

PRODUCE AND GROCERY INDUSTRY CODE ADMINISTRATION COMMITTEE 2007-2008 ANNUAL REPORT

Message from the Chairman

In accordance with the Produce and Grocery Industry Code of Conduct, I am pleased to present the annual report of the Produce and Grocery Industry Code Administration Committee for the year ended 30 June 2008. The report outlines the work undertaken by the Committee to progress the objectives of the Produce and Grocery Industry Code of Conduct.

The Committee comprises of producer, wholesaler and retail representatives from the National Farmers' Federation, the Horticulture Australia Council, the Victorian Farmers' Federation, the Australian Dairy Farmers, the Australian Chamber of Fruit and Vegetable Industries Limited, the National Association of Retail Grocers of Australia, the Australian Food and Grocery Council, the Australian Retailers Association, the Coles Group and Woolworths Limited. I am aware of no other Committee that has effectively brought together supply chain participants and representatives in a cooperative and facilitative environment for the benefit of the industry.

2007-08 was a busy year with the Committee participating in a review of the code, making two submissions to the Australian Competition and Consumer Commission grocery prices inquiry, amending the code and establishing sub-committees to clarify membership procedures and to investigate the possibility for developing standards and specifications for the fresh horticultural produce sector. These issues are discussed in the report.

As Chairman I met with the then Minister for Agriculture, Fisheries and Forestry, the Hon Peter McGauran MP, the UK Competition and Consumer Commission and gave evidence to the ACCC grocery prices inquiry. I also wrote to the new Minister for Agriculture, Fisheries and Forestry, the Hon Tony Burke MP commenting on the review of the code.

I note a decline in use of the Produce and Grocery Industry Ombudsman service and understand that this has not been off-set by demand for the services of the Horticulture Mediation Adviser. I am not sure if this is due to a maturing of the industry or a lack of awareness of the service.

The code and its associated dispute resolution service are only as strong as member's commitment. Therefore I encourage Government and industry members to renew their commitment to the code and ensure that participants of the produce and grocery industry supply chain are aware of the guidance provided by the code and the benefits of the low cost dispute resolution provide by the Ombudsman.

In closing, I would like to extend my appreciation and thanks to Committee members for their ongoing contribution to and support of the code and the Committee's work.



The next twelve months promise to be challenging for the Committee as the industry responds to the recommendations of the ACCC grocery pricing inquiry and the evaluation of the Horticulture Code of Conduct.

Ian Davis
Chairman
Produce and Grocery Industry Code Administration Committee

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1. Background

On 10 December 1998 the Federal Parliament established the Joint Select Committee on the Retailing Sector to consider the impact of market concentration in the retail sector and recommend possible revenue neutral courses of action for the Australian Government.

The Joint Select Committee presented its report, *Fair Market or Market Failure?*, on 30 August 1999, with the Government releasing its response to the report on 17 December 1999. The Government responded to the Joint Select Committee's recommendations by implementing a voluntary industry code of conduct and a Government funded industry ombudsman to assist to resolve industry disputes.

The Retail Grocery Industry Code of Conduct Committee (RGICCC) was established by the Government on 13 February 2000 as an industry-funded committee comprising of a cross-section of industry representatives.

The RGICCC was established with the following terms of reference:

- address the issue of an ombudsman scheme as part of the code and how it will be structured with its jurisdiction, powers, review and reporting requirements defined and delineated;
- improving transparency in 'vulnerable' supply markets – where growers have to deal with a range of market characteristics, including perishability, market volatility and a high degree of risk exposure;
- raising product labelling and packaging standards;
- reducing contractual uncertainty, in particular, the passing of ownership of produce and the circumstances under which produce can be returned;
- branding, particularly where businesses, which are subsidiaries of, or are substantially owned by, a listed public company or major retailer, note that association on shop front signage, in advertising, on stationary etc; and
- consideration of notification issues of retail grocery store acquisitions and of the acquisitions of grocery wholesalers by retailers and vice-versa.

The RGICCC developed the Retail Grocery Industry Code of Conduct, which was launched on 13 September 2000.

On 11 February 2005, the RGICCC agreed to rename the Retail and Grocery Industry Code of Conduct to better reflect its coverage within the industry. The code was renamed the Produce and Grocery Industry Code of Conduct (the code) with the RGICCC becoming the Produce and Grocery Industry Code Administration Committee (the Committee).

On 20 November 2006, the Government transferred the responsibility for administering the code from the Office of Small Business of the Australian Government Department of Industry, Tourism and Resources to the Australian Government Department of Agriculture, Fisheries and Forestry.

The Department of Agriculture, Fisheries and Forestry provides the Secretariat services to the Committee and manages the contract for the Produce and Grocery Industry Ombudsman mediation service.

