

**Sent:** Thursday, 22 May 2008 10:49 PM  
**To:** Leuner, Tom  
**Subject:** Mandatory Code

Dear Tom

I have just received a copy of the Horticultural Code Issues Paper as part of the ACCC grocery enquiry.

I am an executive member of the Mareeba District Fruit & Vegetable Growers Association and the North Queensland Director of the Australian Mango Industry Association. I am also the person who was the main driving force in getting John Anderson to give Australian Growers the commitment that his Government if Re elected (2004 election) would implement a Horticultural Code of Conduct.

Unfortunately the Liberal side of the coalition sought to appease big business which saw growers and the metropolitan markets burdened with a code that is biased, discriminatory and deliberately punitive to those it is meant to protect. Growers cannot be blamed for seeing this blatant biased document as nothing more than political donations taking precedence over ethical legislation / regulation.

What other business in Australia or any other part of the world delivers his total annual production to a third party not knowing what financial return he will receive, when he will receive it and no legal right to documented proof of the transaction. This is situation that the current code provides. It provides NO default clauses and NO protection of grower funds.

It is a well-known fact that market representatives are operating as AGENTS but acting as merchants, exactly what has been happening as long as there has been markets in Australia.

I am attaching a code that I wrote and which was proof read by many experienced growers and introduced into Parliament last year by our Federal Member Bob Katter. This code has the full support of growers and market representatives, as it is fair and all exclusive and provides for full transparency through documented evidence. The only dissension you will find will come from the major chains and the processors. If as I have been told by Peter McGauran, previous minister for agriculture and responsible for the current debacle, that the major chains already adhere to a voluntary code that is stronger than the Mandatory Code why on earth would they not come out and willingly become signatures to a Mandatory Code.

I gave evidence to the ACCC when they were in Cairns and provided them with a copy of the code growers want to be immediately implemented in full. The implementation of this code would result in 90% + of the current problems facing growers being rectified and the estimated billion dollar black economy that exists in the metropolitan markets being seriously restricted as there would be a complete paper trail of all transactions that could be verified by the ATO.

Should you require any further information please do not hesitate to contact me.

Regards

Scott Dixon

2004-2005-2006-2007

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Trade Practices Amendment  
(Horticultural Code of Conduct) Bill  
2007**

**No.     , 2007**

*(Mr Katter)*

**A Bill for an act to amend the *Trade Practices Act*  
*1974***



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**A Bill for an act to amend the *Trade Practices Act 1974***

**The Parliament of Australia enacts:**

**1 Short title**

This Act may be cited as the *Trade Practices Amendment (Horticultural Code of Conduct) Act 2007*.

**2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

**3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1  
2 **Schedule 1—Amendment of the *Trade***  
3 ***Practices Act 1974***

4 **1 Subsection 51ACA(1) (definition of *mandatory industry***  
5 ***code*)**

6 Repeal the definition, substitute:

7 “*mandatory industry code* means an industry code that is declared by  
8 regulations under section 51AE to be mandatory or which is provided  
9 for in this Part. A mandatory industry code that is provided for in this  
10 Part shall be taken to override any inconsistent provision of a relevant  
11 industry code declared by regulations.”

12 **2 After section 51AEA**

13 Insert:

14 **51AEB Horticultural code of conduct**

15 *Name of code*

16 (1) This code is the Horticultural Code of Conduct.

17 *Purpose of code*

18 (2) The purpose of this code is to regulate the conduct of Growers and  
19 Wholesalers, Retailers, Exporters, and Processors of Horticultural  
20 Produce to ensure contractual clarity and transparency of all first  
21 point of sale transactions and provide a cost-effective mechanism  
22 for fair and equitable dispute resolution.

23 *Definitions and interpretation*

24 (3) (a) In this code:

25 ***Grower*** means any person or entity that grows and sells  
26 Horticultural Produce.

27 ***Agent*** means any person or entity that acts for commission  
28 on behalf of another person, group or business.



