



Victorian Farmers
Federation
Potato Growers Council

26th June, 2012

Richard Chadwick
General Manager
Adjudication Branch
GPO Box 520
Melbourne Vic 3001

Dear Richard,

The Victorian Potato Growers Council has recently received a letter informing us that our authorisation for collective bargaining (A91048) is due to expire.

Unfortunately we were unable to address this application until the end of harvest season in May, and thus we have come very close to the date on which the authorization is due to expire.

Though the season is now over and contracts are complete and will not be negotiated again until 2013, we would like to seek interim authorisation if possible so that we are covered in the event of any early negotiations as we understand the revocation and substitution process takes some time.

We would very much appreciate your review of this matter, and fully understand that it is not ideal that this has been left so close to the expiration date.

Yours Sincerely,



Laura Bowles
Executive Officer



**Australian
Competition &
Consumer
Commission**

Contact Officer: Garth Layton
Contact Phone: (02) 6243 1274

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

9 July 2012

Frank Rovers
Chairman
Victorian Potato Growers Council

By email: laura@ag-challenge.com.au

Dear Mr Rovers

Fee waiver request

I refer to your letter of 26 June 2012 to the Australian Competition and Consumer Commission (ACCC) in respect of a proposed application for revocation of authorisation A91048 and substitution of a new authorisation. In your letter you have requested that the ACCC grant a fee waiver in respect of the proposed arrangements.

In particular, you have requested that the fee to be paid in relation to an application for revocation and substitution to be lodged by the Victorian Potato Growers Council (VPGC) be waived in whole.

In support of your request, among other things, you submit that VPGC is a not-for-profit umbrella organisation that runs on a very small budget with much of its work done on a pro-bono basis. You further submit that the fee, if not waived, would result in VPGC closing down for a major part of the year, leading to detrimental impacts on the industry through a lack of representation for members. You also note the difficult year that potato growers have experienced due to flooding, disease issues and difficult growing and selling conditions.

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I wish to advise that the related application fee to be paid by VPGC has been waived in whole. No application fee will apply in respect of VPGC's application for revocation and substitution.

This decision will remain in force for a period of three months. The three month period will expire on 9 October 2012.

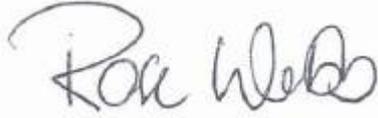
A copy of this letter should accompany the application for authorisation to be lodged by VPGC. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by VPGC after 9 October 2012, a full application fee of \$7500 will apply as VPGC's current authorisation will have expired and you will need

to lodge a new application. The application fee will be payable unless a subsequent request for a fee waiver is made and ultimately approved by the ACCC.

Should you have any queries in relation to this matter, please do not hesitate to contact Garth Layton on (02) 6243 1274.

Yours sincerely

A handwritten signature in black ink that reads "Rose Webb". The signature is written in a cursive style with a large initial 'R'.

Rose Webb
Executive General Manager
Mergers and Adjudication Group

Form FC

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

A91321

The Victorian Potato Growers Council (“VPGC”) which is a member of the Horticulture Policy Council of the Victorian Farmers Federation (“VFF”)

- (b) Description of business carried on by applicant:
(Refer to direction 3)

The Victorian Potato Growers Council (VPGC) is a grower representative body that is authorized under the Victorian Farmers Federation (VFF). It was formed to represent the interests of Victorian potato growing businesses, and to provide a forum for state-wide discussions on matters of interest and to provide a vehicle by which potato growers may usefully discuss with Governments and other regulatory authorities any issues that are affecting them.

The Victorian Potato Growers Council is an umbrella group for individual potato bodies within Victoria. The individual “sub-groups” currently represented under the umbrella of the VPGC are:

**The McCain Growers Group
Seed Potatoes Victoria
Gippsland Certified Seed Grower Association
Ballarat Certified Seed Grower Association
Otways Certified Seed Grower Association
Portland Certified Seed Grower Association
Kinglake Certified Seed Grower Association
The Potato Crisping Research Group
The VFF Gippsland Potato Grower Group**

The members of the Potato Growers Council, being the representative body covering each of the relevant commodity groups, has agreed for this Authorization application to be submitted on their behalf.

