Review of Fair Farms Program
Standard, Rules and Audit Guide

CONTENTS

BACKGROUND

The Fair Farms Program is fostering fair and responsible employment practices across the Australian horticulture industry. The Program aims to support a transition towards stronger workplace compliance which will lead to improved employment practices, fairer treatment of workers and reduced risk of worker exploitation and other human rights violations.

The Fair Farms Program provides a mechanism for participating businesses to demonstrate to their customers and other interested parties that their employment and workplace relations practices are fair and comply with Australia's workplace laws.

The Fair Farms Program has been developed by Growcom as the Scheme Owner. Growcom is committed to continuously review and improve the Fair Farms Program, always aspiring to operate a credible and effective system that achieves its purpose.

The Fair Farms training and certification program is presently applicable to all businesses operating within the Australian horticulture supply chain that:

• Grow produce for retail sale, and/or

• Pack produce for retail sale, and/or

• Operate as an aggregator, distributor, broker or agent supplying produce for retail sale.

The Program provides that:

> (a) the participant engages and remunerates their staff in accordance with all applicable state and federal laws, rules and Awards relating to fair work, and immigration laws;
>
> (b) the participant understands and appropriately discharges their responsibilities towards workers engaged through third-parties (labour hire providers);
>
> (c) the participant ensures a safe work environment and, where applicable, legally compliant and reasonable standards of on-farm accommodation for workers; and
>
> (d) the participant follows an approach of zero-tolerance towards any form of forced labour, bonded labour or any form of modern slavery.

Certification is presently available to employers in the Australian horticulture industry. It is available nationally to Growcom members and non-members alike.

The Fair Farms Standard has been developed by Growcom in consultation with growers and other members of the fresh produce supply chain, industry representative bodies, technical experts, trade unions, representatives of the major Australian retailers (supermarket chains) and the Fair Work Ombudsman.

REVIEW SCOPE

The purpose of the review is to make sure that the Program meets requirements for assurance in the contemporary world of work within the Australian horticulture industry and that it remains a relevant, affordable, and widely accessible program.

The review will consider all elements of the Program including the Fair Farms Rules, Standard and Audit Guide.

Growcom is seeking submissions to assist it in undertaking the review.

MAKING A SUBMISSION

Submissions should be made in writing and may address some of the issues identified by stakeholders and Program participants which are set out in the attached discussion paper. Submissions need not be confined to the issues identified in the discussion paper.

Submissions should be made by **31 August 2021** and forwarded to:

Adam Carter
Fair Farms Compliance Officer
ffcompliance@growcom.com.au

Submissions may also be made by responding to our survey. To access the survey:

- scan the following QR Code

- click here,
- email ffcompliance@growcom.com.au
- or call 07 3620 3808 and a link will be provided.

Submissions may be shared with Growcom Board and Fair Farms staff as well as with the Fair Farms External Stakeholder Reference Group, consultants and legal advisors. Please let us know if you wish any part of your submission to be treated confidentially or anonymously.

FAIR FARMS ELEMENTS FOR REVIEW

1. Fair Farms Rules Version 1.0 (June 2019)

Rule 1 – Timeline to achieve Audit and Certification

Rule 1.1 states that the Fair Farms Program provides a "pathway" to certification but the rules do not mandate any timeframes by which certification is to be achieved.
That is because the Participant is responsible for scheduling their initial audit (see Rule 7.3 & Audit Guide 3.1).

Rule 11.3 provides that Participants may be given a suspended status if the Participant unreasonably delays or continually defers an Audit. Participants can have their registration revoked in a worst case.

Some Registered Buyers are pro-actively involved in progressing their suppliers down the Fair Farms certification pathway while others consider that Fair Farms should play a more active role in ensuring that certification is achieved in a timely manner.

It is noted that auditor availability and restrictions imposed by Covid 19 have had an adverse impact on timelines. If an auditor is not available during the harvest period then delays in achieving certification can be significant.

Q1. Should the Rules be amended to require Program participants to submit to initial audit within a clearly defined timeframe and, if so, how long should be allowed?

Rule 2 – Participant Business Unit & Controlled Sites

Rule 2.1 and the Glossary of Terms at Section 19 separately define the terms Participant and Participating Business Unit (PBU).

