



The N.S.W. Chamber of Fruit & Vegetable Industries Inc.

SUITE B 24, MARKET PLAZA BUILDING. (P.O. BOX 6)
SYDNEY MARKETS 2129.
TELEPHONE: (02) 9764 3244 - FACSIMILE: (02) 9764 2776

11 March 2008

Grocery Prices Inquiry – Submissions
ACCC
GPO Box 520
MELBOURNE VIC 3001

SUBMISSION TO ACCC GROCERY INQUIRY
BY
THE NSW CHAMBER OF FRUIT AND VEGETABLE
INDUSTRIES INC
ON 11 MARCH 2008

Thank you for the invitation to provide a submission relating to the Inquiry into Grocery Prices.

By way of background, the NSW Chamber is a not for profit industry association that traces its origins to the beginning of the 20th Century and has operated in its present form since 1935. We represent fruit and vegetable wholesalers and supporting businesses located in Sydney Markets. We are a member of The Australian Chamber of Fruit and Vegetable Industries Limited.

Sydney Markets is the largest fresh produce Markets in the Southern Hemisphere, and the leading privately owned Markets of its type in the world, supplying thousands of retailers, providores, florists and food processors on a daily basis. Formally a NSW Government owned enterprise, it was taken over in 1997 by Sydney Markets Limited, an unlisted public company owned by the Markets traders and supporting businesses. In 2002 the company purchased the Flemington site from the Government.

Sydney Markets is both a wholesale and a public markets where the general public are able to come each day to purchase fruit, vegetables, flowers, meat, eggs, fish, smallgoods and a wide range of dry goods. Approximately 120 Wholesalers, 394 Produce Growers, 172 Flower Growers-Sellers and over 160 supporting businesses are located on site at Flemington, while some 1,500 traders operate within the various community markets at Flemington and Haymarket.

The NSW Chamber membership includes nearly all the wholesalers on site, as well as grower/traders, exporters, providores, retailers, transporters and supporting businesses located here. Unlike many industry associations, particularly those in the horticulture industry, The NSW Chamber is in daily 'face to face' contact with our members and hundreds of growers and retailers who do business with them. It is pertinent that 50% of our wholesaler members are also growers and 20% are also involved in retailing outside

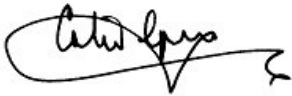
the Markets. More than 40% of our members, or their staff, are also involved in the retail Paddys and Fresh Food Markets that operate at Sydney Markets. More than 90% of our members are small businesses, employing less than 20 personnel.

Through our various services to our members and the industry we are in daily contact with individual growers, industry organisations and Government agencies throughout Australia.

Senior office bearers and management of the NSW Chamber have extensive practical experience with Government legislation, deregulation, producer support schemes, industry regulation and Government regulation over the last two decades. Much of this experience has been gained as participants in Government appointed Committees.

While our submission is mainly focussed on the Horticulture Code of Conduct we have included some general comments relevant to other areas. Our comments draw upon the collective knowledge and experience of our directors and management, as well as the views of the growers and wholesalers most affected by the Horticulture Code of Conduct.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Colin Gray', with a stylized flourish extending from the end.

Colin Gray
Chief Executive Officer

ACCC GROCERY INQUIRY
NSW CHAMBER SUBMISSION

GENERAL COMMENTS

The Central Markets System

The Central Markets system caters to businesses of all sizes and types in the purchase and sale of fresh produce. Growers no matter how large or small from all over Australia are able to market their full saleable crop to the maximum number of buyers. Wholesalers based in the Central Markets add significant value in the supply chain through the provision of a very comprehensive range of services to growers that extend beyond the sale itself, including marketing advice, storing, sorting, residue testing, ripening, repackaging and credit risk. Preservation of an effective Central Markets system is integral to the survival and prosperity of the Australian horticulture industry, in particular, small to medium growers and independent greengrocers.

True market forces of supply, demand and competition determine the prices at the Central Markets. In this highly competitive environment, there is no intervention, quotas, minimum or maximum selling prices or quantities. This allows buyers the freedom of choice and the opportunity to make a personal assessment of quality and availability. The Central Markets also ensures continuity of supply to the consumer irrespective of natural disasters such as cyclones or droughts.

Price Transparency

The nature of the Central Markets provides much more transparency than would be the case in off market operations. Central Markets businesses are in the one location actively competing with each other to sell their products. Buyers of all types (including the general public in the case of Sydney Markets) have the opportunity to compare price more readily and easily than in any other marketing environment.

