



The Australian Chamber of Fruit & Vegetable Industries Ltd

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## **SUBMISSION SMALL BUSINESS AND FAMILY ENTERPRISE OMBUDSMAN PROPOSAL**

The Australian Chamber of Fruit and Vegetable Industries Limited (The Australian Chamber) is the national organisation representing each of the six Market Chambers, which themselves are organisations which represent the fruit and vegetable wholesalers located in each of Australia's six central Markets (Brisbane, Sydney, Melbourne, Adelaide, Perth and Newcastle).

In total, the organisation represents in excess of 430 Market wholesaling businesses. Market wholesalers are involved in the sale of some 50-60% of the fresh produce sold across Australia in servicing the requirements of fruit and vegetable retailers, secondary wholesalers/provedores, foodservice industry businesses, processors, exporters and the public. Over 17,000 growers supply to businesses within the Central Market system.

Many of these businesses within the supply chain fall within a definition of a Small Business or a Family Enterprise.

The major retail chains predominately source their produce directly from growers.

We acknowledge the commitment from the Government under its deregulation agenda to removing roadblocks to small business success by reducing regulatory burden.

In making our submission, we will be responding with a focus on

1. concierge for dispute resolution as it applies to the Horticulture Code
2. Commonwealth-wide advocate for small businesses and family enterprises
3. contributor to the development of small business friendly Commonwealth laws and regulations.

### **1. CONCIERGE FOR DISPUTE RESOLUTION**

- 1.1 What should the scope of the Ombudsman's own mediation service include? For example, small business disputes with Australian Government agencies or disputes under industry codes of conduct?**
- 1.2 What powers should be conferred to the Ombudsman to resolve small business disputes?**
- 1.3 Which types of dispute resolution services should the Ombudsman provide and what should be the model for providing these services? For example, should these services be outsourced or provided in-house?**

The Australian Chamber calls on the Federal Government to support the repeal of the existing Mandatory Horticulture Code of Conduct, the establishment of a level playing field for all businesses in the industry, and the adoption of a consistent and commercial approach to any form of regulatory/voluntary industry Code based protection of Growers with respect to the sale of their fresh/farm produce.

Notwithstanding the call for repeal, The Australian Chamber makes the following response.

The Horticulture Code regulates trade in horticulture produce and it applies to wholesalers and growers who trade with each other in horticulture produce. It does NOT apply to the retail chains. The Horticulture Code provides that growers and wholesalers 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 dispute resolution process set out in the Horticulture Code, it is mandatory that the other party participate in that process as required by the code.

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The Horticulture Mediation Adviser (HMA) can currently provide mediation services for wholesalers and growers who are parties to a dispute under the Horticulture Code.

Taking into account the size of the wholesaling sector of the fresh fruit and vegetable industry which trades in excess of 4 million tonnes of fresh produce worth approximately \$7 billion annually supplied by more than 17,000 growers, the number of mediations actually undertaken by the HMA are significantly low. As outlined in the HMA's Annual Reports<sup>1</sup> over a four year period (1 July 2009-30 June 2013) there have only been 12 direct applications for mediation; and out of the 40 enquires received only 7 were referred to mediation.

This indicates that even though the number of transactions over the period would have been very significant, only a very small number end in mediation provided for under the Code. As well the HMA has consistently reported they have not identified any systemic problems faced by the horticulture industry that conflict with the operation of the Horticulture Code. Additionally they provide an education and awareness program conducting information sessions, producing articles and meet with key industry bodies to ensure knowledge of their services is disseminated. They provide website tools to assist parties with dispute resolution.

The dispute resolution scheme does not prevent anyone from approaching the ACCC directly. The ACCC investigates alleged breaches of the Horticulture Code and can take enforcement action where appropriate. The ACCC cannot provide dispute resolution.

According to the ACCC, between 2011 and 2013 they have received 16 complaints and 14 enquires under the Horticulture Code while issuing 9 enforceable undertakings agreed since 2007.

If the Horticulture Code is not repealed or if it is amended, and even though there are few mediations, or enquiries **The Australian Chamber recommends:**

THAT if the Minister appointed Horticulture Mediation Advisor is the Small Business And Family Enterprise Ombudsman, then the supporting body (either internal or external) should hold significant understanding of the horticulture industry, its operation and a working knowledge of the Horticulture Code to ensure that the enquiries and mediations are addressed as industry specific rather than from a generic catch-all small business enquiry/dispute resolution hub

THAT the powers of the Ombudsman in relation to the Horticulture Code should be those of the Horticulture Mediation Advisor.

THAT the Ombudsman provides education and awareness of the Horticulture Codes' dispute resolution and other provisions, within all sectors of the horticulture industry covered by the Code.

## 2. COMMONWEALTH-WIDE ADVOCATE

2.1 **How can the Ombudsman be a strong advocate to the Government? Are there particular practices that the Ombudsman should focus on?**

2.2 **How can the Ombudsman be a strong advocate to larger businesses on the needs of small businesses?**

2.3 **Should the Ombudsman be conferred powers to investigate allegations of practices in the public and private sectors that**

<sup>1</sup> <http://www.hortcodema.com.au/news.html>



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**are negatively affecting small businesses?**

The Horticulture Code of Conduct is an unworkable, inefficient Code with a high level of compliance burden. It provides an uneven playing field for all businesses in the industry with an inconsistent and uncommercial approach to Code based protection of Growers with respect to the sale of their fresh/farm produce. The Horticulture Code only applies to wholesalers trading with growers (the bulk being small businesses or family enterprises). The major retail chains are not covered by the Horticulture Code.