**Merchant** means any person or entity engaged in the purchase and sale of commodities for profit and may include wholesalers who choose to operate as merchants. It includes all retailers, exporters and processors engaged in purchasing horticultural produce for resale.

**Agency Relationship** means a Trading Relationship under which:

- (i) a Wholesaler acts for an agreed commission as an agent for a Grower in relation to the sale by the Grower of Horticultural Produce to a third party buyer; and
- (ii) the Grower retains ownership of the Horticultural Produce until sold to a third party buyer and the wholesaler does not at any time acquire ownership of the Horticultural Produce.

**Agreed Term of Trade** has the meaning given in subsection (7).

**Horticultural Code Management Committee** means the committee appointed by the Minister pursuant to subsection (39).

**Horticultural Inspector** means a horticultural inspector appointed by the Horticultural Code Management Committee pursuant to paragraph 39 (c).

**Horticultural Produce** means fresh, unprocessed, fruit and vegetables, nuts, and plants, for human consumption.

**Intent to Deliver Produce Form** means a form detailing produce by which means a Grower may notify a Wholesaler of its intention to deliver Horticultural Produce.

**Merchant Relationship** means a Trading Relationship under which:

- (i) a Wholesaler or Retailer or Exporter or Processor purchases Horticultural Produce from a Grower at a price, or pursuant to a schedule of prices, agreed prior to the receipt of the Horticultural Produce by the Wholesaler or Retailer or Exporter or Processor; and
- (ii) unless there is a dispute regarding the quality or quantity of delivered produce, ownership of the Horticultural Produce passes to the merchant no later than 24 hours after receipt of produce by the Merchant.

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**Market Authority** means any organisation owning, controlling or administering the centralised markets where produce is bought, sold and/or traded by Merchants, Agents, Wholesalers and Retailers including, but not limited to Perth Metropolitan Markets, Brisbane Markets (Brismark), Sydney Markets Ltd, Melbourne Market Authority.

**Trading Relationship** means a trading relationship between a Wholesaler or Retailer or Exporter or Processor, and a Grower.

**Type of Trading Relationship** means an Agency Relationship or a Merchant Relationship.

**Wholesaler (Agent)** who facilitates the sale of Horticultural Produce on behalf of a Grower to a third party for a commission or fee.

**Wholesaler (Merchant)** means any person or entity who purchases Horticultural Produce from a Grower for the purpose of resale (including resale after processing the Horticultural Produce) or

**Terms of Trade** has the meaning given in subsection (5).

(b) In this code, unless the context requires otherwise:

- (i) the use of the words “include”, “including”, or similar expressions, shall not limit the generality of words that may follow; OK
- (ii) a reference to any communication includes a communication provided in writing, in person, by post, by facsimile or by electronic mail.

#### *Application of the code*

(4) (a) This code applies on and from the commencement date and covers all first point of sale transactions between a Grower and a Wholesaler or Retailer or Processor or Exporter.

(b) This Code does not apply to:

- (i) any sale of Horticultural Produce by a Grower to an end consumer; or
- (ii) any sale by a Grower of produce grown by that grower, provided that the sale takes place in a central market

1 reserved for Growers and commonly known as the  
2 “Grower’s Shed”.

3 *Wholesaler or Retailer or Processor or Exporter must prepare*  
4 *Terms of Trade*

5 (5) (a) A Wholesaler or Retailer or Processor or Exporter must prepare  
6 and maintain a document that sets out the terms and conditions  
7 on which they are prepared to trade with Growers  
8 (***Wholesaler’s Terms of Trade***).

9 (b) A Wholesaler or Retailer or Processor or Exporter’s Terms of  
10 Trade must:

11 (i) be consistent with the requirements of this code;

12 (ii) identify the type or types of trading relationship under  
13 which they are prepared to trade and the terms and  
14 conditions applying for each such type of trading  
15 relationship;

16 (iii) where more than one type of trading relationship is  
17 specified, identify a default type Trading Relationship.

