

Horticulture Code of Conduct - Industry Support Package

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Horticulture Australia
Council

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Horticulture Code of Conduct

ACCC – HAC/NFF industry meetings
feedback and recommendations



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Project details

Project Name: Horticulture Code of Conduct:
ACCC – HAC/NFF industry meetings
feedback and recommendations

Date: June 2007

Project Purpose: The purpose of this project was twofold:

1. to provide feedback to the Horticulture Australia Council / NFF Horticulture Code Steering Committee on issues that horticultural producers raised during the first round of HAC - ACCC industry meetings held during the lead up to the implementation of the Horticulture Code of Conduct; and
2. to provide feedback on any further awareness and/or education requirements for growers to enable smooth implementation of the Code.

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Table of Contents

Table of Contents	iv
Introduction	1
Meeting details	2
Issues raised	4
Frequently asked questions	8
Evaluation survey summary	9
Recommendations	10
Appendix 1: evaluation summary	13
Appendix 2: evaluation questionnaire	25
Appendix 3 : meeting notes	27

Introduction

As the result of the introduction of the Horticulture Code of Conduct on May 14, 2007, Horticulture Australia Council (HAC) and National Farmers' Federation (NFF) arranged a series of industry meetings so that the ACCC could present information to industry in regard to the Horticulture Code of Conduct.

Over forty industry meetings were organised in all the States and the Northern Territory during March and May 2007. This was done in conjunction with HAC and NFF's members.

To gain a better understanding of issues, concerns and areas where more education / information was required in regard to the implementation of the Code, HAC engaged p2p business solutions and Gerard McEvilly to attend the industry meetings and provide feedback, so that the HAC/NFF Code Steering Committee could effectively support and manage the industry communication and education process.

This was a dynamic process with major issues being reported to the Code Steering Committee by the consultants as they became apparent. Meetings and discussions took place between industry representatives and ACCC while the 'Roadshow' was still underway and a number of statements providing clarification on specific issues were released during this time. This process is still underway at the time of writing of this report.

Notes were compiled for each of the meetings attended by the consultants. These recorded the key issues raised at the meetings, concerns related to the Code, areas where more information was required by meeting participants or where there appeared to be confusion about aspects of the Code, general observations and a list of questions asked. The latter are provided in Appendix 3 of this report.

Evaluations were also undertaken with meeting participants at most meetings. This has provided further insight into the understanding of the Code by those impacted and indicated where further support may be needed.

In analysing the meeting reports and evaluation surveys the consultants have been able to identify common issues raised at the meetings and frequently asked questions, which are detailed. Some specific issues have already been clarified, as mentioned above, however, there is a high level of uncertainty about the implementation of the Code, the rights and obligation of parties and what is required to achieve compliance. It is important that further information and support is provided to the sector to ensure the successful implementation of the Code.

Recommendations, in regard to how industry may best be able to address issues and the types of intervention required, are also offered. This involves a comprehensive communication program, drawing on the combined resources of Government and Industry and both short term 'implementation' strategies and medium-long term 'development' strategies are required.

Meeting details

Below are meeting particulars and attendance details.

