



FMA | FRESH MARKETS
AUSTRALIA

ADDITIONAL MATTERS: Horticulture Code of Conduct Review Submission September 2015

Additional Matters Submission: Review of
Horticulture Code of Conduct

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Fresh Markets Australia is the national industry body representing wholesalers and supporting businesses in Australia's six central fruit and vegetable Markets. Collectively our members employ several thousand people and have a combined turnover of some \$7 billion at wholesale prices.



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Without properly functioning Central Wholesale Markets, Australia's fresh fruit and vegetable supply chain would collapse.

Introduction

Fresh Markets Australia (FMA) is the national industry body representing each of the six Market Chambers, which themselves are organisations which represent wholesalers and supporting businesses in each of Australia's six central fresh fruit and vegetable Markets (Brisbane, Sydney, Melbourne, Adelaide, Perth and Newcastle). In total, these organisations represent in excess of 400 Market wholesaling businesses.

More than 90% of Australia's estimated 17,000 commercial fruit and vegetable growing establishments do business with a Central Market wholesaler. In fact, more than 50% of fresh fruit and vegetables consumed in Australia is handled by a market wholesaler.

The economic contribution of the Central Markets – directly and indirectly is significant.

On their own, the six Central markets turnover in excess of \$7 billion a year at wholesale prices. They are also significant employment hubs with more than 17,500 people employed directly or working on-site to buy fresh produce every day.

In addition to that, across Australia more than 2,700 independent fruit and vegetable retailers and 18,700 food service businesses (IBISWorld 2015) directly or indirectly rely on Central Markets for their fresh fruit and vegetable needs. These sectors employ 17,800 and 139,700 staff respectively, with a turnover of \$3.7 billion and \$17.3 billion annually.

FMA is committed to participating in a robust review of the Horticulture Code of Conduct, after eight years of traders struggling under an anti-competitive and inflexible Code, and is committed to finding a resolution that is equitable and commercially practical.



FMA's position

This submission will address matters other than and in addition to those referred to in other FMA submissions:

Fresh Markets Australia – RECOMMENDED CHANGES TO The Horticulture Code of Conduct, Review Submission, September 2015.

Fresh Markets Australia – RESPONSE TO ISSUES PAPER, Horticulture Code of Conduct, Review Submission, September 2015.

Fresh Markets Australia – AN ASSESSMENT OF THE INTRODUCTION, JUSTIFICATION FOR AND PERFORMANCE OF THE CODE, Horticulture Code of Conduct, Review Submission, September 2015.

This submission in summary:

FMA supports that Trader's function is to add value in the supply chain and offer a diverse array of services to meet the needs of both grower suppliers and the buyers of the produce.

FMA rejects the suggestion that information asymmetry is a reason for market failure that creates the need for unworkable and anti-competitive regulation that is the current Code.

FMA believes that within Central fresh fruit and vegetable wholesale Markets the fundamental forces of supply and demand dictate the sales price of fresh fruit and vegetables.

FMA supports the existing Dispute Resolution being maintained, however, streamlining of the process and recognition of the role which can be undertaken by industry organisations would be supported equally.

FMA opposes the introduction of penalty provisions and supports that obligations under the Code must apply to both growers and traders. There must be a focus on fairness.

FMA acknowledges and supports the use of digital technology to support the information exchange and communication between traders and growers.

FMA will continue to maintain FreshSpecs as a product specification standard.

FMA will continue to develop and provide FreshTest as a cost effective and comprehensive testing program for the verification of food safety and Quality Assurance programs.



Recommended Changes to the Horticulture Code of Conduct

In addition to this submission FMA is recommending changes to the Code.

