



The Australian Chamber of Fruit & Vegetable Industries Ltd

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SUBMISSION AGRICULTURAL COMPETITION GREEN PAPER

The Australian Chamber of Fruit and Vegetable Industries Limited (The Australian Chamber) is the national organisation representing each of the six Market Chambers, which themselves are organisations which represent the fruit and vegetable wholesalers located in each of Australia's six central Markets (Brisbane, Sydney, Melbourne, Adelaide, Perth and Newcastle).

In total, the organisation represents in excess of 430 Market wholesaling businesses. Market wholesalers are involved in the sale of some 50-60% of the fresh produce sold across Australia in servicing the requirements of fruit and vegetable retailers, secondary wholesalers/provedores, foodservice industry businesses, processors, exporters and the public. Over **15,000 growers** supply to businesses within the Central Market system. The total turnover of businesses in the Central Markets exceeds some \$7 billion annually.

In making this submission, we will be responding with a focus on industry codes specifically that the mandatory Horticulture Code of Conduct.

Fair return on investment to growers

The Green Paper has been organised under categories – one being “Competition and Regulation” —*giving farmers the best chance to earn a fair return on investment by ensuring fairness and transparency in the supply chain; and making sure that unnecessary red and green tape is removed and that necessary regulation creates the least possible costs for business and individuals.* The Horticulture Code of Conduct is mentioned under “Competition and Regulation” - stating that the Horticulture Code *is a formal mechanism 'for' farmers that manages some supply chain dynamics.*

The Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) released a “Review of Selected Regulatory Burdens on Agriculture and Forestry Businesses” in November 2013.¹ It assessed the effectiveness and efficiency of the Horticulture Code of Conduct along with about 19 other areas of regulation in the agricultural and forestry industries.

The findings from this study suggested that potential future action by the Australian Government to improve regulatory arrangements typically fell within three broad categories:

- further action could potentially reduce unnecessary regulatory burdens
- further action could complement state and territory government efforts to reduce unnecessary regulatory burdens
- no further action required at this stage (beyond ongoing commitments).

¹ Gibbs, C, Harris-Adams, K & Davidson, A 2013, Review of Selected Regulatory Burdens on Agriculture and Forestry Businesses, Australian Bureau of Agricultural and Resource Economics and Sciences report to client prepared for the Department of Agriculture, Canberra, November.



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The review continued that *under the “No further action required at this stage” [Finding 1] Horticulture Code of Conduct omissions, stated “no unnecessary regulatory burden exists”¹⁽⁶⁾* This finding is cited in the recent Agricultural Competitiveness Issues Paper²⁽³⁾.

The validity of this proposition has not been scrutinised by and is clearly relied on in this Green Paper. To rely on this ABARES finding as it relates to the Horticulture Code of Conduct is out of touch with how the associated regulatory red tape and resultant uneven playing field is affecting growers return for their produce. The Horticulture Code of Conduct does not offer flexible commercial relationships.

The significant cost of compliance of the Horticulture Code of Conduct to Central Market wholesalers is contributed to by growers non return/signing of Horticulture Produce Agreements while continuing to supply produce with an expectation of an excellent return which in turn puts the wholesaler at regulatory risk of non-compliance with the Code and potential action by the ACCC. To reduce the cost of compliance a significant number of wholesalers have reduced their exposure to smaller growers – thus contracting the market for the smaller grower. This reduction of market may be affecting growers return for their produce. Those growers who continue to trade (inside or outside the Code regulations) will also have returns affected due to the need to pass on the cost of compliance to them.

It also needs to be noted that the Horticulture Code of Conduct does not apply to imported produce, so in this regard Australian fruit and vegetable growers who supply a Central Market wholesaler are burdened by a regulatory system and compliance costs, which do not apply to produce being imported. Accordingly, the Horticulture Code of Conduct has an in built bias against Australian growers and from a compliance perspective, contributes further to adding cost and reducing the ability of Australian growers to compete with imported product.

A situation exists whereby those growers who supply a Central Market wholesaler are having to work through a supply chain which is burdened by additional prescriptive Government red tape; while those who supply directly to a supermarket are not! Approximately 40-45% of the fresh produce sold at the retail level is sourced through Central Market wholesalers.

Supermarkets buying direct from a grower offer their own terms of trade, but have none of the scrutiny, cost, or the requirements as seen in the Mandatory Horticulture Code of Conduct.

The approach which exists therefore is one sided, it is making the Central Market system less competitive, and is imposing an uneven playing field on those growers who supply a Central Market wholesaler.

There would therefore, appear to be a strong argument that the Government should apply a fair and consistent approach to regulating how business is done. An even playing field would contribute to a fair return for growers produce.

It is clear the proposition that no further action is required at this stage regarding amendment to the Horticulture Code

² Commonwealth of Australia 2014, Agricultural Competitiveness Issues Paper, Canberra, February.

of Conduct is flawed. There is significant regulatory burden affecting growers return for their produce when they supply through Central Market wholesalers.

Policy Idea 8 – Strengthening competition laws

Proposed Food and Grocery Code vs Mandatory Horticulture code of Conduct

The Competition Policy Draft Report³⁽⁶⁶⁾ states that “Codes of conduct play an important role under the CCA by providing for a flexible regulatory framework to set norms of behaviour.” And when referring to the proposed Food and Grocery Code it states that “the introduction of a properly designed and effective industry code should also assist in ensuring that suppliers are able to contract fairly and efficiently.”

