



Response to Draft Food Regulation 2025

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About Freshmark

Freshmark is the trading name of the NSW Chamber of Fresh Produce Limited, which is dedicated to improving the central market system, helping wholesalers, growers, retailers, and the fresh produce sector achieve and maintain profitability. Freshmark is based in the heart of Sydney Markets, which is the largest fresh fruit and vegetable wholesale market in Australia and one of the largest in the world transacting approximately \$3 billion in produce per annum.

This submission represents the specific views of Freshmark and reflects our policy positions and the input of our members and industry stakeholders in NSW. Freshmark has also contributed to and broadly supports a submission developed by Fresh Markets Australia, our national industry body.

About Sydney Markets

Sydney Markets is Australia's leading produce market, receiving and distributing over 40% of fresh produce grown nationally. The markets are the price barometer for fruit, vegetables and flowers in Australia.

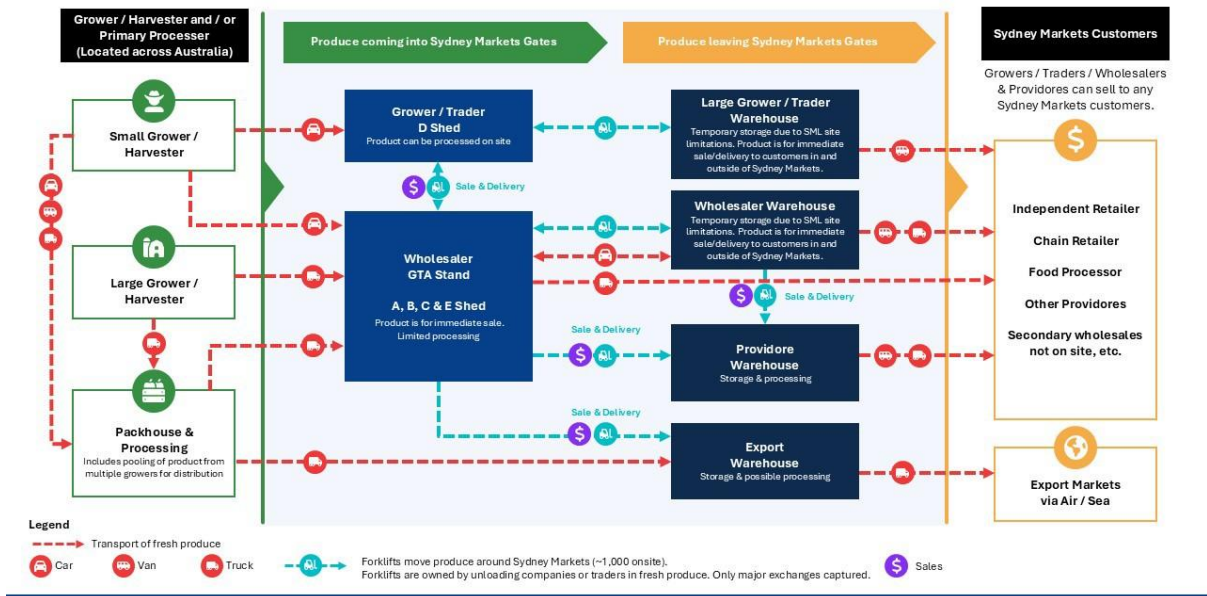
Sydney Produce Market, Sydney Flower Market and Sydney Growers Market comprise more than 700 businesses that sell fresh fruit, vegetables and cut flowers supplied by over 20,000 local and interstate growers. All grades of produce are sold at Sydney Markets.

Sydney Markets service independent retailers, supermarket chains, florists, providores, exporters, food processors, restaurants, caterers and retail markets.

MARKET FACTS & STATISTICS

- Sydney Markets at Flemington spans 42 hectares
- 24 hours a day, seven days a week operation.
- An estimated 2,500,000 tonnes of fresh fruit and vegetables sold through Sydney Produce Market and Sydney Growers Market annually.
- Approximately 106 Wholesalers, 260 Produce Growers, 180 Flower Growers-Sellers, 60 Providores, 6 Exporters and over 130 supporting businesses are located on site at Flemington.
- Approximately 1,500 traders operate within Paddy's Retail markets at Flemington and Haymarket.
- 500 semi-trailers and trucks unload at the markets each night.
- More than 5,000 people work in businesses at Sydney Markets.

Sydney Central Market Operations



As the graphic above demonstrates, the Sydney Markets ecosystem is complex and nuanced. Operations within the Sydney Markets framework can all be categorised as being beyond the early stage of processing, which is critical to understanding the key position of our submission.

A larger version of this graphic is included at Appendix C for clarity and easier reading.

Our broad position

The draft Food Regulation 2025 as it currently stands will have a severe negative impact on businesses operating across almost the full breadth of the berry, melon and leafy vegetables supply chains. The draft Food Regulation 2025 sets up a licensing scheme which differs significantly from those proposed by other states and appears to be misaligned with the intentions of the FSANZ Primary Production and Processing Standards relating to berry, melon, and leafy vegetable production and processing (FSANZ PPP Standards), which extends only to early-stage processors and does not include wholesalers.

Our primary and most strident recommendation is that wholesalers NOT be captured by draft Food Regulation 2025. Their inclusion is not aligned with the intent of the FSANZ PPP Standards.

Overview

Food, and especially fresh produce, is possibly the most important purchase for NSW consumers. Our members – the wholesalers, growers, transporters, packers, providores and processors who bring fresh produce to retailers, hospitality and consumers – play a critical role in the fresh produce supply chain. Compliance and red tape are among the biggest challenges our members and our industry face, and one of the sector’s biggest challenges is that the codes under which industry participants operate in various parts of the supply chain or jurisdictions are not always consistently or fairly applied.

The draft Food Regulation 2025 is a powerful example of this, with NSW businesses on a path to a much higher compliance burden and associated cost than the equivalent industry members in VIC, SA and WA, noting QLD has yet to make publicly available their position at the time of writing this submission.

Despite our critical position as the representative body of the sector in NSW, Freshmark has been afforded limited opportunity and little time to engage in appropriate consultation on draft Food Regulation 2025. Given the vast potential impact of the draft Food Regulation 2025, we have sought to provide as detailed a response as possible and likewise have had several positive engagements in recent weeks with relevant personnel at DPIRD. We remain deeply concerned that industry has not had sufficient time to fully digest and respond to the draft. We note also that while we have been offered reassurance around the approaches to be taken to implement some elements of the draft Food Regulation 2025, those assurances are not captured in the wording of the current draft and thus remain areas of concern.

Overall, we argue that the draft Food Regulation 2025 is in contrast with FSANZ’s intent to capture only the early stage of the supply chain.

The draft Food Regulation 2025 appears to have been adapted from those of other industries without consideration for the unique challenges and intricacies of the fresh produce sector, specifically within the Sydney Markets precinct. This approach by the NSW Food Authority demonstrates a lack of operational intelligence and understanding of the extremely deleterious impacts that may follow including the exit from industry of businesses which are already operating on very narrow margins.

