SEAFOOD INDUSTRY AUSTRALIA

Seafood Industry Australia submission to the Food and Grocery Code Review

29 February 2024

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About SIA

Seafood Industry Australia (SIA) is the national peak-body representing the Australian seafood industry as a whole. With members from the wild catch, aquaculture and post-harvest sector, including state, territory and sectorial associations, along with seafood businesses and producers. We are the voice of Australian seafood.

Currently valued at more than $3.5 billion and directly supporting more than 17,000 Australian families (ABARES, 2021) and thousands more downstream in logistics and sales, the Australian seafood industry plays a key role securing Australia's food base, creating and maintaining jobs, boosting economic activity, and generating valuable export income for Australia and our rural and regional communities.

Growth of our industry delivers increased jobs and investment in rural and remote Australia, and puts more than 1.5 billion meals of quality, healthy, sustainable seafood for Australian families and our international neighbours.

SIA provides consumers, Government and other stakeholders with confident and united representation.

Our mission is to Promote, Protect and Develop the Australian seafood industry on the national and international level. Our unity indicates that we love what we do, we stand by our products, and that our products are the best in the world.

Our Pledge

We are the Australian seafood industry, and we are committed to putting the best Australian seafood on your table now and for generations to come.

- To ensure we do this in ways we are all proud of, we promise to:
- Actively care for Australia's oceans and environment and work with others to do the same;
- Value our people, look after them and keep them safe;
- Respect the seafood we harvest and the wildlife we interact with;
- Be transparent and accountable for our actions;
- Engage with the community and listen to their concerns; and,
- Continually improve our practices.

This is our pledge to you.

Submission recommendations

SIA strongly recommends that:

1. An independent review be undertaken into the Australian food system and existing national food security frameworks, including the National Food Plan, to develop recommendations for the structure and development of a National Food Security Strategy that:
    - strengthens and safeguards Australia's domestic food security, and global export capabilities,
    - informs the development of long-term economic strategies, plans, and polices across all Commonwealth ministerial portfolios
    - considers the power imbalance between retailers and the food and fibre sector in the context of its impact on Australia's ongoing food security.

2. The Food and Grocery Code of Conduct be strengthened using a combination of mandatory and voluntary mechanisms to address the significant power imbalance between retailers and suppliers.

Introduction

While SIA welcomes the opportunity to provide feedback on the Independent Review of the Food and Grocery Code of Conduct 2023–24, we believe it's necessary to look at this issue in the broader context of Australia's food security. Access to food, water, and natural resources are key to satisfying fundamental human needs and there is significant opportunity to strengthen and safeguard Australia's domestic food security, and global export capabilities.

The sustainability of Australia's food and fiber sector is the core issue. The subject of this review is a symptom of the challenges impacting food security, compounding an already fraught space where fisheries and aquaculture operators are competing for access rights and trying to grow their businesses through the cumulative impact of government policy and climate change.

Industry, governments and the community need to collectively understand the social, economic, environmental and governance values associated with the industry to understand the impact of decisions, what the breaking points are and what can drive growth opportunities and business certainty.

Recognizing these challenges, SIA has successfully campaigned for initiation of the *Futures of Seafood* study. This program is a novel study that will describe, map and model the spatial, economic and social impacts of government targets and decisions, including but not limited to:

- offshore energy zones and proposals,
- marine parks and environmental regulation,
- oil and gas,
- desalination plants,
- tourism and recreational use and rocket launch pads.

With this knowledge, the people and businesses that support Australian seafood can make decisions and plans around the potential impacts to their future. This is also what government needs to make informed policy that achieves an inclusive and sustainable future.

Futures of Seafood. Wild. Aquaculture. Recreational. Aboriginal and Torres Strait Islanders is supported by funding from the Fisheries Research and Development Corporation (FRDC), Blue

Economy CRC, Department Climate Change, Energy, Environment and Water, and the Department of Agriculture, Fisheries and Forestry.

Relating specifically to the topic of this submission, competition is an essential element of well-functioning markets and supply chains. The Australian fisheries and aquaculture supply chain is characterised by an uneven distribution of market concentration. Food and fibre production has one of the lowest rates of market concentration in the Australian economy; there are many small to medium sized businesses competing to sell their products (Leigh, Triggs 2016). At the same time, supermarkets are one of the most concentrated sectors in Australia.