18 *Requirement to provide Wholesaler or Retailer or Processor or*  
19 *Exporter Terms of Trade*

20 (6) (a) A Wholesaler or Retailer or Processor or Exporter must provide  
21 their Terms of Trade to any Grower they choose to deal with.

22 (b) If a Wholesaler or Retailer or Processor or Exporter amends  
23 their Terms of Trade they must provide a copy of the amended  
24 Terms of Trade to any Grower they choose to deal with.

25 *Agreed Terms of Trade*

26 (7) (a) A Wholesaler or Retailer or Processor or Exporter and a  
27 Grower may agree to trade under any type of Trading  
28 Relationship and under terms and conditions that differ from  
29 the Wholesaler or Retailer or Processor or Exporter Terms of  
30 Trade (***Agreed Terms of Trade***), provided that the Agreed  
31 Terms of Trade are consistent with the requirements of this  
32 code.

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(b) In an established relationship, should a Grower send or deliver a consignment of Horticultural Produce to a Wholesaler or Retailer or Processor or Exporter that is accepted and where the type of Trading Relationship for that particular consignment has not been arranged, the Trading Relationship for the most recent previous consignment will apply.

#### *Transaction splitting*

(8) In the event that a Wholesaler or Retailer or Processor or Exporter and a Grower agree in advance that a consignment of Horticultural Produce will be split, with different parts sold under differing Types of Trading Relationship and terms and conditions, each part will be treated as a separate transaction with a separate Trading Relationship and Agreed Terms of Trade.

#### *Application of minimum terms of trade for all Trading Relationships*

(9) The provisions of subsections (9) to (16) inclusive shall apply to all types of Trading Relationships between a Wholesaler or Retailer or Exporter or Processor, and a Grower.

#### *Grower intent to deliver Produce Notification*

(10) (a) A Grower must not deliver a consignment of Horticultural Produce to a Wholesaler without first notifying the Wholesaler or Retailer or Processor or Exporter of details of quantities and grades. Notification can be made by telephone, facsimile or electronically followed by a summary of the total consignment by facsimile or electronically at the time of dispatch.

(b) The Wholesaler or Retailer or Processor or Exporter Terms of Trade and Agreed Terms of Trade may include a pro forma Intent to Deliver Produce Form, which includes information to be provided about the quantity and quality of Horticultural Produce to be delivered and, where the Wholesaler or Retailer or Processor or Exporter operates under more than one type of Trading Relationship, specifies the type of Trading Relationship the Grower wishes to enter into.

- (c) Where the Agreed Terms of Trade include a pro forma Intent to Deliver Produce Form a notification made under this subsection must use the pro forma Intent to Deliver Produce Form or any agreed form of notification.

*Grower failure to give an Intent to Deliver Produce Notification*

- (11) If a Grower delivers a consignment of Horticultural Produce to a Wholesaler or Retailer or Processor or Exporter without first providing a notification as required under subsection (10) and which Horticultural Produce the Wholesaler or Retailer or Processor or Exporter does not want:

- (a) the Wholesaler or Retailer or Processor or Exporter must notify the Grower of the delivery of the consignment of Horticultural Produce Grower must not deliver a consignment of Horticultural Produce within 24 (twenty four) hours of the consignment being delivered; and
- (b) the Grower must, within 24 (twenty four) hours of receiving a notification under paragraph (a), notify the Wholesaler or Retailer or Processor or Exporter if it wishes to have the consignment of Horticultural Produce destroyed, or delivered to a nominated third party, or returned to the Grower. Alternatively, the Grower and the Wholesaler or Retailer or Processor or Exporter may come to an agreement pursuant to which the Wholesaler or Retailer or Processor or Exporter will accept the consignment on Agreed Terms of Trade; and
- (c) if the Grower does not notify the Wholesaler or Retailer or Processor or Exporter in accordance with paragraph (b) within 24 (twenty four) hours of receiving a notification under paragraph (a), the Grower is deemed to have elected to have the consignment dealt with at the Wholesaler or Retailer or Processor or Exporter's discretion, which may include the consignment being accepted by the Wholesaler or Retailer or Processor or Exporter on Agreed Terms of Trade or destroyed at the Grower's expense; and
- (d) the Wholesaler or Retailer or Processor or Exporter must deal with the consignment of Horticultural Produce in accordance

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1 with the Grower's election under paragraph (b) or deemed  
2 election under paragraph (c); and

- 3 (e) the Grower must reimburse the Wholesaler or Retailer or  
4 Processor or Exporter for any reasonable costs incurred by them  
5 in dealing with the consignment in accordance with this  
6 subsection.

