

Sent: Thursday, 22 May 2008 10:49 PM
To: Leuner, Tom
Subject: Mandatory Code

Dear Tom

I have just received a copy of the Horticultural Code Issues Paper as part of the ACCC grocery enquiry.

I am an executive member of the Mareeba District Fruit & Vegetable Growers Association and the North Queensland Director of the Australian Mango Industry Association. I am also the person who was the main driving force in getting John Anderson to give Australian Growers the commitment that his Government if Re elected (2004 election) would implement a Horticultural Code of Conduct.

Unfortunately the Liberal side of the coalition sought to appease big business which saw growers and the metropolitan markets burdened with a code that is biased, discriminatory and deliberately punitive to those it is meant to protect. Growers cannot be blamed for seeing this blatant biased document as nothing more than political donations taking precedence over ethical legislation / regulation.

What other business in Australia or any other part of the world delivers his total annual production to a third party not knowing what financial return he will receive, when he will receive it and no legal right to documented proof of the transaction. This is situation that the current code provides. It provides NO default clauses and NO protection of grower funds.

It is a well-known fact that market representatives are operating as AGENTS but acting as merchants, exactly what has been happening as long as there has been markets in Australia.

I am attaching a code that I wrote and which was proof read by many experienced growers and introduced into Parliament last year by our Federal Member Bob Katter. This code has the full support of growers and market representatives, as it is fair and all exclusive and provides for full transparency through documented evidence. The only dissension you will find will come from the major chains and the processors. If as I have been told by Peter McGauran, previous minister for agriculture and responsible for the current debacle, that the major chains already adhere to a voluntary code that is stronger than the Mandatory Code why on earth would they not come out and willingly become signatures to a Mandatory Code.

I gave evidence to the ACCC when they were in Cairns and provided them with a copy of the code growers want to be immediately implemented in full. The implementation of this code would result in 90% + of the current problems facing growers being rectified and the estimated billion dollar black economy that exists in the metropolitan markets being seriously restricted as there would be a complete paper trail of all transactions that could be verified by the ATO.

Should you require any further information please do not hesitate to contact me.

Regards

Scott Dixon

2004-2005-2006-2007

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Trade Practices Amendment
(Horticultural Code of Conduct) Bill
2007**

No. , 2007

(Mr Katter)

**A Bill for an act to amend the *Trade Practices Act*
*1974***

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A Bill for an act to amend the *Trade Practices Act 1974*

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Trade Practices Amendment (Horticultural Code of Conduct) Act 2007*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Amendment of the *Trade Practices Act 1974*

1 Subsection 51ACA(1) (definition of *mandatory industry code*)

Repeal the definition, substitute:

“*mandatory industry code* means an industry code that is declared by regulations under section 51AE to be mandatory or which is provided for in this Part. A mandatory industry code that is provided for in this Part shall be taken to override any inconsistent provision of a relevant industry code declared by regulations.”

2 After section 51AEA

Insert:

51AEB Horticultural code of conduct

Name of code

(1) This code is the Horticultural Code of Conduct.

Purpose of code

(2) The purpose of this code is to regulate the conduct of Growers and Wholesalers, Retailers, Exporters, and Processors of Horticultural Produce to ensure contractual clarity and transparency of all first point of sale transactions and provide a cost-effective mechanism for fair and equitable dispute resolution.

Definitions and interpretation

(3) (a) In this code:

Grower means any person or entity that grows and sells Horticultural Produce.

Agent means any person or entity that acts for commission on behalf of another person, group or business.

