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REPORT 3: Phase 2

Interviews

Project 1.3.7: Understanding how trading practices affect food loss and waste in Australia

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Executive Summary

This is Report 3 from the project '*Understanding how trading practices affect food loss and waste in Australia*'. The project investigates how trading practices impact on food loss and waste (FLW) in Australia and what are the solutions to situations where a trading practice is contributing to food loss and waste. This report presents findings from semi-structured interviews with 19 stakeholders (participants) involved in bakery and horticulture supply chains.

Through an analysis of this data, the report finds a number of trading practices and supply chain features implicated in FLW in Australia. Namely, it shows how participants consider market imbalances, contractual practices, a lack of data and transparency, as well as a lack of alternative markets as contributors to FLW at production levels. It also identified a range of other factors associated with trading practices and the structure of supply chains that indirectly shape trading practices and FLW, including cold chain transport practices and issues, labour shortages and regulation applicable to food relief. Finally, this research identified factors that participants believe would influence the success of interventions into trading practices to address FLW or which should be part of how interventions into trading practices are designed. These include cultural drivers and unintended consequences associated with interventions.

In the preliminary analysis of the findings presented in this Report, we draw on the list of unfair trading practices (UTPs) contained in the EU *Directive on Unfair Trading Practices* (EU 2019/633 of the European Parliament and of the Council of 17 April 2019 on Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain, 2019) to provide support for identifying what practices may be problematic. As noted in our earlier reports, we use the EU *Directive on Unfair Trading Practices* throughout our research because it provides a clear definition and list of unfair trading practices, unlike in Australia where we do not have a legal definition and set list of practices. Drawing on the European Commission's (European Commission, 2014) definition of UTPs, Falkowski et al. (2017, p. 6) highlight that UTPs in the context of B2B relationships (which are of relevance to this project) are "practices that grossly deviate from good commercial conduct, are contrary to good faith and fair dealing and are unilaterally imposed by one trading partner on another". We note that what is 'fair' or 'unfair' is partly dependent on cultural context, and so what is considered fair or unfair within Australia may differ from the EU, however the EU context provides a useful example of what practices could be considered unfair and what practices may be considered 'grey' or ambiguous.

Based on this analysis, this report makes the following key points:

1. It is sometimes difficult to distinguish between trading practices that cause FLW and other components that are either design features of the supply chain or which significantly influence supply chains that also result in FLW.
2. Participants view market imbalances as a core feature underpinning trading practices and supply chains that contribute to FLW.
3. Participants identified specific trading practices that cause FLW and these are associated with contractual terms, data and transparency, and [lack of] alternative markets.

Report 4 and 5 provide further analysis of these findings towards advancing specific recommendations regarding trading practices and FLW in the Australian context.

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1. Introduction

This report is the third report of a total of five reports that were written for Project 1.3.7, which aimed at understanding trading practices contributing to food loss and waste in Australia. Specifically, this report focuses on Phase 2 of the project, in which interviews were conducted with industry stakeholder in the Australia food supply chain to develop an understanding of relevant trading practices contributing to food loss and waste (FLW).

This report is structure as follows.

Section 2 provides an overview of the method. This includes outlining the purpose of this phase of the project and providing an overview of the participants, including recruitment procedures.

Section 3 highlights key themes that emerged from the data, including in relation, but not limited, to market imbalances, contracts that demand or facilitate overproduction, oversupply and/or FLW, lack of data/transparency, and lack of alternative markets.

This report concludes by making connections between the themes and issues that emerged during the interviews with the unfair trading practices recognised as per EU *Directive on Unfair Trading Practices* (Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain, 2019). Limitations of this aspect of the project are also outlined within Section 4.

For reference, the following provides an overview of the five project reports:

- Report 1 provides findings from a review of the Australian context regarding trading practices including: food loss and waste (FLW) in Australia, supply chain characteristics, the regulatory environment, and relevant government inquiries related to either trading practices and/or the food supply chain. It then goes on to provide an overview of trading practices, including defining unfair trading practices and outlining relevant aspects of Australian competition and consumer law. Attention is then given to international and Australian legislation and regulations relating to unfair trading practices in the context of agriculture and the food supply chain.
- Report 2 presents the findings from Phase 1 of the project, whereby a literature review was conducted to map trading practices that contributed to FLW, both internationally and in Australia.
- Report 3 provides findings from Phase 2 of the project, in which interviews were conducted with industry stakeholders in the Australian food supply chain to develop an understanding of relevant trading practices. This report provides an overview of the method and highlights key themes that emerged from the data, including in relation, but not limited, to market imbalances, 'contracts' that require or facilitate overproduction, oversupply and/or FLW, lack of data/transparency, and lack of alternative markets. This report concludes by making connections between the themes and issues that emerged during the interviews with the unfair trading practices recognised as per EU *Directive on Unfair Trading Practices* (Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain, 2019). Limitations of this aspect of the project are also outlined within Report 3.
- Report 4 delivers the findings from Phase 3 of the project. This report provides a 'deep dive' of three potential solutions that may aid in addressing some of the practices and issues noted in Report 3. Specifically, it (1) explores strengths and limitations of industry codes; (2) considers how data transparency could be addressed; and (3) investigates the potential of whole crop purchasing in mitigating oversupply.

- Report 5 brings together the key insights across Reports 1-4 and provides a summary of the project. Importantly, this final report builds on insights across the entire project to offer recommendations with respect to trading practices and FLW.

2. Methodology

To better understand the role trading practices play in Australia's FLW, semi-structured interviews with industry stakeholders were conducted to: (a) identify trading practices contributing to - or reducing - FLW in Australia specifically, and (b) establish if data is available to quantify food loss and waste (or food loss and waste saved) resulting from trading practice, and where possible, estimate the impact and extent of these trading practices. Prior to conducting these interviews, ethical approval was obtained from QUT's University Human Research Ethics Committee (#8043).

In total, 49 potential participants were contacted and invited to participate in an interview. Recruitment largely involved purposive sampling procedures, which means potential participants were selected based on their current role within relevant industries and specifically their experience with trading practices relating primarily to production, processing, and distribution pertaining to horticulture and bakery goods, as per the scope of this project (see Robinson, 2014). Identification of potential participants was aided by a survey distributed via the CRC and the researchers' own networks in which participants were invited to share some high-level views on trading practices and FLW, and could provide their contact details should they wish to be contacted to participate in a research interview. In the majority of instances, direct contact was made by emailing potential participants specifically, however, there were instances where the invitation to participate was sent to an organisation's generic email address, inviting a representative from the organisation to participate. Where a response was not received after initial contact was made, a follow up email was sent.

Of the 49 potential participants contacted, 19 agreed to participate in a formal interview. Two of the interviews involved two participants, so in total, 17 interviews were conducted. Here, it should be noted that a number of other participants agreed to talk with the lead researcher, however, they did not wish to participate in a formal interview. These conversations were invaluable in terms of providing clarity on specific points or background information to the project. While these conversations have not been reported on in the project's findings, where possible, the project team used the information to tailor subsequent probing questions in later interviews and/or sought to find secondary data sources that could be used to make these points elsewhere in the reporting for this project instead.

Due to the sensitive nature of discussing trading practices and known market imbalances with the food supply chain, a key requirement of the ethical approval obtained for this project, and in fact, the willingness of participants to engage in a recorded interview, was that participation would be anonymous. Careful consideration has been given in reporting the project's findings to ensure that participants' identities are not inadvertently revealed and as such, pseudonyms have not been used to illustrate which quotes come from which participants. This also means that limited details can be provided about who participated in a research interview. The majority of interviews involved representatives of industry bodies, but some interviews involved individual growers, representatives of specific organisations and/or those that could talk to specific issues. Despite attempts to recruit specific representatives from retailers, the retail perspective was not captured in the interviews. This is not surprising given the heightened socio-political context at the time of conducting this project, whereby there were a number of active government inquiries (see Report 1), however, it is recognised as a limitation of the project. A small number of interviews were conducted with other representatives outside of production, processing, and manufacturing, including those in the food relief sector (who were cognisant of how changes to trading practices might impact their supply chains and had formed direct relationships with retailers and producers) and a food service organisation, who could offer insights into upstream and downstream contracts.

