



Supplementary Public Submission

Re: Horticulture Code

by

Brismark

On 20 June 2008

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INTRODUCTION

Brismark lodged a submission to the ACCC Grocery Inquiry on 10 June 2008. Following the display of a number of submissions on the ACCC website Brismark wishes to provide additional information to rebut some of the more extreme claims made by peak grower organisations.

Issue. 1: Enforcement of the Code

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 a 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?

Supplementary Response

The Farm Produce Marketing Act 1964 regulated Central Market trade in Queensland until its repeal on 30 June 2000. Brismark was cognizant of the needs of growers trading in a new environment and so developed a voluntary Code in conjunction with the Queensland Department of Primary Industries and with input from Queensland Fruit and Vegetable Growers (now called Growcom).

The Code of Practice for Queensland Fruit and Vegetable Wholesalers outlined trading requirements for subscribing wholesalers. Brismark charged participating wholesalers an annual fee and used the monies to advertise the Code and the names of accredited wholesalers in industry publications. Among other things the Code includes a dispute resolution process provided at no cost to growers.

From July 2002 until 15 June 2008, Brismark received 107 grower complaints. 27 complaints were against accredited wholesalers and a further 80 were against non-accredited wholesalers. As a result of the investigations undertaken by Brismark additional payments totalling \$712,408 were made to growers.

Over this six-year period, this represents an average of 18 complaints per year. With the total throughput value over that period of 5.62 billion dollars, the amount in dispute represents less than 0.02% of the total throughput value.

Our experience raises a number of questions regarding claims made by some grower organisations in relation to dispute resolution and the alleged “reluctance by growers to complain”.

1. If a low cost dispute resolution process is so important, why have peak grower organisations failed to support the likes of the Code of Practice for Queensland Fruit and Vegetable Wholesalers since its inception in July 2000, or other comparable arrangements that have existed in other Markets? In particular, why has Growcom, as a co-author of the Code, not

promoted it, not recommended that growers trade with accredited wholesalers and not sought to participate in the dispute resolution process?

2. If growers are afraid of commercial retribution why have 107 of them chosen to report grievances with wholesalers to Brismark over a six-year period?
3. If wholesalers are intent on punishing growers that complain about trading arrangements why have Brisbane Market wholesalers on 107 occasions since July 2002 voluntarily participated in dispute resolution, co-operated fully with investigators and returned \$712,408 to growers as a result of the investigations? In particular, why have non-accredited wholesalers with no legal or moral requirement chosen to take part in 80 investigations during that period?

We submit that the level of disputes in the industry is very low in relation to the size of the industry and that growers have demonstrated a willingness to use low cost dispute resolution processes when they do have a complaint.

We also submit that wholesalers in the Brisbane Markets have without exception co-operated in the dispute resolution process and have on many occasions made additional payments to growers without legal compulsion to protect their good name and standing with growers. This is in stark contrast to the “anecdotal” claims of some peak grower organisations.

Furthermore, a very clear distinction needs to be drawn between growers complaining because of the return prices they are paid not meeting their expectations due to the competitive nature of the industry and the commodity market which exists for fresh produce, and growers who have a specific commercial complaint regarding the operations of a trader.

Issue. 6: Agents

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?

Supplementary Response

Many proponents of the Mandatory Code hoped that wholesalers that were unwilling to set a price at farm gate for produce that had not been inspected and well before the operation of the market would choose to trade as “agents”. They rejected the so-called “hybrid” transaction, not because of a lack of transparency, as the “hybrid” is as transparent as “agency”, but because of a perceived unfairness.

They have argued that all the risk is borne by the grower while all the benefits accrue to the wholesaler. We submit that the “hybrid” transaction is far superior to the “agent” transaction for both the wholesaler and the grower.

	Agent	Hybrid
Transparency	The trader must reveal the price received for produce sold but not the customer to whom the produce was sold	The trader must reveal the price received for produce sold but not the customer to whom the produce was sold
GST	The trader must charge the grower GST on the commission charged	The grower is not required to pay GST
Risk	The grower is liable for any bad debts	The trader is liable for any bad debts
Return	The trader charges an agreed commission	The trader makes an agreed margin on sales
Administration	Requires high-level administration and record keeping.	Provides for an agreed level of administration to meet the needs of both the wholesaler and grower.
Cost	Is a higher cost option because of the higher administration costs involved.	Provides a flexible and lower cost option.

We do not understand why grower organisations support a method of trading which imposes greater risk and cost on the people they purport to represent, while arguably not providing any additional transparency.

This concern is exacerbated by the fact that given the conclusions by the CIE that the Code would only benefit up to 5% of growers, these organisations are seeking to impose substantial costs on all for the benefit of very few.

Issue. 7: Packing houses and cooperatives

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?

Supplementary Response

Calls for the exclusion of grower owned cooperatives/packing houses continues the stereotyping of industry sectors to justify the unequal treatment of parties performing the same function. From a starting point of applying the rule of law to capture all first transactions in an "industry" code the proposed exclusions and inclusions amount to the selective application of regulations based on the "colour of the traders skin". This is clearly biased and inequitable and cannot be justified.