Meeting Particulars			
State	Date	Place	No. Attendees
QLD	8/3/07	St George	15
QLD	14/3/07	Ayr	27
QLD	14/3/07	Bowen	20
QLD	15/3/07	Innisfail	16
QLD	15/3/07	Tully	14
QLD	16/3/07	Atherton	9
QLD	16/3/07	Mareeba	56
QLD	20/3/07	Gayndah	28
QLD	21/3/07	Bundaberg	39
QLD	22/3/07	Gympie*	25
QLD	23/3/07	Caboolture*	19
QLD	22/3/07	Nambour*	16
QLD	23/3/07	Greenbank* (Brisbane)	4
QLD	27/3/07	Boonah*	4
SA	28/3/07	Berri	21
QLD	29/3/07	Gatton*	31
NT	29/3/07	Ti Tree	nr
NT	30/3/07	Katherine	nr
QLD	30/3/07	Toowoomba*	13
QLD	30/3/07	Stanthorpe*	39
NT	31/3/07	Darwin	nr
QLD	2/4/07	Yeppoon*	20
NSW	2/4/07	Lismore*	31
NSW	3/4/07	Coffs Harbour*	16
NSW	3/4/07	Sydney (Camden)*	20
WA	3/4/07	Carnavon	nr
WA	4/4/07	Geraldton	nr
NSW	4/4/07	Sydney (Richmond)*	15
NSW	4/4/07	Orange*	20
NSW	5/4/07	Young*	31
NSW	5/4/07	Griffith*	10
WA	11/4/07	Manjimup	nr
WA	12/4/07	Myalup	nr
NSW	13/4/07	Batlow*	28
WA	17/4/07	Perth (Markets)	25 (traders)
WA	17/4/07	Donnybrook*	13
WA	18/4/07	Wanneroo*	11
SA	18/4/07	Renmark (ACG conf)	nr
VIC	23/4/07	Robinvale*	28
VIC	24/4/07	Swan Hill*	6
VIC	24/4/07	Mildura*	20
VIC	26/4/07	Lilydale*	27
WA	26/4/07	Albany*	nr
VIC	27/4/07	Red Hill*	7
VIC	27/4/07	Cranbourne*	7

Meeting Particulars			
State	Date	Place	No. Attendees
VIC	30/4/07	Tatura*	5
VIC	30/4/07	Shepparton*	5
VIC	1/5/07	Cobram*	22
VIC	3/5/07	Bairnsdale	nr
WA	3/5/07	Broome	nr
VIC	4/5/07	Trafalgar	nr
VIC	9/5/07	Colac*	2
VIC	9/5/07	Werribee*	10
TAS	10/5/07	Devonport*	2
TAS	11/5/07	Huon Valley*	7
TOTAL ATTENDEES			777 +

Key:

* - denotes meetings at which evaluations of meeting participants were undertaken.

nr – denotes a meeting which the consultants did not report on.

Notes:

The number of attendees represents growers, packers and traders that attended the meetings. Where industry representatives or other service providers were identified they have not been included and have been identified separately.

Issues raised

1. Packing and marketing groups

There are a number of common structures for packing and marketing operations, including:

- central packhouse which packs and markets on a commercial basis. It is owned separately to growers.
- cooperative packhouses owned and operated by growers.
- loose arrangements where a grower may pack and market for a neighbour on a short or long term basis – and may or may not receive a fee for marketing.
- marketing group where growers pack on their own farms (or use a third-party packhouse) and market as directed by a central coordinator who may or may not receive a fee.
- 'Growers Markets' (eg. Sydney Markets D Shed), where sellers may be growers selling their and other growers produce or parties who are not growers selling produce on behalf of growers.

ACCC has indicated that these trading arrangements are captured by the Code and as a result an Agreement must be in place between the grower and packhouse /marketing group.

The application of the Code in relation to packhouses has caused confusion at meetings throughout the 'roadshow'. In response to this confusion the ACCC has released an Information Brochure titled 'Does the Horticulture Code apply to packing houses?'

There has also been general concern amongst growers, grower-packers and packhouses that the above relationships are captured by the Code. In particular, in the first four relationships outlined above, the next relationship along the supply chain, often with the traditional trader (central market wholesaler) is not captured by the Code. It has been indicated by many meeting participants that they believe that this transaction, between the grower/ grower-packer / packhouse and the central market wholesaler, should be captured by the Code.

2. Pooling

Packhouses often pool prices on a weekly basis ie. growers receive the pooled price for that week. It has been indicated by the ACCC that it is not sufficient to stipulate the terms of this form of trade in the Horticultural Produce Agreement, but that pooling can only occur on a daily basis and all packages must be traceable.

There have been mixed messages and lack of clarity around the 'pooling' issue and the options available to packhouses in regard to the terms of trade they are able to offer under the Code. There is genuine concern about the workability of the Code in relation to this issue, based on current information /advice. A number of individuals and groups asked for additional advice about how the Code should be applied in their situation.