All participants were asked to sign a consent form prior to participating in the interview and were verbally asked to confirm their consent at the start of the interview. All interviews were conducted by the lead researcher for consistency, and followed a semi-structured interview protocol. This meant that all participants were asked the same key questions, however, more nuanced probing questions were typically tailored depending on the participant and their responses to the key question. To avoid biasing the data,

participants were initially asked broad questions (e.g., From your perspective, can you tell me about a trading practice that has negatively impacted your organisation's ability to reduce food loss or waste?) rather than questions about specific, known trading practices (e.g., as per the EU *Directive on Unfair Trading Practices*). Invariably however, participants did speak to a number of specific trading practices that have been labelled as unfair as per the EU *Directive on Unfair Trading Practices* (as summarised in Section 4 of this report). Interviews ranged in length from 35 minutes to 1 hour, with the average time being 51 minutes. All interviews were conducted between February-April 2024. While each participant offered unique perspectives and insights, broad data saturation was reached via the interviews conducted.

All interviews were recorded and transcribed to support data analysis and ensure participants' responses were accurately captured. Data analysis involved thematic coding. This entailed a close reading of the data to familiarise the researchers, an open coding of the data base followed by a collaborative grouping of these open codes thematically, and a review and refinement of the themes. This approach is consistent with the widely accepted framework for thematic analysis developed by Braun and Clarke (Braun & Clarke, 2022; Clarke & Braun, 2017; Braun & Clarke, 2006). The themes ultimately identified are discussed in Section 3.

2.1 Limitations

Prior to explaining the key findings from the interview data, it is important to contextualise here that the genesis for this project emerged back in late 2022, prior to increased attention being placed on Australian supermarkets and their market power through several inquiries that took place between late 2023 and into 2024 (see Report 1, Appendix A). Of particular note, all interviews were conducted prior to the final report of Independent Review of the Food and Grocery Code being handed down, of which the recommendations that the Food and Grocery Code be made mandatory and substantial penalties incurred for non-compliance, amongst others, were outlined. The various inquiries (detailed in Report 1) were focused on retailer trading practices generally and not specifically trading practices in relation to food waste. Although the interviews conducted for this research were focused on the connection between trading practices and food waste, the existence of the inquiries and their focus on trading practices more generally influenced the interviews. There are various ways in which we hypothesise that the interviews were influenced by the broader social and political context, for instance, participants often struggled to identify trading practices that reduced FLW and should be enabled. They could, however, readily talk about negative trading practices. Participants also largely spoke to trading practices related to the retailers more than any other supply chain actor.

Importantly too, all participants were explicitly asked whether they had captured data, or had seen any data, that revealed the level of FLW stemming directly from trading practices. All participants highlighted that this data does not currently exist in Australia and many were of the view that such metrics would be impossible to capture given the level of granularity needed, the time or cost involved to collect such data, and that it is not always clear whether a trading practice (or which specific trading practice) was the root cause behind the FLW. To illustrate this latter point, a grower could face a situation where a certain crop is rejected. In this instance, the cause of the FLW could be the weather, the cosmetic standard, another undeclared reason the crop was rejected or an unclear mix. As this example shows, trading practices are often invariably interrelated and often circular in nature, meaning it would be difficult to ascertain which specific trading practices was ultimately to blame.

When considering the results, it is important to highlight that the interview data represents the *subjective views* of participants rather than objective conclusions about trading practices and FLW. A focus on the subjective views of stakeholders regarding a particular issue is common in qualitative research such as this, and it is widely understood that this type of research is intended to explore participants perspectives in-context rather than provide an objective account of naturally occurring phenomena (see, for example, Morse et al., 2002).

Additionally, while interviewees were explicitly asked about trading practices contributing to food waste, the points and issues they raised: (1) did not necessarily correlate clearly to known unfair trading practices in the agricultural supply chain (as per the EU *Directive on Unfair Trading Practices*), and (2) were not always directly relevant to food waste, but nonetheless, are features of systemic issues within the food supply chain that overall may contribute to FLW.

3. Results

This results section is structured according to the themes that emerged via the data analysis. It begins with market imbalances, which emerged as a central and connecting theme of the study. It then discusses the contractual relationships and how these demand and/or facilitate overproduction, oversupply, and/or FLW within the food supply chain. Following this, the key themes of lack of data and/or transparency and lack of alternative markets are outlined. Additional themes related to the cold chain, labour, and food relief are then outlined, along with a number of factors participants, often indirectly, highlighted that need to be considered in relation to addressing FLW and/or unfair trading practices.

3.1 Market imbalances

Market imbalances embedded into supply chain structures and/or related to corporate consolidation was, overwhelmingly, perceived to be a central cause of FLW identified across all interviews. While market imbalances was in and of itself a key theme that came through in the data, it was inextricably linked to the other key themes or practices specifically noted as contributing FLW that came through this study, specifically: (1) 'contracts' which demand or facilitate the overproduction, oversupply and/or waste; (2) lack of data and/or transparency; and (3) a lack of alternative markets, as will be explored in subsequent sections of this report. While much of the data talked to market imbalances between retailers and suppliers, it also emerged in other relationships including between franchisees and franchisers in the bakery sector, and more subtly, between food service organisations and their clients and even between tiers of growers, as elucidated in the following sections and via the below sub-themes. As one participant acknowledged however, how and when market imbalances play out with the food system can significantly vary:

[I]t depends on who the grower is, what their offering is and at what time of the year. If they're competing against other growers, then they'll tend to get played off against each other. If they're dealing directly with a retailer and they're the only ones producing at that time of year, then they probably are in a pretty good position... I think there's pressures and conflict regardless of whether you're supplying to retailers, wholesalers, et cetera, depending on who you're competing with, the time of the year, the market you're trying to access, et cetera.

Whilst Sections 3.2, 3.3, and 3.4 of this report highlight the connection between market imbalances and practices which were noted as directly contributing to FLW, fear of negative consequences, rising costs and the implications, and promotions and payments for wastage emerged from the data as sub-themes related to market imbalance. While they do not necessarily correlate directly to FLW, they do reveal how the structure of food supply chains and related power imbalances create food supply chains that are more likely to lead to FLW or through which issues related to FLW may go unaddressed.

3.1.1 Fear of negative consequences – Impact on supplier relations

Across the interviews, participants made references to fear of negative consequences – whether “real” or “perceived” (as noted by one participant) – though these did not necessarily directly link to FLW. Some participants, for example, highlighted the different ways they believed negative consequences could be experienced. A number of participants also spoke about how growers will not report retailers when they perceived behaviour occurring which did not align with the current codes because of a fear of negative consequences. This point is important to note, because a lack of reporting could (a) create the perception that current regulatory mechanisms are working and/or (b) limit the ability of regulators to enforce the laws relevant to unfair trading practices (such as industry codes in Australia) and practices which may also drive FLW (detailed in Report 1 and 2).

The comments shared by participants with respect to this theme may correlate to items detailed in the EU *Directive on Unfair Trading Practices* such as adverse actions that may be a result of the supplier exercising contractual or legal rights, though the

some participants expressed the view that the way in which these manifest in practice would not be classified as an 'unfair' trading practice. For example, there was the perception that commercial retaliation could be 'hidden' under the guise of a legitimate commercial reason, because of the data retailers have at their disposal.

3.1.2 Promotions and payments for waste

Participants highlighted how they perceived the practice of promotions has changed over time, moving away from something that ultimately worked as mechanism to reduce FLW (via the selling of surplus) to something more akin to a 'privilege' at suppliers' cost:

We used to be able to do a deal with specials when you had a lot of – a glut of produce, but supermarkets about four or five times a year would come out and say, oh, for the privilege to be a supplier of us, we're going to run a special in two weeks and we're going to drop the price... it's understood that you will be supplying that produce at a third less, below the cost of production, so we can run the special. So, the money wasn't coming out of their [retailers'] pocket, it was coming out of our pocket.

This quote points to how buyers ask suppliers to pay for discounts, which is considered a 'grey' trading practice as per the EU *Directive on Unfair Trading Practices*. This means that such practices are not necessarily unfair, and therefore not prohibited, provided the supplier and buyer unambiguously agree on them beforehand (see Report 1 and 2).

