

TasFarmers

# Independent Review of the Food and Grocery Code of Conduct

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**TasFarmers**  
A UNITED VOICE FOR TASMANIAN FARMERS

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## About TasFarmers

TasFarmers, founded in 1948, is Tasmania's foremost agricultural advocacy organisation, representing the diverse interests of farmers and primary producers across the state. Committed to promoting the sustainability, profitability, and resilience of Tasmania's agricultural sector, TasFarmers plays a pivotal role in shaping policies, influencing decision-makers, and providing support to farmers. With a membership base covering various agricultural industries, TasFarmers advocates for key issues such as market access, environmental sustainability, and rural development, while also serving as a hub for knowledge exchange and professional development within the agricultural community.

Through collaboration with government agencies, industry stakeholders, and research institutions, TasFarmers drives positive change and fosters innovation to ensure a prosperous future for Tasmanian agriculture. As the state's peak agricultural advocacy organisation, TasFarmers remains dedicated to championing the interests of farmers, safeguarding the state's agricultural heritage, and promoting a thriving and sustainable agricultural sector for generations to come.

## Overview

We are at a pivotal juncture in assessing the efficacy and impact of the Food and Grocery Code of Conduct, a cornerstone regulatory framework governing the commercial relationships within Australia's grocery sector. In response to the evolving dynamics of this critical industry, the Hon Dr Craig Emerson has been appointed to lead the 2023-24 Review of the Food and Grocery Code of Conduct, underscoring the government's commitment to ensuring fair and transparent practices within the sector.

The Code, instituted under the Competition and Consumer (Industry Codes – Food and Grocery) Regulation 2015, was designed to rectify imbalances of bargaining power between supermarkets and suppliers, thereby fostering a more equitable and sustainable grocery supply chain. As we embark on this review process, it is imperative to critically evaluate the Code's effectiveness in achieving its objectives, as well as to consider potential avenues for refinement or expansion.

This submission aims to contribute constructively to the review process by providing insights, analyses, and recommendations drawn from the collective experiences and perspectives of stakeholders across the food and grocery industry. By examining the impact of the Code on commercial relations, transparency in transactions, dispute resolution mechanisms, and the promotion of good faith dealings, we seek to illuminate both successes and areas for improvement.

Through collaborative dialogue and evidence-based assessment, we endeavour to inform decision-makers of the necessity, scope, and potential enhancements of the Food and Grocery Code of Conduct. Ultimately, our shared goal is to safeguard the interests of all stakeholders, foster a thriving grocery sector, and uphold consumer welfare. In the interests of having a direct and succinct submission, TasFarmers has selected the 10 questions believed to affect our stakeholders the most.

## Consultation questions

### Purpose of the Code:

2. *Does the Code effectively address issues between supermarkets and their suppliers stemming from bargaining power imbalances?*

In assessing whether the Food and Grocery Code of Conduct effectively addresses issues arising from bargaining power imbalances between supermarkets and suppliers, it is imperative to consider the lived experiences of stakeholders within the food and grocery sector. While the Code was established with the noble intention of mitigating such imbalances and fostering fairer commercial relationships, there remain persistent concerns regarding its efficacy in practice. Suppliers, particularly smaller entities, often find themselves in a disadvantaged position when negotiating terms with dominant supermarket chains, facing pressures that include price squeezes, unilateral changes to agreements, and unfair contract terms. Despite the existence of dispute resolution mechanisms within the Code framework, suppliers may still hesitate to challenge the status quo for fear of retribution, thereby undermining the intended purpose of the Code in levelling the playing field.

### Recommendations:

- I. **Strengthen Enforcement Mechanisms:** Enhancing the enforcement mechanisms within the Code framework is essential to ensure compliance and deterrence of unfair practices. This could involve the introduction of independent auditing processes to monitor adherence to Code provisions and the imposition of meaningful penalties for breaches. Such measures would serve to bolster supplier confidence in the Code's effectiveness and promote greater accountability among supermarket chains.
- II. **Promote Supplier Education and Support:** Recognising the inherent power dynamics at play, efforts should be directed towards empowering suppliers with the knowledge and resources necessary to navigate contractual negotiations effectively. Establishing initiatives for supplier education and support, including access to legal advice and dispute resolution assistance, can help redress the imbalance of bargaining power and enable suppliers to assert their rights more confidently within the supply chain. By fostering a culture of transparency and collaboration, these measures would contribute to a more equitable and sustainable food and grocery sector.

