



MEDIA RELEASE

31 October 2016

Clarification on ACCC's horticulture report

Fresh Markets Australia (FMA) has responded to an Australian Competition and Consumer Commission (ACCC) report into fair trading issues in the horticulture industry saying it shares many of the concerns raised over what are unworkable Federal Government regulations.

Both the FMA and ACCC have labelled the Horticulture Code of Conduct, currently under review, as "ineffective" with FMA saying it is unfair, commercially restrictive and administratively onerous.

However, FMA says that while the release of the ACCC's "Perspectives in horticulture and viticulture" shows some common ground, the wholesaling sector must once again clarify key areas regarding the report's conclusions.

FMA Chairman, Shane Schnitzler, said FMA gave feedback to the Horticulture Code Review Panel that it agrees that documented terms of trade are important in the wholesaler and grower business relationship.

Contrary to the claims being made about pre-Code Agreements, they have given growers and wholesalers the ability to maintain a flexible and workable commercial relationship, when the regulatory alternative, the existing Code, is inflexible, uncommercial and largely unworkable.

It is illogical for anyone reviewing the Code to be critical of these pre-Code agreements given the unworkable alternative which exists and given that in any event, a grower could tear up the agreement at any time.

"It is also perhaps unfair of the ACCC to suggest that growers are in fear of retribution by wholesalers if they complain when business issues arises," Mr Schnitzler said.

The fact is that this claim issue is not new. It has been raised in prior reviews by the ACCC, the Federal Government and others, and dates back well over a decade as the reason why growers don't lodge complaints about the retail chains, processors and wholesalers. This comment has been more commonly heard however, in relation to broader reviews of the Retail and Grocery industry.

Commissioner Keogh therefore has failed to put the issue of retribution into context, when it has been raised in respect of retail chains, processors as well as and wholesalers and has been raised as an issue for well over a decade.

It appears very one-sided that the ACCC now appears to be waving the big stick at small businesses, with threats of increasing regulations and monetary penalties only months after the



Voluntary Retail and Grocery Industry Code of Conduct was introduced by the Federal Government with no restrictive regulatory provisions and no monetary penalties.

“FMA does not condone any form of heavy handed tactics within the Central Market System. However, FMA also advocates that growers should not continue to send their produce to a wholesaler that they are not happy doing business with.

“There are more than 400 central market wholesalers in six Central Markets across Australia for the grower to choose from so options do exist,” he said.

Mr Schnitzler said that FMA had supported and requested numerous changes to the current Code which would go a long way towards resolving many of the issues that have been raised by growers and wholesalers over many years.

While agreeing with most recommendations suggested by a Code Review Panel for a revised Code, FMA has challenged the Government as to why monetary penalties should be introduced for breaches, when more than 12 million transactions between growers and Central Market wholesalers are transacted annually and by any measure, there was a low incidence of disputation.

Mr Schnitzler added that ‘the ACCC had not been proactive in talking to FMA and as far as he was aware, Commissioner Keogh appeared to be forming his opinions based upon feedback from a very small number of growers, and without visiting any Central Markets’.

Mr Schnitzler said that despite the differences of opinion which exist and that FMA remains opposed to the introduction of anti-competitive and prescriptive regulations, the organisation has committed to working with the Federal Government and the ACCC to achieve a workable, fair and cost effective Code for the horticulture industry.

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Note: The Horticulture Code was established in 2007 to regulate trade in horticulture produce between growers and traders of fresh fruit and vegetables and to provide an alternative dispute resolution procedure. The Horticulture Code is a prescribed, mandatory industry code under the Competition and Consumer Act 2010. The code came into operation with the aim of improving the clarity and transparency in transactions between horticulture growers and traders and to provide some standard procedures and mandatory requirements in the trading relationship.

About FMA

The Australian Chamber of Fruit and Vegetable Industries trading as Fresh Markets Australia (FMA) is the national organisation representing each of the six Market Chambers, which themselves are



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organisations which represent the fruit and vegetable wholesalers located in each of Australia's six Central Markets (Brisbane, Sydney, Melbourne, Adelaide, Perth and Newcastle).

In total, the organisation represents in excess of 400 Market wholesaling businesses. Market wholesalers are involved in the sale of some 50-60% of the fresh produce sold across Australia in servicing the requirements of fruit and vegetable retailers, secondary wholesalers/provedores, foodservice industry businesses, processors, exporters and the public. Over 15,000 growers supply to businesses within the Central Market system. The total turnover of businesses in the Central Markets exceeds some \$7 billion annually.