The objectives of the Potato Growers Council are;

- a. To provide a Statewide forum for potato growers to have a voice to local, State and National governments.**
- b. To effectively and efficiently address problems within the Victorian Potato industry and provide workable solutions to the affected growers.**
- c. To represent the interests of members in all matters and services that could be justly requested by the members consistent with these objectives.**
- d. To develop and promote guidelines, hygiene protocols and policy documents for Victorian potato growers.**
- e. To promote an open and competitive international and domestic market**

In 2007 the Potato Growers Council agreed to join with the Victorian Farmers Federation Horticultural Council. This has made no difference to the way in which the Potato Growers Council structure works, however it gives a member of the Potato Growers Council access to more policy and structure decisions that are made within the VFF Horticulture sector.

The membership of the Potato Growers Council is via a yearly levy that is decided upon each year by the Potato Growers Council, on top of a base fee that is required by the Victorian Farmers Federation for membership to that State body. Growers can choose to opt out of membership at any stage and are not required to be members of the VPGC.

The individual groups within the Potato Growers Council deal with specific sectors of the industry.

The McCain Growers Group is focused on the processing growers that supply the McCain Foods (Aust) factory in Ballarat.

Seed Potatoes Victoria is an incorporated association under the Potato Growers Council, which looks after the interests of over 100 certified seed growers in Victoria and South Australia. The group is focused on certified seed grower interests and the separate district organizations under the Seed Potatoes Victoria umbrella are represented on the Seed Potatoes Victoria committee.

The Potato Crisping Research Group collects a levy from its members who grow potatoes for the crisping market, for investment into research and development of their industry.

(c)Address in Australia for service of documents on the applicant:

PO Box 571, Warragul Vic, 3820

2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

The ACCC authorisation number is A91048, in relation to a collective bargaining agreement by the VPGC to allow the various potato commodity groups negotiate with buyers they supply, as well processing companies which they collectively negotiate with.

- (b) Provide details of the basis upon which revocation is sought:

The revocation is sought due to the pending expiry of authorisation A91048 on 31 July, 2012.

3. Substitution of authorisation

- (a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:
(Refer to direction 4)

An arrangement between present and future members of the VPGC to collectively negotiate the terms and conditions of supply contracts with processors and other buyers, as well as establish price recommendation for supply of seed potatoes to other potato growers in Australia.

An arrangement between present and future members of the Victorian VPGC members for the Victorian Potato Growers Council to assist them in their negotiations with processors and other buyers.

- (b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

The VPGC has a membership of growers from the crisping, processing, seed and fresh industries. The contracts that are collectively negotiated are between members of the VPGC and processing companies, as well as smaller buyers who buy off groups of present and future members of the VPGC.

- (c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

Five (5) years, as per the previous authorisation.

4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

Victorian Potato Growers Council Members (present and future)

McCain Foods – processing company

Snackbrands Australia – crisping company

Smiths – crisping company

Elders Limited – seed/fresh potato buyer

Moriatis Group – fresh potato buyer

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

VPGC members.

Individual commodity groups represented under the umbrella of the VPGC namely;

Seed Potatoes Victoria (Including the Ballarat Seed Potato Growers Group, the Gippsland Seed Potato Growers Group, the Portland Seed Potato Growers Group, the Kinglake Seed Potato Growers Group, the Otways Seed Potato Growers Group)

McCain Growers Group

Potato Crisping Research Group

The Thorpdale Potato Growers Group

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Potato growers – current non VPGC members.

5. Public benefit claims

- (a) Arguments in support of application for substitution of authorisation:
(See Direction 6 of this Form)

Growers as individuals are in a weak bargaining position against large companies and corporations which desire to buy their potatoes. These companies and corporations often have specialised negotiators, and worldwide company resources to pull from to strengthen their position against individual growers.

Individual growers are not expected to have the skills required to negotiate with multinational and very large companies. And it is neither practical or economical to employ professional negotiators for individual grower businesses.

The VPGC considers the collective bargaining approach to be an

organized and cost effective means to cover the issue of arranging contract prices and conditions for potato crops grown in Victoria.

The practice of open consultation with each of the commodity groups by their respective leaders ensures that a considered grower position is always adopted when the negotiating groups meet with the company representatives.