2. Produce and Grocery Industry Code of Conduct

The code is a voluntary set of guidelines promoting fair trading practices in the produce and grocery industry and provides a simple dispute resolution mechanism.

The code covers vertical transactions within the produce and grocery industry supply chain and guides the conduct of businesses within the industry. The code is intended to cover all participants (except consumers) in the Australian produce and grocery industry, including growers, processors, wholesalers, distributors and retailers.

The code addresses four important issues:

- produce standards and specifications;
- contracts;
- product labelling, packaging and preparation; and
- notification of acquisitions.

The objectives of the code are to:

- promote fair and equitable trading practices amongst industry participants;
- encourage fair play and open communication between industry participants as a means of avoiding disputes; and
- provide a simple, accessible and non-legalistic dispute resolution mechanism for industry participants in the event of a dispute.

The best practice principles promoted by the code encourage fair, equitable and open relationships between industry participants to strengthen relationships and minimise disputes.

The following organisations and businesses are committed to promoting the code and their own internal dispute resolution procedures:

- Aldi Stores
- Australian Chamber of Fruit and Vegetable Industries Limited
- Australian Dairy Farmers
- Australian Chicken Growers Council
- Australian Egg Corporation Limited
- Australian Food and Grocery Council
- Australian Retailers Association
- Coles Group Limited
- National Association of Retail Grocers of Australia
- National Farmers Federation
- National Retail Association
- Horticulture Australia Council
- Queensland Retail Traders and Shopkeepers Association; and
- Woolworths Limited.

During the year the Murray Valley Winegrape Growers withdrew their commitment to the code as they are now committed to the new Wine Industry Code of Conduct.

3. Produce and Grocery Industry Code Administration Committee

As specified in the code, the role of the Committee is to:

- publicise and promote the code and its dispute resolution procedures;
- monitor the operation of the code;
- consult with industry participants (where appropriate) on proposed amendments to the code;
- determine necessary amendments to the code;
- provide for the adequate financing of code administration expenses;
- produce an annual report on the code and its administration;
- report to the Australian Government Minister for Agriculture, Fisheries and Forestry on the operation and effectiveness of the code, as required; and
- report to the industry on the operation and effectiveness of the code.

a. Committee Membership Changes

There were the following changes to Committee member representatives in 2007-2008;

- Australian Retailers Association – Mr Richard Evans replaced Mr David Edwards
- Australian Dairy Farmers – Ms Lisa Wilson replaced Mr Robert Poole
- National Association of Retail Grocers of Australia – Mr Jos de Bruin replaced Mr Ian Baldock.

Produce and Grocery Industry Code Administration Committee Membership (at 30 June 2008):

Chairman

Ian Davis
Senior Partner
Minter Ellison Lawyers

Members

Mr Richard Evans
Executive Director
Australian Retailers Association

Mr Charles McElhone
Manager – Economics
National Farmers' Federation

Mr Dick Wells
Chief Executive Officer
Australian Food and Grocery Council

Mr Stuart Swaddling
Chairman
Horticulture Australia Council

Mr Colin Gray
Executive Director
Australian Chamber of Fruit and
Vegetable Industries

Jos De Bruin
Chief Executive Officer
Master Grocers Australia

Ms Lisa Wilson
Chief Executive Officer
Australian Dairy Farmers

Mr Ken Henrick
Chief Executive Officer
National Association of Retail Grocers of
Australia

Mr Chris Mara
Adviser – Government Affairs
Coles Group Limited

Mr Rohan Jeffs
General Manager, Corporate Services
Woolworths Limited

Ms Meg Parkinson
Deputy President
Victorian Farmers Federation
(Representing the Australian Chicken Growers Council
and the Australian Egg Corporation)

b. Meetings

The Committee convened three times and details of the meetings and attendance by representative organisations at all scheduled PGICAC meetings are as follows:

Meeting	Date
23rd meeting	6 September 2007
24th meeting	13 December 2007
25th meeting	6 March 2008

Attendance at meetings (includes via telephone) 3 meetings held

Name	Attended
Ian Davis	3
Richard Evans /Julie Bradshaw	2
Dick Wells / Russ Neal	2
Colin Gray / Martin Clark	3
Robert Poole	2
Chris Mara	2
Meg Parkinson	2
Charles McElhone	2
Stuart Swaddling	3
Ian Baldock	3
Ken Henrick	2
Rohan Jeffs	2

4. Operational and Effectiveness Issues

Review of Code

The Department of Agriculture, Fisheries and Forestry contracted Garland Outcomes Pty Ltd to undertake a review of the code in September and October 2007. Committee members met with the consultants individually and as a Committee to assist with the conduct of the review.

The consultants undertaking the review considered that the code is having limited impact on trading practices or business behaviour and that stronger industry commitment and funding from industry is required.