The draft Food Regulation 2025 establishes high licensing fees for businesses dealing in a very narrow sector of the fresh produce industry, with berries, leafy vegetables and melons making up a very small proportion of overall production volume in Australia, and an even smaller proportion of the volume of most Sydney Markets businesses.

Understanding the sector

Berries, leafy vegetables and melons accounted for 592,782 out of 6,453,481 tonnes in production across Australia in 2022-2023.¹

This is about 9.18% of total fresh fruit and vegetable production across the whole of Australia, which is then distributed across six states, two territories and international export markets.

Assuming 40% of fresh produce grown nationally enters through Sydney Markets, this equates to 237,112 tonnes of berries, leafy vegetables and melons collectively. This in turn equates to 9.4% of the total tonnage received into Sydney Markets, per annum. This begs the question as to why our

¹ P19, [2022/23 Australian Horticulture Statistics Handbook](#)

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industry must pay the same fees and charges as other regulated industries, where those charges encompass 100% of industry production, such as dairy, seafood, meat, poultry and eggs. The draft Food Regulation 2025 and its associated fees and compliance requirements are overburdening the fresh produce industry, especially wholesalers who operate within Sydney Markets.

"It's another cost that's got to be borne by Sydney Market businesses which cannot be passed on because Sydney Markets operate in a true market environment where supply/demand often drives price. For example – if a person pays for produce or any item with a credit card fee they get charged a surcharge. We don't have the luxury of passing these licence fees and compliance costs on to the customer if we want to remain competitive. It's just a cost.

The compliance burden experienced by fresh produce participants is just getting larger and larger and regulations don't take into consideration the manpower required to implement them. This disadvantages small businesses and makes it harder to remain sustainable/financially viable. For larger businesses, if they choose to pass the cost on, it makes them uncompetitive with other states who are trying to sell to the same customers."

Sydney Markets Wholesaler and Warehouse owner.

While we call strongly for the draft Food Regulation 2025 to include only early-stage processing as intended by the FSANZ PPP Standards, we provide insights and recommendations in response to the draft as written. If wholesalers are intended to be captured, there are numerous issues with the draft Food Regulation 2025 which must be addressed and are explored in this submission. Further, the approach to licensing of transporters requires significant revision and this too is covered in this submission.

In preparing this response, Freshmark has engaged with NSW Farmers, Fresh Markets Australia and NatRoads and our views are in broad alignment.

Inconsistency

Inconsistency between states

For a full comparison of state approaches, see Appendices A and B.

FSANZ PPP Standards

While the FSANZ PPP Standards were developed nationally, each state is responsible to engage stakeholders, develop and manage their own implementation process.

This has led to a very uneven approach with the draft Food Regulation 2025 seeking to broaden the interpretation of "processors" which underpins the national FSANZ PPP Standards, extending compliance obligations to wholesalers. The FSANZ PPP Standards focus on managing food safety risks at the earliest stages of the supply chain. Notably, the FSANZ DRIS states that extending the scope beyond growers and primary processors could introduce unnecessary duplication without corresponding food safety benefits.

Apart from NSW - VIC, SA and WA have proposed regulations which do not reach as far along the supply chain as the wholesaler, noting QLD has yet to make publicly available their position.

NSW has taken a different approach by altering the language used in the FSANZ PPP Standards from primary horticulture producer and primary horticulture processor to the generic name of 'plant products business'. This has enabled NSW to broaden the scope of their regulatory reach to include the entire supply chain (e.g. growers, packhouse, wholesalers and providers). This is not in alignment with the intention of the FSANZ PPP Standards, which was intended to cover early-stage processing, evidenced by the definition of 'primary' being 'first in order of time or development'.²

This creates an instant and extreme uneven playing field that places NSW businesses at a huge commercial disadvantage, as they face licensing fees at almost every link in their supply chain while like-businesses in other states do not. Potential negative impacts include:

1. Adverse impact to NSW economy as plant products businesses exit the NSW industry or move interstate to avoid fees.
2. Potential reduction in competition for the fresh produce sector as the independent sector is less likely to remain financially sustainable with constantly increasing regulatory costs. Note that only last year did the ACCC Supermarkets Inquiry state that increased competition is vital to assist in controlling the cost-of-living crisis and ensuring a vibrant and sustainable future for the fresh produce industry.
3. Potential food security issues as businesses become reluctant to operate in NSW - the most densely populated state.
4. Potential of driving prices up due to food supply issues in an economic and political environment where cost of living is crucial to government and the public alike. Feedback from our members indicates the inclusion in the draft Food Regulation 2025 of the entire supply chain could increase prices to the consumer by up to 20%.

It is Freshmark's strong view that the draft Food Regulation 2025 should only cover up to primary processing. That is grower/harvester up to the packhouse. It is our view that this was the intent of FSANZ, as recognised by other states.

NSW has also included transport as an activity in the draft Food Regulation 2025, which attracts a licensing fee of \$425 per annum per vehicle. In VIC, no such fees apply to plant product vehicles. In

² ['Primary' Definition & Meaning - Merriam-Webster](#) downloaded 30 January 2025 at 6.21pm.

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WA, transport vehicles associated with a licensed food business are included as part of the food business licence. This misalignment of approaches places NSW transport businesses and plants and products businesses with transport vehicles at a commercial and competitive disadvantage as demonstrated later in the submission under the section titled Transport, as well as several case studies included in this submission.

Inconsistencies with other streams in the draft Food Regulation 2025

The proposed pricing structure under the revised draft Food Regulation 2025 splits berries, leafy vegetables and melons into three separate categories, rather than treating them as one category, as is the case for other streams in the FSANZ PPP Standards (for example, dairy is simply dairy, not separate categories for milk, cheese and other products).

This exacerbates the cost impact three-fold for those businesses operating across all three categories. While the intent may be to treat all three product lines as a single stream for the purpose of licensing, this intent is not captured by the current wording of the draft Food Regulation 2025.

Inconsistencies between the FSANZ PPP Standards and the draft Food Regulation 2025

There is a difference between the FSANZ PPP Standards and the proposed approach of NSW DPIRD to the draft Food Regulation 2025.

The FSANZ PPP Standards do not mention or define premise. The language used is business, enterprise or activity. Under the FSANZ PPP Standards, the number of premises is irrelevant. Under the draft Food Regulation 2025, a single business could find itself facing a licensing fee of more than \$25,000 if it operates five premises with 25 FTE staff at each, as is the case for some operators in the industry.

One-size-fits-all approach

The proposed draft Food Regulation 2025 for berries, melons and leafy vegetables is modelled on existing food regulation streams which cover a broader range of industries like seafood and meat. This existing legislation is designed for whole-of-industry, end-to-end, high-risk sectors. The proposed plant products regulation fails to recognise the distinctly different risk profiles of the different sectors.

Freshmark has received confirmation that the NSW Food Authority did indeed adopt largely the same approach for fresh produce as other streams in the draft Food Regulation 2025 with a goal of regulatory consistency, but without consideration of the differing risk profiles.