7 *Wholesaler or Retailer or Exporter or Processor's obligation to*  
8 *respond to Grower's Intent to Deliver Produce Notification*

- 9 (12) (a) If a Wholesaler or Retailer or Processor or Exporter receives an  
10 Intent to Deliver Produce notification from a Grower in  
11 accordance with subsection (10), they must respond in an  
12 agreed way to the Grower within the maximum number of  
13 hours specified in the Agreed Terms of Trade (which must not  
14 exceed 48 hours) indicating whether or not they will accept the  
15 consignment, subject to the consignment's compliance with the  
16 Agreed Terms of Trade.

- 17 (b) If a Wholesaler or Retailer or Processor or Exporter does not  
18 respond in the permitted time frame they will be deemed to  
19 have agreed to accept the consignment, subject to the  
20 consignment's compliance with the Agreed Terms of Trade.

21 *If a Wholesaler or Retailer or Exporter or Processor does not*  
22 *accept an Intent to Deliver Produce Notification*

- 23 (13) If a Wholesaler or Retailer or Processor or Exporter responds in the  
24 agreed way and in accordance with subsection (12), indicating that  
25 they will not accept the consignment of Horticultural Produce, the  
26 Grower must not deliver the consignment to them. Subsection (11)  
27 applies to any consignment of Horticultural Produce the Grower  
28 delivers to the Wholesaler or Retailer or Processor or Exporter in  
29 breach of this requirement.

30 *If a Wholesaler or Retailer or Exporter or Processor does accept*  
31 *an Intent to Deliver Produce Notification*

- 32 (14) If a Wholesaler or Retailer or Processor or Exporter responds in  
33 accordance with subsection (12) indicating that they will accept the

1                   consignment of Horticultural Produce (or is deemed to have done  
2                   so), they must accept the consignment of Horticultural Produce  
3                   when delivered, unless:

4                   (a) the consignment does not meet the quality or quantity  
5                   requirements specified in the Intent to deliver Produce  
6                   Notification and the Agreed Terms of Trade; or

7                   (b) the Wholesaler or Retailer or Processor or Exporter advises the  
8                   Grower of the rejection of the consignment within the time  
9                   specified in the Agreed Terms of Trade (which must not exceed  
10                  24 hours after the time of delivery).

11                   *Payment Timeframes*

12                  (15) A Wholesaler or Retailer or Processor or Exporter must remit to  
13                  the grower the proceeds from the sale of a consignment of  
14                  Horticultural Produce that they accept within the period specified  
15                  in the Agreed Terms of Trade. The time specified may not exceed  
16                  45 (forty five days). If no timeframe is specified, the period will be  
17                  deemed to be a maximum of 28 (twenty eight) days from the date  
18                  the produce is sold by the Wholesaler or Retailer or Processor or  
19                  Exporter.

20                   *Wholesaler or Retailer or Exporter or Processor Dispute Contact*  
21                   *Details*

22                  (16) A Wholesaler or Retailer or Processor or Processor must specify in  
23                  their Terms of Trade contact details for a period a Grower may  
24                  contact in the event of a dispute with the Wholesaler or Retailer or  
25                  Processor or Exporter.

26                   *Application of Minimum Terms of Trade for an Agency*  
27                   *Relationship*

28                  (17) Subsections (17) to(24) inclusive shall apply only where a  
29                  Wholesaler and a Grower are in an Agency Relationship and shall  
30                  apply in addition to the requirements of subsections (9) to (16).