For full details refer to: **Fresh Markets Australia – RECOMMENDED CHANGES TO The Horticulture Code of Conduct, Review Submission, September 2015.**

In reviewing and amending the Code, FMA asks that the Code:

1. Is able to be readily utilised by industry associations to promote better commercial practices within the industry (i.e. let associations such as FMA show leadership, through being prepared to support and promote compliance with an industry Code that is fair, commercial and workable)
2. Fairly imposes obligations on all parties and allows growers and traders to document flexible trading relationships which meet their needs in seeking to minimise costs and maximise returns for both the grower and the trader
3. Can operate as a tool which promotes better business practices, but which also recognises that the vast majority of commercial transactions between growers and traders occur to the satisfaction of all parties, without incident or dispute.

It is the FMA's view that:

Application of the Horticulture Code of Conduct must extend right across the fresh produce industry. The only exemption should be retailers who are subscribers to the Food and Grocery Industry Code of Conduct and Exporters, in respect of product which is exported and only before export.

The Code must include provisions which facilitate deemed compliance with the requirement of the Code that traders must have an executed Horticulture Produce Agreement from each grower, in situations where a grower who has been provided an agreement and requested to return it, fails to do so, but continues to send produce to the trader.

Options are available to growers to gain transparency. Changes to the Code are proposed by FMA which will address ongoing grower concerns regarding sale price transparency in relation to merchants using a method of determining a return price paid to a grower, which is based upon the sale price less an agreed margin.



The Code must permit the types of commercial transactions which are widely adopted and in place within the industry. FMA has proposed changes to the Code which will address grower concerns regarding transparency.

It is appropriate that the Code includes requirements that product supplied by growers to traders must be fit for purpose, while the concept of all parties 'acting in good faith' is also supported.

Pre-Code contracts must stay in place until a workable and commercial alternative to the existing Code is in place.

Obligations under the Code must apply to both growers and traders. There must be a focus on fairness.

Any final amended Code should be endorsed by industry organisations so that they are willing to take on a role in promoting to their members, support for and compliance with the Code.



Operating environment

Even though a significant array of services are provided by Market traders, Central Markets fundamentally operate as a market and clearing house of grower's produce. In the absence of production controls, they operate to clear production volumes. The price for which produce is sold in Central Markets is based on supply and demand.

With no regulation over fruit and vegetable production in Australia, and no limitation on import volumes of produce which meets Australia's import protocols, there is variable quantity and quality of produce made available to buyers each day. The price at which that produce is sold reflects a range of factors relating to the level of demand given the quality, size and variety of particular lines within the overall supply volume.

The vagaries of the weather – rain, hail, drought, heatwaves, frost, wind, storms and cyclone can each have an impact in delaying planting, destroying production, delaying ripening, or speeding it up. The diversity of geographical locations throughout Australia mean that production volumes are not able to be easily forecast, regulated or changed. It is essential therefore for the marketing system to be able to cater for the unpredictability of production volumes coming into the market.

Other factors affecting supply are prices of farm inputs such as pesticides and fuel, varieties planted and methods of farming such as protected cropping. Dumping produce on the market that is out of specification or breaking down also impacts the vagaries in supply. Often this is produce that growers have kept in storage waiting for prices to rise, but time has made it deteriorate so much that it no longer holds worth. Yet this produce can still be sent to the Markets hoping to gain the best dollar value possible.

Supermarket rejection of produce, often due to their own over-ordering, exacerbates the dumping issue. Supermarkets that reject consignments leave growers with additional produce that they then forward to Market, often oversupplying their trader and adversely affecting the Market's prices.

The majority of fresh produce needs to be marketed within a discrete timeframe. It is essential therefore for the marketing system to be able to cater for the vagaries of nature and effect on production methods and dumping.

While the likes of retail chains and food processors may have relatively predictable supply requirements, the role of the Central Markets is to work for the growing sector in clearing the vast and fluctuating production volumes which come into the market, and work for their customers (buyers) in sourcing their specific requirements.



The wholesale buyers of fresh produce include independent retailers, supermarket chains, exporters, processors, secondary wholesalers, providores, food service operators and institutions.