Further investigation needs to be undertaken in relation to this issue and a possible adjustment to policy may need to be considered.

3. Inclusion of other supply chain partners

There was consistent discussion raised at the industry meetings about the need for other supply chain partners to be included in the Code. In particular, it was felt that retailers should not be exempt from the Code. The inclusion of exporters and processors was also raised.

Concern was also raised about the exemption of buyer's agents from the Code. However there appeared to be some confusion whether some businesses were trading on behalf of the grower or buyer.

4. Ownership and the definition of delivery

There is concern about the meaning of 'delivery' and when ownership is transferred to a merchant or a third party buyer.

Growers continue to be concerned that although 'delivery' has taken place and presumably transfer of ownership, that product will still be returned to the grower if there are situations of oversupply or return by the merchant's buyer.

Currently this practice sees produce returned often days after 'physical delivery', when the quality of the produce has deteriorated and the product is either unsaleable or must be sold for a significantly reduced price.

ACCC has stated that the definition of 'delivery' can be agreed by the parties and should be defined in any Agreement between the parties. This can vary from 'immediately the product is physically delivered to the dock of the wholesaler' through to 'a period after ripening or storage, which may be weeks or months'.

The latter appears to be of concern to growers as it allows wholesalers to hold product for an extended period of time before an agreed price needs to be set between the grower and the wholesaler. Under a merchant arrangement this in effect transfers the majority of the risk to the grower and reduces the grower's ability to redirect product should the price offered by the wholesaler be inadequate.

5. Transparency in merchant transactions

There is an indication that some traders intend to use the "\$1 option". This is where a trader purchases product at \$1/carton, acting as a merchant. The trader then passes on the remainder of the proceeds after resale, outside of any Agreement.

This option was raised at the meetings as a number of growers had indicated that they had been presented with Horticultural Produce Agreements with the inclusion. There has been confusion whether this practice would be acceptable under the Code. Further clarification has been provided by the ACCC and this information needs to be communicated to the horticultural sector.

6. Transparency in agency transactions

There has been considerable comment by growers about lack of traceability to third party buyers (ie. details about who purchased the product) in an agency transaction, except in the circumstance where there is a bad debt and it is the grower's responsibility to recover this debt.

Growers have consistently indicated that, under an agency arrangement, the name of the buyer should be provided, if requested by the grower (as is the situation with the sale of cattle).

It is important to recognise the Code does not preclude a wholesaler from providing these details however it does not force the disclosure of the buyer's details.

The argument has been presented that the information about the purchaser of the produce is the intellectual property of wholesaler and if this information was provided to the grower there is a possibility that the grower may attempt to sell direct. Growers have also argued that if the wholesaler is adding value, they are unlikely to sell direct realising the majority of smaller retailers would not prefer this option as the central market system and consolidators do offer services individual growers can not match.

Growers also have concerns Assessors will be unable to trace transactions adequately to ensure the integrity of the wholesale price offered under an agency transaction and to ensure that all transactions are 'at arms length' (unless indicated otherwise). Access to buyer details may assist in overcoming these concerns.

There have also been numerous requests for the introduction of random audits of trader's records to ensure compliance with the Code.

7. Contractual issues

There are a number of issues that have the potential to create confusion and need further clarification. These include:

- the difference between a Horticultural Produce Agreement (HPA) and supply agreements.
- what to do if HPAs offered by traders do not comply with the Code.
- the status of phone call/fax/SMS to confirm record of transaction agreement.
- the clarification of the application of Trade Practices Act (TPA) and contract law on a HPA and individual transactions.
- how growers should respond to trader's offering back dated contracts (pre December 14th, 2006) to escape the provisions of the Code.

8. Languages other the English

There is a requirement for additional support through the provision of information in languages other than English. This applies to the translation of written material as well as support for meetings in areas where there is a high concentration of growers where English is not their first language.

