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SUPERMARKET PRICING SELECT COMMITTEE

Members present:

Mr TJ Smith MP—Chair
Ms A Leahy MP
Hon. SJ Miles MP
Mr SJ Minnikin MP
Ms JE Pease MP
Mr TJ Perrett MP
Ms JC Pugh MP

Counsel assisting:

Mr Angus Scott KC
Mr Harold Rafter

Staff present:

Mr T Horne—Committee Secretary
Ms K Guthrie—Inquiry Secretary

PUBLIC HEARING—INQUIRY INTO SUPERMARKET PRICING

TRANSCRIPT OF PROCEEDINGS

Monday, 13 May 2024

Brisbane

MONDAY, 13 MAY 2024

The committee met at 8.31 am.

CHAIR: I declare open this public hearing held as part of the committee's inquiry into supermarket pricing and the impacts on Queensland's communities. My name is Tom Smith. I am the member for Bundaberg and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the lands on which we meet today and pay our respects to elders past, present and emerging. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all now share. With me here today are: Ann Leahy MP, member for Warrego and deputy chair; Steve Minnikin MP, member for Chatsworth; Tony Perrett MP, member for Gympie; Jessica Pugh MP, member for Mount Ommaney; and Joan Pease MP, member for Lytton.

The committee was established on 7 March 2024 by a motion of the Legislative Assembly to examine the causes and effects of increased supermarket prices and to identify opportunities to increase transparency in the supermarket sector for consumers and producers. Today the committee will hear from Coles Group and Woolworths Group—Australia's two largest supermarket retailers with a combined presence of more than 800 stores in Queensland and approximately 65 per cent of the national market.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. The proceedings are covered by parliamentary privilege, which means witnesses are protected from legal action in respect of the evidence they give the committee. If witnesses give evidence today which reflects adversely on an individual or organisation, it should not be taken as proof of the allegations being made. The committee may choose to receive but not publish that evidence. Only the committee and invited witnesses may participate in the proceedings. Witnesses will be giving evidence under oath or affirmation. I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. The committee is being assisted in this inquiry by Mr Angus Scott KC and Mr Harold Rafter, barrister-at-law of counsel. Witnesses are likely to be asked questions by both counsel assisting and committee members.

BREWSTER, Mr David, Chief Legal and Safety Officer, Coles Group Ltd (via videoconference)

FITZGIBBONS, Mr Adam, Head of Public Affairs, Coles Group Ltd

SWINDELLS, Mr Matt, Chief Operations and Sustainability Officer, Coles Group Ltd (via videoconference)

Witnesses were sworn or affirmed—

CHAIR: It is my understanding that witnesses do not seek legal assistance today and will be appearing as themselves. Thank you. We acknowledge the apology from Ms Bon and wish her and her family the very best. I would like to start with an opening statement from Angus Scott KC.

Mr SCOTT: Mr Chair and members of the committee, one of the obvious indicators of cost-of-living pressures is the prices paid for ordinary staples at the supermarket. The experience of Queenslanders has been that those prices have increased markedly over the last few years. Evidence before this committee suggests a striking disparity between what consumers pay for groceries at supermarkets and what Queensland producers are paid for those same groceries by supermarket companies. This, and other evidence before this committee, raises the question whether Queensland producers suffer unfair disadvantages because of a disparity of bargaining power between them and supermarket companies.

Today and tomorrow, this committee will hear from the representatives of Coles, Woolworths, Metcash, Aldi and Australian United Retailers. In the next two days, questions will be asked of these representatives regarding the arrangements that supermarket companies use to acquire produce from Queensland producers; whether those arrangements are fair; whether they are a product of disparate market power between supermarket companies and producers; and the drivers of any such market power. It is hoped that the next two days of evidence will assist the committee in discharging its terms of reference. I thank the committee.

CHAIR: I invite the gentlemen before us to provide an opening statement.

Mr Fitzgibbons: For more than a century, Coles has been an important part of the Australian community and economy. We proudly employ 120,000 team members, operate more than 850 supermarkets and 960 liquor stores nationally, and process more than 17 million customer transactions every week. In FY23, more than 26,000 team members worked in our stores and distribution centres in Queensland. We operate 185 supermarkets, more than 240 liquor stores and three distribution centres in the state. We were pleased to be joined by the Prime Minister and former Queensland premier Palaszczuk in opening our Redbank Automated Distribution Centre in April last year, where the premier said that Coles's investment would drive productivity growth in Queensland while ensuring food security to one of the fastest growing regions in the country. Nationally, we partner with 8,000 valued suppliers, many of whom have worked with us for generations—10, 20, 30 and as long as 50 years. Along with our customers and team members, Coles donates millions of dollars to the communities in which we operate.

We spend lots of time listening to and seeking to understand our customers. We know that many of our customers are dealing with the challenges of cost of living right now. Thirteen consecutive interest rate rises have exacerbated the cost of mortgages and rents. It costs more to run the family car, with fuel prices continuing to rise. The cost of education, health care, insurance, energy and transport all continue to rise. At Coles, we cannot influence these household expenses but what we can do—and what we do do—is give customers the best value possible on their grocery bill. We balance this with paying our suppliers fairly and reinvesting in our business to keep it efficient.

As a customer-led organisation, our customers expect us to continue to provide a choice of quality products across a range of value propositions to suit their budget and the needs of their particular household. We are committed to providing this. This is something we remain very focused on because we know that, if we do not, customers have many other alternatives from which to purchase their food and groceries.

We cannot provide great quality products to our customers without our suppliers and our team members. We are proud to be the retailer of choice for many suppliers and their range of products. Without them, we cannot succeed. Claims have been made about how we interact with our suppliers. We acknowledge that we do not always get it right, but all of our procedures seek to ensure fair and sustainable relationships. What has been missing in this conversation is the many suppliers who choose Coles—suppliers who have been working with Coles for generations. Australian businesses have benefited because of Coles's Australian First Sourcing Policy, which leads to all of our Coles Own Brand beef, lamb, pork, chicken, turkey, duck, milk and eggs being sourced 100 per cent from Australia, as is around 96 per cent of all of our fresh produce.

We value our supplier relationships and work hard to interact in a fair, honest and transparent manner. If a supplier does have a concern, not only do we have a confidential, robust internal mechanism but also we are bound by the Food and Grocery Code of Conduct, which has alternative complaint mechanisms and is enforced by the ACCC. We note that the committee has asked Coles to provide copies of complaints of breaches of the Food and Grocery Code of Conduct made by Queensland-based suppliers. As we have advised, the Food and Grocery Code of Conduct, to which Coles has been a voluntary signatory since 2015 and whose terms are publicly available on the website, does not have custody of this information. A key term of the code is that this information is confidential to protect the privacy of complainants and is only held by the code arbiter and independent reviewer. However, we are listening and acknowledge some of the concerns that have been raised by the farming sector, particularly the horticultural sector, around price transparency. Coles is very willing to be part of a solution that would involve greater transparency for fresh produce growers.

We were pleased to meet with Premier Miles, Minister Furner and Minister Grace earlier this year to discuss farm gate prices and the retail price of groceries and to subsequently meet with Queensland Fruit & Vegetable Growers and the Queensland Farmers' Federation, all of whom we continue to have an open dialogue with.

Our team members are the critical link between our suppliers and our customers. They are working every day to bring great quality products into our stores and to give customers a welcoming experience when they shop with us. We are proud that thousands of our team members have worked with us for more than 20 years and that we continue to give many young Australians their first job. We are also proud of how, together with our suppliers, our logistic partners and our team members, we ensured the provision of food and groceries across Australia during the difficult COVID years.

For all of these reasons—120,000 team members, 8,000 supplier relationships and 17 million customer transactions per week—it is important that Coles is a sustainable, profitable enterprise. For every \$100 spent in our stores, Coles makes about \$2.60 in profit, or less than three cents for every dollar. Compared to many other industries, this is a very small margin. This margin has remained consistent over the last five years. It did not increase with the rise in inflation and it is consistent with profit margins in supermarkets overseas.

The Australian grocery sector is highly competitive. We have to compete for our customers, suppliers and team members, all of whom have many options for where to shop, where to sell their products and where to work. At Coles we welcome competition. We encourage governments to invest in infrastructure and minimise regulation to make Australia a more attractive market in which to do business.

More than 100 years after opening its first store, Coles continues to be a successful Australian business, contributing to the Australian and Queensland economy. That is because we listen to our customers and respond to their changing needs. We strive to treat our suppliers fairly and invest in long-term partnerships with them. We value our hardworking team members. Thank you very much.

CHAIR: Mr Fitzgibbons, you mentioned what has been missing. In this duopoly, the voice of Queenslanders has been missing—and largely the voice of farmers in Queensland, who are terrified to go on the public record. We are here today because this committee endeavours to ensure the voices of Queenslanders are heard, and that is what we will be doing today.

Mr SCOTT: My first set of questions is addressed to you, Mr Fitzgibbons. You are aware, may we take it, of the motion of the Legislative Assembly to establish this committee on 7 March this year?

Mr Fitzgibbons: Yes.

Mr SCOTT: Following that motion, Coles provided a submission to this committee on 12 April this year?

Mr Fitzgibbons: Correct.

Mr SCOTT: Are you aware that on 24 April the committee sent an email to Ms Bon with an invitation to attend the public hearing for the inquiry?

Mr Fitzgibbons: Yes.

Mr SCOTT: That was an invitation to Coles; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: In that invitation, the committee requested Coles Group to confirm the details of the representatives available to give evidence; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: Until yesterday, the representatives nominated by Coles to give evidence to this committee were Ms Bon and yourself; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: Ms Bon cannot be here for legitimate reasons which we will not go into. Can you tell us, Mr Fitzgibbons, what is your position title?

Mr Fitzgibbons: Head of Public Affairs.

Mr SCOTT: What is the nature of your duties as Head of Public Affairs?

Mr Fitzgibbons: To interact with governments on behalf of Coles as well as industry.

Mr SCOTT: To make submissions to government on matters of policy; would that be one of your duties?

Mr Fitzgibbons: Correct.

Mr SCOTT: Make representations in person to representatives of government?

Mr Fitzgibbons: Correct.

Mr SCOTT: Does Ms Bon have the same or essentially the same duties?

Mr Fitzgibbons: Correct.

Mr SCOTT: Would you agree, Mr Fitzgibbons, that your and Ms Bon's duties are essentially what members of the community would recognise as the duties of lobbyists?

Mr Fitzgibbons: I think there is a distinction to be made between lobbyists and our role insofar as lobbyists generally are paid to lobby on behalf of a number of various companies or bodies, whereas we merely interact on behalf of Coles. There is a distinction insofar as one of the core distinctions, I think, was best highlighted through COVID. It is actually our role to interact with government to make sure there is a very efficient delivery of groceries and food security. It does not just extend to COVID but also when there are natural disasters as well. We work very closely with ministers and their offices to make sure there is a continued supply of groceries.

Mr SCOTT: Would this be an accurate description of your roles: your roles are to be advocates for Coles?

Mr Fitzgibbons: Advocates and facilitators.

Mr SCOTT: The CEO of Coles is not here today; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: Does the CEO have other commitments that render her unavailable to speak to this committee today?

Mr Fitzgibbons: The reason we are appearing today is that ordinarily Vicki would be alongside me, and it is our role to assist governments, assist committees and facilitate those communications. That is part of our ordinary role that we would undertake at Coles.

Mr SCOTT: My question was: does the CEO of Coles have other commitments today that render her unavailable to speak to this committee today? Can you answer that question, please?

Mr Fitzgibbons: As I am under oath, I cannot speak to details of the CEO's diary that I am not aware of.

Mr Swindells: Sorry to interject. There is actually a board meeting underway this morning that the CEO is in attendance at. Both I and Mr Brewster were due to also be scheduled there. We have removed ourselves from that board meeting to attend today.

Mr SCOTT: Was that an answer from Mr Swindells we just heard?

Mr Fitzgibbons: Yes, it was.

Mr Swindells: Yes.

Mr SCOTT: Thank you. The reason the CEO of Coles is not here is that she is presently attending a board meeting; is that right, Mr Swindells?

Mr Swindells: Yes, that is correct. It is quite hard to understand the direction of questions. My view of you asking is facing a different way, so if questions can be addressed with my name first then it would help me understand your requirements.

Mr SCOTT: My apologies, Mr Swindells. I will make that clear in the next question.

Mr Swindells: Thank you.

Mr SCOTT: Perhaps if I address this question to you, Mr Swindells. Why is it that it was not until yesterday that Coles did not nominate any representative who had senior responsibility within the company for operations to speak to this committee and instead nominated two persons whose roles are effectively to be advocates for Coles?

Mr Swindells: I think we can debate the 'advocates for Coles' part, but if I first of all start with Vicki Bon. Vicki is extremely credentialed internally within not just her role but a wider understanding of how the organisation runs, and the preparation that goes into this inquiry this morning is extensive. I will also add that my own personal preparation, having been notified yesterday afternoon, is not as extensive, so hopefully at times you may bear with me. My role is a specialist within operations, both supply chain stores, parts of commercial and sustainability. Notwithstanding that, Vicki has the full range and remit and understanding of how the business operates and is fully briefed, as is Adam, on being able to answer those questions and has already conducted herself within a prior Senate inquiry.

Mr SCOTT: My question was, and I would ask you to answer my question, Mr Swindells: why is it that it was not until yesterday that Coles nominated anyone with senior operational responsibility within Coles to speak to this committee?

Mr Swindells: As I said, Vicki has a full and wide understanding of how the operation is run and is able to answer those questions. I am more than happy to stand in at very short notice, as is Mr Brewster. This is not the first engagement within Queensland I have conducted in the last six months, having had a call with the Premier, the ag minister and also a number of agriculture bodies. We have a range of different people who can fulfil different roles at different times.

Mr SCOTT: Was it not obvious that this committee would want a senior executive with operational responsibility to come and speak to this committee, Mr Swindells?

Mr Fitzgibbons: If I could—

Mr SCOTT: My question was directed to Mr Swindells. I will come back to you.

Mr Swindells: I am happy to answer. I could just repeat that Vicki, and Vicki and Adam combined, are more than capable of answering questions that relate to a wide range of operations—and potentially more so than someone of my own personal expertise would be once we get into a wider range of questions, depending on the questions that are asked. I am happy to be here today. When the call came through, as you said at very short notice for some very personal circumstances, I am more than happy to support Vicki and the organisation.

Mr SCOTT: Mr Fitzgibbons, did you have something to say?

Mr Fitzgibbons: I just wanted to make the point that originally you said Coles was invited to appear before the committee. We nominated Vicki Bon as the government and industry relations manager to appear before the committee. That invitation was accepted. That hearing and appearance was confirmed for one hour, from 10.15 to 11.15 this morning. We have that email confirming that appearance and that being acceptable to the committee. Then we received a subsequent email saying that the time for the hearing had changed and we were asked to appear at a different time but extended from one hour to four hours. That was, I think, on 3 May. We were told that the committee would be extended from one to four hours. Given that the committee sought to extend its proceedings for such a significant time, I put myself forward to also appear, given, as I said, the significant period of time that was being requested. Subsequently, on Tuesday of last week the time that we were requested to appear changed again. We were seeking to change arrangements to ensure we could appear in person. It was a challenging thing to accommodate at such short notice. I note that it was only on Tuesday, I think it was, of last week, which was the first request for the CEO, and given that would have been three business days notice we could not accommodate that.

Mr SCOTT: Members of the committee, I am about to move on to another topic if members wish to ask questions about this topic.

CHAIR: Did the CEO appear before the federal inquiry?

Mr Fitzgibbons: Yes, she did.

CHAIR: Has the CEO appeared before any other parliamentary inquiries of any other sort?

Mr Fitzgibbons: No.

CHAIR: So just for the federal one?

Mr Fitzgibbons: Correct.

CHAIR: Would the CEO not feel inclined to appear before the Queensland parliament's committee with regard to this inquiry?

Mr Fitzgibbons: I think given the short notice and, as I have heard, the board meeting was the thing that could not be accommodated.

CHAIR: Mr Fitzgibbons, the committee was formed on 7 March. We are two months down the track. Coles Group was aware of when a date would be set. As you said, there was a one-hour initial time frame. Why did the CEO not volunteer to appear for that one hour?

Mr Fitzgibbons: As I am sure you can appreciate, Coles is invited to appear before many committees in many jurisdictions, and the ordinary course of events is for me or Vicki, or someone in my team, to appear before those committees because that is our role. Our role is to assist and facilitate, and that is what we are employed to do, so in the ordinary course of events we would appear.

CHAIR: We currently have two people out of the board meeting who would otherwise be in the board meeting right now; is that correct?

Mr Fitzgibbons: That is my understanding.

CHAIR: So two out of the board meeting can happen, but not one CEO?

Mr Fitzgibbons: I think again it comes to the CEO would be very much required to facilitate that board meeting.

CHAIR: Coles cannot move ahead without the CEO?

Mr Fitzgibbons: Given the short notice, it was very difficult to rearrange the diary.

CHAIR: I apologise that two months is short notice. Deputy Chair, do you have a quick question?

Ms LEAHY: Just a very quick question, thank you, Mr Chair. Mr Fitzgibbons, did the CEO attend Beef Week?

Mr Fitzgibbons: No.

Ms LEAHY: Did other representatives of Coles attend Beef Week?

Mr Fitzgibbons: Yes, they did.

Mr SCOTT: Can you give us an idea of who attended and whether any of the ones before us today attended?

Mr Fitzgibbons: No. I would have to take on notice precisely who appeared, but it was category managers for, not surprisingly, red meat. That is my understanding. I think perhaps—no, I would just be speculating. I can take it on notice. Certainly category managers for beef were there, and I would have to take on notice if there were any further.

Mr MINNIKIN: You said that with the second invitation, to extend it from 10.15 to 11.15 to a full four hours—half a day—the CEO received roughly three clear business days. What was the equivalent number of business days notice for the CEO to attend the Senate inquiry? Do you have any idea?

Mr Fitzgibbons: I would have to take that on notice to go back and see the exact date on which the CEO was specifically invited to appear.

Mr SCOTT: Mr Fitzgibbons, are you familiar with the contents of the Coles submission to this committee?

Mr Fitzgibbons: Yes.

Mr SCOTT: Would it be right that part of your duties would have been to be involved in the preparation of that submission?

Mr Fitzgibbons: Correct.

Mr SCOTT: You would have been involved in the sign-off of that submission before it was sent to this committee?

Mr Fitzgibbons: Correct.

Mr SCOTT: You satisfied yourself that it is true and correct to the best of your knowledge and belief?

Mr Fitzgibbons: To the best of my knowledge and belief, yes.

Mr SCOTT: I am going to ask you to go to page 22 of that submission. Do you have that there, Mr Fitzgibbons?

Mr Fitzgibbons: I do.

Mr SCOTT: Do members of the committee have a copy of that submission? I am going to ask you about the section towards the middle of the page headed 'Profit'. Do you have that? Do other witnesses have the submission in front of them? Mr Swindells?

Mr Swindells: We are just locating it, Mr Scott.

Mr SCOTT: I will just wait for confirmation that has been identified by the other witnesses. Do you have it?

Mr Swindells: We have located it, Mr Scott.

Mr SCOTT: Thank you. If I could just direct your attention, witnesses, to the section headed 'Profit'. That section says—

The supermarket sector is a typical example of a high volume, low margin sector.

Do you see that? Then it refers to what is disclosed in the 2023 annual report. Do you see that?

Mr Fitzgibbons: Yes.

Mr SCOTT: It refers to 'net profit after tax from continuing operations of \$1.04 billion'. Do you see that?

Mr Fitzgibbons: Yes.

Mr SCOTT: That is the Coles Group as a whole, isn't it?

Mr Fitzgibbons: Yes.

Mr SCOTT: It is not the operating profit from the supermarket inside the Coles business; correct?

Mr Fitzgibbons: Correct. It is net profit after tax for the group.

Mr SCOTT: The point that is made in that submission, and in fact what you said in your opening statement, is that, effectively, the net profit after tax of the group as a whole has remained relatively stable over the last five years; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: I am going to ask that you be shown a document. For the witnesses who are appearing via video link, this is the Coles five-year summary that is available on the Coles website—and we have copies for the members of the committee. Before I ask you questions about this, Mr Fitzgibbons, the point that is also made in the Coles submission is that a key driver of supermarket price increases is the cost or the price increase request from Coles's suppliers; correct? Do you remember that?

Mr Fitzgibbons: Correct.

Mr SCOTT: Do you have that document there that is headed 'Coles Group Limited—Five year summary (Adjusted)'?

Mr Fitzgibbons: I do.

Mr SCOTT: Do the witnesses appearing via video link have that document?

Mr Swindells: Yes, Mr Scott.

Mr SCOTT: Thank you. Can you see the columns—before I continue, do you accept that this is the Coles five-year summary, Mr Fitzgibbons?

Mr Fitzgibbons: It looks to be.

Mr SCOTT: Can you see at the top columns FY19, FY20, FY21, FY22, FY23? Do you see that?

Mr Fitzgibbons: Yes.

Mr SCOTT: Which represents results for the financial years 2019 to 2023; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: Can you see the row 'Group sales revenue—continuing & discontinued operations'? Do you see that?

Mr Fitzgibbons: Yes.

Mr SCOTT: That indicates sales revenue from those five financial years that we have just mentioned; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: That is gross sales; correct?

Mr Fitzgibbons: Sorry?

Mr SCOTT: That is gross sales? That is how much revenue—

Mr Fitzgibbons: Yes.

Mr SCOTT: Can you then see a bit further down towards the middle of that section of the five-year summary a section headed 'EBIT'? Do you see that?

Mr Fitzgibbons: Yes.

Mr SCOTT: EBIT is an acronym for earnings before interest and tax; do you see that?

Mr Fitzgibbons: Yes.

Mr SCOTT: You agree that is what EBIT stands for?

Mr Fitzgibbons: Yes.

Mr SCOTT: That is effectively an accounting term for operating profit, isn't it?

Mr Fitzgibbons: I would not be familiar with that. Happy to speak to EBIT.

Mr SCOTT: Mr Swindells, EBIT: that is operating profit, isn't it?

Mr Swindells: EBIT is the earnings before interest and tax in absence of depreciation and amortisation. It is a way of looking at profit, yes.

Mr SCOTT: Then it has a breakdown for different parts of the Coles business, doesn't it? These questions are directed to you, Mr Swindells.

Mr Swindells: I am just looking now. I am trying to follow which column—there is 'Liquor', 'Express', 'Other' and 'Supermarkets (adjusted)'; is that where you are?

Mr SCOTT: Yes. So the EBIT Supermarkets (adjusted) for 2019 was \$1.191 billion; do you see that?

Mr Swindells: Yes.

Mr SCOTT: Then in 2023 it was \$1.848 billion; correct?

Mr Swindells: Yep.

Mr SCOTT: That is an increase of about \$657 million EBIT between those years for supermarkets; correct?

Mr Swindells: Yep, correct.

Mr SCOTT: About half that increase of \$657 million is about half of what Coles supermarket operating profit was for 2019, isn't it?

Mr Swindells: If this may help, because if you look through 2020 onwards it is a lot flatter. I will have to take it on notice, but I suspect FY19 is the year we demerged from Wesfarmers so it is not a full financial year; it would be part of a year. That will explain the jump.

CHAIR: Mr Scott, are you happy with that question, or would you like an answer more directly in regards to 'half of the profit'?

Mr SCOTT: Yes.

CHAIR: Could you please, Mr Swindells, answer that question as it was put directly as to whether or not it equates to close to half of that year's profit?

Mr Swindells: Can you ask me the question again, please?

Mr SCOTT: The operating profit for Coles Supermarkets has increased from 2019 to 2023 by an amount that is more than half of what that operating profit was in 2019; correct?

Mr Swindells: No, that is not true. What I am saying is: I do not think the reported FY19 is a full financial year and, therefore, it would not be true to assume that the profits have increased from that point in time to now by that percentage or that amount.

Mr SCOTT: All right. Can you explain that? What do you mean by 2019 was not a full financial year?

Mr Swindells: Before Coles was listed on the ASX, we were under the conglomerate Wesfarmers and we were not reported separately. There are anomalies within some of the numbers that you look through, usually around that time period FY19, where you have to take into account—the demerger went through, from memory, around November. So you have almost got half of the year—probably less than half of the year that is missing from those numbers. I am hypothesising, so bear in mind we would need to take that away to come back with a full and accurate number. I would be happy to take that away and come back and say what is the true FY19 number.

Mr SCOTT: Can you do that, please?

Mr Swindells: Sure. We will take that on notice.

Mr SCOTT: Can you do that before the evidence is finished today?

Mr Swindells: I should be able to. I would think so.

Mr SCOTT: Perhaps if we can deal with the other financial years, financial year 2020 was \$1.618 billion; correct?

Mr Swindells: Yes, correct, yes.

Mr SCOTT: Then it went up in the next financial year to \$1.7 billion?

Mr Swindells: Yes.

Mr SCOTT: So it is a little under a hundred million it has gone up in that financial year; correct?

Mr Swindells: Well, the numbers are there. You say it is a little under a hundred million. I would say it is \$84 million, but yes.

Mr SCOTT: Then about \$40-odd million in the next financial year; correct?

Mr Swindells: \$45 million, yes.

Mr SCOTT: Then another \$100-odd million between 2022 and 2023; correct?

Mr Swindells: Correct, yes.

Mr SCOTT: So the truth is, in fact, notwithstanding any price increases from its suppliers that Coles is experiencing, Coles is significantly increasing its operating profit from its supermarket business; correct?

Mr Swindells: The numbers show that. I guess the question is—you have to link that then into a couple of other factors. One would be: what is the sales growth through that period? We are a business of fixed costs; sales volume gets fractionised at a better EBIT rate. And what are the cost and efficiency initiatives we have deployed through that period that take out cost of doing business from within our own organisation? Things like the investment in Redbank would be a good example, although it is not within that time line. Yes, the profits have gone up. So would sales have gone up and so would our overall productivity in the business.

Mr SCOTT: Thank you.

Mr Fitzgibbons: The additional point I would make in that instance is: you do see that jump from financial year 19 to 20. You would expect to see that as a result of COVID lockdowns, which continued through a number of years and in various jurisdictions over an extended period of time. That was the underpinning to our growth in that regard. Just to pick up on Matt's point as well around the continued growth as you would expect to see in terms of inflation, heightened revenue as well, that would naturally come through; but when you actually look at the net profit after tax, that has not grown. There has not been a growth in net profit as a result of the inflationary period.

Mr SCOTT: We will come back to the net profit after tax, but the COVID lockdowns would not explain the increase in profit between 2022 and 2023, would they?

Mr Fitzgibbons: I would suggest that reflects—the reality is: one of the reasons we do include interest and tax is that in those years there was significant growth, as every Australian household would have experienced, in interest payments as well as tax payments. Coles is not immune to either of those costs as well, so the interest and tax costs are included in that figure, which is significant.

Mr SCOTT: Mr Fitzgibbons, would you answer my question, please? My question was: COVID lockdowns would not explain the increase in operating profits for the supermarket business between 2022 and 2023, would they?

Mr Fitzgibbons: No, COVID would not explain the growth before interest and tax.

Mr SCOTT: Thank you. Mr Chair, does the committee wish to table that five-year summary?

CHAIR: That is so tabled.

Mr SCOTT: Coles makes the point in its submission that 80 per cent of Coles's net profit after tax was used to pay dividends to shareholders; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: And that net profit after tax was a bit over a billion?

Mr Fitzgibbons: Correct.

Mr SCOTT: That \$800 million was paid in dividends to shareholders; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: It is the truth, isn't it, Mr Fitzgibbons and other witnesses present, that Coles is doing fabulously well financially?

Mr Fitzgibbons: Coles's financial performance is consistent with what it has been over the last five years.

Mr SCOTT: It is doing fabulously well financially, isn't it?

Mr Fitzgibbons: As I said, it is consistent with its performance over the last five years.

Mr SCOTT: Do you want to answer my question, Mr Fitzgibbons?

Mr Fitzgibbons: That is fairly subjective, but I am saying it has been consistent with the past five years.

CHAIR: Mr Fitzgibbons, I will just note that, as this is a parliamentary inquiry, it is important that witnesses do give answers to questions as they are directly put and answered directly. To say that something is consistent over the last five years does not indicate whether or not Coles are happy or acknowledge that their financial status is good. Something that is financially consistent could be as equally bad as it is good. Could you please find in your best words an answer to that question? As I understand it, the question is asking: does Coles Group believe that they are being financially successful or are well off in terms of their finances? A yes or a no, please.

Mr Fitzgibbons: I think the financial performance over five years would suggest a level of sustainability within our business.

CHAIR: Successful sustainability?

Mr Fitzgibbons: Successful sustainability.

CHAIR: Mr Scott, does that suffice you—

Mr SCOTT: Yes; thank you, Chair. I am moving to another topic if committee members wish to ask questions on this topic.

Ms LEAHY: The terms of reference of the inquiry are in relation to pricing and transparency. Mr Fitzgibbons, you would agree with that?

Mr Fitzgibbons: Yes.

Ms LEAHY: I am just wondering in relation to that transparency whether you feel that potentially the wrong message has been sent by the Premier—I am just holding that up for—

CHAIR: Point of order. We will put down the prop, thank you.

Ms LEAHY: I am just—

CHAIR: Put down the prop; thank you.

Ms LEAHY: I am just wondering if—

CHAIR: I will just inform all members on that side, as they all did hold up a prop—you know very well that is not to be done—that all three members are on a warning. We will make sure this committee represents the voice of Queenslanders as it is set out to do under the terms of reference. We will be taking questions at this moment with regard to the line of questioning by Mr Scott so that he may then be able to continue his further line of questioning. Deputy Chair, do you have a question?

Ms LEAHY: I do have a question. Do you think that transparency has been sent the wrong message by the Premier's actions in appearing in that manner?

CHAIR: Okay. That question is asking for a clear source of opinion. That question is not in order. I rule that out of order. Deputy Chair, do you have a question as relevant to the terms of reference?

Mr MINNIKIN: So credibility 'down down'?

CHAIR: Do you have a question, Deputy Chair, along the line of questioning that Mr Scott was—

Ms LEAHY: We are looking at the terms of reference, and I have them here and they are quite clear in relation to transparency.

CHAIR: We are not arguing the point. The question was not in order. I am asking if you have a new question.

Ms LEAHY: We are looking in relation—

Ms PEASE: Deputy Chair, I have a question.

CHAIR: Is there a question, member for Warrego?

Ms LEAHY: We are looking in relation to pricing and transparency, so do you think these matters are important with regard to transparency when the Premier actually appears—

CHAIR: Okay. Thank you, Deputy Chair; you do not have a question. Member for Lytton, would you like to ask a question?

Ms PEASE: Thank you very much, Chair, and thank you, everyone, for coming in today. I am interested to pursue the response from Mr Swindells with regard to the financial year 2019. The document that I have in front of me clearly states at the top that it represents 52 weeks plus one day

pre—and I am sorry but I think it is—AASB 16. You mentioned that that was not a clear reflection of the actual activities for that period, given that you withdrew from Wesfarmers. Can you perhaps elaborate on that heading for that title, firstly, and whether that is a reflection on and reinforces your statement with regard to that figure?

Mr Swindells: I think, just for clarification, I said 'may be', which is why we want to take it away on notice. The AASB 16 is a change to the accounting standard that specifically relates to lease liabilities, and that may be the reason that number is a different number in that year than in other years. It is probably best, as I have committed to, that we go away and get the right data and the right answer to the rationale for what sits in FY19 before the end of this hearing, if that is okay.

Ms PEASE: Thank you for that. I just wanted some clarity around that because that was not mentioned in your reply whereas it clearly states it in the heading. Having said that, and given that this is a document, no doubt, that was presented to your shareholders, I do not know that they would be too happy with that lack of clarity around those figures. Could you provide any comment on that?

Mr Swindells: Let us go away and get the answers as to why. I have not seen that. I did not know that document was coming up and finance is not in my wheelhouse, but I know enough people who can answer that question.

CHAIR: So that is a commitment to provide that answer before the end of this hearing?

Mr Swindells: Yes; correct.

CHAIR: Thank you.

Ms PUGH: Thanks, everyone, for appearing today. Just referring to the financial statement section of your submission and noting that the Coles Group makes roughly, you are saying, about \$2.50 per \$100, along the supply chain that gets the groceries into the supermarket do you own any other businesses along that supply chain that also separately profit from getting those groceries into the supermarket and is that profit reflected in those figures?

Mr Fitzgibbons: I might start and then ask Matt to elaborate if there is anything further to add. My understanding is that those financial statements obviously refer to Coles Group and all companies owned by Coles Group, so if there was a subsidiary of some kind it would be incorporated into those financial statements. That is my understanding. If that is incorrect, I would be happy to correct the record.

Mr Swindells: That is correct.

Ms PUGH: If that is correct those profits would be captured, but do you own any businesses along the supply chain? Are you able to speak to that at all? I am happy to direct that question at you, Mr Fitzgibbons, but the other witnesses may want to answer also.

Mr Fitzgibbons: Not that I am aware of. Matt, if you have a different view?

Mr Swindells: We have different listed entities under the Coles Group. There are many of them that support the business in different ways. Some of them operate as costs. If you think about our Coles supply chain, that is a cost that is then charged to the supermarket business and in the materiality of the scale and size our supermarket business is significantly the largest proportion of all of the financial components of that total group number.

Ms PUGH: I am sorry, but I did not catch the end of that answer, Mr Swindells.

Mr Swindells: The supermarket business in scale and size means that it is by far the largest proportion of that \$2.57 number.

Ms PUGH: Thank you. Would you be able to provide a list of the businesses you own along the supply chain to the committee on notice?

Mr Swindells: Sure.

Ms PUGH: Thank you.

CHAIR: So that is taken on notice. I will move back to Mr Scott, but I would just note, Mr Fitzgibbons, for the record: the first email inviting Coles to attend before the committee was on 24 April. Mr Scott.

Mr SCOTT: Thank you, Chair. Mr Fitzgibbons, are you aware of the market share figures for Coles, Woolies and other participants in this market quoted in the food and grocery code of conduct independent reviewer annual report of 2022-23?

Mr Fitzgibbons: I am aware that they are there. I could not recite them, but I am aware that they are there. I think it is IBISWorld data they use.

Mr SCOTT: All right. Would you agree with this proposition: as reported in that report, Coles has about a 28 per cent market share?

Mr Fitzgibbons: Yes.

Mr SCOTT: Okay, and Woolies has about 37 per cent?

Mr Fitzgibbons: Yes.

Mr SCOTT: Okay, so together Coles and Woolies account for about 65 per cent of Australia's food and grocery market; correct?

Mr Fitzgibbons: That is correct.

Mr SCOTT: Would you agree that this significant market share means that Coles and Woolies account for the significant majority of the sale of perishable agricultural goods to end consumers in Australia? Correct?

Mr Fitzgibbons: About 65 per cent, I would presume.

Mr SCOTT: Okay; thank you. And that gives Coles and Woolies significant market power; correct?

Mr Fitzgibbons: I think it reflects a degree of concentration that exists within the market at 65 per cent.

Mr SCOTT: Well, concentration within the market gives rise to market power, doesn't it? Correct?

Mr Fitzgibbons: Yes.

Mr SCOTT: Thank you. On Saturday Coles provided some information in response to a request for information from the committee; correct?

Mr Fitzgibbons: On Friday, yes.

Mr SCOTT: Friday; I beg your pardon. And do you have a copy of that response with you?

Mr Fitzgibbons: I do not have a copy of that response right in front of me, no, but I know that my colleagues do.

Mr SCOTT: We can give you a copy. Does the committee require—

CHAIR: Yes.

Mr SCOTT: Okay; thank you. You have that, Mr Fitzgibbons?

Mr Fitzgibbons: I do.

Mr SCOTT: And the witnesses who are appearing by video link have that?

Mr Swindells: What is that dated, please, as a document?

Mr SCOTT: 10 May 2024.

Mr Swindells: Then yes, we have that.

Mr SCOTT: Great. There are two attachments to that document; correct?

Mr Fitzgibbons: Yes.

Mr SCOTT: Attachment A is responsive to the request for supply and/or purchasing agreements, including contracts and compacts, between Coles Group and Queensland-based producers entered into within the last 12 months; you agree with me on that?

Mr Fitzgibbons: Yes.

Mr SCOTT: And then attachment B is the same thing but for Queensland-based processors; correct?

Mr Fitzgibbons: Yes.

Mr SCOTT: And by 'processors' respectively we are talking about people in the food-manufacturing business; correct?

Mr Fitzgibbons: My understanding, yes.

Mr SCOTT: And then suppliers is other categories that do not involve manufacturing; correct?

Mr Fitzgibbons: Yes.