Some participants also highlighted how they perceived suppliers were, in effect, being charged for waste that was generated in retail stores (see also sales and return agreements under Section 3.2.2 of this report):

As it concerns waste in store, I think that's something that they shouldn't be able to get out of... There is no way a grower, a supplier, has any control over the waste that occurs in store after it's delivered to a DC, right? It's not your responsibility. It's something you can't control, so why are you paying for it?

This above quote infers a link to a trading practice that is prohibited in the EU: Payments requested by the buyer for the deterioration or loss of agricultural and food products such as where deterioration or loss is not caused by negligence or fault of the supplier. The extent to which this is a widespread practice was unclear, however, other participants highlighted how they perceived this can be done, via payment terms for example, without it being deemed a waste charge.

Participants shared concerns about the way in which payments are currently requested by the buyer for deterioration or loss of agricultural and food products, identifying a significant opportunity to create clear guidelines as to the calculation of payments. However, it could also be suggested that the method/s used to transfer the cost of waste at the retail level to the supplier may make it difficult to detect, even if Australia had prohibitions similar to the EU. These views more broadly reflect the possible difficulties in building a case to prove that an unfair trading practice occurred. Where retailers are able to transfer costs of waste incurred at the retail level to suppliers, the economic incentives to reduce FLW may be reduced, since the costs can be shifted.

3.1.3 Rising costs and the implications

Participants highlighted – either explicitly or implicitly – perceptions about how market imbalances mean that suppliers lack power to be able to negotiate, including in relation to achieving price increases from retailers, despite significant increases of costs incurred by suppliers. As one participant explained, "cost of production is not a key feature in any negotiation" because of the "supply and demand market". Participants, for example, talked about how they perceived that "supermarkets are paying approximately 25 per cent less", "the price that growers get at the retail level from supermarkets has remained almost flat", "growers haven't received a price increase in 15 years", and that "retailers [have] a lot of the expectations they push down through the supply chain and there's no capacity for the growers to recoup the costs". On this latter point, while participants acknowledged that labour was a significant cost for them, a number of participants also pointed to the high cost of compliance necessary in order

to be able to supply the supermarkets. As one participant explained, “for a grower to have supply into the retail, you’ve got to have your GFSI and HARPS systems, which are required on annual audit. That annual audit and certification process is somewhere in the order of \$5,000 to \$10,000 depending on how big you are and how much produce you’re producing”. Some participants called on the ACCC to scrutinise these costs, and also highlighted the perceived double standard at play:

In our local supermarket there is a fridge at the front of the shop where they put in there just about ready to expire products. So, that could be milk with a satay chicken with some seafood in with the berries and, like, they’re all huge contaminants that we get audited with, like, a fine toothcomb and they’re all in the one cabinet and yet they’re allowed to do that.

Participants also highlighted the flow on effects they perceived existed because of market imbalances and their lack of ability to negotiate prices. This included:

- Growers leaving the industry and/or suffering emotional and financial hardship (e.g., “We were losing money [hand] over fist, it was incredibly difficult for us, it nearly broke us”; “we’ve been living below the poverty line”).
- Increasing consolidation of farms and suppliers (e.g., “...unless you can produce something at volume you can’t possibly ever be profitable”).
- Concerns for food security (e.g., “We are going to end up with fewer growers, fewer larger growers. I think that does add risk. Supply chains are already quite long, in a physical sense, prone to disruption by natural disasters and other things. We’re eroding the productivity of the industry, I think... growers who are less secure, less profitable, and less able to ride out disruptions like a natural disaster, or COVID, or anything else.”).
- Less ability to invest into farms or value-add opportunities, such as upcycling or processes that can reduce FLW (e.g., “They have less profit to be able to reinvest in productivity enhancements”; “...people are struggling to breakeven so how on earth we shift that so that we get people going, okay, now I can invest in value add, and other bits and pieces”).

While the above does not point to specific unfair trading practices per se, it is important to place this discussion in the context of supermarket prices. One participant, for example, spoke about a 500% mark up between the price a grower received for a product and the price it was selling for in a supermarket during COVID. This example, along with others raised during the various government inquiries focusing on supermarkets, would not likely meet the threshold of an ‘unconscionable conduct’ (See Report 1); however, it does raise questions about the inherent ‘fairness’ or, conversely, ‘harm’ of pricing practices within the food supply chain. Regardless of this, as another participant summarised:

[There must be] powers to scrutinise the differentials between farmgate and retail pricing to ensure – and maybe it is part of the code. Maybe it is supply contracts must be written on the basis of cost of production plus X per cent. The X per cent might be based on CPI or RPI plus a bit more to make sure the farmer is actually achieving a margin that is going to allow for long-term sustainability of the operation.

It is feasible to suggest that the price differentials between farmgate and retail pricing may, in turn, impact on FLW by limiting the resources a grower has to invest in methods, knowledge, and infrastructure to reduce FLW. It could also facilitate overproduction as growers look to increase income by producing more.

3.2 'Contracts' which demand or facilitate overproduction surplus and/or FLW

Overwhelmingly, participants highlighted how they perceived 'contracts', a term that is used loosely here, created systemic impacts for the food supply chain, and in particular, facilitated overproduction, surplus and/or FLW. In this context, overproduction leading to food surplus can be understood as the production of food beyond what is required to meet nutritional requirements or demand (see Hiç et al., 2016; Messner et al., 2021). While the nature of participants meant the data was skewed towards the horticulture sector and discussion around supply agreements particularly with the retailers, some concerns were also relevant to the bakery sector, as well as other contracting practices more broadly.

3.2.1 Supply agreements

This section focuses on supply agreements with retailers specifically and the role participants perceived they play in facilitating overproduction, oversupply, and waste. It is important to premise this discussion, however, by highlighting that the majority of participants explicitly stated that they do not view supply agreements as contracts. While some participants acknowledged growers "definitely sign an agreement", others noted that it "has always been on good faith and conversations", which still likely amount to a contract in a technical legal sense. As one participant acknowledged "...a lot of horticultural growers don't have a contract, it's a supply agreement which we don't think carries the same legal weight and then there's - so there is some debate about the terminology". Technically, a supply agreement is still a contract, and so arguably in light of legal provisions around contracts, if a retailer decided not to buy any of the volume provided, this could be considered as a breach of contract. However, the key issues raised by participants is that (a) the supply agreement does not provide clarity to the grower about how much will be purchased and at what price, and (b) there is a lack of clarity as to what constitutes a contract, as further discussed below.

Another participant acknowledged that the Food and Grocery Code (discussed in Report 1, see also Report 4) covers supply agreements, however, they acknowledged how they perceived the behaviours of retailers around varying the terms of a supply agreement often falls outside of the Code:

The supply agreement is what currently falls under the code and there are no contracts. But, the behaviour post the supply agreement isn't - would not be compliant with the code necessarily. I think this is where you have - at the moment there's ridiculous scenarios essentially saying, well, take it or leave it pricing essentially or there's a whole heap of protections in the Code, but they can be written out of an individual supply agreement provided both parties agree.

Here, it is also worth highlighting that while the data presented in this report largely talks to supply agreements between direct suppliers and retailers (which, depending on certain thresholds, fall under the Food and Grocery Code), they can also exist between food processors or manufacturers, as well as hospitality, institutions, and food service organisations. The extent to which the Code/s apply to the relationships between growers and food processors/manufacturers and growers and hospitality/institutions/food service organisations is not as clear. What is also important to contextualise too is that supply chains are not always simple; for example, there can be multiple growers that supply to a pack house, who then feeds it to a marketer, who then feeds it to a supplier/retailer. The extent to which the multiple growers and/or pack houses are covered by the Code/s is also somewhat unclear (see Report 4).

Regardless of whether supply agreements are or are not legally enforceable in a technical sense, what was made very clear by participants is that these agreements do not bind retailers to a price or volume. As one participant noted: "they're not contracts.... They don't determine price. They suggest volume. In many cases, they bind the supplier but not the supermarket, so they're not – they're a loose agreement, you would say". The nature of these agreements means, as another participant summarised: "because

supermarkets won't commit to contracts that lock in a supply volume in advance, the actual supply volume and price is negotiated week to week". In other words, the supplier commonly agrees to supply a certain volume in advance to the retailer with the retailer agreeing to set a price and take a certain amount to be determined in the future.