- 1 **Merchant** means any person or entity engaged in the
2 purchase and sale of commodities for profit and may include
3 wholesalers who choose to operate as merchants. It includes
4 all retailers, exporters and processors engaged in purchasing
5 horticultural produce for resale.
- 6 **Agency Relationship** means a Trading Relationship under
7 which:
- 8 (i) a Wholesaler acts for an agreed commission as an agent
9 for a Grower in relation to the sale by the Grower of
10 Horticultural Produce to a third party buyer; and
- 11 (ii) the Grower retains ownership of the Horticultural
12 Produce until sold to a third party buyer and the
13 wholesaler does not at any time acquire ownership of the
14 Horticultural Produce.
- 15 **Agreed Term of Trade** has the meaning given in subsection
16 (7).
- 17 **Horticultural Code Management Committee** means the
18 committee appointed by the Minister pursuant to subsection
19 (39).
- 20 **Horticultural Inspector** means a horticultural inspector
21 appointed by the Horticultural Code Management Committee
22 pursuant to paragraph 39 (c).
- 23 **Horticultural Produce** means fresh, unprocessed, fruit and
24 vegetables, nuts, and plants, for human consumption.
- 25 **Intent to Deliver Produce Form** means a form detailing
26 produce by which means a Grower may notify a Wholesaler
27 of its intention to deliver Horticultural Produce.
- 28 **Merchant Relationship** means a Trading Relationship
29 under which:
- 30 (i) a Wholesaler or Retailer or Exporter or Processor
31 purchases Horticultural Produce from a Grower at a
32 price, or pursuant to a schedule of prices, agreed prior to
33 the receipt of the Horticultural Produce by the Wholesaler
34 or Retailer or Exporter or Processor; and
- 35 (ii) unless there is a dispute regarding the quality or quantity
36 of delivered produce, ownership of the Horticultural
37 Produce passes to the merchant no later than 24 hours
38 after receipt of produce by the Merchant.

Section 3

- 1 **Market Authority** means any organisation owning,
2 controlling or administering the centralised markets where
3 produce is bought, sold and/or traded by Merchants, Agents,
4 Wholesalers and Retailers including, but not limited to Perth
5 Metropolitan Markets, Brisbane Markets (Brismark), Sydney
6 Markets Ltd, Melbourne Market Authority.
- 7 **Trading Relationship** means a trading relationship between a
8 Wholesaler or Retailer or Exporter or Processor, and a
9 Grower.
- 10 **Type of Trading Relationship** means an Agency
11 Relationship or a Merchant Relationship.
- 12 **Wholesaler (Agent)** who facilitates the sale of Horticultural
13 Produce on behalf of a Grower to a third party for a
14 commission or fee.
- 15 **Wholesaler (Merchant)** means any person or entity who
16 purchases Horticultural Produce from a Grower for the
17 purpose of resale (including resale after processing the
18 Horticultural Produce) or
- 19 **Terms of Trade** has the meaning given in subsection (5).
- 20 (b) In this code, unless the context requires otherwise:
- 21 (i) the use of the words “include”, “including”, or similar
22 expressions, shall not limit the generality of words that
23 may follow; **OK**
- 24 (ii) a reference to any communication includes a
25 communication provided in writing, in person, by post,
26 by facsimile or by electronic mail.
- 27 *Application of the code*
- 28 (4) (a) This code applies on and from the commencement date and
29 covers all first point of sale transactions between a Grower and
30 a Wholesaler or Retailer or Processor or Exporter.
- 31 (b) This Code does not apply to:
- 32 (i) any sale of Horticultural Produce by a Grower to an end
33 consumer; or
- 34 (ii) any sale by a Grower of produce grown by that grower,
35 provided that the sale takes place in a central market

1 reserved for Growers and commonly known as the
2 “Grower’s Shed”.

3 *Wholesaler or Retailer or Processor or Exporter must prepare*
4 *Terms of Trade*

5 (5) (a) A Wholesaler or Retailer or Processor or Exporter must prepare
6 and maintain a document that sets out the terms and conditions
7 on which they are prepared to trade with Growers
8 (***Wholesaler’s Terms of Trade***).

9 (b) A Wholesaler or Retailer or Processor or Exporter’s Terms of
10 Trade must:
11 (i) be consistent with the requirements of this code;
12 (ii) identify the type or types of trading relationship under
13 which they are prepared to trade and the terms and
14 conditions applying for each such type of trading
15 relationship;
16 (iii) where more than one type of trading relationship is
17 specified, identify a default type Trading Relationship.