Mr SCOTT: All right. In Coles's submission a distinction is drawn between the arrangements Coles enters into for livestock as compared to horticulture. Do you recall that, Mr Fitzgibbons?

Mr Fitzgibbons: Yes.

Mr SCOTT: Okay, and in terms of livestock what is done is what is called in the submission 'forward supply contracts'; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: All right, and then what is said in the submission about horticulture is that what Coles enters into is seasonal commitments; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: Attachment A should be the first tab in that bundle. Mr Fitzgibbons, that should have the first of the documents responsive to attachment A; correct?

Mr Fitzgibbons: Mmm.

Mr SCOTT: All right. Were you involved in the provision of this response to the committee?

Mr Fitzgibbons: I facilitated it, yes.

Mr SCOTT: Okay, so you are familiar that the only agreements that comprise attachment A are livestock forward supply contracts?

Mr Fitzgibbons: I can see that to be the case.

Mr SCOTT: Okay. There is nothing from horticulture suppliers?

Mr Fitzgibbons: No.

Mr SCOTT: By 'no', you mean there is nothing from horticulture suppliers; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: Okay. Why is that?

Mr Fitzgibbons: I may ask our chief legal officer to assist with this response. The request was put to us on Wednesday. I requested those contracts from the business. I may not have been clear in what I asked for, but I can certainly ask our chief legal officer if there are contracts that we could provide.

Mr SCOTT: Mr Brewster?

Mr Brewster: Mr Scott, if there are particular contracts you would like to see, we are happy to make them available. We understood that you were looking for five contracts from people who were primary producers and five from people who were manufacturers. That is the interpretation we took of the request. There were some time constraint issues in terms of quite a lot of the people we needed to go to to try to find these were actually out of the office. As you have heard, there was an Aus meat function in Queensland. We did our best to give you some examples, but if there are other particular types of either growers or manufacturers, we are happy to track those down.

Mr SCOTT: Wasn't it obvious that what was sought was a representative sample? Do you agree with that, Mr Brewster?

Mr Brewster: I would not agree from the wording that we received, which was not as clear as it might have been, that that was actually clear. In any event, as you will see from the documents we provided, our documents are largely standard form contracts and they do not vary much from one person to another.

Mr SCOTT: Coles in its submission drew a clear distinction between forward contracts for livestock and what was described as seasonal commitments for horticulture suppliers. Are you aware of that?

Mr Brewster: Yes, I am.

Mr SCOTT: And there are no agreements supplied in respect of that category—that is, horticulture suppliers; correct?

Mr Brewster: That is correct.

Mr SCOTT: Isn't that incredibly unhelpful?

Mr Fitzgibbons: We are happy to take that on notice and provide contracts.

Mr SCOTT: What I wanted to ask is: the reason there were no agreements provided in respect of horticulture supplies is because they do not exist?

Mr Fitzgibbons: I do not believe that to be the case.

Mr SCOTT: Well, the submission, Mr Fitzgibbons, from Coles described the arrangements as 'seasonal commitments'. Are those commitments binding?

Mr Fitzgibbons: I think if I can take a step back it might be helpful. It might assist the committee to explain how it is that we generally procure goods in the horticulture space. Coles procures fruit and vegetables from a variety of different sources. We have either direct contracts with farmers and growers or contracts with aggregators, and sometimes aggregators are growers as well. In many instances, Coles will contract with farmers directly. It is not practical for Coles to contract directly with every farmer that we engage with. That is simply not practical—it is too resource intensive—which is why Coles then engages with aggregators. An aggregator is someone who effectively deals with a lot of smaller producers and then aggregates them and we purchase directly from those aggregators.

We have longstanding and established relationships with many of our growers, so what we seek to do ahead of each season is engage with our suppliers and talk to them about the seasonal variability that may be coming in a particular season. One of the challenges in the horticulture space, as I am sure the committee is very aware of, is that there is a lot of variability from year to year, so we will engage with our suppliers to talk about what we think our volumes will look like over a season and then we will make commitments as to what those volumes will be and then we will take those in on a weekly basis.

Mr SCOTT: Can I clarify a couple of things in terms of what your response was, Mr Fitzgibbons? You described aggregators. Are they essentially agents?

Mr Fitzgibbons: To be perfectly frank, I have heard a number of different terms used to describe them—from intermediaries to aggregators to agents. There are a number of different ways I have heard them described, but our vernacular is aggregators.

Mr SCOTT: So they are independent of Coles?

Mr Fitzgibbons: Yes.

Mr SCOTT: They run their own business?

Mr Fitzgibbons: Yes.

Mr SCOTT: Do they purchase the goods from suppliers and then sell them to Coles, or are they just an intermediary?

Mr Fitzgibbons: I would have to take that on notice. My understanding is that aggregators purchase it and then they sell it to us as opposed to being an intermediary or an agent, but I would have to take that on notice and go away.

Mr SCOTT: Are any of the other witnesses present able to answer that question?

Mr Brewster: Yes. It is our understanding that they do acquire title themselves. They are effectively a form of wholesaler. They buy and then they resell to Coles.

Mr SCOTT: Mr Fitzgibbons, can I come back to what you said in your statement just before. You said that Coles engages with suppliers to talk about volumes that are expected in a particular season. Do you recall that?

Mr Fitzgibbons: Yes.

Mr SCOTT: And you described commitments being given. Do you recall that?

Mr Fitzgibbons: Yes.

Mr SCOTT: Those commitments are not binding contracts, are they?

Mr Fitzgibbons: I would have to take that on notice.

Mr SCOTT: Perhaps Mr Brewster can answer that question.

Mr Brewster: Mr Scott, if it might assist: with producers that we deal directly with, rather than buying through an aggregator, we do enter into grocery supply agreements. They are called GSAs. I do apologise that they were not amongst the suite of contracts that we were provided to send to you. We can certainly make them available. They are generally entered into prior to a growing season and they do contain a volume commitment. There is flex within the GSA that allows the supplier or Coles to flex that volume by 15 per cent, up or down, and that is a binding commitment. What is not agreed in those agreements is the price, usually. Sometimes it is, with products which there is varied certain production. Carrots is an example of that. Usually price is struck towards the time that the product is picked.

Mr SCOTT: You talk about GSAs. Did I hear right that they are called grocery supply agreements?

Mr Brewster: That is correct.

Mr SCOTT: And there is a provision in those for commitments to be given as to volumes; correct?

Mr Brewster: Correct.

Mr SCOTT: Which can be varied by either the supplier or Coles up or down by 15 per cent; correct?

Mr Brewster: Correct.

Mr SCOTT: Is this the case universally for all horticulture suppliers that Coles deals directly with?

Mr Brewster: We could not be that definitive, and you did mention that there might be circumstances where there is no contract. We could not rule out that some very long-term relationships may have some very old document that is not used much by the parties, but on the whole that is the agreement that is used.

Mr SCOTT: In what circumstances would there be no contract?

Mr Brewster: We would have to look into that. I am not saying that we are aware of particular instances. Just being a big business with many thousands of suppliers, we could not rule out that there might be some historical arrangements of that nature.

Mr SCOTT: What sorts of numbers of arrangements are we talking about where there would be no contracts?

Mr Brewster: I think very few, given the grocery code. It was a requirement under the grocery code that we form compliant contracts with people, but I know through that experience—which was a while ago now—that some suppliers just were not willing to return terms to us and we have kind of operated on very historic arrangements. That would be the absolute minority, Mr Scott, if at all. I am just saying that I cannot rule out that there might be a couple.

Mr SCOTT: All right. In terms of the capacity for Coles to vary the seasonal commitments by 15 per cent, are there criteria stipulated in the GSAs for when that can occur?

Mr Brewster: Not specific criteria.

Mr SCOTT: So effectively at Coles's discretion; correct?

Mr Brewster: Effectively—

Mr Swindells: At Coles's or the supplier's discretion.

Mr SCOTT: Right. And what is not agreed in the GSA is price; correct?

Mr Brewster: That is correct. There are some suppliers where price is agreed at the beginning of a season, but more generally it will be agreed at the time that the product is picked.

Mr SCOTT: Is this right: what occurs on a weekly basis is that suppliers will nominate the proposed price to Coles and then Coles will consider all of those offers and go back to their suppliers with the price that Coles is proposing? Is that right?

Mr Brewster: That is correct, Mr Scott. They enter into an online portal on a Monday the price they would like. On Tuesday Coles responds. Then on Thursday whatever agreement or nonagreement is reached.

Mr SCOTT: Okay. Mr Fitzgibbons, if you are not the person to answer this question, whoever is can answer it. Perhaps Mr Brewster can answer this question. Mr Fitzgibbons, I got the sense that you were suggesting there might be some difference for the arrangements entered into with aggregators—that is, in relation to whether or not there are any binding agreements. Can you tell us what the arrangements are for aggregators?

Mr Fitzgibbons: I apologise if that is the impression that I left. My understanding is that we treat direct suppliers and aggregators the same way in terms of those GSAs. I was more referring to the manner in which that product is provided—whether it is directly with the farmer or via a third party. My understanding is the GSA remains the same for both direct suppliers and aggregators.

Mr SCOTT: Is that right, Mr Brewster?

Mr Brewster: Yes, Mr Scott.

Mr SCOTT: Effectively, Coles is in the position where it gets information from all of its suppliers as to what price they are prepared to sell their goods for when negotiating a price but those suppliers do not know what their competitors are offering Coles; is that right? Perhaps Mr Brewster might be the one to answer that question.

Mr Brewster: I guess we are not privy exactly to what information our suppliers do or do not have, but the extent to which market talk might inform them of matters, in lots of markets there are conversations that filter back. As Coles we use an online portal, a website, that is maintained by a third-party provider that has up-to-date wholesale market prices for the fresh produce markets in Brisbane, Adelaide, Sydney and Melbourne. There is a subscription fee for that—it is \$520 a year—and we understand that nearly everyone we deal with also subscribes to that service. That is the main way that we determine weekly pricing in the market.

Mr SCOTT: Okay. But that is just a starting point for how Coles operates with respect to negotiating supply. It does not necessarily make offers based on market price, does it?

Mr Brewster: There will be other factors. That is correct.

Mr SCOTT: And may offer lower than the market price; correct?

Mr Brewster: I think there would be a range of pricing scenarios—above, at or below—depending on the circumstances and the future direction that we think the market might be just about to take, given it is very volatile. If you think the market is literally about to tip down because of a huge flush that might be about to hit the market then, you are right, there might be an offer that is made by Coles that is below the current price.

Mr SCOTT: In terms of the range of factors that might influence Coles's offer, one of those surely is the information that it has as to what all of its suppliers have offered at the start of the week; correct?

Mr Brewster: That would be part of the information pool available, yes.

Mr SCOTT: And that is not information your suppliers each have; correct?

Mr Brewster: Again, it is hard for us to know what information they do or do not have.

Mr SCOTT: Well, how could they possibly know what their competitors have offered to Coles? Can you think of a way that they would?

Mr Brewster: There are a number of ways I think they could but we would be speculating.

Mr SCOTT: In what ways?

Mr Brewster: In lots of industries there is talk amongst participants, there is general rumour, there are industry associations that channel broad information around. There are ways and means that people become informed of general prices.

Mr SCOTT: So your suppliers have available to them rumour and talk amongst themselves, whereas you have the information as to what all of them have supplied in terms of their offers; correct?

Mr Brewster: As I said, it is difficult for us to comment what information they have available, Mr Scott.

Mr SCOTT: I suggest that this gives rise to an imbalance between Coles and its suppliers in terms of the information that Coles has available to it but suppliers do not. Do you agree with that?

Mr Brewster: We would accept that absolutely there are some suppliers who do not have the sources of data that might be available to us or to other market participants or to the aggregators because, even though we might be sourcing a particular produce item that has come from many different farms, we might be buying it largely from a single aggregator. In terms of us having all this data about market prices, we might actually just be contracting for the majority of our produce from one person, so we only have one data point ourselves. Having said that, our submission to the ACCC's separate inquiry has called for reform in this space to try and make more information available to suppliers, potentially making that Oz market website that we have referred to somehow funded so people can just log onto it. We accept there is a need for much greater transparency in this space, and we are happy to try and play our part.

Mr SCOTT: Can you offer any suggestions as to how that might be done by way of transparency?

Mr Fitzgibbons: If I may, I think there are some challenges that are well acknowledged in this space. I met with the Queensland Fruit & Vegetable Growers association as well as the Queensland Farmers' Federation, and my colleague Vicki has met with Ausveg. It was a very productive conversation. We acknowledge very much that there are issues within the horticulture sector, and we think one of the reasons for that is issues around transparency that do not exist in other sectors. I think in the meat sector you have various indices. In the dairy sector we have the dairy code, where there are published prices and there is a degree of stability within those markets that enables that to happen.

We are very willing and keen to be part of the conversation as to what an appropriate transparency measure looks like for the horticulture sector. It was a very productive conversation with Queensland Fruit & Vegetable Growers, where we said there needs to be an ongoing dialogue. That will take a little bit of time, because there are a lot of participants in this space and we need to be cautious of any unintended consequences. There is a role, as part of this conversation, for growers, for aggregators, for retailers and governance as to what some of those transparency measures might look like. I note conversations we have had with the National Farmers' Federation, and indeed the National Farmers' Federation 'Market price transparency' issues paper that was released in December of last year actually identified the need for caution when discussing what a transparency mechanism looks like so as to not incentivise unintended behaviour where there might be an ability to come together on prices—which would fall foul of the ACCC requirements, of course. I only raise that as an example of the caution and the different participants who acknowledge there are challenges in this space and not a consensus as yet as to what that looks like. Coles is very happy to continue to be part of that conversation and play our part in coming up with that mechanism.

Mr SCOTT: Coming back to this process of bargaining that occurs on a weekly basis for the purchase of horticulture, this is happening in or about the time the particular produce has been picked; correct?

Mr Fitzgibbons: I believe so.

Mr SCOTT: Of course we are dealing with perishable products; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: That do not have long before they go off or are unmarketable; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: In those circumstances, and given the market share that Coles possesses, is it not the case that a supplier has really no choice but to accept the price offered to it by Coles?

Mr Fitzgibbons: I think David spoke in terms of the volumes that we agree to ahead of a season. There is only 15 per cent flex as to whether that is up or down. By and large, when we purchase products under those arrangements it is very, very rare that we will accept less. In fact, it is usually the case that we will take all of the supplier's volume and then go for a top-up—that is the way we refer to it—to wholesalers. The way that is purchased is based on a number of factors and the starting point is the market price, as is explained in the data David was referring to.

I think the point we would make around the point of purchase and the way we engage with our suppliers is that it is not in Coles's interest, it is not in the community's interest and it is not in our suppliers' interest to have extremely fragile or unsustainable supply chains. It is something that certainly I think became very apparent to all Australians through COVID, and it is something that I think is apparent to Queenslanders more than most through natural disasters. There is really a premium to be placed on sustainable supply chains, so that is why when we engage with our suppliers—and I must say, it was heartening as well to hear those conversations with Queensland Fruit & Vegetable Growers as well as Queensland Farmers' Federation, an acknowledgment that where there are direct arrangements with Coles by and large they are very positive relationships.

CHAIR: Mr Fitzgibbons, I am sorry to interrupt, but you are straying away from the crux of the question put by Mr Scott. I would ask that you return to the question. Mr Scott can put the question again if you like, but if you understand the question I would like you to go back to it, please.

Mr Fitzgibbons: I was just coming back to that point. The point I was making is that, where we have direct relationships with suppliers, overwhelmingly they are very positive ones. That is based on the fact that we acknowledge we need to have sustainable partnerships. I think the evidence is that we have had those for many decades.

Mr SCOTT: Mr Fitzgibbons, I will ask that you answer my question, which was: given the circumstances in which these negotiations happen—particularly in relation to when the produce is coming out of the ground and its perishable nature—growers really have no choice but to accept the price that is offered to them by Coles; correct?

Mr Fitzgibbons: I think there are a number of markets, and I appreciate that at that point in time that is the case. However, if that was something that was on an ongoing basis that was done regularly in a way that was unsustainable, we would not enjoy the relationships that we do with our suppliers. They would go elsewhere.

Mr SCOTT: Mr Chair, I am moving to another topic if members of the committee wish to ask some questions about this.

CHAIR: Mr Fitzgibbons, before the term was raised here today you had been previously aware of the terms GSAs?

Mr Fitzgibbons: Yes.

CHAIR: You mentioned there were direct contracts, and in your discussion around fruit and veg and the horticulture sector you stated that Coles has direct contracts. Are these GSAs in the same legal definition as a contract? Are they equally binding?

Mr Fitzgibbons: I would defer to David, our chief legal officer, to respond to the legal nature of those agreements.

Mr Brewster: Yes. We are required, under the grocery code that the federal government has implemented, to have written supply agreements. Yes, they are contracts.

CHAIR: These relate to the volume of supply and other fixed terms?

Mr Brewster: Correct. The key issues would be volume, the nature of delivery—are they ex farm or are they delivered—and also the quality specifications for the produce.

CHAIR: How long is an agreement?

Mr Brewster: It does vary. Sometimes it will be a couple of years. Usually it is for the coming growing season.

CHAIR: Let's say there is a fixed-term agreement for a couple of years and there is a 15 per cent flex on the price up or down; is that correct?

Mr Brewster: Correct.

Mr Swindells: Volume.

Mr Brewster: Sorry, not price; volume.

CHAIR: Price is never a fixed term of an agreement, is it?

Mr Brewster: It can be for some agricultural products where—

Mr Swindells: You have to have stability of supply to enable a price that you can both line up around. Where price volatility is high, it is a function of supply through weather and climatic conditions and growing seasons. Sweet potatoes are a good example. It is pretty stable. You can get to a reasonable understanding of a price. Onions, on the other hand—Mr Brewster has already commented on carrots, but they are the minority. One of the challenges in all of this is the volatility of supply in our produce industry.

CHAIR: Would Coles ever engage in a transaction where they have a direct agreement with a local farmer and the farmer works to that agreement—let's say it is 10 pallets of avocados each month and the price becomes negotiated—but then Coles wishes to have a special on avocados in the coming months? Is it a practice that Coles contacts farmers, tells them there will be a special on avocados and then asks the farmers to reduce their price for avocados to meet the specials price?

Mr Swindells: Promotional programs would generally be done as part of a seasonal piece. It tends to be at the start. You would plan out what your seasonal volumes are and include promotional periods through that. If there was a flush on a particular product—in this case, if it was avocados—where the volume of supply in the market is becoming so significant that the price is deflating and we need to get unit volume higher, that may then warrant a conversation about running a promotion. To get that promotional volume higher, and therefore to get the overall cash profitability higher for the supplier, you might want to work through a different pricing structure for it—that is, discount, sell at a lower retail price and more volume.

CHAIR: When a special is on and Coles reduces the price and consumers are coming through and picking avocados off the shelf, is Coles losing out on money or is the farmer losing out by having a devalued product?

Mr Swindells: We would hope nobody is losing out. Actually, the rationale for running a special is to move more volume where there is good volume. Ninety-six per cent of all of our produce is domestic. We absolutely work in lock step with the seasonality of produce. When volumes are high, generally quality is at its best. That is where both growers and retailers want to promote products and move that volume. I would hope at that point both are winning. Actually, so is the customer.

CHAIR: I will put forward statements that have been made to us by farmers—farmers, by the way, who are terrified to appear in public because of the fear of retribution they know they will face from Coles Group because they have faced it in the past. I have spoken to a farmer who has an ongoing agreement for 10 pallets a month. He has been contacted on numerous occasions to say there will be a special in Coles on his particular product. A representative from Coles calls that farmer and says, ‘You’ll reduce your price to this price, and instead of 10 pallets we’ll take 50 pallets.’ Upon that, Coles does not return for months until they have used those 50 pallets. How does Coles respond to those statements from those who directly supply you?

Mr Swindells: Clearly, that would be enormously disappointing and, as I said to the Queensland Farmers’ Federation, the Queensland Fruit & Vegetable Growers association, the Victorian Farmers Federation and the WA ag minister last week, where there are those specific examples we would really want to get in touch directly and have a conversation. That is not how we want to do business. We have in the past looked into instances where allegations such as these have been made. We take them extremely seriously. We know there is a reputation out there where people are concerned about coming forward. We are absolutely committed to doing the right thing, to listening to farmers and growers, to understanding those issues and resolving them. If we could possibly get the details, I will personally make sure that incident itself is looked into in the right way and in a supportive way. That is wholeheartedly not how we want to run our business.

Mr Fitzgibbons: If I could build on that, I extend an invitation to the committee members present today to participate in those discussions. It is very much not the culture that we have at Coles—or I would like to think that we have at Coles—in terms of a fear of retribution. We are very keen to address those directly, so we would very much welcome you to participate as part of those discussions that we have so you can see how it is that we engage and provide some confidence around how these processes are handled.

CHAIR: Local growers across all of our regions and across the state are telling us that this has been a culture that has lasted decades: the culture of retribution, the culture of if they do not sell at the lowered price they are threatened by the large supermarkets that they will no longer be a supplier. We are seeing farmers have the price of their product being reduced time and time and time again by a manipulated market from the duopoly and they are losing out. I understand that you gentlemen here today are saying, ‘Well, that is not the culture that Coles wants,’ but it is the culture that is occurring throughout Queensland. Would Coles commit to an independent review of their GSAs?

Mr Fitzgibbons: We would be happy to take that away and consider that, but in the first instance I would really encourage the committee to participate with us in those discussions with the farmers that you have identified so you can see firsthand how it is that we engage.

CHAIR: Mr Fitzgibbons, with all due respect, what we are doing right now is engaging with the Coles Group on behalf of those farmers—those farmers who do feel cheated, those farmers who do feel threatened and those farmers who are worried about not only the produce in the ground but also their workers and their families. Farmers in Queensland are terrified by Coles and Woolworths. Coles and Woolworths are, at the end of the day, their lifeblood. There needs to be a greater commitment. I will turn to the deputy chair for questions.

Ms LEAHY: I will defer to the member for Gympie.

Mr PERRETT: You mentioned that you met regularly with the Queensland Fruit & Vegetable Growers and the Queensland Farmers’ Federation. We had the CEO of the Queensland Fruit & Vegetable Growers appear before the committee raising a number of issues in respect of their membership. Could you inform the committee of the sorts of issues that were raised by both those peak industry organisations when you met with them recently?

Mr Fitzgibbons: Absolutely, and I touched on it already. I think we had some really productive discussions. We offered both those bodies the same offer that we have given to the committee: to participate in processes. It is very challenging to respond without specifics or individuals, and that is why we are seeking to engage with peak bodies, engage with this process and invite you to attend with us to actually address the concerns that are raised with you, because it is not consistent with how we would characterise the culture at Coles and if there are examples of that we want to get to the bottom of it. That was the nature of those discussions with Queensland Fruit & Vegetable Growers as well as other peak bodies, not just in Queensland but elsewhere as well. As I said, there was an acknowledgement that there are a number of different players in this space who have a contribution to make—growers, peak bodies, retailers and government. I think it is an important part to recognise. It was good to see that there was agreement that it was important to recognise many players in this space who are having an impact on Queensland agriculture.

Mr PERRETT: One of the issues they raised to the committee was profitability and ultimately viability. I think you may have touched earlier on the importance to your business of having that continuity of supply, but they raised serious issues around ultimately the viability of so many of these horticulturalists. Is there an area where you believe that you can assist through that process? I know that you mentioned transparency, but it makes certain that the bottom line for these horticulturalists and farmers means that they can actually survive and supply the produce that you need.

Mr Fitzgibbons: I think that is part of those conversations that we were having, and that was one of the reasons I very briefly gave an overview of how it is we procure fruit and vegetables, either directly with a farmer or through aggregators. As I mentioned, we were pleased to hear that acknowledgement from both those peak bodies that where there is a direct relationship between Coles and a grower it is invariably a really positive one. The feedback they are receiving comes from people that we cannot see through the supply chain. We have a contract, or a grocery supply agreement, with aggregators and we do not necessarily see beyond that. There may be instances where it is not just an aggregator who is dealing directly with a farmer. It might be another grower who is actually supplying into somebody else who is a bulk aggregator and then they onsell to the aggregator who we then purchase from. We acknowledge that there are some issues with transparency insofar as we do not know what communications are going from aggregators to growers and, likewise, growers do not know the conversations that are happening with retailers. I just want to be really clear that we are not seeking to point the finger to any particular group but merely making the point that there are a number of participants in this space that need to be part of the conversation to agree on what appropriate transparency measures look like. I do not propose—and Coles does not propose—to have a silver bullet as to exactly what that answer is, but we do have a commitment to be part of the solution.

Ms PUGH: I am going to move that we table this document so I can ask a few questions referring, in particular, to the supplier trading terms.

CHAIR: This is the document provided by Mr Scott? The motion is to table? It is so tabled.

Ms PUGH: As I said, I have a couple of questions from the Coles trading terms document, if I may. I will direct them firstly to you, Mr Fitzgibbons. In your trading terms, what does a rebate refer to with a supplier? That is on page 2 of your trading terms.

Mr Fitzgibbons: I might ask our chief legal officer to respond. When you say page 2 of the trading terms, was that for the producer or supplier?

CHAIR: It is the yellow tab.

Mr Brewster: The rebate is a discount that is taken off the remittance before payment. It is effectively like a trading discount.

Ms PUGH: Why would you get one of those?

Mr Brewster: Usually in return for some type of consideration that is paid to the supplier. For example, in the past there have been rebates that were paid to provide additional information and data to suppliers relating to their level of sales to help them plan better, assess the efficacy of marketing campaigns et cetera. There is effectively a levy for the cost involved in collating and providing that information. That is just one example.

Ms PUGH: Just so I am understanding clearly, you provide the supplier with data that you have collected and then they deduct money from the cost of the product; have I understood that correctly?

Mr Brewster: We deduct whatever agreed amount. I do not think there is any amount agreed in most of these terms that were provided. They will send us an invoice and then from the amount payable there will be some amount that is taken off by way of a rebate.

Ms PUGH: Taken off the amount you pay the supplier?

Mr Brewster: That is correct.

Ms PUGH: How often does that occur?

Mr Brewster: Across our portfolio of suppliers, we would have to take that on notice.

Ms PUGH: No worries. I notice in your trading terms you refer to one of those vertical integrated businesses that I spoke of earlier. In this case it is Coles Collect, a transport provider that I presume Coles owns. Can you tell us what percentage of the businesses you buy from use Coles Collect? If you do not have that number to hand, I am happy for you to take it on notice.

Mr Swindells: We would have to take it on notice to get an accurate figure.

Mr Brewster: We do not own the business; it is contracted. It is a service, but we do not own our own fleet.

CHAIR: That question is taken on notice.

Mr MINNIKIN: Mr Fitzgibbons, my question is in relation to supply agreements and is a bit of a lesson from the past. I know that it ended a few years ago, but would you care to comment in relation to, from a consumer relations exercise, that \$1-a-litre milk campaign and the lessons learned by Coles from that marketing campaign?

Mr Fitzgibbons: I think there were a lot of lessons taken from that campaign, perhaps, to be frank.

Mr MINNIKIN: I am sure there were.

Mr Fitzgibbons: We have actually changed the way that we do business in the dairy space. I think that is a really important point to make to the committee. We acknowledge that where there are issues in a particular industry we are committed to changing the way that we do business to make sure that is reflective and sustainable within the sector.

With regard to the dairy model, prior to the model that we have currently it was the case that Coles would purchase milk from processors and there was no relationship with dairy farmers directly themselves. That generated some issues where dairy farmers were seeing the price at the shelf edge versus what they were paying. There was no direct relationship between Coles and those farmers at all as we contracted with processors.

We have changed our model—I acknowledge not in Queensland. In Queensland we still engage with Norco as a co-op. In other jurisdictions we have a direct model where we contract directly with farmers now and then we actually pay a processor to process on our behalf. We have greater visibility of what it is that farmers are getting because we have that direct contract with them. Through the dairy code we publish on an annual basis, and we are proud to say that we are amongst the highest in the market for what we pay for dairy products. That is a commitment that we have had for many years now. I think it was 2019—I could be wrong; I will correct the record if I am wrong—when we started to roll out a direct sourcing model in Victoria. That was a really great success and then we started exporting that model to other jurisdictions as well. I am pleased to say that we enjoy again direct, very positive relationships with our dairy farmers.

Mr MINNIKIN: As a loss leader campaign, it is fair to say that it was pretty disastrous from Coles's perspective at the wider market price?

Mr Fitzgibbons: I could not comment as to whether it was loss leading. I would again have to take it on notice. I know there was an ACCC inquiry into the dairy sector at the time. I know that there were a number of findings. I think one of them referred to it not being a loss leader, but I will take that on notice and go back and check.

CHAIR: Member for Chatsworth, you are happy for that to be on notice?

Mr MINNIKIN: Yes.

Mr Fitzgibbons: Just to clarify that point, I think it is fair to say that it has taken a lot of effort and direct engagement with the sector, and with a number of customers as well, to explain that we have changed the way that we do business in that space and that will require ongoing work over many years.

Ms PEASE: I just want to get some clarity around the aggregators. Correct me if I am wrong: they are not a part of the Coles Group; they are completely independent operators?

Mr Fitzgibbons: That is correct.

Ms PEASE: Would the producers who are making use of the aggregators be aware that they are independent and not part of the Coles Group?

Mr Fitzgibbons: That is a really important question, and I am pleased you have raised it, because it was certainly in conversations that I have been having with growers, and particularly with the peak bodies. The question was put to us today as to whether those bodies act as agents and it is the case that they are not agents. They purchase, they take possession, they own that product and then they onsell it to us.

Ms PEASE: So they are merchants?

Mr Fitzgibbons: I think there are a lot of growers who are not aware that that is actually the case. I think that is certainly an important piece and, again, one of those transparency measures that we were talking about. I think it would be really worthwhile to have that visibility as to where it goes.

Ms PEASE: Would the farmers be aware that they are not Coles?

Mr Fitzgibbons: In all cases, no, I think that would be correct to say.

Ms PEASE: So they present themselves as representing Coles?

Mr Fitzgibbons: Again, this is one of the points that I was making before around the visibility that we—

Ms PEASE: All I am asking is: would they represent themselves as being representative of Coles?

Mr Fitzgibbons: I am not aware, to be perfectly frank. They should not be because they are not agents; they are merchants. Again, this is one of the issues of transparency that I think we need to work through.

Ms PEASE: Do the aggregators provide a GSA to the producer?

Mr Fitzgibbons: No. The GSA is between Coles and the aggregator and then the contractual arrangements that aggregators have with growers—correct me if I am wrong, David, but we do not have visibility of those.

Mr Brewster: That is correct.

Ms PEASE: We are actually in a position where the aggregator—are they aggregators or merchants?

Mr Fitzgibbons: I think this is one of the issues that we have insofar as a lot of different words are being used and there is some confusion as to whose role is what. We refer to them as aggregators.

Ms PEASE: We have heard—and I am assuming you are across all of the public hearings that we have had. You no doubt would have heard of the many witnesses who have come before us and particularly they have talked about that they deal directly with Coles. There is potential that these producers are actually not dealing with Coles but are dealing with an aggregator?

Mr Fitzgibbons: That is correct.

Mr Swindells: Can I make a comment at this point. This was one of the topics in conversation last week with the Queensland Fruit & Vegetable Growers association and certainly, from my perspective, was not something that we had considered. The chair voiced his own experience where those growers supplying aggregators deemed themselves to be supplying Coles directly. Clearly, we see the direct suppliers that we deal with because we interact with them. We have GSAs, we have existing relationships and we have the ability to sit down and discuss issues on both sides on an ongoing basis. The feedback we get is that those true, direct partnerships we have with growers are healthy and good. Where we have aggregators and then growers we do not have that visibility, albeit those growers may deem themselves to be supplying Coles, and I think that is the part we want to explore further. So far this has been about Coles and growers. The missing stakeholder is the aggregator and how we all work together and how we all work together more transparently.

Ms PEASE: Thank you. During our inquiry we have heard from producers who are not getting paid in a timely fashion. They actually indicated they had a relationship and they were Coles suppliers, and some of them are waiting 120 to 150 days for payment. I know as a consumer that I cannot walk into a supermarket and walk out with shopping, because I would be arrested by the police for shoplifting. What is the position with regard to Coles—I have had a little look at the document here and it is very vague; it refers to this and that—with regard to payment terms and agreements? What is your position on that?

Mr Fitzgibbons: In terms of supplier payment, Coles worked with the Business Council of Australia to ensure we are reducing—sorry, the Business Council of Australia led a piece of work with the federal government for supplier terms for small businesses. The purpose of that was to make sure there was transparency around businesses and their payment terms with small suppliers. That is something that made us very much focus as an entire business on all of those small businesses and what our supplier terms were. We generally have supplier terms—I will have to take it on notice. I am happy to provide the committee with exactly what those supplier terms are—

Ms PEASE: You have actually provided us with a copy of the document. Can you not refer to that with regard to your payment terms?

Mr Fitzgibbons: I see it does have 30 days. The reason I was saying that is it will vary, because naturally we have suppliers of varying sizes and so the supplier terms will vary based on the relative size of the supplier. The smaller the supplier—I can say generally—the lower the payment terms, because we do recognise it is important to pay those suppliers swiftly.

Ms PEASE: It is interesting—

Mr Swindells: Sorry, can I just build on that a little bit? Small suppliers should be 30 days or less. Let's just be clear: no-one should be waiting 120 days. Again, I would really welcome details. If I can help on that today then I would very much like to do so. Where suppliers also have difficulty, we deal with them directly. In the past we have changed to better terms to help cash flow. We are here to proactively partner with our suppliers through the good times and the bad times, and on numerous occasions we have supported them with those changes—and some of those changes have been for long periods to help them get through.

Ms PEASE: Thank you. I guess that goes further to what I was about to say. In your opening statement you talked about the importance of food security and ensuring we can provide food to our constituents et cetera. Having said that, by not paying the producers up to 150 days for their product—I am very concerned, because when I read through this document it is very much focused on protecting Coles at every step of the way. It is lovely that you are saying you are working well with the producers and that you want to work hard, but we have actually heard contrary to that. Have you been listening to the hearings that we have had and heard those comments that have been made? What is your position on that, apart from I know you said you are willing to work with them and you want to hear from them. These are our constituents; these are people who are feeding Queensland and we heard very real and heartbreaking stories.

Ms LEAHY: Is there a question?

CHAIR: We need a question.

Ms PEASE: The question is: what is your response to that—further?

Mr Fitzgibbons: You pointed out, Ms Pease, that there were some issues with farmers who believed that they are actually supplying Coles directly when, in fact, they are supplying an aggregator. I cannot speak to all of those arrangements. What I can speak to are the arrangements that Matt referred to, which is where smaller suppliers have payment terms of 30 days, and where it is beyond that and that is causing issues for a particular grower or supplier, we engage with them proactively to ensure we can assist them in managing their cash flow. Again, it is not in our interest, in the community's interest or in the grower's interest to have an unsustainable supply chain, and we work very closely with them to ensure we can continue to have a sustainable relationship over many decades if possible.

Ms PEASE: We also heard that suppliers—

CHAIR: Sorry, member for Lytton, in the interests of time, because we are intending to have a break at 10.30, I will turn to the member for Warrego and then we will return later.

Ms LEAHY: Mr Fitzgibbons, we had an example in relation to lettuces. The GSA might say that Coles wants 10,000 lettuces, which is about 2,000 a week. The grower goes ahead; he has to plant those because he has to supply those every week. In a situation where Coles says, 'We don't want 2,000 lettuces this week. We only want 500,' is it such that the GSA locks in that grower so that he cannot then take those other lettuces to another aggregator? Can you tell us whether there are exclusive restrictions on those GSAs?

Mr Fitzgibbons: Thank you for the question. It was something that I did note was evidence provided for the committee and I was surprised to hear that, to be perfectly frank, and so it was something that I immediately went and checked. That is not a feature of our contracts. That is not a feature of the way we engage with suppliers. I again make the point that I made previously and that David referred to—the volume commitments that we have and that 15 per cent flex that we have with regard to volume. Almost invariably, we take all of that volume and then go to other markets to top up. It is not the usual course of events that we would exercise that to take lower volume. I can say that, in the case where that does exist, there is no exclusivity that locks them into not being able to sell that to another avenue.

Ms LEAHY: In a situation where the price of a produce—and we will use lettuces—might be falling and the volume is actually decreasing, does Coles go back—so if the grower says, 'I have to do something with these lettuces. I either plough them back into the ground or I can go to an aggregator, a merchant or a wholesaler,' does Coles then go and buy them back through that system?

Mr Fitzgibbons: Not that I am aware of. For the most part, when it comes to our agreements we take the full volume and then go to the spot market to top up, so we would be taking all of those. I expect—in most instances; I cannot say that there are not instances where we do not take the full volume. It would not be the normal course of events that we would then go and purchase those back on the wholesale market after refusing volume. That is not the practice we would ordinarily engage with.