Though companies may not support the collective bargaining offer by the different grower groups under the VPGC, growers would like the opportunity to go down this path if the companies decide to change their mind in the future and deal with the growers as a group instead of individually over price, supply and tonnage issues.

The collective bargaining process under Authorisation A91048 has been running smoothly for the last 5 years for those growers and businesses who are using it, and we do not envisage there would be a change in the manner in which the negotiations are undertaken now or in the future.

- (b) Facts and evidence relied upon in support of these claims:

The manner and method of negotiating prices has not been altered by us since the initial Authorisation (A91048).

The benefits on an administrative side include a more cost effective method of obtaining a price which will see more stability and added benefits for the local economy.

The McCain Growers Group had been negotiating with McCain Foods for many years before the original authorisation had been approved. The method of negotiation had not changed after the authorisation was in place and was already widely accepted by the industry.

6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The Victorian potato industry, including buyers and processors.

(See Direction 7 of this Form)

7. Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

It is very unlikely that there would be any detriment to public or consumers during the collective bargaining process.

(See Direction 8 of this Form)

- (b) Facts and evidence relevant to these detriments:

In the last 5 years, the price paid to processing potato growers has been increased by approximately 7% through the collective bargaining process. In this time, one of the processors main buyers has decreased the consumer cost of their product almost 10%, and even up to 50% for certain lines at different time, in that time. Another of the buyers has increased the cost of their product almost 40% in that time.

Therefore we suspect that the raw product price has little or no impact on the price which the companies decide to use for their consumers.

8. Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

Yes

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Future VPGC members

Other potential buyers of potato crops from Victorian VPGC members who may enter into the industry in the future, and other potato buying companies which currently exist but who are not listed in 4 (a)

(See Direction 9 of this Form)

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

N/A

(See Direction 5 of this Form)

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

As per 8 (b) (i)

9. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

N/A

- (c) If so, by whom or on whose behalf are those other applications being made?

N/A

10. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Mrs. Laura Bowles

Executive Officer

Victorian Potato Growers Council

PO Box 571

Warragul, Vic 3820

Dated 26/6/12

Signed by/on behalf of the applicant



(Signature)

Laura Bowles

(Full Name)

Victorian Potato Growers Council

(Organisation)

Executive Officer

(Position in Organisation)



Submission in Support of Application for Revocation and Substitution of Authorization A91048

By the Victorian Potato Growers Council (VPGC)

Introduction

This submission is in support of the Victorian Potato Growers Council (VPGC) application for revocation and substitution of the authorization A91048 granted to the VPGC in July 2007.

The purpose of the VPGC's application for authorization is to allow VPGC to continue to engage in collective bargaining negotiations on behalf of its members with:

- a. Australian State and Territory potato industry bodies and/or potato variety rights owners.
- b. National, State and Territory potato growing bodies and/or other potato variety rights owners.

Where required or authorized by members of VPGC

Authorization is sought for 5 years.

No members will be required to enter into any agreement with a controlling body negotiated by VPGC on behalf of its members. Members of VPGC are, and will remain, entitled to negotiate individual agreement with any controlling body.

The Victorian Potato Growers Council (VPGC)

The Victorian Potato Growers Council (VPGC) is a grower representative body that is authorized under the Victorian Farmers Federation (VFF). It was formed to represent the interests of Victorian potato growing businesses, and to provide a forum for state-wide discussions on matters of interest and to provide a vehicle by which potato growers may usefully discuss with Governments and other regulatory authorities any issues that are affecting them. There are currently 289 members of the Victorian Potato Growers Council.

The Victorian Potato Growers Council is an umbrella group for individual potato bodies within Victoria. The individual "sub-groups" currently represented under the umbrella of the VPGC are:

The McCain Growers Group

Seed Potatoes Victoria

- Gippsland Certified Seed Grower Association
- Ballarat Certified Seed Grower Association
- Otways Certified Seed Grower Association
- Portland Certified Seed Grower Association
- Kinglake Certified Seed Grower Association

The Potato Crisping Research Group

The VFF Gippsland Potato Grower Group

The members of the Potato Growers Council, being the representative body covering each of the relevant commodity groups, has agreed for this Authorization application to be submitted on their behalf.

