

10 June 2008

Grocery prices inquiry – Horticulture Code Submissions
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Re: ACCC review of the Horticulture Code of Conduct

The National Farmers' Federation (NFF) acknowledges that the Australian Competition and Consumer Commission (ACCC) has been given the task of reviewing the effectiveness of the Horticulture Code of Conduct (the Code), and whether the inclusion of other major buyers such as retailers would improve the effectiveness of the Code. It is the NFF's view that it is far too early to assess the overall effectiveness of the Code and the reasons have been outlined within our submission into the ACCC review into the competitiveness of retail prices for standard groceries. We have reinforced this position within this submission.

The ACCC would be aware that the NFF was closely involved with the development of the Code, which came into operation in May 2007. The Horticulture Code of Conduct has been designed to improve the transparency and clarity of transactions between growers and traders of fresh fruit and vegetables. The Code has the full support of the NFF.

The Code was developed to address an obvious lack of commercial transparency in grower/trader transactions. The NFF believes that the Code is enhancing the relationship between growers and traders by improving business practices in the fruit and vegetable wholesale sector. Growers are also benefiting from better information about how traders buy and sell their produce.

The key requirements of the Code are simple and represent the 'minimum terms of trade' that are seen as general business practice in every other industry. As such, we believe the requirements of the Code do not impose unreasonable compliance costs, as they are the basic costs of doing business.

The NFF acknowledges that there have been some teething issues with the Code in areas such as the involvement of grower owned cooperatives, pooling and averaging, the definition of immediately upon delivery, and agents acting on behalf of third parties. These issues are being address by the newly formed Horticulture Code Committee.

Code Coverage

The Code covers transactions between growers and traders of fresh fruit and vegetables in Australia. A trader is either:

- a merchant, who buys a grower's produce for resale, or
- an agent, who sells produce on a grower's behalf for a commission or fee.

The Code does not cover retailers, processors or exporters who buy a grower's produce. The Code also does not affect any existing written contracts between growers and traders entered into before 15 December 2006. However, the Code will apply to agreements entered into before 15 December 2006 that are varied on or after 14 May 2007.

To reduce complexities with the administration of the Code, the NFF has always been of the view that the Code should apply to all parties involved in the first transaction from the grower to wholesalers, produce merchants, brokers, retailers, exporters and processors. In our view, the major retail chains and processors already offer contractual clarity and transparency in their dealings with horticulture growers. Therefore, including these parties within the Code will not add any compliance costs or regulatory burden to these businesses.

Again, the NFF must reinforce that we believe that it is far too early to undertake a comprehensive review of the Horticulture Code of Conduct. While we acknowledge that some teething issues with the Code exist, we have every confidence that industry will resolve the majority of these issues over time as stakeholders become more familiar with the Code and their obligations within it. Any issues requiring legislative change should be identified by the Horticulture Code Committee and progressed through that channel.

We would welcome the opportunity to provide any further input into the review of the Horticulture Code of Conduct as required by the ACCC.

Yours sincerely

CHARLES BURKE
Vice President - NFF