Grower owned cooperatives/packing houses have no more difficulty in complying with the Mandatory Code than wholesalers. Indeed, most packing houses have fewer suppliers, narrower product ranges, fewer customers and more time to comply with the Code than do Central Market traders. The only justification for such an approach must be the contention that all grower owned cooperatives/packing houses act in the best interest of growers and all wholesalers do not.

Such generalisations, like all prejudices, are unsustainable and no basis for government regulation.

There are many instances of business relationships between traders and growers and between traders and packing houses that are just as close as the relationship between the grower and a grower owned co-operative/packing house. There are many such examples where the trader and grower have comprehensive marketing arrangements, where the trader may be marketing the grower's entire crop. Some of these arrangements have been in place for up to 30 years.

A number of case studies we examined have identified examples the trader is providing the grower with detailed intake and sales reports daily, payment terms of seven to fourteen days and situations where, at the end of each season, a comprehensive report was prepared showing intake and sales information. Some of this information included details relating to a break-up by size, variety, pack type, week and customer category with comparisons to the previous season. Traders do ensure that full day face-to-face meetings are conducted regularly with key suppliers and these discussions can and do extend to every aspect of the business including plans for the coming season.

It should also be noted that packing houses, whether grower owned co-operatives or not, are separate legal entities and have not always acted in the best interests of their suppliers. There have been financial failures of grower owned packinghouses such as Simpson Citrus Pty Ltd. One of the more significant examples of a grower owned business not serving the best interests of their grower members however, would be the debacle surrounding the business interests of Queensland Fruit and Vegetable Growers (now Growcom) in relation to its Sunshine Produce/Freshmark operations.

Further Issue: Application of Produce and Grocery Industry Code of Conduct

In its submission to the ACCC dated June 2008 (p11), and in a media article in Queensland Country Life (19 June 2008), Growcom has stated that the Horticulture Code does not need to be extended to include the two major retailers because "they have already signed the much more comprehensive Produce and Grocery Industry Code of Conduct (PGCC) and these transactions are subject to far more onerous requirements than those of the Horticulture Code".

Supplementary Response

If this is correct, the Horticulture Code should be repealed immediately and all wholesaling sector representative organisations be engaged to support the Produce and Grocery Industry Code of Conduct. Such support would be forthcoming, as it would provide the industry a workable and cost effective outcome as a distinct alternative to the Horticulture Code.

Based on the statements made by Growcom, this position should be supported by that organisation.

If Growcom does not support this outcome, that organisation would need to explain its double standards and hypocrisy in relation to the position it takes on Code related matters.

The Produce and Grocery Industry Code of Conduct (PGICC) would provide for a single Code with broader industry coverage, while continuing to provide an effective dispute resolution framework. The application of the PGICC should be evaluated as an alternative to the existing Horticulture Code.

Further Issue: Claimed Benefits and Grower Expectations

Grower representative organisations have expressed a view that the Code has not met growers' expectations and that there are levels of grower disappointment with the Code.