The objectives of the Potato Growers Council are;

- a. To provide a Statewide forum for potato growers to have a voice to local, State and National governments.
- b. To effectively and efficiently address problems within the Victorian Potato industry and provide workable solutions to the affected growers.
- c. To represent the interests of members in all matters and services that could be justly requested by the members consistent with these objectives.
- d. To develop and promote guidelines, hygiene protocols and policy documents for Victorian potato growers.
- e. To promote an open and competitive international and domestic market

In 2007 the Potato Growers Council agreed to join with the Victorian Farmers Federation Horticultural Council. This has made no difference to the way in which the Potato Growers Council structure works, however it gives a member of the Potato Growers Council access to more policy and structure decisions that are made within the VFF Horticulture sector.

The membership of the Potato Growers Council is via a yearly levy that is decided upon each year by the Potato Growers Council, on top of a base fee that is required by the Victorian Farmers Federation for membership to that State body. Growers can choose to opt out of membership at any stage and are not required to be members of the VPGC.

The individual groups within the Potato Growers Council deal with specific sectors of the industry.

The McCain Growers Group is focused on the processing growers that supply the McCain Foods (Aust) factory in Ballarat.

Seed Potatoes Victoria is an incorporated association under the Potato Growers Council, which looks after the interests of over 60 certified seed growers in Victoria and South Australia. The group is focused on certified seed grower interests and the separate district organizations under the Seed Potatoes Victoria umbrella are represented on the Seed Potatoes Victoria committee.

The Potato Crisping Research Group collects a levy from its members who grow potatoes for the crisping market, for investment into research and development of their industry.

Target

The aim of the VPGC in seeking authorization to collective bargain is to be able to allow its sub-groups and members to negotiate with the relevant buyers of their produce as a

collective group. Companies listed in Appendix I are the major contract suppliers for members of the VPGC. There may be other large companies or businesses which growers wish to collectively bargain with in the future.

Background

It is estimated that Victoria currently has over 300 individual potato growing businesses. It is not compulsory for potato growers to join the VPGC.

Victorian growers produce approximately 120,000 of ware (fresh) potatoes, 50,000 tonnes of seed, 70,000 tonnes of processing potatoes and 50,000 tonnes of crisping potatoes each year, based on approximate grower numbers and average yield. Private varieties are those listed under Plant Breeder and Plant Variety Rights and are privately monitored and the information on their production is owned by the companies that control the varieties. The majority of potatoes harvested in Victoria in 2012 were private varieties.

With the increasingly shrinking local markets for fresh produce in Australia, due to increased imports and 'closed loop' supply chains into supermarkets, growers within the industry are being faced by an increased demand for lower priced produce. Large companies have breeding and variety rights to certain varieties that are sold in 'closed loop' systems that are limited to only selected growers for production.

Closed loop marketing systems consist of a company or individual owning rights to a private variety, and selecting growers to grow the variety, both in seed and commercial form. The owner of the variety is often closely linked to a marketing group which can put the variety into supermarkets or processing companies a lot easier than an individual grower can. Growers who are not a part of these closed loop systems find it hard to negotiate a reasonable price for their produce individually.

Large companies currently have a monopoly on the major varieties in Australia. Individual growers must negotiate with companies for contract prices for the year. Individual growers often find themselves confused and unsure of whether the contract they have been offered is fair. Some large companies, such as McCain Foods, are willing to negotiate with growers in groups.

It is acknowledged and well understood that individual growers are generally in a weak bargaining position when dealing with large companies, especially those that compete on a global market. However, there are restricted limited supply options in the crisping and processing sectors of the industry largely due to market access issues and proximity of growers to processing factories in Ballarat (McCain Foods), Melbourne (Readymeals). The fresh, or 'ware' growers are restricted by market access bans imposed by interstate quarantine authorities.

The interstate bans stem mostly from the fact that Victoria is the only State in Australia with areas that have been tested and found to have the pest 'Potato Cyst Nematode' (*Globodera rostochiensis*) active in potato growing areas. Potato Cyst Nematode (PCN) is a serious pest of potatoes world-wide and is subject to stringent quarantine and/or regulatory procedures wherever it occurs. PCN can be a devastating pest of potatoes in temperate regions if not controlled. However, the effect of the pest on known infested sites has been minimal, if any effect at all. Currently all certified seed in Victoria is tested for the presence of this pest, as well as all known infested areas which are known as 'Control Areas'. Individual companies may or may not require tests for PCN if the potatoes from Victorian growers, in areas where the pest has not been detected, will be going interstate.

