



# Fruit Growers Victoria Ltd

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## Public Submission by Fruit Growers Victoria Limited on 10<sup>th</sup> June 2008 to the ACCC Grocery Inquiry Horticultural Code of Conduct

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Fruit Growers Victoria Ltd (FGVL) is the peak representative body for apple and pear growers in the state of Victoria. We represent orchardists in the Goulburn Valley, Gippsland, Mornington Peninsula, Yarra Valley, Harcourt, Bacchus Marsh and North-eastern Victoria regions. As growers of fruit, our members' business transactions are covered by the Horticultural Code of Conduct (*"the Code"*). They have been affected by the introduction of the code on May 14<sup>th</sup> 2007 and consequently have a critical interest in any review of the Code.

FGVL maintains that there have been unintended consequences arising from the introduction of the Code and that the Code misses its target by applying only to the first post farm gate transaction and thereby roping in fruit packers who in many cases do not determine the "price" of the produce to be paid to growers.

We offer the following selective comments referring to and in the order of the ACCC Inquiry into the Competitiveness of Retail Prices for Standard Groceries – Horticulture Code of Comment Issues Paper.

### **Enforcement of the Code**

**Issue:** *Is there reluctance by growers to: complain to the ACCC regarding breaches of the Horticulture Code; or to initiate a move from an existing exempt agreement onto horticulture Code compliant agreement? What evidence is there to support these claims? Are there any measures that could be adopted to facilitate the reporting of Horticulture Code breaches or to enable growers to initiate a shift from an existing exempt agreement to a Code compliant agreement?*

**Comment:** Fruit Growers have an aversion to red tape and a significant proportion have viewed the introduction of the Code as an imposition which has not improved a situation that was already working well. As a consequence many continue to work on agreements that predate the Code or in some other cases they simply have ignored the code. Those who ignore the code will not identify themselves. Where growers are aware of breaches they may be unwilling to report a breach for fear of exclusion. If the Horticulture Produce Agreements were not compulsory, unless either party requested them, then a significant avoidance would be extinguished.

### **Extension of the Code to cover retailers and their agents**

**Issue:** *Should the Horticulture Code be extended to regulate retailers? On the one hand, the regulation of retailers and their agents may provide growers with greater clarity and*

*transparency in their transactions with retailers. On the other hand, such an extension may capture dealings that do not warrant intervention and in doing so may impose unnecessary compliance costs. Alternatively, should the Horticulture Code be extended to cover retailer's agents (and not retailers themselves) as a distinct category of trader?*

**Comment:** The extension of the Code to cover retailers would be overkill. It would not necessarily resolve issues of clarity. It would rope in so many participants that the permutation of the number of Horticulture Produce Agreements would result in an unworkable situation. As a result it would be bureaucracy for bureaucracy's sake and provide no real solution or benefit. The administrative workload on small operators would punish the many to control the few. Growers who deal with smaller retailers always have the option of withdrawing supply which is a far more potent remedy than a contract.

### **The Horticulture Code transitional arrangements**

***Issue:** Should there be a cessation date on these exemptions (i.e. a sunset clause), in order to facilitate a consistent approach across the industry and to assist the ACCC's enforcement of the Horticulture Code? Would a sunset clause be an appropriate response to address the possible reluctance of growers to challenge the status quo created by the use of exempt agreements?*

**Comment:** If it is not broken do not fix it! Working agreements where both parties are content do not need a sunset clause.

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

***Issue:** Is the requirement that the parties agree on a price for produce either before or immediately upon delivery appropriate to achieve this goal of providing growers with clarity and certainty regarding the price they will receive? Should the Horticulture Code be amended to enable merchants to provide growers with a method or formula by which price will be established? Should this formula be restricted in any way to provide growers with greater transparency and clarity as to the price they will receive from the merchant?*

**Comment:** The option of a formula is acceptable provided that it is really an option for growers and not the sole mechanism for price determination available for growers to choose.

### **Service agreements**

***Issue:** Should the Horticulture Code permit merchants to provide growers with additional services as part of their horticulture produce agreement? If so, when should ownership transfer from the grower to the merchant take place? In these circumstances, should the Horticulture Code impose further obligations upon merchants, in addition to requiring them to take due care and skill, prior to the transfer of ownership?*

**Comment:** The provision of additional services by merchants is a legitimate part of the supply chain. There is nothing currently precluding growers and merchants from entering into contracts for services and therefore those who choose to do so will do so. The important issue is that the transfer of title and therefore risk needs clear determination.

### **Agents**

***Issue:** To enable growers to collect their own debts and to encourage traders to act as agents should market credit services permit growers to use the market credit services to collect their bad debts on behalf of growers? To what extent should agent's current record keeping and reporting obligations under the Horticulture Code be reduced in*

order to decrease their compliance burden, while retaining adequate transparency for growers?

**Comment:** No comment

### **Packing houses and cooperatives**

***Issue:** Should transactions between growers and grower-owned cooperatives/packing houses be excluded from regulation by the Horticulture Code where the cooperative/packing house 'markets' the grower's produce (i.e. act as an agent)? Should dealings between the cooperative/packing house and traders be regulated by the Horticulture Code?*

**Comment:** The imposition of the code on transactions between growers and grower-owned cooperatives/packing houses adds no value. Indeed many organizations consist of a growing corporate entity and a marketing corporate entity that are owned and operated by the same individuals. The Code requires them to have contracts with themselves. This is nonsense!