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1                    *Transfer of Ownership of Horticultural Produce (Agency*  
2                    *Transaction)*

- 3                    (18) Ownership of Horticultural Produce remains with the Grower until  
4                    sale by the Wholesaler (Agent) to a third party. At this time  
5                    ownership passes immediately to the third party.

6                    *Payment of proceeds of sale*

- 7                    (19) (a) A Wholesaler (Agent) must pay to the Grower any proceeds the  
8                    Agent receives in connection with the sale of a consignment of  
9                    Horticultural Produce, less:

- 10                    (i) any commissions permitted under subsection 20; and  
11                    (ii) any extra costs permitted under subsection (21).

- 12                    (b) All monies received by the Wholesaler (Agent) on behalf of the  
13                    Grower must be placed in a trust account managed by the  
14                    relevant Market Authority prior to distribution to the Grower  
15                    less the commissions allowed for in subparagraph (a)(i) and the  
16                    costs allowed for in subparagraph (a)(ii).

- 17                    (c) A Wholesaler (Agent) must pay the Grower for a consignment  
18                    of Horticultural Produce the proceeds received for the  
19                    consignment less the commissions and fees allowed for in  
20                    subparagraph (a)(i) and the costs allowed for in subparagraph  
21                    (a)(ii), if applicable, within the period specified in the Agreed  
22                    Terms of Trade. The period specified may not exceed 45 (forty  
23                    five) days.

24                    *Commissions*

- 25                    (20) A Wholesaler (Agent) may only charge commissions on the basis  
26                    set out in the Agreed Terms of trade. Such Commissions must be  
27                    specified on a percentage basis. The commission rate is negotiable  
28                    in the Agent's Terms of Trade but may not exceed 12.5% (twelve  
29                    and one half per cent).

30                    *Extra Costs*

- 31                    (21) A Wholesaler (Agent) may only seek reimbursement for extra  
32                    costs it incurs to the extent provided for, and on the basis set out in,  
33                    the Agreed Terms of trade. Extra costs may include storage fees,  
34                    handling fees and disposal fees.
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*Summary price information*

- (22) (a) A Wholesaler (Agent) must provide a Grower with a duplicate copy of their statement or invoice to the third party for each consignment of Horticultural Produce sold by them on behalf of the Grower, showing the total proceeds of sale of the consignment less any commission or extra costs permitted under subsections (20) and (21) in the Agreed Terms of Trade.
- (b) The statement or invoice must be provided within the period specified in the Agreed Terms of Trade or within 28 (twenty eight) days of the completion by the Wholesaler (Agent) of the sale of the consignment, if no period is specified.

*Itemised price and quantity information*

- (23) A Wholesaler (Agent) must within the period specified in the agreed Terms of Trade, or within 14 (fourteen) days if no period is specified, provide a duplicate copy of their statement or invoice to the third party relevant to the transaction. The time specified may not exceed 28 (twenty eight) days. The duplicate copy statement or invoice must include:
- (a) the date or dates of the sale;
  - (b) the type, quantity and count of the Horticultural Produce sold;
  - (c) the price received for each grade of Horticultural Produce sold; and
  - (d) details of the buyer of the Horticultural Produce.

*Due care and skill*

- (24) While the Horticultural Produce is under the Wholesaler's (Agent's) management, they must exercise due care and skill in handling and storing the Horticultural Produce.

*Application of minimum terms of trade for a Merchant Relationship*

- (25) Subsections (25) to (28) inclusive shall apply where a Wholesaler and a Grower are in a Merchant Relationship and to all transactions between a Grower and a Retailer or Exporter or Processor and apply in addition to the requirements of subsections (9) to (16).

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*Transfer of Ownership of horticultural Produce (Merchant Transaction)*

- (26) Ownership of Horticultural Produce passes from the Grower to the Wholesaler (Merchant) either:
- (a) if the price for the Horticultural Produce has been agreed by the Wholesaler (Merchant) and the Grower prior to delivery, ownership passes immediately to the Wholesaler (Merchant) upon receipt of the produce; or
  - (b) if the price for the produce has not been agreed between the Wholesaler (Merchant) and the Grower prior to delivery, ownership passes immediately at the time the Wholesaler (Merchant) and the Grower agree on a price for the produce. This must be no later than 24 (twenty four) hours after receipt of the produce by the Wholesaler (Merchant).

