

**PRODUCE AND GROCERY INDUSTRY CODE ADMINISTRATION COMMITTEE
2005-2006 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 2006.

The report outlines the work undertaken by the Committee to progress the objectives of the Produce and Grocery Industry Code of Conduct. That is, to promote fair and equitable trading practices, encourage fair play and open communication amongst industry participants as a means of avoiding disputes and, in the event, of a dispute the provision of an accessible dispute resolution mechanism.

In 2005-2006, the Committee welcomed the Horticulture Australia Council, Australian Dairy Farmers', Victorian Farmers Federation, Australian Chicken Growers Council, Australian Egg Corporation and Murray Valley Winegrape Growers as representatives on the Committee and industry endorsers of the code.

The effectiveness of the code in minimising the cost of disputes to industry is evidenced by the dispute resolution statistics. In 2005-06 there were 47 mediations. In 44 cases agreement was reached. This is a success rate of 95 per cent. In these cases as a result of the code costly legal action or the breakdown of trade was avoided and parties reached solutions they were content with.

Ian Davis
Chairman
Produce and Grocery Industry Code Administration Committee

1. Background

The Federal Parliament established the Joint Select Committee on the Retailing Sector on 10 December 1998. The Committee's terms of reference was to inquire into and report on 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 RGICC 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 by the then Minister for Employment, Workplace Relations and Small Business, the Hon Peter Reith MP and the then Parliamentary Secretary for Small Business, the Hon Mal Brough MP.

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 (PGICC) with the RGICCC becoming the Produce and Grocery Industry Code Administration Committee (PGICAC).

2. Produce and Grocery Industry Code of Conduct

The Produce and Grocery Industry Code of Conduct 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
- 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
- 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
- Murray Valley Winegrape Growers
- 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.

3. Produce and Grocery Industry Code Administration Committee

As specified in the Produce and Grocery Industry Code of Conduct, 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
- report to the industry on the operation and effectiveness of the code

a. Committee Membership Changes

There were the following changes to PGICAC member representatives in 2005-2006:

- Australian Retail Association – Mr David Edwards replaced Mr Duncan Shaw.
- Coles Myer Limited - Mr Peter Merritt replaced Mr Ted Moore.
- National Farmers' Federation – Mr John Rogers replaced Mr Ben Fargher.
- National Association of Retail Grocers of Australia – Mr Alan McKenzie tendered his resignation from the Committee at the 15th Committee meeting.

Following acceptance of their nominations at the 14th Committee meeting, the new grower representatives attended their first meeting at the 15th Committee meeting. The new grower representatives on the Committee are:

- Mr Stuart Swaddling – Chairman, Horticulture Australia Council.
- Mr Robert Poole – Deputy CEO, Australian Dairy Farmers'.
- Ms Meg Parkinson – Vice President, Victorian Farmers' Federation also representing the Australian Chicken Growers Council, Australian Egg Corporation and Murray Valley Winegrape Growers.

The Committee considered its Chairman position during an annual review and offered the position to the current Chairman for a further 12 months. Mr Ian Davis accepted the offer to continue as Committee Chairman until June 2007.

**Produce and Grocery Industry Code Administration Committee Membership
(As at 30 June 2006):**

Chairman

Ian Davis
Senior Partner
Minter Ellison Lawyers

Members

Mr David Edwards AM
Executive Director
Australian Retailers Association

Mr John Rogers
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

Mr Ian Baldock
Director
National Association of Retail
Grocers of Australia

Mr Robert Poole
Deputy Chief Executive Officer
Australian Dairy Farmers

Mr Rohan Jeffs
General Manager, Corporate Services
Woolworths Limited

Mr Peter Merritt
Managing Director,
Strategy and Development
Coles Myer Limited

Ms Meg Parkinson
Deputy President
Victorian Farmers Federation
(Representing Murray Valley Wine Grape
Growers, Australian Chicken Growers Council
and Australian Egg Corporation)

4. Meetings

The PGICAC convened five times over the reporting period. Details of the meetings and attendance by representative organisations at all scheduled PGICAC meetings are as follows:

Meeting	Date	Attendance
14 th meeting*	24 October 2005	All except Australian Food and Grocery Council, National Association of Retail Grocers, Horticulture Australia Council, Victorian Farmers Federation, Australian Dairy Farmers, and the Australia Retail Association.
15 th meeting	19 December 2005	All except National Association of Retail Grocers of Australia, and the Australia Retail Association.
16 th meeting*	6 March 2006	All except Australia Retail Association.
17 th meeting	3 May 2006	All except the Australian Food and Grocery Council, and Coles Myer Limited.
18 th meeting*	25 May 2006	All except National Farmers' Federation, and the Australian Food and Grocery Council.

*Teleconference

5. Operational and Effectiveness Issues

At the 12th Committee meeting on 11 February 2005, the Committee unanimously agreed to increase the membership of the Committee to allow for an additional two grower representative organisations.

Nominations provided by the National Farmers' Federation were considered by the Committee, with the Committee agreeing to further increase the number of grower representative organisations, from two to three, at its 13th meeting.