At its 13 December 2007 meeting, the Committee considered the final report of the review and agreed that the considerable achievements and benefits of the code have been overlooked. The Chairman wrote to the Minister for Agriculture, Fisheries and Forestry expressing the Committee's concerns about the recommendations of the review.

The Committee understands that the Minister will consider the review of the code as part of his consideration of the ACCC grocery prices inquiry.

Meeting with Minister McGauran

On 2 August 2007 the Chairman met with the then Minister for Agriculture, Fisheries and Forestry, the Hon Peter McGauran MP, to introduce himself and discuss the role and work of the Committee and the code within the produce and grocery industry. The Minister was familiar with the activities of the Committee and indicated his support for the code and the Committee.

Standards and Specifications Sub-Committee

During 2007-08 the Committee considered standards and specifications that currently exist within industry. The Committee agreed that initially it would consider the produce standards and specifications used in horticulture. Horticulture would be used as an example and then based on the outcomes the Committee would consider whether it is worth looking at the standards and specifications of other sectors.

The Committee agreed that Mr Stuart Swaddling, Mr Chris Mara and Mr Martin Clark form a sub-committee to explore the use of produce standards in the horticulture industry.

The sub-committee met on one occasion with the intent to draft a recommended set of product specifications that provide a basis for industry to use. Preliminary discussions by the sub-committee with a number of industry representatives on the concept of a product standard and specification were well received. Some industry groups noted a number of benefits – including uniformity in supply and dispute resolution measures. The sub-committee noted that broad industry support and acceptance will be required when considering the establishment of such standards.

The sub-committee is continuing to work on developing standards for the horticulture industry.

Membership sub-committee

At its June 2007 meeting the Committee established a membership sub-committee to develop recommendations for a criteria, guidelines and process for accepting new Committee members, encompassing the removal of Committee members and conditions imposed on organisations that endorse the code. Mr Henrick, Mr Gray and Ms Parkinson agreed to form the sub-committee which met on two occasions. The Committee accepted recommendations that:

- Committee membership be by invitation;
- organisations seeking to endorse the code do so by written application;
- that organisations endorsing the code not be required to make a financial contribution; and
- that decisions of the Committee would be by a simple majority vote except where they related to changes to the code, including membership. In this case changes to the code would be by unanimous vote.

The last recommendation resulted in a change to the code which was agreed by the Committee at the 6 March 2008 meeting.

Submission to ACCC grocery prices inquiry

On 22 January the Government announced that it was directing the Australian Competition and Consumer Commission (ACCC) to undertake an inquiry into competitiveness of retail prices for standard groceries.

The Committee lodged a submission with the inquiry on 11 March 2008. The submission highlights the nature and extent of the code, its coverage and objects within industry, which are important for the inquiry to understand because of their impact on matters that the government has asked the ACCC to consider in the inquiry. A copy of the submission is attached.

Following receipt of the submission the ACCC invited the Chairman to give evidence to the inquiry which he did on 30 May 2008. At the hearing the Chairman was questioned about the history and coverage of the code and the dispute resolution scheme.

On 20 May the ACCC released an Issues Paper on the Horticulture Code of Conduct and requested submissions commenting on the paper by 10 June 2008. The Committee lodged a submission highlighting the code's broad coverage, inclusiveness, member discussion, and low cost mediation, which provide a valuable tool for improving the transparency and effectiveness of the vertical supply chain in the produce and grocery sector.

UK Competition Commission Inquiry

The United Kingdom Competition Commission (the Commission) is undertaking a Groceries Market Review. In December 2007, the Chairman and other Committee members met with representatives from the Commission who considered that the code has features, such as its mediation service, which provide a successful model that they will consider adopting for the UK Supermarkets Code of Practice. In a working paper, *Working Paper on Supply Chain Practices and the Supermarkets Code of Practice*, the Commission referred to the code as 'an example of a successful scheme aimed at addressing concerns about supplier-retailer relationships'.

5. Communications

The secretariat, through Cox Inall Communications published and released eight e-zines during the year. The e-zines are distributed to over 270 individuals and organisations and have focussed on topics such as the mediation service, outcomes of meetings, introducing Committee members and key principles of the code.

Media releases are sent after each Committee meeting to industry and a statement of outcomes from the meeting are placed on the PGICC website after each meeting. These report to industry the progress of the work being conducted by the Committee.

The 2007 review of the code recommended that more work needs to be done to promote the code and at its 25th meeting the Committee noted this and agreed that members should identify and make available opportunities for the Ombudsman to inform stakeholders of the services offered through newsletters, industry forums and conferences. Committee members also asked the secretariat to identify work that members can be undertaken to promote the code.

a. PGICC Website Statistics

The PGICC website was launched in September 2006 and is an important communication tool for the code and Committee.