Multiple participants perceived that such purchasing practices enabled by overproduction and ultimately, FLW. This situation is perhaps best summarised by one participant, who was of the view that retailers are "over-ordering so that they can kind of oversupply the market and pick up a cheaper price". How this plays out was consistently explained by multiple participants and can be broadly summarised as follows:

1. Retailers give growers an outlook, tell a grower specifically how much quantity of a particular product they need, and/or growers advise the supermarkets how much quantity they will have of a certain product and what price they are willing to accept from it. As one participant summarised, at this point, growers are essentially "dealing with retailers under [the] assumption of how much they need to produce".
2. Retailers can theoretically go to a number of growers with the same outlook figures and/or specific quantities. This can lead to overproduction, in that multiple growers are growing to the same 'order'. As summarised by a participant, retailers could go to one grower and give them an outlook, but "they might give five other people the same amount".
3. Because of contracting requirements that require growers to meet the supply agreements, growers typically grow above the forecast amount – to factor in things like quality assurance specifications/cosmetic standards, pest, disease, and weather events – to ensure that are not penalised for part delivery or non-delivery. This, as one participant explicitly acknowledged "drives overproduction because they [growers] are absolutely frantically trying to over-deliver to make sure they meet the volume that's in a supply contract". So, in line with Point 2, not only are multiple growers potentially growing to the same 'order'; they are also likely overproducing to meet that 'order'.
4. Retailers, because of the nature of supply agreements, are not bound to take the forecasted amount. As a result, they arguably can, as summarised by one participant, "pick and choose where they get the product and what they get and what volume they want from each operator".
5. Once 'orders' are fulfilled (noting here that growers are effectively price takers and have limited power to negotiate on price because of market imbalances, lack of data transparency and/or perishability of the produce) growers – because of Points 1-4 – are then left with a situation where they have an oversupply. At this point, growers have limited options, as summarised by a participant:

They plough it back in to save on cost... [W]here it's already bagged and branded...they can't do anything. So that's what goes to Foodbank and all the hunger relief. Or...they've put all their money into it, so they put it on the wholesale market. This is where it goes really bad... The retailers also buy through agents in the wholesale market, [but because of oversupply] the wholesale market already is at capacity... it crushes the whole thing. [Added to this], the person that comes with an imperfect wholesale now bottoms out of the market too. So, it crashes the entire wholesale market price.

6. This creates a vicious cycle for perishable products in particular, due to the lead time necessary to grow the produce and effectively creates a situation that facilitates FLW: "you get overproduction and then the price being offered is less than the cost of actually picking the [produce]. So, you end up having a scenario where you've got basically growers ploughing their crops in or [the produce] rotting, or you just have an inability to move the volume of product".
7. While growers could arguably just grow less based on their own insights regarding supply and demand, this is not as simple as it would seem due to the risk of not being able to fulfil a supply agreement as noted in Point 3 and/or real or perceived negative impact this would have on their long-term relationships with retailers.

Some participants highlighted significant variations between supply agreements and what the retailers ended up taking, with one participant commenting that “it would be interesting to take all their supply agreements for a product, work out what the total volume was that they ordered or that they promised suppliers and then what they actually ended up taking”. While it is acknowledged that the discrepancies between supply agreements and the volume ultimately being taken by the retailers could be explained through legitimate commercial reasons (e.g., lower consumer purchasing levels than predicted), participants also perceived, and expressed concerns, that such practices were being used to deliberately lower prices paid by retailers to growers. While such perceptions and concerns would likely “be really hard to prove”, it is worth noting that during the Select Committee on Supermarket Practices (Commonwealth Parliament, 2024), a retailer highlighted that they “look at what the central markets are paying” and noted “we pay the market price”. This becomes relevant in the context of the perceived deliberate creation of an oversupply (see Point 5 above) and, as a result, the increased volume going through the central markets. While this report cannot confirm or refute that such practice is occurring, it is noted that this issue may be hard for a regulator to identify and address on a case-by-case basis, which suggests that a different approach to regulating and structuring this aspect of the supply chain should be investigated and developed.

Within the EU, the above scenario may be prohibited under the EU *Directive on Unfair Trading Practices*, namely ‘unilateral changes to the terms of the supply agreement by the buyer’. However, the case would depend on at what point a ‘supply agreement’ is classified as an ‘order’, and whether it occurs at Point 1 in the scenario outlined above, or at Point 4. As one participant surmised:

That's where I believe is the biggest loophole in waste that's coming about, the definition of an order. I'd [say] an order exists when you have got a supplier agreement where the grower is growing for no one else [and you have] an indicative amount over an indicative time period... [I]t doesn't have to have a price attached because the price can be negotiated and all the rest. [Because of this view], growers are saying 'I'm not oversupplying'. Because in their head, they're growing to order.

While participants noted limitations and perverse impacts of supply agreements, some participants questioned how and if the status quo of supply agreements could change to address price and volume. One participant, for example, stated “I don't think many growers would support putting the price in there, because it limits their options”, whilst another suggested that “volume in the agreement should be binding”. However, as another participant argued:

[O]ur product is perishable so our product changes day to day, sometimes there can be up to five to six changes within the day due to whatever situation. So, how can a contract cover that? There is nothing that you can put together and say, you know, oh there is going to be possibly 16 changes for the day but you're okay with that, sign here.

Another point worth noting here is that while participants (a) were cognisant of the interconnection between quality assurance standards/cosmetic standards (see Point 3 above) and supply agreements, and (b) overall noted a need for some standards, they also highlighted how the perceived these standards may be applied when and as the retailers need them. Some participants noted that specifications “feed into the dynamic around supply” and that “retailers will change their specs depending on demand”, while others took a more critical view, as illustrated by the following two quotes:

I think cosmetic standards are just another tactic that they use to manipulate supply. Because they will take less than desirable standards when they have to. It is not a cut and dry rule. It is a rule that they manage.

[I]f they're sitting on more [produce], they've got incentive to go look through the whole pallet and find something wrong with it. Whereas if they need the [produce], they might just do...a sample size. So, it's probably the variability in their sample size depending on the trading conditions which is a bit inconsistent.

Some participants explicitly made a connection between these standards and FLW: "I think it's things like quality standards, cosmetic quality standards, in particular, that are resulting in a lot of on farm losses and probably unnecessary downgrades" and "all of those specs and requirements [in contracts] is what drives waste".

In addition to supply agreements, it is worth noting here that some participants also spoke to the "year-round availability of certain types of food" based on business decisions to "supply what the consumer wants" as facilitating overproduction, oversupply, and FLW. To explain this point, it was highlighted that in order to be able to have year-round supply of food that is, in many cases, seasonal, growers have had to plant more trees and/or take on additional farms in other areas to ensure a consistent supply. This, in turn, may facilitate an oversupply of certain produce during the season, all so that supply can be guaranteed in the months that produce is not supposed to be in season.

Finally, while participants were not explicitly asked about payment terms as it was not perceived to be a topic explicitly relevant to FLW, some participants did bring this up over the course of the interview, and where this occurred, figures given were well in excess of what is considered an unfair trading practice as per the EU Directive (i.e., payment later than 30 days for perishable agricultural and food products). Given the limited discussion around payment terms in the interviews, this is something that warrants further attention.

3.2.2 Sales and return agreements and other contracts, including franchise agreements

Sales and return agreements, and other contracting practices, including franchise agreements, were also noted during the interviews as directly facilitating FLW.

In relation to sales and return agreements, participants provided examples which highlight how such agreements could fall under a grey unfair trading practice, as per the EU *Directive on Unfair Trading Practices*: "the buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or without paying for the disposal of those products, or both". Typically, sales and return agreements provide a retailer with "full credit for things that aren't sold". In the EU context, since such a practice is considered 'grey', it would not necessarily be prohibited provided the "the supplier and the buyer have agreed to it in clear and unambiguous terms" (see Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain, 2019). Yet, these practices are still known to generate waste, in that retailers are not motivated to lower the waste because it is not their problem. As participants explained, this situation is further compounded by the market imbalances noted in Section 3.1 of this report.