*Payment of price*

- (27) The Wholesaler (Merchant) must pay the Grower for a consignment of horticultural produce the price agreed in accordance with the schedule of prices agreed prior to delivery within the period specified in the Agreed Terms of Trade. The period specified may not exceed 45 (forty five) days.

*Summary price information*

- (28) (a) A Wholesaler (merchant) must provide a Grower with a statement for each consignment of Horticultural Produce accepted by them showing the quantity and quality of the Horticultural Produce bought and the price paid, and statements containing only average prices are not acceptable.
- (b) The statement must be provided within the period specified in the Agreed Terms of Trade or within 14 (fourteen) days of the consignment being bought by the Wholesaler if no period is specified. The time specified may not exceed 28 (twenty eight) days.

1                    *Dispute resolution definitions*

2                    (29) For the purposes of subsections (29) to (38) inclusive:

3                    **Complainant** means the person or entity who initiates the  
4                    procedure under subsection (30) or appoints a Horticultural  
5                    Inspector under subsection (32).

6                    **Parties** means the Complainant and the Respondent in a dispute.

7                    **Respondent** means the person or entity with whom the  
8                    Complainant has a dispute.

9                    *Initiating a dispute*

10                    (30) A Wholesaler or Retailer or Processor or Exporter or Grower may  
11                    initiate a dispute against any participant covered by the code in  
12                    relation to a Trading Relationship by contacting in writing the  
13                    other party and notifying them of:

- 14                    (a) the nature of the dispute;  
15                    (b) the outcome the Complainant seeks; and  
16                    (c) the action the Complainant considers will settle the dispute.

17                    *Good faith negotiations*

18                    (31) If a dispute is notified under subsection (30) the Parties must  
19                    negotiate in good faith to resolve the dispute.

20                    *Horticultural Inspectors*

21                    (32) A Grower or a Wholesaler or Retailer or Processor or Exporter  
22                    may at any time, and irrespective of whether a dispute has been  
23                    notified under subsection (30), appoint a Horticultural Inspector to  
24                    provide a report on:

- 25                    (a) whether the rejection of Horticultural Produce by a Wholesaler  
26                    or Retailer or Processor or Exporter was in accordance with the  
27                    requirements of this code and the Agreed Terms of Trade;  
28                    (b) whether amounts paid by a Wholesaler or Retailer or Processor  
29                    or Exporter to a Grower were calculated in accordance with the  
30                    requirements of this code and the Agreed Terms of Trade; and

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- 1 (c) any other matter in relation to which a dispute has been notified  
2 under subsection (30).

#### 3 *Assistance to Horticultural Inspectors*

- 4 (33) If a Horticultural Inspector is appointed pursuant to subsections  
5 (30) or (32), the relevant party must:  
6 (a) permit the Horticultural Inspector to inspect any Horticultural  
7 Produce supplied by the Grower in possession of the wholesaler  
8 or Retailer or Processor or Exporter;  
9 (b) in the case of an Agent, permit the Horticultural Inspector to  
10 inspect the financial and other records of the Agent that relate  
11 to the Grower or Horticultural Produce supplied by the Grower.

#### 12 *Horticultural Inspector's report*

- 13 (34) A Horticultural Inspector appointed pursuant to subsection (32)  
14 must prepare a report within 48 (forty eight) hours of Appointment  
15 and provide a copy of that report to both Parties. The Horticultural  
16 Inspector's report:  
17 (a) must not include information that a Party to the dispute is not  
18 entitled to obtain under the Agreed Terms of Trade; and  
19 (b) will not be legally binding on the Parties but is intended to  
20 provide objective evidence to facilitate the dispute being  
21 resolved by good faith negotiation, by mediation, or through  
22 legal proceedings.