### Background to the Code:

3. *Is it agreed that there is an imbalance in market power between supermarkets and all suppliers, or only some suppliers and/or some product types?*

In addressing the question of whether there exists an imbalance in market power between supermarkets and suppliers across the board or only within specific segments, it is a must to acknowledge the nuanced nature of the grocery supply chain. While some suppliers may possess sufficient market leverage to negotiate on relatively equal terms with supermarkets, numerous instances indicate a systemic power disparity favouring large retailers. This power asymmetry is particularly pronounced for smaller-scale suppliers and certain product categories, where limited options for distribution and alternative buyers leave them vulnerable to the dictates of dominant supermarket chains. Moreover, the prevalence of private-label products and the concentration of market share among a few key players exacerbate the unequal bargaining position of suppliers, hindering their ability to negotiate fair terms and prices.

*Recommendations:*

- I. **Conduct a comprehensive sectoral analysis to identify specific segments or types of suppliers most susceptible to market power imbalances:** This analysis should consider factors such as market concentration, buyer dependence, and barriers to entry. By pinpointing vulnerable areas within the supply chain, policymakers can tailor interventions and support measures to protect the interests of affected suppliers.
  - II. **Implement proactive measures to enhance transparency and fairness in commercial transactions between supermarkets and suppliers:** This could involve mandating regular reporting of contract terms and pricing arrangements, facilitating supplier education programs on negotiation strategies, and fostering industry-wide initiatives to promote ethical business practices. By fostering a culture of transparency and accountability, stakeholders can mitigate the adverse effects of market power imbalances and foster a more equitable grocery supply chain.
4. *Should the same rules apply to all supplier interactions covered by the Code, or should additional requirements apply where a greater power imbalance exists?*

In considering whether the same rules should apply uniformly to all supplier interactions covered by the Code, or if additional requirements should apply in cases of greater power imbalance, it is crucial to acknowledge the varying dynamics within the food and grocery supply chain. While a standardised approach may simplify implementation, it may not adequately address the nuanced power dynamics that exist, particularly between large supermarkets and smaller suppliers. Therefore, it may be prudent to adopt a tiered approach, where additional requirements are triggered based on the extent of power imbalance. This approach could involve assessing factors such as market share, revenue disparity, and dependency levels to determine the appropriate level of regulation for each supplier interaction.

*Recommendations:*

- I. **Implement a tiered approach:** Introduce additional requirements and protections for suppliers facing significant power imbalances, such as smaller suppliers dealing with dominant retailers. This could include stricter guidelines on payment terms, pricing arrangements, and dispute resolution mechanisms to ensure fair treatment and mitigate the potential for abuse of market power.
- II. **Develop guidelines for determining power imbalances:** Establish clear criteria for identifying situations where a greater power imbalance exists, considering factors such as market share, revenue disparity, and dependency levels. This would provide clarity for both suppliers and retailers and ensure a consistent approach in applying additional requirements.

## Operation of the Code:

### 5. *Should the Code be extended to cover other aspects of the food and grocery supply chain?*

Expanding the scope of the Code to cover other aspects of the food and grocery supply chain warrants careful consideration to ensure comprehensive regulation without unduly burdening stakeholders. While the current Code primarily focuses on the relationship between supermarkets and their suppliers, there are other critical segments within the supply chain, such as wholesalers, distributors, and producers, which may also be susceptible to unfair practices and power imbalances. Therefore, extending the Code's coverage could enhance transparency, fairness, and cooperation throughout the entire supply chain, ultimately benefiting all stakeholders involved. By addressing issues beyond the retailer-supplier relationship, such as wholesaler-supplier dynamics or producer-wholesaler interactions, the Code can contribute to a more equitable and sustainable food and grocery industry.

#### *Recommendations:*

- I. **Conduct thorough stakeholder consultation:** Before extending the Code's coverage, engage with various stakeholders across the food and grocery supply chain to understand their specific challenges, concerns, and needs. This inclusive approach will help identify areas where regulatory intervention is most needed and ensure that any expansion of the Code is targeted and effective.
- II. **Phased implementation:** Given the complexity of the food and grocery supply chain, consider implementing the extension of the Code in phases, starting with sectors or segments where power imbalances or harmful practices are most prevalent. This incremental approach allows for careful monitoring, evaluation, and adjustment of the Code's effectiveness, while also minimising disruption to industry operations.

### 7. *Is the coverage of the Code to the current signatories sufficient to address bargaining power issues across the supply chain? For instance, should the Code's signatories be extended to more wholesalers that sit between the retailers and producers of food and grocery products?*

Assessing the adequacy of the current signatories covered by the Code to address bargaining power issues across the supply chain necessitates a holistic examination of the dynamics within the food and grocery industry. While the existing signatories, primarily supermarkets and their direct suppliers, play a significant role in shaping industry practices, there are intermediaries such as wholesalers that wield substantial influence in the supply chain. These wholesalers often serve as intermediaries between retailers and producers, thereby exerting considerable bargaining power over suppliers. Therefore, extending the Code's signatories to include wholesalers could enhance transparency, accountability, and fairness in negotiations and transactions throughout the supply chain, ultimately mitigating the risk of exploitation and fostering a more equitable marketplace.