24 months of implementation of the Rules has shown that there is a degree of confusion created by having two separate terms for the legal entity participating in the Program.

Q2. Is the separate definition of "Participant" and Participating Business Unit required?

Rule 2.2. Provides that "Controlled Sites" are those locations (for example a farm or pack-house) which are routinely staffed with manual workers (whether directly employed or engaged through a Labour Hire Provider) and operate under the policies and procedures, day-to-day supervision and management control of the PBU.

There is some confusion surrounding the definition as it has connotations in other QA systems with which growers are familiar (e.g. Freshcare).

Q3. Does the existing definition adequately explain those sites that should be included within the scope that ought to be nominated at time of registration?

Rules 5 & 6 Self-Assessment Process & Fair Farms Training

The Fair Farms Program is stated to be a "training and certification" program. However, it is possible for a participant to progress immediately to audit without undergoing any training. This may happen where an Online Self-Assessment (OSA) does not indicate that any specific training is required.

Where training has not been provided it may lead to a sub optimal result at audit with a higher level of Findings than might have been the case had some level of training been undertaken by the participant.

During the Covid 19 pandemic the ability for Fair Farms to deliver face to face training has been constrained and the mode of training most commonly used has been via video conference or via telephone.

Participants commencing the program might consider that they do not need training because they have established systems and have been through other audits for other purposes (e.g. Freshcare). If the training comes at an additional cost, or too high a cost, then this may be a factor that leads to growers choosing to withdraw from the Program or to participate in other certification schemes (e.g. Sedex) instead of Fair Farms.

With the continued expansion of the Program, it may be possible to deliver group training by industry sector or growing region. The online learning system is still under development.

Q4. Should new Participants be required to complete training or particular training modules (regardless of the results of an OSA) to progress to audit?

Q5. If training is to be mandatory for new or current participants, how should that training be delivered (e.g. online, via video conference, in person, group training by region or industry sector)?

Rule 6.5 deals with compulsory professional development (CPD) training requirements and specifically states that the requirement for CPD would be subject to review following the initial roll-out and evaluation of the Program.

In 2020/21 CPD was delivered to participants via online learning and without charge provided it was completed within the timeframe specified.

Rule 5.2 (and Standard M4.1) provides that the Online Self-Assessment must be completed at least once every year.

Q6. Should a participant who has been certified be required to complete both CPD and the OSA on an annual basis?

Rule 7 – Audit Process

Rule 7.8 provides that the duration of a Fair Farms audit may vary between half a day and two days depending on a number of factors. However, the professional body Association of Professional Social Compliance Auditors (APSCA) does not allow for half day audits if the audit is to be one to which an auditor can assign their APSCA number.

Some Program Participants, particularly those seeking recertification, or those who have other current certifications (e.g. Freshcare), are of the view that half day audits are sufficient. Participants have indicated a degree of "audit fatigue" and have queried whether a Fair Farms Audit might be conducted concurrently with a Freshcare audit if the auditor was qualified and competent to do so.

APSCA does not allow Social Compliance audits to be conducted concurrently with any other audit. An APSCA approved audit must be conducted on a different day and administered separately even if conducted by the same audit provider.

Other stakeholders including Registered Buyers are concerned that the audits be as comprehensive as possible.

Certification bodies may regard a certain number of hours on site (e.g. 4.5 hours) as a better way to define the minimum length of an audit. Certification Bodies have indicated that the "grouping" of audits is one way to reduce costs and make half day audits more commercially viable.

At a time when Auditor mobility may be restricted by COVID 19 and in circumstances where auditor availability may be constrained a "desktop" audit may be possible, if only for recertification?

Q7. Should half day audits be allowed under the Rules? If so, should they be confined to smaller growers (e.g <25 workers), recertification audits or audits where other certifications such as Freshcare are current?

Q8. Where Participants are required to have other audits, should Fair Farms and other audits be conducted concurrently provided the auditor was suitably qualified and competent?

Q9. Should desktop (or remote provision of evidence) audits be allowed under the Program?If so, under what circumstances?

Rule 8 – Recertification Cycles

The Recertification Cycle is determined on the basis of an assessment of risk based on the results of the current audit. Some Participants believe that the audit cycle should be annual or every two years for all participants regardless of risk level.

