



**THE CHAMBER OF FRUIT & VEGETABLE INDUSTRIES
IN WESTERN AUSTRALIA (INC.)**

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**Submission Prepared by the Chamber
of Fruit and Vegetable Industries in
WA Inc. (CFVIWA) Regarding the
Issues Paper Released by the ACCC
Inquiry Into the Competitiveness of
Retail Prices for Standard Groceries**

May 2008

BACKGROUND INFORMATION

The Chamber of Fruit and Vegetable Industries in Western Australia (CFVIWA) is a member organisation that represents all of the fruit and vegetable wholesale businesses trading in the Central Trading Area at Market City in Canning Vale. One of the roles of the CFVIWA is to lobby state and federal politicians as well as government departments in order to raise awareness of the many issues its members face. The CFVIWA also provides services to its members and also undertakes promotional activities on behalf of the fresh fruit and vegetable industries in WA.

The CFVIWA has long supported written terms of trade between suppliers and wholesalers. However, we do not support the Mandatory Code of Conduct in its current form. The Code is too rigid. Amendments need to be made to the Code to allow both parties to structure their own terms of trade within a framework set out by the Code. If the parties cannot agree in writing on their own terms, then prescribed terms of trade as set out in the Mandatory Code should be the default minimum terms of trade. The Code should also be amended to allow merchants to determine a price based on a method of calculation. These two amendments would make the code practical and workable for the industry.

Having read the Issues paper released by the ACCC inquiry into the competitiveness of retail prices for standard groceries we wish to provide comment on the following issues identified in the paper;

- Enforcement of the Code
- Extension of the Code to cover retailers and their agents
- The Horticulture Code transitional arrangements
- The definition of delivery and a requirement that merchants establish a price on delivery
- Agents
- Packing houses and cooperatives
- Pooling of produce and price averaging

Enforcement of the Code

The CFVIWA is concerned over reports that the ACCC is now instructing wholesalers to cease trading with growers with whom they do not have a HPA in place.

The CFVIWA believes wholesalers are being discriminated against because some growers do not wish to sign these agreements. Growers that are sole traders may opt to sell their produce direct to retailers or exports without a HPA or complying with the code however wholesalers have no option but to have agreements in place or cease trading.

Some traders are being made to give court enforceable undertakings to the ACCC for apparent breaches of the Code, yet no action is being taken against the growers that have refused to sign the agreements.

This strict enforcement in Western Australia is going on despite the fact that a Government appointed review committee is still in the process of reviewing the code to see if any changes should be made to the document to make it more acceptable to the industry.

It would not be an ideal situation if some wholesalers were forced by the ACCC to cease trading with growers at this point in time only to have changes made to the Code at a later date which would allow wholesalers and growers more flexibility to operate within the Code. We believe the ACCC should revert to a policy of only acting on complaint until the review committee has had time to complete its task.

The issues paper outlines in some detail that growers are reluctant to make complaints for fear of prosecution or being singled out by disgruntled traders. There is no mention of the reluctance of growers to sign agreements that are Code compliant. The traders involved are attempting to comply with the code yet the growers are not signing the documents and returning them to the trader. Their reluctance to do so is placing the traders in a less than ideal situation as they cannot trade with the grower without an agreement in place. Yet the growers in many instances continue to send their produce in to the trader knowing that they are in breach of the Code. At this stage all of the action is being taken against the traders. In Western Australia several of our members are being pursued by the ACCC because a number of their growers have refused or neglected to sign a HPA. No action is being taken against the growers. There are two parties involved and only one of them is being sanctioned.

The fact that the ACCC has received few complaints nationwide regarding non compliance with the Code is perhaps a reflection of the level of actual disputes that exist in dealings between growers and traders. Such a low level of complaint would have to indicate that the high cost of implementation was perhaps unwarranted and the poor conduct of a very small percentage of the industry could have been addressed via alternative means.

Extension of the Code to cover retailers and their agents

The Code does not apply to transactions between growers and exporters, retailers, or the Potato Marketing Corporation. The Chamber understands that retailers that buy direct from growers already have clear terms of trade and usually purchase produce on a farm gate price basis. However there does not appear to be a **mandatory** dispute resolution process in place if these retailers

trade contrary to the specifications detailed in their supply agreements. This leaves open the potential to manipulate produce orders as specifications can be relaxed when produce supply is short or alternatively specifications can be tightened during periods of oversupply.

We feel that the Code is discriminatory in that it only applies to traders and not retailers and exporters. Having said this we believe if the Code were to apply to retailers and exporters they will face the same difficulties and frustrations experienced by the wholesaling sector due to the inflexible nature of the Code.

In the interests of equality the Code should apply to all sectors of the horticulture supply chain including retailers and exporters however the amendments referred to in the introduction must be made so that these sectors do not face the same difficulties as the wholesaling sector in complying with the Code.