The Australian seafood industry directs its produce into four main trading sectors:

- Major supermarkets;
- Independent retailers;
- Foodservice; and,
- Exports into international markets.

Independent retailers and the foodservice sector form a sizeable market for domestic consumption of Australian seafood so currently the Australian seafood industry is not completely reliant on the major supermarkets for distribution. However, the supermarkets still play a significant role within the Australian seafood industry. In 2022–23 Coles and Woolworths held a combined 65 per cent share of Australia's food and grocery market (Leptos 2023), significantly more than the two following largest firms, Aldi (10 per cent) and Metcash (7 per cent). Coles, Woolworths and Aldi account for more than 75 per cent of industry revenue (ANZSIC 2020). Combined, the four largest firms hold approximately 82 per cent of the market in the food and grocery sector (Leptos 2023). This market share of the top four firms is significantly higher in the food and grocery sector than most other sectors in Australia's economy (Andrews, Dwyers, & Triggs 2023).

Because of this significant market share, supermarkets are one of the largest supply channels of perishable products to end customers in Australia (ACCC 2020). This market concentration impacts the competitive nature of the food supply chain and Australia's food security.

Food security is defined in the Rome Declaration on World Food Security dated 13 November 1996 as being achieved when 'all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life' (McConnel 2022). This is not just an internation issue. Food insecurity in Australia has increased in recent years with more than five million Australians now experiencing food insecurity (OzHarvest 2023). The emergency food relief system is now an 'industry in itself' with the rapid growth in demand for and expansion of food banks, community agencies, and school breakfast programmes (Sydney Environment Institute 2021).

SIA position

Competitive markets are a fundamental driver of industry efficiency, productivity, innovation, investment and international competitiveness. It is critical that competition laws effectively maintain and improve competition at all levels. Free and fair markets which promote competition, price transparency, timely and appropriate information flows and do not allow supply chain participants to exercise undue market power are critical.

Australia's food and fibre industries are under intense pressure from the cumulative impacts of climate change, labour shortages and increasingly complicated rules of doing business including the power imbalance between suppliers and the retail sector. All of these topics link to Australia's food security and SIA strongly feels there is a significant gap in government policy on this issue which must be urgently addressed.

SIA strongly recommends that:

1. **An independent review be undertaken into the Australian food system and existing national food security frameworks, including the National Food Plan, to develop recommendations for the structure and development of a National Food Security Strategy that:**
   - **strengthens and safeguards Australia's domestic food security, and global export capabilities,**
   - **informs the development of long-term economic strategies, plans, and polices across all Commonwealth ministerial portfolios**
   - **considers the power imbalance between retailers and the food and fibre sector in the context of its impact on Australia's ongoing food security.**

To focus solely on the topic of the Food and Grocery Code Review silos these issues and ignores the cumulative risk of not addressing a broader strategy to address food security. This must be the priority.

Food and Grocery Code Review

In addition to the above core recommendation, SIA provides the below context on the subject of the Food and Grocery Code Review, noting that this is only a symptom of the above broader threat.

To date, Australia's competition law has been ineffective in preventing the misuse or abuse of market concentration. Instead, we are seeing the development of a concerning level of market concentration and the misuse of market power with harmful flow on impacts to Australia's ongoing food security.

The Food and Grocery Code of Conduct (the Code) should provide a set of rules or minimum standards for an industry. The Code should work to address the current, significant bargaining power imbalance between major supermarket signatories and their suppliers. Unfortunately, the Code is failing to do its job effectively. Bargaining power imbalance and a lack of market price transparency continue to be used against fisheries and aquaculture suppliers in their negotiations with supermarkets. The impact is most significant in perishable goods supply chains where produce must be sold within a specific period before it spoils or degrades in value.

SIA recommends:

2. **The Code be strengthened using a combination of mandatory and voluntary mechanisms to address the significant power imbalance between retailers and suppliers.**

Additionally, SIA supports a number of the recommendations from the ACCC's Perishable Agricultural Goods Inquiry Final Report (December 2020), including that:

- An unfair business practice framework be implemented to outlaw such behaviour, above and beyond unfair contract terms. Business-to-business unfair contract terms framework should be strengthened.
- Increased penalties for anti-competitive conduct, including the use of unfair contract terms. Significant penalties be introduced for repeat breaches of contraventions. As it currently stands, the Code does not provide the ACCC with the necessary enforcement tools to protect suppliers against signatories that fail to comply with its requirements. Seafood suppliers have indicated they are unwilling to raise complaints because of the risk to their business, and the fact that there will be no genuine consequences for the retailers under the Code.
- Increased awareness of the ACCC collective bargaining class exemption.