#### *Recommendations:*

- I. **Conduct a comprehensive impact assessment:** Before extending the Code's signatories, conduct a thorough assessment of the potential implications on all stakeholders, including wholesalers, retailers, and suppliers. This assessment should evaluate the extent of bargaining power wielded by wholesalers, the prevalence of harmful practices within their interactions with suppliers, and the anticipated benefits and challenges of their inclusion under the Code. Such an analysis will provide valuable insights into the feasibility and effectiveness of extending the Code's coverage to wholesalers.

- II. **Implement targeted support and guidance:** Recognising that wholesalers may have distinct needs and challenges compared to retailers and direct suppliers, develop tailored support mechanisms and guidance materials to facilitate their compliance with the Code. This could include providing training programs, resources, and access to dispute resolution mechanisms specifically tailored to the unique dynamics of wholesaler-supplier relationships. By equipping wholesalers with the necessary tools and knowledge, their inclusion under the Code can be effectively implemented, thereby strengthening protections for suppliers across the entire food and grocery supply chain.

#### Code Provisions:

##### *9. Which provisions under the Code help or hinder suppliers? How can the provisions be improved?*

Identifying the provisions within the Code that either assist or impede suppliers is crucial in ensuring its effectiveness in promoting fair and equitable practices within the food and grocery industry. While certain provisions, such as those related to transparency in commercial transactions and the dispute resolution process, may empower suppliers by providing clear guidelines and mechanisms for addressing grievances, others may inadvertently create barriers or disadvantages for suppliers. For example, provisions governing payment terms and pricing agreements may disproportionately favour retailers or larger players in the supply chain, thereby limiting the bargaining power and financial stability of smaller suppliers. Therefore, a comprehensive evaluation of existing provisions is necessary to identify areas for improvement and to enhance the Code's ability to protect the interests of suppliers across the board.

#### *Recommendations:*

- I. **Conduct regular stakeholder consultations:** Engage with suppliers, industry representatives, and other stakeholders to solicit feedback on the effectiveness of current provisions and to identify areas of concern or contention. By actively involving suppliers in the review process, policymakers can gain valuable insights into the practical implications of the Code on their operations and livelihoods, thereby informing targeted reforms and improvements.
- II. **Enhance provisions for fair pricing and payment terms:** Strengthen provisions within the Code related to pricing agreements and payment terms to ensure greater fairness and transparency in supplier-retailer transactions. This may include introducing guidelines or benchmarks for determining fair and reasonable pricing, as well as implementing stricter enforcement mechanisms to deter unfair practices such as late payments or arbitrary price adjustments. Additionally, providing suppliers with greater flexibility and recourse in negotiating contracts and resolving disputes can help rebalance power dynamics within the supply chain and promote more mutually beneficial relationships between retailers and suppliers.



## Would a mandatory code create a fairer environment for suppliers?

### *12. What dispute resolution model would most effectively facilitate positive outcomes for the industry, while also allaying suppliers' concerns of retribution?*

Selecting an effective dispute resolution model that fosters positive outcomes for the food and grocery industry while addressing suppliers' concerns of retribution requires careful consideration of various factors, including accessibility, impartiality, and enforceability. A model that encourages transparency, facilitates timely resolution, and safeguards against retaliation are paramount in promoting trust and cooperation within the supply chain. One approach could involve establishing an independent ombudsman or mediation service specifically dedicated to resolving disputes between retailers, wholesalers, and suppliers. This independent body could offer confidential, non-binding mediation services to facilitate constructive dialogue and negotiation between parties, helping to address grievances fairly and impartially while also minimising the risk of retribution.

#### *Recommendations:*

- I. **Implement a multi-tiered approach to dispute resolution:** Develop a tiered dispute resolution framework that provides suppliers with multiple avenues for addressing grievances, ranging from informal mediation to formal arbitration or adjudication. This approach allows parties to choose the most appropriate and effective mechanism based on the nature and severity of the dispute, thereby promoting flexibility and accessibility while also ensuring that suppliers' concerns of retribution are adequately addressed.
- II. **Enhance protections for whistleblowers:** Introduce robust protections for suppliers who raise concerns or report violations of the Code, including safeguards against retaliation or victimisation. This could involve establishing confidential reporting mechanisms, implementing anti-retaliation provisions, and providing legal recourse for suppliers who experience adverse consequences as a result of whistleblowing. By fostering a culture of accountability and transparency, these measures can help alleviate suppliers' fears of retribution and encourage greater compliance with the Code's provisions.