The compliance cost of this code has profitability ramifications as part of this cost is passed onto those businesses serviced by the Central Market wholesalers such as independent fruit and vegetable retailers, secondary wholesalers/provedores, foodservice industry businesses, processors and exporters. Part and sometimes all of the compliance cost may be absorbed by wholesalers and this in turn affects their profitability.

Independent fruit and vegetable retailers (small business and family enterprises) must compete with major retail chains, and do not have the same compliance burden attached to their supply chain.

The Ombudsman must play a role in advocating for a level playing field across all parts of the horticulture industry and remove the cost of compliance from businesses that have to either absorb or pass them to the next part of the supply chain.

The Ombudsman must be a strong facilitator of industry consultation, collaboration, education and awareness for all parts of the supply chain across the horticulture industry. This would increase awareness of and advocate small business needs.

**The Australian Chamber recommends:**

THAT the Ombudsman's role be to consult and strongly advocate to the Government for a level playing field for all businesses within the horticulture industry regulated by the Horticulture Code.

THAT the Ombudsman consult with industry to repeal or reform legislative provisions that have high compliance burden and favour one part of the industry over another. (The Australian Chamber calls for the repeal of the existing Mandatory Horticulture Code of Conduct, the establishment of a level playing field for all businesses in the industry, and the adoption of a consistent and commercial approach to any form of regulatory/voluntary industry Code based protection of Growers with respect to the sale of their fresh/farm produce).

THAT the Ombudsman be a strong facilitator of industry consultation, collaboration, education and awareness for all parts of the supply chain across the horticulture industry.

**3. CONTRIBUTOR TO COMMONWEALTH LAWS AND REGULATIONS**

**3.1 How should the Ombudsman engage with small businesses and family enterprises to identify the regulatory burdens most affecting them?**

**3.2 What activities should the Ombudsman be tasked with in order to make Commonwealth laws and regulations more small business and family enterprise friendly?**

The Australian Chamber agrees with the Australian Government's aim for its deregulation agenda.

The Ombudsman should engage with the wholesaling sector of the horticulture industry to fully understand all regulatory

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burdens that apply to the sector, through its national representative industry organisation - The Australian Chamber as well as with the State Member representative bodies.

The Market wholesaling businesses represented by The Australian Chamber have been sidelined in the attempt to establish a level playing field for all businesses in the industry, and the adoption of a consistent and commercial approach to any form of regulatory/voluntary industry Code based protection of Growers with respect to the sale of their fresh/farm produce. The wholesaling sector has not been successful in engaging meaningfully with Government as it does not have the political force of some other parts of the industry.

The Ombudsman should represent all sectors of the industry with an even handed approach, without favouritism. If one part of the supply chain (the wholesaling sector) is struggling under a regulatory burden i.e. the Horticulture Code, that is consistently reported by the Horticulture Mediation Advisor has not identified any systemic problems faced by the horticulture industry that conflict with the operation of the Horticulture Code<sup>2</sup>, then it is fair to say that all parts of the supply chain that deal with that sector could be impacted financially and therefore affect the profitability and viability of many small businesses and family enterprises.

Along with action being required to repeal or reform the Horticulture Code, there is an urgent need for taxation reform and labour market reform.

The market wholesaling businesses within the Central Market system sell produce to independent fruit and vegetable retailers. These businesses support the retailers through the provision/facilitation of marketing and promotional activities. These retailers do not have a collective voice and have to compete with major retailers. The Australian Chamber is in a unique position to work closely with this sector of the industry and be a conduit to the Ombudsman.

It would be appropriate for the Ombudsman to work with the Australian Chamber in the event that any regulation impact statement was necessary and to examine the Horticulture Code with a view to nominate it for repeal or reform.

The Ombudsman role should include the provision of information and evidence to the Commonwealth Government based on consultation with The Australian Chamber and State Member Representative bodies particularly regarding the Horticulture Code and other regulatory burdens for wholesalers and independent retailers.

The Australian Chamber, its State Member bodies and Market wholesale businesses were surprised by the unworkable regulatory burden within the Horticulture Code when it was enacted. This was particularly due to the fact there had been significant input from and consultation with the sector. Ideological politics must be addressed and the Ombudsman should not have a direct reporting relationship with a Minister responsible for an industry code.

**The Australian Chamber recommends:**

THAT the Ombudsman engage with the wholesaling sector of the horticulture industry to fully understand the regulatory burden (particularly relating to but not limited to the Horticulture Code), through its national representative industry organisation - The Australian Chamber as well as with its State Member representative bodies.

THAT the Ombudsman engage with the independent fruit and vegetable retailers of the horticulture industry using The

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



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Australian Chamber (and its State Member bodies) as a conduit.

THAT the Ombudsman engage early with The Australian Chamber to ensure any new legislation or requirements are not unduly burdensome.

THAT the Ombudsman not have a direct reporting relationship with a Minister responsible for an industry code.

#### **May 2014**

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