Demand for produce varies due to seasonal factors, the weather, the school calendar, timing of major events and festivals, 'super food' fads and marketing campaigns.

Within the fresh fruit and vegetable industry in Australia, the 15,000 producing establishments that supply Central Markets are spread across a vast production area. There is also an array of produce, some which are counter seasonal to Australian produce, and others that compete directly with Australian produce. Note that imported produce is not covered by the Code.

As perishable produce, fruit and vegetables cannot be left in a paddock or in a warehouse. Produce must be picked when it is ready. While some produce such as apples can be warehoused for lengthy periods, there are limits as to the length of storage able to be economically justified.

While economists talk of 'matching' supply with demand or of 'demand' driven supply chains, the fact is that with produce such as fresh fruit and vegetables it is not possible to precisely and consistently match supply with demand. Central Markets therefore, have a very valuable role in:

- Clearing volumes (i.e. 'matching' supply and demand).
- Providing a buffer in warehousing produce which is available for sale in Australia.
- Facilitating the marketing of the diverse range, quality and variety of produce to a large number of buyers.
- Serving a customer base which extends from small independent retailers to food service industry operators, secondary wholesalers, exporters and retail chains.
- Coordinating/facilitating the distribution of the produce.

Conversely, retail chains have the market power to be price setters and as such are able to return an agreed price on farm based on their marketing plans. They are usually supplied by larger growers and are 'topped up' by Market wholesalers.

While the retail chains are very significant buyers of fresh produce in Australia, the strength of the Central Market system in Australia offers choice, an alternative for growers and a means to promote a vibrant, independent retailing and food service sector.

While the Central Markets remain strong, the independent retailing sector (in excess of 2,700 small businesses) can remain strong. Although the retail chains are dominant in the fresh produce industry, they do not control anywhere near the market share which they have in other industry sectors such as dry groceries, meat, dairy product etc. The fruit and vegetable industry has therefore not seen the dramatic rationalisation which has occurred in the likes of the dairy industry.



In Australia there are no controls over production and without discrete purchase orders from retail chains dictating who stays in business, growers do need other alternatives – they need a valuable and competitive Central Market System that is not weighted down by anti-competitive regulations.

FMA believes that within Central fresh fruit and vegetable wholesale Markets the fundamental forces of supply and demand dictate the sales price of fresh fruit and vegetables.



Dispute Resolution

The Centre for International Economics, Regulation Impact Statement July 2005, estimated that **potential** problem transactions make up less than five per cent of total sales of domestically produced fruit and vegetables.¹ It further stated that the problems of lack of clarity and transparency impact mainly on smaller growers, growers who are a long way from the markets, growers who supply infrequently to the market or are new entrants, and growers who have found it difficult to overcome information problems in the markets.

There is no doubt a percentage of operators within all sectors of the industry that tarnish the reputation of those others who are working hard to do the right thing. Why should regulation be strengthened to appease demands of, or problems associated with the lowest common denominator?

Each day wholesalers deal with matters of delivery. They will deal with pallets of produce that have turned up unexpectedly when other lines of produce haven't turned up at all. They are sent fruit/vegetables marked grade/class one when it is substandard, packaging that is not adequate and unlabeled cartons. Often sizing is out, fruit/vegetable has deteriorated or been damaged in transport and large numbers of the same produce have flooded the market dropping prices on that line dramatically. Quality problems can be caused by climatic conditions at the time of harvest, inadequate post-harvest treatments, or inappropriate post-harvest handling and storage. Often quality issues, such as bruises, blemishes, or diseases will only become visible some days after the produce is received by the trader and on-sold to a buyer. Without taking anything away from the fruit and vegetable growers and the risks they take in producing a crop, these can be everyday problems faced by traders.

The Horticulture Code of Conduct now regulates trade in fresh fruit and vegetables and it currently applies to merchants/agents and growers who trade with each other.