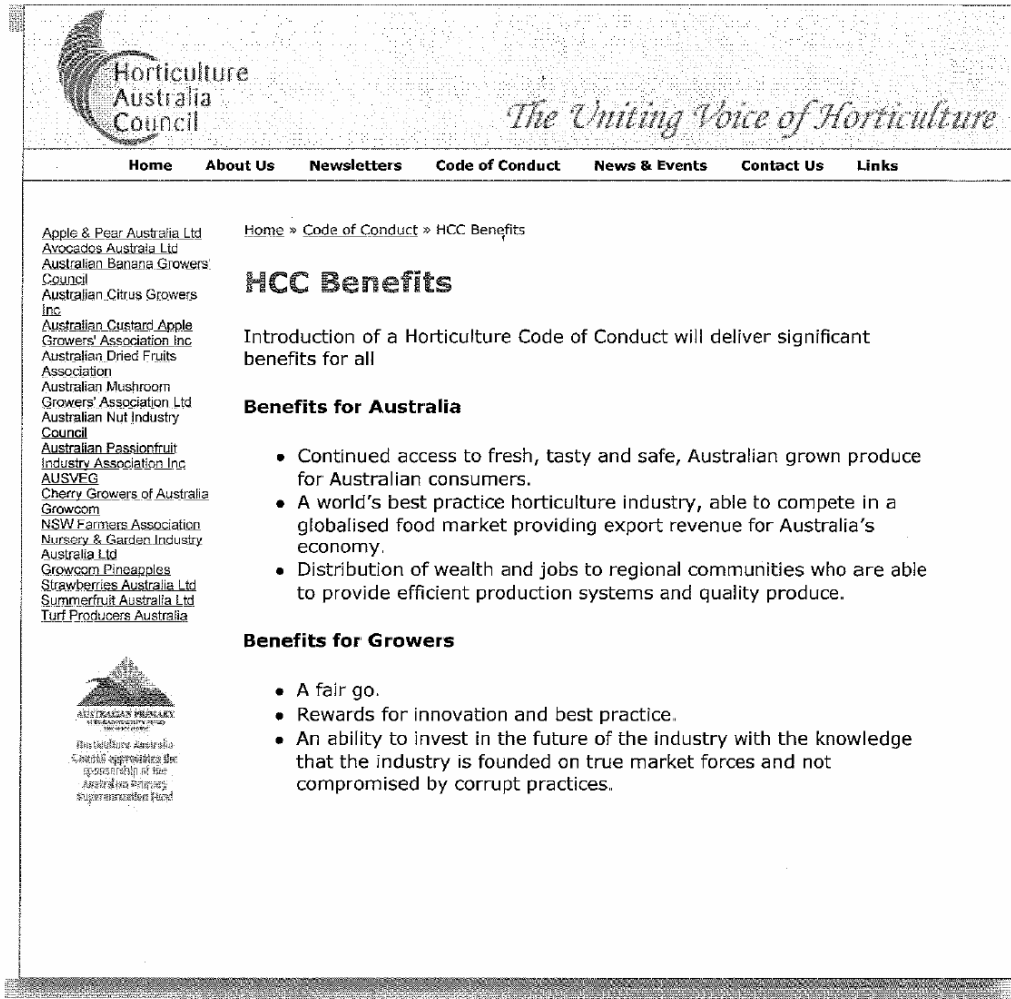
Supplementary Response

Grower support for the Horticulture Code of Conduct was based on a promise of 'significant benefits' for all, and some level of disappointment must surely be expected when so much is promised and the reality falls far short of people's expectations.

The Horticulture Australia Council website still displays their early promotion material for the Code, dated 7 November 2005, a snapshot of which follows.

The proposed "Benefits for Australia" are clearly either totally irrelevant or undeliverable through an industry code.

In relation to the "Benefits for Growers", while the objective of a 'fair go' is appropriate, the objectives are over-generalised and lack any context in terms of how the current Horticulture Code can deliver such benefits.



The screenshot shows the Horticulture Australia Council website. The header includes the logo and the tagline "The Uniting Voice of Horticulture". A navigation menu contains links for Home, About Us, Newsletters, Code of Conduct, News & Events, Contact Us, and Links. The main content area is titled "HCC Benefits" and includes a breadcrumb trail: Home » Code of Conduct » HCC Benefits. The page lists various industry associations in the left sidebar, such as Apple & Pear Australia Ltd, Avocados Australia Ltd, and Australian Banana Growers Council. The main text introduces the HCC Benefits and lists them under three categories: Benefits for Australia, Benefits for Growers, and Benefits for Consumers. The Benefits for Growers section lists: A fair go, Rewards for innovation and best practice, and An ability to invest in the future of the industry with the knowledge that the industry is founded on true market forces and not compromised by corrupt practices. At the bottom, there is a copyright notice for 2005 Horticulture Australia Council.

Horticulture Australia Council
The Uniting Voice of Horticulture

Home About Us Newsletters Code of Conduct News & Events Contact Us Links

Home » Code of Conduct » HCC Benefits

HCC Benefits

Introduction of a Horticulture Code of Conduct will deliver significant benefits for all

Benefits for Australia

- Continued access to fresh, tasty and safe, Australian grown produce for Australian consumers.
- A world's best practice horticulture industry, able to compete in a globalised food market providing export revenue for Australia's economy.
- Distribution of wealth and jobs to regional communities who are able to provide efficient production systems and quality produce.

Benefits for Growers

- A fair go.
- Rewards for innovation and best practice.
- An ability to invest in the future of the industry with the knowledge that the industry is founded on true market forces and not compromised by corrupt practices.

Benefits for Consumers

Continued access to fresh, tasty and safe, Australian grown produce for Australian consumers.

Links

Apple & Pear Australia Ltd
Avocados Australia Ltd
Australian Banana Growers Council
Australian Citrus Growers Inc
Australian Custard Apple Growers' Association Inc
Australian Dried Fruits Association
Australian Mushroom Growers' Association Ltd
Australian Nut Industry Council
Australian Passionfruit Industry Association Inc
AUSVEG
Cherry Growers of Australia Growcom
NSW Farmers Association
Nursery & Garden Industry Australia Ltd
Growcom Pineapples
Strawberries Australia Ltd
Summerfruit Australia Ltd
Turf Producers Australia

Australian Premium Horticulture
The Horticulture Australia Council represents the growers in the Australian Premium Supermarket Food

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In reality, the Code suffered from over-politicisation of the issue, a failure to test the veracity and relevance of the claims being made against wholesalers, the failure on the part of the government to assess other options or alternatives, and an outcome which has failed to recognise how the industry operates in terms of the rapid turnover of large volumes of fresh produce of a diverse range of varieties, sizes and grades.