While an obvious solution would be to simply ban sales and returns agreements, as has been done in South Australia (*Prices Act 1948*), participants highlighted concerns with nation-wide legislation to this effect, in that retailers, aided by market imbalances, could, either directly or indirectly, request payments for wastage as part of their contracts, and in turn, that these payments could actually worsen the suppliers' financial position. This concern is not without grounds. As discussed previously in Section 3.1.1 of this report, participants identified various ways in which retailers shifted the cost of waste at the retail level onto suppliers. An additional point noted here was that, while shifting the responsibility of the waste to retailers would likely lead to less FLW (as has been demonstrated in South Australia), concerns were raised that the retailers would be in a better financial position than under the current arrangements with sales and return agreements. To explain this using a hypothetical example: Retailers could stipulate what is essentially a wastage fee from the supplier based on 10% waste, which in turn, the supplier is required to pay to maintain their supply. However, the retailer, through markdowns and other practices, might be able to get the waste down to 6%. The retailer

ends up in a better financial position if they do not pass this saving on to the supplier. Furthermore, concerns were also expressed about the financial impact “removing sale or return agreements could impact regional and remote communities because [smaller] food stores would not be able to return product they weren’t able to sell”. However, there would be a way to design prohibitions on sales and returns agreements so that they only applied to retailers over certain revenue thresholds.

Participants highlighted the need for government oversight or involvement in contracting should legislative change be made to ban sales and return agreements, and even in the case of any voluntary approaches to ensure suppliers are not worse off under such arrangements (e.g., to ensure retailers do not use their market power to dictate what could be perceived as unfair payments for waste). It was also highlighted that any voluntary approaches will need to adopt a ‘whole of industry’ approach, with the view that the fear of negative consequences means that individual suppliers cannot risk refusing to comply with current arrangements regarding sales and return agreements. In a similar vein, the current regulatory approach whereby some actions and decisions which are theoretically exempt under the Food and Grocery Code unless agreed to by all parties was also critiqued. Here, some participants suggested removing such exemptions as market imbalances mean that suppliers feel they have little choice but to agree to such terms. This potential weakness, whereby unfair trading practices are permitted provided they are agreed to, is also a feature of the EU approach.

Franchise agreements within the bakery sector were also highlighted as causing substantial, and avoidable, FLW. Participants highlighted how the master franchise agreements require franchisees to have certain stock levels (for example, 20%) available at the end of the day for, essentially, last minute customers. As one participant acknowledged: “It’s all very good to have the shelves all full. That’s wonderful, it looks beautiful, but at the end of the day it’s got to go somewhere”. Participants highlighted that the master franchises are not willing to budge on this practice, and that franchisees cannot make less because of the level of data available to the master franchises which can show when non-compliance occurs.

Throughout the interviews, light was also shed on how downstream practices by those ordering food (i.e., institutions) from food service and hospitality organisations can result in FLW, simply because a contract demands what is effectively over-ordering (i.e. they need to provide a certain amount of food, regardless of whether or not it is likely to be eaten). In a similar scenario to what was highlighted in relation to franchise agreements, participants highlighted that: (a) there is little incentive to change this practice voluntarily, in that practices and guidelines within institutions prevent such a change; (b) the food service/hospitality organisation cannot take steps to minimise FLW without being penalised for failing to meet contractual obligations; and (c) there may be a lack of incentives for food service/hospitality organisations to initiate conversations about reducing the downstream FLW because this comes with a likely financial impact.

3.3 Lack of data and/or transparency

Closely interrelated to market imbalances and issues associated with contracts, particularly supply agreements, was the lack of data and/or transparency. Overwhelmingly, participants identified the challenges associated with forecasting, and in turn, supply agreements, and noted the lack of data and/or transparency as being an underlying factor behind overproduction. As one participant summarised:

It goes to that inverted pyramid, I think, on food waste, where it’s the production you can prevent in the first place that possibly presents the greatest opportunity. It goes to accuracy of forecasting, and therefore planting and production... Because there is no transparency in terms of the market for fresh fruits and vegetables, particularly as they go into supermarkets, but arguably, also into wholesale markets as well. There are some services that

people can pay for to get data on the wholesale markets, but it's not great. It's not perfect, and there is no view of at the supermarket end.

Participants were generally of the view, as one participant summarised, that “[t]here’s no trust. There’s no openness. There’s very little transparency”, particularly in relation to the horticulture sector. This came down to what one participant referred to as the “information asymmetry” that exists because, as they perceived, the “retailer has a bigger understanding of what else is out there whereas the grower has no understanding so they can’t really interrogate that”. While some participants did highlight that individual growers are the ones ultimately making decisions about what to grow (notwithstanding the challenges noted in the previous section), as others articulated, the lack of data and/or transparency means that individual growers do not know how many supply agreements exist and/or they “can’t see what other growers are doing” to be able to forecast better.

Participants resultantly suggested there is a need for “greater data sharing with suppliers”. As one participant articulated, retailers should:

Across a category, make it publicly available, what they forecast, what they actually bought, and where there’s any variance, or significant ongoing variances, that they incur penalties, fines. And also, requiring them to privately supply to the – privately publish to the individual supplier for a particular period, what the forecast was, and what the actual was, so individual producers and suppliers have a view of how close they had got at the end of a season, or at the end of a quarter, to what they were told originally.

While volume was typically noted by participants as an area where more transparency was required, price was also noted as another area where greater transparency was needed, with participants talking about the need for greater transparency around how prices were set, as well as around the prices being offered to growers. To explain this point, participants were of the view that when retailers tell the grower what price they would be willing to pay for produce, growers typically have limited information to understand how this price was determined and if the price they were being offered was for a similar or lesser quality of produce.

Some participants did acknowledge that there are mechanisms to access specific kinds of data, but the costs of accessing this data for individual suppliers was considered prohibitive. Others acknowledged challenges associated with the sharing of data and relatedly creating transparency. This included the view, as one participant articulated, that “there is very little incentive for retailers of all descriptions to improve that because they’ve basically passed the risk, the supply risk and all of the financial underpinning of that on the supply base”. Others highlighted concerns around competition laws, including fears that any attempts, particularly by industry associations, to create an accurate/better understanding of price and/or volume would be considered as “collusion” or “anti-competitive”. As one participant stated:

[T]here’s nothing inherently problematic about an industry group developing some type of price transparency mechanism. In fact, the majority of these are industry led but it’s important the behaviour doesn’t facilitate cartel or anti-competitive agreements across competitors. So, there is a line and it’s just the technicalities of where that line is.

In terms of what this ‘line’ is, as another participant acknowledged, to avoid running afoul of competition laws, data needs to be shared in a way that is “vague enough so collusion can’t be construed, but clear enough to be useful”. A solution to this, as one participant articulated, is for the government to mandate data sharing:

I think the government has a role to play to maybe mandate the publication of data. After that, I think it’s up to maybe the private sector or industry bodies to gather that data together and make it more accessible. But access to the data in the first place is probably something that the government could regulate for, but then – so, mandating the publication of it in some format that’s easily [interrogated].

3.4 Lack of alternative markets

Whilst 'contracts' which demand or facilitate overproduction, oversupply, and/or FLW and a lack of data/transparency were central issues raised by participants, lack of alternative markets emerged as a compounding factor in creating FLW and was closely interrelated with the notion of market imbalances. As one participant explained:

[I]t doesn't matter if you're the biggest grower in Australia; you have a situation where really your only access to your customer is through the retailers.... [growers] don't really have a lot of other avenues to market and because of the perishability, the retailers can 100 per cent push the grower to a take it or leave it position because the grower - it's that information asymmetry....you can't just say no, I'm going to hold out and see if I get a better price, you just have to take the price as it is... you certainly have that issue with perishability that really changes the dynamic of the conversation and the fact that we don't have alternate pathways to consumers.

Participants in particular spoke of challenges trying to find alternative markets when produce has been rejected by supermarkets. As one participant explained:

So, when they knock it out there are two things that can happen, the first thing is they knock it out, they'll send it back to you so that's at a cost to the grower so a freight back. So, then you have to find... another market for that product and it's not as fresh. The second thing is if we have products that's coming through, the whole way through, and we have no way of getting that product on [to another buyer], it is at our cost that we have to put it into a foodbank.