"The inherent risk profiles are completely different. Seafood starts with an inherently different risk profile to a strawberry or a lettuce.

Would you eat an oyster that's been left out on the bench for six hours? You'd be silly to. Would you eat a strawberry that has? Yes! Which one's likely to put you in hospital? It's not the strawberry. This is the thing. It's a ridiculous one size fits all approach and that will not change a single food safety outcome."

National fresh produce business operator.

Unreasonable cost and broad impact

Who will be affected

Freshmark is deeply concerned about the breadth of the draft Food Regulation 2025, which will capture businesses across the supply chain and touch most businesses in Sydney Markets, even though berries, leafy vegetables and melons represent only 9.4% of overall produce volume received.

In other states the regulations will extend either to growers only or to growers and early-stage processors, generally not extending beyond the packhouse. Based on the current NSW draft it seems the draft Food Regulation 2025 may capture:

- Growers
- Packhouses
- Warehouses
- Wholesalers
- Providores
- Transporters

Freshmark conducted a survey of about 440 businesses consisting of wholesalers, grower/traders, providores and transport operators located within Sydney Markets.

Based on our survey results, most businesses are involved in the proposed regulated activities in one or more of the lines, triggering the compliance obligations and associated fees of the draft Food Regulation 2025 even though in some cases the regulated lines represent as little as 1% of their total product volume. Many of the businesses operating in Sydney Markets deal in more than one regulated line, still at very low volume, meaning their licensing fees could be doubled or tripled, and further affected if their business activities take place over multiple premises.

Businesses operating vehicles that transport fresh produce also face steep licensing fees per vehicle, even where the load transported includes a small volume of the regulated lines. The draft Food Regulation 2025 fails to acknowledge that vehicles do not transport single lines of produce at a time. In fact the 500 trucks that enter and leave Sydney Markets each day will almost certainly carry mixed loads, and may include one or more of the regulated lines. The volume of berries, leafy vegetables and melons is 9.4% of overall volume entering and leaving Sydney Markets and is further fragmented across many businesses through distribution channels.

EXAMPLE

A grower, packer, pre-packer and wholesaler based at Sydney Markets deals in a very small volume of berries, melons, and leafy vegetables, estimated to comprise at most 1% of total business volume. This business already holds multiple certifications and accreditations and already spends just over \$262,000 per year on food safety. This business could face over \$15,000 in additional licensing costs under the draft Food Regulation 2025 – for produce lines that represent an exceptionally small proportion of their operation. Further investment in food safety may be required if this business's GFSI certification is not recognised by the draft Food Regulation 2025 because it may be subject to NSW Food Authority Inspections and Audits of its food safety programs.

(See case study 7 at Appendix D for full details)

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Existing burden of compliance

Most businesses in the fresh produce sector already face an extreme compliance burden with an attendant high cost.

The cost of meeting the requirements of the draft Food Regulation 2025 will be in addition to other regulatory compliance costs including:

- Internationally recognised Food Safety Certification GFSI schemes
- HACCP
- HARPS
- Horticulture Code of Conduct
- WHS
- Modern slavery
- Existing NSW food safety licensing schemes
- Vehicle and facility registration and licensing
- ESG regulations and reporting

Freshmark has had detailed discussions with several businesses operating in Sydney Markets to verify their existing licence and audit fees *relating only* food safety schemes. The existing licensing costs range from \$3,000 to \$12,300 for a medium-sized business. These fees are for all produce lines in their supply chain.

We have also calculated the financial impact of the draft Food Regulation 2025 on the same businesses. The additional licencing costs are 56-289% higher than those already being paid by businesses (excluding transport businesses) – which is very hard to justify to Sydney Market participants involved in one or more of the three regulated lines, especially considering these lines represents 9.4% of produce entering and leaving Sydney Markets.

EXAMPLE

A providore business based out of Sydney Markets utilises berries, melons and leafy vegetables along with other produce lines including meat, dairy, poultry and seafood which come into Sydney Markets to produce a variety of ready-made meals. Only 5-8% of business volume is in berries, melons and leafy vegetables. The business already spends nearly \$70,000 per year on food safety, including a NSW Food Licence and HACCP certification. This business could face close to \$9,000 in additional costs under the draft Food Regulation 2025 – for produce lines that represent only 5-8% of its business volume.

(See case study 1 at Appendix D for full details)

It is difficult for Freshmark to identify the value of the draft Food Regulation 2025 fees and charges. We accept that registration to enable tracking of industry participation may be useful but ongoing licensing appears to be a cost without a benefit, with the exception perhaps of the small number of businesses which are not already party to some other form of food safety certification or licensing. Given the already high overall compliance burden on the industry, the introduction of a new repeating cost is hard to justify.

Lack of recognition of GFSI certification

There is no acknowledgement or recognition of GFSI accreditation in the draft Food Regulation 2025, despite the fact that those businesses which already have such certification are held to very rigorous food safety standards, at significant expense.

The regulators have indicated a desire for efficiency and a balanced approach to fees, so it is disappointing that GFSI accreditation is not formally recognised in the draft Food Regulation 2025,

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especially since it represents a higher standard of food safety and traceability than that conferred by the FSANZ PPP Food Standards.

In the absence of GFSI accreditation recognition, businesses face additional cost burden without any material evidence of improvement in food safety. At a time when food security and supply chain resilience are critical priorities for Australia, the lack of recognition for GFSI accreditation in the draft Food Regulation 2025 is a clear missed opportunity to support the adoption of the highest food safety certification that is globally recognised, already adopted by many in the industry and recognised by the major retail chains as the preferred food safety scheme.

While DPIRD have stated on their website that GFSI certification will meet the requirements of the FSANZ PPP Standards, industry seeks clarification on what this means in practical terms. Freshmark has had conversations with DPIRD representatives which indicate that inspections of premises or an audit of a food safety program or proposed food safety program will not be required where GFSI certification is in place and the appropriate documentation provided to NSW Food Authority. GFSI-certified businesses are already outlaying initial audit costs that range from a few thousand to over 10 thousand dollars, depending on the size and complexity of the facilities. All schemes include ongoing audit and recertification fees. There should be no cost for GFSI certified businesses to be licensed under the Food Regulation 2025 apart from – at most – a nominal one-off registration fee of \$85.

A registration fee of \$85 would cover tracking and communication updates.

Freshmark recommends that GFSI accreditation is recognised in the draft Food Regulation 2025 and that certified businesses be required to pay a simple flat \$85 registration fee per year inclusive of licence fees.

Data for audits should be transferred via an automated API process (per the current project underway with Ag Victoria). NSW Food Authority must be able to accept the data transfer directly from the GFSI accreditation bodies (such as Freshcare or SQF) to avoid unnecessary time and cost burdens for all parties involved.

Wholesaler exclusion for those who hold produce for sale

A wholesaler's core activity is to receive, display, hold for sale and dispatch fresh produce. They typically do not alter the nature of the product while in their custody prior to sale and therefore do not perform the activities of washing, trimming, sorting, sanitising, combining harvested product of the same line, packing or transporting between primary processing premises. Whilst storage is listed as an activity, both the FSANZ PPP Standards and the draft Food Regulation 2025 do not define it. The activity of storage performed by the wholesaler is purely to hold product for sale, either in ambient or refrigerated environments.