Table 1: PGICC Website Usage Statistics

Month	Hits per Month	Daily Hits Average
July 2007	1705	55.0
August 2007	2103	67.9
September 2007	1677	55.9
October 2007	1858	59.9
November 2007	1391	46.4
December 2007	1140	36.8
January 2008	1150	37.1
February 2008	1729	59.6
March 2008	1548	49.9
April 2008	1666	55.5
May 2008	1931	62.3
June 2008	1546	51.5

6. Produce and Grocery Industry Ombudsman

The code provides for a two-stage dispute resolution scheme that:

1. encourages applicants to raise disputes with the respondent; and
2. encourages unresolved disputes to be raised with the Produce and Grocery Industry Ombudsman (PGIO).

As outlined in the code, the PGIO provides a confidential mediation service, which is subsidised by the Australian Government. The role of the PGIO is to:

- produce an annual report on the Office of the Produce and Grocery Industry Ombudsman;
- report to and consult with the Committee on the operation and effectiveness of the code annually, or as requested; and
- report to the Australian Government Minister for Agriculture, Fisheries and Forestry on the operation and effectiveness of the code and the Office of the Produce and Grocery Industry Ombudsman.

The PGIO mediation service will continue to mediate disputes in accordance with the code and the Ombudsman will continue to determine whether a dispute is covered by the code and suitable for resolution by mediation.

a. PGIO Website Statistics

Table 2: PGIO Website Usage Statistics

Month	Hits per Month	Daily Hits Average
July 2007	1473	47.5
August 2007	1242	40.1
September 2007	1692	56.4
October 2007	1572	50.7
November 2007	1927	64.2
December 2007	1530	49.4
January 2008	1746	56.3
February 2008	2016	69.5
March 2008	1653	53.3
April 2008	2191	73.0
May 2008	2363	76.2
June 2008	1763	58.7

7. Dispute Resolution Statistics

The following statistics detail the work undertaken by the PGIO for mediation of disputes within the industry in 2007-08.

Disputes Enquiries made by residents of each State/Territory and sector:	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
Apple	0	0	0	1	0	0	0	0	1
Avocado	0	0	0	1	0	0	0	0	1
Banana	0	0	0	2	0	0	0	0	2
Citrus Fruits	0	0	0	1	0	0	0	0	1
Currents	0	0	0	0	0	0	1	0	1
Cherries	0	1	0	0	0	0	0	0	1
Fruit - general	0	1	0	1	0	0	3	0	5
Grape	0	0	0	0	1	0	5	0	6
Hay	0	0	0	0	1	0	0	0	1
Honey	0	0	0	1	0	0	0	0	1
Mango	0	0	0	1	0	0	0	0	1
Pumpkin	0	0	0	2	0	0	0	0	2
Stone Fruits	0	1	0	0	0	0	0	0	1
Sweet Potato	0	0	0	1	0	0	0	0	1
Vegetable -general	0	0	0	0	0	0	1	0	1
TOTAL	0	3	0	11	2	0	10	0	26

Note: 'Fruit-general' and 'Vegetable-general' are used as categories where the enquiry related to more than one type of produce. These enquiries related to the following: citrus fruits, tropical fruits, watermelon, rockmelon, pumpkin and potato.

Mediations run in each State/Territory, capital city/regional area and sector:	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
Citrus Fruits	0	1	0	0	0	0	0	0	1
TOTAL	0	1	0	0	0	0	0	0	1

Note:

Where mediation is conducted via teleconference, the location for mediation is taken as being the location of the mediator. This is the case for the mediation above.

Nature and Basis of each dispute mediated and unmediated:	
Failure to pay invoice/s	11
Value of produce	3
Quality of produce	1
Non-payment and quality of produce	1
Terms of Agreement between parties	1
Pricing levels set by distributing organisation	1
Alleged unreasonable terms and conditions for supply agreement	1
Care of produce during transport period	1
Disparity between price agreed and price paid	1
Price variations and auditing	1
Alleged unsatisfactory conduct of packing house	2
General issues	2
TOTAL	26

Note:

Disputes can involve more than 1 issue. Information relates to all enquiries, whether mediated or not.

How the enquirer was made aware of the Produce and Grocery Industry Ombudsman:	
Produce and Grocery Industry Code of Conduct	1
Australian Competition and Consumer Commission	1
Previous Enquiry	1
Previous Dispute	0
Former Produce and Grocery Industry Ombudsman	2
Internet	1
Produce and Grocery Industry Ombudsman Website	2
Local Newspaper	2
Solicitor	1
Growcom	6
Victorian Farmers Federation	2
Other Associations	3
Word of Mouth	4
TOTAL	26