9. Other issues

Other issues raised and where growers have raised concerns or requested additional information include:

- the application of Produce and Grocery Industry Code and TPA to transactions with supermarkets not covered by the Horticulture Code.
- the application of Collective Bargaining. (The collective bargaining notification process was introduced on 1 January 2007. Notification is a process under which parties which propose to engage in collective bargaining conduct may obtain

immunity from legal action under the Trade Practices Act, if the conduct is in the public interest.)¹

- Central Markets Credit Services, including where these services exist, their applicability in agency transactions, whether growers could negotiate to join these Services.
- other alternative debt collection options which may be available.
- quality assurance / traceability / supply chain integrity. (Related to Pooling and Ownership issues above). There appears to be a significant gap in knowledge and understanding of this area, with growers concerned about how the "Freshspecs" system (the produce specification system recently launched by the Australian Chamber of Fruit and Vegetable Industries) will be used in practice when produce fails to meet its description.
- definitions around certain issues, in particular:
 - 'delivery' and how it can be defined for produce partly destined for export or processing markets or produce that is ripened, repacked and / or stored for long periods before sale.
 - 'processed', in particular in relation to nuts and the semi processing of leafy vegetables and pumpkins.
 - potted herbs for consumption.
- growers have also raised concerns about the 'paperwork' required. Further investigation needs to be made as to whether this is onerous and how the communication process could be streamlined to facilitate business efficiency.

¹ <http://www.accc.gov.au/content/index.phtml/itemId/776299/fromItemId/776294>

Frequently asked questions

Below is a list of frequently asked questions that were common across the industry meeting held to date:

- What is the difference between an agency transaction and a merchant transaction?
- Does the Code apply to traders outside the central market system?
- Does the Code apply if I am selling directly to supermarkets?
- Does a trader have to ensure that my produce is adequately stored?
- When is ownership of produce transferred under an agency arrangement and when is ownership of produce transferred under a merchant arrangement?
- Does there have to be an Agreement for every consignment?
- Under a merchant arrangement do grower and trader have to have written evidence of the agreed price?
- Can I access the trader's records to see who bought my produce?
- Can an agent sell my produce to his own company or family member?
- What happens if my trader and I have a dispute about price or quality?
- Who has to pay for the Assessor if there is dispute between me and my trader?
- What happens if there is a bad debt from the buyer of my produce?
- How often does my trader have to report to me?
- What are the penalties for not complying with the Code?
- What is the review process for the Code?

Evaluation survey summary

Evaluations were conducted with meeting participants at most meetings after and including the Gympie meeting (22nd March 2007).

A summary of the evaluations are included in Appendix 1.

These results show that, at the time of the evaluation, following the industry meetings:

1. half (51%) of meeting participants did not have a clear understanding or required further clarification of their obligations under the Code.
2. over half (55%) of meeting participants either did not have a clear understanding or required further clarification of their rights under the Code.
3. nearly half (46%) of meeting participants either did not have a clear understanding or required further clarification of what they needed to arrange with their wholesaler / trading partner where the Code applied to their trading transactions.
4. two thirds (66%) of meeting participants had not discussed with their wholesaler or other trading partners (not retailer, exporter or processor) whether their product would be sold under a agency or merchant arrangement; although a large number (42%) said they had been presented with terms of trade or a Horticulture Produce Agreement that was compliant with the Code.
5. half (48%) of meeting participants said they were not confident to assess terms of trade or contracts before signing them and would seek advice (legal or from other sources); a number (14%) said they were not sure what they would do.

Asked what type of support would be useful to help with better understanding the Code and making the necessary changes to implement it effectively in their business:

- the majority (59%) of meeting participants indicated that draft Horticultural Produce Agreements (which would include template terms of trade) would be useful.
- also 36% of respondents indicated that a workshop focusing on 'understanding trading options and what's best for your business' would be helpful.
- a smaller number (19% and 26% respectively) indicated that a workshop on managing your supply chain (relationship and administration) and a helpdesk (phone or online) would be helpful.

Recommendations

Based on the questions asked at the industry meetings and the feedback provided through the evaluation survey, it is clear there was a high level of uncertainty about the implementation of the Code, the rights and obligation of parties and what is required to achieve compliance.