While this participant noted two outcomes, participants also highlighted an additional outcome: "it just gets dumped".

The occurrence of retailers rejecting produce from the distribution centre which in turn, is donated, at the growers' expense, to food relief organisations is worth noting here. As another participant perceived:

[S]upermarkets say we donated so many million dollars' worth of fresh produce [but they] didn't pay the grower for it. The grower actually donated it.

This raises an interesting question around at what point 'ownership' should be transferred from the grower to the retailer. Currently, data suggests that ownership does not transfer until the retailer inspects and agrees to take the product, as opposed to when the product arrives at the distribution centre. If this is the case, careful consideration needs to be given around how claims to the general public that donations are made by the retailers to food relief, as these claims could be viewed as misleading if it is not the retailer who has borne the cost of that donation.

On a separate but related issue to rejections, other participants highlighted perceived issues around packaging and specifications, in that retailers have different requirements around packaging and even "slightly different" specifications. As one participant explained, this becomes problematic when the produce is rejected by a retailer:

If you take it to the wholesale market in a [retailer] bag, everyone knows it's been rejected, so they give you nothing – basically nothing for it anyway. You're not going to bring something like that back to repack because of the costs of undoing the packaging, repacking, let alone the transport costs.

This particular participant viewed the proposed Food Donation Tax Incentive as a positive option for growers in such situations, as they it would place them in a better position in that they would receive at least some financial return on the produce. While not all

participants were explicitly asked about the proposed Food Donation Tax Incentive, where it did come up in interviews, overall participants were supportive of this scheme.

Finally, a number of participants also highlighted the need to develop export markets for horticulture products as a way to create alternative markets. The grape industry was often used as an example of this:

[I]ndustries like the grape industry that have a really big export profile - they're pretty much able to say to the supermarket's, fine, we'll just sell them offshore. Supermarkets are like, okay, and so they've been able to negotiate better deals and more clarity and a bigger focus on quality and all of that kind of stuff. So, I think there's so many benefits for an industry if we can get that export and that dynamic of competition into the marketplace.

As this quote elucidates, participants perceived that export markets would not only provide an alternative market for produce, but would also be a means to address market imbalances. Whether expanding export would reduce FLW is unclear, as it could lead to additional FLW as producers expand production and work to meet specifications set by other governments and retailers. However, it may help address those aspects related to market imbalance detailed previously that ultimately enable FLW by indirectly providing growers with more bargaining power.

3.5 Other themes: Cold chain, labour, and food relief

Whilst not central to the findings in terms of unfair trading practices, three other topics emerged during the interviews that are still worth noting with consideration to FLW and trading practices more broadly: cold chain, labour, and food relief. These are discussed below.

While most of the interview data focused on the relationship between growers and the retailers, participants acknowledged that cold chain/transport was also a point at which FLW can occur. As one participant highlighted, “transport is a big issue for us. It has the ability for quality breakdown really quickly, which then leads to an increase in waste”. Overall, the notion of ownership, transparency, and quality were noted by participants, sometimes in response to a follow up interview question and sometimes on their own accord. This is perhaps best summarised by one participant, who stated:

So it's an interesting question, who owns the goods where, and that's part of the problem in the cold chain is the concept of accountability for the product along the way. The problem with it passing or products passing in and out of trucks and warehouses and so forth is at what point does a product become non-compliant if people aren't doing the right things along the way at each in and out point?

A challenge with the cold chain, as highlighted by a participant is that:

There are no mandatory requirements around cold chain. If something goes wrong, that is when literally the finger pointing starts on where things went wrong, and usually everyone thinks it's somebody else's problem.

It was suggested that improvements could be made by ensuring “temperature is controlled, tracked and monitored through that whole process to ensure consistency”. This, amongst others, would lessen “shortcuts along the way, which reduces temperature or increases it whichever way that it shouldn't go, which causes spikes and reduces the shelf life of those products”.

In relation to labour, participants expressed a variety of topics and concerns related to labour. Often, labour was mentioned in the context of rising costs of labour, with some making explicit connections to how this contributed to FLW. As one participant summarised:

I think...\$35 to \$45 is what they're paying pickers, which that sort of cost just makes it unviable straight up to go and pick anything other than the cream of the crop fruit that's going to go into retail and bring you back – potentially – the best reward. I would love to see some sort of tax incentive for people to actually harvest stuff that's going to be left on the ground as waste.

Others spoke about government policies or legislation more broadly and how this impacted the cost of labour and type of labour. One participant, for example, spoke about the costs associated with harvesting on public holidays because of government legislation:

We're going to have to harvest one day in this public holiday and it's at a cost that is ridiculous that we know we're not going to get back for but we have to go harvest it otherwise it is going to be spoilt and not - it's going to be a second grade product because it's not going to last until the Tuesday and Wednesday that you go back into harvest...I just find our government treating [primary] producers the same as white collared workers. We cannot work nine to five Monday to Friday. We work nine to five Sunday to Monday. Or Monday to Sunday, that's how we always have been, and when our product is ready, our product is ready. We can't go hey stop we've got a public holiday for the next two days, just have a bit of a holiday we'll come and see you on Tuesday, it doesn't work like that, it does not work like that. We're being penalised for growing a product in Australia for Australian people.

Another participant highlighted the need for “all the tools in the toolbox” when it comes to visa arrangements and the different types of workers growers need. As this participant articulated:

You have peaks and troughs in labour requirement. So, there's a huge diversity in how you manage some of those things. Some growers have short- and long-term PALM workers. Some growers rely on backpackers. Others are looking for longer term arrangements... we need all the tools in the toolbox because of our diversity of crops, diversity of growing regions, and all those sorts of things.

Some participants also spoke to the quality of labour, with one participant stating that “the quality of labour and the productivity will have a direct correlation on the waste that actually comes out the other side”.

In relation to food relief, one area of concern that was raised was Samaritan laws. More specifically some participants highlighted that such regulation in Australia “speaks entirely to free food or donated food” and that there was a grey area where food relief organisations were providing any form of payment to primary producers and/or food manufacturers. Whilst not specifically relevant to this project, hypothetically – and in the absence of tax incentives for donating surplus food (noting here that at the time of writing this report, the Food Donation Tax Incentive Bill was before parliament) – this grey area of the law may limit pathways for surplus food. Some participants also spoke to the inconsistencies between the application of health and safety standards between states and territories and noted a need for a harmonious approach.

3.6 Additional considerations

Over the course of the interviews, participants, often indirectly, highlighted a number of factors that should be considered in relation to addressing FLW and/or unfair trading practices. This included competition laws, weaknesses of the current Codes, culture, and potential unintended consequences. Each of these are discussed below.

In relation to competition laws, whilst this was raised in the context of data transparency, participants also spoke more broadly for the need for ‘exemptions’ to competition laws to be able to effectively address FLW. This included in relation to whole crop purchasing, which was highlighted by some participants and will be discussed in more detail in Report 4. One participant, for example, drew on the case of Tesco in the United Kingdom to help illustrate this issue and highlighted that whole of crop

purchasing involves secondary contracting. When queried about whether this could lead to a possible violation of Australia's competition laws, it was suggested that this could potentially be avoided "if the regulator writes the clauses for the secondary contracts and you stick to them". The point was also raised that there is a "need for exemptions around public good and environmental good" to, in essence, allow for situations like have happened elsewhere in the world where "competitors [are] in the same room... all trying to solve a common problem". As noted in Report 1, such exemptions were, at the time of writing this report, being considered by the ACCC.

Participants raised a variety of issues related to the current Horticulture Code of Conduct and the Food and Grocery Code (noting here that at the time of data collection, Emerson's independent review of the Food and Grocery Code had not been completed). A number of participants highlighted what they perceived to be gaps and/or lack of clarity with the Codes, including in relation to more complex supply chains and cold chain/transport. For example, one participant highlighted that there was a lack of clarity as to who is covered in situations where there are "multiple growers feeding into a pack house who then feeds into a marketer who then is the supplier". Here, it was perceived that the Horticulture Code "only protects the grower to the packer. It doesn't protect the packer to the marketer". However, another participant offered a slightly different view in the context of grower to packer:

There's not a real code [that covers the grower to packer relationship], but that tends to be on a contract basis where these packers go out and contract with a grower to grow and there's various forms of that but that cuts out the code. The code can't – doesn't come into being under that. So that's a bit different [to] supplying direct into the Melbourne market or the Sydney market where the code does enforce the process.