Ms LEAHY: How would growers know that that does not happen?

Mr Fitzgibbons: I suspect for our part it would be through our suppliers that we actually have contracts with. The evidence of that would be presented in the fact that we tend to purchase the entire volume that we contract for.

Ms LEAHY: You would be buying on the auction market and also from wholesalers on the spot—you referred to it as a spot market. You would have buyers there as well?

Mr Fitzgibbons: In very limited circumstances. It is literally a top-up. It is not something that forms a significant part of our purchasing arrangements.

CHAIR: In answer to the member for Warrego, you said the full volume. Is that the full volume of produce that meets criteria once it gets to your distribution centres?

Mr Fitzgibbons: I would expect so but I would have to take that on notice.

CHAIR: How much produce that goes to the distribution centre does not meet the criteria of Coles and is, therefore, not put up onto the shelves?

Mr Fitzgibbons: I am sure there is a high degree of variability with that. I would have to take that on notice.

CHAIR: You do not have to take that one on notice. Let's continue along this line of questioning.

Mr Brewster: If it might assist, I have actually got a figure. In financial year 2023 we rejected from our DCs 1.49 per cent of fresh produce we received. It is very low.

CHAIR: What then happens to that fresh produce?

Mr Brewster: It is returned to the vendor, which is often the aggregator.

CHAIR: So returned to the aggregator?

Mr Brewster: Correct.

CHAIR: What about if it is from a direct supplier, a farmer? What happens then?

Mr Brewster: The same, or there might be a discussion about what the farmer would like to do with it. It might be that they prefer for it to be transported from our DC, say, to a wholesale market and then sold there rather than all the way back to farm. There will be a discussion, essentially, about the best way to deal with it.

CHAIR: I am going to throw open to questions in just one moment. I do have a question. It came from one of our hearings in Bundaberg with a local farmer, Mr Cross. Coles obviously enter into an agreement with the aggregator to purchase produce at a price. Do you list that publicly so that farmers can see what the average pricing is?

Mr Fitzgibbons: Not that I am aware of. I do not believe that we publish the purchase price for that.

CHAIR: Would that not provide farmers with a greater insight into how much their produce is actually worth once it goes from aggregator to Coles?

Mr Fitzgibbons: Again, it speaks to the challenges of the transparency. I note that we use Ausmarket data, so there is a reference point which we use that is available to those who subscribe. In terms of providing the actual figures, I would have to consider what the commercial-in-confidence requirements of that are or whether it incentivises some other behaviour that might be not advantageous to parties.

CHAIR: Is it more that Coles do not want to publish that data because it would then give the farmers an opportunity to ensure they are getting a fair go and raise their prices to meet the standard that is being set between the aggregate and Coles?

Mr Fitzgibbons: As you would be aware, we are a listed company and there are requirements—there is certain data that is very market sensitive that we would be precluded from publishing. I am aware of other examples—in the meat sector, for example, there are various indices that the market can look to and actually get a very decent understanding of what the market is. The growers can get a good sense of whether what they are being paid they view as being appropriate. I think there are measures that are available. There are measures that may be made available to provide growers with the same degree of confidence that exists in the meat sector. That is what we are keen to keep—

CHAIR: Mr Fitzgibbons, right now for horticulturalists, as we sit here today, Coles will not list the prices that they pay aggregates for? As we sit currently, Coles will not make a commitment to publicly list those prices?

Mr Fitzgibbons: I would have to take that on notice to ensure—

CHAIR: It is not on notice. It is as we sit here today. Right now, Coles are not committed to that undertaking, are they? You have just said that you are worried about commercial-in-confidence and so forth, so right now, as a representative of Coles Group, you are saying that Coles are not comfortable with publicly listing those prices as we sit here today; yes or no?

Mr Fitzgibbons: I think there are sensitivities and restrictions placed upon us that would not enable us to do that today.

CHAIR: You are not comfortable doing that today?

Mr Fitzgibbons: That is why we are having those conversations with fruit and vegetable growers.

Ms PUGH: In our regional hearings we heard from some growers that some of the produce is not making it, whether it is to the aggregate or to Coles or Woolworths, to be rejected. We are talking about 30 to 40 per cent that would not meet your standards because it is too 'ugly', but there is nothing wrong with the product. That is one point at which we are seeing that potential volume of wastage. You are talking about rejecting about 1.49 per cent at another point in the supply chain. Is there anywhere else that we are losing product? What would be the end-to-end wastage that we see on our perishable supply chain which Queenslanders are not even getting the chance to eat?

Mr Fitzgibbons: I cannot speak to what happens on a variety of farms, but I can speak to the figure that David points out—that 1.49 per cent—that is rejected at distribution centres, which is a very low figure. The question refers effectively to some of our specifications. The reason that we have those specifications is because we are a customer-led organisation. We know that consumers have a lot of choice when it comes to where they purchase their fruit and vegetables—

Ms PUGH: Coles or Woolies.

Mr Fitzgibbons: It is important. There are many green grocers as well in wholesale markets. The reality is that the specifications that we stipulate with our suppliers are done in conjunction with them. It is part of that grocery supply agreement. Again, it is not something that we take lightly. We do work with our suppliers to provide Queenslanders with groceries of a standard specification that they expect of us. By and large our suppliers very much deliver on those specifications, which I think is evident in that 1.49 per cent figure.

Ms PUGH: If you could take on notice about what would be thrown out at the end when it has not sold off the supermarket shelves and whether or not you provide that on to a third party charity. I am happy to take that on notice in the interest of time, Chair.

CHAIR: Thank you, member for Mount Ommaney.

Ms PEASE: Can I ask a question that can be put on notice?

CHAIR: We can hold it over. The witnesses will be returning.

Proceedings suspended from 10.32 am to 10.48 am.

CHAIR: I welcome back Mr Swindells, Mr Brewster and Mr Fitzgibbons. I will hand over to Mr Scott to kick off the second part of this hearing.

Mr SCOTT: Thank you, Mr Chair, and members of the committee. Gentlemen, I wish to ask a few questions that spring from the exchanges that occurred just before we broke. The first question I have is directed to Mr Swindells. My note of something Mr Swindells said relating to specials is that the rationale for a special is to move more volume when there is more volume. Mr Swindells, do you recall saying something to that effect?

Mr Swindells: I do, yes.

Mr SCOTT: My notes indicate that you identified two categories of specials—one where there is a special arising out of a flush. Do you recall referring to that category of special?

Mr Swindells: I do, yes.

Mr SCOTT: A flush is essentially where there is more produce that is returned in a season than is expected; correct?

Mr Swindells: Yes.

Mr SCOTT: Then I think you identified another category of special which is a special that is planned ahead of the season; correct?

Mr Swindells: Correct.

Mr SCOTT: That is a situation where the special is not responsive to unexpected volume; correct?

Mr Swindells: Well, it would follow the shape of a seasonal curve. For example, you would not run a special at the shoulders of a season where quality is low, supply is low and price is high. You try and pitch for the peak or you might try and pitch for a moment where consumer demand is strong—that is, Christmas for berries for entertaining, for example.

Mr SCOTT: But it is not in response to unexpected volume; right?

Mr Swindells: Not necessarily. Although the two may coincide if that happened.

Mr SCOTT: But there are specials where it is entirely planned by Coles; correct?

Mr Swindells: Correct.

Mr SCOTT: It might be planned six months out; correct?

Mr Swindells: Notionally correct, yes. You would not be picking the exact volume and the exact point in time, but you would have an understanding of a rough period.

Mr SCOTT: Right. Are growers informed of these upcoming specials before the season—that these are planned specials?

Mr Swindells: As part of the seasonal plan, yes.

Mr SCOTT: Is this right: the special is a reduction in the price for the good at the supermarket; correct?

Mr Swindells: Yes. It should be something that a consumer would recognise as great value.

Mr SCOTT: Is that reduction in price passed back to the grower—that is, they are offered a lower price for the good?

Mr Swindells: It would vary between grower and specific category, but, on the whole, you would be looking to work together to move more volume at a point in time at a better price, yes.

Mr SCOTT: The offer is in effect that Coles will pay a lower amount in order to move more volume; correct?

Mr Swindells: At a unit price level.

Mr SCOTT: If the grower were to not wish to be paid that price, what alternative does the grower have to accepting that price?

Mr Swindells: Can you explain that to me again?

Mr SCOTT: Perhaps if I rephrase the question: if Coles offers a lower price to move more volume for these planned specials, the grower really has no alternative but to accept that price; correct?

Mr Swindells: I think if we are looking to try and grow the volumes together, there is a set price that you would want to be able to lock in to be able to know that that is ultimately the uplift you will get for the consumer. It is a bit more around do you want to run a special or not? Generally, in supply in retail, specials are a good thing, moving more volume is a good thing and growing your business is a good thing at a cash dollar value. If we are at a point where, say, you were a supplier and I was Brisbane

the category manager, we have an ongoing relation through seasons. If we do not want to partner together, then potentially you go and sell to the market, so you sell to other competitors or you sell to food service or you get into export. We are 15 per cent of the volume within that overall market, notwithstanding our total market share numbers earlier. There is a wide range of places. I guess it depends upon what your business strategy is as a grower.

Mr SCOTT: Are there any specials that Coles plans for which growers are not warned of before the start of the season?

Mr Swindells: This kind of works both ways. There will be specials that growers may want to come and run if they have volumes they cannot move the standard prices they have. This is a fluid weather and nature related category. You can set the standard at the start, as I said earlier. Things like sweet potatoes are far more predictable than, say, lettuce would be. At a point in time, both the grower or the retailer may suggest that we want to change what the volume needs to be to hit the right point to move through the products that have been supplied and produced. They may relate to doing a special or not.

Mr SCOTT: Can I ask you, please, Mr Swindells, to listen carefully to my question? My question is: are there any specials that Coles plans for that it does not warn growers of prior to the start of the season?

Mr Swindells: Yes, there would be. Not all specials that come through would necessarily be 'warned'—and I think it is an interesting word to use. We may choose to partner on other activity through the year. Whether the supplier wants to do that or not would be down to the supplier.

Mr SCOTT: Perhaps if we rephrase my question so I do not use the word 'warned'. Am I right that there are specials that Coles plans for prior to the start of a season which it does not tell growers of before that season starts?

Mr Swindells: I could not comment on specifics for all categories, all suppliers and all category managers. Would I think there is a scenario where halfway through a season your sales are softer or stronger than both the grower and the retailer would want? Absolutely. Would that therefore then translate into us coming together and looking at additional activity? More than likely. If the question is: is all activity planned out in advance? The answer is no.

CHAIR: Mr Swindells, you are not here to provide a comment; you are here to answer the question. The question as I hear it was very clear: does Coles Group plan for specials ahead of time throughout the season that they do not inform the growers of until that point of the special occurs?

Mr Swindells: I would not be able to comment on that question.

CHAIR: I am not asking you to comment; I am asking you to answer the question. If you need to seek advice and come back with an answer before the end of the hearing, I am sure Mr Scott would be very appreciative of that.

Mr Swindells: Sure. We will take the question on notice.

CHAIR: No. What we will do is that we will ask that you provide an answer by the end of the hearing. If you are unable to, then we will consider that a question on notice. Mr Scott, I will hand back to you.

Mr SCOTT: Thank you. Perhaps this question is best addressed to you, Mr Fitzgibbons, but if it is not other witnesses can respond. Before we broke, there was a discussion about aggregators; correct?

Mr Fitzgibbons: Yes.

Mr SCOTT: Are aggregators that Coles deal with bound by the grocery code of conduct or any other code of conduct?

Mr Fitzgibbons: My understanding is that they are bound by the Horticulture Code of Conduct.

Mr SCOTT: Alright. Does Coles have any visibility over the level of compliance by those aggregators with that code of conduct?

Mr Fitzgibbons: I know that there are a series of ethical sourcing audits that occur and that those do go through to aggregators. The interaction of that with the horticulture code in detail I would have to take on notice for the specific provisions.

Mr SCOTT: You are talking regular audits that are undertaken under that code; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: Who conducts those audits?

Mr Fitzgibbons: I would have to take that on notice.

Mr SCOTT: Do you know whether or not the results of those audits are provided to Coles?

Mr Fitzgibbons: My understanding is that for aggregators they are. I would have to clarify. I would not want to mislead the committee given I am under oath. I definitely would not want to mislead or speculate. Please let me take that one on notice and we will come back.

CHAIR: Would you like to hear the question again to give yourself better time to consider the answer?

Mr Fitzgibbons: Please.

Mr SCOTT: I will rephrase: can you tell us whether Coles is provided the details of the results of those audits?

Mr Fitzgibbons: I will take that on notice.

Mr SCOTT: Do the agreements between Coles and aggregators require aggregators to comply with the Horticulture Code of Conduct?

Mr Fitzgibbons: I would have to take that on notice.

CHAIR: Mr Fitzgibbons, we have the chief operations officer here. I am sure he may be able to shed a bit more light on that; Mr Swindells?

Mr Brewster: Perhaps if I assist. Our agreements would have a general compliance with law clause which would incorporate the Horticulture Code of Conduct. I do not believe it is explicitly called out, but it would be caught under the general compliance with law requirement.

Mr SCOTT: Mr Fitzgibbons, you made a point before we broke, and my notes are to the effect that you said it would be unusual for Coles to take lower volumes than it had forecast with growers, putting to one side issues about failure to comply with specifications. I am just talking about excluding those categories where Coles takes less than the amount that they forecast in accordance with the discretion under the GSAs. Do you understand what I am saying?

Mr Fitzgibbons: Yes.

Mr SCOTT: Your comment was that it would be unusual for Coles to do that. Are you able to tell us in any kind of comprehensible figure how frequently Coles does that?

Mr Fitzgibbons: No. I would have to take that on notice and provide the committee with that detail.

Mr SCOTT: Okay. Mr Brewster, I think you gave us the figure of the proportion of produce rejected by Coles being 1.49 per cent.

Mr Brewster: Yes.

Mr SCOTT: Can you tell us the actual volumes that 1.49 per cent represents?

Mr Brewster: I would be able to obtain that. I do not have that data in front of me but the percentage would have been calculated from that number.

Mr SCOTT: Do you know what the total volumes are that Coles takes?

Mr Brewster: Again, that would be in a spreadsheet I could locate, but I do not have that in front of me at this juncture.

Mr SCOTT: I would be grateful if you could locate it, Mr Brewster. I think it was you, Mr Fitzgibbons, in response to questions from the chair regarding the publication of price information, who indicated that, as a listed company, Coles is subject to restrictions on what it can publish. Can you be specific about what those restrictions are?

Mr Fitzgibbons: No, I cannot be specific. I would have to take that on notice as to the express provisions under which we would be required, unless David can point to the specific provisions.

Mr Brewster: I think what Mr Fitzgibbons was referring to was sort of a range of issues with our internal confidential data. The first is the listing rules under the ASX in terms of continuous disclosure and whether or not whatever information it was was a sufficiently material insight into our operations that it could. It is something that we have never put into the public domain before. It might affect people's assessments of Coles's share price. That would be the first one.

The second one that we are very conscious of and which we have raised with the ACCC, in the context of trying to promote greater transparency in horticultural and produce supply, is a willingness, as I said before, to enter into that debate and see what we can do to help make that industry more transparent. The big concern is the laws around price signalling that have been inserted

into the Competition and Consumer Act. We are very conscious that the ACCC has prosecuted companies before where they have made their internal confidential data available. Particularly in circumstances where people say there is a duopoly with Woolworths, we are very conscious that if we start putting out our own internal data into the market we do not want to face an allegation that we are trying to signal to Woolworths what they should do with their produce prices.

Mr SCOTT: Can I just take that in steps? The first category of restriction was in relation to ASX requirements; correct?

Mr Brewster: Correct.

Mr SCOTT: And what I understand you to be saying is that those restrictions would apply because Coles would not ordinarily publish that kind of information; correct?

Mr Brewster: That is correct. It depends what the information is, but I think we were talking generically that that is a concern when we start publishing data that we have never published before, because people take notice of that.

Mr SCOTT: Of course. But if Coles changed its practice and started publishing that information as a matter of course, those restrictions would not apply, would they?

Mr Brewster: As long as we were confident that that first disclosure did not raise issues, that is correct. The other way to do it is if it is made anonymous through some type of industry indexing which everyone's prices are blended in so you cannot actually reverse engineer ours out.

Mr SCOTT: And if that anonymisation that you have just described were adopted, would that overcome the issue with respect to price signalling that you identified as the second category of restriction?

Mr Brewster: It would ameliorate it. It might not remove it entirely, which is why we have actually raised it with the ACCC, because we would want their kind of buy-in that that is an appropriate solution.

Mr SCOTT: But it sounds very much like these are issues that could be worked out, surely.

Mr Brewster: Yes, that is why we are very happy to start talking in this area. As Mr Swindells said, most of the other primary produce areas have moved over the last few years in terms of the transparency and contracting behaviour, and it is time that this sector moved too.

Mr SCOTT: Okay. Something which this committee has heard evidence about is that supermarkets use overinflated projections and indicative supply amounts to ensure a market oversupply and skew the supply and demand market indicator. Mr Fitzgibbons, I gather from your answers earlier that you have been following the evidence before this committee?

Mr Fitzgibbons: Correct.

Mr SCOTT: And you are aware of that evidence?

Mr Fitzgibbons: Yes.

Mr SCOTT: Can you tell us whether or not that is something that Coles does?

Mr Fitzgibbons: As I mentioned previously to the committee, Coles will work with suppliers at the beginning of the season to work out what volumes will be required for the season. We then engage with those suppliers over the course of the season for delivery on a week-to-week basis. As I said, there is that 15 per cent flex up or down. I am advised that it is unusual for that volume level to not be reached. What I can say is that we contract for a particular volume with our suppliers, be they our direct suppliers, the direct grower farmers that we have grocery supply arrangements with, or the aggregators that we work with. That is the volume that we indicate to our contracted parties that we will require and that is how we progress over the basis of a season—to those volumes.

Mr SCOTT: Would this be fair to say: namely, that some suppliers that Coles obtains horticulture from are relatively large businesses?

Mr Fitzgibbons: Yes.

Mr SCOTT: And some are not. Some are lower level businesses; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: As to those larger businesses, because of the volumes that they deal in, if they are to move those volumes, they are going to have to sell their produce to Coles; correct?

Mr Fitzgibbons: Not necessarily exclusively.

Mr SCOTT: No, I am not suggesting exclusively. I am just saying that, given the volumes that some of the suppliers that deal with Coles have are so significant, they are going to have to sell at least some of their produce to Coles; correct?

Mr Fitzgibbons: If they are our suppliers, we agree volumes in advance of the season and we adhere to those volumes. If the suppliers that we have agreements with grow beyond the volume that we have indicated, that is not something that we have control over, but what we do is ahead of the season we agree with those volumes. As I have said, I am advised that it is unusual for us to not reach those volume requirements.

Mr SCOTT: Okay. Perhaps I will break my question up. Mr Swindells, I think you said a little while ago that Coles accounts for about 15 per cent of the market.

Mr Swindells: That was the conversation had in the meeting with the Queensland Fruit & Vegetable Growers association. I was there in attendance with one of our former senior produce commercial team members, and we were talking about the variety of different places that produce is used and sold in Australia and we were about 15 per cent.

Mr SCOTT: That is a very significant proportion of the market, isn't it, Mr Swindells?

Mr Swindells: Yes, absolutely, 15 per cent of a very large market is still a large number, as are a lot of the numbers that we deal with in Coles. The percentages can be small but the actual quantum is large. We take that responsibility very seriously.

Mr SCOTT: Okay. The volumes that some of the Coles suppliers deal in could not be shifted if those suppliers did not sell produce to Coles because the size of the market that Coles accounts for; that is what I am putting.

Mr Swindells: I am not sure that is necessarily true of all categories or at all points in a season. I also think there is a counterfactual, which is there is an element of dealing with one trusted supplier in Coles when you deal directly with having a purchase order where you know what the price is rather than going to the market, that some may choose it to be preferential. I think either way we are still a significant volume percentage of the Queensland market.

Mr SCOTT: I think in part of your answer you said my proposition is not necessarily true for all of the market, but can we take it from that that for at least part of the market my proposition is correct?

Mr Swindells: Yes, absolutely.

Mr SCOTT: Coles has a set of quality control standards; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: Would this be right: the GSAs provide that Coles may reject produce that does not meet those standards?

Mr Fitzgibbons: Correct.

Mr SCOTT: Maybe Mr Brewster can answer this question. Do the GSAs provide that there is a period between delivery and acceptance of produce when Coles can give notice that it is not going to accept a particular delivery of produce?

Mr Brewster: I think that they would. Under the grocery code of Australia, there is a limited time window that we have to reject produce. I think it might be 48 hours; I would have to refresh my memory. Under the code there is a limited window, and once you pass that it is too late.

Mr SCOTT: Okay. The point being that—and let us just say the period is 48 hours—from the moment the produce is delivered to Coles up to the end of that period, Coles can give notice that it is not going to accept the goods because they do not meet specifications, and then if that occurs those goods are not accepted by Coles; correct?

Mr Brewster: That is correct.

Mr SCOTT: What protection does the grower have from the possibility that the goods might be damaged in that period before notice is given?

Mr Brewster: Do you mean in terms of their rights under the contract?

Mr SCOTT: Perhaps I could make my question more specific. Does the grower have any recourse under the contract in the event that it is damaged in that period—let us say it is 48 hours—and Coles rejects the produce because by the end of that period the produce no longer meets specifications?

Mr Brewster: It would depend on the nature of the reason for rejection. Clearly, as a business, if we were the cause of whatever problem it is—if the carton was dropped during being put away in the DC—that would not be something that Coles would claim from the supplier because products are

generally checked before that point. Generally, the sorts of defects that are inherent with the product are not the sorts of defects that can arise in a distribution centre. They are issues like when the fruit is cut open it is rotten in the core or it simply does not meet the outside specifications. They have been picked too early, for example, and the under-ripe percentage is too high. Those sorts of things are not ever things that Coles could sort of engineer of its own volition.

Mr SCOTT: But in the example you just gave of the produce dropping, how would the grower know that is what has happened?

Mr Brewster: I guess they would not is the frank answer there.

Mr Swindells: In terms of the practicalities of that scenario, if I may just try and bring a bit of colour to the actual process, the distribution centre has an inbound refrigerated sealed dock door. The product is brought into a staging area at the front by the truckload and these are ordinarily black crates that are stacked and wrapped or they are boxes stacked and wrapped with a standard of conformance. So these are whole deliveries that are coming through as opposed to individual boxes or crates that would be dropped, and therefore to Mr Brewster's point it is more around the specification of the products within the delivery unit as opposed to something physically happening to one or more delivery units within that truck. The other part to build there is that the area of space on that receiving bay is constrained. We cannot just have product sat there waiting for 48 hours for someone to come in and inspect it; the turnover and the velocity of produce through that distribution centre is managed by the hour, and so I think that is more around the communication between the grower from the category team via the quality team member as opposed to a physical check being conducted early enough, if that helps.

Mr SCOTT: All right. Thank you, Mr Swindells. Would you agree though that, in terms of the possibility that there might have been damage to the goods between delivery and any notice given by Coles to the grower that it is rejected, the grower has to rely on the good faith of Coles that the reason for the rejection is not because of any damage within that period?

Mr Swindells: Well, yes.

Mr SCOTT: Thank you. When there is a rejection by Coles, is the recourse available to the grower to make a complaint under the grocery code of conduct if they disagree with the rejection?

Mr Brewster: They have various appeal mechanisms. By far the most common is to go directly to their category manager so they can escalate through the business. Alternatively, we have an internal complaints line which is used as well where there is someone internal within my legal team who looks at matters and then finally—yes, you are right—they can go to our independent arbiter which is now an individual named Jenny Linsten, who is a former lawyer who has been appointed.

Mr SCOTT: Appointed by Coles?

Mr Brewster: Correct—appointed by Coles and notified to the federal government.

Mr SCOTT: Okay. Since 2020 how many complaints have been made to the independent arbiter? Do you know off the top of your head?

Mr Brewster: I think off the top of my head it is about five. We would have to double-check that number.

Mr SCOTT: Okay, and how many of those complaints have been substantiated?

Mr Brewster: Again we would—look, I do not have to take that on notice but a number of them. We have been subject over the years to orders for compensation in seven figures by our independent arbiter.

Mr SCOTT: In seven figures?

Mr Brewster: Correct.

Mr SCOTT: So seven figures means in the millions?

Mr Brewster: Over a million, yes.

Mr SCOTT: Okay, and how many complaints have resulted in an arbiter recommending compensation in that amount? Do you know?

Mr Brewster: That is the largest. Other amounts are below that, and sometimes the solution that is being sought is a commercial one rather than a financial one such as relisting of products or changes in supply terms.

Mr SCOTT: Okay. You said that is the largest—the seven-figure sum. Is that only one case?

Mr Brewster: Yes.

Mr SCOTT: Okay. Can you tell us—

Mr Brewster: Not the only case of compensation, but it is the largest one.

Mr SCOTT: It is the only case where there is a compensation figure in the seven-figures amount?

Mr Brewster: Again I would have to check that. I know that that one is the largest.

Mr SCOTT: Okay. Can you tell us without disclosing the details of the individuals involved what the nature of the issue was that led to that seven-figure sum?

Mr Brewster: A lot of the complaints come down to ranging decisions and the circumstances of ranged reviews, which is when a product is put into a range for the first time or every year or so there is a review of the range to make sure it is relevant to customers. It is usually a dispute about that process and whether or not the right outcome was achieved, whether or not in particular the right sort of information was considered.

Mr SCOTT: All right, and we are talking about review-of-range decisions; is that right?

Mr Brewster: Yes. What—

Mr SCOTT: And is that where—sorry, I did not mean to cut you off. What were you going to say?

Mr Brewster: I was going to say, yes, reviews at the range by the category manager who is the primary contact point between the supplier and Coles.

Mr SCOTT: And what are the types of decisions that can result from a range review?

Mr Brewster: There is a whole range. Often it is about introducing new products into the range, so keeping the customer proposition fresh. So there will be new products in and there is obviously a limited amount of shelf space for any given category, so there is usually a discussion about products out—not always. Sometimes a supplier will simply increase its range; sometimes it just stays static, and that is what the discussions are usually about.

Mr SCOTT: Right. So, for example, a decision to discontinue a particular range, would that be—

Mr Brewster: Yes.

Mr SCOTT: Okay; a decision to introduce more products into a particular range?

Mr Brewster: Yes, grow the shelf space because the range itself is in growth such as health foods.

Mr SCOTT: Okay. And is the complaint that resulted in the six-figure sum compensation amount a complaint that arose from a range review; is that right?

Mr Brewster: That is my recollection. It is a number of years old that complaint, but that is my recollection.

Mr SCOTT: All right. Mr Brewster, are you, like Mr Fitzgibbons, someone who is familiar with the evidence that has been given in this committee?

Mr Brewster: By other witnesses?

Mr SCOTT: Yes.

Mr Brewster: No.

Mr SCOTT: All right; well, perhaps I can address this question to Mr Fitzgibbons. Mr Fitzgibbons, do you consider that five complaints about Coles since 2020 to the independent arbiter is reflective of the level of dissatisfaction this committee has heard from producers?

Mr Fitzgibbons: I think that level of five complaints speaks to the end of processors rather than the beginning of them. With Coles across 8,000 suppliers there is obviously a range of relationships. In many instances where there are issues that are raised, as David mentioned, the first instance is to raise them with the category manager. We are not suggesting that there have only been five complaints lodged with Coles; I just make the reflection that it is the end of the process, not the beginning of it, and many issues are resolved at a category manager level before they are then escalated at all.

Mr SCOTT: All right. Mr Fitzgibbons, you are aware of the evidence this committee has received from growers indicating that they are afraid of upsetting companies like Coles because of the risk of losing business; correct?

Mr Fitzgibbons: Yes.

Mr SCOTT: Do you think potentially that the number of complaints that the independent arbiter has received might be related to that level of fear held by growers?

Mr Fitzgibbons: I cannot speculate as to the reasons behind the individual people who have provided evidence. What I can say is that it is not consistent with the culture that we conduct ourselves under. Again, we continually make offers for the committee and for peak bodies to engage with us directly so they can see firsthand how we engage and how we address some of these issues. I do note that these are issues that have been considered actively through Dr Emerson's food and grocery code review, and we are participating in that review fully and we would encourage others who do have any concerns to likewise engage with that process so they can be fully considered as part of Dr Emerson's review.

Mr SCOTT: In relation to aggregators, you mentioned the Horticulture Code of Conduct. Is there a process for complaints under that code of conduct regarding the conduct of aggregators?

Mr Fitzgibbons: I am not intimately familiar with the operation of that code.

Mr SCOTT: Perhaps Mr Brewster might know the answer to that question.

Mr Brewster: I do not think there is the same type of mechanism. It is a much more detailed process under the grocery code involving each company having its own arbiter and then the appellate function of the independent reviewer, which is Chris Leptos. I do not think it is of that nature. I think it is more dispute resolution based involving going to arbitration or mediation.

Mr SCOTT: All right. Mr Chair, those are my questions on this topic.

CHAIR: Thank you, Mr Scott. I might just go to one point here in your submission where you talk about supplier price variation requests—that is page 14—and it notes the increase in requests: financial year '21, 1,101; financial year '22, 4,126; financial year '23, 3,804. Earlier in your submission on the front page you say that one of the reasons cost of goods on your shelves has gone up is because of suppliers wanting to increase their volume and therefore you meeting them. My question is: across those three financial years, how many of those requests resulted in the price rising for the supplier?

Mr Fitzgibbons: Just a couple of points to clarify for the committee again. On that particular graph, I note that it is 1,101 in financial year '21. That is only for six months, so that was a reporting period. I do not want to extrapolate, but were you to it would be approximately 2,000, so we saw a doubling of that year on year. In terms of the number of those that were passed on partially or in full, it was, I understand, around 95 per cent.

CHAIR: Around 95 per cent, and that was a negotiated price rise?

Mr Fitzgibbons: It would have been a request that was put. The process that we undertake when considering these price request increases is the manufacturer will come to us and request an increase. We will ask effectively the reasons for that. What we do not ask for is commercial information, but we do ask the reasons for it. In many instances it is relating to, particularly in these number of years, packaging, freight, utilities, wheat, labour and international shipping that were the key drivers of those. That is what was identified to Coles as being why the request was put, so that is considered by the category team and then in 95 per cent of instances passed on partially or in full.

CHAIR: Staying along the line of suppliers—and we spoke about exclusivity before and within the agreements—I am just wondering are there any individual farms that Coles does deal with and stipulates an exclusivity that that farm will only sell to Coles to ensure that the competition with Woolworths and other supermarkets is not available? Does Coles put any exclusivity agreements on farms that their products will only go to Coles Group?

Mr Fitzgibbons: Unless my colleagues can provide a definitive answer, I would have to take that on notice just to understand. My understanding is that it is not. When I was asking about the exclusivity in the context that Ms Leahy requested, that was relating to the specific evidence. I put that evidence to the team and was told that that was not the case. This is a slightly different question, so I just want to be sure that I am answering comprehensively, so I will have to go back to the business to take that.

CHAIR: Mr Fitzgibbons, I would just note that since coming back from the break you have asked to take a lot of questions on notice. Before we commenced proceedings we were told that Ms Bon had done an extensive amount of work to answer our questions. Was all of that extensive amount of work passed on to you three gentlemen to refer to? Do you have Ms Bon's work before you that you can cite?

Mr Fitzgibbons: No, we do not.

CHAIR: Why would you not bring an extensive, as you put it, amount of detailed work to refer to?

Mr Fitzgibbons: Our expectation was that Ms Bon would be appearing today. It has been very last minute notice that she has not been able to appear. Vicki and I worked very closely on the briefings we received from the business. There are a number of questions that have been put. I must say, we have taken note of the evidence, which was why I have been able to respond to Ms Leahy's question about exclusivity as it related to that particular piece of evidence. We sought the answer to that. With respect, Chair, you are asking me a different question, so I do not have that particular piece of information in front of me.

CHAIR: You will take on notice whether or not Coles has exclusive agreements with farmers that they are only to provide their produce to Coles Group?

Mr Fitzgibbons: Yes.

CHAIR: Just moving back to aggregators, I asked questions before about whether or not Coles would commit to publishing the price that they purchase goods from aggregators for. What sort of oversight or internal overview does Coles Group have of the aggregators or agents they engage with to make sure they are providing good faith business operations back to farmers? Maybe I will phrase it this way: does Coles Group review what pricepoint agents offer farmers for their produce?

Mr Fitzgibbons: We do not have visibility of that.

CHAIR: You do not. So there is every possibility that agents could be pushing down prices on farmers to ensure they maximise profit, which they then engage at a pricepoint with Coles?

Mr Fitzgibbons: I think Matt referred to this as well in the conversations we were having with Queensland Farmers' Federation and Queensland fruit and veg growers. Certainly in those conversations there was an acknowledgment that there are a number of players within the space that have a role to contribute to enhance that transparency. I think likewise aggregators have a role to play in this space to provide that transparency, both from growers through to retailers and retailers through to growers.

CHAIR: Mr Fitzgibbons, I took Premier Steven Miles out to Cross Family Farms north of Bundaberg, where it cost Trevor Cross a dollar to produce a punnet of cherry tomatoes. He goes through an agent. The agent is offering him 60 to 70 cents.

Mr PERRETT: It does not matter whether the Premier was there or not.

CHAIR: Member for Gympie, I remind you that you are on a warning.

Do you think it is fair that, when it costs a dollar to produce a punnet of cherry tomatoes, agents have been pressing down the price at 60 to 70 cents to the farmer? Should Coles not have a responsibility to ensure that farmers are getting a fair go for their produce—the very same produce that you take at 60 cents and then charge at \$3.50, and then a week later after I go to the shops the price has jumped to \$4.50? Should Coles not be ensuring they have ethical oversight of what our Queensland farmers are being paid at the farm gate and your eventual retail price?

Mr Fitzgibbons: I know that Bundaberg is a very significant region in Australia for growing cherry tomatoes and I am familiar with the evidence provided to the committee by that particular grower. I can speak to other growers as well in the region who used to have agreements with aggregators. They came to us and requested to become direct suppliers. We understand that has been enormously beneficial to their business. That is the type of relationship that we seek to have with our growers. For the most part, where we can our preference would be to have direct relationships with the growers. Unfortunately, given the nature of the sector and the limitation of resources we cannot have direct relationships with every one of our suppliers. I note your point around the prices paid from aggregators to growers, and that lack of transparency is one of those issues that arises and I think causes concern. As we have said, we are very willing to be part of the solution. Absolutely, there is an obligation for all participants through the supply chain to be present and to contribute to that in a way that is sustainable and does not distort the market.

CHAIR: Mr Fitzgibbons, what can Coles do to ensure there is oversight from Coles Group of how much agents are buying produce from Queensland farmers at to ensure Coles can be part of a more sustainable operation? What commitment will Coles give today to ensure those farmers at the farm gate are getting a fair deal for the cherry tomatoes that you then sell for four, five or six times the amount?

Mr Fitzgibbons: The commitment that we give is the commitment that we have provided to be part of the solution.

CHAIR: That is not currently working, Mr Fitzgibbons. Let's talk about what we are going to do. Will Coles commit to ensuring that the agents they engage with provide pricepoints for produce from farmers?

Mr Fitzgibbons: I am not sure of the extent to which we are able to require that in our contracts. What I can say is that we are very committed. We have commenced dialogue and we continue dialogue both with the peak bodies and the minister for agriculture's office. We are very keen and very committed to making sure that the enhancements that have occurred in other sectors are reflected in the horticulture sector. That is not something that can be done by one retailer: it is something that can only be done in collaboration with all industry participants.

CHAIR: I have one final question before I turn to the deputy chair. I will provide an example. When Rugby League teams want to engage with a community, they will go to a local junior Rugby League club and say that they are proud sponsors of this NRL club. The attraction is that young players want to go to that small junior club because there is an association with an NRL team and they think there is a pathway there to the future. Does Coles allow any of its aggregators or agents to market themselves as partners of Coles?

Mr Fitzgibbons: I am not familiar with how it is that they present themselves. I think this goes to—

CHAIR: No. Does Coles allow aggregators, if they wish, to market themselves as partners with Coles?

Mr Fitzgibbons: I am not aware of any specific prohibition against that, but I would be happy to engage with the team to see if there is any prohibition.

CHAIR: Mr Brewster or Mr Swindells, is there any agreement with agents and aggregators that allows them to market themselves as partners of Coles?

Mr Swindells: I am not aware of any.

Mr Brewster: I am not aware either way. I do not know.

CHAIR: In future, would Coles encourage engaging with aggregators under the Coles partner banner to ensure that farmers have a more transparent avenue as to what they are having to give up at the farm gate? Is that maybe something where Coles could enter into agreements with aggregators who are more willing to provide what the price at the farm gate is?

