



SA Citrus Board

South Australian
Citrus Industry Development Board

**PUBLIC SUBMISSION RE HORTICULTURE CODE BY
THE SOUTH AUSTRALIAN CITRUS INDUSTRY
DEVELOPMENT BOARD ON 13 JUNE 2008**

**ACCC INQUIRY INTO THE COMPETITIVENESS OF
RETAIL PRICES FOR STANDARD GROCERIES**

**ISSUES PAPER REGARDING THE HORTICULTURAL
CODE OF CONDUCT**

INTRODUCTION:

The SA Citrus Industry Development Board (SACIDB) is a state statutory organization that represents SA Citrus Industry stakeholders including growers, packers, processors and wholesalers. Individuals who undertake business in one or more of these categories must notify the SACIDB, provide information required by the Board and contribute to a fund to assist with industry development activities.

Prior to the formation of the Horticultural Code of Conduct the Board provided information in August 2005, detailing conditions the Board applied under the previous Citrus Industry Act 1991 to improve transparency along the supply chain. In this original submission the Board suggested that some of these conditions could be picked up in the Horticultural Code of Conduct especially on the basis that the Board was moving to the new Citrus Industry Act 2005 which contained less power to force transparency along the SA citrus chain. The Board therefore felt that the Horticultural Code of Conduct provided an opportunity to pick up some of these issues.

With the above in mind the SACIDB was pleased to support the implementation of the Horticultural Code of Conduct but has been disappointed that some stakeholders have been left out of the Code including retailers and processors. Furthermore the Code has created in some cases unworkable and or unintended consequences for some stakeholders such as citrus packers. The biggest issue for this group has been an inability to pool and price average fruit which traditionally has been accepted by all stakeholders over many years as an acceptable and agreed practice.

While the SACIDB agrees with the intent of the Code we also want to maintain a vibrant packer, processor and wholesaler sector that is not weighed down unduly by inappropriate and or ineffective legislation.

1. ENFORCEMENT OF THE CODE

ISSUE:

Is there reluctance by growers to: complain to the ACCC regarding breaches of the Horticultural Code; or to initiate a move from an existing exempt agreement onto a Horticultural Code compliant agreement? What evidence is there to support these claim?

Are there any measures that could be adopted to facilitate the reporting of Horticultural Code breaches or to enable growers to initiate a shift from an existing exempt agreement to a Code compliant agreement?

In South Australia 97% of citrus growers supply their citrus to a citrus packing house. In the majority of cases good working relations exist between packers and growers so overall there are relatively few serious disputes.

However to improve trading transparency the Board has previously provided growers with a generic legal template to assist them in recording and clarifying trading terms not unlike the current document circulated by Horticultural Australia Council.

Regardless the SACIDB believes that growers find it difficult to complain about packers and similarly packers find it difficult to complain about wholesalers for fear of losing an avenue to sell their citrus. For a complaints system to work effectively it needs to be simple and retain the confidentiality of those that have initiated the complaint.

2. EXTENSION OF THE CODE TO COVER RETAILERS AND THEIR AGENTS

ISSUE:

Should the Horticultural Code be extended to cover retailers?

On the other 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 Horticultural Code be extended to cover retailer's agents (and not retailers themselves) as a distinct category of trader.

The SACIDB has always supported the view that for equity the Horticultural Code should include retailers. However in the case of the SA Citrus Industry only citrus wholesalers are able to sell to retailers.

To assist with timely payments right back along the chain to the grower all sections of the chain need to operate in a transparent manner and provide prompt payments.

A system is needed such that retailers do not cause unnecessary delays which could then unduly impact on wholesalers (traders) ability to meet their obligations to packers/growers.

3. THE HORTICULTURAL 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 to assist the ACCC's enforcement of the Horticultural 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?

Natural market place pressure will ensure that agreements, which pre date the commencement of the Horticultural Code and does not meet grower expectations will ultimately change. Removal of the pooling issues and price averaging issues faced by packers so that the Code is more user friendly will also assist in this process once industry gathers more confidence.

In South Australia growers have the opportunity to supply multiple traders and will naturally gravitate to organizations that provide the best terms of trade.

4. 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 Horticultural Code be amended to enable merchants to provide growers with a method of 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?

As discussed 97% of SA citrus growers provide produce direct to citrus packers who historically have provided payments based on how fruit “packs out” into various quality grades. This system has been extremely important in driving improvements in quality production and rewards individuals who apply better practices to produce quality fruit. In this case price needs to be agreed immediately after grading has occurred. At this point grower and packer will have a clear indication of the likely value of the product and will allow a fair payment to be made. Indeed one could view grading as a service to maximize the potential value of the grower crop.

In those few cases where growers prefer to sell their fruit “farm gate” the price should be agreed before produce leaves the farm.

5. SERVICE AGREEMENTS

ISSUE:

Should the Horticultural Code permit merchants to provide growers with additional services as a part of their horticultural produce agreement?

If so when should ownership transfer from the grower to the merchant take place?

In these circumstances, should the Horticultural Code impose further obligations upon merchants, in addition to requiring them to take due care and skill, prior to the transfer of ownership?

Service agreements should remain outside the HPS and subject to a separate contract. As indicated in section 4 packers provide a grading service which assists growers in maximizing returns. In this case growers and packers should be allowed to agree on the system with ownership and application of the Code occurring immediately after grading.

6. 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 Horticultural Code be reduced in order to decrease the compliance burden, while retaining adequate transparency for growers?

While the concept of allowing growers/packers to access the market credit service appears to have some merit concern is expressed that such a system could be used too liberally and breach confidentiality issues.

Rather a time period needs to apply at which point it is deemed that growers/ packers should have the ability to access credit services to assist in following up debts.

7. PACKING HOUSES AND COOPERATIVES

ISSUE:

Should transactions between growers and grower-owned cooperative/packing houses be excluded from regulation by the Horticultural 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 Horticultural Code?

A grower owned cooperative / mutual should be excluded from regulations under the Code. Such cooperatives act in the best interests of growers and the growers in their group.

It has been suggested that all grower owned cooperatives listed with the ATO be defined as a "grower" therefore excluding them from the regulations.

8. POOLING OF PRODUCE AND PRICE AVERAGING

ISSUE:

Should the Horticultural 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 Horticultural Code were to permit pooling and price averaging, producers of high quality may not be treated fairly and as a result there may be less incentive to produce high quality produce. What protections should the Horticultural Code provide to growers who choose to join a pool and receive an average price?

Pooling and price averaging should be allowed under the Code provided maximum transparency is maintained about the process. To deny pooling and price averaging for

packers creates massive inefficiencies and administrative issues which could result in a small grower with little produce being penalized or having access to packers severely restricted. Without pooling and price averaging packers are reluctant to pack for small growers.

Most SA citrus packing houses have traditionally operated by collecting citrus from a number of growers and running this fruit into large accumulators so that the packing plant can run larger batches of fruit across the packing line in an efficient and cost effective manner. This pre accumulated fruit forms the basis of pooled fruit with growers in that pool receiving a price based around the average price and dependant on quality parameters. It is extremely difficult for a packer to track an individuals fruit down to the last individual carton under this system but growers have largely accept this traditional system.

Provided prices are based on clear quality or grade parameters growers should receive fair prices. Previously the SA Citrus Board has moved to improve transparency about packing returns and included a condition under which packers were required within 14 days of packing to provide to growers with details of % pack-out, size and count information, grade classifications and details of shed averages and or highest figures for each week and or pool. This improved reporting was accepted by our packers and welcomed by the grower representing body. .

Andrew Green
EXECUTIVE OFFICER

13th June 2008