Other Participants regard the scoring of Audit Findings to be too severe and that what they might regard as relatively minor Findings results in a more onerous yearly audit cycle.

Q10. Should the recertification cycle be changed to mandate yearly or two yearly audits regardless of risk score?

Q11. Should the scoring of Audit Findings be amended in any way?

Rule 9 – Certification Process

Rule 9.3 provides for follow up audits where evidence of close out for outstanding issues cannot be provided remotely.

It has been suggested that the Program allow for "Follow Up" audits in circumstances where there are a significant number of Findings. A follow up audit would result in additional expense for a Participant and the possibility of such an audit may need to be addressed in the agreement between the Participant and the Certification Body.

Q12. Should the Rules include a requirement for a Follow Up audit by a Certification Body? If so, in what circumstances should a follow up audit be required?

Rule 10 – Certified Participants

The Rules provide for a single level of certification. To achieve certification a Program Participant must submit to an audit and close out all Findings identified at audit.

Participants with more limited financial resources may be concerned about the costs associated with obtaining an independent 3rd party audit.

Some Participants may not require an independent 3rd party audit but still want to achieve some level of recognition for participating in the Program. For example, a Participant may not supply to any Registered Buyers.

Q13. Should there be different levels of membership and certification (e.g Gold, Silver and Bronze)?

Q14. Upon what basis should there be differentiation in levels of certification (e.g 2nd party audit vs 3rd party audit)?

Q15. Would a 2nd party audit provide assurance in circumstances where the level of risk was deemed to be very low (e.g. a small grower with few directly hired employees, no use of LHP and no accommodation provided).

Rule 12 – Fees

Some Participants have suggested that to reduce costs it might be possible to schedule a Freshcare audit at the same time as a Fair Farms audit. That is only possible if the auditor has been approved to conduct both audits. An APSCA approved social compliance audit cannot be conducted concurrently with any other audit.

Certifying Bodies have suggested that audits be grouped so that multiple audits can be conducted in the same area at the same time. However, the way that auditors are presently engaged (directly by the Participant from a list of approved auditors) would make scheduling of audits very difficult. Under the present system it is only possible to advise Participants ready for audit that there will be an approved auditor in the area at a particular time.

Q16. What has been the experience of Participants with the cost and perceived value of the Program? Do the costs associated with the Program represent good value for the level of assurance provided?

Q17. Does Fair Farms remain cost competitive with substitutable certification programs?

> Q18. How can costs associated with the Program be reduced to provide better value to Participants?

2. Fair Farms Standard Version 1.0 (June 2019)

Fair Farms Standard v Legislative Compliance

The audit process requires auditors to audit against the Standard (Code) and relevant law.

When conducting audits, Certifying Bodies use an Audit Checklist. Some Participants have reported instances where the Audit Checklist is inconsistent with the Standard. For example, Standard F11.5 mandates that there be a "trained and appointed fire warden" whereas legislation may only require this for certain types of buildings.

> Q19. Should the Standard and/or Rules include a clause that provides that where there is any conflict between the Standard and the Audit Checklist the Standard will prevail in circumstances where relevant laws are not inconsistent with the Standard?
>
> Q20. Where adherence to an Australian Standard is required and is referenced in the Audit Checklist should the Fair Farms Standard specifically reference the Australian Standard?

Standard F 1.2 – Notice of Termination by Employee

Standard F1.2 provides that employers must have policies and procedures to ensure that workers are free to resign after they have given reasonable notice (not more than one month).

The Standard may imply that an employer is able to require an employee to give one month's notice even in circumstances where the employee has only been employed for a short period of time.

The Horticulture Award 2020 provides for the following notice periods

Employee's period of continuous service with the employer at the end of the day the notice is given	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

It is proposed to amend Standard F1.2 to clarify that notice periods for employees are not to exceed those specified in relevant industrial instruments.

Standard F2.4 – Fair Work My Employment Checklist

Standard F2.4 requires Participants to provide both a Fair Work Information Statement (FWIS) and a Fair Work My Employment Checklist to all employees. The provision of a FWIS is required by the NES. The provision of the Checklist is not required by the Act.

Amendments to the *Fair Work Act 2009* now require employers to provide casual employees with a Casual Employment Information Statement (CEIS).

It is proposed to remove the requirement for Participants to provide a copy of the Checklist and replace that with a requirement to provide casual employees with a copy of the CEIS.