The Food and Grocery Code Consultation Paper⁴ dated August 2014, highlights the current approach by the Federal Government in relation to the Food and Grocery Code exists in stark contrast to the process used for the Horticulture Code, and appears to be a soft and almost hands off approach.

That discussion paper itself highlighted that ‘rather than outright prohibition, supermarkets will be permitted to take certain actions that would otherwise be prohibited, provided that they meet certain requirements’.

It goes on to state that ‘possible alternatives for achieving commercial flexibility may involve a no disadvantage test’.

It is a shame that when the Federal Government drafted the Mandatory Horticulture Code of Conduct that they didn’t go to such lengths to advocate flexible commercial relationships for those bound by the Horticulture Code of Conduct.

In fact, in relation to the Mandatory Horticulture Code of Conduct, no such effort was made.

The Mandatory Horticulture Code of Conduct was introduced without a proper prior assessment of whether it was justified, or its impact on the industry. The instruction issued by the Federal Government at the time was for a Mandatory Code to be implemented, and not determine whether it was justified, or whether other alternatives existed. There was a lack of consultation regarding the introduction of the Code and The Australian Chamber of Fruit and Vegetable Industries Limited, as the peak industry body representing the Market wholesalers had

- no opportunity to propose a voluntary code (as is currently the situation with the major retail chains); and
- no final say as to whether the code provided a flexible framework that set norms of behaviour (in fact it is ridged and unworkable) for those who were to be regulated by it.

The situation with fresh fruit and vegetables is that when any supermarket purchases product direct from a grower, these arrangements and the associated terms of trade are not presently prescribed by, or subject to regulatory oversight.

Where a retailer, and in particular an independent retailer (greengrocer), purchases product through a Central Market,

³ Source: The Australian Government Competition Policy Review 2014

⁴ Source: The Australian Government the Treasury



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they are purchasing product from a Market wholesaler whose relationship with the grower supplier is regulated, with those regulatory requirements (the Mandatory Horticulture Code of Conduct) being prescriptive to the point of being unworkable.

The dispute resolution mechanism established under the Horticulture Code can provide for the investigation of grower complaints, but has only dealt with an average of some two complaints per year since the Code was introduced in 2007.

Despite this, the Government and the leadership of grower representative organisations have made no effort to implement amendments to the Code to facilitate more flexible commercial arrangements, despite ongoing requests from the Market wholesaling sector.

Accordingly, what we could see therefore is one half of the industry, being supermarkets buying directly off Growers, doing so under the provisions of a Code with flexibility which is enshrined in the Code and with exclusions from certain actions "*which would otherwise be prohibited*". This will occur while the other half of the industry, and in particular Market wholesalers, labour under a Mandatory Code, the threat of ACCC intervention, a total lack of flexibility and an effective prohibition on operating in any manner which introduces the required flexibilities to remain competitive.

The Government's approach to this issue looks very inequitable. Their support for a Code based predominately on a document drafted by those parties it is to regulate, may ensure the Code is workable, but it stands in stark contrast to their approach when introducing the Mandatory Horticulture Code of Conduct. Furthermore, their ongoing reluctance to address the shortcomings of the Mandatory Horticulture Code of Conduct, shows a double standard which is entirely unjust and inappropriate.

In summary

In maintaining a Mandatory Horticulture Code of Conduct which lacks commercial feasibility, it is continuing a cost burden for growers who support the Central Market system, and a bias in favour of both imported product, and growers selling direct to supermarkets.

It is clear the proposition that no further action is required at this stage regarding amendment to the Horticulture Code of Conduct is flawed. There is significant regulatory burden affecting growers return for their produce when they supply Central Market wholesalers.

The Australian Chamber is asking that the Government

- is clear in their objectives and fair in the application of policies with respect to the introduction and use of industry codes of conduct so as to ensure that they do not introduce inequities which are clearly anticompetitive in their application (as is precisely the case with the Horticulture Code, and is proposed with the current approach to the Food and Grocery Code)
- undertake of a review of the inflexible mandatory Horticulture Code of Conduct which restricts competition - to achieve a clear, predictable and reliable industry code including recommendations to reduce business

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compliance costs associated with the red tape.

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APPENDIX A

Benefits which Growers have in dealing through the Central Markets:

- Most competitive environment in Australia with more than 400 independent wholesalers in six Central Markets actively competing for the growers' produce.
- The grower has freedom of choice about how many wholesalers they wish to deal with and in what Markets.
- The ability to clear large volumes of produce every day.
- Able to take all the growers' marketable crop, not just certain sizes and grades.
- Long term relationships between growers and wholesalers that often cover several generations.
- Providing daily intelligence on the marketing of the growers' produce.
- Actively seeking outlets for growers' produce.
- Wholesalers support their growers in difficult times.
- The Central Markets is the ONLY true barometer of price for growers.
- Some Central Markets (eg Sydney and Melbourne) have large active Growers' Markets where growers are able to bring and sell their own produce each day.
- The survival of most Australian growers and the survival of independent greengrocers is dependent on the survival of the Central Markets.
- The Green Paper (Page 27) recognises that growers who have alternative marketing options get better prices and better terms when dealing with (MSCs).

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