The industry meetings held to date have focused on the compliance issues related to the Code. This has highlighted gaps in the education / information process. It is important that further information is provided to the production sector including information about:

- the policy setting that lead to the need for a Code and the benefits that may be realised from the Code.
- the steps in implementing the Code in a production business.
- the minimum (and optional/negotiable) elements which should (and can) be included in a Horticultural Produce Agreement.
- Horticultural Assessors and the services they provide.
- the mediation process.

The Industry / ACCC 'Roadshow' meetings have proved valuable in drawing out the many issues described in this report. It has also highlighted that some of the issues raised as a result of the implementation of the Code have challenged growers to consider their business practices and relationships. It is clear that further support is required to ensure growers have the capacity to understand their options and utilise the provisions of the Code so that they can realise benefits it can provide. This includes how industry / commodity groups may work together to negotiate suitable terms of trade for their industry.

A comprehensive communication program is required, drawing on the combined resources of Government and Industry. Both short term 'implementation' strategies and medium-long term 'development' strategies are required.

The consultants recommend the following strategies should be prioritised, as part of a broader plan:

1. Horticultural Produce Agreements

The development of draft Horticultural Produce Agreements (including template terms of trade) is considered to be one of the most useful tools that can be provided to industry, as highlighted in the evaluation survey summary. HAC and NFF have already completed this process and have distributed appropriate material to industry.

2. Information articles and case studies

As part of a broader communications plan, a series of articles and case studies should be developed to assist industry participants develop their understanding of the Code and how it can be applied. These should be suitable for industry publications and regional press.

These articles might focus, for example, on: the difference between an agency and merchant transactions; negotiating suitable HPAs with your trading partner; your rights

and obligations under the Code; handling disputes with your trading partner; what the mediation process involves.

3. Presentations at Industry Conference, Trade and Field Days and Grower Meetings

The presentations of information about the Code by key stakeholders (ACCC, DAFF and Industry Organisations) needs to continue for at least a 12 month period to assist in ensuring that all industry participants have a good access to information and an understanding of the Code and its application. There are a range of forums, such as industry conferences, trade fairs, field days and grower meetings that will provide the opportunity for this to occur.

4. 'Understanding your trading options' workshop

In the initial instance a workshop 'Understanding your trading options and what's best for your business' should be developed. This should seek to address the following learning objectives:

- understanding the marketplace for horticultural produce and different supply chain options and how these are impacted by the Code.
- understanding the difference between an agency and merchant transaction and what these entail in a practical business sense.
- understanding what is required to be in a Horticultural Produce Agreement (HPA).
- understanding what other major options could be included in a HPA eg. times for price setting, defining delivery, bad debt collection options.
- understanding your rights and obligations under the Code.
- understanding what documentation you require to be Code compliant and how to manage this documentation (electronic solutions).
- understanding the importance of managing quality of your product.
- understanding how to handle disputes with your trader including:
 - understanding your rights and obligations in a dispute
 - how to call in a Horticultural Produce Assessor or respond to an Assessor
 - understanding good conflict management and the skills you can develop to maintain good relations with your wholesaler.
- understanding the mediation process.
- understanding basic negotiation management and how to deal with difficulties.

Ideally these workshops should be held with small groups (10 -15 participants) preferably from the same or similar industries (eg. sub tropical fruit growers, vegetable growers, strawberry growers) and similar sized operations. This will assist in fostering discussion and sharing of experiences and will assist with improving learning outcomes and effecting change in the industry. A face-to-face delivery mode will also assist, however an information booklet / DVD based on the workshop training could also be developed for wider distribution.

5. Further workshops

Further workshops may also be considered. These should look at supply chain management between growers and their trading partners and focus on product supply, relationship development and administration from a holistic perspective and how changes to business practices brought about by the Code can be leveraged to improve business relations.

6. Industry hotline

An industry hotline may also be beneficial where by growers can call / email to attain general information about the Code, access information sheets, details on proposed workshops and referrals to specialist information providers eg. ACCC, legal, etc. This could complement the existing ACCC hotline, by covering issues that may relate more to policy (for which the ACCC hotline is likely to simply refer the caller to DAFF/ industry organisations).