- Initiatives that increase competition and options to consumers be prioritised in any government legislative agenda.
- An economy-wide provision unfair trading practices be introduced.
- The ability of retailers or wholesalers to contract out of important protections in the Code should be removed. The Code is intended to address the fact that retailers and wholesalers hold the bargaining power in negotiations with suppliers. Allowing them to contract out of Code obligations fatally undermines this purpose.
- The Code must provide a genuinely independent dispute resolution, so that suppliers are not deterred from using it because of concerns over confidentiality, bias, or commercial retaliation by retailers or wholesalers.
- The government commitment to funding and expanding the resourcing of the ACCC Agriculture Unit indefinitely.
- Outlaw 'open book pricing' where supermarkets, processors and other supply chain firms require food and fibre suppliers to show them their margins and set a price for goods based on this information.

SIA is aware of the following concerns within the food and fibre supplier base relating to supermarkets acting in contravention of the Code, including:

- A lack of information to validate claims made by retailers to suppliers;
- Manipulating markets through over or inaccurate forecasting of consumer trends;
- Unfair and intimidating trading behaviours and negotiation tactics;
- Commercial retribution against suppliers, and threats (both actual and implied) of commercial retribution against suppliers;
- Transferring business risks and costs down the supply chain onto suppliers;
- Requiring suppliers to make and fund changes to their supply chain for unclear reasons
- Reducing or cancelling orders, often 'last minute', for unfair or unknown reasons;
- Ineffective dispute resolution pathways – suppliers have little confidence in this process;
- Failure to pay suppliers in a reasonable time or in accordance with contract terms.

The 2020 ACCC Perishable Agricultural Goods Inquiry

SIA notes that the 2020 ACCC Perishable Agricultural Goods Inquiry listed a number of examples of misuse of supermarket market concentration. These examples include:

- Suppliers being asked to disclose commercially sensitive information, which can remove any information advantage they have in the negotiation. This includes providing intellectual property or details of input providers, which is of particular concern when the supermarket also retails a competing private label product.
- Pressuring suppliers of perishable agricultural goods to provide supermarkets with some form of offset in exchange for an increase in wholesale prices. This includes paying for promotional activity to an extent that almost negates the price increase.
- Retribution for initiating a cost increase discussion, by the de-listing of other products on some occasions.
- Providing a supplier with very little time to negotiate prices in circumstances where their products have a very short shelf life.

These practices reflect the commercial reality of negotiations which favour the stronger party.

The 2020 Perishable Agricultural Goods Inquiry also noted the relationship between suppliers and supermarkets can be characterised as:

- Supermarkets hold significantly more bargaining power due to their concentration in the market.
- Suppliers must commit a considerable amount of time and evidence to negotiate a wholesale price increase with supermarkets.
- Supermarkets can extract a disproportionate level of profits from products.
- Supermarkets require suppliers to comply with onerous compliance standards.

Because of this, the ACCC identified that supermarkets can engage in activities that go beyond hard bargaining and are harmful to the efficient functioning of the market. These practices include:

- Commercial retribution against individual businesses by de-listing suppliers products which can dampen suppliers ability to attempt negotiations.
- Requiring suppliers to inefficiently allocate their resources through requiring cost increases to be offset.
- Requiring suppliers to disclose confidential information to the supermarket.

Conclusion

SIA reiterates that a sole focus on the topic of the Food and Grocery Code Review silos the multitude of issues impacting food security and ignores their cumulative risk.

Australia's food and fibre industries are under intense pressure on a range of topics, and these must be considered in the broader context of Australia's food security before it's too late. SIA draws particular attention to Caitlin McConnel's 2022 Submission to the House Standing Committee on Agriculture Inquiry into food security in Australia which takes a holistic approach to the issue of food security.

Thank you for taking the time to review our submission. I welcome the opportunity to discuss any of our requests with you further and can provide more details if needed.

Finally, I would like to thank you in advance for your support of the future of Australia's seafood industry.

Yours sincerely,

CEO, Seafood Industry Australia Ltd
Email: ceo@seafoodindustryaustralia.com.au
Phone: 0409 220 788

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