Sydney Markets Limited, as the site operator, does not permit most product lines to be held on the wholesalers stand overnight in readiness for sale. Product is required to be moved to a suitable holding place before returning to the wholesalers display/dispatch area. This product is being "held" not "stored".

An example, whole seedless watermelons arrive at the market in 300kg cardboard holding bins. They are displayed for sale and then dispatched from the market in those same cardboard bins. The product is not altered in any way and is purely held for purpose of sale.

Freshmark strongly recommends that storage as a regulated activity should not apply where the produce has been held for sale and has not been altered in form by processing activities.

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Recommended approach if wholesalers are not exempt from the draft Food Regulation 2025

FSANZ PPP Standards were written to capture grower/harvesters and early processors as outlined at the start of our submission. If the NSW Food Authority intends for the draft Food Regulation 2025 to apply to the entire fresh produce supply chain, Freshmark strongly argues that the risk profile of wholesalers is vastly different to that of a plant products business performing processing activities.

Wholesalers receive, display, hold for sale (in ambient or refrigerated conditions) and dispatch at point of sale, typically without making any alterations to the product from receipt through to dispatch. The produce is not handled outside of its original packaging, meaning it is not touched, adjusted or altered in any way; yet the draft Food Regulation 2025 treats this part of the supply chain as though it carries the same risk as early-processing where produce is directly handled, often cut and washed, packed and transferred through stages before being secured in packaging for sale.

Other state food authority bodies recognise the difference in this risk profile and have adjusted their approach accordingly. For example, Western Australia acknowledges that wholesalers have an extremely low profile, and this is reflected in a lower fee. Those who are GFSI accredited are exempt from the fee entirely.

Beyond this, Freshmark questions the exclusion of retail from the draft Food Regulation 2025, and especially the exclusion of the supermarket distribution centre (DC) system. Essentially DCs operate in the same manner as a central market by the nature of the activities undertaken, which are receiving produce, hold for allocation and dispatch to the stage in the supply chain, which is their chain stores across the country. It should be noted that within the DC operation they do not alter the product on receipt. It is dispatched to stores, who then handle the produce for the purpose of display and sale to consumers.

More than 80% of produce consumed by Australian families is bought through the major chain stores so it is difficult to understand why wholesalers in the central market system, who perform the same function as DCs, are classified as processors because of storage, yet DCs are exempt. Wholesalers hold a product for sale and dispatch versus DCs who hold a product for allocation and dispatch.

Freshmark strongly recommends that storage as a regulated activity should not apply where the produce has been held for sale and has not been altered in form by processing activities.

Exception: Freshmark acknowledges there are a small number of wholesalers and secondary wholesalers (known as providores) who do perform the function of processing as the product is altered once received into the custody of the wholesaler/providore at Sydney Markets, before being sold in its altered form. Activities include washing, trimming, sorting, repackaging etc. We would understand the application of a fee in these cases, noting they are uncommon.

Freshmark submits that if NSW Food Authority intends to include wholesalers who fit the profile of performing processing activities (other than solely storage/hold for sale of an unaltered product) then the WA pricing structure should be used as a model.

Supplementary permissions for businesses who have existing NSW Food Authority Licences.

The current draft Food Regulation 2025 does not recognise businesses in the supply chain that have a NSW Food Licence under the existing regulation. For example, Sydney Markets has several providore and food processing business operating on site who have existing NSW Food Authority Licences. Their licences cover certain aspects of Part 7 Plant products food safety scheme, as well as other fresh produce industry schemes such as eggs, poultry, meat, seafood etc.

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Under the draft Food Regulation 2025 these businesses would be subject to further fees per line of product (e.g. berries, leafy vegetables and melons) if they engage in processing activities. This places an additional cost impost on these businesses when they are already subject to the same regulations in other industry sectors as they would be subject to in Part 7. Further, these businesses may have food safety schemes in place already and pay thousands of dollars in licence and audit costs plus the onerous costs of implementing the various food safety schemes they are governed by. To further complicate matters, some providores are also captured under a different food licensing regime related to food preparation services.

Freshmark strongly recommends that where businesses operating in Sydney Markets have an existing NSW Food Authority Licence, an additional permission is added to the licence without any further fees. We understand that this is already applied to other industries and so seek the same treatment.

Reliance on employee numbers

The pricing structures quoted (except for grower/harvester of berries and small grower/harvester of leafy vegetables and melons) for fees payable are subject to the number of staff working in the premise that performs the regulated activity, in the product line/s being regulated.

Using an FTE calculation mechanism to charge a licensing fee is problematic in this sector because:

- a. The availability and supply of produce is seasonal and variable. Sydney Markets receives produce from growing areas outside of NSW which have different growing cycles and growing periods, which are weather dependent. For example, leafy vegetables are grown for a longer period in Victoria due to its weather creating ideal growing conditions versus produce grown in NSW or QLD. This means overall staff numbers fluctuate in a way that is not always predictable or consistent.
- b. Most Sydney Market businesses deal in a variety of products, not just those regulated, and food handlers operating in a premise will often handle all product lines. It will be difficult for these businesses to determine the number of FTE food handlers involved in the regulated lines because produce lines are displayed or stored together (exception is Bananas) and therefore handled by multiple staff throughout the trading day. The accuracy of the calculation is further eroded because only 9.4% of all produce entering Sydney Markets is associated with these regulated lines - which means that most employees will have only a small level of exposure.
- c. The percentage of produce regulated is a small part of the volume a wholesaler/providore receives overall in NSW unless the business primarily deals in one of these produce lines, which does occur. This issue is further exacerbated when the wholesaler/providore has multiple premises where the regulated activity is performed for the product being licensed, because the FTE must be calculated for each premise, with the first tier being 0-5 FTE.

An additional point of significant concern around the calculation of fees is the proposal to rely on 'food handler' numbers, where the term is poorly defined in Schedule 10 Dictionary of the draft Food Regulation 2025.

If the description covers anyone who comes into contact with produce, the list will be extensive, including every person who moves a box of produce, storeroom and warehouse staff, vehicle drivers, those who apply labels or packaging and many others. If the intent of the draft Food Regulation 2025 is to cover food handlers who alter the produce by trimming, washing, sorting, and mixing the produce rather than moving, selling, undertaking picker/packer activities to fill an order for a customer etc., then the definition should be refined.

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However, while this might make the definition clearer, being able to accurately calculate the number of FTE food handlers remains difficult due to the seasonality requirements of our workers and the fact that the actual volume of produce in these lines entering Sydney Markets is 9.4% over overall volume.

Freshmark suggests DPIRD reviews the method of calculating the licence fee. Consultation with industry is a must to find the correct calculation method and fee structure, if any is to be applied at all.