18 *Requirement to provide Wholesaler or Retailer or Processor or*
19 *Exporter Terms of Trade*

20 (6) (a) A Wholesaler or Retailer or Processor or Exporter must provide
21 their Terms of Trade to any Grower they choose to deal with.

22 (b) If a Wholesaler or Retailer or Processor or Exporter amends
23 their Terms of Trade they must provide a copy of the amended
24 Terms of Trade to any Grower they choose to deal with.

25 *Agreed Terms of Trade*

26 (7) (a) A Wholesaler or Retailer or Processor or Exporter and a
27 Grower may agree to trade under any type of Trading
28 Relationship and under terms and conditions that differ from
29 the Wholesaler or Retailer or Processor or Exporter Terms of
30 Trade (***Agreed Terms of Trade***), provided that the Agreed
31 Terms of Trade are consistent with the requirements of this
32 code.

Section 3

- 1 (b) In an established relationship, should a Grower send or deliver
2 a consignment of Horticultural Produce to a Wholesaler or
3 Retailer or Processor or Exporter that is accepted and where the
4 type of Trading Relationship for that particular consignment
5 has not been arranged, the Trading Relationship for the most
6 recent previous consignment will apply.

7 *Transaction splitting*

- 8 (8) In the event that a Wholesaler or Retailer or Processor or Exporter
9 and a Grower agree in advance that a consignment of Horticultural
10 Produce will be split, with different parts sold under differing
11 Types of Trading Relationship and terms and conditions, each part
12 will be treated as a separate transaction with a separate Trading
13 Relationship and Agreed Terms of Trade.

14 *Application of minimum terms of trade for all Trading*
15 *Relationships*

- 16 (9) The provisions of subsections (9) to (16) inclusive shall apply to all
17 types of Trading Relationships between a Wholesaler or Retailer or
18 Exporter or Processor, and a Grower.

19 *Grower intent to deliver Produce Notification*

- 20 (10) (a) A Grower must not deliver a consignment of Horticultural
21 Produce to a Wholesaler without first notifying the Wholesaler
22 or Retailer or Processor or Exporter of details of quantities and
23 grades. Notification can be made by telephone, facsimile or
24 electronically followed by a summary of the total consignment
25 by facsimile or electronically at the time of dispatch.
- 26 (b) The Wholesaler or Retailer or Processor or Exporter Terms of
27 Trade and Agreed Terms of Trade may include a pro forma
28 Intent to Deliver Produce Form, which includes information to
29 be provided about the quantity and quality of Horticultural
30 Produce to be delivered and, where the Wholesaler or Retailer
31 or Processor or Exporter operates under more than one type of
32 Trading Relationship, specifies the type of Trading
33 Relationship the Grower wishes to enter into.

1 (c) Where the Agreed Terms of Trade include a pro forma Intent to
2 Deliver Produce Form a notification made under this subsection
3 must use the pro forma Intent to Deliver Produce Form or any
4 agreed form of notification.

5 *Grower failure to give an Intent to Deliver Produce Notification*

6 (11) If a Grower delivers a consignment of Horticultural Produce to a
7 Wholesaler or Retailer or Processor or Exporter without first
8 providing a notification as required under subsection (10) and
9 which Horticultural Produce the Wholesaler or Retailer or
10 Processor or Exporter does not want:

11 (a) the Wholesaler or Retailer or Processor or Exporter must notify
12 the Grower of the delivery of the consignment of Horticultural
13 Produce Grower must not deliver a consignment of
14 Horticultural Produce within 24 (twenty four) hours of the
15 consignment being delivered; and

16 (b) the Grower must, within 24 (twenty four) hours of receiving a
17 notification under paragraph (a), notify the Wholesaler or
18 Retailer or Processor or Exporter if it wishes to have the
19 consignment of Horticultural Produce destroyed, or delivered to
20 a nominated third party, or returned to the Grower.
21 Alternatively, the Grower and the Wholesaler or Retailer or
22 Processor or Exporter may come to an agreement pursuant to
23 which the Wholesaler or Retailer or Processor or Exporter will
24 accept the consignment on Agreed Terms of Trade; and