The nature of the potato industry means that growers are required to invest considerable amounts in equipment, machinery, resources, land and water. Once the investment has been made they then become 'locked in' to growing potatoes and are vulnerable to company pressure which can be applied to growers who need contracts with companies to sell their produce. The companies know the pressure the growers are under to sell their produce and can use their situation against them.

Contracts between large companies and growers are a commonly agreed option for both parties. Contracts ensure that a company has the potatoes it will need, and the grower is ensured a confirmed market for their produce. Contracts are essential in the processing, fresh and crisping markets so that factories that rely on potatoes at various times of the year have a confirmed supply when needed. Contracts are generally signed before the potatoes are planted. However this is not always the case. Sometimes companies will not offer written contracts until varieties are planted, and sometimes seed buyers will not offer written contracts until the recommended price for certified seed is published in December, which is when a lot of seed is being planted. The contracts themselves range from a standard contract format to an annually negotiated contract which often has different terms and conditions in regards to previous contracts from the same company.

Proposed Conduct

The conduct for which authorization is sought is ("proposed arrangements")

- a. the negotiation by the VPGC member or member body of the VPGC, of the terms and conditions of an agreement between a body in the Australian potato industry and a member or member body of the VPGC.
- b. The participation of the VPGC in any dispute resolution mechanism in relation to disputes between controlling bodies of potato businesses and members of the VPGC with regards to the supply of potatoes.

The VPGC wishes to apply for authorisation on behalf of its potato grower members to:

- Allow an agreement between those members to collectively bargain terms and conditions of growing contracts with potato buyers. It is proposed that negotiations will be undertaken by grower representatives within each of the VPGC's member bodies (i.e. the McCain Growers Group, Seed Potatoes Victoria (and the Gippsland, Ballarat, Otways, Portland and Kinglake Certified Seed Grower Associations), the Potato

Crisping Research Group and the VFF Gippsland Potato Grower Group) as well as any other grower group that may exist in the future under the VPGC.

- Allow the VPGC to participate in any dispute resolution process between members of the VPGC and potato buyers concerning the contracts collectively negotiated.

Authorization Sought

Authorization is sought for the VPGC potato grower members to collectively negotiate, through grower representatives on their various commodity group boards or selected negotiation sub councils, terms and conditions of growing contracts with potato growers.

The proposed arrangements apply to all potato crops grown under contract for supply to the relevant buyers. Each of the groups acts autonomously, as individual sub-groups in the potato industry. Each group has their own meetings, their own office bearers and operate with the administrative support of an Executive Officer. Membership of the VPGC is not compulsory, and growers are able to be members of an individual, or sub group only if they choose.

The addition of other groups under the Potato Growers Council may be necessary in the future. The situation may arise when other buyers of contracted crops may enter the industry or other groups may form under the umbrella of the Potato Growers Council.

The VPGC therefore requests that the ability to apply for addition of the new parties to the addendum lists in the future if required.

Parties to the Proposed Arrangements

The parties to the proposed arrangements are present and future members of the VPGC and:

Businesses that deal with Potatoes

Individuals that deal with potatoes.

Pursuant to sections 88(10) and 88(13) of the Trade Practices Act 1974 (ch), the authorization application applies to any collective bargaining group of VPGC members, present or future, who wish to engage in the proposed arrangements.

Details of Negotiation

Negotiation between growers and businesses over contracts has been an integral part of the potato industry for many years now. Grower groups find that there is certainly strength in numbers and certain companies find that negotiating with groups of growers is often far more agreeable for both parties than holding negotiations with single growers throughout the season.

The process for negotiation varies for different growers and different companies. McCain Foods and the McCain growers group, have a different method of negotiation than Smiths have with their growers. Essentially though, a grower or grower group would contact the buyer, or the buyer would contact the grower or grower group and negotiations would commence from there.

Both buyers and growers will generally aim to have contracts settled before the growing season to ensure supply for the buyers and farm planning for the grower. Contracts can be standard form contracts, or yearly negotiated contracts, depending on what the company requires at the time.