Even though a significant number of pre-code agreements remain in force, the Code has seen the development and use of clear terms of trade and horticulture produce agreements (HPA's) for all new agreements. FMA members supported traders through the development of template documents.

The Code also provides that growers and traders may use any dispute resolution procedures they choose to resolve horticulture disputes that arise between them. However if one of the complainants initiates a dispute under the resolution process set out in the Code, it is mandatory that the other party participate in that process.

¹ Centre for International Economics, *Mandatory Horticulture Code of Conduct: A Regulation Impact Statement*, Canberra, Centre for International Economics, 2005, p.8



The Horticulture Mediation Advisor (HMA) currently provides mediation services for traders and growers who are parties to a dispute under the Code.

Taking into account that there are in excess of 12 million transactions per year covering 4 million tonnes of fresh fruit and vegetables supplied by more than 15,000 growers, the number of mediations actually undertaken by the HMA are overwhelmingly low. As outlined in HMA's Annual Reports² and the Issues paper there have been on average 10 enquires, 2 mediation appointments and 1.5 mediations undertaken per year since 2007. Interestingly the commodities with the most number of enquiries were in relation to mangoes, bananas, pumpkins, apples and pears. Mangoes and bananas require in the main ripening services on market, and apples and pears often require specialised storage services. The quality of ripened and stored commodities is often not able to be determined until the service is complete. Poor pre-harvest practices are evident after ripening. These services are outside the regulation of the Code, though FMA believes that a number of disputes do originate from quality of product after the provision of these services.

The role and use of horticulture produce assessors was also codified. According to the HMA Annual reports, no assessors have been appointed by them under the Code. As well, the listed assessors have indicated that they are not aware of being appointed under the Code.

To address the problems a trader may experience with delivery issues, they will have business-like though sometimes robust, discussions with growers. Communication is instigated by traders and growers alike. In most circumstances these problems are able to be addressed on the spot, though a small number may need the engagement of a produce surveyor. Of all produce survey engagements, it is estimated that produce surveyors are engaged by traders in excess of 70% of occasions usually on-the-spot.

Many growers have a story to tell - how they feel they or some other grower was poorly treated, how they should have received more for their product, how their produce was prime quality etc. The fact is that traders have a story to tell as well – how the market was glutted, how the grower had sent twice as much produce as the trader asked for, how the produce was poorly packed, or lacked quality etc. There are always two sides to a story.

The impression provided by grower organisations and a small section of disaffected growers, is that growers are reluctant to communicate with their trader regarding price, reporting, terms of trade and the like. This is not backed up by evidence or material facts – it is only rhetoric. Though if this is in fact the case, does this come from laziness, or the fundamental inability to act in a professional business-like manner by those growers?

² <http://hortcodema.com.au/news.html>



The claim of retaliation is framed for the greatest impact as it was a decade ago when the Code was first muted and was one reason why the Code was required together with the existing Dispute Resolution process. Evidence must now be put on the table.

Traders have made claims of grower intimidation including; growers withholding produce, take all or else or verbal/physical threats and abuse.

Produce surveyors have been used by traders and growers both prior to and since the introduction of the Code. Their use occurs without regulation, because it makes good commercial business sense to do so.

FMA is prepared to support the retention of the dispute resolution process detailed in the Code, while also acknowledging that more cost effective options may exist.

It needs to be noted that the FMA and its members in each main Central Market across Australia can and do offer a role in providing cost effective dispute resolution services.

On this basis, FMA would support changes to streamline the dispute resolution process, including formal recognition to the role which FMA and its members do currently play in receiving, investigating and resolving disputes.

FMA supports the existing Dispute Resolution being maintained, however, streamlining of the process and recognition of the role which can be undertaken by industry organisations would be supported.

FMA will vigorously oppose any move to introduce penalty provisions into the Code. There has been no evidence presented over the past eight years to support the introduction of penalty provisions. Traders and growers alike have struggled to comply with the Code because of the unworkable prescriptive requirements of the Code and the lack of support for changes to those unworkable requirements by grower representative organisations.