Standard F3.1 – Eligibility of Workers

Standard F 3.1 requires that the Participant must maintain appropriate policies and procedures to ensure correct employment of <u>overseas</u> workers.

The Migration Act 1958 section 245AB creates an offence where unlawful non-citizens are engaged. However, no offence is committed if the employer can show they made reasonable enquiries such as obtaining a copy of a birth certificate and photo identification of a worker.

It is proposed to amend the Standard to clarify that in respect of all workers the Participant has a process to be satisfied that all workers have the right to work in Australia. Appropriate records might include a policy that requires the Participant to obtain a copy of a birth certificate and photo ID where there is any doubt as to the right to work.

Standard F5 – Access to records of Labour Hire Providers (LHP)

Standard F5.4 requires that there be procedures for the provision of wage records by LHP's.

Certifiying bodies have reported some difficulty in obtaining time and wages records from LHP's. This may be because the contractual arrangements between the LHP and the participant do not set this as a requirement. Standard F5.3 sets out the requirements for the written agreement between a participant and their LHP.

It is proposed to amend Standard F5.3 to include a requirement that the written agreement include a clause requiring the provision of employee records to the LHP or an approved Fair Farms auditor for the purpose of audit.

Standard F6 – Conditions of Employment

Standard F6.1 requires Participants to provide a written form of engagement. However casual employees are only required to be inducted.

Significant changes to the *Fair Work Act 2009* which came into effect in March 2021 have created a new definition of a casual employee and imposed a requirement to provide casual employees with a Casual Employment Information Statement (CEIS). Under the Act employers that are not a small business employer will be required to offer casual conversion in certain circumstances.

Standard F6.1 may require amendment to include a requirement for a written form of engagement for casual employees and the provision of a CEIS to casual employees. For Participants with 15 or more employees there will be a requirement to offer casual conversion in certain circumstances and to produce evidence of same.

Standard F6.3 requires that contracts for employees should cover any key Award or Agreement provisions. The Horticulture Award 2020 (clause 17) is very prescriptive as to what must be included in an annualised salary agreement and requires a separate written annualised salary agreement to the contract of employment.

It is proposed to amend the Standard to clarify that participants must meet the criteria for annualised salaries for Award covered salaried employees.

Standard F6.7 requires Participants to ensure piecework agreements comply with the Award. It is noted that the Fair Work Commission will shortly determine whether the Award should be varied to include a safety net provision or should otherwise be varied to provide greater clarity around the piecework provisions. The Standard may require amendment following the Commission's decision.

Standard F6.13 requires that the Participant demonstrate that workers do not work more than 18 hours in a single day.

> Q21. Is 18 hours in a single day inconsistent with the appropriate management of fatigue?

Standard F11 – Safe Working Conditions

Fire Safety Equipment

Standard F.11.1 requires participants to ensure they have policies in place in relation to a safe working environment including in relation to fire safety. However, the standard is not prescriptive as to requirements for maintaining fire safety equipment.

It is proposed to amend standard F11.1 and the audit checklist to specify that Participants must demonstrate that fire safety equipment is maintained in accordance with law and/or the Australian Standard.

Standard F11.1 (2) requires that the Participant have procedures for addressing workplace hazards and provides a non-exhaustive list of hazards including electrical equipment and plant maintenance.

Test and Tag of Electrical Equipment

Some jurisdictions do not require test and tag of electrical equipment for rural industry work. All that is required for is for RCD's or safety switches to be tested annually and the regular checking of handheld equipment. It is proposed to amend Standard F11.1 and the audit checklist to clarify requirements for electrical equipment.

Workplace Health and Safety Duties

Standard F11.2 provides that the participant appoints a person responsible for maintaining and coordinating the implementation of WHS. This may lead to a misunderstanding as to who holds duties under the relevant WHS legislation. It is proposed to amend Standard F11.2 to require that Participants demonstrate knowledge of WHS duties for managers and for workers.

Standard F11.2 requires that the person appointed to manage WHS is appropriately trained to perform that role. Participants have enquired as to what is "appropriate" training.

> Q22. What is an appropriate level of training for the person appointed as responsible for maintaining and coordinating the implementation of WHS?