Once negotiations have commenced, the negotiating sub-committee of the relevant grower group and the buyer representatives would meet and review the past years supply, and make assumptions about the coming season that may affect price. Discussions can be lengthy or quick depending on whether the buyer and the grower can agree on a fair supply price for the season. If the negotiating committee feel what is being offered is reasonable and in line with the knowledge they have of the grower expectations, they can recommend acceptance of this offer to the other growers via a meeting or newsletter. The company will then contact the growers to secure individual acceptance and settle contractual details.

If the committee feels that what is being offered is less than reasonable and/or unable to be recommended to growers, then a grower meeting is called. At this meeting growers will be advised of the conditions surrounding the company position and will be provided with as much information as is able to be obtained by the grower group. The meeting will be asked to provide a directive to the committee about the grower price and conditions. The negotiation committee representatives will transfer this information to the company, generally at a meeting called for this purpose.

Sometimes representatives from the relevant company will attend a grower meeting to put their position. The representatives will then leave the meeting. The members will consider the information provided and advise the committee about the direction required to be taken. The committee will transfer this request to the company.

Once an agreement has been reached, the committee then recommends acceptance.

If the offer is not able to be accepted because it does not fit the understanding of what is desired, the committee may call another grower meeting, or, if there is a total impasse then the committee can recommend that individual growers consider their own position, having regard to the viability of the offer, etc.

The parties who participate in the negotiation process are grower representatives who are always elected from the commodity meetings. The committee members must be growers of the particular potato industry group being represented and be a levy paying member to the VPGC for that potato industry group.

Dispute Resolution Process

The VPGC and its sub groups only represent the members that choose to be a paid part of the VPGC or its sub groups. Growers can choose whether to join just the VPGC, or one of its sub groups independently by joining the Victorian Farmers Federation (VFF).

Each sub-group of the VPGC makes independent decisions on behalf of its members that the VPGC often has little to no direct influence over. The VPGC does not contract directly

with any processors or buyers of potatoes in Australia. All activity by the VPGC is only ever on behalf of the sub group that is being assisted at the time. All contracts are made between individual growers and the company which they are contracting with.

The role of the VPGC has always been to obtain and disseminate relevant information to each of the commodity groups to assist with the price and contract deliberations. The VPGC provides assistance to the commodity groups with Executive Officer support covering such matters as Statewide newsletters, lobbying on any issues affecting the members and press releases. The Executive Officer of the individual sub groups looks after the sector specific newsletters, lobbying on any issues affecting the members and press releases and also accompanies negotiating committees and individual growers as requested when price and contract arrangements are discussed with buyers. The Executive Officer is directly responsible to the Chairman of the sub-group they represent.

The intention of the sub-groups is to continue to represent the best interests of growers who grow the different varieties for different purposes, and to deal with issues specific to that sub group. However, the growers determine individually whether they wish to accept contracts with the relevant company. Tonnages to be contracted and acceptance of the price and conditions, following discussions with the negotiating representative group, and the sub-group as a whole, will always come down to a decision for the individual grower as to whether to accept the negotiating committee and company's agreed price.

There can be times when agreement between a representative negotiating committee and a company cannot be achieved. In this case the negotiating committee is likely to recommend that growers should consider their individual positions and suggest that growers negotiate individually with the company. Alternatively mediation by the Retail Grocery Industry Ombudsman may be sought. The dispute resolution process does not reduce the scope for individual growers to negotiate variations on collectively negotiated arrangements or to negotiate with their processor individually outside of the authorised arrangements.

It should be noted that growers can supply various companies at various prices. Whilst the contracts may be similar for each supply, they are not necessarily the same, primarily because each buyer can have different product requirement or specification.

Other parties affected

Other parties likely to be affected or who might have an interest in the proposed arrangement, fall into three categories

Consumers

Potato industry organizations

Marketing/Buyers

Resellers (Supermarkets)

Consumers of potato products are best served by competitive and efficient markets. Growers groups will need to be able to compete with larger companies in regards to buying or selling their potatoes in fresh, processing and crisping markets.

Authorization is sought to allow negotiation for a sound foundation for doing business for the whole sector, and is not intended to protect or shield the operations of any particular business or the sector from competition. There is no disconcertable detriment to consumers in authorizing the VPGC to undertake this bargaining process.