25 (c) if the Grower does not notify the Wholesaler or Retailer or
26 Processor or Exporter in accordance with paragraph (b) within
27 24 (twenty four) hours of receiving a notification under
28 paragraph (a), the Grower is deemed to have elected to have the
29 consignment dealt with at the Wholesaler or Retailer or
30 Processor or Exporter's discretion, which may include the
31 consignment being accepted by the Wholesaler or Retailer or
32 Processor or Exporter on Agreed Terms of Trade or destroyed
33 at the Grower's expense; and

34 (d) the Wholesaler or Retailer or Processor or Exporter must deal
35 with the consignment of Horticultural Produce in accordance

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- 1 with the Grower's election under paragraph (b) or deemed
2 election under paragraph (c); and
- 3 (e) the Grower must reimburse the Wholesaler or Retailer or
4 Processor or Exporter for any reasonable costs incurred by them
5 in dealing with the consignment in accordance with this
6 subsection.

7 *Wholesaler or Retailer or Exporter or Processor's obligation to*
8 *respond to Grower's Intent to Deliver Produce Notification*

- 9 (12) (a) If a Wholesaler or Retailer or Processor or Exporter receives an
10 Intent to Deliver Produce notification from a Grower in
11 accordance with subsection (10), they must respond in an
12 agreed way to the Grower within the maximum number of
13 hours specified in the Agreed Terms of Trade (which must not
14 exceed 48 hours) indicating whether or not they will accept the
15 consignment, subject to the consignment's compliance with the
16 Agreed Terms of Trade.
- 17 (b) If a Wholesaler or Retailer or Processor or Exporter does not
18 respond in the permitted time frame they will be deemed to
19 have agreed to accept the consignment, subject to the
20 consignment's compliance with the Agreed Terms of Trade.

21 *If a Wholesaler or Retailer or Exporter or Processor does not*
22 *accept an Intent to Deliver Produce Notification*

- 23 (13) If a Wholesaler or Retailer or Processor or Exporter responds in the
24 agreed way and in accordance with subsection (12), indicating that
25 they will not accept the consignment of Horticultural Produce, the
26 Grower must not deliver the consignment to them. Subsection (11)
27 applies to any consignment of Horticultural Produce the Grower
28 delivers to the Wholesaler or Retailer or Processor or Exporter in
29 breach of this requirement.

30 *If a Wholesaler or Retailer or Exporter or Processor does accept*
31 *an Intent to Deliver Produce Notification*

- 32 (14) If a Wholesaler or Retailer or Processor or Exporter responds in
33 accordance with subsection (12) indicating that they will accept the

- 1 consignment of Horticultural Produce (or is deemed to have done
2 so), they must accept the consignment of Horticultural Produce
3 when delivered, unless:
- 4 (a) the consignment does not meet the quality or quantity
5 requirements specified in the Intent to deliver Produce
6 Notification and the Agreed Terms of Trade; or
- 7 (b) the Wholesaler or Retailer or Processor or Exporter advises the
8 Grower of the rejection of the consignment within the time
9 specified in the Agreed Terms of Trade (which must not exceed
10 24 hours after the time of delivery).

11 *Payment Timeframes*

- 12 (15) A Wholesaler or Retailer or Processor or Exporter must remit to
13 the grower the proceeds from the sale of a consignment of
14 Horticultural Produce that they accept within the period specified
15 in the Agreed Terms of Trade. The time specified may not exceed
16 45 (forty five days). If no timeframe is specified, the period will be
17 deemed to be a maximum of 28 (twenty eight) days from the date
18 the produce is sold by the Wholesaler or Retailer or Processor or
19 Exporter.

20 *Wholesaler or Retailer or Exporter or Processor Dispute Contact*
21 *Details*

- 22 (16) A Wholesaler or Retailer or Processor or Processor must specify in
23 their Terms of Trade contact details for a period a Grower may
24 contact in the event of a dispute with the Wholesaler or Retailer or
25 Processor or Exporter.