#### 23 *Costs of Horticultural Inspector*

- 24 (35) In order to eliminate the initiation of frivolous disputes, the  
25 costs of a Horticultural Inspector will be borne in total by the party  
26 that does not succeed, unless the parties agree otherwise, or the  
27 Ombudsman directs otherwise.

#### 28 *Mediation*

- 29 (36) Either party may by notice to the other require a dispute notified  
30 under subsection (30) to be referred for mediation. When a party  
31 seeks referral for mediation:

- 1 (a) the dispute will be referred in the first instance to the  
2 Ombudsman accredited pursuant to subsection (40);
- 3 (b) the Ombudsman will be the official mediator, with the power in  
4 disputes where the claim has a potential value up to and  
5 including \$100,000:
- 6 (i) the Ombudsman may delegate the appointment a mediator  
7 to his office;
- 8 (ii) the Ombudsman may make and enforce decisions made by  
9 his office and/or any mediator appointed by him or his  
10 office
- 11 (iii) to award costs in respect of mediations;
- 12 (c) the Ombudsman will be the official mediator in cases  
13 involving a dispute where the claim has a potential value of  
14 more than \$100,000 and where the parties agree that the  
15 matter be referred to the Ombudsman, with the power:
- 16 (i) to delegate the appointment of a mediator to his office;
- 17 (ii) the Ombudsman may make and enforce decisions made by  
18 his office and/or any mediator appointed by him or his  
19 office
- 20 (iii) to award costs in respect of mediations;
- 21 (d) If parties to a dispute cannot agree with the appointment of the  
22 Ombudsman as official mediator, the parties may initiate legal  
23 proceedings through the court system.
- 24
- 25 (e) within seven days of acceptance or delegation of the mediation,  
26 the mediator must:
- 27 (i) decide the time of mediation (provided it is within 14  
28 (fourteen) days of the acceptance or delegation of the  
29 mediation) and a place of mediation (provided it is in  
30 Australia); and
- 31 (ii) notify the parties of the time and place of mediation;
- 32 (f) the Parties must attend the mediation and try to resolve the  
33 dispute. For the purposes of this paragraph, a party is taken to  
34 attend mediation if the party is represented at the mediation by  
35 a person who has the authority to enter an agreement to settle  
36 the dispute on behalf of the party and who is not a lawyer.

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(g) each party pay their own costs of the mediation itself and costs of attending, unless the parties agree otherwise.

#### *Resolution of disputes*

- (37) There will be no termination of a dispute without settlement either by agreement negotiated between the Parties, or by the Parties and the mediator during the process of mediation

#### *Establishment of Horticultural Code Management Committee*

- (39) A Horticultural Code Management Committee will be appointed by the Minister for Agriculture, Fisheries and Forestry

- (a) an independent chairman;
- (b) 3 members who are growers;and
- (c) 3 members who are wholesalers or retailers or processors or exporters.
- (d) 2 independent members

The Horticultural Code Management Committee will be assisted by a secretariat appointed by the Minister.

#### *Role of the Horticultural Code Management Committee*

- (40) The Horticultural Code Management Committee will:
- (a) facilitate the introduction of the code, including raising awareness of the code and ensuring appropriate industry training and understanding;
  - (b) establish guidelines and procedures for the accreditation of independent, impartial and appropriately skilled Horticultural Inspectors;
  - (c) appoint Horticultural Inspectors so as to ensure that there are a sufficient number operating within the wholesale market, taking into consideration the geographical location of Horticultural Inspectors, the relative dispersal of skills of the Horticultural Inspectors and other criteria to be determined by the Committee;
  - (d) ensure that Horticultural Inspectors are not based within wholesale markets but operate as independent, contract consultants located outside the markets;

- 1 (e) establish guidelines for the accreditation of an independent,  
2 impartial and appropriately skilled Ombudsman to be appointed  
3 by the Minister and to be known as the Horticultural Code  
4 Ombudsman; and  
5 (f) provide a report to the Minister each year detailing the work of  
6 the Committee in the preceding 12 (twelve) month period.  
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