THE AUSTRALIAN CHAMBER OF FRUIT AND VEGETABLE INDUSTRIES
THE VITAL LINK

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Food and Grocery Code

Consultation Paper – August 2014

The Food and Grocery Code Consultation Paper dated August 2014, highlights that the two major retail chains (supermarkets) have a market share of up to 50% of the retail sales for fruit and vegetables.

The situation with fresh fruit and vegetables is that when any supermarket purchases product direct from a grower, these arrangements and the associated terms of trade are not presently prescribed by, or subject to regulatory oversight.

Where a retailer, and in particular an independent retailer (greengrocer), purchases product through a Central Market, they are purchasing product from a Market wholesaler whose relationship with the grower supplier is regulated, with those regulatory requirements (the Mandatory Horticulture Code of Conduct) being prescriptive to the point of being unworkable.

So a situation exists whereby those growers who supply to independent retailers through a Central Market are having to work through a supply chain which is burdened by additional prescriptive Government red tape; while those who supply directly to a supermarket are not!

Central Markets exist in Brisbane, Sydney, Melbourne, Adelaide, Perth and Newcastle and serve as a major distribution hub for fresh fruit and vegetables. Market wholesalers are supplied product by in excess of 15,000 growers from around Australian and on sell to retailers, secondary wholesalers/provedores, food service businesses, exporters and processors.

Approximately 40-45% of the fresh produce sold at the retail level is sourced through Central Market wholesalers.

Supermarkets buying direct from a grower offer their own terms of trade, but have none of the scrutiny, cost, or the requirements as seen in the Mandatory Horticulture Code of Conduct.

The approach which exists therefore is one sided, it is making the Central Market system less competitive, and is imposing an uneven playing field on those growers who supply and those retailers who purchase from a Central Market wholesaler.

It also needs to be noted that the Mandatory Horticulture Code of Conduct does not apply to imported produce, so in this regard Australian fruit and vegetable growers who supply a Central Market wholesaler are further burdened by a regulatory system and compliance costs, which do

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not apply to produce being imported. Accordingly, the Horticulture Code of Conduct has an in built bias against Australian growers and from a compliance perspective, contributes further to adding cost and reducing the ability of Australian growers to complete with imported product.

There would therefore, appear to be a strong argument that the Government should apply a fair and consistent approach to regulating how business is done.

The Mandatory Horticulture Code of Conduct was introduced without a proper prior assessment of whether it was justified, or its impact on the industry. The instruction issued by the Federal Government at the time was for a Mandatory Code to be implemented, and not determine whether it was justified, or whether other alternatives existed. There was a lack of consultation regarding the introduction of the Code and The Australian Chamber of Fruit and Vegetable Industries Limited, as the peak industry body representing the Market wholesalers had

- no opportunity to propose a voluntary code (as is currently the situation with the major retail chains); and
- no final say as to whether the code was workable or acceptable to those who were to be regulated by it.

The current approach by the Federal Government in relation to the Food and Grocery Code exists in stark contrast to the process used for the Horticulture Code, and appears to be a soft and almost hands off approach.

The discussion paper itself highlights that “rather than outright prohibition, supermarkets will be permitted to take certain actions that would otherwise be prohibited, provided that they meet certain requirements”.

It goes on to state that “possible alternatives for achieving commercial flexibility may involve a no disadvantage test”.

It is a shame that when the Federal Government drafted the Mandatory Horticulture Code of Conduct that they didn’t go to such lengths to advocate flexible commercial relationships for those bound by the Horticulture Code of Conduct.

In fact, in relation to the Mandatory Horticulture Code of Conduct, no such effort was made.

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The dispute resolution mechanism established under the Horticulture Code can provide for the investigation of grower complaints, but has only dealt with an average of some two complaints per year since the Code was introduced in 2007.

Despite this, the Government and the leadership of grower representative organisations have made no effort to implement amendments to the Code to facilitate more flexible commercial arrangements, despite ongoing requests form the Market wholesaling sector.

Accordingly, what we could see therefore is one half of the industry, being supermarkets buying directly off Growers, doing so under the provisions of a voluntary Code with flexibility which is enshrined in the Code and with exclusions from certain actions “which would otherwise be prohibited”. This will occur while the other half of the industry, and in particular Market wholesalers and the independent retailers who rely on Central Markets, labouring under a Mandatory Code, the threat of ACCC intervention, a total lack of flexibility and an effective prohibition on operating in any manner which introduces the required flexibilities to remain competitive.

The Government’s approach to this issue looks very inequitable. Their support for a voluntary code based predominately on a document drafted by those parties it is to regulate, may ensure the Code is workable, but it stands in stark contrast to their approach when introducing the Mandatory Horticulture Code of Conduct. Furthermore, their ongoing reluctance to address the shortcomings of the Mandatory Horticulture Code of Conduct, shows a double standard which is entirely unjust and in appropriate.

In addition, in maintaining a Mandatory Horticulture Code of Conduct which lacks commercial feasibility, it is creating a further cost burden for growers who support the Central Market system, and a bias in favour of both imported product, and growers selling direct to supermarkets.

The Australian Chamber is asking that the Government is clear in their objectives and fair in the application of policies with respect to the introduction and use of industry codes of conduct so as to ensure that they do not introduce inequities which are clearly anticompetitive in their

application (as is precisely the case with the Horticulture Code, and is proposed with the current approach to the Food and Grocery Code).

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