Mr Fitzgibbons: I think this again speaks to some of those concerns raised, particularly where there is not a visibility that Coles has of the relationship that an aggregator will have with growers or further down that chain. We are very much committed to having those conversations. I think it has been apparent, even at the committee today, that different groups and different people use different language to describe the same thing or have different interpretations as to what someone's role is. I think it is really important to make sure there is that clarification going forward, and that is why we make the point—and make the commitment—of working with all industry participants to make sure there is that clarification that is not currently there.

CHAIR: Mr Fitzgibbons, I will take that as a long way of saying no. I will hand over to the member for Gympie.

Mr PERRETT: I will refer to page 17 of your submission, which states—

Following the pandemic and ongoing domestic supply chain disruptions, Coles has increased inventory levels at a contingency to minimise disruptions and ensure that our customers have access to the goods they require throughout the year.

I assume that includes increasing the supplier base to shore that up; is that correct?

Mr Fitzgibbons: That particular comment refers more towards the inventory balance that we hold on our balance sheet. What we are seeing is an increase in that over time, and what that actually reflects is not just COVID related but the ongoing disruptions to networks. I think that the most significant example I can provide is where the rail line between South Australia and Western Australia went out for an extended period and effectively cut off the west from having any kind of rail connection. Coles worked with government and industry extensively to actually have restrictions lifted on its national maritime freight plying domestic routes to ensure we could continue to get product into Western Australia.

I make that point just to make the point that there are really significant efforts we have to make to ensure Australians have access to the groceries they need. What an increased inventory balance reflects is an acknowledgement that there are these ongoing disruptions that happen within the supply chain and we tend to have to carry more inventory just to have a contingency against that. From a Brisbane

volume perspective it is not as disruptive, but we do see that regularly with regard to supplying to North Queensland where there are rail disruptions frequently arising from natural disasters but also maintenance and work associated with Cross River Rail, which does have an impact on our ability to service some of those stores. We hold more inventory up there as well as a contingency for those factors.

Mr PERRETT: Is that produce held by your business or held by some of your suppliers?

Mr Fitzgibbons: No, that is our business. Just to be clear, that is on our balance sheet, and that is mostly reflective of packaged goods.

Mr MINNIKIN: My question is to Mr Fitzgibbons. In relation to Coles's submission, at section 4 there are factors affecting the cost of groceries. If I continue to page 17 you list the subheadings: energy, labour, logistics, packaging, and inventory, which has just been referred to by the member for Gympie. Would you like to comment further on some of those extra costs, particularly energy, labour, logistics, packaging and tax as cost inputs?

Mr Fitzgibbons: Sure. Those particular inputs refer to Coles's cost of doing business, and naturally we do see these kinds of costs reflected in the supply chain. Just to be clear, that section relates specifically to Coles. It is not surprising to householders that the cost of energy, the cost of fuel, the cost of interest rates have all gone up, and that is reflected not just in households but also in our business as well. One of the additional factors we have is the increase in interest payments and tax payments, which goes to the point we made earlier. Some of those increases in interest and tax are considerable, and we have seen those costs go up in Queensland in particular.

In terms of logistics, I did touch on some of those impacts. Some of those impacts, as I said, relate to rail. When the rail goes out to northern Queensland, or anywhere north of Brisbane, it is actually a significant impost to our business because the practical impact of that is that the stock still needs to move, but it just means we have to move it by road instead of rail. Naturally, rail is much more efficient, both in time and fuel, and so those have a very direct impost on the cost of doing business for us. I think it is almost, if not more than, double to move from rail to a truck. They are significant impacts that we do not necessarily have control over. We certainly do not have control over the price of fuel.

We always seek as a business to be as efficient as we possibly can. That is why we have made significant investments in Queensland in our automated distribution centre in Redbank. Costs will continue to impact our business but what we do for our part to try to ensure that we can offer the best value to customers is reinvest in our store network and our distribution network to make sure it is as efficient as possible.

CHAIR: Can I ask Mr Fitzgibbons, with time being considered, that you are answering concisely and to the point as quickly as we can because other members may wish to ask follow-up questions.

Mr MINNIKIN: Mr Fitzgibbons, we all know that cost-of-living pressure is biting everywhere. It is well publicised, including media last night about mortgage stress et cetera. Does Coles as an entity within its marketing team use ABS data of a typical family, as you would get from the ABS, on a full-time average wage, maybe a part-time wage, with a couple of kids—whatever the ABS data would indicate would be a typical family, however you define that? Does it look at it from the marketing angle to see just what those cost drivers have been on a typical family and take that on board when it comes to price setting?

Mr Fitzgibbons: We absolutely do take note of the fact that we have a great variety of people who shop at Coles. We seek to service as many elements of the community as we can. One of the things that we do note, which was in the submission as well and I touched on it in my opening statement, is there are these significant issues that are affecting families: rent, energy, transport. We note that, according to the ABS, the share of household spend on groceries is about 10 per cent and that has been declining over an extended period of time—30 years. What we are committed to doing is making sure customers get as much value as they can out of that 10 per cent household share. We absolutely acknowledge the pressure that households are facing being driven up by interest, energy costs, transport costs. We seek to influence what we can in terms of the offer that we provide to families.

Ms PEASE: I was really happy to hear that Coles wants to be part of a solution. Obviously you have been listening to the submissions and the public hearings. Given that you have given an indication that you want to be part of a solution, have you reached out to any of the people who have made those submissions to try to assist them and talk to them directly about the issues they have been having?

Mr Fitzgibbons: As I have said, we have spoken with Queensland Fruit & Vegetable Growers.

Ms PEASE: No, with regard to any of the people who have made a submission—that was actually my question—with regard to the individuals.

Mr Fitzgibbons: The individuals? Not as yet—to the individuals who have made submissions.

Ms PEASE: Do you plan to and in what time frame?

Mr Fitzgibbons: In the ordinary course of events we will go back and actually investigate the extent to which those individuals are suppliers of Coles directly. Where they are—

Ms PEASE: Further to that, you just made a statement ‘if they are suppliers to Coles’s. Can you define that: as a direct supplier to Coles or a supplier to an aggregate? Which one are you referring to then, a supplier to Coles or a supplier to an aggregate?

Mr Fitzgibbons: A supplier to Coles, but we would be happy to reach out to others—

Ms PEASE: Further to that question then, in regards to supplying to the aggregate who is representing one of your end suppliers, I am concerned about—and I am sure you are too—that relationship they are actually having with the aggregate who, for all intents and purposes—at the end of the day it is either the producer or the consumer who is dissatisfied with their engagement with Coles.

Mr Fitzgibbons: What I can say—and I think of a reference to this with regard to the chair’s comments around the cherry tomato grower—is that there are instances where we do have suppliers who supply an aggregator who then comes across and supplies directly to Coles. In direct response to your question—

Ms PEASE: But my question is what oversight—we already know there does not appear to be any great oversight or any interest—sorry, I will not put that. Given that you have made a commitment, what are your plans with regards to that? Do you have any position that you are likely to engage with the aggregates at this point to see what their engagement is with the producer?

Mr Fitzgibbons: Absolutely, absolutely.

Ms PEASE: And what is it?

Mr Fitzgibbons: These are the conversations we have been having actively with the peak bodies which is to, as I have said, ensure that all participants in the supply chain are part of that conversation.

Ms PEASE: Thank you.

CHAIR: Mr Scott, back to you, please.

Ms PEASE: Excuse me, Chair, I am going to have to be excused for a moment.

Mr SCOTT: Mr Swindells, can I come back to the questions I asked at the outset regarding the change in Coles’s operating profit from its supermarket business over the last five years? Do you recall that line of questioning?

Mr Swindells: I do, yes.

Mr SCOTT: Do you have page 17 of the Coles submission in front of you?

Mr Swindells: I do, yes.

Mr SCOTT: There are a number of cost increases that Coles indicates or refers to on that page. Do you see that?

Mr Swindells: I can see that, yes.

Mr SCOTT: Would this be right, with the exception of tax, all of those cost items on that page are taken into account in the calculation of Coles’s operating profit for its supermarket business?

Mr Swindells: That is correct.

Mr SCOTT: While we are on the issue of the increase in Coles’s operating profit over the last five years, have you yet had an opportunity to answer that question on notice regarding the explanation for the difference between 2019 and 2020?

Mr Swindells: I have made progress. It does relate to the AASB 16 change in accounting standard where leases were then no longer reported within the same column, so you have to adjust it for our operating leases. There is also a small part of the Wesfarmers demerger, so continuing operations excludes the previous Wesfarmers businesses, which were included in there, but it is for a full year. I do not have the final number to join the bridge from one to the other, but it is in the hundreds of millions of dollars that you would have to put back into the FY19 number for a comparable figure. It is a material difference.

Mr SCOTT: Where do the lease costs now go? In which column?

Mr Fitzgibbons: If I may, my understanding—

Mr Swindells: I have it. The decline in occupancy costs—and the order of magnitude for the changes that occurred at a group level follows occupancy costs that (indistinct) FY19—is potentially somewhere in the order of \$600 million. I will make sure I come back with the specifics. The decline in occupancy costs is the reallocation of rent to depreciation and financing. So that results in an increase in EBIT as the imputed lease related interest sits below the EBIT line.

Mr SCOTT: But you will be able to give us further information in due course?

Mr Swindells: Absolutely, absolutely.

Mr SCOTT: Can I come to the last topic I wish to deal with, which relates to issues of property? Mr Swindells, you are familiar with the concept of land banking, I take it?

Mr Swindells: I am.

Mr SCOTT: Would you agree with this definition of the concept: that it involves a market participant buying land without an actual intention to develop that land in order to avoid development by competitors?

Mr Swindells: That is a fair assumption, yeah; a fair description.

Mr SCOTT: Is this right, that Coles has a property strategy whereby it acquires land years in advance of its intended use of that land?

Mr Swindells: I might defer to Mr Brewster for specifics on this one. The lead times for property land acquisition, construction and supermarkets to then become operational are some of the longest lead times in our overall business.

Mr SCOTT: Mr Brewster, can you add to that?

Mr Brewster: The intention when we purchase land is to develop it as soon as is possible given the circumstances. Even with the best block of land, as Mr Swindells said, that can often be a number of years. Sometimes we do buy them in growth corridors where there simply are not even houses and so we know it is probably going to be three or four years before that suburb gets developed. There are also some instances—I think this is probably more what you are asking—where it is a longer term play where we will buy a small parcel of land in an area where we do not have a presence but it is not big enough to open even a small liquor store. We have to wait patiently hoping that other adjacent properties become vacant so we can buy them and amalgamate them. Sometimes that works and sometimes it does not work.

Mr SCOTT: One circumstance where Coles might buy land where it does not have an intention to immediately use the land is where the population just is not there yet; correct?

Mr Brewster: Yes.

Mr SCOTT: And that might take years before that population level is reached where Coles is minded to use that land; correct?

Mr Brewster: Yes.

Mr SCOTT: By that time when the population is sufficient for Coles to use that land, Coles is then in possession of that land which it can then use to develop a supermarket; correct?

Mr Brewster: Often it is more than a supermarket. It will be a sort of a subregional centre including other specialty shops as well, but yes.

Mr SCOTT: By that time property prices have likely increased in that area; correct?

Mr Brewster: It would depend on the area.

Mr SCOTT: It stands to reason that would likely be the case given that in that time population has increased and demand for land has increased; correct?

Mr Swindells: If the market dynamics play out as property market dynamics have played out for the last 40 or 50 years in Australia then, yes, that is correct.

Mr SCOTT: At that point Coles is in a competitive advantage because it then possesses land it can use for a supermarket—a competitive advantage over other potential competitors that have not yet bought into that area; correct?

Mr Swindells: We already have an existing property location that we can develop whereas others who have not invested in the prior period would not. By the nature of the decisions we took years earlier, then yes.

Mr SCOTT: Thank you. Are you aware of an instance where Coles bought the Milton Village Shopping Centre?

Mr Brewster: Yes.

Mr SCOTT: You are aware of that?

Mr Brewster: Yes.

Mr SCOTT: And you are aware of the evidence that has been heard by this committee in relation to that?

Mr Brewster: No, I am not. Mr Fitzgibbons may be.

Mr Fitzgibbons: I am.

Mr SCOTT: You are, Mr Brewster?

Mr Fitzgibbons: No, I have heard that evidence.

Mr SCOTT: After buying that shopping centre, Coles lodged a development application to develop a supermarket?

Mr Fitzgibbons: Yes.

Mr SCOTT: And after that occurred the IGA supermarket in the centre closed?

Mr Fitzgibbons: The lease reached the end of its term, yes.

Mr SCOTT: Right, and it was not renewed—

Mr Fitzgibbons: No.

Mr SCOTT:—by Coles?

Mr Fitzgibbons: No.

Mr SCOTT: Would you care to comment on whether that is an instance of uncompetitive behaviour by Coles?

Mr Fitzgibbons: I think it represents the normal ordinary course of commercial relationships where the term of the tenancy expired and there was a view to develop that. I think it is worth pointing out that instances in the past—we have had a look at this in the last 10 years; we did an analysis of where a competitor took over a Coles lease. There were 13 instances of that; and in the last 10 years where Coles has taken over a competitor lease, there have been five instances of it. That is demonstrably not a growth strategy that is employed by Coles.

Mr SCOTT: You have made a point about how competitive the supermarket business is, Mr Fitzgibbons; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: Here you had a competitor leasing a property that was owned by Coles; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: Once the lease reached the end of its life, Coles chose not to renew that contract; correct?

Mr Fitzgibbons: Correct.

Mr SCOTT: The clear reason Coles chose to do that was to remove a competitor from the location where Coles was about to develop a supermarket; correct?

Mr Fitzgibbons: The lease expired and so we chose to exercise our right.

Mr SCOTT: For the reason that I just put to you, Mr Fitzgibbons; correct?

Mr Fitzgibbons: For the purpose of developing the site, yes.

Mr SCOTT: Thank you. Those are my questions.

CHAIR: Thank you, Mr Scott. I note that we are joined by the member for Murrumba, Premier Steven Miles. In accordance with standing orders 202(1) and 202(2) correspondence has been received from the Hon. Mick de Brenni, Leader of the House. We have an extensive time for questions from the committee and we will, of course, endeavour to hear from everyone.

Mr MILES: Thank you, Chair. Thank you Mr Fitzgibbons for joining us. I understand that Mr Swindells and Mr Brewster are online. I appreciate the opportunity to ask some questions. Did Coles have to be summoned to appear at the committee today?

Mr Fitzgibbons: I agreed to appear before the committee and then a summons was issued.

Mr MILES: Was there a reason the summons had to be issued?

Mr Fitzgibbons: We were discussing time. The committee hearings changed a number of times. We were seeking to accommodate an extension of the period of time that we were initially invited to sit. The timing changed a number of times in a short space of time, as well. We had already agreed to appear, but before we agreed on a time, the summons was issued.

Mr MILES: So it does not reflect the importance that you place on attending?

Mr Fitzgibbons: Not at all. We had already committed to appearing.

Mr MILES: If it is important enough for me to be here; it is important enough for Coles to be here, so thank you for your explanation. Mr Fitzgibbons, you are head of public affairs?

Mr Fitzgibbons: Correct.

Mr MILES: That means you have some experience and qualifications in public affairs, I assume?

Mr Fitzgibbons: Correct.

Mr MILES: Could you briefly talk us through your background?

Mr Fitzgibbons: Absolutely. I am currently Head of Public Affairs for Coles which requires me to engage with government and industry on behalf of Coles. Prior to this I had the same role at Sydney Airport and before that I was a parliamentary staffer for a number of years across a number of deputy prime ministers. Prior to that, I was executive officer to the electoral commissioner in Canberra.

Mr MILES: From a public affairs perspective, with your considerable experience, how would you say things are for grocery stores in Australia at the moment?

Mr Fitzgibbons: I think Coles would acknowledge that it is a really challenging time for families. The cost of living is affecting all households. I appreciate that, Premier, you were not present for my opening statement, but I did reference a number of issues that are affecting households and what is making it really tough. We cannot control a lot of those circumstances, but what we can control, and what we seek to do every day, is to provide value to households every time they go to the supermarket.

Mr MILES: From a public affairs perspective, it strikes me that there is an incredible focus on grocery stores, prices and the cost of living. This has culminated in a Senate inquiry whose report we saw recently; the Emerson review; and this process. How long have you been in your role?

Mr Fitzgibbons: Four years.

Mr MILES: Is it your sense that in the last couple of years this focus has escalated?

Mr Fitzgibbons: As cost-of-living pressures have risen—I mentioned households have experienced 13 consecutive interest rate rises—we have seen an increasing focus on supermarkets. We understand very much that about 10 per cent of household spend is on groceries. In households there are certain factors that can be controlled, and some that cannot. We are committed to listening to customers. We asked them: what are the key factors that are driving your stress? They identified a number of issues, particularly mortgages and rents, energy and transport and, of course, groceries.

For our part, we understand that a lot of those costs come in consistently over a couple of months, but customers are reminded of this every time they go to the shops, which is a couple of times a week. We understand and we listen very closely to our customer base and try to make sure that we do what we can do which is provide as much value as we can. We do that through specials and through our home brand range. We provide a number of different price points so that customers can shop at entry points affordably. We also have our FlyBuys program and we have made changes to that to enable customers to scan and receive \$10 off their shop in real time.

The other thing we do that is particularly relevant to Queensland given it is the most decentralised state in Australia, is state-based pricing. What that means is: due to the competition that exists, the prices that are offered in Brisbane are the same prices that are offered in Cairns. We have statewide pricing for key pantry staples.

Mr MILES: I will turn to those issues in a minute. I am interested in the period of time that interest rates have been rising. In the last six months, from a public affairs perspective, is there anything that Coles should have done differently?

Mr Fitzgibbons: I think that our commitment through the entire period has been to ensure we provide the best value that we can to customers. That has been our ongoing commitment, and what we will continue to do. We acknowledge that there have been pressures applied on households. In

the period that you are talking about, I will refer to interest rate rises. The reason there are interest rate rises is because we are coming off the peak of an inflationary and economic environment. I note that, in terms of CPI, the inflation figure at Coles for the last 17 quarters has been consistently below the headline inflation rate for groceries. For our part, we are doing as much as we can to ensure families can afford groceries.

Mr MILES: This speaks to what is most frustrating for both policymakers and consumers. Every time we hear from spokespeople from—to be frank—Coles or Woolworths, they insist that they have done nothing wrong. I think what Queenslanders would like to hear is a supermarket boss say, 'We could have done better and we will do better', 'These are things we will do differently' and 'These are things we should have done differently.' Certainly my frustration is that we do not get to hear that.

Mr Fitzgibbons: If I can respond to that, Premier. The consistent thing we have been trying to put forward today is that we have listened to customers, but we have also listened to the farming community, particularly the evidence that has been provided to this committee. One of the consistent messages that I have been saying here today is that we are very much committed to being part of the solution. We acknowledge that that is something that requires the engagement of all industry participants. Matt Swindells and myself met with you earlier this year. Following that meeting, we have engaged with the Queensland Fruit & Vegetable Growers and the Queensland Farmers' Federation and had some really productive dialogue. We have committed to working to address some of the issues around transparency and some of the confusion that exists within the market.

I absolutely acknowledge that that will take some time, but we are committed to making sure that we are addressing those issues as they come up. I think there is a high degree of confusion within the sector. All of us can do a better job of explaining how the sector operates. We were particularly heartened in our engagement with those peak bodies. Where there is a direct relationship with Coles, overwhelmingly, it is a positive relationship. There are relationships that exist further down the supply chain, which we do not necessarily have visibility of, where we can be working better with all of the participants to make sure that everyone understands the operation of the market, and how we can do better to ensure there is that transparency and visibility.

Mr MILES: We certainly welcome your contribution. You pointed to specials as one of the ways that you address the cost of living for families. I shop at Coles; I love specials. What the fruit and veggie growers have told me, though, is that specials can really hurt them. They are told they will be on special and told the new price they will be paid. There is often not much regard for the cost of production or farm viability. Can you explain how specials play out from a farmer's perspective?

Mr Fitzgibbons: Sure. We have already provided some of the evidence of the way that we engage with our growers and the way that we procure fruit and vegetables. What we ordinarily do is that we have direct relationships with farmers but we also have relationships with aggregators. There will be smaller farmers who then sell their goods to an aggregator. We do not have a direct relationship with them; we have a direct relationship with the aggregator. We also have direct relationships with larger farmers. It is not practical to have direct relationships with all farmers. Ahead of the season we will work with our suppliers to establish what the volume will be for that particular season. As part of that process, depending on seasonality and depending on events that are happening—naturally Christmas will impact what sells in high volumes—we will agree what those promotions will be ahead of time. There may be variations. I believe we have taken some questions on notice to provide more detail around where promotions arise that have been planned.

CHAIR: Premier, do you have any further questions?

Mr MILES: I do have more.

CHAIR: We can continue and then, we will give even time to opposition members as well.

Mr MILES: I did miss the earlier hearing so I apologise if I am going back over things that you have already covered. Are you across the practice of charging growers three or five per cent rebates on their invoices?

Mr Fitzgibbons: This is something that has come up in the hearing. Our chief legal officer, David Brewster, can respond to that question.

Mr Brewster: Sorry. Was the question in relation to the flat charging of the three to five per cent rebate? I am not familiar with that. My understanding is that rebates will vary from nothing to some amount that is agreed.

Mr MILES: We have certainly heard reports of the flat charging of a rebate. My interest was in terms of how much you collect on those rebates?

Mr Brewster: We are providing some further detail about those rebates and we are happy to provide that detail. Are you looking particularly at the fresh produce sector?

Mr MILES: Yes, very much so.

Mr Brewster: We are happy to look into that.

Mr MILES: Very good. As a former health minister, I have an interest in what we can do to enable, particularly kids, to eat healthier food. Have you seen the ABS data over the last couple of years which suggests that through this period of price escalation, the consumption of fresh food—fresh fruit, veggies and meats—has gone down?

Mr Fitzgibbons: I would have to take that detail on notice, but what I can say is that Coles is committed to our purpose of helping Australians to eat and live better every day. That is very much at the core of our business. Around getting young people to eat more fruit and vegetables, we have free fruit available in store for kids when they come in. This critical role of encouraging healthy eating was reflected in our latest promotion with Pokemon—it encouraged kids to consume more fresh food.

Mr Swindells: Could I perhaps comment, Premier? It is Matt Swindells, here; we spoke in January. On the topic of food security, we partner with SecondBite, we partner with Foodbank, we partner with FareShare. At a recent SecondBite lunch, the CEO commented that families who need support have gone from one in five to one in three. In addition, around multiple states of his recent tour he heard the story repeatedly of parents who will tell their kids that they will eat when the children are in bed, not because that is what they are doing but because they cannot afford to. We are extremely mindful and conscious we have to help those in need more than ever. We have recently renewed our partnership with SecondBite and we are trying to make sure that there is as much food redistributed to those who need it the most at this time because there has never been a greater need. Some of those are children who are going to school and they need that nutrition to be able to study in an appropriate way. It is a super important issue. Thank you for raising it.

Mr MILES: Thank you for that response. I know you have been participating in the school lunch taskforce that Minister Farmer has been running. You have assured me privately but I wanted to ask you to publicly commit to assist us in getting more fresh fruit and veggies into schools.

Mr Swindells: You can absolutely have that assistance, Premier. We are extremely passionate about that topic.

Mr MILES: So I am. Thank you.

CHAIR: Premier, thank you. I turn to the deputy.

Ms LEAHY: Mr Chair, I seek to table a document.

CHAIR: There is a motion to table a document. I certainly will not be supporting it. All in favour?

Mr MINNIKIN: Absolutely I am in favour that the document be tabled.

Mr PERRETT: Absolutely.

CHAIR: There is 'opposed', 'opposed'. Casting vote: that will be opposed.

Mr MILES: Chair, the photo is of me with a group of schoolchildren from Saint Joseph's, Wandal, helping them prepare fresh food at a stall at Beef Week that was sponsored by Coles.

Mr PERRETT: Cosying up to the big supermarkets.

CHAIR: Member for Gympie, you have been on a warning. You have tested. Under standing order 253A, you may leave this chamber for one hour.

Whereupon the honourable member for Gympie withdrew from the chamber at 12.16 pm.

CHAIR: Deputy Chair, would you like to pursue a line of questioning?

Ms LEAHY: Yes, I would. I want to come back to the accreditation requirements that Coles requires of the growers under the GSA contracts or any other supply contracts. Can you advise what accreditation requirements are on the growers?

Mr Fitzgibbons: I may ask David Brewster, our Chief Legal Officer, to respond to the GSA question.

Mr Brewster: Unfortunately, I am not across the specifics of that. That is something we would have to take on notice.

Ms LEAHY: Does the word Freshcare ring a bell at all? We did hear from growers about Freshcare. Is that a Coles requirement?

Mr Brewster: I have never heard of that expression. I am not saying that that means it might not be something, but certainly it is not an expression that I have ever heard of.

Mr Fitzgibbons: Sedex is the compliance framework that I am most familiar with at Coles, but that is not to say that there are not others.

Ms LEAHY: Can you tell us what the nature of that compliance is?

Mr Fitzgibbons: My understanding is that it aligns with requirements to ensure that there is an appropriate level of oversight of employment on farms. I would have to take on notice the specifics as to what it actually covers.

Mr Brewster: If I might assist, Sedex is a global program that is used extensively around the world. It is used for modern slavery and ethical sourcing purposes. It is part of our process of complying with Australia's modern slavery laws. It is essentially a self-assessment program. Suppliers are required to self-assess against a number of criteria to determine a risk rating for their operations in terms of those core modern slavery issues such as underpayment of workers, child labour, discrimination and vilification et cetera. They do a self-assessment. A risk rating comes out of that and then, from that, under our ethical sourcing modern slavery framework, we determine if it is necessary to get a third party auditor to then conduct an audit. That audit will look at payroll, are farm workers being paid in accordance with the relevant award and, in particular, safety issues and looking at things like Spyrix that is in packing sheds et cetera.

Ms LEAHY: Who pays for the cost of those requirements on the grower?

Mr Brewster: It is a mix. Sometimes Coles will pay. Over the past few years we have committed quite a significant amount of funding to the paying of audits of smaller suppliers, especially ones that have not gone through the process before. Sometimes it is the supplier themselves. Having said that, it is a very common platform so it will be a requirement that, say, Coles and Woolworths and Aldi and IGA would also impose. It is not like they have to do something separate for us. They would be doing it for all of those different places at the same time.

Ms LEAHY: Are there any accreditation requirements that Coles has on the aggregators?

Mr Brewster: If we purchase directly from them then, yes, our ethical sourcing program will apply to them so it is the same thing.

Ms LEAHY: But the aggregator would not be paying for that, the grower would be paying; is that right?

Mr Brewster: No. It is the person with whom we have the direct contractual relationship, which is the aggregator. We do not have visibility of how many people supply it.

Mr MINNIKIN: Gentlemen, I have a question to any of you three here today, one physically and two via videoconference. Do you think there will be any reputational damage to Coles by the nonappearance of the CEO here today?

Mr Fitzgibbons: Our appearance in all instances from when we were originally invited to appear, we have engaged fully with the inquiry and sought to assist as best as we can. It is the ordinary course of function at Coles that, in my role and in my team's role, it is our job to assist committees and facilitate interaction with government. That is very much part of what my role is and how we engage with committees consistently on that basis. As I am sure the committee can appreciate, Coles is invited to appear at a number of committees. In the ordinary course of events, it is absolutely me and my team who appear on behalf of Coles.

CHAIR: I know the member for Mount Ommaney has a couple of questions, but before that I was wondering: how is the board meeting going? Is that still on?

Mr Swindells: Yes, it will be.

CHAIR: That is good. I wanted to make sure.

Ms PUGH: I am happy for this to go on notice as I suspect you will not have the answer in front of you. You talk about being a consumer-led organisation. I am keen to understand if you can provide the committee with information about what percentage of your sales are click and collect and what percentage are home delivery. I would like to see the growth on that year on year over the number of years that both of those services have been operating. I recognise the figures will be somewhat inflated by COVID, but I think it is important to understand because obviously you have a dominating market advantage, in conjunction with Woolworths. I think that those services, with the increasing number of people working out of home, as the member for member for Chatsworth alluded to, are a key part of your ongoing commercial success. I am keen to see how that breaks down. Could you provide that to the committee on notice?

Mr Fitzgibbons: I am happy to provide some comment on that, if you would like, as well, in terms of the growth.

CHAIR: A brief comment.

Mr Fitzgibbons: Yes. As you said, there was significant growth in that through the COVID period. It did not necessarily catalyse that investment in our business, but it certainly accelerated it. We had to move very quickly to increase the capacity for online. It led to, naturally, a very big increase in the community picking up on that.

Going forward, there is a lot of change in the grocery space in Australia. You have new entrants including Costco and particularly Amazon, which is playing in this space as well. The growth trajectory in the future in online is significant and that is why, as a business, we have invested significantly and specifically in customer fulfilment centres through partnerships with Ocado to make sure that that is the best experience that it can be for customers. I am happy to take that specific information on notice.

Ms PUGH: Thank you. You spoke about being a consumer-led organisation and that customers are demanding beautiful produce: capsicums that do not have holes, bananas that are a specific size et cetera. Do you also accept though that, with around 30 per cent of the market, you have a role to play in being a trendsetter and promoting what good produce looks like to consumers? Therefore, by only selling a small portion of 'ugly' produce—because it is not ugly; it is perfectly edible and it is absolutely delicious—you are contributing to consumers having unrealistic standards about what real produce from Queensland farmers actually looks like. Growers are having to waste too much product—we have heard 30 to 40 per cent—because of the unrealistic standards perpetrated in large part by the big two supermarkets.

Mr Fitzgibbons: Picking up on your point about being a customer-led organisation, I will make two points about that. One is that we are customer led and this is the expectation that customers have. We know that they can choose to go elsewhere and get that product that is of a similar specification elsewhere so we seek to meet customers' expectations rather than necessarily diminish them. The other point that I would make is that the level of rejection at the distribution centre is 1.49 per cent so I do not think that speaks to an unreasonable level of specification if that is the level that we are able to achieve.

Ms PUGH: That is right, but there are things that are not even making it to the distribution centre because they know it will not meet your very stringent specifications. That is the waste volume that I am very concerned about.

Mr Swindells: I think it is a very fair point. There are two parts to the supply chain that we have to fix. The first is at the farm gate and you are right that there are specifications that we have a responsibility to educate consumers are more than fit for purpose. We live in a privileged country that has some of the best produce in the world and we should celebrate it. The other side of the supply chain, at home in the fridge, is a problem too. Twenty per cent of all the products that people buy do not end up being used and consumed at home. There is education on both sides: better recipes, meal plans and structure to help balance the budget and feed nutritious meals; and better understanding and flexibility of specifications at the farm.

Mr MILES: Again, apologies if this came up earlier. Growers have raised with me concerns about buyers buying off the wholesale floor of the central markets. Are you aware of that practice?

Mr Fitzgibbons: Not as an ordinary course of events, no. As I have shared with the committee previously, ordinarily we agree volumes with our suppliers in advance of the season and there is a 15 per cent variation there of what is delivered over the course of the season. My understanding is that in most cases we will actually reach that volume requirement and then once we have reached that volume that we have contracted for with our suppliers, to top up volume from time to time suppliers will go to a wholesale market or another market to purchase that top-up over and above what our suppliers have been able to provide.

Mr MILES: But you can rule out that it is a common practice?

Mr Fitzgibbons: That is what I am advised, yes.

Mr Swindells: Absolutely.

Mr MILES: When we met earlier in the year, you explained to me the process for packaged goods and, effectively, they apply to increase their retail price. It has really struck me since then: why is there such a different process for setting the price for fresh foods versus not fresh goods?

Mr Fitzgibbons: I think it speaks to the complexity of the industry. I note that there are a number of different sectors that make up primary producers in the fresh sector. I think the reality is that there are good examples in other sectors of where there is a degree of price transparency that

does not exist in the horticulture sector and we are really committed to being part of that solution. I think that there are examples in other sectors, like red meat, where you have publicly available indices so producers are able to see what the general market price is for their products and the same with dairy as well, so they have comfort and confidence that they are getting the market rate for their products.

There are some challenges in the horticulture space because, as I said, at the beginning of every season we will agree volume with our suppliers. The reason that that becomes challenging is because there is so much volatility within this space, within this sector. From year to year, the variation that occurs as a result of climatic events is significant. That does have an impact on the volatility within the sector. I think that there is certainly room to enhance the transparency to provide growers the confidence that there is visibility of the market price.

CHAIR: Thank you, Mr Fitzgibbons. I note the time and I am endeavouring to ensure that there is equal time. I believe the member for Chatsworth has one very quick question.

Mr MINNIKIN: Mr Fitzgibbons, we often see on the TV, on current affairs shows periodically, images of farmers ploughing the crop back into the field because they assert that with Coles and Woolworths—the big two—it is simply not worth what they are getting paid so they simply plough what would be good food back into the ground. What is Coles's perspective when you see images and stories like that that are semiregular on the media airwaves? What is your view?

CHAIR: Concisely, please.

Mr Fitzgibbons: At Coles, we certainly work with our suppliers to minimise waste. We seek to minimise waste throughout the entire chain from when we purchase from suppliers through to what we provide to Foodbank and SecondBite at the end of the day in a supermarket. Again, I would make the point that, with our suppliers, we are very clear what our volumes expected for a season are. Where our suppliers have an oversupply or a flush, we work with them to seek to improve the value proposition and offer to customers so we can actually move that volume. We do not want to see that wasted, but we certainly make those commitments ahead of the season as to what it is that we will be looking to purchase.

CHAIR: Mr Swindells, Mr Brewster and Mr Fitzgibbons, the committee does thank you for being here today—Mr Swindells and Mr Brewster at late notice and it is appreciated that you were able to be here today. Questions taken on notice will be provided by the secretariat as there is quite a large volume of questions. They will be in contact. It is expected that answers to those questions taken on notice will be returned by Friday, 17 May. The committee will now break for 30 minutes and resume the hearing at 1 pm.

Proceedings suspended from 12.32 pm to 1.00 pm.

CHAIR: For the benefit of any new observers and participants I will reiterate that this hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. The proceedings are covered by parliamentary privilege which means witnesses are protected from legal action in respect of the evidence that they give the committee. If witnesses give evidence today which reflects adversely on an individual or organisation, it should not be taken as proof of the allegations being made. The committee may choose to receive but not publish that evidence.

Only the committee and invited witnesses may participate in the proceedings. Witnesses will be giving evidence under oath or affirmation. I remind witnesses that intentionally misleading the committee is a serious offence. The committee is being assisted in this inquiry by Mr Angus Scott KC and Mr Harold Rafter, barrister-at-law of counsel. Witnesses are likely to be asked questions by both counsel assisting and committee members.

HARKER, Mr Paul, Chief Commercial Officer, Woolworths Group Ltd

BALDWIN, Mr Danny, Queensland State Director of Operations, Woolworths Group Ltd

Witnesses were sworn or affirmed—

CHAIR: Welcome. I note, via correspondence from the Leader of the House, that the member for Murrumba will be substituting for Ms Jessica Pugh MP, member for Mount Ommaney. Mr Baldwin, Mr Harker, would you like to make an opening statement before I open up to questions from the committee?

Mr Harker: Thank you, Chair. I also acknowledge the traditional custodians of the land on which we meet today and pay my respects to their elders past and present. My name is Paul Harker and I am the chief commercial officer for the Woolworths Group. In this role I am responsible for our buying and merchandising function which services more than a thousand supermarkets across Australia. I am also joined today by my colleague, Danny Baldwin, who is the Queensland state director of stores for Woolworths supermarkets.

Woolworths has a long and proud history in Queensland, having opened our first store in Queen Street, Brisbane, in 1927. Almost 100 years on we are proud to be a significant private employer in the state, with over 37,000 Queensland team members, including 12½ thousand in regional areas, working across our supermarkets, Big W discount department stores and distribution centres. We operate five Queensland-based distribution centres, including the Brisbane regional distribution centre at Larapinta and our Townsville regional distribution centre. These centres underpin our seven-day-a-week delivery of groceries to communities across Australia and our ability to respond quickly to natural disasters.

As Queenslanders are all too aware, natural disasters have been increasingly disruptive for communities and for food and grocery supply chains. We play a key role in providing essential items to communities during these difficult times and work hard to plan and respond to these events. For example, in 2020 we opened the \$12 million expansion of our Townsville regional distribution centre specifically to improve its resilience in responding to natural disasters as it services 39 regional and remote supermarkets and has been crucial in providing emergency relief through the Salvation Army and other charity partners.