As another participant suggested, the Codes:

... need to cover the full gamut of relationships between farmers, growers, other suppliers like food manufacturers, wholesalers and retailers and catering companies, everyone in that food system that is involved in the production, sale and distribution of food should be part of that code.

The key takeaways here were that not only do the Codes need to adequately cover the supply chain, but that there also needs to be education around who is covered by which Codes and how (see also, the discussion on supply agreements/contracts in Section 3.2.1).

Another of participants also expressed concerns with the wording of the Food and Grocery Code, as also seen in relation to the EU *Directive on Unfair Trading Practices*' grey unfair trading practices, in that certain behaviours are not considered to be in violation of the Code if these are 'agreed' by both parties. As one participant summarised:

[T]here's a whole heap of protections in the Code, but they can be written out of an individual supply agreement provided both parties agree. But if you have a situation where one party has all of the power and the other party has none of the power then...that's not really a very fair approach.

This quote, as a number of other participants also highlighted, illustrates how market imbalances effectively mean that suppliers feel they have little choice but to accept conditions. One participant even went as far to suggest that removing the "unless agreed line" could be "helpful" in supporting a reduction of FLW. In a similar vein, participants also highlighted that: (a) what is considered "good faith", (b) a significant change to a contract, and (c) whether appropriate notice is given about changes to a contract are subjective within the Food and Grocery Code, but again, market imbalances meant that these concerns were generally not reported (see Report 4 for a more detailed analysis of both the Food and Grocery Code and the Horticulture Code).

Linked to the notion of market imbalances, and particularly the fear of negative consequences, was the need for independent dispute resolution processes. As one participant summarised, "We can be told 1,000 times that there's some sort of paper wall between a Code arbiter and the retailer, but yeah, the growers just won't buy it, so they do need to be [truly] independent. However,

as one another participant expressed: “My concern is that...we’re still perishable. If they do bring in true independent arbiters and mediators, I don’t know how much of a difference that will make [when you’ve] got a perishable product”.

Lastly, on the notion of perceived weaknesses with the Codes, enforcement, or lack thereof, was also perceived to be an issue. As one participant explained:

[I]f a retailer can get away with a certain behaviour and knowing that the growers or the suppliers won’t complain about it, then it probably just instils that behaviour in the daily trade.

This quote illustrates the idea that a culture of non-compliance has emerged due to the market imbalances between supplier and retailer and the weaknesses in the relevant regulation. There is, as such, an embedded expectation among all parties that growers will not access the avenues available to enforce fair trading practices.

On the topic of culture, this was a theme that emerged across the interviews as something that would need to be addressed and could prohibit progress on reducing FLW. Interestingly, participants spoke to the culture at various points of the supply chain, including in relation to growers, cold chain/transport, retailers, and consumers, as well as how a ‘business case’ mentality prevails over sustainability.

In relation to growers, as one participant highlighted, “collective bargaining is difficult because essentially horticultural growers are very lone soldiers, they do them”. This idea of growers being individualistic was raised by a few participants, in relation to various topics. One such topic was data transparency. As one participant summarised:

It is difficult to extract price information from growers. Asking wholesalers or retail supermarkets to publish it is one thing, but obviously that data is also arguably owned by the supplier or the grower. There are a couple of different initiatives that are designed to enable the pooling of market information by growers, and it’s like a data cooperative, if that makes sense. You submit your price information, and in response, you get a view of the whole market, or the market for that particular produce that you’ve just sold. Some of these schemes have been successful. Others haven’t been so much. It’s because, I think, horticulture is really competitive, that people don’t want to give away any advantage including sharing their information.

Another participant spoke about the perverse impacts of competition, noting that:

[C]ompetition is so strong that you’ve got growers who will put product into the market at zero just to knock others out. You sit there going, that’s not healthy as an industry... how do you get that mentality out of people and how do you change that culture?

This same participant acknowledged:

I don’t know that I could put that oversupply issue squarely on retail and those agreements. We find quite often you have a really strong year dollar-wise on, say, [name of produce]. The next thing you know, you’ve got two farmers pop up here or there and you’ve got an oversupply due to success the year before. That, again, comes back to that whole, growers competing against growers. You know – such and such down the road had a really good year last year. I’m going to put in a little bit more just to try and bump my negotiating powers up, and all of a sudden, everyone is oversupplied.

The need for behaviour and/or cultural change was also noted in relation to understanding of the cold chain and improving transport practices. As one participant expressed, there is a:

Lack of understanding of the importance of cold chain, lack of understanding around the collaboration and the end-to-end concept of cold chain. Really everything from someone who's just freshly picked grapes, left them out in the sun too long sitting in their container before it goes into the first cool room. That's before it even gets to the distributor. So, it's not even lack of compliance, it's culture; it's behaviour change.

In relation to improving practices within the transport industry, this is perhaps best summarised by the following quote:

[T]he transport industry has been guided by the principles of, get it there on time. So, it's all around the prime mover making sure that it's loaded on time, making sure that the driver has their appropriate breaks, making sure that the driver's not breaking any rules, making sure that the truck is loaded the right way so that you're not breaching axle weights. It's all around safety and compliance of moving the product from A to B, but it's not so much around the quality of the payload.

The point being made in the above quote was that the shift in mentality around transport practices to also consider food quality could lead to significant reductions in the amount of FLW occurring during transport.

At the retail level, participants highlighted their perceptions that key performance indicators and behaviours of individual buyers could facilitate the practices outlined in this report. As one participant highlighted with reference to internal performance measures within supermarkets in particular: "We're products of an environment. You change the environment enough, behaviours will change". Similarly, another participant suggested "I sometimes think maybe some of the behaviours are individual specific...because when we raise them sometimes to senior management, they go, oh no, we'd never condone that behaviour, and yet the behaviour's happening". However, it is unclear the extent to which individual buyers' behaviour is then addressed by the retailer.

At the consumer level, some participants pointed to the need to change consumer perceptions in relation to quality standards. For example, as one participant commented: "I don't think you could pin that on the retailers... we've got to change the consumer's perception and then that would drive the retailer to change". Some participants also commented on the need to change consumer behaviour so that Australian eat the recommended serves of vegetables and fruit per day as a way to drive consumption and decrease oversupply.

What also emerged from the interviews was the notion that the 'business case' mentality continues to prevail over sustainability. This was briefly noted in Section 3.2.2 of this report regarding other contracts. Participants, for example, spoke about how any "improvements in shelf life" by manufacturers or growers are "banked by the retailer", that "it's cheaper to throw [food] in the bin than do a markdown because of the high labour cost to manage that process", and that "there's a difference between their [retailer] waste versus supplier's waste" and as a result "there's just no appetite to engage". On the point of a business-case mentality, some participants also highlighted the need for 'whole of industry' approaches to FLW. In essence, the view was that there is too much of a risk being a 'first mover' and that change will only happen if the whole industry is mandated or voluntarily agrees to enact change. Collectively, the quotes highlighted above suggest that even if government policies and/or legislation were introduced to address the trading practices and concerns noted within this report, without culture and/or behaviour change among all actors, the intended outcomes may not be achieved. Regardless, influencing culture and behaviour change may still require government intervention, for instance, changes to procurement and food marketing environments.

Lastly, participants also spoke to potential unintended consequences and challenges of addressing the issues noted through this report. Several participants highlighted the potential implications for the food relief sector should a reduction in overproduction at the primary production level, in particular, be achieved. Furthermore, participants also spoke to concerns that in solving one problem, only would be created. As one participant summarised:

I think the real challenge with this is you've got to make the solution not create another problem and there's a lot of, as you would know, distortion you can - once you start mucking around you can create distortions and create a bigger problem than the one you're trying to solve.

This perhaps points to the importance of developing interventions into trading practices in a way that includes identifying and addressing unintended consequences and considering interventions that address root causes as opposed to reacting to specific issues in isolation.