As a result, at the 14th meeting, the Committee accepted the nominations to the Committee of:

- Mr Robert Poole, Deputy Chief Executive Officer, Australian Dairy Farmers'.
- Mr Stuart Swaddling, Chairman, Horticulture Australia Council.
- Ms Meg Parkinson, Vice President, Victorian Farmers Federation and also representing the Australian Chicken Growers Federation, Australian Egg Corporation and Murray Valley Winegrape Growers.

a. Strengthening the Code Reference Group

The Strengthening the Code Reference Group was established, at the 13th Committee meeting on 29 April 2005, with the objective of developing recommendations to assist in strengthening the code. The Reference Groups original membership comprised of Mr Ben Fargher, Mr Colin Gray and Mr Alan McKenzie. Following the resignation of Mr McKenzie at the 15th meeting, Ms Meg Parkinson was nominated to the Reference Group.

The Reference Group met three times during the reporting period, on 23 March 2006 and the 21 and 26 April 2006. The Reference Group discussed a range of matters concerning the code, including purpose, membership, stakeholders, communication, scope and coverage, reporting and selling the benefits.

On 15 May 2006, the Australian Competition and Consumer Commission (ACCC) provided the Reference Group and Committee with its observations and recommendations concerning the code. The ACCC is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* (Cth).

The Reference Group will be taking into consideration the advice and analysis provided by the ACCC, Committee members, the Ombudsman and the Office of Small Business in the preparation of its recommendations. The Reference Group will provide recommendations to the Committee on potential amendments to the code to improve and strengthen its provisions in 2006-2007.

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.
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. Its role is to:

- produce an annual report on the Office of the Produce and Grocery Industry Ombudsman
- report to and consult with the PGICAC on the operation and effectiveness of the code annually, or as requested
- report to the Australian Government Minister for Small Business on the operation and effectiveness of the code and the Office of the Produce and Grocery Industry Ombudsman

The provision of the PGIO dispute resolution services is conducted by Mediate Today Pty Ltd, contracted by the Office of Small Business of the Australian Government Department of Industry, Tourism and Resources.

7. Dispute Resolution Statistics

The following statistics detail the work undertaken by the Produce and Grocery Industry Ombudsman for mediation of disputes within the industry, based on quarterly reports.

Number of Disputes Enquiries:	30/09/2005	31/12/2005	31/03/2006	30/06/2006	TOTAL
ACT	0	0	0	0	0
QLD	9	4	19	8	40
NSW	1	6	21	4	32
NT	0	1	0	1	2
SA	2	8	0	1	11
TAS	4	2	0	0	6
VIC	13	9	8	2	32
WA	1	0	0	0	1
TOTAL	30	30	48	16	124

Number of Mediation Applications Received:	30/09/2005	31/12/2005	31/03/2006	30/06/2006	TOTAL
ACT	0	0	0	0	0
QLD	1	2	16	2	21
NSW	1	3	17	2	23
NT	0	0	0	0	0
SA	0	3	0	0	3
TAS	0	1	0	0	1
VIC	5	7	2	3	17
WA	0	0	0	0	0
TOTAL	7	16	35	7	65

Number of Mediation Applications Rejected by the Ombudsman:	30/09/2005	31/12/2005	31/03/2006	30/06/2006	TOTAL
ACT	0	0	0	0	0
QLD	0	0	0	0	0
NSW	0	0	0	1	1
NT	0	0	0	0	0
SA	0	0	0	0	0
TAS	0	0	0	0	0
VIC	0	0	0	0	0
WA	0	0	0	0	0
TOTAL	0	0	0	1	1

Number of Mediation Applications Joined with Other Mediation Applications:	30/09/2005	31/12/2005	31/03/2006	30/06/2006	TOTAL
ACT	0	0	0	0	0
QLD	0	0	0	0	0
NSW	0	0	11	0	11
NT	0	0	0	0	0
SA	0	0	0	0	0
TAS	0	0	0	0	0
VIC	0	10	0	0	10
WA	0	0	0	0	0
TOTAL	0	10	11	0	21

Number of Mediation Applications Mediated:	30/09/2005	31/12/2005	31/03/2006	30/06/2006	TOTAL
ACT	0	0	0	0	0
QLD	1	2	3	17	23
NSW	0	1	4	3	8
NT	0	0	0	0	0
SA	0	0	2	0	2
TAS	0	1	0	0	1
VIC	1	2	6	4	13
WA	0	0	0	0	0
TOTAL	2	6	15	24	47

Number of Formal Mediations resulting in Signed Agreements (including interim agreements and matters settled by direct negotiation after mediation commenced):	30/09/2005	31/12/2005	31/03/2006	30/06/2006	TOTAL
ACT	0	0	0	0	0
QLD	1	2	2	17	22
NSW	0	1	4	2	7
NT	0	0	0	0	0
SA	0	0	2	0	2
TAS	0	0	0	0	0
VIC	1	2	6	4	13
WA	0	0	0	0	0
TOTAL	2	5	14	23	44
***1 matter withdrawn by applicant					

ISSUE	30/09/2005	31/12/2005	31/03/2006	30/06/2006	TOTAL
Percentage ratio of number of mediations concluded to signed agreement between the parties:	100%	83%	93%	100%	n/a
Number of Application Fees Collected:	7	16	18	5	46
Number of Application Fees Waived:	0	0	17	2	19
Number of Application Fees Returned:	0	0	0	0	0
Number of Certificates Issued under Clause 10.17 of the code:	0	0	0	0	0
Number of Referrals to Other Agencies, where enquiry was beyond scope of PGIO*: (* includes wine grape matters referred from 01/07/2004)	0	0	0	0	0
Average daily number of information 'requests' from website:	66	65	66	61	-