

## **PUBLIC SUBMISSION TO THE ACCC GROCERY INQUIRY BY HORTICULTURE AUSTRALIA COUNCIL, 11 MARCH 2008**

**RESPONSE TO THE ISSUES PAPER**



## INTRODUCTION

**Horticulture Australia Council (HAC) is the peak national industry body representing the Horticultural industries.** Members of HAC are the national peak industry bodies (PIBs) for the Horticultural industries, and some State farmer organisations. Horticulture Australia Council (HAC) represents over 97% of the Australian horticulture industry, and its Member organisations include:

- Apple & Pear Australia
- Agricultural Investment Managers Australia
- Avocados Australia
- Australian Banana Growers' Council
- Australian Citrus Growers
- Australian Dried Fruit Association
- Australian Mushroom Growers Association
- Australian Nut Industry Council
- Australian Passionfruit Industry Association
- AUSVEG
- Cherry Growers of Australia
- Growcom
- NSW Farmers' Association
- Nursery and Garden Industry Australia
- Persimmon Industry Association
- Strawberries Australia
- Turf Producers Australia

Horticulture in Australia is intensive, generally irrigated, agriculture. Horticulture is a diverse industry, spread across the continent in a wide array of climates. Horticulture is the fastest growing industry in agriculture; with some 30,000 businesses nationally, and a farm gate value of \$7 billion. Total horticultural exports in 2006/07 were \$763 million. As the most labour intensive of all agricultural industries, Horticulture employs one-third of those employed in agriculture. The industry is the principal driver of many regions and local communities and economies in rural and regional Australia.

Horticulture welcomes the opportunity to provide a response to the Issues Paper released by the ACCC in January 2008 on the competitiveness of retail pricing on standard grocery items.

The issue of retail grocery prices has been of concern to the Horticultural industries for many years. Equity - in terms of returns to all those in the supply chain, and fair prices to consumers for our high quality and safe fresh produce - is central to those concerns.

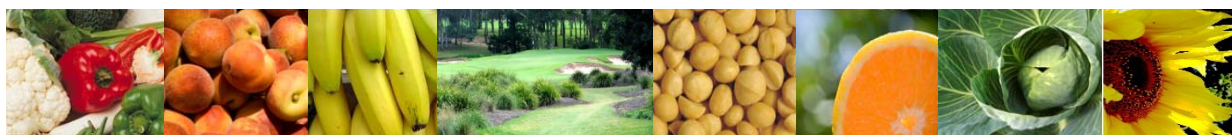
This submission will cover the 'headline' points only. Unfortunately, the deadline for submissions did not allow sufficient time for a full submission at this stage. However, industry is currently preparing a detailed submission, which will be presented shortly as a supplementary submission to the Inquiry.

Australia has the highest concentration of retail grocery power in the OECD. For the past decade, the retail price of groceries in this country has consistently risen by more than the rate of inflation – significantly higher than any other OECD country. We believe these elements are linked: market power has allowed the major retail chains such dominance that there is an effective duopoly operating in this country.

This is exacerbated by a value chain which is frequently opaque (the primary rationale for the introduction of the Horticulture Code of Conduct). The combination of retail concentration and lack of transparency in the value chain places growers in an invidious position.

This initial submission will therefore cover the following (related) points of the Issues Paper:

- ◆ C: Competition in grocery retailing
- ◆ D: Competition in grocery wholesaling
- ◆ E: Buying power in grocery supply markets
- ◆ G: Factors influencing the pricing of inputs along the supply chain for standard grocery items
- ◆ H: Impediments to efficient pricing of inputs along the supply chain
- ◆ I: Horticulture Code of Conduct.



## RESPONSE TO ISSUES PAPER

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**We believe there are three key questions for the Review in relation to retail grocery pricing:**

- ◆ **Is there market failure in retail grocery pricing?**
- ◆ **Does lack of transparency in the value chain disadvantage growers? and, as a result**
- ◆ **Are relative margins (returns over input costs) equitable for all the players in the supply chain?**

Growers operate in extremely competitive markets, and the domestic market for fresh produce is dominated by Australia's two major supermarket chains. The significant market power of these retailers, along with escalating costs of production (labour costs are on average around 50% of the cost of production in Horticulture) limit the capacity of growers to absorb additional costs or manage external industry impacts (such as climate change).

### ***Market Failure?***

As a consequence of their large share of the market, the retail chains are price makers; and growers are generally price takers.

While we are aware that there are many growers who deal with the retailers as direct suppliers, there is a significant majority who are unwilling to deal directly with the major supermarkets, or unhappy about major issues relating to their business transactions with the retail chains.

Market forces cannot effectively counter-act the ability of capital strength; this leads to the potential for unreasonable positions or abuses, and creates an entrenched culture. For example, retailer margins may simply be higher than they would otherwise be.

A more competitive environment through the introduction of new players such as independents should see margins adjust downwards. However, the investment by the majors in supply chain infrastructure and logistics effectively adds to their level of market power.