26 *Application of Minimum Terms of Trade for an Agency*
27 *Relationship*

- 28 (17) Subsections (17) to(24) inclusive shall apply only where a
29 Wholesaler and a Grower are in an Agency Relationship and shall
30 apply in addition to the requirements of subsections (9) to (16).

Section 3

1 *Transfer of Ownership of Horticultural Produce (Agency*
2 *Transaction)*

3 (18) Ownership of Horticultural Produce remains with the Grower until
4 sale by the Wholesaler (Agent) to a third party. At this time
5 ownership passes immediately to the third party.

6 *Payment of proceeds of sale*

7 (19) (a) A Wholesaler (Agent) must pay to the Grower any proceeds the
8 Agent receives in connection with the sale of a consignment of
9 Horticultural Produce, less:

10 (i) any commissions permitted under subsection 20; and

11 (ii) any extra costs permitted under subsection (21).

12 (b) All monies received by the Wholesaler (Agent) on behalf of the
13 Grower must be placed in a trust account managed by the
14 relevant Market Authority prior to distribution to the Grower
15 less the commissions allowed for in subparagraph (a)(i) and the
16 costs allowed for in subparagraph (a)(ii).

17 (c) A Wholesaler (Agent) must pay the Grower for a consignment
18 of Horticultural Produce the proceeds received for the
19 consignment less the commissions and fees allowed for in
20 subparagraph (a)(i) and the costs allowed for in subparagraph
21 (a)(ii), if applicable, within the period specified in the Agreed
22 Terms of Trade. The period specified may not exceed 45 (forty
23 five) days.

24 *Commissions*

25 (20) A Wholesaler (Agent) may only charge commissions on the basis
26 set out in the Agreed Terms of trade. Such Commissions must be
27 specified on a percentage basis. The commission rate is negotiable
28 in the Agent's Terms of Trade but may not exceed 12.5% (twelve
29 and one half per cent).

30 *Extra Costs*

31 (21) A Wholesaler (Agent) may only seek reimbursement for extra
32 costs it incurs to the extent provided for, and on the basis set out in,
33 the Agreed Terms of trade. Extra costs may include storage fees,
34 handling fees and disposal fees.

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Summary price information

- (22) (a) A Wholesaler (Agent) must provide a Grower with a duplicate copy of their statement or invoice to the third party for each consignment of Horticultural Produce sold by them on behalf of the Grower, showing the total proceeds of sale of the consignment less any commission or extra costs permitted under subsections (20) and (21) in the Agreed Terms of Trade.
- (b) The statement or invoice must be provided within the period specified in the Agreed Terms of Trade or within 28 (twenty eight) days of the completion by the Wholesaler (Agent) of the sale of the consignment, if no period is specified.

Itemised price and quantity information

- (23) A Wholesaler (Agent) must within the period specified in the agreed Terms of Trade, or within 14 (fourteen) days if no period is specified, provide a duplicate copy of their statement or invoice to the third party relevant to the transaction. The time specified may not exceed 28 (twenty eight) days. The duplicate copy statement or invoice must include:
 - (a) the date or dates of the sale;
 - (b) the type, quantity and count of the Horticultural Produce sold;
 - (c) the price received for each grade of Horticultural Produce sold; and
 - (d) details of the buyer of the Horticultural Produce.

Due care and skill

- (24) While the Horticultural Produce is under the Wholesaler's (Agent's) management, they must exercise due care and skill in handling and storing the Horticultural Produce.

Application of minimum terms of trade for a Merchant Relationship

- (25) Subsections (25) to (28) inclusive shall apply where a Wholesaler and a Grower are in a Merchant Relationship and to all transactions between a Grower and a Retailer or Exporter or Processor and apply in addition to the requirements of subsections (9) to (16).