At Woolworths we are acutely aware of the cost-of-living pressures on households and vulnerable Australians. I welcome the opportunity to appear before you today and I hope I can help the committee understand the key drivers behind grocery inflation. As we sit here today we have lived through a very tumultuous five years, with COVID related disruption followed by rising interest rates and a period of sharply elevated inflation in the last two years. We understand many of our customers are under immense cost-of-living pressure due to the combined impact of rising mortgage repayments and rents alongside energy, insurance and transport costs. Grocery spend represents approximately 10 per cent of household income and grocery prices have gone up by a compound annual growth rate of over six per cent for the last two years. We know we have a key role to play in helping our customers find ways to spend less on their groceries and get the best possible value in challenging circumstances.

In our recent quarterly announcement we noted that inflation was coming down in our stores. Throughout this recent inflationary period we have taken and continued to take steps to provide affordable grocery products for all Queenslanders. These include offering our own brand products on everyday low prices across pantry essentials, weekly specials and including a best-unit-price search filter on our digital platform and the Woolworths app on instore mode. We have also donated more

than seven million meals through food relief programs, some of which go to school breakfast programs, in the 2023 financial year. Our success in the last 100 years, and indeed in the years that lie ahead, has been based on balancing a strong focus on providing real value for our customers, meaningful employment for our team and treating our suppliers and other stakeholders fairly.

One of the key themes of this inquiry has been in regard to retailers' relationships with suppliers. What may not be well understood is that there is a Food and Grocery Code of Conduct overseen by the ACCC which governs our relationships with suppliers. On this I would like to make three points very clearly here today. Firstly, as a founding signatory to the food and grocery code we consider compliance with it to be the minimum standard for our supplier engagement. Secondly, we believe there needs to be greater education of suppliers, particularly in the fruit and vegetable industry, of their rights within the code. We publicly commit to doing this, as with all suppliers who supply our business. Thirdly, we support the code becoming mandatory with penalties attached so that when there is behaviour in any part of the industry that is not in keeping with the code it is treated as unacceptable and penalised.

We seek to be the long-term partner of choice for suppliers and in Queensland we work with some 260 suppliers right across the state. In the last financial year we purchased 3.2 billion goods from them. In many cases we have worked with Queensland growers for very long periods of time. For example, in Far North Queensland we have a supply relationship spanning more than 20 years with a banana grower and over that period they have grown from a family-run and operated farm to a business with more than 450 employees. We have worked together with suppliers like them to overcome a number of challenges over the years, including packing and delivering fruit early into DCs to help manage supply during natural disasters and educate customers about cyclone impacts on bananas. Another of our suppliers here in Queensland growing shepherd avocados has collaborated with us to expand the popularity of this type of avocado, including through instore signage and recipes to promote the benefits and characteristics of this product. We supported another family-owned citrus supplier through a grant to assist with expanding their orchard and growing production levels, including the purchase of equipment to improve product quality. Our Queensland-based suppliers also have the unique opportunity to service a national market through Woolworths' national footprint and supply chain.

Queensland is a strong focal point for our national operations. When products are in season in Queensland they are often not in the rest of the country, opening up significant marketing opportunities for our suppliers based here. Large quantities of bananas, avocados, sweet potatoes, ginger, chilli, sweet corn, capsicum, grapes and mandarins are sourced from this state and delivered right across the eastern seaboard and beyond. In addition, beef, lamb and pork is processed not far from here at Heathwood in a world-class facility adjacent to our distribution centre where it is packed and sent out across the eastern seaboard.

Given a key focus of this inquiry is the degree of competition in the supermarket sector, I will provide a very brief summary of our view on this. In short, we are part of a highly competitive, efficient and innovative grocery sector. Over half of the Queensland supermarkets are independents, including FoodWorks, Drakes and IGA, and 78 per cent of the population live in close proximity to at least three supermarkets. In 2008 the Australian Competition and Consumer Commission determined that the industry was workably competitive and now it is much more so. With the arrival and growth of three of the world's biggest and most competitive retailers, Aldi, Costco and Amazon, Australia consumers have even more choice and this is a good thing.

In this context, it has never been more important to be price competitive. It is critical in trying to win our customers' shopping basket, which we need to do on a daily basis. Grocery retail more broadly is a high-volume, low-margin sector and Australia has one of the most efficient and productive grocery sectors in the OECD. We make a reasonable profit, around three cents in the dollar, and much of that goes back to Australian households in the form of superannuation and dividends. We also make considerable investments back into our business so that it is more resilient, innovative and efficient. We look forward to answering any questions the committee may have.

CHAIR: Thank you, Mr Harker. I note the apology by Mr Banducci. I understand it is a very reasonable reason why and we wish him and his family all the best in that matter. I will now turn to the member for Murrumbidgee. Premier?

Mr MILES: Thank you, Chair, and thank you for appearing before us today. I understand Woolworths did not need to be summonsed and so that is welcome. I put these questions to Coles earlier and they could not really think of anything. When it comes to the cost increases we have seen in recent times, is there anything that you think Woolworths could or should have done differently?

Mr Harker: Thank you for the question, Premier. I think supermarkets have been in the headlines for the last four years. I go back to the height of COVID and all of the work that the supermarket industry did working with government to make sure that Australians could access groceries during the pandemic. Of course, in recent times we have been in the headlines as people have experienced the cost-of-living crisis due to mortgages, rents, electricity, fuel and, of course, grocery prices going up. I think our job is to make sure that our customers can understand how they can navigate that and where they can get great value, whether it is buying our own brand products that can save customers 30 per cent, shopping our specials, using some of the digital tools we have recently built out, which is best unit price across my shop, whether it is shopping online or in store using the app. I think we could play a bigger role in actually communicating to customers the amazing ways that they could spend less on their groceries with us.

Mr MILES: It sounds like you are saying consumers could do a better job of shopping around, but Woolworths could not do a better job of lowering prices.

Mr Harker: We have been committed to lowering prices. In fact, if you look at our fruit and vegetable category and our meat category, they have actually been in deflation. We have been working with suppliers across each quarter to try to bring price dropped items to customers and we are now in very constructive conversations with suppliers around some of the reasons for the cost increases that they have presented to us, particularly in the FMCG world, and around how we can actually work together to lower prices for consumers.

Mr MILES: The ABS says that consumption of fresh vegetables is down 6.8 per cent, fresh fruit is down 6.1, dairy is down 5.1 and meat is down nearly three per cent. Would you apologise to the Queensland families who have reduced their fresh food consumption because of those price increases?

Mr Harker: Thank you for sharing the ABS data. The data in our business would actually show that the volume in those categories has actually gone up significantly. We are selling more fruit and vegetables and more meat versus the same time last year.

Mr MILES: Over and above general increase in trade?

Mr Harker: Volume increases, yes.

Mr MILES: To the question of the Queensland families who cannot afford to buy fresh fruit, veggies and meat at the moment, would you apologise to them?

Mr Harker: We acknowledge that a number of customers in the community are doing it tough trying to balance their budgets. We try to do our best to provide great value items to customers in our stores and we empathise with people who are trying to balance their budget.

CHAIR: Mr Harker, I will note under parliamentary committee inquiries it is important that direct questions are provided with a direct answer. I believe the direct question is: would Woolworths apologise? If you could please address that direct question with a direct answer.

Mr Harker: I am trying to understand what I am actually apologising for. I certainly have empathy. I know we have gone out of our way. Could we do more and will we seek to do more for consumers? Yes, we will, but I do not believe we have done anything wrong.

Mr MILES: Earlier today Coles admitted that sometimes their buyers bought from the wholesale floor at central markets. Does that practice exist within the Woolworths supply chain?

Mr Harker: The central markets play a very, very small role in our sourcing arrangements. It is normally for top-ups—that is, when we cannot get the product that we need from our current supply base, we would go and source from the markets. I might just explain our fruit and vegetable business. There are about 12,000 horticultural businesses in Australia. We source from about 350 of those. Nearly all of them are growers themselves but they do source from other growers into their network. We manage our relationship with our 350 growers who may have relationships with other people. We constitute those people as aggregators—that is to say, they might be aggregating supply from other people. Our relationship with the 350 suppliers in our business would be covered by the food and grocery code. The relationship between aggregators and other producers would be covered by the Horticulture Code of Conduct.

It is actually interesting when you look at what has been happening in the sector, and it is the amount of consolidation. I do not think many people are aware that there are actually 12 large horticultural businesses in this country that now make up over 50 per cent of the wholesale value of all fruit and vegetables. By their own admission, they have a network of over 1,000 growers that they would have their own commercial arrangements with. It is also worth noting that obviously fruit and

vegetables in this country still operate on a very much market-based system of demand and supply. About 50 per cent of all fruit and vegetables produced is actually traded on the state-based terminal market system.

Mr MILES: In those instances where your buyers buy top-ups, would they be buying produce that at other points in the chain they have declined to purchase, so there were purchase agreements in place or—?

Mr Harker: No, that would not be the case. We are literally buying from there because we cannot procure enough product from our own supply base.

Mr MILES: My first job was at Woolworths at Petrie.

Mr Harker: So was mine. I am still here 30 years later.

Mr MILES: I did not stay that long. I am interested in the impact of self-serve check-outs. Can you quantify how much you save in labour costs when I do my own check-out versus if I used the staffed check-out?

Mr Harker: I would have to take that on notice. I do not have the data. What I can say is our labour force has obviously evolved over time as self-service check-outs have come in, which are actually very popular with customers. We do not have them in every store but we have them in most stores. We make sure we have manned lanes in every store. Labour has actually moved towards in-store shopping. We actually employ more people than we ever have as online shopping has grown. If you think about it, we now have someone going around the store with a cart doing your shopping for you, rather than necessarily checking you out at the front of the store.

Mr MILES: If there was a saving, you would be putting that saving into lowering food prices, or is that a component of that profit?

Mr Harker: I would imagine that, if there was a saving, it would be contributing to the additional cost of having someone go around and pick the groceries for customers, given that when you shop online you are not charged a different price than when you shop in-store.

Mr MILES: So I am subsidising the click and collect order for someone else?

Mr Harker: If you choose to use the self check-out versus the manned lane, which is obviously your choice to use if you do not like to go through the self check-outs.

Mr MILES: Have you seen an increase in shop stealing as these costs have gone up? Is that an experience?

Mr Harker: We have seen a few things. One is an increase, unfortunately, in violence and aggression. We know that most of our customers come into our store wanting to do the right thing, but unfortunately there are some customers who take their frustrations out on our store teams and, yes, we have also seen some increase in theft. I think where the theft has increased markedly has actually been professional thieves who are taking advantage of on-selling and reselling that product, as opposed to it being our customers who are mostly genuinely good people who just want to come in and get their groceries.

Mr MILES: I understand, and we certainly would not tolerate that kind of treatment of your staff or indeed anyone's staff. I just want to read something for you. The Queensland Fruit & Vegetable Growers association describes the relationship between supermarkets and their fresh produce suppliers as bearing a resemblance to corporate Stockholm syndrome. They say that this dynamic means 'growers find themselves tethered to retailers but are hesitant to address legitimate concerns for fear of jeopardising their relationship' with the retailer. Would you apologise to growers who feel that way?

Mr Harker: That would not be the behaviour that we would countenance in Woolworths. We obviously want to make sure we have extremely constructive relationships with our growers, the people we deal with directly. Our teams have constructive relationships with them all the time. I myself have conversations with our growers, having looked after our fruit and vegetable business some 10 years ago, and they are quite free to give me advice on what we could or could not do better. What I can say is that, if there is anyone who supplies us—or even if indirectly they think they are having issues with the person who might be supplying us—they should raise that with us. If you are supplying us directly, you are covered by the good faith provision in the fruit and vegetable code of conduct, and we would take those matters extremely seriously.

We put a number of programs in place with our team to try to make sure that we are our suppliers' partner of choice, and we have seen significant improvements in that over the last 10 years. We actually pulse our suppliers every two months to get feedback from them. It is done by a third

party. They have the opportunity to put feedback in that as well. Pleasingly, and we do not take this lightly, last year in the annual Advantage grocery industry survey, which is done where suppliers are asked detailed questions by a third party across the whole of the retail sector, we came No. 1 out of 20 retailers in this country. What I can say is if someone is unhappy with their experience at Woolworths I would personally love to hear it, and if they do not feel comfortable raising it with me then Helen McKenzie, our code arbiter, would be more than happy to hear their concerns.

Mr MILES: It has been reported that your outgoing CEO will take with him a payout of \$24 million in shares and a further \$6.5 million; is that accurate?

Mr Harker: I could not answer the question directly. I do not focus on Brad's remuneration—

Mr MILES: Is that approximately your understanding?

Mr Harker: I think it would be in our public accounts and I am happy to get that and share it.

Mr MILES: It is pretty generous, though, you would agree?

Mr Harker: I am not sure that necessarily is the payout but obviously it may have been what he has accumulated over his 8½ years in tenure and what has happened with share price appreciation and the like.

Mr MILES: How many customers would Woolworths say you have?

Mr Harker: In terms of transactions, we have about 20 million transactions a week, but typically out of that it would be 2.2 to 2.4 visits. You could divide 20 million by that and it is maybe 10 million or nine million customers who would shop with us across the year.

Mr MILES: How many a week, do you think?

Mr Harker: I would have to guess the number. I am happy to come back and give an accurate number. The 20 million transactions occur a week. If you take the 2.2 to 2.4 times that someone would visit our store, you would probably still get to the—

Mr MILES: I am just trying to work it out. For every person shopping at Woolworths this week, \$3 of their trolley is going to the CEO's payout. Would that be approximately right?

Mr Harker: I have not done the maths. I am happy to take it away and ask someone to do the maths if that is helpful to the committee.

Mr MILES: Sure, I would appreciate that. I have one last question. I know we have been talking about this throughout the year, but I wanted to ask Woolworths to commit publicly to work with us on our program to get more fresh food into schools. It is something I am really passionate about. You have already agreed privately.

Mr Harker: Have we?

Mr MILES: It is a Dorothy Dixier.

Mr Harker: It is a Dorothy Dixier, is it? I will take your word for it, Premier, because I have not been briefed on that topic.

Mr MILES: I will take that as expressing enthusiasm.

Mr Baldwin: I can certainly confirm that, yes, absolutely. We are interested in continuing to work with your team in government on contributing.

Mr MILES: Very good. Thank you.

Ms LEAHY: I am interested in what your suppliers say about the increased costs that are coming forward to them. Is electricity one of those increased costs?

Mr Harker: Our suppliers, particularly our FMCG suppliers, would come and talk to a broad range of pressures that have caused them to come and seek cost increases from us—in energy, as well as shipping and cost of ingredients. You would have seen in the press commentary around what is going to happen to the price of cocoa and coffee on the global market. Yes, electricity would be one of those.

Mr MINNIKIN: In relation to a loss leader campaign going back a few years ago, and I asked this question of your major competitor earlier this morning, and that was the \$1 per litre milk campaign. What were the lessons learnt from a marketing customer interaction perspective that Woolworths Group took away from that campaign?

Mr Harker: I might start by saying that we are obviously well aware of the impact it had on the sentiment of the dairy industry. You probably recall back then that we certainly did not start \$1 a litre milk, but obviously—

Mr MINNIKIN: You were happy to join the program though.

Mr Harker: As someone who needs to compete on a very basic staple for our customers, we would need to match them. When you looked at the review that was done—and I know this is very difficult for people—the ACCC found that there was no correlation between retail milk prices and farm gate milk prices, which we know is actually the fact that dairy is traded globally.

In spite of that though, and in fact in this state I actually met with a number of our dairy producers who talked through the impact it was having on them just in terms of how they thought the people in the community valued the work that they did when they saw prices that were that low. I am very proud of the fact that we ended the \$1 a litre milk. Having worked with some of the industry bodies here and talking to government, we actually put the price of milk up and we did it in such a way that we made a provision in the way we did that. You might recall it was drought relief milk where we made a provision that that money could not go directly to the processor. That money had to go directly to the farmer, the person producing the milk. We had those arrangements put in place and they were audited.

I would like us to reflect more on I suppose about trying to balance the needs of customers and the communities that we serve and the role that we can play in that. We were very proud of the fact that we stepped in to actually do that. It was a very nerve-racking six or seven weeks when I was selling milk for more than everybody else in the market, but thankfully it brought about a change.

CHAIR: If there are no more questions, we will move to Mr Scott.

Mr SCOTT: Thank you. Gentlemen, the point that Woolworths made in its written submission and indeed in your opening statement is that Woolworths is a low-margin, high-turnover business; correct?

Mr Harker: Correct.

Mr SCOTT: What that really means is that its profits are driven by high volume in terms of sales; correct?

Mr Harker: That is correct.

Mr SCOTT: And you are familiar with the Woolworths net profit after tax for the last financial year?

Mr Harker: For the group, 2.7 cents in the dollar.

Mr SCOTT: And the total figure?

Mr Harker: I think after significant items it was \$1.6 billion.

Mr SCOTT: \$1.618 billion; correct?

Mr Harker: \$1.6 billion, yes.

Mr SCOTT: Do you know off the top of your head how much of that was passed back to shareholders through dividends?

Mr Harker: I think \$1.33 was passed back to shareholders. I do not have the exact number here but, of the \$1.6 billion, \$1.33 per share was passed back to shareholders in terms of dividends, which I think was about \$700 million.

Mr SCOTT: \$700 million?

Mr Harker: Sorry, I should not be making statements that I cannot backup in terms of the number. I will check what I have here. It is \$1.2 billion, I apologise. It was \$1.2 billion that was distributed to shareholders and the remaining amount was reinvested back in the business.

Mr SCOTT: You would be familiar with the concept of earnings before interest and tax?

Mr Harker: I am indeed.

Mr SCOTT: That is an accounting term that effectively describes the profit of a business before the impact of interest and tax is taken into account; correct?

Mr Harker: Correct.

Mr SCOTT: By interest, we are talking about cost of debt, and it is obvious what tax is.

Mr Harker: The \$700 million we paid in corporate tax.

Mr SCOTT: Right. Another term for referring to EBIT is operating profit; correct?

Mr Harker: Correct, with a few adjustments, but, yes, broadly speaking.

Mr SCOTT: Would you agree with this proposition—that operating profit for Woolworths as a group went up in financial year 2023 by 19.1 per cent?

Mr Harker: I do not have that number in front of me. I know it went up by 70 basis points.

Mr SCOTT: We have an extract of the annual report of Woolworths. Perhaps we can provide a copy to you and there are copies available for the committee. I should say, unfortunately, that we are short one copy so perhaps if it suits the committee one of the committee members might be able to share.

CHAIR: Mr Scott, is it your intention that the committee should table this?

Mr SCOTT: Yes.

CHAIR: All in favour of tabling? It is so tabled.

Mr SCOTT: I should say, Mr Chair, that in the interests of not chopping down too many trees it is an extract of the annual report, not the whole one.

CHAIR: Yes. Please continue, Mr Scott.

Mr SCOTT: I ask you to turn to pages 30 and 31, gentlemen. There should be a figure on those pages that sets out figures for the Australian Food branch; do you see that?

Mr Harker: Yes

Mr SCOTT: The Australian Food branch; what is that?

Mr Harker: The Australian Food business is primarily supermarkets and metro. Because our online business is fulfilled through supermarkets, we have, if you like, a shadow P&L in the business that rolls up into the food group.

Mr SCOTT: Just to be clear, pages 32 and 33 deal with Woolworths Food Retail branch. How does that differ from Australian Food?

Mr Harker: I beg your pardon?

Mr SCOTT: If you go to pages 32 and 33, you see the sections dealing with Woolworths Food Retail; do you have that?

Mr Harker: Yes.

Mr SCOTT: What part of the business is that in comparison to Australian Food?

Mr Harker: My understanding is under Australian Food—because I am responsible for food retail—we would have things like our media business Cartology. It would be included in the Australian Food businesses numbers but not in Food Retail.

Mr SCOTT: Is Food Retail a subset of Australian Food?

Mr Harker: Yes, based on these papers. It is the lion's share of it, but there are other things that would be put in the Australian Food group as opposed to Food Retail as laid out here in the reports.

Mr SCOTT: Perhaps it is more useful to go to the section that is dealing with Woolworths Food Retail on pages 32 and 33. Do you have those pages there?

Mr Harker: I do, yes.

Mr SCOTT: Do you see the figures quoted there for that part of the Woolworths business?

Mr Harker: I do.

Mr SCOTT: Do you see that there is a record of the change in EBIT for financial year 2023 of 18.3 per cent?

Mr Harker: Yes, I can see that.

Mr SCOTT: That is an increase in operating profit for Woolworths food retail of 18.3 per cent?

Mr Harker: Yes, with COVID cost reductions in there. If you go to the preceding page you will see that there is EBIT excluding direct COVID costs. Obviously in our base historically, as a result of the significant cost that we put in our business servicing Australian communities and keeping customers and team safe, you might recall that we did an earnings downgrade whilst we went into the pandemic. A lot of those costs actually are being unwound. I think the number in here is a 9.5 per cent increase, if you exclude for the benefit of taking out COVID costs in our business.

Mr SCOTT: So it is effectively attributing to that period what is described as a cost which Woolworths incurred during the COVID period; is that what you are saying?

Mr Harker: The previous year that it is comparing to and the years previous, you would see that there were COVID costs as we went through the business. You can see the EBIT change there as a result of the significant difference between F22 between EBIT before COVID costs were excluded and when they were in there. They were in the base, which can make the number look higher than it has been historically, yes. The margin is six per cent.

Mr SCOTT: Can you be very precise about what you mean by 'COVID costs'?

Mr Harker: If you think about the fact that we had to pay for people at the front of the store to make sure people were wearing face masks, that they were hand sanitising. We had to put tests in to our DC before people could come there and work. These are all the very direct costs associated with COVID as opposed to all the indirect ones where the business becomes less efficient as you start to manage people through check-outs with social distancing and so on and so forth. There were some material supply chain and store operating costs that occurred obviously as we tried to keep communities and our team safe.

Mr SCOTT: If you were to exclude those costs from the calculation, the truth is that the operating profit for the Woolworths Food Retail branch, from financial year 2022 to financial year 2023, went to an increase of 18.3 per cent; correct?

Mr Harker: No, that is not correct. If you exclude the costs, it would be more like the previous page which would be nine per cent.

Mr SCOTT: Yes, I am sorry. My question was: if you do not take that into account?

Mr Harker: If you do not take it, yes, it is a matter of public record.

Mr SCOTT: Those are my questions on that topic, Cr Chair. Do committee members wish to ask questions about this topic?

C\ I will open to the committee to see if there are any questions along this line. Otherwise, we will allow you to continue, Mr Scott.

Mr SCOTT: Gentlemen, would either of you be familiar with the market share of the various players in this sector reported in the *Food and Grocery Code Independent Reviewer 2022-23 Annual Report*?

Mr Harker: I am very aware of the supermarket channel market share, yes.

Mr SCOTT: Would you agree with this proposition: as at the financial year 2022-23, Woolworths' market share within this market was 37 per cent?

Mr Harker: Yes, in the realms of the narrow definition of the grocery retail that happens in supermarkets, that would be correct.

Mr SCOTT: When you say 'narrow definition' of retail, what do you mean by that?

Mr Harker: I am saying that that is the market share of the traditional supermarket sector. The grocery industry is so much bigger than supermarkets. There are so many options for people to purchase groceries. If you look at people's access to being able to purchase groceries, you can now buy pet and cleaning at Bunnings; you can go to Chemist Warehouse and pretty much buy all of the home and beauty essential items. The market for groceries is far bigger, but in that definition of the market, as in traditional supermarket retailing—Woolworths, Coles, Aldi, the independents—that would be a correct assessment of the market share.

Mr SCOTT: You appreciate that what we are talking about here today principally is perishable groceries, wouldn't you?

Mr Harker: I am here to talk about supermarket pricing.

Mr SCOTT: Okay. My question is: you appreciate that the particular focus of the committee, as you would have appreciated from previous evidence and evidence today, is on perishable goods; correct?

Mr Harker: There appears to be a focus on fruit and vegetables, yes.

Mr SCOTT: Do you know how much of the market share Woolworths has with respect to fruit and vegetables?

Mr Harker: If you were to look at the market share of what do we buy out of the horticultural sector here, it would be between 15 and 20 per cent depending on whether you want to look at volume or value.

Mr SCOTT: What about volume?

Mr Harker: Volume would be 15 per cent.

Mr SCOTT: And value, 20 per cent?

Mr Harker: Yes.

Mr SCOTT: Would you agree with me that that indicates that, in respect of that category of groceries, Woolworths has substantial market share?

Mr Harker: I would not say 15 out of 100 is substantial. It is a meaningful market share. I would not describe it as 'substantial'.

Mr SCOTT: It is substantial enough that producers are likely going to have to deal with Woolworths if they are to move their goods; correct?

Mr Harker: Fifty per cent of horticultural production here is actually traded on the terminal markets, which means that they do not have to deal directly with the retailer.

Mr SCOTT: If they are to move their goods, they are likely going to have to sell their goods either directly to Woolworths or to another player that is going to onsell them to Woolworths; correct?

Mr Harker: Not necessarily if we only buy 15 per cent of what is produced here.

Mr SCOTT: What about producers who sell in any kind of significant volume? They are going to have to deal with Woolworths either directly or indirectly, aren't they?

Mr Harker: It depends on their market strategy. Some of the largest producers in this country do so to participate in the export industry that occurs in a number of commodities in a very meaningful way and others do so to participate in the processing sector. There are significantly more potatoes processed in this market than are sold in retail. It would depend on their circumstances and the business model they adopt.

Mr SCOTT: It depends on the player; correct?

Mr Harker: Yes, it would depend on the player.

Mr SCOTT: A great many of them will be dealing with Woolworths directly or indirectly; correct?

Mr Harker: A number of them may find their product getting into a Woolworths store, yes.

Mr SCOTT: A significant number of them?

Mr Harker: At 15 per cent of the volume, I would not be saying a significant number of them. There might be a small number of players who produce a lot.

Mr SCOTT: Gentlemen, the committee requested some information from Woolworths which it submitted, correct me if I am wrong, on Saturday?

Mr Harker: If you say so. I did not do the submission, but if you say that is the case.

Mr SCOTT: You are aware that material was supplied by Woolworths in the last couple of days?

Mr Harker: Yes.

Mr SCOTT: Thank you. Do you have a copy of that?

Mr Harker: I do.

Mr SCOTT: I want to ask about the answer to question 1 and the material supplied for the purpose of question 1. If the committee does not have a copy of this material, we can ask that it be provided to the committee. The document that I am hoping you have in front of you, gentlemen, and that the committee has, should be a document headed 'Supermarket Pricing Select Committee.' Do you see that?

Mr Harker: Yes.

Mr SCOTT: It says—

ANSWERS TO QUESTIONS ON NOTICE

Woolworths Group

Submitted—10 May 2024

Is that correct?

Mr Harker: Correct.

Mr SCOTT: It refers to some attachments. The sheets are attached; correct?

Mr Harker: Correct.

Mr SCOTT: That is attachment A and attachment B? Do you agree with me on that?

Mr Harker: Correct.

Mr SCOTT: Can I ask you about attachments A and B?

CHAIR: Mr Scott, before you do that I will make sure that the document is tabled so that way it becomes publishable for questions. All in favour? It is tabled.

Mr SCOTT: Thank you, Mr Chair. Attachment A is the national vendor trading terms; correct?

Mr Harker: Correct.

Mr SCOTT: Which Woolworths points out is publicly available on a website?

Mr Harker: It is on Partner Hub for our suppliers, yes.

Mr SCOTT: It is on what?

Mr Harker: Partner Hub, which would be the portal that we use to communicate and deal with suppliers.

Mr SCOTT: I see. It is not generally publicly available?

Mr Harker: I would have to find out the answer to that. I know it is available on Partner Hub for all our suppliers. Whether or not it is publicly available, I would need to take advice.

Mr SCOTT: Partner Hub, for the uninitiated, is some kind of online tool that both Woolworths and its suppliers can deal with each other on; is that right?

Mr Harker: Correct. It is mostly an information exchange program.

Mr SCOTT: Thank you. Attachment B is what appears to be a purchase order; is that right?

Mr Harker: Correct.

Mr SCOTT: Is this right: the general terms effectively operates as an agreement between Woolworths and a supplier; correct?

Mr Harker: Yes.

Mr SCOTT: Which has binding force?

Mr Harker: Correct.

Mr SCOTT: As a contract?

Mr Harker: They are the terms under which we will do trade, yes. There are obligations on us and there are obligations on the supplier.

Mr SCOTT: Those national vendor trading terms do not specify volume or price; is that right?

Mr Harker: For fruit and vegetables, no, that is not the case.

Mr SCOTT: That is reflected in the trading terms at attachment A; do you have that?

Mr Harker: Yes.

Mr SCOTT: On page one?

Mr Harker: Correct.

Mr SCOTT: We look at clause 1(b). Do you have that?

Mr Harker: Yes.

Mr SCOTT: It states—

We are under no obligation to issue you a Purchase Order at any particular time, or any number of Purchase Orders over a particular period, unless otherwise agreed with you.

Do you see that?

Mr Harker: Sorry, where are you referring to again?

Mr SCOTT: I am at clause 1(b) of the national vendor trading terms.

Mr Harker: Correct, yes.

Mr SCOTT: Then clause 2.1(a) states—

The price of the Goods is as set out in the Purchase Order.

Do you see that?

Mr Harker: Correct.

Mr SCOTT: Is this how things work: that the agreement is entered into with the supplier through agreement of the national vendor trading terms; right?

Mr Harker: Yes, and then there will be commercial terms that we will negotiate with them.

Mr SCOTT: Yes, but when an actual amount is sought by Woolworths from the supplier, that is further separate negotiation after the agreement with these terms—these national vendor trading terms; correct?

Mr Harker: Yes, correct.

Mr SCOTT: Okay, and then it is at that point that volume and price is negotiated between Woolworths and the supplier; correct?

Mr Harker: It depends on the nature of the goods. If it is fruit and vegetables, yes; if it is packaged groceries, there would be a standard cost price in the system that the supplier may come back to ask to renegotiate.

Mr SCOTT: Okay, but you can assume that the rest of my questions on this topic will be relating to fruit and veg. So the effect of it is that a particular supplier, before a purchase order is agreed, has no binding agreement with Woolworths as to volume and price for a particular order; is that right?

Mr Harker: No, the process would be similar to the rest of the industry—that is, pre them sending us any product and us sending them a purchase order, we would agree volume and price for the upcoming week, or sometimes further out.

Mr SCOTT: Yes, but generally this is done on a weekly basis; correct?

Mr Harker: Yes, that is correct.

Mr SCOTT: Okay, and at the start of the week suppliers who have entered into these trading terms with Woolworths will—that is, on a Monday—nominate a proposed price and volume; is that right?

Mr Harker: That is correct—the amount that they have available and at what price it is available.

Mr SCOTT: Okay, and then the next day or so Woolworths will come back with what they propose is the volume and price; correct?

Mr Harker: No. We would either accept what they had proposed or seek to negotiate as in we do not require that volume or that is not reflective of the market price.

Mr SCOTT: Right, but until that happens and until an agreement is reached on a weekly basis there is no binding agreement between Coles and the supplier as to the price and volume; correct?

Mr Harker: I presume you mean Woolworths and the supplier?

Mr SCOTT: I beg your pardon. It has been a long day.

Mr Harker: No, that is the nature of the fruit and vegetable industry in this country, that it still operates as a traditional supply and demand market; that is correct.

Mr SCOTT: Thank you. Can I take you back please to the answer to question 1 on the cover page of the documents we have been discussing?

Mr Harker: Yes.

Mr SCOTT: I will just read this into the record. It says at the bottom of that page—Some suppliers may request a forecast, or commercial buyers may provide a Supplier Schedule Arrangement ... which provides an indicative season working target to support planning with medium forecasting.

Do you see that?

Mr Harker: I do.

Mr SCOTT: Okay. In terms of this concept of an 'indicative season working target', does that result in any binding agreement between Woolworths and the supplier as to volume and price?

Mr Harker: No, it does not.

Mr SCOTT: Okay, and is this right: that indication could be given at the start of the season, for example?

Mr Harker: It could be, yes.

Mr SCOTT: Okay, and then by the time there is a negotiation on a weekly basis for a particular amount, Woolworths is not bound at all by that indication; is that right?

Mr Harker: Are you referring to the amount or the price?

Mr SCOTT: Both.

Mr Harker: We would work with our suppliers to manage the volume over the season from them. Often we have to source more than we asked for, in which case the supplier has opportunity to provide us a lot more, but we would endeavour to try and make up that volume across the season.

Mr SCOTT: Okay, but they are not bound by that indication at the start of the season; correct? Woolworths is not bound by that indication at the start of season, I should say?

Mr Harker: We are bound to operate in good faith to do everything that we can to make sure that the information we provided was fair and reasonable at the time and we took every endeavour to move that volume.

Mr SCOTT: Right but, subject to that, Woolworths is not bound to that indication; correct?

Mr Harker: Subject to that, it is a requirement of the grocery code for us to operate in good faith and there would be remedies for a supplier that did not believe that we operated in good faith.

Mr SCOTT: Okay but, subject to that, there is nothing to require Woolworths to act in accordance with that indication given at the start of the season?

Mr Harker: Other than the fact that they would have recourse and our code arbiter, if we were found to not act in good faith, would be able to provide remedial damages up to \$5 million.

Mr SCOTT: Okay. Does the code arbiter have any power to require Woolworths to produce documents in its possession relevant to a complaint made to the code arbiter?

Mr Harker: Absolutely.

Mr SCOTT: Okay; has compulsive powers?

Mr Harker: They can ask us for information; we provide that information. I am not sure in the technical definition of the law whether it is compulsive powers or not. I would have to take advice.

Mr SCOTT: Okay, and I will be very specific about my question: is there a legal obligation on Woolworths to provide information requested by the code arbiter?

Mr Harker: If you are asking me for a technical legal definition, I am not in a position to answer that. I would have to take advice. I do know that we treat the grocery code as legally binding and enforceable and we have made undertakings in that including the remediation process and the role of the code arbiter in our business.

Mr SCOTT: Okay. Are you aware of any legal consequences that might flow in a strict legal sense if a request by the code arbiter is not complied with by Woolworths?

Mr Harker: As I said, I am not familiar with the legal definition of what is written in there other than, regardless of its status, we treat it as binding.

Mr SCOTT: Okay; all right. Has the code arbiter ever requested documents from Woolworths about complaints?

Mr Harker: A formal complaint?

Mr SCOTT: Yes.

Mr Harker: No.

Mr SCOTT: Okay, and the code arbiter is someone appointed by Woolworths; correct?

Mr Harker: Under the arrangements of the code, yes, that is the arrangement that was put in place.

Mr SCOTT: Okay; thank you. Can we go back to the national trading terms please? Do you have that?

Mr Harker: I do.

Mr SCOTT: Thank you. Can I ask you to go to page 3 please? Do you have that?

Mr Harker: Yes.

Mr SCOTT: Okay. Do you have clause 5 relating to rejected goods in terms of fresh produce in front of you or at the bottom of the page?

Mr Harker: Yes.

Mr SCOTT: Okay; thank you. I want to ask you about subclause (b). Do you see that?

Mr Harker: Yes.

Mr SCOTT: The words are—I will read it into the record—

If the Goods fail to meet the applicable Fresh Produce Specifications and the standards or other requirements set out in these Terms, we will notify you, within 24 hours of Delivery of the Goods to us and prior to Acceptance of the Goods ...

Do you see that?

Mr Harker: Correct.

Mr SCOTT: All right; and are you aware that the term 'acceptance' is defined in this agreement?

Mr Harker: I beg your pardon?

Mr SCOTT: Are you aware that the term 'acceptance', which is a term that was used in that part of the clause that I just read to you, is defined in this agreement?

Mr Harker: I am happy to go through the agreement to see that it is defined there.

Mr SCOTT: Okay. Could you go to page 13 please? Do you have that?

Mr Harker: Yes.

Mr SCOTT: Okay. Do you see that on that page is clause 26 relating to definitions?

Mr Harker: Yes.

Mr SCOTT: Okay, and do you see that the term 'acceptance' is defined in the second term that is defined in that clause?

Mr Harker: 'Acceptance means'?

Mr SCOTT: Yes. Do you see that?

Mr Harker: I can indeed.

Mr SCOTT: Okay, and that says—

(a) in the case of Goods which are fresh produce, the earlier of:

(i) 24 hours after Delivery of the Goods; and

(ii) receipt by you of written notice from us that we accept the Goods ...

Do you see that?

Mr Harker: I do.

Mr SCOTT: Okay. The effect of these clauses which we have just discussed, isn't it, that in a period of 24 hours between delivery of goods and the end of that 24-hour period Woolworths can give a notice saying that it does not accept goods because it does not meet Woolworths's standards; correct?

Mr Harker: Technically, yes.

