that the big box retail market be regulated through a mandatory code of conduct. This can be achieved by either amending the Food & Grocery Code, or by establishing a new code that draws from its relevant provisions.

The object and purpose of any new code applying to big box retailers of plants should be consistent with other industry codes of practice, including:

- Regulating standards of business conduct in the greenlife supply chain to sustain trust and cooperation throughout that chain.
- Ensuring transparency and certainty in commercial transactions in the greenlife supply chain and to minimise disputes arising from a lack of certainty in respect of the commercial terms agreed between parties.
- Providing an effective, fair, equitable and accessible dispute resolution process for raising and investigating complaints and resolving disputes arising between large plant retailers and suppliers.
- Specifically prohibiting acts of retribution against growers who raise concerns or complaints.
- Promoting and supporting good faith in commercial dealings between big box retailers and their suppliers.

It is well understood that penalties that are insignificant compared to the benefits gained from prohibited behaviour or to the businesses' turnover, fails to act as a deterrent. Rather, they are often viewed as a cost of doing business. Consistent with findings made by the recent Senate Supermarket Inquiry and the Emerson review of the Food and Grocery Code of Conduct, GIA recommends a code of practice that includes provision for significant penalties that will act as a proper deterrent to poor behaviour.

Further, significant penalties will only act as a deterrent for poor behaviour where there is a reasonable prospect of contraventions of a new code being uncovered. GIA recommends the ACCC should have the power to investigate the practices of any individual big box retailer at any time, regardless of whether they have a reasonable suspicion of any wrongdoing. These powers should include the ability to compel the sharing of historic purchase price data.

While stronger government regulation is arguably required in this market, it also introduces its own frictions and costs. Any new code must balance the benefits it creates in terms of increased efficiency, transparency, or fairness against the additional transaction costs it imposes.

Government regulation offering certainty for greenlife growers and formalising disincentives for bad behaviour on the part of big box retailers is our preferred outcome, since this provides much needed certainty for greenlife growers. Alternatively, by the time this Committee produces its Report, GIA is prepared to negotiate a voluntary framework with Bunnings that addresses growers’ concerns and addresses the shortcomings in the existing trading relationships between greenlife growers and the biggest retailer of their products in Australia, Bunnings.

-END-

11 October 2024