The Horticulture Code transitional arrangements

The CFVIWA does **not** support a cessation date being set on pre-existing agreements between growers and traders. If the two parties have long standing written agreements on how they conduct business they should be allowed to continue to do business in a manner that they are both comfortable with.

The definition of delivery and a requirement that merchants establish a price on delivery

While the code offers a range of benefits to the industry, these are likely to be overshadowed by an inflexible provision which currently makes it very difficult for traders acting as merchants to obtain the best price for their grower suppliers when their product is ready for sale.

The Code as it is currently written requires that a price must be agreed in writing upon delivery of produce to the trader if they are acting as a merchant. This provision is impractical with the main reason being that not all produce is ready for sale when it is delivered to market. Some produce may need to be ripened or repacked before it can be sold. Service Agreements can help to alleviate some repacking and ripening issues however they do not grant the trader the flexibility to achieve the best possible price for the grower. Due to the fact that the Central Markets are a trading hub and much like many other market systems, prices asked for, and prices received may rise and fall in a reasonably short space of time. Therefore if traders must nominate a price well in advance of the date of sale (in some cases a number of weeks), then growers may not be afforded the opportunity of achieving the best possible price for their produce on market day. Conversely if market conditions deteriorate after produce has been delivered the trader may be exposed to price reductions and may therefore offer a conservative price to growers upon delivery.

There are two possible solutions to the current problem. The first is to amend the Code to allow pooling of produce and price averaging (this is discussed later in the submission). The second is to amend the Code to define the term “delivery”

as being when the produce has been received by the trader and the trader has determined that the produce meets the relevant quality requirements of the accompanying Horticulture Produce Agreement and the produce is ready for sale.

Agents

Inspection of an agent's records

The Code currently permits a grower's representative to inspect an agent's records regarding the sale of their produce. The CFVIWA believes the Code should be amended to permit a grower's representative that is acceptable to both parties to the Agreement to inspect an agent's records regarding the sale of their produce. This would alleviate some of the concern held by wholesalers that this clause can be manipulated by competitors in order to view their books.

The CFVIWA also believes that requirement of the Code for traders to notify growers of sales of produce not sold on an arms length basis on each and every occasion should be amended. Growers will either accept that their agent will sell produce to related parties from time to time, or they will not accept it and their acceptance or otherwise should be written into their HPA. The requirement for the agent to contact the grower on each and every occasion is unnecessary and can be time consuming for the agents concerned. This amendment may also assist agents to more efficiently clear remnants of large consignments which they may otherwise find difficult to sell and have to discard.

Packing houses and cooperatives

The CFVIWA does not support transactions between growers and grower-owned cooperatives/packing houses being exempt from the Code. Such a move would only serve to make the Code more discriminatory and would place wholesalers at a competitive disadvantage.

Logically if grower owned trading entities were finding the Code restrictive or difficult to comply with then the natural response should be to question the value of the Code and its practical implications for all businesses, and not to seek to exempt themselves from a Code which they recognise is difficult to comply with. It should be remembered that the difficulty associated with supplying large buyer orders without aggregating product and pooling prices is also faced by wholesalers.

Trading entities involving grower ownership are no different to businesses without grower ownership they are both in the business of buying and selling fresh produce from growers to another party. On a national scale there are some very large scale businesses with grower shareholdings: Moraitis, Montague Fresh, Mulgowie Farms, are just a few examples. Many of these operations have trading floors in central markets and it would be discriminatory to apply the Code to some trading floors in Central Markets and not others.

The extension of the Code to cover dealings between cooperative/packing houses and traders is also an **unwarranted** step unless the application of the Code was also extended to cover retailers, exporters and traders dealing with

packing houses. To single out traders yet again in this regard would have to be viewed as a further restriction/discrimination of the wholesaling sector.

Pooling of produce and price averaging

The CFVIWA believes that the Horticulture Code has to be amended to allow greater flexibility within the industry for pooling and price averaging. One of the main reasons for supporting such a change is simply the logistics of operating a trading floor. Large consignments are received from growers and these consignments are broken up and sold to numerous buyers. It is very difficult for a wholesaler acting as merchant to guarantee a grower a fixed price on every unit sold to many different buyers from the one consignment. Prices for some commodities can fluctuate very quickly in a fresh produce market.

The CFVIWA can assure the ACCC that there will always be an incentive for growers to produce high quality produce. High quality producers are highly sort after by wholesalers. Wholesalers are prepared to pay quality producers a premium for their produce as they know they can readily find a buyer for the produce and that the buyer is unlikely to subsequently return or reject the produce and leave the wholesaler with the difficult task of finding another buyer for the produce. Poor quality producers are paid a lower price because their produce is more difficult to sell and it is often the case that oversupply of poor quality fruit can lead to significant marketing problems for all concerned.