Per-premise licensing fees

Fees and charges under the draft Food Regulation 2025 are applicable per activity and they are also applied per premise where the activity occurs, however premise is not defined. Complexities exist within the operation of Sydney Markets that are historic in nature that forces some Sydney Market businesses to hold multiple premises within Sydney Markets and surrounding areas. This exacerbates the fees/charges they will pay under the draft Food Regulation 2025.

The reason many businesses are spread across multiple sites is related largely to physical limitations at Sydney Markets, including

- a. The Sydney Markets site is defined by Government zoning permissions. The site is 42 hectares and is zoned SP1 Special Activities.
- b. The location of Sydney Markets is challenging because it cannot expand beyond its boundaries as it is bounded by roadways and adjoining owners. (See site map at Appendix E)
- c. Sydney Markets has been located at the Flemington site for 50 years. The design of the markets has changed little during this time with designated areas for Grower/Traders (D shed), and a general trading area for all fresh produce sold by wholesalers known as A, B, C and E sheds. This core business activity is surrounded warehouses, the flower shed, designated transport areas for large trucks and smaller carparks for providores and independent retailers. Each building has a specific name and purpose resulting in businesses being unable to expand their trading area without the purchase of an additional space.

Due to lack of opportunities for business to expand their trading area, numerous businesses have acquired multiple premises across Sydney Markets and surrounding areas where the same regulated activities are performed by the business.

Under the current draft Food Regulation 2025, each premise owned by a business will be charged a licensing fee and inspection or audit fee. Freshmark suggests this is not the intent of the DPIRD given the businesses regulated under the draft Food Regulation 2025 cannot grow their business at Sydney Markets without expanding the number of premises they operate out of.

Some businesses have multiple modules (in the case of a wholesaler) or stands (in the case of a grower/trader) next to each other in the shed they operate out of, while others have modules in multiple sheds, which reflects site availability at the time those operations sought to expand.

EXAMPLE

A single wholesaler of leafy vegetables based at Sydney Markets has 18 stands plus a warehouse. This business is certified through HACCP and Freshcare and already spends nearly \$60,000 per year on food safety. It would face close to \$24,000 in additional costs under the draft Food Regulation 2025 due primarily to the interpretation of 'premise'.

(see case study 5 at Appendix D for full details)

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How other schemes manage the definition of 'premise'

Both BRCGS and SQF recognise multiple sites under a single certification provided they are within a close geographic proximity and operate under a single management system. (Distance is not defined.) Freshcare also allows multi-site businesses to be registered under a single registration if they operate under a single management system and all sites can be visited as part of a single reported audit (Freshcare allows 100km distance or 1.5-2h travel). Where sites operate under a different management system and/ or are geographically distant then they need to be registered separately, as is the case where multiple businesses operate from a single site.

There is also precedence in Government legislation for the treatment of multiple sites as a single premise, including in the Federal *Biosecurity Act 2015* which treats multiple sites run by the same operator as a single premise.

Freshmark recommends that Sydney Markets and its surrounding area be considered one premise, and that the surrounding area definition be consistent with that of existing GFSI schemes which acknowledge and have dealt with this issue by adjusting their premise criteria accordingly.

Potential exit of businesses in industry

Undoubtedly there are businesses in the fresh produce sector operating on near-unsustainable margins. Freshmark has received feedback that the proposed additional fees may force some businesses to consider their future within the industry, especially if they have multiple premises and a fee is charged per premise, and/or they operate across multiple lines. This could lead to business closures and a reduction in competition which is critical for the sustainability of the sector.

Unlikelihood of improved food safety outcomes

The goal of the draft Food Regulation 2025 is ostensibly to improve food safety, but many if not most of the fresh produce businesses that will be captured by this regulation are already subject to rigorous certification schemes.

Likewise, we again question the inclusion of the supply chain beyond the early processing stage. We recognise that the FSANZ PPP Standards for berries, leafy vegetables and melons were catalysed by food safety issues in each of these categories – in each instance the trigger event occurred in grower/harvester or early processing stages, not further along the supply chain, so this regulation appears to offer, to some considerable degree, a solution for a problem that does not exist. We remain very sceptical of the potential for this regulation to have any meaningful impact on food safety.

Transport

There are multiple concerns around the potential impact of vehicle licensing, the cost of which could cripple many businesses and have a serious consequential effect on critical transport services supplied to the sector, in particular grower/harvesters. Freshmark is deeply concerned about the flow on effects of vehicle licensing fees. The sector is already facing great difficulty in accessing transport to carry produce from farm to market. A new and expensive licensing requirement could disincentivise third party transporters from continuing to operate in NSW with dire consequences not only for sector sustainability but for food security.

Freshmark Draft Food Regulation 2025

Further to this, transport licensing costs are likely to be passed back to growers, exacerbating their direct cost for an essential service, with limited scope for cost recovery.

Freshmark has also received repeated feedback that there has been no consultation with transport industry bodies or transport businesses about the draft Food Regulation 2025 which has a significant financial impact. Understandably there is a heightened level of alarm in the transport sector.

Our concerns about the impost on transporters extends to those businesses within the Sydney Markets ecosystem and third-party transporters. There has already been a serious decline in the number of transport companies servicing the fresh produce sector. In 2023, supply chain pressures led to the liquidation of Australia's largest cold chain transporter. The year before, almost 200 companies in the transport sector became insolvent. We hold deep concerns that a transport sector already under pressure will decline further if they are forced to carry steep licensing costs as outlined in the draft Food Regulation 2025.

Under the draft Food Regulation 2025, transport is captured as a licensed activity and attracts an annual licence fee of \$425 per vehicle. At present vehicles are not defined in the draft Food Regulation 2025 and therefore we need to fall back to the Food Act 2003, which states 'vehicle means any means of transport, whether or not self-propelled, and whether used on land or water or in the air.' If we take this interpretation literally, this means all modes of transport must be licensed if they carry berries, leafy vegetables and melons in/out or around NSW, inclusive of forklifts, trollies, prime movers, hauling trailers, pallet jacks, cars, small vans etc. Furthermore, the inclusions of 'whether or not self-propelled' in the definition could literally mean anyone transporting produce on foot, which is nonsensical, lacks pragmatism and must be addressed.

Freshmark appreciates the DPIRD have spent time at Sydney Markets on 22 January 2025 to gather operational intelligence on how vehicles are used by transport operators in the course of their business. DPIRD acknowledged in written correspondence that they intend to take a pragmatic and balanced approach to licensing of vehicles transporting plant products and would welcome the input from Freshmark on this. Freshmark looks forward to continued discussions on this significant matter and would encourage the involvement of NatRoads as the principal national body representing the transport industry.

In the interest of this submission Freshmark assumes that the DPIRD will focus on self-propelled vehicles including:

- Passenger cars
- Vans
- Trucks of all types
- Forklifts and other self-propelled equipment (e.g. pallet jacks)

The draft Food Regulation 2025 states that every vehicle must be licensed if it carries one of the three regulated fresh produce lines (berries, leafy vegetables and melons). The licence fee of \$425 per annum, is the same for every type of vehicle, from the largest truck to a private car carrying a box of produce. In addition to the more than 1,000 forklifts which operate within Sydney Markets, more than **500 trucks** enter and leave Sydney Markets daily, all of which, on current reading of the draft Food Regulation 2025, would require licensing.