It should be noted that the VPGC is not empowered nor does it intend, to seek to conclude any common agreement on behalf of its members. Rather, the grower groups beneath the VPGC would nominate delegates on behalf of their group to negotiate with the company or business.

Each member of the VPGC and its sub-groups retains the right to decide not to be part of any shared process conducted by VPGC, but reach an agreement with companies or businesses independently and separately.

Public Benefits of the proposed arrangements

The test for authorization is:

- Whether the proposed arrangement would result, or be likely to result in a benefit to the public;
- or whether that benefit to benefits would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result from the proposed arrangement.

Growers as individuals are always in a weak bargaining position. Large companies use the might and power of their respective world wide resources and knowledge to achieve their aims. It is clear that some security is given to the growers though the use of the collective bargaining process.

The VPGC considers the collective bargaining approach to be an organized and cost effective means to cover the issue of arranging contract prices and conditions for potato crops grown in Victoria.

Individual growers are seen to be in a weak bargaining position and could not be expected to have the negotiating or business skills requires to deal with well resourced, often international companies. It would not be practical, or economical, for growers to individually employ negotiators each time they wished to settle a commodity contract.

Collective bargaining, though sometimes difficult between the negotiating parties, is intended to provide support and industry stability for grower. This transfers to Victorian growers being able to maintain pace with, and continue to adopt relevant technology. There is always a strong desire for growers to continue to adopt suitable technology for industry achievements and progress.

The practice and open consultation with each of the commodity groups by their respective leaders, ensures that a considered grower position is always adopted when a the negotiating group meets with a companies representatives.

In the last 5 years of active negotiations under the existing authorization, no public detriment has been observed.

Anti Competitive Detriment

It is unlikely that the activity of growers in collectively bargaining will have any significant effect on consumers.

The VPGC estimate the grower share of the retail value of the products to range from around 14%, depending on the specific potato crop. This means that any increase to the grower prices will only ever be small, relative to the consumer price.

For instance, the delivered factory price being paid to growers of processing potatoes (McCain Foods) is currently around \$290 per tonne. The same potatoes when sold to consumers by a major restaurant in Melbourne will have a value of around \$28000 per tonne. The growers therefore receive less than 1% of the retail value of the product.

The fresh market has no cohesive group of growers who can negotiate with the supermarket buyers, and thus have price dictated to them by merchants and packers who buy their potatoes for resale to the large buyers. In 2012 #1 grade fresh market potatoes were being sold for \$150/tonne at farm gate, and supermarkets were charging over \$2.50 per kilo bag of the same potatoes.

It could also be argued that there is no immediate need for any price increase to be passed to consumers. The level of supermarket discounting which occurs almost on a weekly basis would indicate to the VPGC and to the grower that there is much flexibility in the system.

Coles and Safeway supermarkets regularly offer discounts for frozen and fresh potato products. The price for fresh, brushed potatoes in Coles on the 1st July 2012 was \$1.40/kg and in Safeway for the same variety (Sebago) was \$1.20/kg. For frozen potatoes the price was \$2.85 (discounted by \$90c) in Coles and \$2.50 in Safeway for the same brand of item (McCain French Fries). Growers get less than 3% percent of this cost at farm gate sales.

It is the VPGC's understanding that the processors and packers are required to fund most, if not all of these discounts. Maybe this is a reflection of the buying power of the supermarkets, who are able to extract seemingly ridiculous discounts from the processors, most likely at the expense of the grower.

If Victorian growers and buyers are not able to achieve a realistic return on their investment then it would be expected that Australian consumers would have to pay considerably more should product have to be imported. The small grower share of the retail value of frozen potatoes clearly does not give consumers cause to blame the growers for the price they are asked to pay,

Term of Authorization

Most of the contracts with potato growers are based on seasonal supply. 1 year contract covers one growing season. However a lot of large contracting companies wish to secure their supply for more than one year at a time, and thus 2-5 year contracts have been offered to growers. The longer term contracts have price and conditions fixed for the contract period. The buyers usually reserve the right to adjust the tonnage, if listed on the contract, each year if necessary.

Longer term contract are generally acceptable to both growers and buyers as they provide some stability to the industry.

In order to allow for growers to negotiate longer term contracts where appropriate, and to provide greater certainty regarding the negotiation environment for those growers who negotiate year to year, authorization is sought for an initial period of 5 years.