

Issue

- Following extensive lobbying from the Association and other industry players, the Federal Government prior to the last election in October 2004 agreed to implement a mandatory Horticulture Code of Conduct (HCC) to oversee trading relations between growers and the buyers of their produce.

Background

- The Australian horticulture industry consists of approximately 18,000 growers and is valued at approx \$6bill, roughly 15% of the total value of Australian agriculture and the second largest industry behind beef. Of this total, 61% comprises fruit production and 39% vegetables.
- The problems surrounding the relationship between fruit and vegetable growers and the buyers of their produce have been present for some time and are as follows;
 - a. **A lack of transparency and clarity in relation to price and contract terms.** Agreements are verbal, informal and without any verifiable documentation. As a result, buyers have excessive discretion to determine when and what price they pay growers irrespective of when the produce is received by the buyer and what price is quoted to growers before produce is dispatched. The grower is also not able to determine the price for which the produce was sold, to whom, and no means to determine the validity of any rejection of produce on quality grounds.
 - b. **A lack of transparency and clarity in relation to the status of the buyer.** Buyers have ultimate discretion as to whether they will act as an agent or a wholesaler with growers unaware of this status until after the transaction;
 - c. **A lack of clarity, equity and fairness with respect to ownership and risk.** Currently growers have full ownership and risk for produce until the buyer actually resells it. This means that produce may be returned to the grower for spurious quality reasons despite the buyer having possession of the produce and undertaking actions which may influence produce quality which are beyond the control of the grower.
 - d. **Information asymmetries** for growers in relation to prices, supply and demand. The lack of information systems and transaction tracking in the central market has meant that growers are at a significant disadvantage to buyers when attempting to negotiate prices to obtain the true market value for produce.
 - e. **A lack of an effective dispute resolution mechanism.** The current ombudsman powers are deficient. He can only mediate under the Produce and Grocery Industry code, cant impose a solution on any party, has no right to access transaction documents relevant to a dispute; any ruling he makes against a party must remain confidential (even when gross abuse is revealed); and he needs "substantive merit" before accepting a complaint (a considerable difficulty given the lack of transparency in market chain transactions and fear of commercial retaliation by growers).
- As a result of these problems, both the 1999 Baird report and the 2003 Buck review recommended the introduction of a mandatory code.
- The mandatory code aims to provide a set of basic minimum trading provisions that are enforceable through the Trade Practices Act. Specifically the code hopes to provide transparency and clarity with respect to price, contract terms, status of the buyer, ownership, risk as well as access to a simple, effective, expedient and inexpensive dispute resolution mechanism.
- While growers' relationship with wholesalers is the most problematic area, supermarkets are not guilt free. There offer no written contracts (only 'growing agreements') and produce specifications are not available for all produce lines leaving ambiguity and scope for dispute. Importantly over 50% of their produce is sourced direct from growers, a trend set to increase. For these reasons NSW Farmers' Association has always supported retailers inclusion within the Code.

Where to from here

- The Code has effectively been finalised after consultation with stakeholders in the latter half of 2005 with Treasury now developing regulations in conjunction with the ACCC (who will enforce the Code).
- The Federal Minister for Agriculture Peter McGauran will introduce the Code into Federal Cabinet at the end of February 2006. When it is passed by Cabinet it will be officially launched with a start up date expected to be from 1st July 2006.
- It is understood that a Committee will oversee and administer the Code and that a set of guidelines will be provided along with an education campaign to aid its implementation.

What the Association is seeking

- A mandatory code that will contain basic minimum trading terms that will provide transparency and clarity to enable effective produce price negotiation without excessive administrative burden on industry participants.