Some forms of behaviour which could be classed as unreasonable or abuses of market power for at least a significant number of growers include:

- ◆ Direct suppliers 'bidding themselves down in price' (being allocated no quota; or being asked to re-bid or re-tender to supply, usually at a lower price).
- ◆ Stock returns after delivery.
- ◆ Lack of understanding of appropriate treatment for certain produce (which can lead to poor handling of/damage to produce).
- ◆ Input costs pushed back down the chain to suppliers (cartons/food safety testing/packaging).
- ◆ Unilateral changes to, or termination of, contract by the major retail chains.
- ◆ Growers unwilling to raise issue for fear of retribution in their business.

On the issue of poor handling of/damage to produce, one grower responded with the following example:

"We have had instances where our gold squash was held too long in higher temperatures (10-12) degrees - squash should be held around 6 degrees. As a result, the product sweated and began to grow mould. This was deemed our fault and resulted in lost product, sales and income. In another instance, zucchini was kept too cold (below 4 degrees), which froze the zucchini; again this was deemed a problem on our farm. If we kicked up too much of a stink over this, we would have lost future sales."

A recent survey of Members agreed (85%) that growers were often unwilling to raise issues with major retailers and wholesalers, for fear of retribution.

This is a major issue for our industry, and will impact heavily on any public hearings the ACCC conduct. HAC is happy to assist with organising an *in camera* session with growers who are willing to share their stories in confidence.

### ***Lack of transparency in the value chain?***

In the wholesale sector, control by a duopoly reduces supplier options for wholesalers (the 'chosen few', acting as Buyers' Agents). There are instances of where an effective monopoly exists in the wholesale markets for certain commodities (eg Moraitis with potatoes in the Sydney Markets; Avocados in the Brisbane Markets), which also mean market forces are not operating effectively due to market power.

One growers' view of this situation is that:

"Agents [wholesalers] see growers as competition/milch cows. Good growers go direct [to the retailers] to get away from the stupidity of Agents [wholesalers]. Growers are the other half of the market, yet have no power or representation or ownership. Agents [wholesalers] ignore the above by saying "growers have D shed" [a growers' direct selling floor at the Flemington Markets]. That statement is stupid, as growers outside the Sydney basin cannot market their produce.

### ***Equity of Relative Margins?***

The market power of the retailers is unsustainable, and does not deliver good outcomes for either consumers or suppliers. Lack of market forces lessens the ability for suppliers to pass on increases in input costs up the chain (thus creating the constant 'squeeze' on margins for growers).

On the contrary, growers are constantly under pressure from those higher in the supply chain to absorb greater costs – which might normally be thought to be the province of the retailers or wholesalers. Recent examples include returnable plastic crates or other unique packaging required by the retailers (at the growers' expense); or additional food safety testing over and above agreed national standards (again, at the growers' expense).

HAC acknowledges that all supply chain participants will have input costs for their business, and that every business requires a reasonable profit margin to survive and thrive. However, it is the belief of the majority of growers' that their relative margins do not fairly represent their value contribution to the end to the end-product price. We are delighted by the opportunity offered by this Review to finally clarify the situation.

### ***Inclusion in the Horticulture Code of Conduct?***

The Code is quite simply a measure to ensure that there is transparency in contractual arrangements between growers and commercial buyers (written contracts which comply with some minimum requirements); transparency of trade (eg is a trader operating on the supplier's behalf, or their own?); and a simple, accessible and affordable dispute resolution process.

Industry has been disappointed by the lack of enforcement activity by the ACCC in relation to the Horticulture Code of Conduct (the Code) to date. Our primary concern is to ensure that the new Code is actually operating as it was intended – which is not currently the case. Massive non-compliance with the Code (on the order of 80%+) makes this our first priority.

Nevertheless, industry has consistently supported the position that the Code should cover the first transaction from the grower ('first point of sale') and that it should apply to all parties; including, but not limited to, central market wholesalers (currently covered), other wholesalers and produce merchants (eg independent traders, or packhouses), brokers (Agents are currently covered, but not if they are acting directly on behalf of the retailers as Buyers' Agents), retailers, exporters and processors.

We also believe that the trading relationship beyond the first point of sale should, under certain circumstances, be available for scrutiny under the provisions of the Code where it impacts adversely on parties subject to the Code. This would be applicable to ensure pricing transparency and to address issues related to trading with related parties.

The contracts agreed to by the major retailers with their direct suppliers more than meet the minimum requirements of the Code – in general, they are solid documents covering both the terms of trade arrangements and the specific agreements currently covered by the Horticulture Produce Agreement. These trading relationships are currently covered by the national Produce and Grocery

Code. In general terms, industry has no reason to suppose that these contracts are not operating as intended.

However, there have been instances of direct suppliers trading with no written contractual arrangements; and industry is also keen to ensure that independent retailers are 'captured' by the Code. Another major issue is to ensure that those traders acting on behalf of the retailers (Buyers' Agents) are also covered by the Code. Consequently, we are willing to consider (for reasons of equity, clarity and administrative simplicity) the possibility of one Code (Horticulture Code of Conduct) which governs all transactions in the fresh produce sector.

**This initial submission covers the 'headline' points of policy only. Industry is currently preparing a detailed submission, which will be presented shortly as a supplementary submission to the Inquiry.**