It is considered that these initiatives should be implemented as soon as possible to ensure that growers and others are as fully informed regarding the Code, minimum requirements and optional / negotiable inclusions in Horticultural Produce Agreements and how to manage the process within their own business and with their trading partner.

Appendix 1: evaluation summary

Summary Table of HAC / ACCC Horticulture Code of Conduct meetings attended and reported.

Summary Table of HAC / ACCC Horticulture Code of Conduct meetings analysis								
Question	SA	QLD	NSW	WA	VIC	TAS	Total	Percent %
Number of meetings attended/reported	1	18	8	3	12	2	43	-
Number of growers, packers, traders present	21	395	171	44	137	9	777	-
Describe your role / business in industry								
Grower		57	47	9	42	1	156	58%
Grower /Packer		27	24	4	11	2	68	25%
Packhouse		6	1	0	1	0	8	3%
Trader		3	5	0	1	0	9	3%
Industry service provider		1	9	0	10	0	20	7%
Other		4	0	0	3	0	7	3%
TOTAL		98	86	13	68	3	268	
* - co-operative representative								
** - horticultural consultant								
Do you have a clear understanding of your obligations under the Code?								
Yes		28	42	6	30	0	106	44%
No		11	1	0	6	0	18	7%
Clarity required		45	32	7	21	3	108	44%
Not Applicable		1	6	0	4	0	11	5%
TOTAL		85	81	13	61	3	243	
Do you have a clear understanding of your rights under the Code?								
Yes		29	39	5	27	1	101	41%
No		12	2	0	6	0	20	8%
Clarity required		45	36	8	24	2	115	47%
Not Applicable		1	4	0	3	0	8	3%
TOTAL		87	81	13	60	3	244	
Do you now know what trading relationships are affected by the Code?								
Yes		50	63	10	38	2	163	67%
No		7	1	0	4	0	12	5%
Clarity required		30	17	3	17	1	68	28%
TOTAL		87	81	13	59	3	243	
Where the Code applies to your trading transactions do you have a clear understanding of what you need to arrange with your wholesaler / trading partner?								
Yes		41	42	7	28	0	118	48%
No		9	1	0	3	0	13	5%

Clarity required	34	30	6	27	3	100	41%
Not Applicable	3	8	0	3	0	14	6%
TOTAL	87	81	13	61	3	245	
If trading with a wholesaler or other trading partners (not retailer, exporter or processor), have you discussed with them whether your product will be sold under an agency or merchant arrangement?							
Yes	31	20	6	19	2	78	34%
No	55	51	7	35	1	149	66%
If so, have they provided you with terms of trade and/or a Horticulture Produce Agreement / contract that are compliant with the Code?							
Yes	16	18	4	19	2	59	42%
No	15	32	7	27	1	82	58%
Do you feel confident to assess the terms of trade/ contract yourself or will you seek further advice before signing them?							
Feel confident	30	24	6	26	1	87	38%
Not confident and will seek legal advice	22	18	1	8	0	49	21%
Not confident and will seek advice from other sources	23	15	4	18	2	62	27%
Not sure	10	14	2	5	0	31	14%
TOTAL	85	71	13	57	3	229	
Which of the following would be useful to help you better understand the Code and make the necessary changes to implement it effectively in your business? (assuming 243 respondents)							
Draft Horticulture Produce Agreements	47	53	6	35	3	144	59%
Workshop: Understanding trading options and what's best for your business	33	26	8	20	0	87	36%
Workshop: Managing your supply chain	16	18	4	7	0	45	19%
Help Desk: Phone or online	20	25	5	12	2	64	26%
Other:		1		3	0	4	2%

Notes:

Evaluation of meeting participants was not undertaken at all meetings.