Mr SCOTT: Okay; and what protection does a supplier have in respect of goods that might have been damaged in that 24-hour period which is then the subject of a notice that they are not accepted by Woolworths?

Mr Harker: Our quality assessment is done before we actually receive the goods, so they would not have been accepted into the DC and put away. That is just the process that we have. We notify them immediately—normally on the day, that very morning—and they are given information, including photos, of what the cause of the rejection was and how it did not meet our specification, so it is near instantaneous which is what the second part is referring to. It is normally well within 24 hours and normally on the morning of or the time of receipt.

Mr SCOTT: Okay, so why then the opportunity for notice only to be given up to 24 hours after delivery?

Mr Harker: Our standard terms, bearing in mind these are standard terms, set out what we are allowed to do under the grocery code. Just because we are allowed to do something does not necessarily mean that we do that, so we are allowed to do that within 24 hours. Our standard practice is to do it first up when we are receiving produce.

Mr SCOTT: Okay, but in this case you are allowed to do this under the code and you have at least put into your agreements provision for this; correct?

Mr Harker: Yes.

Mr SCOTT: Okay; thank you. The effect of the standard arrangements that we have just discussed is that on a weekly basis Woolworths receives, in effect, offers by all of its suppliers as to price and volume; correct?

Mr Harker: Correct.

Mr SCOTT: And then armed with that and other information, Woolworths is then in a position to negotiate a price with Woolworths suppliers; correct?

Mr Harker: We would be able to assess those quotes relative to the other quotes and also what the prevailing market price is, yes.

Mr SCOTT: Yes, and it is very significant information for Woolworths knowing what everyone is offering; correct?

Mr Harker: Yes. We are assessing our supply base and what the prevailing market price is for fruit and vegetables.

Mr SCOTT: Okay. Would this be right though: suppliers do not know what other suppliers are offering on this weekly basis?

Mr Harker: Yes, that would be the case.

Mr SCOTT: Okay. Would you agree that results in an imbalance of bargaining power as between suppliers and Woolworths?

Mr Harker: I would argue that in the whole of retail no supplier knows what another supplier is actually charging for their goods. It would be anticompetitive behaviour, but, no, they do not know what the price is that other people are quoting.

Mr SCOTT: So why would it be uncompetitive for the other suppliers to not know what they are quoting?

Mr Harker: Because it could lead to cartel conduct.

Mr SCOTT: Okay. Can you explain that?

Mr Harker: Where people collude to set a price.

Mr SCOTT: Okay, but we are not talking about collusion between suppliers here; we are talking about suppliers knowing what other suppliers are bidding into the market.

Mr Harker: Correct, which increases the propensity for collusion.

Mr SCOTT: Okay, but you are not going to suggest that if suppliers in Queensland were able to be informed of what other suppliers are bargaining that is going to lead to cartel conduct and anticompetitive behaviour?

Mr Harker: I do not know. If your question is around whether more could be done to increase price transparency in the sector, I would say, yes, that is the case.

Mr SCOTT: Okay. Would this increase price transparency in the sector—that is, enabling suppliers to know what other suppliers are bidding in?

Mr Harker: It depends at what level. I am happy to take it on notice, but there are obviously various considerations in here in competition law and the like. If it was to say price transparency was improved so that all people in the sector could see the average price being paid for commodities coming from a particular part of the country and going to a particular part of the country, we would be very supportive. In fact, price transparency always comes up in these scenarios as something that should be improved. It was also done in the perishable goods inquiry with the ACCC, but there has been no practical step forward in what that means. Woolworths's suggestion would be that there is a government appointed, grower owned research and development corporation called Hort Innovation that would be well placed to examine this matter and come up with proposed remedies that work for growers and people in the sector. In fact, every year they produce the hort stats handbook that does that information on a yearly basis. Clearly if people would like that information more frequently and make it more available based on their needs, we would be very supportive and we would be happy to contribute our information from that if it cannot be discerned from any other parties' information but actually gives meaningful information around what the prices are that people are achieving in the supply chain. We would be extremely supportive and that would be our recommendation.

Mr SCOTT: Mr Chair, that is all of my questions on that particular topic, if members of the committee wish to ask some questions on this topic.

CHAIR: I will turn to the member for Mount Ommaney for questions.

Ms PUGH: Thank you for appearing today. I refer to your earlier comments about the food and grocery code and that Woolworths adheres to the food and grocery code as if it were mandatory even though currently it is not. Would you object to the code being made mandatory seeing as it is something that you adhere to so strictly already?

Mr Harker: As I stated in our opening statement, we are very supportive of the code being made mandatory. In fact, we have also suggested that given it is a grocery code and not a supermarket code it actually be expanded in its mandatory nature to all significant contributors to the grocery supply chain, of which there are many that are currently not covered.

Ms PUGH: I did note some of your comments in your submission, so thank you for that. Can I take you to section 4 in the tabled document about rejected goods? Under what circumstances would you reject fresh goods? Under what circumstances would you enact that provision?

Mr Harker: Fresh produce is rejected when it does not meet our product specifications. Less than two per cent of all deliveries are normally subject to a rejection. I think we can all agree that customers do not want to buy unripe strawberries or capsicums with mouldy cavities inside or apples that have very low pressure or Brix points which means the eating experience is going to be terrible. We aim to try to make sure that, when customers buy fruit and vegetables from Woolworths, it will last at least four days in their home so that we are not contributing to food waste in the home.

Ms PUGH: At what point before they are getting to your distribution centres would you have an estimate on what farmers are not packing up and sending to you because they think it will not meet your specifications around beauty or aesthetics rather than freshness?

Mr Harker: I would not have that number. I would say it varies by category. Clearly, if you are talking about potatoes where the vast majority of them go into processing, it is probably not an issue. Our specifications are mainly around quality, not necessarily all about aesthetics, and I think that is an interesting point to make. We also introduced our Odd Bunch range that actually expands the amount of product that we can take from growers where we call out the fact that the visual appeal of it may not be what consumers are used to. We also take into account what is happening in a growing season. We will approve something like tens of variations across the year based on seasonal conditions, and I can think of numerous examples after the cyclone and the bad weather up north where we accepted bananas with significant rub marks and external damage and we worked with industry to actually explain that to consumers to say, 'This is what has actually happened, but you will find the bananas are still great to eat.' We are more than happy to work with industry, and that is why we have a lot of product speck variations.

Ms PUGH: With your odd bods, is that something you would be willing to expand on? I understand that in the past consumers have been very interested in having beautiful produce, but with the cost of living I know a lot more families are turning to the odd-bods section, the 'ugly' section. I think that that is certainly a direction in which consumers are turning to find savings on their weekly grocery bill.

Mr Harker: Absolutely. We have seen demand for that section increase to the point that some of our suppliers cannot actually supply us enough of even the product that is misshapen. We will seek to see what we can do to continue to expand that category.

Ms LEAHY: You set your supply and volume arrangements at the beginning of the season with your suppliers?

Mr Harker: It does not happen on every product and for every supplier. It happens for those suppliers who come to us and say, 'This would be useful for us when we are planning.' If you think about tree crops—apples and the like—the amount of apples on the market is not a consequence of what somebody decides to plant; it is more a consequence of what happens in the growing season because the trees are the trees from year to year. You do not have significant increase in the number of production. It is normally the prevailing conditions that will actually determine what is available from tree crops. You would typically see it more in some of the vegetable categories and particularly in some of the more stable staples in categories that someone is making a decision on what to plant in terms of carrots or the like that we would share an indication of what we think we will need across the season. Of course the market conditions, as in how much is available and what it is selling for and what consumers are buying, ultimately are going to determine what we do in fact purchase.

Ms LEAHY: On the supply arrangements, you do have the spot market as well which is the wholesalers. How do you monitor those supply arrangements to make sure you are not overordering from those growers?

Mr Harker: I am sorry, overordering?

Ms LEAHY: For instance, I will use lettuce as an example. The supply arrangement is for 10,000 lettuces—a couple of thousand a week. If something happens somewhere else, how do you make sure that you do not ask those growers to oversupply the market? How do you work that out?

Mr Harker: We would look at what we think we need over the season in total, depending where it is sourced, and then we would make decisions to divide that volume up based on the people who are in our supply chain. It is not in our vested interests to ask people to oversupply product at all.

Ms LEAHY: Does it happen?

Mr Harker: I do not believe it happens as a result of information we provide, but overproduction does sometimes occur. Someone planting something does not know what the person down the road is necessarily going to plant and, as you can appreciate, sometimes the people see the prices in one season and assume they might get that the next season, so a lot of people decide to plant product and then there is an oversupply based on what was available the previous year. These are some of the decisions that are made on farm. What we do is try to communicate what we think we will need, all things being equal in terms of the market conditions. Ultimately, one of the hard realities, I suppose, with the fruit and vegetable industry in this country is that it is still a traditional supply and demand market. It is the imbalance between supply and demand that actually determines the price. We all know that when there is poor availability you will see prices increase and when there is an abundance of product you will see prices coming down. We certainly have an appreciation of the fact that that market dynamic system that has existed here since horticultural production started is not necessarily the best mechanism for people to recover what it is actually costing to run their business because the two are not in alignment.

Ms LEAHY: I will go back on the supply agreements again. How do you determine the specifications of what you are looking to buy with your growers?

Mr Harker: Our specifications would not be very dissimilar from industry standard specifications, if you went and got the information from the market system that talked about a grade A this or a grade B that. Primarily they are driven by customer expectations of what people want to buy when they come into a supermarket. There are some appearance and size specifications in there, but actually they are more about eating quality and the things that we would like to see in terms of products. Let us take a really important Queensland staple—thankfully we are not at the start of the season because the NT is—such as mangoes, for example. If those products are brought to market too early, that is to say that they are not sweet and juicy after they ripen, that actually keeps the consumer out of that product for up to six weeks because they had a very poor experience buying an under-ripe mango. It is really grounded in what a customer is expecting and to maximise the opportunity of customers increasing consumption and coming back into our store and purchasing more of those. In fact, the shoulders of seasons are actually the most dynamic times, as you could appreciate: you are coming into market just that little bit too early which means the customer is not going to get a great experience, or you are hanging on a bit too late and it means they will not get a great experience which actually impacts the start of the next season. It is very much grounded in customers.

Ms LEAHY: How do you share that customer data with your growers?

Mr Harker: That expectation is in our specifications. If you are looking at general customer behaviour when it comes to a commodity, the RDC I spoke about, Hort Innovation, actually publishes on the Harvest to Home website customer information that is available at a commodity level around what is happening with customer consumption over time et cetera. I believe the RDC actually purchases that information and makes it available to all growers for free. In fact, anyone can go on that website and have a look at that information.

Ms LEAHY: Woolworths themselves, though, through a lot of the data and information that you collect, would have a lot of information about what your customers actually purchase. How do you share that with your growers?

Mr Harker: That would be in our specifications. We obviously have routine meetings with our growers where we would talk about these matters and what we are looking for in the products that we are selling. They do not change significantly from year to year. What changes typically from year to year is what is available out there. It is actually more around working with growers to make more product available when it does not meet the specification because it is not in our commercial interests to not have product available for consumers because we set our specifications so tight that we actually cannot source the product that we need to meet customer demands. It is a very fine balance. The

peak industry bodies themselves—APAL, for example, which would be apple and pears—would do a lot of consumer research and be talking to all of their members about what is the appropriate Brix levels or sugar levels in an apple and pressure points and what turns off consumers and the like. They also have access to that from their peak industry bodies.

Ms PEASE: You mentioned in your opening statement that you deal with 350 horticulturalists and some of them might be combined. Do you deal directly with those horticulturalists, or do you deal through an aggregator or merchant?

Mr Harker: The 350 businesses that we do business with—so we have a commercial relationship with those businesses—are typically large growers who then may source from other growers with which they have a relationship.

Ms PEASE: You would sign a national vendor trading terms agreement with those 350?

Mr Harker: We would have trading terms agreed with them, yes.

Ms PEASE: With those 350, so you do not deal through aggregators or merchants at all?

Mr Harker: Some of those growers would also be aggregators. They may be—

Ms PEASE: Yes, I know what you mean. When that is occurring, do you have a vendor agreement with them on their overall purchase and what happens to them with regard to their horticulturalists that they might be buying from? Do they make it clear to those other horticulturalists that they are dealing with 'ABC farm' as an aggregator and not Woolworths?

Mr Harker: They should be. They should not be representing that they are an agent or anyone working on our behalf. I think those relationships they would have would vary. Some of them have longstanding, commercial agreements with growers and their networks. Some of that is driven by the fact that another key fact that is happening in the horticultural industry here is actually plant breeders' rights—companies actually owning the IP or the ability to actually grow. If someone else wants to grow that product, they can only do that with that other entity being able to market on their behalf. Some of them have very formal, longstanding partnerships. Others might be opportunistic as in they had every intent of supplying us with the product, but they had a shortfall and then they would go and find it from someone else rather than telling us that they could not supply us with the product.

Ms PEASE: Of those 350 businesses that you have a vending agreement with, how many would be aggregators as well?

Mr Harker: I would not know that off the top of my head because I think we would have to do some work if they were happy to share the information. I think some of them are obvious because I know that they are selling some of those plant breeder right products and they are not the only people growing them, and for others it would be less obvious because they might just be getting a short-term—

Ms PEASE: What I am trying to understand is that we are hearing from the producers that they feel overwhelmed by the big supermarket chains when they are trying to sell their produce in that they do not actually have any protections. I am trying to understand that Woolworths does not have a relationship with farmers individually—you do and that is your 350—but some of them also happen to be aggregators?

Mr Harker: That is correct. I might just add, if you go to what I think could be done that might help people who do not supply us directly understand the market better, I would go back to my comments on price transparency where they would be able to compare purported wholesale prices with what they are receiving and I would also go to the role that many people can play around actually educating them on their rights because they are covered by the Horticulture Code of Conduct.

Ms PEASE: You mentioned that you were not in a position to give me that advice regarding numbers. Are you able to provide, taken as a question on notice, the number of your clients that are growers as well as aggregators?

Mr Harker: I am happy to take it on notice to see what we can provide because it may be that we do not know and they will not tell us.

Ms PEASE: Do you have any of your clients or people that have a national vendor trading agreement that are not producers, that are simply aggregators?

Mr Harker: In terms of our books, the fact is that we have to sometimes source from a market agent and we would not be able to source from a market agent for top-ups if we did not have a business relationship set up with them. In the sense that we have people on our books for us to get top-up inventory when we cannot get what we need from our growers, the answer would have to be yes.

Mr PERRETT: I want to get back to the issue around transparency and getting greater clarity back to industry, in particular the two peak industry organisations that represent horticultural growers here in Queensland—Queensland Fruit & Vegetable Growers and the Queensland Farmers' Federation. I wonder what engagement you have directly with them to understand some of the challenges and some of the issues that are raised by growers and industry reps.

Mr Harker: Our team would have regular engagement with many people in our supply chain, some of which would be peak industry bodies and the people they represent. Specifically I would have to go back to the fruit and vegetables team to get the specific recent engagements they have had. I myself have recently engaged on a number of topics with the National Farmers Federation, of which obviously QFF is a member, to talk about some of these topics and these issues.

Mr PERRETT: I raise that because the CEO of the Queensland Fruit & Vegetable Growers appeared before this committee raising the issue on behalf of growers. I was keen to understand the willingness of your company to further strengthen those ties with those peak industry organisations to get that clarity and transparency in the system that gives confidence back to our growers. Is that something that you are keen to engage on?

Mr Harker: Absolutely. We love to meet and engage with industry as well as our own direct suppliers. I know the produce team themselves will be going to Hort Connections in June—we go every year—which is actually the biggest coming together of everyone in the horticultural industry where we run sessions with our suppliers and the team also meet with industry bodies. I am more than happy to meet with anybody on these matters.

Mr MINNIKIN: Mr Harker, I asked this question also of your main competitor earlier, and you have said repeatedly that the fresh produce market is pretty much dictated by the laws of supply and demand. When you see images that we see from time to time on the TV on current affairs shows et cetera of farmers that are basically ploughing produce straight back into the soil, what sort of market reputational damage does that do to Woolworths?

Mr Harker: I personally do not like to see the images, but that is my initial gut reaction. However, I do not know the circumstances behind it. If one of the issues faced by industry repeatedly is overproduction, which means that they cannot realise the sustainable market price, one of the only means of not overproducing is to produce less. We love to talk to people about how we get more Australians consuming fruit and vegetables as opposed to coming to that. One category that you often see is pears. If you go and look at that consumer data, pear consumption in this country is declining yet the trees have been in the ground for a very long period. Unless there is a concerted campaign to get young people to consume more pears—and I am afraid it is young people; if you go on to Harvest to Home and look at the data, it is retirees and older couples who continue to consume pears and the other segments in terms of the consumer base are not engaging in the pear category—the reality is we could have a scenario where we continue to have too many pears relative to people who are buying them, which causes some of these issues.

This is why industry engagement is important. I commend the citrus industry that many years ago realised that customers were moving to seedless, easy-peel mandarins. They actually had a very constructive conversation with their growers to say, 'If you continue growing daisy mandarins', which are the complete antithesis of what customers want—they are full of seeds and they are not easy to peel and they are not particularly sweet—and put them onto the market, that is actually going to be an anchor on what could be a high-growth category for you, which is easy-peel seedless mandarins.' That is why some of these longer term engagements and the role that industry bodies can play—and we could have a stronger role with some of the industry bodies with that sort of forward-looking communication and building what it looks like. Your choice is either to do something collaboratively to get them to change consumer demand or face into it and make the decisions in a more structured way so that every year you are adjusting your business as opposed to a particular point in time when it becomes catastrophic.

Mr MINNIKIN: Mr Harker, you have repeatedly said in relation to supply chain management 'getting fresh produce to market quickly'. In relation to your main distribution centre in Brisbane, I believe there are major distribution issues currently as we speak today. What are the problems?

Mr Harker: We have had a terrible IT problem with the warehouse management system upgrade which has caused, quite frankly, carnage. As the chief commercial officer, who is responsible for getting product to our stores to sell it, and poor Danny, whose store teams have to deal with this, we are not particularly happy about the situation we have and we are working very hard to improve it. Actually, we apologise to all our customers who have had issues.

Mr MINNIKIN: I was going to ask: would you take this opportunity to apologise?

Mr Harker: Absolutely. We are a retailer; we want to make sure that there is product that is available for our customers. I might add that we are continuing to take the committed stock from our suppliers even if we cannot get it out. In fact, we have had to donate a fair amount to Foodbank because obviously we have had fresh produce stuck up in racks that has not been able to get out and we keep getting fresh stuff coming through. We have been working with our food rescue partners to provide that for them to go through and pass it on to people in need. Rest assured everyone is doing everything they can, and you have two people in front of you here who would be very upset with the outcome that we have in terms of what we are responsible for. Certainly we give our heartfelt apologies to our customers who may have been disappointed when they came into our stores wanting to buy something that is not on the shelves.

CHAIR: Before we return to Mr Scott, Mr Harker, going back to product specifications, is there a criteria set around the length or the size of the banana?

Mr Harker: Yes, there would be size specifications based on what consumers buy. Even the industry themselves would say, 'We don't want to send you cannons to go on the shelf that quite clearly no-one is going to buy', particularly when most of them are bought for children. Our work has been with industry to actually grow the spec the other way such as our five-pack of children's bananas, taking smaller bananas than we would ordinarily. If you go into our store when the shelves are actually full you would see a wide range of various sizes of bananas in there. There does come a point where the banana is so large that a customer will not actually purchase it.

CHAIR: Are those specs able to be provided to the committee?

Mr Harker: The specifications are made available to all our suppliers. They are on Partner Hub. I am happy to take that on notice to see if we can come back to you with our specs.

CHAIR: It would be good if you could take that on notice and provide the specs, particularly for bananas, especially the minimum standard in terms of the sizing.

Mr Harker: I will just reiterate the point that that is the standard spec for a standard year. We would have so many variations in place, particularly with bananas, over the years because of the climatic conditions that the industry has faced. If I send you the standard spec, that is by no means the specification that is normally used when the industry is facing issues to bring product into our DCs.

CHAIR: No doubt, though, Woolworths would have a preferred size and weight seeing how—

Mr Harker: Absolutely, but if it cannot be provided it is not within our commercial interest to not have bananas on our shelves. If it is not the prevailing spec that producers can produce, we will vary our specification to make sure we have the No. 1 selling item, by the way, in our stores which is actually bananas.

CHAIR: In terms of the supplier agreements and communication either with your agents or any direct farmer supply—and we asked this question of Coles—in Woolworths's plan for a financial year, at what point along the season will specials be applied to particular fruit and veg?

Mr Harker: It is not the norm. There would be some commodities where the grower would actually be asking us to know in advance whether we were planning—and these are typically staple, commodity type products such as onions, carrots and things they will be making those decisions on. The vast majority of our promotions would be working with our producers based on a flush of product that is available and trying to give our consumers a great price to help them move that volume through, and that is normally at peak season when there is peak quality—customers get a great price as we work to move all of that volume through.

CHAIR: At peak season and peak quality of the produce specials are occurring on the shelves to bring down the price for consumers. Is that not then passed on to the producers themselves so that, therefore, they would be asked to provide a lesser rate for their premium quality—

Mr Harker: It is normally a reflection of where the market price is at. The fact is they would be quoting each week what they would like to receive for their product in relation to the market, and there is that conversation we had before in that we would make an assessment of the prevailing market price. When we make long-term commitments to products that are on promotion, a longer term price reduction or whatever else, we are not asking fruit and vegetable growers to underwrite that; that is at our risk.

CHAIR: Mr Harker, I have been approached by numerous growers who have said that time and time again they are approached by the large supermarket entities and told that there will be a special in a month's time, in two months time, sometimes even within a week or two—this is from a

range of different growers—and they are told that they will have to drop their price so the large supermarkets do not make an overall loss on the produce. Then they are told that they must increase the volume that they supply or another farmer will be sourced. Do you deny that this goes on?

Mr Harker: It does not sound anything like the way we would conduct business. If you had a particular person who has had that experience, I would love to hear and I would love to investigate it. I think one of the things we have talked about with information is I have no doubt the team would go and talk to a grower or a supplier to us around the fact that another grower with significant volumes has come to us and asked them to help them move their product and their volumes and would we consider dropping the price to do that and they would give us a price to do that. Then we may go and talk to others and say, 'Would you like to participate in this promotion?', to which they could say yes or no.

CHAIR: There are times, though, when Woolworths decides that they will trigger that special, are there not?

Mr Harker: It is normally based on the product that is available in the market. As I said, there might be long-term crop-planning products where we might choose to do that and talk about it in advance so that someone is growing and planting for that. Particularly when you are talking about one and two weeks, that is in response to market pricing that is available to us. As I said, if there is a specific example of Woolworths conducting themselves in that way, I would love to have the specifics so I am happy to investigate.

CHAIR: One final one before moving on to Mr Scott, how is it that I can go into Woolworths and the label on a product that is a non-perishable product says that the special is \$2.60 and I lift up the tag and it says its original price was \$2.60? How does that happen? Is that just oversight?

Mr Harker: No, that would not happen. I would imagine—

CHAIR: I have photos.

Mr Harker: Can you tell me is it a photo of a red 'prices dropped' ticket, not a yellow special ticket?

CHAIR: It is the yellow special ticket and then you lift that up and the exact same price is underneath.

Mr Harker: I would love to see the photo because that should not happen; the system would not allow it. What we do have and we know—

CHAIR: I might stop you there, sorry, Mr Harker. What should consumers do when they witness that in a Woolworths store? What is the best way to ensure they can point that out to Woolworths so that Woolworths can correct the matter?

Mr Harker: If there is a yellow special ticket that has that scenario, they should absolutely bring it to the attention of the store team. If it is a red 'prices dropped' ticket, the point is the 'prices dropped' price is the shelf price; we have actually lowered the shelf price and therefore the two values would be the same.

CHAIR: So the yellow ticket with the same price—

Mr Harker: The yellow ticket is a special; they should see a save on that ticket. If there is no save on the ticket and it clearly says 'special', then the price is the same underneath. If it was a 'while stocks last' ticket because it was a non-standard product that we managed to bring into the store, the price is the price; there is no save representation because we do not normally sell it.

CHAIR: So the consumers should absolutely make sure that they report any incidents—

Mr Harker: Absolutely, we would love to know about it to find out what the error was on a yellow special ticket, yes.

CHAIR: I will note that the committee intends to break at three o'clock. Mr Scott, is that sufficient time for you?

Mr SCOTT: It should be. Thank you, Mr Chair and members of the committee. I wish to ask a series of questions about various matters that have arisen throughout the course of the afternoon. Firstly, we have heard evidence today about rebates being required by Coles in return for data supplied by Coles to its suppliers. Can you tell us whether or not Woolworths engages in that kind of a practice?

Mr Harker: I am curious because that would not be a rebate. Suppliers can go and engage with our data agency to purchase data if they so desire to have it which is removed from the commercial relationship with the buying team. Our deals and rebates from a buying team point of Brisbane

view are typically where we have agreed to promote an FMCG product at half price and they have agreed to fund X of it and we have agreed to fund Y of it. Therefore, a scan deal would be set up to deduct the amount of funding that the supplier had agreed to in order to promote their product. When it comes to data, that would be a completely separate transaction that they would have that is removed from the buying team.

Mr SCOTT: You said a little while ago, Mr Harker, is that it would not be in Woolworths' interests to ask growers to oversupply; do you recall saying something to that effect?

Mr Harker: Yes.

Mr SCOTT: This committee has heard that supermarkets use overinflated projections and indicative supply amounts to ensure a market oversupply and to skew the supply and demand indicator to reduce prices. Can you tell us whether or not Woolworths engages in that sort of practice?

Mr Harker: I already answered that. No, we do not. In actual fact, it is a contravention of the good faith provision in the code. We do not deliberately overstate forecast requirements.

Mr SCOTT: Subject to a grower being able to prove a breach of the good faith provision, there is nothing stopping Woolworths from doing that, is there?

Mr Harker: Again, I do not know why we would do that. It seems like a very odd thing to do.

CHAIR: Mr Harker, I remind you about direct questions and answers. Mr Scott, if you could restate the question so that it can be directly answered.

Mr SCOTT: My question was: subject to a grower being able to prove a breach of the good faith provision in the code of conduct, there is nothing else the grower could do in respect of that kind of practice?

Mr Harker: There is nothing else they can do?

Mr SCOTT: Yes.

Mr Harker: Yes, correct—short of raising that as an issue and having it investigated.

Mr SCOTT: It would be virtually impossible for a grower to prove that was a motivation for the particular volume signal given by Woolworths.

Mr Harker: I disagree because we would be required, if they did make a complaint, to provide our information showing how that information was derived when we communicated to show that it was a fair and reasonable assessment that was given to someone based on the market conditions at the time.

Mr SCOTT: May we take it from your answer that a grower could prove that was a motivation of, for example, Woolworths because the grower would make the complaint and the evidence of that motivation would be documented by Woolworths?

Mr Harker: No. I dare say that a fair and reasonable person—the code arbiter—would look at the data and aggregate what was provided to everyone to see where that landed. They would be able to make an assessment based on that whether the aggregate quantity and how we divided that up was fair and reasonable based on the information we had at the time. If they found that was not to be the case they would say we did not produce the information in good faith and they would be able to, as I said before, seek damages of up to \$5 billion. It can be tested by an independent person who has been put in place to access the information and we would have to justify to them that the information we provided was fair and reasonable.

Mr SCOTT: Can you identify any occasion where something like that has been found to be substantiated by the independent arbiter?

Mr Harker: No.

Mr SCOTT: There has been a bit of discussion about the 350 suppliers that Woolworths deals with; correct?

Mr Harker: Yes.

Mr SCOTT: I think, from what you have said, that is a combination of large growers who themselves supply to Woolworths and obtain produce from other growers and then separately, within that 350, there are also aggregators?

Mr Harker: There are also small growers.

Mr SCOTT: What is the distinction between an aggregator and a large grower that is also sourcing from other growers?

Mr Harker: They are the same thing.

Mr SCOTT: So we are talking about the one concept?

Mr Harker: We have 350 people in our supply chain, most of whom are growers themselves, other than I spoke about the fact we would have some people on our books to be able to source top-up stock from the market. We would also have people on our books—I do not have the specific number—who do not aggregate at all. I know of some of them personally—I have visited them—who literally just grow product and they do not supply anybody else's product into our business. So out of the 350 you would have a mix of a large grower, a small grower, a medium grower, some of which—not all of them—may also be aggregators.

Mr SCOTT: Something I think you said—and I want to clarify that I understand this correctly—was that a proposal Woolworths would have would be that there be a single code that covers all market participants so that the requirements relating to conduct within the market are consistent; would that be a fair statement?

Mr Harker: No, I did not say that. I outlined the fact that there were two codes in existence. The Food and Grocery Code of Conducts tells us how we should conduct business with our suppliers and there is a Horticulture Code of Conduct that is unique to the circumstances of people who are supplying to people who onsell their goods. What I spoke about from a whole industry point of view is the fact that the topic of price transparency always comes up and that there never seems to be any progress. Therefore, we would put forward a practical recommendation of how that could potentially be progressed, rather than it being a constant topic of conversation.

Mr SCOTT: Thank you for the clarification. The truth is that the Horticulture Code of Conduct is not identical to the grocery code of conduct; correct?

Mr Harker: Correct, because the business relationships that exist within it are different. There are different parties in the horticulture code in terms of who the person is dealing with—whether it is a market agent and they are sending the product on consignment without a price. There are multifaceted scenarios that are covered in the horticulture code which are far more diverse than the relationship between a retailer and someone who is effectively selling wholesale goods to them.

Mr SCOTT: There are, for example, differences in terms between the two codes in terms of dispute resolution; correct?

Mr Harker: I am not intimately familiar with the horticulture code but I imagine they probably have different paths to remedy. They probably have different ways disputes are resolved and they probably have different penalties.

Mr SCOTT: Does Woolworths enter into agreements with aggregators that require—as a term of the relationship between Woolworths and the aggregator—that the aggregator complies with the Horticulture Code of Conduct?

Mr Harker: It is not specifically called that. You would see in our general trading terms that we ask all of our suppliers to comply with all legislation and regulation that pertains to the way they conduct their business.

Mr SCOTT: Does Woolworths take any steps to satisfy itself that its aggregators are complying with the Horticulture Code of Conduct?

Mr Harker: I would have to take that question on notice. We do have third parties that audit our suppliers right across our supply chain, particularly if they are involved in private label or in fresh foods. They look at a variety of things, modern slavery and so forth—I am not aware of whether that is called out specifically.

Mr SCOTT: You would not know then whether those auditors make any inquiries with the growers that the aggregators are dealing with to find out whether or not the growers are satisfied with the aggregator's compliance with the Horticulture Code of Conduct?

Mr Harker: Based on the fact that I said 'I am not familiar with whether it is specifically called out', I do not know.

Mr SCOTT: Would you be able to take that question on notice?

Mr Harker: I am happy to take the question on notice and see what we can come back with.

Mr SCOTT: Thank you.

CHAIR: I will note that when a question is taken on notice, the expectation is that the question is answered.

Mr SCOTT: This committee has heard evidence about the use by some participants of non-compete clauses. Some witnesses and submitters have expressed concern that supermarkets often include such clauses in their contracts with suppliers which prohibit those suppliers from onselling product that has been rejected by those supermarkets.

Mr Harker: That is incorrect.

Mr SCOTT: When you say it is incorrect it is not—

Mr Harker: It does not happen.

Mr SCOTT: I am about to move onto a different topic, if any members of the committee have any questions to ask arising out of the topic I have asked questions about.

CHAIR: We will ask some very quick questions noting that we will break at 3.00 pm.

Ms PEASE: Looking at the national vendor trading terms, at 3.2 on page 3 it mentions the Supplier Excellence Program—I assume that is like a ‘preferred client’?

Mr Harker: No, it is not. That is typically for people who manufacture private label goods for us or who are involved in high-risk categories like electrical goods, to make sure that they are safe. There are separate things that we work through with those suppliers to make sure if they are providing us with private label goods that they meet our standards or if they are providing high-risk products like button cell batteries and electrical items that they are adhering to—

Ms PEASE: I might have used the wrong terminology, my apologies. During the course of this inquiry we have heard that for producers to be able to sell their produce to supermarkets they have to undertake a certification process which they are required to pay for; are you aware of this?

Mr Harker: If you are referring to Freshcare, they are required by law to comply with food safety standards and to be certified in their on-farm management and the way they treat produce in terms of whether it has been washed and tested. I do not think anyone wants to get E. coli when they buy something from our store so yes, they do need to.

Ms PEASE: So Woolworths itself does not directly demands a supplier fulfil criteria to be able to sell?

Mr Harker: I do not know if you are familiar with HARPS? If I go back historically, every retailer—

Ms PEASE: I just wanted to know if—

Mr Harker: It goes to the question. The question is: does Woolworths specifically know there was work undertaken a number of years ago to harmonise all the various retailers’ expectations that were above Freshcare to make sure that they did not have to deal with four different retailers with different expectations? There is an industry HARPS standard that exists.

Ms PEASE: Who do they pay the Freshcare money to?

Mr Harker: They would pay the auditor.

Ms PEASE: You mentioned that there are audits done on those aggregators to ensure they are fulfilling their requirements?

Mr Harker: We audit all of our suppliers to make sure that they meet certain standards, particularly when it comes to modern slavery and the like. As I said, I am not aware of whether specific adherence to the horticulture code is something that is audited. I will take that question on notice.

Ms PEASE: Thank you.

Ms LEAHY: In the submission on page 5—

Mr Harker: I am not sure if I have a copy of the submission here, but that is okay.

Ms LEAHY: I can take you through it. There is a paragraph about local sourcing. It states that the sourcing of meat is 100 per cent fresh meat in Woolworths’ supermarkets and 96 per cent fresh fruit and veggies. Does Woolworths pride themselves on its local supply?

Mr Harker: Australian supply, yes.

Ms LEAHY: The committee heard from the Queensland Fruit & Vegetable Growers. They had data from the AUSVEG survey. You may not be aware of this; it is in *Hansard*. It stated that 37 per cent of those Australian growers who filled out the survey were looking to exit in the next 12 months. This would put considerable pressure on that local supply. Does that concern Woolworths at all?

Mr Harker: We would be concerned if there was less local supply available. In the industry at the moment there is a high level of consolidation. There is a large amount of investment that is happening in horticulture with overseas pension funds investing in these larger businesses. We have this scenario that, as people are leaving the industry, the amount of product that is being produced is

actually increasing. It is an interesting thing for us all, as a community, to think about. We are obviously seeing the two halves of it. Production year on year is increasing. If you look at ABARES' forecast it is continuing to increase whilst people are talking about potentially leaving the industry. I would be very concerned about us not being able to secure Australian supplied product for as much of the year as we conceivably can.

Ms LEAHY: Do you think that price pressures are why some Australian growers—it is a third—are looking to exit? They are saying, 'Look, it is easier to make a dollar somewhere else.'

Mr Harker: I did acknowledge that one of the dynamics in the industry—a traditional supply and demand market where the imbalance between the two determines the price—does mean that a pass-through mechanism of increases in input costs is not necessarily something that manifests for them. Of course there are other people who are continuing to invest which is driving productive initiatives into their business to manage those cost pressures. I imagine some people are not able to deal with those cost pressures, and it would have an impact on them.

Ms LEAHY: It is probably not all, but the data is clear from the AUSVEG survey. If you are losing 37 per cent, that is getting close to 40 per cent of your Australian growers looking to go in the next 12 months.

Mr Harker: It would be concerning if it meant that production fell. It has not been the case to date, and the ABARES forecast is that it will continue to grow. I think there is potentially a dynamic that you have fewer people producing more, and that is putting some pressure into the industry.

Ms LEAHY: Does Woolworths engage with Queensland Fruit & Vegetable Growers in relation to those concerns?

Mr Harker: I do not know specifically whether the fruit and veg team have engaged with them on that matter. As I said, I am happy to go back and find what engagements the fruit and veg team have had with industry bodies, but they do it on a routine basis.

CHAIR: Does Mr Baldwin know?

Mr Baldwin: No, my team does not directly deal with our suppliers. That would be part of our commercial team.

Ms PUGH: If I could put the same question. This goes to the very end of the supply chain and the growth of both your click-and-collect business and home delivery. I do not expect you to be able to furnish the figures, so I am happy if you take it on notice. If you could provide the committee with separated out figures over the last five years of click and collect and home delivery as part of your business and as part of the overall figures for sales.

Mr Harker: Absolutely. If I can find that information in the break I am happy to provide it. It is certainly something that accelerated when COVID hit. I think a few people dabbled in it, and during COVID when they could not leave their home we had to ramp-up significant capacity to service the growing demand for online, whether it is delivered to home or direct to boot.