Fire Warden

Fair Farms Standard 11.5 – Safe working conditions requires that the participant must 'Develop emergency procedures and train employees in them'. The Standard requires that there be a 'trained and appointed fire warden'.

This requirement is designed to mitigate the risk of workers being injured or killed due to fire or other type of emergency situation on farm.

The requirement goes beyond the WHS legislative requirements applicable in some Australian States/Territories. However, it is consistent with the Australian Standard (AS3745-2010 Planning for Emergencies in Facilities) and was adopted by Fair Farms to establish a national minimum standard in horticulture.

Some Participants may see fire warden training as irrelevant where they do not have large or high occupancy building structures. However, it was considered that fire warden training covers many additional topics about emergency planning and evacuations. Fires can also affect farming equipment and there may be the threat of bushfire.

Q23. Should the Standard and audit checklist be revised to clearly articulate that RTO training is required for a Fire Warden only where the level of risk may require same?

Standard F12 – Accommodation

Some Participants have queried whether the Standard in relation to Accommodation is too strict and does not recognise the reality of accommodating workers in more remote areas. For instance, only camping accommodation may be available to workers.

Q24. Does Standard F12 require amendment to provide for camping accommodation where that is the only option? If so, what is an acceptable standard for camping accommodation?

3. Fair Farms Audit Guide Version 1.0 (June 2019)

Clause 2 – Auditor Requirements

Rule 3.2 of the Fair Farms Rules provides that only auditors complying with the competency requirements set by Fair Farms may conduct Fair Farms Audits.

A key element of the Fair Farms program is the provision of credible and robust audit system.

APSCA - the Association of Professional Social Compliance Auditors was selected as the governing body for auditors to conduct Fair Farms audits (See Section 2.1).

Section 2.2 of the Audit Guide provides that to carry out a solo audit or act as an audit team leader the auditor must be a Certified Social Compliance Auditor (CSCA) or an Associate Social Compliance Auditor (ASCA) with 150 days of audit experience.

The Audit Guide was developed prior to the implementation of the APSCA competency framework which specifies that Associate Auditors are unable to conduct solo Social Compliance audits. To do so an Associate Auditor may risk disciplinary action and the auditing days would not count towards satisfying competency requirements in order to progress toward attaining CSCA status. This does not mean that an Associate Auditor cannot do a solo Fair Farms Audit. It means that the auditor cannot assign their APSCA number to the audit report.

There are relatively few CSCA level auditors in Australia. Registered Level Auditors (RA's) seeking to become CSCAs have had difficulty in passing APSCA exams that would allow them to become a CSCA. Indeed, a failed exam will mean that the RA is relegated to the Associate level.

These issues have at times led to problems with auditor availability and delays in Participants proceeding to audit. Audits must be conducted during the harvest period and if auditors are not available at that time it can mean a very significant delay.

Participants are concerned to keep the costs of audits at a reasonable level. All stakeholders want to see Program participants progress to audit in a timely manner. However, stakeholders also want assurance that the auditors conducting the audits are appropriately qualified and competent to complete the audits.

APSCA approved courses have recently become available in Australia.

Q25. Should Fair Farms auditors be required to be members of APSCA?

Q26. Is the requirement for auditors to be a CSCA or ASCA with 150 days of experience too onerous?

Q27. Is it appropriate and sufficient that Fair Farms audits be conducted by auditors who have completed an APSCA approved auditing course provided that the auditor otherwise satisfies the competency requirements set by Fair Farms?

Section 23 – Finding Alert

Section 23.1 provides that the Certification Body will communicate Findings of critical severity (Critical Non-Compliance) to Fair Farms and Registered Buyers.

The Section requires amendment to make it clear that Fair Farms, rather than Certification Bodies, are responsible for communicating Findings of Critical Non-Compliance to Registered Buyers but only where the Participant has consented to the disclosure of that information via the MyFairFarms dashboard.

Rule 7.7 of the Fair Farms Rules may also require amendment to make it clear to Participants that Findings of Critical Non-Compliance will be communicated to Registered Buyers by Fair Farms where the Participant has consented to the disclosure of that information.

ADDITIONAL FEEDBACK

Whilst Growcom is seeking feedback on each of the topics above, we would welcome any additional and constructive feedback that you might care to offer. Please feel free to include additional feedback in your submission.

ENDS