With reference to the government inquiries occurring at the time of data collection, another participant articulated three outcomes they could see from any changes made as a result of these inquiries:

1. Retailers would respond to public pressure and lower prices for consumers. While the participant noted this was a good option for consumers, they suggested that it would be bad for growers as they perceived the retailers would “push back” and “lower supplier prices”. They suggested this option would be “bad for consumers in the long run because the growers will just go out of business”.
2. Retailers would respond to public pressure and find “some middle ground” whereby “prices go down for consumers and a little bit of profit [goes to] growers”. Under this scenario, this participant suggested that “retailers might be rocky”, inferring that this would negatively impact the retailers’ profitability.
3. Prices increase for consumers, because, as the participant noted, that “what’s happening down the food chain”. Under this scenario, prices would increase for growers to better reflect the costs of growing.

Summarising these scenarios, the participant cautioned: “I can't see any good results”. This participant’s perspective highlights that it is unlikely that significant changes to the food system in Australia will see benefit for growers/food manufacturers, retailers, *and* consumers. It highlights that trade-offs will need to be carefully considered and that there is not going to be an easy resolution to mitigate FLW.

4. Conclusion

Through the interviews, it became apparent that market imbalances could be considered a root cause of practices occurring in Australia that facilitate a food system that is geared towards creating FLW. Further to this, as was noted in Section 3.1 of this report, while market imbalances was in and of itself a key theme that came through in the data, it was inextricably linked to the other key themes or practices specifically noted as contributing FLW that came through this study, specifically: (1) 'contracts' which demand or facilitate the overproduction, surplus, and/or waste; (2) lack of data and/or transparency; and (3) a lack of alternative markets, each of which was outlined in this report. While much of the data talked to market imbalances between retailers and suppliers, it also emerged in other relationships including between franchisees and franchisers (particularly in the bakery sector), and more subtly, between food service organisations and their clients and even between tiers of growers.

Collectively participants were able to paint a picture of how they perceived market imbalances, contracting practices, lack of data/transparency and lack of alternative markets were interrelated and creating systemic issues with the food supply chain. In summary, what the data ultimately suggested was that market imbalances are facilitating issues with contracting and lack of data/transparency, that issues with contracting are compounded by the lack of data and transparency, and that the resulting overproduction and surplus these issues create is compounded by the lack of alternative markets, which results in FLW.

In summarising the data, it is also important to highlight that issues related to the cold chain, labour, and within the food relief sector were noted by participants, as well as a number of factors that need to be considered in relation to addressing FLW and/or unfair trading practices, including included competition laws, weaknesses of the current Codes, culture, and the potential unintended consequences.

In relation to unfair trading practices more specifically, while participants were not asked about specific, known trading practices (e.g., as per the EU *Directive on Unfair Trading Practices* (EU 2019/633) (see Report 1) so as not to bias the data, invariably participants did speak to a number of trading practices that could correlate to UTPs as per the EU *Directive on Unfair Trading Practices*. Table 1 summarises the black (outlawed) and grey (prohibited unless agreed) unfair trade practices and per the EU *Directive on Unfair Trading Practices* and highlights the practices inferred by the data collected for this project.

It is important, however, to premise this table with the following caveats:

- This table summarises the trading practice noted via the data collection specifically and thus should be noted within this project's context of trading practices facilitating, or being relevant, either directly or indirectly, to FLW. This is not to say that the others are not apparent in the food supply chain, but rather, they did not emerge during the interviews.
- As noted within Section 2 of this report, the interviews represent a small sample of participants compared to the number of actors involved, the data presents the subjective views of participants which is the nature of qualitative research, and participants were not asked about the unfair trading practices as per the EU Directive explicitly.
- Whilst the data, in effect, inferred certain 'unfair' trading practices, as noted through the results, the extent to which said practices could actually be labelled as 'unfair' would depend on how the law was interpreted and applied as well as the relevant context including whether an agreement was reached.
- EU law only applies to the EU. Thus, while it is being used to gauge what might be considered unfair in the Australian context, it is important to acknowledge legal and cultural differences between the jurisdictions.

Table 1. Summary of unfair trading practices noted via the data

EU Directive on Unfair Trading Practices (EU 2019/633)	Inferred by the data collection
'Black' trading practices	
<i>The directive prohibits the following unfair trading practices in any circumstances:</i>	
1. Payment later than 30 days for perishable agricultural and food products	Yes, see Section 3.2.1
2. Payment later than 60 days for other agricultural and food products	N/A
3. Short-notice cancellations of perishable agricultural and food products	Yes, see Section 3.2.1
4. Unilateral changes to the terms of the supply agreement by the buyer	Yes, see Section 3.2.1
5. Payments requested by the buyer that are not related to the sale of an agricultural and food product	N/A
6. Payments requested by the buyer for the deterioration or loss of agricultural and food products where such deterioration or loss is not caused by the negligence or fault of the supplier	Yes, see Section 3.1.2
7. Refusal by the buyer to provide a written confirmation of a supply agreement, despite the supplier's request	Yes, see Section 3.2.1
8. misuse of the supplier's trade secrets by the buyer	N/A
9. Commercial retaliation actions by the buyer against the supplier if the supplier exercises their contractual or legal rights	Yes, see Section 3.1.1
10. Transferring costs for examining customer complaints to the supplier's products despite the absence of negligence or fault on the part of the supplier	N/A
'Grey' unfair trading practices	
<i>The directive prohibits the following unfair trading practices unless the supplier and the buyer have agreed to it in clear and unambiguous terms:</i>	
1. The buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or without paying for the disposal of those products, or both	Yes, see Section 3.1.2
2. The supplier is charged payment as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market	N/A
3. The buyer asks the supplier to pay for discounts on agricultural and food products sold by the buyer as part of a promotion	Yes, see Section 3.1.2
4. The buyer asks the supplier to pay for the advertising of agricultural and food products	N/A
5. The buyer asks the supplier to pay for the marketing of agricultural and food products	N/A
6. The buyer charges the supplier for staff for fitting out premises used for the sale of the supplier's products	N/A

When linking these trading practices back to FLW specifically, the data suggests that ‘Unilateral changes to the terms of the supply agreement by the buyer’ and ‘The buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or without paying for the disposal of those products, or both’ were the key trading practices that are more likely to be directly connected to FLW in Australia. More specifically, these practices can be linked to supply agreements (i.e., unilateral changes) and sales and return agreements (i.e., payments for unsold goods). Notwithstanding the compounding factors here and potential for unintended consequences, as noted in Report 3, addressing these practices may aid in reducing overproduction and surplus.

Finally, whilst this report provides a much-needed, first-of-its-kind investigation into trading practices contributing to FLW based on the insights from actors within the Australian food supply chain, it is not without its limitations. As previously stated, it is recognised that interviews represent a limited sample and that not all parts of the supply chain were involved in the study. In the words of one participant:

When you talk to growers, there’s a huge diversity in their issues. Not one grower has all of them, so we highlight a whole lot of different issues. But some growers will say to us really it’s just price. We actually have a great relationship, but they don’t pay us enough. Others will talk about inconsistencies in distribution centres [in relation to quality specification/cosmetic standards]. Others their key thing is all of the controls along the supply chain. It varies considerably when you talk to growers. I think it tends to depend on what crops you grow. What state you’re in and all sorts – and how many other growers are in that category. So, I think there’s a huge amount of variables as to what that relationship is.

Thus, it is recognised that this project is really just the tip of the iceberg, so to speak, in that it only talks to practices raised by the participants involved in this study. Throughout the project, the team anecdotally heard about other practices, such as waste permits having implications for retailers’ ability to transport FLW from individual stores back to a central distribution centres, but such anecdotes were not formally captured as part of this study. Resultantly, it is acknowledged that more research is needed in this space.

Drawing on the findings from this reporting, Report 4 highlights a ‘deep dive’ that was conducted to explore potential ‘solutions’ to addressing some of the practices noted within this report. More specifically, Report 4 considers in more detail the Horticulture Code and Food and Grocery Code, the notion of data transparency, and the role whole of crop purchasing in addressing overproduction and/or oversupply. The final report in this project, Report 5, provides a summary of the project as a whole and outline recommendations.

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