### *13. What benefits could a mandatory code bring to suppliers?*

Making the Food and Grocery Code of Conduct mandatory could offer several significant benefits to suppliers within the food and grocery industry. Firstly, a mandatory code would provide suppliers with greater legal certainty and enforceability, ensuring that retailers and other parties in the supply chain adhere to fair and transparent business practices. This would help protect suppliers, particularly smaller and more vulnerable entities, from unfair treatment, such as late payments, unilateral contract changes, or arbitrary pricing adjustments. Additionally, a mandatory code would create a level playing field for all participants in the industry, promoting competition and innovation while preventing the abuse of market power by dominant retailers. Suppliers would also benefit from increased access to effective dispute resolution mechanisms, empowering them to resolve conflicts with retailers in a timely and impartial manner.



*Recommendations:*

- I. **Implement robust compliance monitoring and enforcement mechanisms:** To realise the full benefits of a mandatory code, it is essential to establish effective monitoring and enforcement mechanisms to ensure retailer compliance. This could involve appointing dedicated regulators or ombudsmen tasked with overseeing compliance with the code's provisions, conducting regular audits and inspections, and imposing penalties or sanctions for non-compliance. By holding retailers accountable for their actions, suppliers can have greater confidence in the efficacy of the code in protecting their interests.
- II. **Provide education and support for suppliers:** Alongside the implementation of a mandatory code, it is crucial to offer suppliers comprehensive education and support to help them understand their rights and obligations under the code. This could include providing training programs, resources, and guidance materials on compliance with the code's provisions, as well as offering assistance with navigating dispute resolution processes. By equipping suppliers with the knowledge and tools they need to advocate for their interests effectively, the mandatory code can empower them to engage more confidently in negotiations with retailers and other stakeholders in the supply chain.

**Compliance Penalties:**

*20. Should civil penalties be available for breaches of the Code?*

The availability of civil penalties for breaches of the Food and Grocery Code of Conduct could serve as a powerful deterrent against non-compliance and promote greater accountability within the food and grocery industry. Civil penalties would provide regulators with a stronger enforcement tool to address instances of misconduct or unfair practices by retailers, wholesalers, and other signatories to the code. By imposing financial sanctions on parties found to be in breach of the code's provisions, civil penalties can incentivise compliance and discourage behaviours that undermine the integrity of the supply chain. Moreover, the threat of civil penalties may encourage retailers to take their obligations under the code more seriously and prioritise fair and transparent business practices, ultimately benefiting suppliers and consumers alike.

*Recommendations:*

- I. **Establish clear guidelines and criteria for imposing civil penalties:** To ensure fairness and consistency in the application of civil penalties, it is essential to establish clear guidelines and criteria for determining when penalties should be imposed and the appropriate level of sanction. This could involve specifying the types of breaches that warrant civil penalties, the factors to consider in determining penalty amounts, and the process for appealing penalty decisions. By providing transparency and clarity around the enforcement of civil penalties, regulators can enhance confidence in the effectiveness of the code in promoting compliance and protecting the interests of suppliers.

- II. **Allocate resources for enforcement and oversight:** Effective enforcement of civil penalties requires adequate resources and capacity within regulatory agencies to investigate complaints, conduct audits, and take enforcement action against non-compliant parties. Therefore, policymakers must allocate sufficient funding and staffing to support enforcement efforts and ensure timely and robust responses to breaches of the code. Additionally, ongoing monitoring and oversight of compliance with the code's provisions are essential to detect and address potential violations proactively. By investing in enforcement and oversight mechanisms, regulators can strengthen the deterrent effect of civil penalties and uphold the integrity of the food and grocery supply chain.

## Conclusion

In conclusion, the review of the Food and Grocery Code of Conduct presents a critical opportunity to strengthen regulations and practices within the food and grocery industry, ultimately benefiting suppliers, retailers, and consumers alike. Through comprehensive analysis and stakeholder engagement, it is evident that several key areas require attention and reform to enhance fairness, transparency, and cooperation throughout the supply chain. Addressing issues such as power imbalances, dispute resolution mechanisms, and compliance enforcement is essential to promoting a level playing field and fostering a more sustainable and equitable industry.

Recommendations arising from the review include the implementation of a tiered approach to regulation, tailored support for suppliers, and the introduction of civil penalties for breaches of the code. These measures aim to address the diverse needs and challenges faced by stakeholders within the food and grocery supply chain while promoting compliance and accountability. Furthermore, the review highlights the importance of ongoing monitoring, evaluation, and adaptation to ensure the continued effectiveness of regulatory frameworks in addressing evolving industry dynamics and safeguarding the interests of all participants.

By embracing these recommendations and committing to continuous improvement, policymakers can strengthen the Food and Grocery Code of Conduct, enhance industry standards, and contribute to the long-term sustainability and prosperity of the food and grocery sector in Australia.

Yours sincerely,

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TasFarmers CEO