In addition, a substantial number of cars, vans and small commercial vehicles also transport product into and out of Sydney Markets. Transporters based in other states will be instantly captured by the draft Food Regulation 2025 on crossing the state border, even if they are already licensed in their home state.

Freshmark Draft Food Regulation 2025

Freshmark submits that there is a significant amount of industry consultation required in relation to transport to determine the best outcome for all parties.

Some items of discussion as part of this consultation should include:

- A clear and concise definition of vehicles should be constructed
- Several categories of vehicle should be excluded from the draft Food Regulation 2025, such as forklifts, pallet jacks, dollies, any other equipment/tools of trade that can transport fresh produce and passenger vehicles not otherwise intended as a commercial vehicle.
- The fee schedule needs review to ensure it is fair and reasonable to not disadvantage the fresh produce sector of NSW. The fee of \$425 per vehicle should not apply to growers who transport their product to the next step in the supply chain (as per the FSANZ PPP Standards), or to processors where the transport is required between their own processing sites (e.g. wholesaler to their warehouse or processing site that is separate to Sydney markets or within Sydney markets).
- Consideration should be given to transport businesses who are GFSI Certified.

Overall, transport vehicle licensing is cost prohibitive and the proposed NSW fees are well in excess of those in other states such as Victoria, where notably no such fees apply to fresh produce due to its low risk profile. Vehicle operators also already pay licence and registration fees in the thousands of dollars.

Cost of vehicle registration

The cost to register a refrigerated truck in NSW (as just one example of the type of vehicle utilised in this sector) depends on the vehicle's type, number of axles, gross vehicle mass and configuration. Other fees that may apply include inspection fees and stamp duty.

Examples of vehicle registration fees for NSW:

- Tare weight 3055–3304 kg: \$1,634 for business use
- Tare weight 3305–3564 kg: \$1,778 for business use
- Tare weight 3565–3814 kg: \$1,908 + \$314 for business use
- Tare weight 3815–4064 kg: \$2,051 + \$314 for business use

At the top of this range, a truck registered in NSW at a cost of \$2,365 could attract a further \$425 in draft Food Regulation 2025 licensing fees if the business operates in one of the proposed regulated lines. That's a total cost of \$3,640 for a single vehicle.

Vehicles already captured by another stream in the Regulation

Note that through our engagement with DPIRD/NSW Food authority, we have been provided with informal advice that:

- A vehicle requiring a licence will be subject to one licence fee, regardless of the number, type and volume of products carried. This includes plant products, meat, dairy, seafood etc.

While this is reassuring, this position is not reflected in the current wording of the draft Food Regulation 2025.

Freshmark calls for the proposed regulation to explicitly note that vehicles which are subject to an existing licence under the Food Regulation 2025 will not require a second licence but may have an additional permission added to their existing licence if dealing in berries, melons or leafy vegetables at no extra fee.

Freshmark Draft Food Regulation 2025

Vehicles domiciled/registered in NSW

The draft Food Regulation 2025 features a one-size-fits-all approach to vehicle licensing fees. Further to this, businesses will find it extremely difficult to know how many of their vehicles carry the regulated lines, and the proportion of berries, melons and leafy vegetables in any given load will typically be low, given the regulated lines are 9.4% of the total volume entering/leaving Sydney Markets.

Excessive licensing fees attached to a small revenue stream for businesses may discourage transport operators from continuing to carry those lines.

"These costs are going to kill us. We are a family run business bringing fresh produce into and out of NSW. How can we remain competitive with our interstate colleagues? How can we bid for business with fees like this when no one else has to? I thought this government was interested in looking after businesses as well as the consumer. We are already doing it tough. We have no choice but to pass this on in order to survive, making us uncompetitive. It could drive us out of business. It makes no sense."

Owner of independent transport business servicing the Fresh Produce industry, including Sydney Markets.

EXAMPLE

One transport company based in NSW could face licensing fees for up to 214 vehicles, including 42 dolly trailers and 10 forklifts, under the broadest definition of vehicle. Some other vehicle types which could potentially be captured have been excluded from this example for the sake of being conservative (pallet jacks for example) so the true impact could be even greater. Based on conservative calculations, this business could expect total additional fees of up to \$91,540 on top the of huge existing expense of registering its vehicles.

(See case study 3 at Appendix D for full details)

Vehicles domiciled/registered outside NSW

Fresh produce is grown, transported and sold in all parts of Australia. It is critical that transporters are not disincentivised to operate in NSW, particularly when for the vast majority, berries, leafy vegetables and melons represent only a small proportion of what they carry.

On current reading of the draft Food Regulation 2025, all vehicles entering NSW will be subject to the licensing fees if they cross the NSW border. Where a vehicle is registered in another state, there must be mutual recognition of the regulatory framework applied in that state. This means that vehicles of this nature should be deemed to meet the requirements of NSW with no additional licensing requirements.

Freshmark submits that if a transport vehicle already has a licence granted in another state, it should be exempt from the NSW Food licence fee if it is transporting product into or out of NSW to avoid unnecessary fee duplication. Due consideration should be given to a national licensing scheme to rationalise costs and provide a fair and equitable playing field for licensed operators.

EXAMPLE

A major transport company servicing multiple states and operating entirely in fresh produce has over 200 vehicles registered and domiciled in Victoria and Queensland. In Victoria there is no licence fee for vehicles transporting fruit and vegetables as they are recognised as very low risk (meat product transport vehicles, by comparison, are licensed). Under the draft Food Regulation 2025 as proposed, this business will face additional fees of over \$90,000.

(See case study 6 at Appendix D for full details)

Lack of industry engagement

Freshmark was not involved in the consultative process that led to the development of the FSANZ PPP Standards nor the two-year discussion at a national level on how they were going to be implemented across the country. Our first exposure to any detail for NSW came with the release of the draft Food Regulation 2025 in December 2024.

The formal period for submissions in response to the draft Food Regulation 2025 was less than four weeks, with a closing date just days before Christmas. While Freshmark was granted an extension to end January, we remain deeply concerned that industry has not had close to enough time to fully explore the implications of the draft Food Regulation 2025 and provide a detailed response.

The additional period granted for developing this response encompassed Christmas and New Year shutdown periods and a long weekend, and the entire consultation period coincided with the busiest time of year for fresh produce businesses. We also note that key DPIRD staff have been on leave during this critical period, limiting the opportunity for additional discussions and clarifications.

This draft Food Regulation 2025 has the potential to generate truly diabolical outcomes for our members and the broader sector, and we are very disappointed by the compacted timeline. We believe it highly likely that other key parts of the supply chain, transport in particular, may not even be fully aware of the proposed changes and their potential implications. Indeed, many businesses and other industry bodies we have engaged with in preparing this response indicated little to no knowledge of the draft Food Regulation 2025.