Section 3

1 *Transfer of Ownership of horticultural Produce (Merchant*
2 *Transaction)*

- 3 (26) Ownership of Horticultural Produce passes from the Grower to the
4 Wholesaler (Merchant) either:
5 (a) if the price for the Horticultural Produce has been agreed by the
6 Wholesaler (Merchant) and the Grower prior to delivery,
7 ownership passes immediately to the Wholesaler (Merchant)
8 upon receipt of the produce; or
9 (b) if the price for the produce has not been agreed between the
10 Wholesaler (Merchant) and the Grower prior to delivery,
11 ownership passes immediately at the time the Wholesaler
12 (Merchant) and the Grower agree on a price for the produce.
13 This must be no later than 24 (twenty four) hours after receipt
14 of the produce by the Wholesaler (Merchant).

15 *Payment of price*

- 16 (27) The Wholesaler (Merchant) must pay the Grower for a
17 consignment of horticultural produce the price agreed in
18 accordance with the schedule of prices agreed prior to delivery
19 within the period specified in the Agreed Terms of Trade. The
20 period specified may not exceed 45 (forty five) days.

21 *Summary price information*

- 22 (28) (a) A Wholesaler (merchant) must provide a Grower with a
23 statement for each consignment of Horticultural Produce
24 accepted by them showing the quantity and quality of the
25 Horticultural Produce bought and the price paid, **and statements**
26 **containing only average prices** are not acceptable.
27
28 (b) The statement must be provided within the period specified in
29 the Agreed Terms of Trade or within 14 (fourteen) days of the
30 consignment being bought by the Wholesaler if no period is
31 specified. The time specified may not exceed 28 (twenty eight)
32 days.

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Dispute resolution definitions

(29) For the purposes of subsections (29) to (38) inclusive:

Complainant means the person or entity who initiates the procedure under subsection (30) or appoints a Horticultural Inspector under subsection (32).

Parties means the Complainant and the Respondent in a dispute.

Respondent means the person or entity with whom the Complainant has a dispute.

Initiating a dispute

(30) A Wholesaler or Retailer or Processor or Exporter or Grower may initiate a dispute against any participant covered by the code in relation to a Trading Relationship by contacting in writing the other party and notifying them of:

- (a) the nature of the dispute;
- (b) the outcome the Complainant seeks; and
- (c) the action the Complainant considers will settle the dispute.

Good faith negotiations

(31) If a dispute is notified under subsection (30) the Parties must negotiate in good faith to resolve the dispute.

Horticultural Inspectors

(32) A Grower or a Wholesaler or Retailer or Processor or Exporter may at any time, and irrespective of whether a dispute has been notified under subsection (30), appoint a Horticultural Inspector to provide a report on:

- (a) whether the rejection of Horticultural Produce by a Wholesaler or Retailer or Processor or Exporter was in accordance with the requirements of this code and the Agreed Terms of Trade;
- (b) whether amounts paid by a Wholesaler or Retailer or Processor or Exporter to a Grower were calculated in accordance with the requirements of this code and the Agreed Terms of Trade; and

Section 3

1 (c) any other matter in relation to which a dispute has been notified
2 under subsection (30).

3 *Assistance to Horticultural Inspectors*

- 4 (33) If a Horticultural Inspector is appointed pursuant to subsections
5 (30) or (32), the relevant party must:
- 6 (a) permit the Horticultural Inspector to inspect any Horticultural
7 Produce supplied by the Grower in possession of the wholesaler
8 or Retailer or Processor or Exporter;
 - 9 (b) in the case of an Agent, **permit the Horticultural Inspector to**
10 inspect the financial and other records of the Agent that relate
11 to the Grower or Horticultural Produce supplied by the Grower.

12 *Horticultural Inspector's report*

- 13 (34) A Horticultural Inspector appointed pursuant to subsection (32)
14 must prepare a report within 48 (forty eight) hours **of Appointment**
15 and provide a copy of that report to both Parties. The Horticultural
16 Inspector's report:
- 17 (a) must not include information that a Party to the dispute is not
18 entitled to obtain under the Agreed Terms of Trade; and
 - 19 (b) will not be legally binding on the Parties but is intended to
20 provide objective evidence to facilitate the dispute being
21 resolved by good faith negotiation, by mediation, or through
22 legal proceedings.