Mr MINNIKIN: Gentlemen, does the Woolworths Group land bank?

Mr Harker: I would not call it land banking. We obviously are very interested in making sure that we have stores for communities as they grow. Our interest in buying land is about our business and making sure that we have land in growth corridors. I think everyone would be aware that those types of developments (a) have a long lead time; or (b) sometimes the actual community itself takes some while to be formed. If you think of outer metropolitan areas, when people advise they are going to open up a new suburb or something like that they would talk to retailers about whether they are going to build a shopping facility or the like, and therefore we would be involved in those scenarios. Most of our activity is around greenfield sites in growth corridors.

Mr MINNIKIN: Mr Harker, approximately how many vacant sites under Woolworths Group control do you own that would be undeveloped greenfield sites?

Mr Harker: I would have to take that question on notice and talk to the property team and come back with an answer.

Mr MINNIKIN: How would Woolworths Group countenance the proposition that has been presented to the committee: Woolworths, in addition to your other major competitor, does in fact land bank to squeeze other potential competitors out of different geographic areas?

Mr Harker: We would say that that is not the case.

Ms PEASE: I am looking at your website with regard to becoming a supplier. On one of the sites it talks about having to pay a registration fee. Does that not apply to produce suppliers, or is that other suppliers?

Mr Harker: It is a very detailed question. I am afraid I do not have the answer. I would have to find out.

Ms PEASE: Can I put on notice that you will find out if you are charging people to become a preferred supplier?

CHAIR: Just for the secretariat, can we please have that question put again?

Ms PEASE: I am just inquiring as to whether produce suppliers, horticulturists, are required to pay a fee to become a preferred supplier to Woolworths.

Mr Harker: The answer to that question would be no. I think what you refer to is a registration fee, which I am happy to get an answer back—

Ms PEASE: Then are they required to pay a registration fee to apply to become a preferred provider?

Mr Harker: I will get you the answer to that question.

CHAIR: We will take that on notice unless after the break you are able to come back with that answer.

I just want to go to everyday mums and dads and pensioners and the amount they have to pay every time they go to a shopping centre. Does Woolworths have an option for suppliers to pay a shelf fee for a more favourable position on the shelves?

Mr Harker: You would have read our general terms. Our general terms would have the provision, because we are legally allowed to ask and it is governed by the grocery code. The fact is, though, that we do not.

CHAIR: You do not?

Mr Harker: We do not get any placement fees, whether they are for on-shelf or the like. Neither do we get new line entry fees or any of those things. My point earlier was that these general provisions are based on what we are legally allowed to do and what is governed by the code. It does not necessarily mean that we do it.

CHAIR: Do you know of any other retail outlets that do ask a shelf fee for a better position on their shelves?

Mr Harker: I believe it is a practice in some businesses. I do not want to deal in hearsay, to be frank, but it might be something worth asking other people who appear before the inquiry.

CHAIR: Are you aware of any statements in the media from different companies saying that they do have to pay shelf fees to other retailers?

Mr Harker: No, I am not aware of any.

CHAIR: When it comes to putting stock up on the shelves, what is the structure? Is there a criteria that says there must be a particular brand up here in the middle of the shelf, or do the people who do night fill just rock up and colour coordinate to whatever they feel best?

Mr Harker: You are talking about packaged groceries now, I assume?

CHAIR: Let's pick the carbonated drinks aisle.

Mr Harker: There is a planogram that is issued to our stores of what they tie up with on the shelves, which is actually done by my team who manage space and range. Effectively, when we do a range review we would decide the range. There is obviously a starting base of the existing range. Then the way the shelves would be laid out would depend on a number of factors based on the category you are in. There is the customer decision tree, which is how does a customer shop the category. In the case of soft drink, I am buying no-sugar drinks, or I am buying mineral water, or I am buying X, Y and Z. I think you will find that, in the drinks category, typically just from a weight point of view the heavier drinks are on the bottom shelves and the smaller drinks tend to be on the top shelves. People shop that category by brand, so you might find most of the brand drinks put together and the like. Effectively, it is primarily driven by how customers shop the category, and the amount of space that is allocated is based on the volume of product that sells.

CHAIR: If Woolworths does not engage in the practice of shelf fees, why do you outline it in your terms?

Mr Harker: They are general standard terms that basically have every provision that we are able to enact. The fact is that we do not. We are legally allowed to have a conversation about that. The fact is the team does not because it does not actually deliver a great return for us to provide money to have people move things around. We are interested in trying to sell as much product as we can to customers and we want to lay out our stores based on how our customers shop them, so I can categorically say we do not.

CHAIR: Does Woolworths publicly advertise that, or do you wait for a company to write to you saying they would be interested in undertaking a shelf fee?

Mr Harker: I cannot think of an example where a supplier has ever asked us, because they know it is not our practice and it has not been our practice for as long as I can remember.

CHAIR: In the last 10 financial years Woolworths has never been approached by a supplier requesting to engage in a shelf fee?

Mr Harker: I cannot categorically answer that question. I have not been in my role for 10 years, and I am not aware of every conversation that a supplier may or may not have had with Woolworths. I can say it is not a practice that Woolworths adopts.

CHAIR: In the length of your term that has not been the situation?

Mr Harker: I am not aware of a situation where anyone has ever done that.

CHAIR: Mr Scott, we have five minutes before the intended break. Would you prefer it if we took our 15-minute break now?

Mr SCOTT: That would be convenient.

CHAIR: We will break for 15 minutes and return at 3.10.

Proceedings suspended from 2.54 pm to 3.09 pm.

CHAIR: I welcome back Mr Paul Harker and Mr Danny Baldwin from Woolworths Group. I will turn to Mr Scott to continue his line of questioning.

Mr Harker: Chair, if it is convenient to the committee, I have a couple of things that I found out in the break, otherwise I am happy to do it later.

CHAIR: If you have them now, it would be appreciated.

Mr Harker: In terms of our national vendor trading terms, they are in the public domain. You can google them and they will come up. Fruit and vegetable suppliers do not have to pay a registration fee to be considered to be a supplier to Woolworths. I have a half answer to the online question. Online penetration has grown from 4.1 per cent in FY19 to now be sitting at 11 per cent. What I do not have for you is the break-up between delivery versus direct to boot.

Ms PUGH: So that is both combined?

Mr Harker: Yes, correct; 11 per cent of our sales are now through the ecom channel.

Ms PUGH: That is interesting.

Ms PEASE: I have the correct name, if I may, with regards to that. It is the Woolworths quality assurance standard. What is the fee associated with that?

Mr Harker: I will have to take that one on notice. I am not aware that there is one, but I will chase that up.

CHAIR: Thank you for providing that. We will go to Mr Scott.

Mr SCOTT: Thank you. Gentlemen, I wish to follow on from some questions from the member for Chatsworth regarding the issue of land banking. You will recall questions on that general topic a little while ago?

Mr Harker: Correct.

Mr SCOTT: As I understand your evidence, the practice of Woolworths is to buy land in what it describes as growth corridors; correct?

Mr Harker: Primarily, yes.

Mr SCOTT: Also known as greenfield sites; correct?

Mr Harker: That is a phrase that some people use, yes.

Mr SCOTT: Where the population has not yet built up; correct?

Mr Harker: Correct.

Mr SCOTT: But then wait until the population has built up before it then uses that site for a supermarket; correct?

Mr Harker: Yes. There would be no point opening a store if there were no customers in the area.

Mr SCOTT: And that might take some years between when Woolworths purchases the land and when the supermarket is opened; correct?

Mr Harker: Correct, and it also takes some years to go through all the development application processes and things before you can start works.

Mr SCOTT: Okay, but these purchases are happening before any development applications are made; correct?

Mr Harker: Some would be, yes.

Mr SCOTT: Some years before any development applications are made?

Mr Harker: I would have to take that on notice. I do not represent the property team so I am not sure how long it takes between when they buy a block of land and they put in a development application.

Mr SCOTT: Can Woolworths provide that information in due course?

Mr Harker: I am happy to take the question on notice.

Mr SCOTT: The reality is that a greenfield site will be identified some years before that greenfield site is developed; correct?

Mr Harker: I am not an expert. I would imagine it is the practice for government and councils to identify that they are going to open up a new parcel of land for development and for housing.

Mr SCOTT: At the time that Woolworths acquires that land, its value is lower than what its value is at the time that Woolworths develops the site. Would that be a fair summary?

Mr Harker: I do not know the answer to the question. I am not a property developer. I think there are many things that value land. If nothing had been developed when we start development, it may have done nothing to the land value. I really cannot say.

Mr SCOTT: Once the population has built up, it stands to reason that the land is a much more attractive commercial proposition, isn't it, as a commercial site? That is, once there are more people in the area, the proposition commercially speaking—

Mr Harker: I would imagine that would be the case, yes. Land values do go up.

Mr SCOTT: By that stage, Woolworths is in the position where it is already in possession of that land and other competitors might not be; correct?

Mr Harker: We certainly own the block of land. Other people had equal opportunity to buy the block of land when we bought the block of land. We did not have any information that was not available to anybody else to make a decision about purchasing a block of land.

Mr SCOTT: I want to ask some questions about the Food and Grocery Code of Conduct. Gentlemen, you are aware, I take it, of the evidence received by this committee in submissions about the level of dissatisfaction of growers with their dealings with supermarkets?

Mr Harker: I am not aware of anyone raising any dissatisfaction with Woolworths.

Mr SCOTT: Just assume my question is general in relation to supermarkets.

Mr Harker: To answer specifically for Woolworths, we take our supplier relationships extremely seriously and our compliance with the code seriously. It is something that we routinely measure on a regular basis and we get feedback on and are rated by our suppliers. We have been rated as the most preferred retailer in Australia out of 20 retailers to do business with.

Mr SCOTT: I will be more precise with my question. Plainly, there is a high degree of dissatisfaction by growers manifested in the submissions and evidence before this committee; correct?

Mr Harker: I think there is obviously some satisfaction with some growers who have made submissions. I am not going to surmise that everyone who did not make a submission is equally unsatisfied given we have lots of positive relationships with our growers.

Mr SCOTT: Fair enough. When you said 'satisfaction' I think you meant 'dissatisfaction', correct, in your answer you just gave?

Mr Harker: I am not sure. Could you repeat the question?

Mr SCOTT: You used the word 'satisfaction'. You said you were sure—I am paraphrasing—there is some satisfaction by some growers, but I think you meant 'dissatisfaction'; correct?

Mr Harker: Correct, yes. There would be some dissatisfaction from some growers, as put in the evidence that this committee has received, obviously none of it specifically to Woolworths.

Mr SCOTT: Would this be right? Between 2020 and now there have been no complaints against Woolworths to the independent arbiter?

Mr Harker: There have been no formal grocery code complaints, no; that is correct.

Mr SCOTT: Do you think perhaps that might indicate that the level of dissatisfaction that growers have is not reflected in the number of complaints made to the independent arbiter?

Mr Harker: I look at the satisfaction of our suppliers much more broadly than the number of complaints made. As I said, every two months they get the opportunity to provide us with feedback via an independent, anonymous method of telling us how they would rate us on a whole bunch of different things and also they are able to give us constructive feedback. The team engage with our growers and also with industry bodies; I engage with some of our growers and industry bodies and the level of dissatisfaction that you have been hearing about is not something that has been remonstrated to me.

It could well be that there are some people who do not want to come forward. It also could well be that the lengths we put in place to try to make sure we have collaborative and constructive relationships and dealing with issues as and when they arise mean there is no need for somebody to actually make a formal complaint against us.

If you take the topic that comes up around people will not speak up for fear of retribution, in working with the independent reviewer and feedback in addressing that particular issue, Woolworths put out a supplier complaints integrity policy, which is such that if anybody does want to come forward

and make a complaint, whether the complaint is found to be true or false, their business will be monitored at the six-month mark and the 12-month mark and beyond to make sure that there is absolutely no retribution in their commercial dealings with our business as a result of making a complaint. That investigation is done outside of my team, as in the commercial team, so they can feel that the complaint is investigated properly. They are the steps we take to try to manage this because we take our relationships extremely seriously and we hold ourselves to a very high standard. I would be extremely disappointed if our team did not live up to not only the grocery code but our trade partner charter that talks about how we want to do business with our suppliers.

Mr SCOTT: You mentioned that this process you have just described involves a review of a supplier's business over six to 12 months to ensure that they are not suffering retribution in consequence of a complaint. Have I summarised what you have said just now?

Mr Harker: Correct, yes.

Mr SCOTT: How is that business monitored?

Mr Harker: How is which business monitored?

Mr SCOTT: The business that has made the complaint I think you have said—

Mr Harker: They would look to make sure there would be no commercial detriment as in their business did not for non-valid commercial reasons suffer as in go backwards, lose sales, lose ranging, lose position, lose any of the things that they would have based on their commercial merit.

Mr SCOTT: Who is doing that monitoring?

Mr Harker: That would be the MD of supermarkets.

Mr SCOTT: Are the results of that monitoring documented?

Mr Harker: We have not had a formal complaint so we have had no need to do it. We have done some trial runs where some people have raised some issues that the team have worked through and we have actually asked that process to be put in place to make sure that nothing happened and nothing did happen.

Mr SCOTT: There have been a lot of questions about aggregators. Is this right, when Woolworths deals with an aggregator, price is negotiated and ultimately reflected in the purchase order? Is price negotiated between Woolworths and the aggregator; correct?

Mr Harker: I would like to call them a supplier because they may or may not be an aggregator. Yes, when we enter into a commercial arrangement we agree to the volume of stock they provide and the price that we will pay the person who is supplying us the product; that is to say wholesale goods at a wholesale price delivered picked, packed, graded into our standard, into our DCs.

Mr SCOTT: Aggregators, in that situation, are not acting as a Woolworths agent; correct?

Mr Harker: No, they are not.

Mr SCOTT: That price that is negotiated is the price paid by Woolworths for the purchase from the aggregator of the particular good in question; correct?

Mr Harker: Yes, that is correct. It is the price we pay the person who supplied us the goods.

Mr SCOTT: If that aggregator has then obtained those goods from another producer, Woolworths would have no visibility whatsoever of what price that aggregator has paid that other producer?

Mr Harker: No, that is covered by the Horticulture Code of Conduct that talks about the relationship between those parties and the transparency of information, which is overseen by the ACCC and is something the ACCC routinely runs its own audits on for compliance.

Mr SCOTT: Mr Chair, those are the questions I have for these witnesses.

CHAIR: I will continue along this line. We are hearing about aggregators and also earlier today we heard about agents and merchants. Are you aware of these terms?

Mr Harker: I think agents and merchants are covered in the horticulture code and they would probably be market agents and the like.

CHAIR: Is it your understanding that a merchant will pay a price and then take ownership of the produce, whereas an agent will act as a negotiator but never actually receive the produce?

Mr Harker: I am not an expert in the names, but I know that some growers will negotiate a price with someone before they send them the goods and they take carriage of it; and then other growers, in terms of a market system, would send their produce to market with an agent with the best endeavours to get whatever price they could for them. I am not familiar with the detail because that is not a realm that we actually participate in.

CHAIR: If a farmer has 10,000 tonnes of avocados, of produce, and they engage with an agent and that agent negotiates the price that the supermarkets will pay for that produce, is that an avenue that Woolworths engage with?

Mr Harker: No, it does not—if there was a market agent that was supplying us because we had a shortfall in demand and we had to get product from a market agent, they would have their own grower base or supplier base that they would source product from. There are a number of ways they could do that. I am not familiar with how each of those goes about doing that. It is such a small part of our business that is also covered by the Horticulture Code of Conduct that I am not sure how I can add—

CHAIR: In terms of the activities of Woolworths, when you are getting that final stage from the suppliers—let's call them the aggregators—are Woolworths engaging with aggregators who have taken ownership of the produce off the farmers and then negotiating a new price?

Mr Harker: I do not know what commercial arrangement they have in terms of sourcing their product.

CHAIR: I am talking about Woolworths, when Woolworths source—

Mr Harker: We source the product from the person who supplies it to us. No-one sends us any product without knowing exactly what they will be paid for it before they put it on the truck and deliver it to the DC.

CHAIR: What I am saying is we have heard evidence from witnesses that there are merchants—that is the name described—who will pay for produce from a farmer, take ownership of that produce and then look to onsell that. Does Woolworths engage only with those who have taken ownership if it is not a direct supply to the farmer?

Mr Harker: We do not know the commercial arrangements that someone who is also aggregating supply as well as giving us their own have entered into with the other party. That is between those parties as to the type of commercial arrangement they would like to have between them.

CHAIR: Surely you would know whether an aggregator is a farmer or not?

Mr Harker: I know that—sorry, your question was the relationship they have with someone who is growing produce that is not theirs.

CHAIR: You have listed 350 companies along the supply chain. Surely there would be an understanding as to whether or not there is an organisation that acts solely as purchasing produce from a farmer to then onsell to the supermarkets and retailers.

Mr Harker: I think I took the question on notice to explain the break-up of the 350 where I said that most of them are people who grow who may also source from other people. There would be a very small number of people who we would have commercial terms with because they are market agents for us to be able to top up stock. It would be those market agents as opposed to the grower who also aggregates other suppliers who would conduct business that way. We would have no understanding of where they source the product from and also what commercial arrangements they entered into with the people who put product onto their markets.

CHAIR: Does it not concern you in the sense around it being ethically sourced and so forth and making sure that you are receiving goods that have been sourced ethically to know where the produce is coming from?

Mr Harker: Our expectation is that anyone who is supplying us goods would be compliant with the horticulture code. Our preference is to not necessarily deal in that market, which is why it is a very small part of our business and is only opportunistically top-up that if I had ordered X from a supplier and I need to fulfil orders to get to store to supply it and they were unable to give me the full quantity that was required, I may have to resort to going to the market and buying products off a market agent to make up the shortfall.

CHAIR: How are Woolworths made aware if a supplier is breaching the code of conduct?

Mr Harker: The Horticulture Code of Conduct? We would only be aware because somebody had told us that that was the case.

CHAIR: The ACCC would tell you? Who would be informing you that there are breaches or that things are not being ethically sourced?

Mr Harker: I imagine either the party that was aggrieved that wants to let us know or if it had happened and we were dealing with the ACCC, I dare say they would take action against someone who is not in compliance with the code.

CHAIR: When Woolworths engage with suppliers, what level of research of an organisation is undertaken to ensure they have a good, positive track record in terms of the code?

Mr Harker: I answered this question before around we expect all of our suppliers to comply with the law and with regulation. With regard to whether we had an explicit audit requirement around the horticulture code, I did not know the answer and I committed to coming back to give you an answer if in our audits we explicitly call out the Horticulture Code of Conduct and ask it to be checked.

CHAIR: Would it be something you would expect, though, and you are the chief commercial officer for Woolworths Group. Would you not expect that the organisation that you work for would do your due diligence before signing to an agreement with the supplier?

Mr Harker: We deal with very large suppliers of horticultural produce. Our expectation, as with all of our suppliers, is that they comply with legislation and regulation. If they do not, we would investigate the matter and treat it seriously. Woolworths does not have the capacity to test the 3½ thousand suppliers we have to make sure they have business practices to make sure—we take high-risk areas like modern slavery and things like that, and I know that they are explicitly called out in audits. But that one in particular, again, I would have to take it away on notice and give you an answer as to the Horticulture Code of Conduct. That is something that is managed and governed by the ACCC and I know the ACCC does audits. I imagine that they would probably be doing audits in the market system, which is potentially where you are talking about the relationship between an agent or a merchant or whatever else actually transpires.

CHAIR: I have a final question before I move to the deputy chair. Earlier you said that Woolworths and large supermarkets do not engage with the manipulation of the market in terms of rejecting produce, sending it back down to a market at a cheaper value and then coming in and purchasing later. We have heard witnesses who have said to the committee that that does occur. Have they misled the committee?

Mr Harker: They may be talking about other people. What I can say is Woolworths does not indulge in that conduct. If the product does not meet our specifications it does not meet our specifications. We do not rebuy it off someone else.

Mr Harker: They may be talking about other people. What I can say is that Woolworths does not indulge in that conduct. If the product does not meet our specifications, it does not meet our specifications. We do not rebuy it off someone else.

CHAIR: Deputy Chair?

Ms LEAHY: No further questions at this stage.

CHAIR: No further questions from members to my left. Member for Mount Ommaney?

Ms PUGH: My question goes to the matter of waste. If we look at the supply chain, we also then I suppose have a shadow chain there, which is starting to form in my mind as the waste chain. We have heard from previous witnesses that at that first point, which I have spoken to before today, 30 to 40 per cent of product can be rejected without ever getting to market. Can you just outline for the committee the various points at which product can be wasted? I will take you to the point in your submission where you talk about the good work you do in terms of charitable food donations. My question is twofold. I will first jump to the end of the question where, if you are donating \$75 million worth of food, who is making that decision? Is that centrally a decision made by Woolworths corporate or is that individually made by every single Woolworths owner? How does that food physically get distributed? Is it all coming to a central point before going back out again or is it going from individual points throughout the retail shops?

Mr Harker: Nationally we have partnerships with food organisations like Foodbank and OzHarvest that we work with and we also have a lot of activity at the individual store level. The actual collection and donation happens—other than if there is an issue with the product in the DC, like produce that cannot apparently get out—at a store level. Our store teams do an amazing job of trying to find a home for a product that could still be eaten by someone or an animal rather than it going into landfill.

Mr Baldwin: We certainly prioritise food recovery for human consumption, whether that be returned to our DCs or whether that is collected directly from our stores, and as a last resort we also have what we call our farmers program where farmers will come and collect food waste for animals.

The majority of our stores across Queensland have nominated suppliers and partners who actually collect that food waste. As I said, part of that is that we may also return it to our DC and consolidate it into one location. Then that will be collected from our DC or delivered to our partners, depending on specific arrangements.

Ms PUGH: Are individual retailers authorised to give out food that would otherwise potentially be thrown out or do they need to return that to the DC before it is redistributed to charities?

Mr Harker: Our store managers are empowered to make local decisions—where we have an arrangement they can tap into in place, like OzHarvest or Foodbank, where we recover it and then give it to them centrally versus what they do at a local store level. It is something that our store teams are extremely passionate about and they actually measure. They do not like seeing things go to waste. Importantly, when you hear some of the things that people say they find that is in waste—we are actually concerned about stories of people taking stuff out of bins. Things that normally go into a bin are not safe to eat because they have been through temperature abuse—they have not been refrigerated. When a customer returns a refrigerated product to us, we do not know what has happened to that product in its life cycle so we cannot put the product back on shelf for sale and those types of things. We are always looking for ways to manage and improve that and make sure calories go to people who need them, not to landfill.

Ms PUGH: At the beginning of the cycle, I spoke earlier about that 30 to 40 per cent that might be rejected and therefore ploughed back into the field. Where the farmer would like for that to be going to a more productive use than that, can you see a way that that product could be used, whether it is to be donated at the front end or sold in your store as an ugly or an odd bod or something like that? Is there a way that we can lower that 30 to 40 per cent number?

Mr Harker: I think there are a lot of things that happen. We clearly have the Odd Bunch in our stores, which is a mechanism to put that in front of consumers and let consumers decide whether they prefer to buy that or something else. I know that many of our trade partners also have tremendous relationships with Foodbank and OzHarvest. In fact, I was just talking to one of our smaller egg producers who proactively take the smaller eggs that might have normally have gone into food manufacturing. They have a program in their business of donating those to food shelters and people. A number of our suppliers do that themselves. Then you see a high degree of innovation that is only in early days starting to happen in industry with some players. Take a conversation I had the other day with a large apple grower. Clearly, there is waste on-farm that is never fit for human consumption—so birds have got in there and have pecked at it or whatever else, or hail has really smashed it up. They are looking at how, outside of sending that to juice, the waste stream that comes from juice, which is the pulp, can be used to be made into a cardboard equivalent that could then be used as the cardboard punnet that the apples go in. They are really thinking quite differently about how all of those streams could be used in a circular economy, which I think is just fantastic. There should be more thoughts and innovation in that space.

Ms PEASE: I want to go back to my question on notice. I would like to make sure I get a response to that question on notice with regard to the Woolworths quality assurance standard, if there is a cost associated with that.

Mr Harker: Absolutely. I have committed to giving you an answer on that.

Ms PEASE: Thank you very much. We have talked about your 350 suppliers. When did that model of business begin in Australia?

Mr Harker: We have been sourcing from fruit and vegetable suppliers since we got into grocery retailing in the 1950s. Probably if you go back to the 1950s it would have literally been everyone growing stuff and sending it to a terminal market. The terminal market system would have been the mechanism that people brought things to market. I think what you would see over time is that the percentage of stuff sold in the terminal market system has now come down to literally only 50 per cent. If you went back 10 years it would have been higher than that. If you went back 20 years it would have been higher than that. It is quite entrenched, I suppose, in how the horticultural sector was established in this country. Our preference is to deal with people who grow produce, but they cannot always give us everything that we need all of the time so they enter into these other arrangements.

Ms PEASE: I have noticed when you have been talking and giving evidence here today that you talk about your supplier. I am not really sure who you are talking about. Are you talking about the aggregator or are you talking about the grower?

Mr Harker: They are one and the same if they are a supplier to us. Those 350 suppliers of fruit and veg grow fruit and veg and they also source fruit and veg from other growers and in that capacity they are an aggregator. It is not someone who has a business model of 'I don't grow anything and I just go and aggregate stuff'. That is more typical of a market agent and that only exists in our supply chain for top-ups and it is less than 10 per cent of our volume.

Ms PEASE: When did that model start—that you were using an aggregator to purchase through an aggregate agreement?

Mr Harker: It is not a model. We did not start that. We have growers who supply us with product and they sometimes cannot grow enough or do not have enough or they have plant breeders rights and get other people to grow product for them.

Ms PEASE: Not all of your suppliers have to sign up to be an aggregator?

Mr Harker: No-one signs up to be an aggregator. It is not a supply type or capacity. It is a description of the activities they may undertake. That is to say, they could grow carrots for us. They may also source carrots from other growers of carrots and in that sense they are performing the role of an aggregator, but they are a supplier of carrots to us.

Ms PEASE: I am a little bit lost now because I understood that you do not deal directly with the grower and the aggregator's responsibility is to adhere to the code of conduct for the primary producer.

Mr Harker: If I have not been clear I apologise. Of the 350 fruit and vegetable suppliers we have, a large number of them grow product themselves. They are normally large growers. They also source sometimes from other growers that we do not have a relationship with.

Ms PEASE: I understand that completely. I think you made that quite clear.

Mr Harker: Which means they are a grower aggregator who supply us with product.

Ms PEASE: Every time we have raised this to you with regard to the standards, you would say about the aggregator that it is not up to you to monitor or police the behaviour of the code of conduct for the primary producer because they are responsible and they have a requirement under the ACCC to respond to that.

Mr Harker: Which is correct. Their relationship with us is covered by the food and grocery code. The relationship that they have with somebody else who provides them with the same product is governed by the Horticulture Code of Conduct.

Ms PEASE: So you have an aggregator that may also happen to be a grower that would purchase produce from another supplier. They would then onsell that as an aggregator and they would have a requirement to adhere to the code of conduct of the primary producer.

Mr Harker: Yes, they would have a requirement to comply with the Horticulture Code of Conduct in their relationship with the other grower.

Ms PEASE: That is in terms of those organisations that are an aggregator and purchase produce and sell directly to you. What about the large farms that do not buy produce externally and sell directly to you?

Mr Harker: They are suppliers who are growers and their relationship, like all our relationships, is governed by the food and grocery code.

Ms PEASE: Are you then, as an organisation, responsible to the Horticulture Code of Conduct?

Mr Harker: No, because I am a retailer and I am buying off a wholesaler who happens to be someone who grows the product. The Horticulture Code of Conduct only comes into play when somebody else is selling somebody else's product.

Ms PEASE: My question was if they are not selling someone else's produce—if they are just selling their own.

Mr Harker: Then they are a wholesaler to us and they are governed by the food and grocery code because they have no relationships with anyone else for the horticulture code to be relevant because they do not have that relationship.

Ms PEASE: I guess what I am trying to understand is: there seems to be a certain level of distance with regard to responsibility for the behaviour of the large supermarkets towards the farmers.

Mr Harker: I do not agree with that, given that the vast majority of the product that we would source would be from people who grow it who then may also have growers in their network. Our large apple grower grows apples. They also source apples from other growers who might be in different growing regions with different profiles and in that regard they are an aggregator, not a wholesaler.

Ms PEASE: Now we have determined the aggregator issue and that you are not beholden to the Horticulture Code of Conduct as a retail outlet, my understanding from what we are hearing is that you are distancing yourself from any responsibility to the producers for the way they perceive they are being treated.

Mr Harker: I am not distancing myself. I am trying to describe how things work and how the codes relate.

Ms PEASE: How do we make these producers feel that they have a voice and are being treated fairly and reputably by organisations that are making huge profits?

Mr Harker: I would go back to my starting point around two suggestions. One is price transparency, where we have put forward what we believe is a sensible pathway forward to actually resolve that issue that never seems to get resolved. It is often talked about; it is never resolved. We are committed and we want to work with the industry research and development corporation, for them to run a project and understand what people mean by price transparency—what information will be useful to people at what level in the supply chain for them to make more informed decisions. That information would give transparency to everyone at an aggregate level—so not a retailer but at an aggregate level—what retailers are paying for products sourced out of X region. That means that grower, who may not deal with a retailer, would be able to look at that number and go, 'That's nowhere near the number that I'm getting,' so that is potentially an issue or a topic of conversation with the person they have a commercial relationship with.

The other is that there be better education. I do not believe that these people actually understand their rights under the Horticulture Code of Conduct in the first place, so I would suggest that for industry bodies and the many people involved in the supply chain we have a very detailed education campaign to help people understand their rights either under the fruit and grocery code because they are a direct supplier to a retailer or under the horticulture code because they are someone who supplies to a wholesaler, whether that wholesaler is a grower or not.

They would be my two practical suggestions that I think would make a meaningful difference to help people understand their rights and also to increase the level of transparency without getting into the realms of competition law and all of those types of things. I think Hort Innovation, which is the government appointed, grower owned research and development corporation, would probably be best placed to kick off a project and to understand that and pull it apart further, and we are absolutely willing and able to assist in that project. If that means we have to provide them with data so they can do those assessments and understandings, we are more than willing to do so.

CHAIR: Thank you, Mr Harker. We will return to questions from government members soon, but I believe the member for Chatsworth has a question.

Mr MINNIKIN: Yes, thank you, Chair. Mr Harker, my electorate is just typical of many electorates throughout Queensland: the average voter would be in their late 30s with a couple of kids and a gross household income of, say, \$150,000—full-time employee, part-time wage, \$150K. They regularly come up to me when I have mobile offices, doorknocking or whatever and simply talk about the cost of living but particularly that putting fruit, veg and food on the table is getting ever increasingly more and more difficult, particularly in the last few years. What would you say to them if one of those typical constituents was in front of you today before this committee?

Mr Harker: I would have absolute empathy for the fact that people are struggling with the cost of living because the lion's share of their income is going on mortgages, rent, higher fuel and electricity prices and effectively they have 10 per cent of their income left to buy groceries and grocery prices have gone up, so I perfectly well understand that. What I would say is that there are wonderful opportunities and perhaps we could do a better job of communicating those opportunities to our customers around the fact that if they were to buy, for example, own brand products on key essentials they would be paying typically less than 30 per cent than the brands and to take advantage of the promotions and specials that we have across the store. More importantly, and in particular in your electorate as you described they are far more digitally savvy, on our website and now even on the app you can sort things by best unit price and all those types of things to make sure you are getting the best deal in terms of what is available.

When I talk about retail price transparency, it has never been higher because all of the retailers are online, so a lot of people are researching online and every day a new app pops up that compares the prices of retailers to tell you where you should go to buy what, and we can see that. As I think I mentioned, in Queensland 78 per cent of consumers have three supermarkets near them and they are increasingly shopping around. In fact, one in six people will visit another supermarket on the day they visit us. There are opportunities. I appreciate that they potentially have to work harder than they

have before to try and understand where they can save, so we have a job to do in communicating all of those opportunities to them so they can make an informed decision to try and make their dollar go further, but I certainly understand the pressure they are under.

Mr MINNIKIN: In terms of internal marketing campaigns et cetera being shopped around within the Woolworths Group, is it something that you would give serious consideration towards with your Woolworths fresh food magazine that is available in terms of trying to get out to people some of the things that you have identified today and outlined? The trouble is that there is a disconnect between, with respect, what you have said today, which makes sense, and getting that into the hearts and minds of the average Queenslander from an education campaign perspective.

Mr Harker: I take your point. We try to communicate things as best we can. We often clearly miss the mark, so I know that our marketing team and comms team are always trying to find new ways to connect with customers to share these things. I think we have even gone onto TikTok with hacks, because that seems to be where a lot of people are going to now. I am not on there myself. Steve, if when you are talking to your electorate you come up with some ideas around how we could try and get those messages out in a more digestible way, we would love to hear.

Mr MINNIKIN: I would welcome that opportunity. Thank you, Chair.

Ms LEAHY: In the submission you talked about state-based pricing of fresh food. We have heard from growers that they are growers in Queensland—that is where their product is grown—but then for whatever reason they might send that to the market in Melbourne. If you purchase that on the spot market, how would you have a state-based pricing regime around that?

Mr Harker: We are talking about our pricing to customers, so when we talk about the way we price goods in our store, most of the packaged groceries, with very few exceptions, are nationally priced. If you are shopping in Brisbane, Sydney or Melbourne, you would be charged the exact same price for packaged groceries on the shelf, and that is, I suppose, something that we can bring with a national footprint. When it comes to fresh food, we typically have state-based pricing for consumers because of the fact of where the product is coming from as in how far it is moving and what is available in the state versus what needs to be brought into the state. All across the country and stuff means that we normally coalesce around if you are in Queensland you would be paying the same price for bananas, for example. It could be a different price to Melbourne, which is normally typically a higher price because bananas are grown in Queensland and then you have to move them around the country, so I am actually referring in the submission to more retail pricing than pricing for suppliers.

CHAIR: Mr Harker, listening to what you reiterated before along the line of questioning by the member for Lytton, you said that you are very keen to see that the price of produce be displayed—be publicly available—in terms of how much each retailer paid for a specific item within that week; is that correct? That is how I understood it.

Mr Harker: No, that is not what I said. It was not by retailer. What I said is that we would support the research and development corporation doing a study into what people are looking for when they talk about price transparency to find a way that would make a meaningful difference to people who are planning at the level that they need it but also manageable. I think you will find that that will involve some anonymisation and aggregation and it would obviously typically be historical because of the fact that it would be what people did pay, but I was not calling out that they should then see what Woolworths paid, what Coles paid, what Aldi paid or anyone else paid because I think that would have issues as opposed to the prevailing wholesale price, if you like, paid by retailers for products sourced from this region of Queensland in this market was X for them to be able to compare what they were receiving versus what retailers were, on average, paying for product.

I think the study needs to be done and that is why I think an independent body that understands the horticultural sector—it is the RDC for horticulture—is best placed, without me presuming to know the solution and stuff, to run a proper study and talk to many participants in the supply chain about what they are looking for, how that would help them and what is the best way to do it and make a recommendation on what that is. As I stated before, our commitment is that if we needed to provide information into that process to help them build that out and whatever else we would be more than happy to assist and work through that with them.

CHAIR: Thank you. That is a positive step, and it takes me down a different path. We have seen the price fluctuations—cherry tomatoes one week are \$3.50 and then the same brand the next week might be \$4 and then it could go back down and can go up and down—and we know that that is reflective, as you said, of the market and also subject to the natural environment in which these goods are growing. In terms of how much you may get from either a supplier or an aggregate around that negotiated price, does Woolworths set within its internal operations a minimum profit per measurement of volume that must be achieved each time there is a product coming through?

Mr Harker: No.

CHAIR: For instance, you must make a profit of a dollar off the purchase of cherry tomatoes.

Mr Harker: No.

CHAIR: Okay, so you are very much subjected to—

Mr Harker: Correct, and typically when prices are very low or we are promoting something our margin would go backwards on those products. No, we do not set arbitrary targets like that. We are about trying to balance a basket for customers and we are about trying to get customers to buy products in our stores. We are very customer led in terms of those decisions—profits and outcome of focusing on the right things as opposed to the thing in and of itself.

CHAIR: When we are talking about purchasing at a market rate or a wholesale rate in terms of the visibility around that, we have heard growers express that they would like to see a government website set up that is displaying live price values of particular products. Is that something that is achievable under the current system?

Mr Harker: There currently is not a system, which is probably why we suggest that an independent body that understands the industry, like the industry RDC, should get those requirements and the requirements of many other people and then work out what they think would be a practical thing that would work for growers in making decisions to manage their business, and obviously respecting the confidentiality of individual businesses in that process. There would be some of the horticultural sector that would not necessarily want their own personal information being published as well, and I think they are best placed to understand that and make a recommendation on behalf of industry.