Freshmark has worked hard in very challenging circumstances to engage with as many businesses as possible at Sydney Markets, to provide the most comprehensive response. However, the short consultation period combined with the Christmas timing has made this task very difficult.

Nonetheless, we have sought to engage with DPIRD to the extent possible and were able to secure:

- A meeting with a DPIRD representative on 12 December 2024
- A site visit from DPIRD representatives on January 22 2025
- A follow up call with DPIRD on 28 January
- A small amount of email dialogue to seek and review clarifications in December 2024

Freshmark would like to acknowledge that these interactions were positive, constructive and in good faith and we thank those personnel who have sought to better understand the framework in which Sydney Markets operates and provide insight into the draft Food Regulation 2025.

That said, each engagement demonstrated that there is a vast amount of nuance and industry specificity that needs to be considered in the finalisation of this draft Food Regulation 2025.

Freshmark calls for a further round of extensive consultation and co-design before the Food Regulation 2025 is finalised.

With potential implications stretching over decades, it is critical we get this right.

We further acknowledge that NSW Food Authority and DPIRD have expressed interest in including Freshmark representatives on the proposed plant products industry consultative committee and would welcome this opportunity to ensure industry's voice is heard.

We also remain very concerned about the implementation timeline. While there have been assurances that the Regulation will not be implemented until the review is complete, we are concerned there will be pressure for the review to be hastened and that there will be little time to communicate the final outcome before the scheme is introduced.

Freshmark Draft Food Regulation 2025

Freshmark supports the recommendation from Fresh Markets Australia to delay implementation to the 12 February 2026 to ensure meaningful engagement with all impacted industries and their representative bodies, in the truest sense of co-design.

Consultation with the transport industry

Freshmark has been in contact with several transport companies and none of them knew about the draft Food Regulation 2025 and its potential impact on their business and the wider transport industry.

Many operators advised they feel disappointed that they lacked the opportunity to discuss the implications with their industry colleagues and representatives to provide a submission for consideration by DPIRD and the NSW Government.

"I'm a member of NATRoads and Australian Trucking Association. I avidly read all my emails. I never heard anything about it from them. Did the NSW Government even consult them? Did they tell them this is coming? They would have fought this tooth and nail. This is going to have a massive impact on our industry if it gets through. It must be thrown out."

Transport business operator

There was also concern that retail and export sectors were excluded from the draft Food Regulation 2025 .

"What do you mean the chain store transport sector and export sector don't have to pay the same fees for transport in NSW. How is this fair? Why is the independent sector picked on? It's like the Government are trying to drive us out of business."

Transport operator

Freshmark calls for further consultation that appropriately engages all supply chain stakeholders.

What Freshmark would like to see

Freshmark recognises that regulation is a necessary part of doing business. Ultimately, we seek an approach which is fair and reasonable. With this in mind, Freshmark calls for:

1. Exclusion of wholesalers from the draft Food Regulation 2025. Their inclusion is not aligned with the intent of the FSANZ PPP Standards.
2. Recognition of GFSI accreditation in the draft Food Regulation 2025 and that certified businesses be required to pay a simple flat \$85 registration fee per year inclusive of licence fees.
3. Storage as a regulated activity not to apply where produce has been held for sale and has not been altered in form by processing activities.
4. If NSW Food Authority intends to include wholesalers who fit the profile of performing processing activities (other than solely storage/hold for sale of an unaltered product) then WA pricing structure to be adopted.
5. Where businesses operating in Sydney Markets have an existing NSW Food Authority Licence, an additional permission be added to the licence without any further fees.
6. DPIRD to review the method of calculating the licence fee in relation to number of FTE Food Handlers, in consultation with industry, to find the correct calculation method and fee structure, if any is to be applied at all.
7. A significant amount of industry consultation in relation to transport to determine the best outcome for all parties. Items of discussion as part of this consultation should include:
 - A clear and concise definition of vehicles should be constructed
 - Several categories of vehicle should be excluded from the draft Food Regulation 2025, such as forklifts, pallet jacks, dollies, any other equipment/tools of trade that can transport fresh produce and passenger vehicles not otherwise intended as a commercial vehicle.
 - The fee schedule needs review to ensure it is fair and reasonable to not disadvantage the fresh produce sector of NSW. The fee of \$425 per vehicle should not apply to growers who transport their product to the next step in the supply chain (as per the FSANZ PPP Standards), or to processors where the transport is required between their own processing sites (e.g. wholesaler to their warehouse or processing site that is separate to Sydney markets or within Sydney markets).
 - Consideration should be given to transport businesses who are GFSI Certified.
8. Regulation to explicitly note that vehicles which are subject to an existing licence under the Food Regulation 2025 will not require a second licence but may have an additional permission added to their existing licence if dealing in berries, melons or leafy vegetables at no extra fee.
9. If a transport vehicle already has a licence granted in another state, it should be exempt from the licence fee in NSW if it is transporting product into or out of NSW to avoid unnecessary fee duplication. Due consideration to be given to a national licensing scheme to rationalise costs and provide a fair and equitable playing field for licensed operators.
10. A further round of extensive consultation and co-design before the Food Regulation 2025 is finalised, including consultation that appropriately engages all supply chain stakeholders.
11. Delay of implementation to 12 February 2026 to ensure meaningful engagement with all impacted industries and their representative bodies, in the truest sense of co-design.

Appendix A

Application of Part 3: Licence fees for plant products businesses

Item	Category	Annual Fee (Per Premises - where activities are carried out)
4	Berry Plant Products Business (Non-Small) i.e. growing or harvesting berries OR processing berries: see S114(g)	\$300
5	Small Berry Plant Products Business – i.e. grows or harvests berries from a property with a total area less than 1oha.	\$75
6	Leafy Vegetable or Melon Plant Products Business (Non-Small) - growing or harvesting leafy vegetables or melons OR processing leafy vegetables or melons: see S114(g)	
	(a) 0–5 food handlers engaged in activities	\$570
	(b) More than 5 but no more than 50 food handlers engaged in activities	\$1,180
	(c) More than 50 food handlers engaged in activities	\$5,170
7	Small Leafy Vegetable or Small Melon Plant Products Business – i.e. grows or harvests melons or leafy vegetables from a property with a total area less than 1oha.	\$75

Appendix B

Jurisdictional Comparison of Licence/Registration Fees for Horticultural Producers and Processors