FMA opposes the introduction of penalty provisions and supports that obligations under the Code must apply to both growers and traders. There must be a focus on fairness.



Technology

In the years since the introduction of the Code, there has been significant development of digital technology and its subsequent use.

Computer applications have been developed to allow for mature reporting to support the requirements of the Code. Most traders would utilise a modern computer system to support all business functions, including accounting, stock control, and food safety requirements.

The level of reporting has been so robust, that in some cases growers have requested summary reports rather than the level of reporting that was originally provided. Reporting is a back-office function and is able to be produced on demand as well as systematically. These reports are able to be provided digitally via email or if necessary, albeit not as efficiently or cost effectively, via facsimile or traditional post. These computer systems are able to provide reporting requirements under the Code and more.

FMA developed and introduced FreshSpecs³ in 2007 - product specifications which identify; the general appearance criteria; major defects; minor defects; and consignment criteria. These are referenced in terms of trade and in HPA's. These specifications are easily available on the internet or through contacting the trader, a FMA member or FMA itself. These specifications provide growers with the information required to supply produce within specification and to know when produce is outside that specification.

FMA initiative FreshTest⁴ launched in 2001 is the largest and most comprehensive testing program in Australian Horticulture. It provides a low cost MRL (chemical residue) and microbial testing solution for traders and their growers in Australia's Central Markets. It is run by industry for industry on a not-for-profit basis. The tests are used for verification for food safety and Quality Assurance systems. FreshTest is a highly respected program with data being used by the Federal Department of Agriculture and state jurisdictions to support the verification of national food safety as well as supporting export markets through presentations to various international "Verification Tours" to prove Australia produces safe food and support overseas export markets for Australian fresh produce.

Commercial Market Reporting Services are available across all main Central Markets. The digital age allows for easy access to data on sales prices through daily, weekly and monthly e-mail reports depending on the end-users requirements. These services provide all information that may be required about the sale price achieved on the Market.

A large number of traders have dedicated websites that provide details of the commodities that they trade, as well as terms of trade. Alternatively FMA members or market landlords have

³ <http://freshmarkets.com.au/fresh-specs/>

⁴ <http://freshmarkets.com.au/freshtest/>



details of the trader and the commodities that they trade in on their websites. This supports information that growers may require to make decisions about which traders to do business with i.e. terms of trade, contact name and numbers, commodities traded.

Mobile devices have changed the information /communications paradigm over the last decade. The majority of traders would communicate via mobile phone through voice, text or email with about 90% of their growers. Some growers though are still only contactable at 'smoko time' when they 'go up to the house'. They use a standard landline and some do not even have access to a facsimile.

Modern devices are able to quickly take images of problems associated with product (e.g. temperature issues can be shown via a thermometer showing the reading of produce). Information exchange is verbose. Walk around any Central Market and see how many traders are 'attached' to their mobile phones to see how the digital landscape has changed over the last decade.

Ultimately there is little excuse for growers to be lacking information.

FMA acknowledges and supports the use of digital technology to support the information exchange and communication between traders and growers.

FMA will continue to maintain FreshSpecs as a product specification standard.

FMA will continue to develop and provide FreshTest as a cost effective and comprehensive testing program for the verification of food safety and QA programs.



Information asymmetry

There has been a suggestion that in some parts of the horticulture wholesaler sector, that there is an undersupply of important information, particularly in regard to prices obtained and prices paid by traders in the Central Markets.⁵

Market pricing services exist in all main Central Markets with price reports available to all on a fee for service basis. These businesses determine the market selling price range by surveying Market traders and buyers and the knowledge and interpretation of market conditions on a daily basis.

The information on sale price is available to all comers who subscribe to the service. Anecdotal evidence suggests that growers do not want to pay the few hundred dollars per year that would keep them in touch with market prices on a daily basis. Growers have had heated arguments with the providers of these commercial services because the service is not provided for free.

