



WESTERN AUSTRALIAN  
FRUIT GROWERS' ASSOCIATION  
I N C O R P O R A T E D

10<sup>th</sup> June 2008

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

Dear Sir/Madam

**Public Submission re horticulture Code by the Western Australian Fruit Growers' Association on June 10<sup>th</sup> 2008**

The Western Australian Fruit Growers' Association (WAFGA) welcomes the opportunity to provide a written submission to the Australian Competition and Consumer Commission (ACCC) inquiry into the competitiveness of retail prices for standard groceries – Issues Paper regarding the Horticulture Code of Conduct.

As background, WAFGA is the peak pome (apple and pear), citrus and stone fruit industry representative body in Western Australia, with a membership of more than 600 commercial fruit growers. WAFGA conducts agri-political representation, research and development, communication and promotional activities with the primary objective of ensuring both a profitable and sustainable industry for all Western Australian fruit growers.

In 2004/05 WAFGA members produced 76 950 tonnes of fruit, with a total gross value of production exceeding \$90 million. The vast majority of this produce is sold as fresh fruit, with some processing as juice occurring with pome and citrus fruit. The Western Australian Department of Agriculture and Food has estimated that expected production increases over the next five years will see this gross value increase by another 20%. WAFGA members are situated from Kununurra to Albany and therefore are a vital part of the State's current and future rural and regional economy.

In this submission, WAFGA has not addressed all issues listed in the paper, but rather has addressed those which reflect the areas of concern to our membership.

## **Is there reluctance by growers to complain to the ACCC regarding breaches of the Horticulture Code?**

*WAFGA notes that in the last twelve months, five Western Australian fruit trading businesses have formally acknowledged that they have contravened the Horticulture Code of Conduct (the Code).*

*The specifics of the businesses and the nature of the breaches are secondary to this submission however that they have occurred is indicative that there is still trade occurring outside the Code. Indeed many submissions to the ACCC's 'Inquiry into the competitiveness of retail prices for standard groceries' noted a perception of widespread non compliance occurring.*

*It is not unreasonable to expect a level of reluctance from growers in making a formal complaint to the ACCC regarding breaches of the Code. The imbalance of power which exists across the price taker/price setter nature of Australian horticulture would extend down to an individual being conscious of the possible repercussions in making a complaint against another party.*

*Whilst needing to guard against malicious or vexatious complaints, the ACCC needs to ensure that it has a complaints registry that ensures a high level of confidentiality, to provide to the complainant a sense that they are able to raise their legitimate concerns free from suffering a negative response from either the subject of the complainant, or other parties.*

## **Should the Horticulture Code be extended to regulate retailers?**

*WAFGA has had a long standing belief that the Code should be extended to include retailers. This has been our stated position since back on 15<sup>th</sup> December 2006, when our President Diane Fry, interviewed on the ABC's Country Hour program, stated that she "would like to see retailers and exporters included in the code".*

*We understand that retailers and their 'retailer's agent or consolidator' may have some form of generic terms of trade and written agreements under a voluntary code of conduct, however the ACCC's Issues Paper notes that:*

- It is understood that consolidators do not generally provide growers with a written supply agreement. These arrangements are generally oral. The only written material provided to a grower in these circumstances is the retailer's publicly available produce specifications (although specifications are not always available for all lines).*
- The capacity in which the consolidator is acting in each particular transaction may not be made clear to the grower.*
- It may therefore be unclear to the grower whether any particular transaction entered into with a consolidator is regulated by the Horticulture Code.*

- *The complexity and lack of transparency of these arrangements and relationships has the capacity to create confusion and frustration amongst growers that supply these intermediaries.*

*These appear to be contrary to the Code's objective of regulating trade in horticulture produce between growers and traders to ensure transparency and clarity of transactions. Further, WAFGA notes the comments of Coles General Manager (Fresh) David Stevens to the ACCC (as reported in the Weekly Times, Victoria 28/05/2008) on the issue of fruit passing two quality-assurance checks and then being rejected by Coles stores two days after the supermarket had taken delivery, Mr Stevens stated "There are some cases where that happens".*

*When considered in combination these appear to be compelling reasons to move the trade between growers and retailers, and their 'retailer's agent or consolidator' within the scope of the Code. WAFGA believes that this would not be a difficult transition as current arrangements are not unlike an existing written agreement i.e. that signed prior to the 15<sup>th</sup> December 2006, which can be altered by either party. Embracing retailers into the Code still gives the option for growers and retailers to remain on these voluntary agreements, or move to a Code compliant framework should any alterations to these be required. This to WAFGA would allow the objective of transparency and clarity to be obtained by all parties and to also introduce a fair end equitable dispute resolution process, which appears to be required.*

*In a similar theme, WAFGA believes that there is potential to bring export-bound produce into the Code. Two issues for consideration are the structure of the supply chain, where export businesses deal through intermediaries who consolidate supply for another business, and the reassignment of export fruit for domestic purposes. In the latter, often for perfectly reasonable commercial factors, fruit initially consigned for export is sold on the domestic market, and these transactions by-pass the Code. WAFGA believes that the current assignment of application of wholesale markets/direct supply to retail/export creates uncertainty in that it applies varying levels of support to growers, dependant on their choice of market.*

**Should the Horticulture Code be amended to enable merchants to provide growers with a method or formula by which price will be established?**

*One of the objectives of the Code was to introduce clarity to transactions between growers and traders. Despite concerns from various parties of 'increased costs and early morning phone calls' the reality is that there has been very little demonstrable activity to prove these have occurred.*

*WAFGA would not be totally opposed to the incorporation of a method or formula process which aided the operational aspects of the trade in fresh produce however would need greater consultation on the specifics of this process, before agreeing to it. Our primary requirement would be that growers should not be returned to an environment where a part of the trader's risk management process includes providing less information, or information in a delayed manner, to the grower on the price to be paid for the produce.*

**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?**

*WAFGA believes that the Code should not seek to encourage traders to conduct business under an agent or merchant arrangement, rather that this is a decision for the business to make based on their understanding of the market and their assessment of the likely benefits in acting in this manner.*

*Growers could have access to a debt collection service provided by the various market credit services across Australia; however we recognise that this will come at a cost, as a fee for service. Given that this service is supplied as part of a member benefit currently, the mechanics of establishing this service may be some time away however is possible if all parties in the supply chain are indeed working towards common goals.*

**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)?**

*To ensure uniformity in the application, WAFGA believes that these arrangements should be included within the Code.*

**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?**

*WAFGA notes the comments in the Issues Paper "It has been the ACCC's view to date that the practice of paying growers a price based on the average price received by the agent for a pool of produce (i.e. where various grades of produce from various growers are mixed together and then sent by the agent to be sold in markets throughout Australia) is not permitted under the Horticulture Code". WAFGA would support that position and is against a move which would introduce price pooling or averaging, particularly if it brought with it a loss in desire to obtain a higher price for produce.*

We thank you for consideration of our comments. Could you please ensure that you formally acknowledge receipt of this submission and advise the WAFGA on any future developments in the ACCC inquiry into the competitiveness of retail prices for standard groceries?

Yours Sincerely



**Alan Hill**  
**Executive Manager**  
**Western Australian Fruit Growers' Association**