Each Central Markets has one or more independent price reporting services, which provide prices for each and every product on a daily basis. These reporting services can provide special reports to suit a customer's needs on a daily, weekly or monthly basis. Anyone is able to use these services on a 'fee for service' basis.

Weekly fruit, vegetable and flower price reports are published in The Land newspaper in NSW and in similar publications in the other states. Some industry groups publish daily reports for their particular products on a seasonal basis. An example of this is the daily price reports for mangoes sold in the Central Markets, which are freely available on the internet.

As the AFFA Report 'Price Determination in the Australian Food Industry', when discussing transparency, states:

'It is also apparent that those who bother can get the information they need. There is increasing investment by individual businesses in knowledge and intelligence and private R&D. Indeed, some have asserted that most of the noise associated with lack of information comes from those who have not made the investment or necessary adjustment in anticipation of change.' (Page 125).

HORTICULTURE CODE OF CONDUCT

Introduction of the Code

The mandatory Horticulture Code was the result of a political promise in response to threats from certain grower groups just prior to the 2004 Federal Election. Its introduction was subsequently confirmed in September 2006 after the same grower groups were allowed to walk away and reject reasonable alternative proposals put forward by the Department of Agriculture Forestry and Fisheries. The final Code regulations were developed in secret without consultation with the people most affected by it; the mainstream growers and wholesalers.

The resulting Code regulation is unconstitutional, discriminatory, lacking in justification, wrong in concept and flawed in execution. It imposes impractical and costly regulatory requirements on growers and other small businesses in the horticulture industry. It also imposes unnecessary costs on taxpayers for its implementation and enforcement.

Impact of the Code (Inquiry Question 81)

The NSW Chamber's Experience

Despite our opposition to the Code in principle, the NSW Chamber actively participated in its introduction by encouraging our members and their growers to abide by the legislated Code Regulation and by assisting our members to implement the Code requirements in their businesses. Moreover, we liaised extensively with the Government agencies involved in the introduction of the Code and have provided a conduit for the dissemination of information, interpretation of Code requirements and the resolution of enquiries with our members.

Despite this cooperation and participation, our experience with the Code to date has been a less than happy one. It has cost the NSW Chamber extensive time and resources, a small fortune in legal fees, and has detracted from our efforts to foster increased grower/wholesaler cooperation. Furthermore, the NSW Chamber itself has suffered misrepresentation, while some of our members have been subjected to false accusations and manufactured allegations of non-compliance. These situations were particularly galling when they were directed at businesses that were genuinely endeavouring to comply with the Code.

Level of Complaint

Given the amount of publicity and the efforts by some grower groups to generate complaints, it is significant that in the three months period from 1 July 2007 to 30 September the ACCC has reported receiving just 47 enquiries (of all types) in relation to the Code – hardly the avalanche of complaint that some pro Code activists were hoping for.

It is our understanding that the level of enquiries received by the Horticulture Code Mediation Advisor is substantially less and that nearly all of these were just that; enquires - not complaints.

It has been a similar picture for the NSW Chamber. Our records of grower enquiries indicate an average of 16 per year. Last year it was 10. Putting this in perspective; 10 enquiries on a throughput of more than 1 million pallets of produce per year is literally 'a drop in the bucket'.

We did however receive countless calls from growers about the Code itself. Their consistent theme was 'Why? Why? Why?'

- Why wasn't I told about this before?
- Why do we need it?
- Why do I have to be in it?

Impact on Business

While the impact on our organisation has been significant and caused an administrative impost on our members, fortunately the Code has not impacted significantly on the day-to-day business within the central Market system. This is because most of the business is done between growers and wholesalers under pre-existing written agreements or between parties who are not subject to the Code.

The reason we say 'fortunately' is because the Code, as presently written, is unworkable and if it applied to most transactions it would not be possible to process the present volume of daily shipments within the physical and personnel constraints at the Markets. Put simply, there is insufficient room to handle and store the build up of product that would occur while detailed inspections and price negotiations with growers took place. There would also be insufficient storage facilities for product waiting to be picked up or redirected by growers.

The other reason that the Code is not impacting on business is because many within the industry are simply ignoring it.

We regularly receive reports from our members about growers who refuse to sign Code documentation yet still wish to send produce. The wholesaler is placed in the impossible position of accepting the produce and 'breaking the law' or lose the business to another who is less concerned about Code compliance. The suggested solution of 'dobbing in' the other business is not a realistic option.

No Tangible Benefits

There is a significant problem in commenting on the effectiveness of the Code because the Code has no stated tangible benefit. 'Improved transparency' is a very nebulous term that no one has successfully defined in industry terms, let alone measured. It is worthwhile noting that not one pro Code grower group or any pro Code advocate, including the Government, has ever been prepared to give an undertaking that the Code will provide anything tangible for the grower; eg, that the Code will put one more dollar in any grower's pocket.