Traders communicate regularly with growers to provide market intelligence. Some examples of freely available information:

- The Queensland Country Life publishes a weekly 'Market Report' and "Fruit and Vegetable Index" which is subsidised by Brisbane Produce Markets
- Perth Market daily sales price reporting is subsidised by the Chamber of Fruit and Vegetable industries in WA and is free to all subscribers.

On farm, the grower has all the information about their crop. Growers will communicate with their trader about matters such as anticipated quality, quantity and delivery timing. Images of produce may not belie issues such as food safety hazards or consistent quality. The wholesaler has only the trust built on a good business relationship to rely on, before actual receipt.

FMA rejects the suggestion that information asymmetry is a reason for market failure that creates the need for unworkable and anti-competitive regulation that is the current Code.

⁵ Regulatory Impact Statement p10



More regulation?

The Regulatory Impact Statement commissioned by the Federal Government prior to the introduction of the Code's reported ABS data that the profit margins of the fruit and vegetable wholesale sector at large (4%) were lower than the average prevailing in the economy at large (6.5%). It also reported that wholesalers' profit margins were lower on average than that obtained by the retail sector (4.5%). Despite these sobering statistics, the Mandatory Horticulture Code of Conduct was introduced and has added inflexible layers of bureaucracy to wholesalers' operations and increased the costs of running their businesses.

Why has the Federal Government agreed to a design-your-own Voluntary Code of Conduct for Coles, Woolworths and Aldi – which was developed by very large retailers – yet imposes an anti-competitive Mandatory Code on independent traders who are primarily small family businesses. It appears that the big end of town has been given preferential treatment.

It is FMA's view that the onus of proof rests on the parties arguing for additional regulation to show market failure and to suggest ways to address this failure without creating disproportionate costs to business and the community. The claim that some producers are not receiving what they consider to be a 'fair' price is not proof of market failure.

FMA has submitted its recommended changes to the Horticulture Code of Conduct as part of this review.

In reviewing and amending the Code, FMA asks that the Code:

1. is able to be readily utilised by industry associations to promote better commercial practices within the industry (i.e. let associations such as FMA show leadership, through being prepared to support and promote compliance with an industry Code that is fair, commercial and workable)
2. fairly imposes obligations on all parties and allows growers and traders to document flexible trading relationships which meet their needs in seeking to minimise costs and maximise returns for both the grower and the trader
3. can operate as a tool which promotes better business practices, but which also recognises that the vast majority of commercial transactions between growers and traders occur to the satisfaction of all parties, without incident or dispute



Appendix 1 - Services Provided by Traders in Central Markets

The services provided by Market traders are many and varied, and include the following:

- Marketing of produce
- Warehousing of produce
- Ripening of produce
- Sorting/repacking of produce
- Provision of advance payments to growers (e.g. start of the season)
- Specialised storage/warehousing of produce in temperature controlled facilities
- QA/Food safety
- Development of specialised marketing programs
- Distribution of produce
- Administration and payment of levies
- Meeting produce receival and order requirements with extended and out of hours staffing and the use of specialist staff to match produce supplied with what individual buyers are seeking
- Servicing a diverse customer base extending from independent retailers, supermarket chains, food service businesses, institutions, secondary wholesalers, providores and exporters
- Pursuing opportunities to promote the industry and the consumption of fresh fruit and vegetables
- Clearing product volumes including out of grade, produce damaged in transit, rejected, oversupplied and cancelled supermarket orders
- Providing market information – intelligence, market conditions, produce and marketing advice to growers
- Merchandising produce
- Sourcing of specific produce for buyers
- Working with transporters and other industry service providers
- Work with State and Territory governments for biosecurity obligations and compliance

FMA supports that Traders exist to add value in the supply chain and offer a diverse array of services to meet the needs of both grower suppliers and the buyers of the produce.



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