### **Pooling of produce and price averaging**

***Issue:** Should the Horticulture Code be amended to provide greater flexibility within the industry for pooling and price averaging to enable growers to continue to manage their risk in circumstances where there are significant fluctuations in produce prices over time and across various markets throughout Australia. On the other hand, if the Horticulture Code were to permit pooling and price averaging, producers of high quality produce may not be treated fairly and as a result there may be less incentive to produce high quality produce. What protections should the Horticulture Code provide to growers who choose to join a pool and receive an average price?*

**Comment:** The Code has effectively prohibited pooling because the price averaging of pools is now illegal. Pooling has been a long standing and predominant method of packing and marketing in the Pome fruit Industry. It is a symbiotic relationship between growers and packers because packers have traditionally pooled fruit from multiple growers to manage complex orders with both the grower and the packer benefiting as a result of the maximisation of returns.

Besides fruit packers, grower groups and co-operatives have been established at various times over the years to specifically take the benefits of pooling. Pooling is a critical and fundamental structure within marketing arrangements in the pome fruit and other industries. It evolved as a fair and equitable means of allocating best seasonal prices across a group of growers during a long selling season.

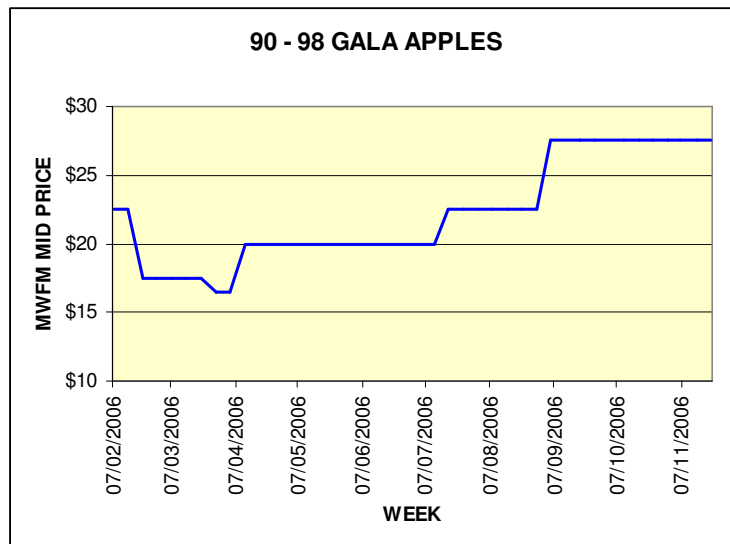
Pooling means fruit from different growers will be mixed in shipments. Pooling provides pome growers with access to markets from which they may otherwise be excluded. This is especially the case for smaller growers who may not produce sufficient quantities or qualities to participate in larger commercial orders.

Fruit can be pooled by variety and quality and pools can exist for single orders or across part of or all of an entire selling season. The individual reasons for the existence and structures of pools are many and varied but they all have the common theme of mutual benefit through an equitable return.

Apples, pears and nashi differ to most other produce in that they have a long-term storage capability. This has the effect of providing a very long selling season. The selling season

normally lasts between 3 and 8 months after harvest but it could potentially be as long as 12 months.

The following graph shows the price variation across the 287 day selling season for 90-98 Gala Apples at the Melbourne Wholesale Fruit and Vegetable Market in 2006. The source of the data is Fruit Growers Victoria's weekly market survey published in Core Facts, its weekly bulletin to growers. The prices do not represent a weighted average but are the mid point of the price range for "most sales".



The maximum mid point price was \$27.50 which was achieved in the last eight weeks, the minimum was \$16.50, the mean was \$21.95 and the median was \$20.00. The top price achieved for top quality fruit was \$30.00.

It takes very little analysis to conclude that there is a small benefit with getting fruit on the market early in the season and a major benefit for holding fruit until the end of the season. These benefits are balanced by the cash flow requirements of growers and storage costs but a 37.5% premium for late fruit would seem to indicate that growers would benefit from participating in late markets if they can get access to them.

Access to late markets and the relationship with the Price Setter will depend on whether a grower has suitable storage facilities and the ability to pack or whether the grower relies on others for these services. It may be that a grower has no direct relationship with Price Setters. Smaller growers will have the greatest difficulty to participate in late markets on a stand alone basis.

The later higher price partly compensates for the storage risk, which via a pool can be equally distributed amongst all growers accepting that risk. Pooling can therefore also have the effect of insurance for growers.

The discussion of the 2006 Gala prices demonstrates the importance of timeliness of placing fruit on a market. In a pool that endures across a selling season, the benefit of the peaks can be returned to all growers and the detriment of low selling prices can be offset. Without a pool, individual growers are vulnerable to seasonal price fluctuations and the decision of when their fruit is marketed. This decision may not necessarily be taken by the grower! This is particularly pertinent when dealing with supermarket chains which demand special prices for promotions.

The benefit of an equitable return from a pool can only be realised through the weighted averaging of the seasonal prices where pools are established by fruit quality.

In the pome fruit industry the quality of fruit has the major affect on the prices. "Pack out" is therefore as important a determinant on return for growers as market fruit price. If a grower has a high percentage of quality fruit this will be reflected in their participation in graded pools.

Without pools and price averaging smaller growers in particular can be at a distinct economic disadvantage. Consequently, there is significant ongoing risk of partial industry failure in the Pome fruit industry as a result of the Code as it currently stands.

The Code fails the pome fruit industry with regards to pools and the averaging of prices because it tries to simplify a very complex relationship.

## **CONCLUSION**

The introduction of the Horticulture Code of Conduct increased the cost of doing business for all fruit growers because of the extra administration required. For apple and pear growers there was little, if any change to the way, the industry operated on a day to day basis. However the outlawing of averaging has meant that smaller growers are now at a distinct disadvantage because of the long selling season of stored fruit.

The Code, as it is currently legislated, is considered by many in the pome fruit supply chain to be a failure because a significant proportion of growers and agents are continuing to trade as previously.

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