Jurisdiction	Berries	Leafy Vegetables	Melons	Additional Costs	Notable Features
NSW Source- ³	- Small (<10 ha)- \$75 annually - Large (>10 ha)- \$300 annually	- Small (<10 ha)- \$75 annually - Large (>10 ha)- 0 - 5 FTE Food Handler- \$570 6–50 FTE Food Handler- \$1,180 >50 FTE Food Handler \$5,170	Same as leafy vegetables	- Application fee- \$85 (one-time) - Inspection or Audit fee- \$370/hour	- No discounts for businesses certified under industry standard schemes. - \$425 for transporting plant products - per vehicle used for the activities - Note potential Fee Overlap
Victoria (VIC) Source ⁴ Application to early-stage processing (not wholesaling if that is the sole activity)	\$33–\$653 scaled to production size	\$33–\$1,632 annually (non-certified, scaled to production size) \$33–\$849 annually (certified ⁵ , scaled to production size) – includes an indicative GFSI recognition fee of \$196	Same as leafy vegetables	- Audit fee- \$206.20/hour (\$51.55 per 15 minutes) - Travel fees- \$51.55 per 15 minutes (capped at 90 minutes)	Discounts and simplified process for businesses certified under industry- standard schemes. To support and encourage businesses to sign up in 2025 and 2026 a temporary discount/rebate of 50% is proposed at the point of registration. Further discounts may be applied in future years at the discretion of the Regulator
South Australia (SA) (not finalised – based on Discussion Paper) Source- ⁶	\$441 application fee Annual fee	Same as berries	Same as berries	- Audit/inspection fee- \$329/hour - No travel or off- site reporting fees - No audit/ inspection fees for businesses certified under industry-standard schemes	First-year application fee waived for all businesses. PIRSA intends to verify all accredited businesses in the first year of the varied regulation.
Western Australia (WA) Source- ⁷	Simplified registration process for businesses certified under industry-standard schemes. Certification documents suffice. Fees set by Local Authorities.	Same as berries	Same as berries	No additional inspections for businesses certified under industry-standard schemes.	- Streamlined process for certified businesses. - non-certified businesses will need to demonstrate compliance with the general food safety management requirements of the standards.
Other Jurisdictions	Implementation details yet to be formally announced for QLD, - no central market wholesalers ACT and TAS. NT				

³ "<https://www.foodauthority.nsw.gov.au/about-us/legislation/draft-food-regulation-2025-have-your-say/draft-food-regulation-2025-changes-industry>"

⁴ "https://agriculture.vic.gov.au/__data/assets/pdf_file/0004/1083334/Hort-standards-factsheet.pdf".

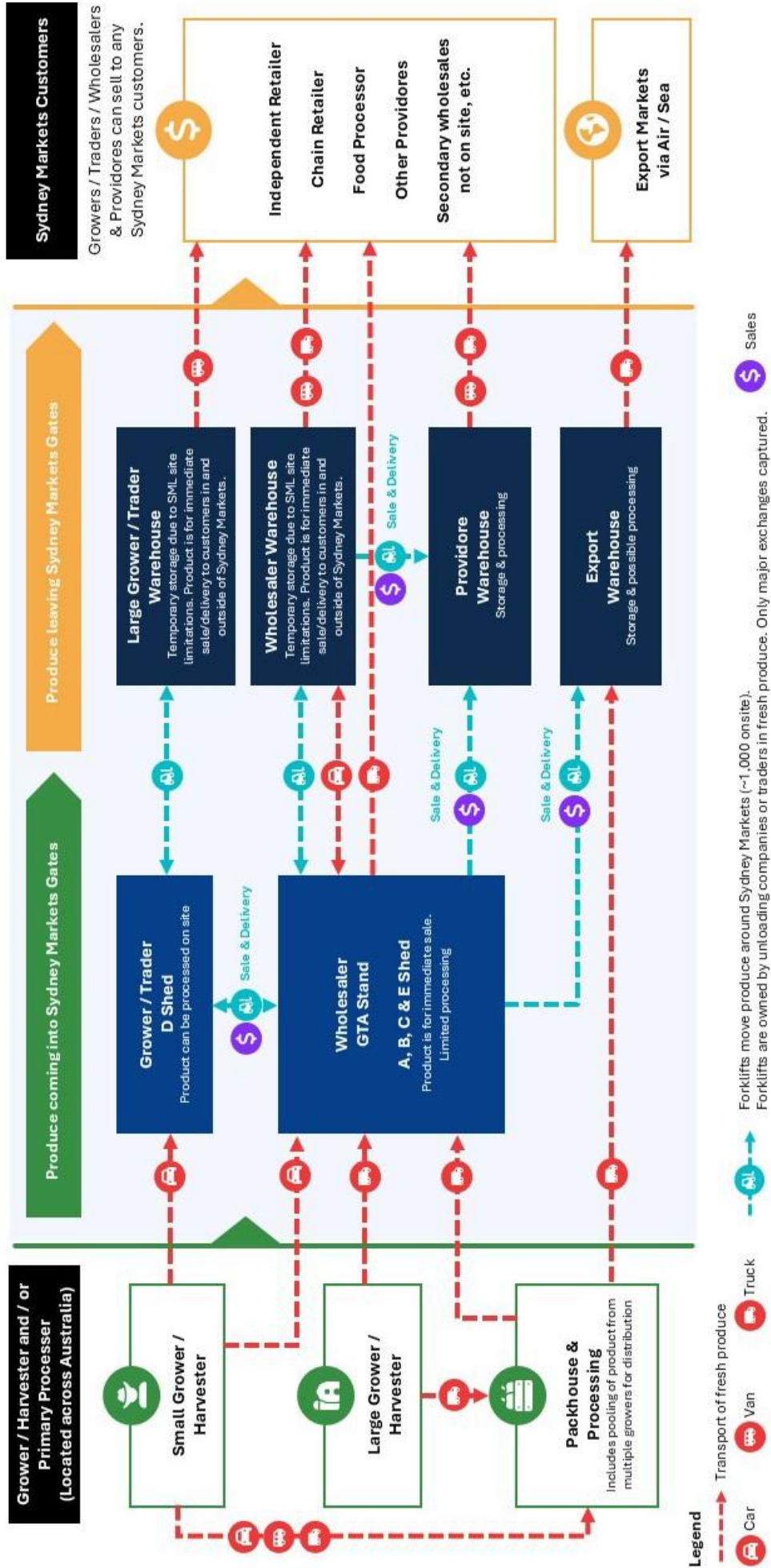
⁵ Certified means 'certified under an industry-standard certification or audit scheme such as Freshcare, SQF, or GLOBALG.A.P.,

⁶ https://pir.sa.gov.au/__data/assets/pdf_file/0008/470438/Horticulture_regulation_discussion_paper.pdf

⁷ https://www.health.wa.gov.au/articles/n_r/primary-production-and-processing-standards-for-leafy-vegetables-melons-and-berries

Appendix C

Sydney Central Market Operations



Appendix D

Case studies

CASE STUDY 1 - Providore (Secondary wholesaler)/Food Processor

CASE STUDY 2 – Wholesaler

CASE STUDY 3 – Transporter

CASE STUDY 4– Grower, packer, wholesaler

CASE STUDY 5 - Wholesaler

CASE STUDY 6 – Transporter

CASE STUDY 7– Grower, packer, wholesaler

Detailed de-identified case studies were provided to the NSW Food Authority as part of this submission; to demonstrate the financial and regulatory impact the proposed changes will have on businesses in the NSW fresh produce sector.

We have deleted the case studies from this version of the submission to further protect the anonymity of the businesses, given it will be publicly available on Freshmark's website.

Thank you for your understanding.

Meegan George
CEO Freshmark