CHAIR: Going back to when we talked about the shelf fees, and noting that Woolworths do not engage in shelf fees, is that something that should then be excluded from the food and grocery code altogether in that organisations should not be allowed to deal in such transactions?

Mr Harker: I do not know the reason people engage in those transactions, so I suppose it would be a bit flippant for me to make that decision. Clearly in the grocery code there is a review mechanism for it. I know that Dr Emerson has obviously made his first round of recommendations and I now know they are going through to see if there should be any other substantive changes in the code. All I can say from our perspective is that if it was to be removed from the code we would have no problem whatsoever with that because it is not a practice we indulge in.

CHAIR: You mentioned that within those 350 suppliers some are quite large farms and they deal direct with you. Under your agreements with particular large farms, are there exclusivity clauses that those farms can only onsell to you?

Mr Harker: No.

CHAIR: Do you know if there are any that exist among other retailers?

Mr Harker: I am not aware of it. I think the only thing that would happen in the industry is: sometimes someone who owns a variety might come and talk to retailers about wanting to partner with that retailer to sell that particular variety only through that retailer, but in terms of locking up operations we definitely do not do it and I am not aware of it happening.

CHAIR: One thing where I am curious—we have heard the term a lot from our farmers and our peak body organisations—is that farmers are price takers, not price makers. The company that appeared before you very much seemed to make a suggestion in their submission that, really, they are the price takers, which I found quite bizarre. If we relate back to Woolworths and our farmers, where is a mechanism along the way where farmers can feel as though they are getting a better opportunity to set the price? We talk about these aggregators as this middle connection where at some point someone has to be setting the price in terms of either it is Woolworths going, 'We want to be able to make X amount of profit this month and therefore we need to set prices at this,' or it is the aggregators going, 'We need to purchase off the farmers at a particular price and then make a profit by onselling that to Woolworths,' and then the farmers are stuck in this position where they need to make sure they can pay their wages, pay their electricity, pay for fertiliser and also purchase the seeds, so they are the ones who are really stuck here. What is a way within the industry that we can ensure farmers are getting to set the price without having the risk of them being blacklisted by supermarkets and then falling in? It does not need to be as direct an answer as I have asked for previously, but are there just general thoughts and considerations that you have, being an expert within the industry, as to how farmers can feel that they have a greater level of confidence to set the price and make the price and to take the price?

Mr Harker: The key thing which is the nature of this industry in Australia—and you talk about who is the price setter and who is the price taker—is that market forces are actually the determiner on the price. I can tell you that when there is not much around the people who have got it can pretty much ask for whatever they would like for people to procure that product. When there is a massive glut and there are lots of people all competing to get rid of their produce, it does affect the market price.

I think this is the fundamental dynamic that makes fruit and vegetables different to FMCG, because if you are an FMCG supplier you control that because you control how much you manufacture. The fundamental issue here is that an individual grower can make their decision, but they have no influence over the other 2,000 horticultural businesses that make the decision to do the same thing or decide to grow the same thing. You are fundamentally stuck in this traditional supply and demand system, which is probably why you are starting to see the rise of people trying to get control of plant breeder's rights and marketing rights because that is the closest way they get to control supply, therefore determining how much is available such that it has an influence on the price they receive.

I suppose I am just acknowledging the fundamental complexity that exists if you have a very traditional supply and demand market where there is effectively a market floor clearing price and that occurs. I did acknowledge that and say there is empathy for the fact that the nature of how that market works legitimately has no consideration around what it took to do it either way. That is a fundamental challenge. I think the starting proposition, which I have spoken about, is that I am a participant in the market. I cannot change the market. This work around price transparency would at least get a general understanding what of is happening. I think even when you look at the yearly data that is currently available in the hort stats handbook there is an extremely strong correlation between volume available and price received. You see it time and time again: when the volume is down, the price is high; when the volume is high, the price is lower. That is the fundamental issue we wrestle with. I do think that work on price transparency and education is a start, but whilst that traditional market system is there there is going to be this level of complexity.

CHAIR: I agree with your analysis of the market. It is a free market and there is supply and demand, and that will set the price. When a farmer produces only three or four different items, even when demand is high and supply is low and the farmer has supply then the balance of power still rests with those up the chain because they could walk away and say, 'We won't take your produce this time. We'll live with not stocking it for a month, or if you drop your price you can still make some money off it.' At the end of the day, the farmer is still at the bottom end of that balance of power, are they not?

Mr Harker: In my experience, when supply is very, very low then very high prices are achieved in the market.

CHAIR: At the end of the day, if the large supermarkets want to walk away from their direct supplier because they do not agree with that negotiated price or that hitched price, the supermarkets have enough on their shelves that they can survive not stocking that particular produce.

Mr Harker: No, that is not the case. You can see in our data that the lengths the team goes to to procure product when it is in short supply are enormous. Literally, they will be paying whatever it takes because it is not in our interest to disappoint our customers who come into our stores looking to buy those products.

CHAIR: So farmers are on an equal playing field with Woolworths?

Mr Harker: I am saying that when there is short supply the market drives a high market price and they should be benefiting from that high market price. We are certainly paying a high market price. If there is someone in the supply chain who feels they are not getting their fair share of that because they are dealing through someone else then they would need to raise that issue for it to be managed, as I said before, under the hort code. I do not know if you would have seen the price of cabbages a couple of months ago in our stores, but you should have seen the price we had to pay when a storm went through and destroyed all of the cabbages. You could not find a cabbage for love nor money.

CHAIR: I was wondering why a whole cabbage was \$6 and a half cabbage was \$4.80, but I will turn to the member for Mount Ommaney

Ms PUGH: As we have also seen in the draft Emerson report, retribution for growers, whether real or perceived, is such a key theme of the evidence we have heard. That word is fairly heavily featured throughout the draft Emerson report as well. Whether or not that retribution is real or

perceived, if it is there in the grower's mind as a looming threat it is going to colour their behaviour and the way they interact with the big two supermarkets. My question is: what can you do to ensure growers know they are genuinely able to negotiate if that is not how they are feeling right now? Certainly that is what we have heard and that is what the draft Emerson report says as well.

Mr Harker: Anyone who supplies us has recourse to what I spoke about before. We were pleased that Dr Emerson picked up on that and that is actually a recommendation. There is actually a specific recommendation in the food and grocery code for retailers to set that in play. We were pleased to see that, because that was something we put in play a little while ago after we had conversations with Chris Leptos, the independent reviewer, when he was giving us some of this feedback. We end up in this nexus where we say, 'There aren't any complaints,' and people say, 'Well, there aren't any complaints because people don't want to complain because they're worried about what would happen.' We genuinely want people to tell us what their issues are, so we put those safeguards into place if someone does want to raise a complaint with us. We have suppliers raise issues with our teams all of the time that they just work through.

I know of numerous examples where people have had hardship, particularly if you think of what has happened over time in Gatton with weather events and things. We moved to immediate payment and did all sorts of things to help manage cash flow. I am also aware of growers we are paying above market rate on something they have supplied us for a long time because they found themselves in difficulty and they have not restructured what they need to do in their business to compete with other people. We are always here to listen to what issues or challenges people have. Invariably we find a solution, and we are normally quite accommodating where we can be with people's particular circumstances. Apart from relying on the supplier complaints integrity report and apart from having recourse to our code, people can contact me whenever they like. My details are on Partner Hub for all suppliers, and if anyone has an issue and they do not want to raise it directly below me in the team then I am more than happy for them to contact me directly on the topic.

Ms PUGH: What would you say if a tomato grower contacted you and said, 'I'm not happy with the price I have been offered'?

Mr Harker: I would work through that with the team. If they were not a supplier to us, I would make sure they were aware of their rights and they should exercise their rights. If they exercised their rights and did not get an outcome and we had someone in our supply chain who was participating that way, I would not accept it and we would step in to help deal with the situation.

Ms PUGH: Can people who are working through agents and aggregators and things like that also use that method of communication if they are not dealing with—

Mr Harker: They can certainly make contact with us. I suppose it is unique in the sense that they are not technically a supplier so they are not actually raising a complaint about Woolworths; they are raising a complaint about someone in Woolworths's supply chain. There are numerous ways of doing that. If they want to be anonymous there is a Speak Up line. There are all sorts of things they could be using to raise their concerns.

Ms PUGH: I think it is good for growers to know that, even if they are not dealing directly with Woolworths—or Coles, for that matter—they can still reach out to you directly because that is where their product is ending up. Chair, can I move to another line of questioning?

CHAIR: Yes, you may.

Ms PUGH: Like the member for Chatsworth, I have a lot of parents in my community. There is always a lot of interest around the little Squishimals or Pokemon or the Little Shoppers range that the big supermarkets put out as a means of customer enticement, specifically little customers. Can I ask why you target little humans who are not yet old enough to have credit cards, presumably, and what research you have relied on to make that decision? I note that the research may not have been commissioned by you; it may have been done previously by another company. In his book the Barefoot Investor referred to the 'Dollarmite effect', where young customers who get their first bank account at five years old may never switch brands because there is that loyalty and familiarity there. Could you speak to any of the research you have relied on?

Mr Harker: I could not talk to it in detail. It is managed by a different team in terms of research or anything that we rely on. All I would add is that you would notice the participating brands are not brands that we prohibit—brands that could be trying to target children for things that are not suitable for children from a health perspective or whatever else. I would have to take that one away. I am not across the detail.

Ms PUGH: Yes, if you could.

Mr PERRETT: I have a follow-up to the line of questioning from the member for Bundaberg about the profitability for primary producers, particularly in this case horticulturists. Once upon a time there were a lot of industries regulated by government. You were probably aware of the amount that could be provided and then ultimately the price. It basically set a farm gate price through regulation. We have moved away from that. The last one I can recall was probably in the fresh milk market. There used to be a guaranteed market milk price and a manufacturer price. Governments of all persuasions have moved away from that. Do you have any thoughts around how a mechanism could be put in place—particularly going back to industry—that would perhaps deal with some of these issues like oversupply and in some cases—I do not like to use this term often, but I am aware that it does happen—where you get primary producers who cannibalise others to their advantage? I think you might have touched on that earlier with respect to there being fewer farmers but a greater supply of produce now available in Australia. Could you suggest a mechanism, perhaps through industry, that would maybe shore up some of those processes and profitability at the farm gate to make certain long-term viability?

Mr Harker: No, I cannot think of a silver bullet short of supply regulation, which has its own unintended consequences. In fact, only recently there was still a board in place for potatoes in WA, and I think everyone agreed it was not a great outcome for consumers in terms of what was available. You have highly productive producers who are not happy with the fact that someone who is not a very productive producer and does not grow to the same quality and standard is being guaranteed the same price they are. I think we all agree it is the government's prerogative to make decisions around that, but I think we have moved away from it for good reason. If there was a silver bullet that would better regulate supply and demand, I would have thought that hopefully someone would have got on it by now. I suppose, rather than opining on it, that is why we have said, 'Can we least start doing something that is different?' Hence the conversation about price transparency and education.

Mr PERRETT: Short of government intervention with respect to supply and price setting, it would appear that it is difficult to try and ultimately shore up that bottom line and ensure profitability. Are there other areas that you are aware of where regulation in an industry, whether it is your industry or others, may create an additional burden in respect of cost and whether you have any thoughts around that?

Mr Harker: I do not have any direct thoughts. Clearly, there are a number of things that are bringing cost pressure into the sector. That is one thing we could all stare into: what is actually driving the cost and are there things that could be done differently that could potentially take cost out—if it is not about regulation—to regulate a price that is received? We would like to think we do not contribute a lot through regulation other than trying to make sure there is safe food for consumers to eat. It is probably a good thing for peak industry bodies to understand what some of those drivers are in their particular industries and then have conversations with regulators or the people who are building those regulations to see if they can be addressed. Hopefully, some relief with fuel and energy may come. I know that some people have been investing in things to manage their costs and others do not have the luxury of doing that, which creates further complexity when some people are able to invest in stuff and others are not, and therefore it makes it even harder for them and then other people gain from that. I certainly acknowledge the challenges. If I had a silver bullet I probably would not be working for Woolworths.

CHAIR: Mr Scott, if you do have any questions that come up, please feel free to ask.

Mr SCOTT: Certainly. I have none at this stage.

Ms PEASE: I know the member for Chatsworth mentioned that you have, I think he called it, land banking and you have purchased some properties that are yet to be developed. Did he ask a question around what property you currently own for future development?

Mr Harker: He did and I took that on notice.

Ms PEASE: I thought you might have and I wanted to confirm that. You talked about the complaints process and the arbitrator and that no complaints have actually reached that level. You did mention that you have had some complaints and you have worked through them at a local level, a store level or whatever. What sorts of complaints would they be? Could you give us an example?

Mr Harker: We would have suppliers, and these are typically FMCG suppliers, that have rights under the code to have decisions reviewed that are made. They might come and have a conversation with us that they were not happy with a ranging decision that was made that impacted them. They have a right to ask for a more senior person to review the decision that was made to ensure it was absolutely made with due commercial considerations in terms of how it was made. We would get people coming and talking about those types of things and we would look at them.

Pleasingly, to date I have not actually found where we have done the wrong thing, but we have modified our decision sometimes based on the circumstances of the supplier who sort of said, 'Well, if you could just let me for another six months it would help me manage X, Y or Z in my business.' It is not a question of us having done anything wrong, but a supplier may not have felt that they have had an opportunity to put all of their circumstances on the table in terms of the implications of the decision. That obviously varies based on the—I probably have less empathy for a very large multinational supplier, when we have not done the wrong thing, wanting us to give consideration versus a smaller supplier.

We have put a dedicated small supplier team into the team to help small suppliers navigate what is a large business. We have invested, I think, about \$4 million in a company called Seedlab that helps small suppliers become retail ready. They actually run, free of charge to the supplier, workshops and all those types of things. Then we have a process, when they get into our business, that they are managed by a team that understands what it is to deal with small suppliers. If you are a category manager you have a lot of suppliers and you are a very busy person, so your ability to put a lot of time and energy into helping coach new suppliers is tough.

These are some of the great suggestions that have come out of the grocery code process, in conversations with Chris Leptos and our code arbiter about what they are hearing, the feedback they are getting, and how we can help resolve and make it easier for people to do business with Woolworths. That is typically where these matters come in. We generally resolve them with the supplier internally to mutual satisfaction. I would like to think that process is the reason we do not get complaints. Of course, if it is not the case, we would love to hear from anyone who feels that they want to raise something that they do not feel they can.

Ms PEASE: I would like to go back to the conversations we have been having around primary producers and the horticultural industry. You have made it clear that, as a company, you actually have no relationship with those providers, those growers, the horticulture providers; is that correct?

Mr Harker: No, I did not say we had no relationship. Out of our fruit and veg suppliers, many of them grow fruit and veg but they may also source fruit and veg from somebody else so we do not have an arm's distance that we never deal with anyone who grows fruit and veg.

Ms PEASE: What agreements do you have with those suppliers?

Mr Harker: The same agreements that we would have with any of our suppliers.

Ms PEASE: So you would have a national tender trading terms—

Mr Harker: Correct.

Ms PEASE:—with a grower that just grows?

Mr Harker: Yes. They are a supplier. In our system, someone is a supplier of goods to Woolworths. They could be someone who grows the product themselves. They could be someone who grows the product and sometimes gets some product from someone else but they are a supplier of goods to us and they are covered by—

Ms PEASE: We have gone down that path about the aggregator. I understand that. What I am trying to determine is: for those people who are just growing and dealing directly and it is their own produce—and you have indicated that that is the case—if they have an issue with Woolworths, where do they go to with a complaint?

Mr Harker: That would be the exact same as any supplier to Woolworths, which is that we would hope they would raise the issue with the category team and have it resolved—

Ms PEASE: With who, sorry?

Mr Harker: The category team, the person managing the category. There are obviously points of escalation above that with more senior people. Ultimately, I would love them, if they did not feel comfortable to talk to anyone else in my team, to come and talk to me about it. However, if they felt uncomfortable raising it directly with Woolworths then their recourse is to the code arbiter. They can have either a formal complaint or an informal conversation with them about their issue and their challenge and whatever else and seek guidance around what rights they would have and whether they would like to pursue things or the like. Of course, anyone can go directly to the ACCC if they would like to, based on breaches of the code. We also have an anonymous Speak Up service that someone could contact.

We go to great endeavours at every single supplier function that we have. I run two a year and the commercial directors that have parts of the portfolio also run two a year, so we would be interacting in those forums at least four times a year with suppliers. We put all of those details up and make them available so that they understand all of the avenues they have to raise a concern, issue, problem or opportunity.

Ms PEASE: As you would know, there are a number of inquiries going on around Australia at the moment with regard to this matter of supermarket pricing et cetera and also in terms of the impact it is having on our producers. Have you been able to listen to or review any of the transcripts or watch any of the live—

Mr Harker: I have. I would not have watched every single one of them. Obviously, there was the Senate inquiry and I am well aware of the submissions made there. I have seen and heard some of the submissions here and I have seen summaries from the team on submissions here.

Ms PEASE: What I am interested in, in particular, is the submissions made to our inquiry here in Queensland. You would be, like me, a bit surprised and disappointed to hear how some of our horticultural providers are feeling at this point in time. Have you reached out to any of those providers at this point?

Mr Harker: Our direct suppliers to us?

Ms PEASE: Yes.

Mr Harker: I think the team have had conversations with them. I myself have not yet, but none of our direct suppliers seem to have made a submission so it would not prompt us to do that.

Ms PEASE: Are you aware of the comments that have been made with regard to those submissions? We have heard that there are delays of up to 150 days for payment.

Mr Harker: From our perspective, that is not the case. Our fruit and vegetable suppliers are paid between seven and 14 days. When I read and hear some of the submissions—and I am not denying the experience that people are sharing—I struggle to see our business being described in what they are describing. I do not take away from the fact that that might be their experience in the market, but when I hear things and see things like that I can categorically say that it is not true. We pay between seven and 14 days and we are one of the top four companies in this country for paying on time, as independently audited. I do not see us reflected in some of the comments like that.

Ms PEASE: My electorate of Lytton is made up of a predominantly older demographic. As you can be aware, they are really struggling at this point in time with cost-of-living pressures. They have raised with me the payout figure of the CEO. How can that be justified to those pensioners who are struggling to buy milk or a loaf of bread or meat or fresh fruit when they see that your CEO is getting a very generous payout?

Mr Harker: I cannot comment in terms that that is a situation between the CEO and the board about how they make those arrangements. What I can say is that there are a large number of older retirees in this country and people depending on their superannuation who depend on us making a profit so that they get their dividend. There are something like 30,000 retirees in this country who rely on Woolworths providing them with a dividend and also superannuation funds—

Ms PEASE: I can tell you about the people I am talking about. Unfortunately, they are not in that category. As I have said, they have a fixed income and they are dependent on that. It is very difficult to justify that payout. I do not think there is any way it could actually be justified, particularly when I have elderly constituents who are unable to afford to go shopping.

CHAIR: I believe that the member for Mount Ommaney has a follow-up question to one asked by the member for Lytton and then we will move to the deputy chair.

Ms PUGH: With regard to the payment terms of seven to 14 days, are your payment terms 30 days and you pay early or is seven to 14 days your standard?

Mr Harker: For fruit and vegetables, seven to 14 days would be the standard.

Ms PUGH: I am assuming that is a direct contract relationship between yourself and the supplier. Could we have a situation where, if a third party is involved in sourcing that product for Woolworths, they could be the point of delay? Do you have oversight over their payment terms to your suppliers?

Mr Harker: No. As I tried to explain, that relationship between them is a relationship between them. It is governed by the horticulture code. That would not stand in there and suggest that they take the action that they have for remedy on that.

Ms PUGH: Somebody supplying Woolworths could still be seeing those delayed payment terms, albeit not because of Woolworths paying them late?

Mr Harker: I do not know, but it certainly would not be because of us.

Ms PUGH: Absolutely.

Ms LEAHY: The member for Gympie talked about the cost pressures on the sector in relation to growers and retailers. In relation to things like energy and payroll tax, are you seeing increased costs? Some of these are large growers as well who would be paying payroll tax. Are some of them coming to you and saying, 'We are finding that we have these increases in energy costs and payroll tax and we need to renegotiate the supply arrangements'?

Mr Harker: Our supply base holistically, including packaged goods, have had—I think we talked about the fact that we have been dealing with five times the level of cost increase requests that we ever deal with, which the team have managed. I think there has been a global phenomenon, really, around pressure in the supply chain, meaning that people are coming and talking about their cost of goods, citing global shipping pressures, commodities prices, electricity and the like as the cause of them needing to be paid more for their goods.

Ms LEAHY: Are they citing labour costs? We heard from the Brisbane Markets that for some of the growers to actually harvest often they have to pay double time to get that into the system.

Mr Harker: No-one has raised it directly. I know if you listen to some of the industry associations they would talk about access to labour as being a challenge, but it has not been raised directly with us as the primary cause. I imagine some people are—I know it was a big issue during COVID, trying to find people to work, obviously, in a very critical part of the supply chain. Yes, I am aware of the fact that access to labour is sometimes a challenge for the industry.

Ms LEAHY: What about, as a retailer, increased energy costs? Are there any differences when comparing Queensland to other states?

Mr Harker: I do not have the information on that. Energy is managed by our team that look after that. I have not heard anything differently from suppliers referencing various states of Australia. They talk in general terms. They are not required to substantiate or give us the detail of any claims they make so they generally talk at a much higher level.

Ms LEAHY: As a retailer, would you be able to give the committee maybe some breakdown, on a state-by-state basis, of your energy costs?

Mr Harker: I can take that on notice. I do not have the data. I do know that, through our investments, we have mostly mitigated rises in energy through efficiencies. We have been looking at refrigeration in our stores, which is a big cause of it—putting doors on fridges. We have been looking at when things run and putting in solar. We have done a lot of things internally to try to mitigate energy costs. I am happy to take that question on notice.

Ms LEAHY: It would be interesting to have some comparison in your stores. In relation to packaging—

CHAIR: Sorry, you are committing to take—

Mr Harker: I said I would take it on notice and talk to the respective teams to see if we have any—

CHAIR: In terms of energy prices in Queensland.

Mr Harker: It was the comparison of energy prices across the state. I do not know if that is readily available, but I will go back and ask the team that manage that.

Ms LEAHY: In relation to packaging, too, because packaging for growers changes as well. Do they raise that issue and do you find that that is a contributing cost? I know that we have had a lot of shifts from plastic packaging to other more sustainable packaging as well.

Mr Harker: Packaging comes up in terms of packaging costs. I know that a number of our suppliers have tried to move to more sustainable packaging and we have agreed to pay them more for the packaging. It is an ongoing conversation about that in our business. Obviously a large proportion of our fruit and veg, for example, is sold loose in store, but some of it is pre-packed. We replaced plastic punnets with cardboard punnets, but ultimately there is still a flow wrap. It really is an interesting space where you try to balance food waste with plastic removal because often it is there for a very good reason and the product lasts for longer. However, consumers are concerned with the amount of plastic around so we try to get the right balance there.

CHAIR: Mr Harker, going back to the specs for a moment, how much notice does Woolworths give if the specs change for a particular item?

Mr Harker: The specification change is normally driven by our suppliers contacting us and talking about what they are experiencing and asking whether they can have a variation to the specification. It is actually driven by what people are experiencing and a conversation they have with us versus us reviewing our standard specs and making changes.

CHAIR: Does it ever happen in reverse?

Mr Harker: I genuinely do not know. If consumer expectations have changed dramatically over a period of time it may have, but I cannot recall an instance of it happening that way. It is normally driven by, 'Hey, we have this problem. We have more dimples. We have had an issue with sun—we have more sunburn, more russet on our apples, so can you accept a variation that means we can have more russet on our apples?' That is normally the conversation. It is normally initiated that way.

CHAIR: The committee has heard from a number of growers, both on record and then just general conversations as members of parliament away from the committee, that there are tactics used by the big supermarkets to change the specification which would mean that the 15 pallets that have been already packed need to be reassessed and packed again, and that is coming about as a form of retribution. Are there—

Mr Harker: That would not happen.

CHAIR: Let me finish.

Mr Harker: Sorry, I was just—

CHAIR: Are there within the industry, to your knowledge, tactics that are used against farmers in forms of retribution for not negotiating at a more appropriate price?

Mr Harker: No, and what you cited there as an example is certainly not something that we would do.

CHAIR: So you have no knowledge of manipulation of the market in terms of putting forward a volume to be directly supplied by growers for that to then change? Let's say, as was said, the supermarket said, 'We want 10,000 tonne,' and then they come to the supplier and say, 'Actually, we only want 7,000 now.' That 3,000 goes to the market at a reduced rate and supermarkets then come in and purchase that product at a reduced rate.

Mr Harker: No, I am not aware of that happening. If I was aware of that, I would have to take action because that would be behaviour that we would not accept.

CHAIR: Who does the negotiation around the price of goods? I imagine that Woolworths employs—

Mr Harker: For fruit and vegetables?

CHAIR: For fruit and vegetables.

Mr Harker: There are buyers that negotiate the price of fruit and vegetables.

CHAIR: Are there people internally within Woolworths who negotiate with suppliers how much they will pay for produce?

Mr Harker: The buyers negotiate the price that we will pay based on the prevailing market price, yes.

CHAIR: Within the organisation, is there an internal review system with regard to the negotiation practices? We think about when you have call centres. It is recorded and then the higher-ups will listen to it and determine whether or not they can do better in terms of calling. Who assesses and reviews the quality and the strategy of the buyers within the organisation?

Mr Harker: Their line leaders would be responsible for working out what is going on with their team.

CHAIR: Mr Harker, would you accept that, whilst actions may not be illegal or outside of the code, there is every possibility that unethical forms of negotiation are occurring within the industry?

Mr Harker: I can only speak to Woolworths and the lengths we go to to make sure that does not happen. Can I ever say with rock-solid certainty, when I have a large team, that there is no-one in the team that has ever done anything wrong? No, I would be silly to say that. But am I comfortable with the type of rigour and training and review and stuff that we put across our teams to try to make sure that cannot happen? Yes. Can we always improve? Yes. Do I take on board feedback from people like the independent reviewer and our code arbiter about where there would be opportunities

to tighten up procedure and process? Absolutely. They would not be things that we would countenance amongst our team members. If anyone has an example of Woolworths indulging in any of that conduct, I would love them to come forward and I will deal with it.

CHAIR: Mr Harker, noting that, do you accept that there is a large portion of Queensland growers, farmers across the board, who are saying that they feel as though they are pressured by both Coles and Woolworths to drop their price or they will not be able to sell their produce? Do you accept that this is a reality that is occurring in Queensland, that farmers are expressing this about both Coles and Woolworths?

Mr Harker: When it comes to Woolworths, no. I did not agree that that is a practice that is occurring, and if anyone has an example of that type of behaviour in their business I would love to hear about it.

CHAIR: Do you agree it is a reality that farmers are expressing that this is occurring in terms of unsavoury tactics and price manipulation of the market, and they are saying that Woolworths is partaking in these matters?

Mr Harker: No, I am not accepting that. I am accepting that I have seen submissions from some growers who talk about these matters and none of them have explicitly called out and said that Woolworths is partaking in that, from what I can see.

CHAIR: Do you accept that farmers have told members of this committee that they are too scared for their livelihoods to go on record and talk about the tactics that have been pushed upon them by your organisation?

Mr Harker: I do not know how I can accept something that I cannot know other than you, as members of the parliament, are telling me it is occurring. I am listening to you and I am hearing that you are saying it is occurring, if that is what you would like me to agree to, having not been one of the parties to say it categorically happened. What I can say is that we treat that type of behaviour quite seriously, and I would absolutely love, if there is an example of that happening in Woolworths, that it came to the fore so that I can address the issue.

CHAIR: One of the issues is that farmers do not believe they can have confidence in the organisations to be able to put that forward without retribution.

Mr Harker: We put tremendous steps in place to ensure people can do that without fear of retribution. They can go and talk to the code arbiter and do it in an anonymous way whereby the code arbiter will not even reveal who came to speak to them about these matters. I am more than happy to sit down with anyone and be held to account as to whether any retribution actually did or did not happen as a result of them coming and talking to me. I am genuinely open to hearing from anyone about any challenge or problem they have dealing with Woolworths, and I will take it extremely seriously. I personally will make sure there is no retribution for the making of a complaint. Whether the complaint is proven to be true or untrue, there will be no commercial retribution.

CHAIR: As there is a culture within Queensland where farmers are saying that there are unsavoury tactics being put forward by retailers within the industry, do you believe that Woolworths can be a positive agent for change of culture moving forward?

Mr Harker: I can only talk to the culture that we would like to have in terms of how we conduct business dealings. If that means that other people lift their game, that would be great and I would encourage it. I am really pleased to see that things like our integrity policy—that is intended to give people confidence around retribution—are now a suggestion put forward in the code review, that all retailers should have to have something similar in place. Anywhere we can be a force to good, I would love us to play that role. I genuinely believe that we are a very good actor and that people turn up to work to do their best job every day, without trying to do anything wrong. If people have had a poor experience, as I said, I would love to hear about that poor experience. We will take the matter very seriously and we will investigate it. If they are doing business with us, as a result of raising it they will not experience any retribution from raising the complaint.

CHAIR: With regard to one of your large farming suppliers, if Woolworths were to say, 'We are no longer engaging with you,' and then Coles were to say, 'We are no longer engaging with you,' are there enough retailers in the market for that farmer to then sell to? For instance, if Coles and Woolies disappear, is there enough for those large farms—

Ms LEAHY: I do not think that is in the terms of reference.

CHAIR: Excuse me. This has been put forward by one of the witnesses in the Bundaberg hearing. They have said that farmers are encouraged to become bigger and bigger to a point where in reality they could only supply to either Coles or Woolworths to exist.

Mr Harker: I genuinely do not understand the question in terms of we do not sit there telling someone to become bigger and bigger. That is their commercial decision around their organisation and the success of their organisation. I am sorry; I genuinely do not understand.

CHAIR: It has just been put forward by farmers that they believe they are encouraged by large supermarkets to become bigger farms to supply directly and therefore that gives greater control over to the large supermarkets. It is a question. Do you agree with what a witness told us, that that is a tactic or not—just a yes or no?

Mr Harker: No, I do not agree, and I genuinely do not actually understand what the inference is. I do not agree with what is being proposed.

CHAIR: The inference is that they become so big that they can only sell to Coles and Woolworths; therefore, Coles and Woolworths get to negotiate down the price. That is the inference that was put forward. But you have said—

Mr Harker: No. That is an absolute no.

Ms PEASE: I am going to go back to the aggregator question again. It is really important. It is something I am trying to understand, because we have heard so much from farmers that they do not feel they have a voice. We have heard that they can come to you if they just have a supply agreement with you, that they can come and make a complaint with you. What I am trying to understand, then, is: if there is a producer who is dealing with an aggregator, they do not have any recourse to make a complaint directly with Woolworths; is that correct?

Mr Harker: There is no formal mechanism because we do not have a relationship, but if they had pursued their remedies under the hort code and they thought they had someone who was blatantly in breach of the hort code, they can come and talk to us about it if someone in our supply chain is behaving that way. As I said, in our general terms and conditions we expect all of our suppliers to comply with the law and all regulations. If I have a supplier that is not, I would love to know about it. I would also encourage them to go and talk to their peak industry body, who might support them in the process of raising a horticulture code complaint.

Ms PEASE: Thank you. I appreciate that. That means you would encourage them to go to the aggregator—their overseer—and you would be interested to hear from them directly if they are not? Have any suppliers come to you directly?

Mr Harker: No, they have not. What I would do if anyone has experienced that is encourage them to understand all of the remedies that are available to them under the code that applies to them. If they need to understand that, they should seek the advice of their peak industry body that will be able to help them.

If having gone through all that process it has been proven that a person in our supply chain is breaching that code and it has not been addressed to our satisfaction and there is not a process put in place to guarantee that they are going to make sure they comply in the future—because it may not have been deliberate; it could have been a one-off, I do not know—then if we have a supplier in our business that is not honouring legislation and regulation, including compliance with the horticulture act, we would take that very, very seriously with that supplier and have conversations with them about what they are going to do to remedy the situation. Ultimately, if we lost complete confidence in their ability to do that, we might have a conversation with them about not supplying us anymore.

Ms PEASE: I guess that comes back to the question that I asked at the beginning of today's hearing. It was around the aggregates. For some of those smaller suppliers who deal directly with those larger farm groups that are aggregates themselves, what we have heard is that these suppliers believe they are dealing directly with Woolworths and—

Mr Harker: I do not know why, when they are not getting payment from us. They do not get an invoice from us. They do not get a remittance from us. We do not pay them. I am genuinely curious as to why they feel they are dealing with someone who does not give them a purchase order and does not pay them for their goods.

Ms PEASE: Given you have heard that and it has been provided to you, and also you have suppliers and the aggregates are suppliers and they are meant to adhere to your code of conduct with your company, you mentioned that you undertake audits. How often do you do those audits on your suppliers?

Mr Harker: The audits are done independently. They are managed by a completely different team. Those audits are done periodically. As I said before, I was happy to take on notice how the Horticulture Code of Conduct features in the audits that are done on our suppliers.

Ms PEASE: I think you might have already answered this, but what would happen if it came up on an audit of one of these—

Ms LEAHY: Point of order, Mr Chair: if we have already answered the question, we have answered the question. There is a fair bit of repetition here.

CHAIR: We are coming to a point of closure. Member for Lytton, if you are able to come to the question, I will allow Mr Harker some leniency as to whether or not he believes he has answered the question and how he wishes to answer. We will probably then need to move to another line of questioning.

Ms PEASE: Thank you. If you undertook an audit of an aggregate supplier and found them to be wanting, what would happen to them?

Mr Harker: It would depend on what they were wanting on. There is a process that you would go to: what was the breach; what was the nature of the breach; how systemic was the breach; was it casual, as in they made a mistake, or was it deliberate? There are actually protections for them that I cannot summarily end someone's supply arrangement based on an infringement. There is actually a whole process that is gone through to understand the gravity, the frequency—

Ms PEASE: And would there be a process for compensation for the supplier if they were found in breach?

Mr Harker: There is a remedy under the horticulture code about how they would be able to access remediation from the party that was proven to be guilty. That sits inside that code, and ultimately the ACCC can make determinations because it is covered by that.

Ms PEASE: Thank you.

Ms PUGH: From your evidence today, Mr Harker, it seems fairly clear that there is a bit of a lack of oversight, I suppose, from Woolworths's end on the behaviour that agents may or may not be employing. From the committee's perspective, it is concerning to hear that this blackspot exists, where none of us really have oversight of what may or may not be happening in that supply chain where there is an agent or a buyer or let's just say a third party involved. In your view, what needs to happen in that supply chain so that Woolworths can be confident to say that anybody who is getting food into your supermarket, whether directly or indirectly, is being dealt with fairly? What changes need to happen for that to be the case?

Mr Harker: These matters are covered by regulation, where these protections and the like are put in place. We want to deal with ethical people who are treating their supply chain well, which is why on core issues there is a higher degree of interrogation when it comes to modern slavery, child labour and all those types of things.

I think when it comes to the topic of the Horticulture Code of Conduct, again, to help shine a light on whether or not there is an issue, it would be price transparency that we have spoken about that actually helps people understand whether they have an issue or they do not have an issue in terms of the payments they are getting from the people they are providing to, as well as education about their rights. As I said, I am happy to take on notice what we do or do not specifically do around the Horticulture Code of Conduct and the audits that we do with suppliers. The horticulture code is reviewed by the people responsible. There are peak industry bodies that can feed into those reviews if they genuinely do not believe the code is working for them how they would like it to. There would be every opportunity for them to argue for it to be changed. As I said, if anyone has any concerns with regard to how things manifest in our business, I am more than happy to hear from them.

Ms PUGH: Finally, on a totally different tack—I am happy for you to take it on notice as you may not have it in front of you—can you outline for the committee what I suspect is a growth in market share over the last 30 years for the Woolworths Group? I suspect you would also have the same information about the Coles Group.

Mr Harker: We will take it on notice and see what we can provide. There is no way we could provide it over 30 years because the market is completely different and there are different people who measure it and so on and so forth. I am happy to take on notice market share for as far back as we can reasonably go, where it makes sense that the market is the same market.

Ms PUGH: Thank you.

CHAIR: That concludes this hearing. Thank you to everyone who has participated today, from the media to the secretariat, counsel assisting and the parliamentary staff who found a TV for the Coles witnesses. Gentlemen, we thank you for coming in today and for being so easy to work with in regard to the committee in the process leading up to today. Thank you to our Hansard reporters. The secretariat will be supplying questions on notice and the answers will need to be provided by 17 May. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

The committee adjourned at 4.52 pm.