Growers tell us they were led to believe, by their representatives, that the Code would provide them with benefits but they don't see any in reality. All they see is more complicated paperwork, more requirements and less flexibility with how they sell their produce. They believe they were misled by their grower representatives; 'betrayed' is the word often used.

Growers Want Flexibility

Growers tell our members and tell us they don't want bureaucrats telling them how to sell their produce. They want the right to choose how and to whom they sell. They want the flexibility to be able to decide whether to operate under the Code or not.

It brings into question the justification for having a mandatory Code; if the Code was introduced because of the demands of most growers then why are most of them opting to stick with pre-existing agreements or choosing not to sign Code agreements. Similarly, if the Government and the pro Code grower advocates are so certain that the Code is beneficial then put it to the real test; give the individual grower the right to choose whether to operate under it or not.

Growers Disadvantaged

The Code regulation itself appears to be written in a manner that tries to shift all the compliance and reporting responsibility onto the wholesaler.

This may sound attractive to the pro Code grower representatives but the practical consequences actually disadvantage the very growers the Code is allegedly supposed to protect. Wholesalers, who in the past would have been happy to 'give a new grower a go', are now most reluctant to deal with a grower who is unknown or does not have a proven record of consistency of product quality and reliability of supply. This will make it increasingly harder for small or new growers to find good wholesalers. It is most likely they will have to run the gauntlet of the 'fly by night off market' operators; the ones who are most probably operating outside the Code.

Already we are seeing wholesalers being forced to make commercial decisions about the cost of dealing with smaller seasonal growers under the Code. In most instances they are forced to tell the grower they simply cannot handle their product.

Central Markets Growers

One of the most glaring anomalies with the Code is its application to growers selling in central Markets and the so-called 'farmers markets'. These growers are not just selling to wholesalers, retailers and the general public they are selling and buying from each other to make up orders or where they see chance to make a profit. Moreover, because many of these markets are public markets, the grower does not necessarily know who they are selling to and for what purpose. (This problem was recognised in 2000 by the GST Task Force and was the reason that fresh fruit and vegetables were made 'GST free through the chain').

Under the present Code regulations, if a grower wishes to sell one box of lettuce to his/her next door neighbour at the Markets then they would each be required to wade through as many as seven documents. We are not aware of any one of the 394 growers operating in Sydney Markets who wants to operate under the Code, particularly with other businesses in the Markets. It is ludicrous to require businesses operating 'face to face' to be subject to such an unnecessary administrative burden.

Inclusion of Retailers and other Major Buyers (Inquiry Question 82)

We believe the decision to exclude large parts of the horticulture industry from the Code, eg retailers, processors and exporters, was not only flawed, it is contrary to the Constitution of Australia and has given a significant competitive advantage to the excluded businesses. The given reasons for these exclusions were questionable at the time there has been nothing offered since that might justify these exclusions. It is interesting that, individually, the leading grower proponents of the Horticulture Code supply retailers, exporters and processors who are exempt from the Code.

If there was a genuine desire to create a level playing field and fair and open competition, (as against satisfying a decision based on political blackmail) then all groups should be included.

However, while the inclusion of these currently exempted groups may overcome the Constitutional and anti competitive aspects of the Code, it would in our opinion, do very little to help achieve the Code's objectives (questionable as they are). We don't believe that it would have any significant effect on the Market behaviour of the currently excluded groups. All it would do is create more administration and cost through the supply chain and ultimately result in higher prices to the consumer.

This would be as unjustified as the original decision to implement the Code in the first place, particularly when there is a perfectly good voluntary Produce and Grocery Industry Code of Conduct in operation.

Improving Effectiveness of the Code (Inquiry Question 83)

As indicated above, we do not believe the inclusion of these additional groups would improve the effectiveness of something that is so fundamentally flawed.

Already pro Code grower advocates are seeking to have formal amendments to exclude some packing sheds from the Code because they have 'discovered' that these businesses cannot comply. This would create further anti-competitive imbalance between businesses competing side by side in the same market, as some would have to comply while their direct competitor does not. This just compounds what is already happening now.

Fixing the Code

All the effort and the time and cost of taxpayer money in promotion, education and enforcement have been effectively wasted because the fundamentals of the Code are wrong. Until the Code has a practical business application and a tangible beneficial effect no amount of band-aids will make it better; it needs radical surgery.

If the Code proponents have a justifiable case then everyone should be included. If on the other hand, as we believe, they do not, then the Horticulture Code Regulation should be repealed forthwith.

End.