23 *Costs of Horticultural Inspector*

- 24 (35) In order to eliminate the initiation of frivolous disputes, the
25 costs of a Horticultural Inspector will be borne in total by the party
26 that does not succeed, **unless the parties agree otherwise, or the**
27 **Ombudsman directs otherwise.**

28 *Mediation*

- 29 (36) Either party may by notice to the other require a dispute notified
30 under subsection (30) to be referred for mediation. When a party
31 seeks referral for mediation:

- 1 (a) the dispute will be referred in the first instance to the
2 Ombudsman accredited pursuant to subsection (40);
- 3 (b) the Ombudsman will be the official mediator, with the power in
4 disputes where the claim has a potential value up to and
5 including \$100,000:
- 6 (i) the Ombudsman may delegate the appointment a mediator
7 to his office;
- 8 (ii) the Ombudsman may make and enforce decisions made by
9 his office and/or any mediator appointed by him or his
10 office
- 11 (iii) to award costs in respect of mediations;
- 12 (c) the Ombudsman will be the official mediator in cases
13 involving a dispute where the claim has a potential value of
14 more than \$100,000 and where the parties agree that the
15 matter be referred to the Ombudsman, with the power:
- 16 (i) to delegate the appointment of a mediator to his office;
- 17 (ii) the Ombudsman may make and enforce decisions made by
18 his office and/or any mediator appointed by him or his
19 office
- 20 (iii) to award costs in respect of mediations;
- 21 (d) If parties to a dispute cannot agree with the appointment of the
22 Ombudsman as official mediator, the parties may initiate legal
23 proceedings through the court system.
- 24
- 25 (e) within seven days of acceptance or delegation of the mediation,
26 the mediator must:
- 27 (i) decide the time of mediation (provided it is within 14
28 (fourteen) days of the acceptance or delegation of the
29 mediation) and a place of mediation (provided it is in
30 Australia); and
- 31 (ii) notify the parties of the time and place of mediation;
- 32 (f) the Parties must attend the mediation and try to resolve the
33 dispute. For the purposes of this paragraph, a party is taken to
34 attend mediation if the party is represented at the mediation by
35 a person who has the authority to enter an agreement to settle
36 the dispute on behalf of the party and who is not a lawyer.

Section 3

1 (g) each party pay their own costs of the mediation itself and costs
2 of attending, unless the parties agree otherwise.

3 *Resolution of disputes*

4 (37) There will be no termination of a dispute without settlement either
5 by agreement negotiated between the Parties, or by the Parties and
6 the mediator during the process of mediation

7 *Establishment of Horticultural Code Management Committee*

8 (39) A Horticultural Code Management Committee will be appointed
9 by the Minister for Agriculture, Fisheries and Forestry
10 (a) an independent chairman;
11 (b) 3 members who are growers;and
12 (c) 3 members who are wholesalers or retailers or processors or
13 exporters;
14 (d) 2 independent members
15 The Horticultural Code Management Committee will be assisted by
16 a secretariat appointed by the Minister.

17 *Role of the Horticultural Code Management Committee*

18 (40) The Horticultural Code Management Committee will:
19 (a) facilitate the introduction of the code, including raising
20 awareness of the code and ensuring appropriate industry
21 training and understanding;
22 (b) establish guidelines and procedures for the accreditation of
23 independent, impartial and appropriately skilled Horticultural
24 Inspectors;
25 (c) appoint Horticultural Inspectors so as to ensure that there are a
26 sufficient number operating within the wholesale market, taking
27 into consideration the geographical location of Horticultural
28 Inspectors, the relative dispersal of skills of the Horticultural
29 Inspectors and other criteria to be determined by the
30 Committee;
31 (d) ensure that Horticultural Inspectors are not based within
32 wholesale markets but operate as independent, contract
33 consultants located outside the markets;

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- (e) establish guidelines for the accreditation of an independent, impartial and appropriately skilled Ombudsman to be appointed by the Minister and to be known as the Horticultural Code Ombudsman; and
 - (f) provide a report to the Minister each year detailing the work of the Committee in the preceding 12 (twelve) month period.
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