Summary Tables of HAC / ACCC Horticulture Code of Conduct meetings analysis										
1A Queensland meetings										
Question	Gympie	Caboolture	Nambour	Brisbane	Boonah	Gatton	Toowoomba	Stanthorpe	Yeppoon	Total
Describe your role / business in industry										
Grower	10	10	9	3	4	3	6	7	5	57
Grower /Packer	4	3	5		4	1		4	6	27
Packhouse	1		2		2	1				6
Trader					1	2				3
Industry service provider						1				1
Other			3 *	1**						4
TOTAL	15	13	19	4	11	8	6	11	11	98
* - co-operative representative										
** - horticultural consultant										
Do you have a clear understanding of your obligations under the Code?										
Yes	6	5		4		2	3	5	3	28
No			6		3		1		1	11
Clarity required	8	8	10		2	3	2	6	6	45
Not Applicable						1				1
TOTAL	14	13	16	4	5	6	6	11	10	85
Do you have a clear understanding of your rights under the Code?										
Yes	6	5		4		3	3	6	2	29
No			7		3		1		1	12
Clarity required	8	9	9		2	2	2	5	8	45
Not Applicable						1				1
TOTAL	14	14	16	4	5	6	6	11	11	87
Do you now know what trading relationships are affected by the Code?										
Yes	7	7	4	3	1	5	6	9	8	50
No		1	3		1			1	1	7
Clarity required	7	8	7	1	3	1		1	2	30
TOTAL	14	16	14	4	5	6	6	11	11	87
Where the Code applies to your trading transactions do you have a clear understanding of what you need to arrange with your wholesaler / trading partner?										
Yes	8	10	4	2	1	2	3	6	5	41
No			5		1		1	1	1	9
Clarity required	6	4	7	1	3	3	1	4	5	34
Not Applicable				1		1	1			3
TOTAL	14	14	16	4	5	6	6	11	11	87
If trading with a wholesaler or other trading partners (not retailer, exporter or processor), have you discussed with them whether your product will be sold under an agency or merchant arrangement?										
Yes	5	6	3	1	3	3	3	5	2	31
No	9	8	13	3	2	2	3	6	9	55
If so, have they provided you with terms of trade and/or a Horticulture Produce Agreement / contract that are compliant with the Code?										
Yes	2	4	1	1	2	3	1	2		16
No	3	5	1		1	1	3		1	15
Do you feel confident to assess the terms of trade/ contract yourself or will you seek										

further advice before signing them?										
Feel confident	6	6		2	1	1	3	4	7	30
Not confident and will seek legal advice	3	2	6	1	2	1	2	4	1	22
Not confident and will seek advice from other sources	4	5	6		1	2	1	2	2	23
Not sure	1	1	2		2	1		1	2	10
TOTAL	14	14	14	3	6	5	6	11	12	85
Which of the following would be useful to help you better understand the Code and make the necessary changes to implement it effectively in your business?										
Draft Horticulture Produce Agreements	8	8	8	2	2	3	3	7	6	47
Workshop: Understanding trading options and what's best for your business	7	7	6	1	2	2	2	4	2	33
Workshop: Managing your supply chain	3	3	5		1		1	2	1	16
Help Desk: Phone or online	2	2	2	2		2	3	1	6	20
Other:										

Summary Tables of HAC / ACCC Horticulture Code of Conduct meetings analysis										
1B New South Wales meetings										
Question	Lismore	Coffs Harbour	Camden, Orange Young, Griffith	Richmond	Batlow					Total
Describe your role / business in industry										
Grower	4	9	22	4	8					47
Grower /Packer	5	6	9	2	2					24
Packhouse	0	1	0	0	0					1
Trader	0	1	1	2	1					5
Industry service provider	0	1	4	3	1					9
Other	0	0	0	0	0					0
TOTAL	9	18	37	11	12					86
Do you have a clear understanding of your obligations under the Code?										
Yes	2	10	20	4	6					42
No	0	0	0	0	1					1
Clarity required	7	6	14	3	2					32
Not Applicable	0	0	4	2	0					6
TOTAL	9	16	38	9	9					81
Do you have a clear understanding of your rights under the Code?										
Yes	1	8	19	5	6					39
No	0	1	1	0	0					2
Clarity required	8	7	15	2	4					36
Not Applicable	0	0	2	2	0					4
TOTAL	9	16	37	9	10					81
Do you now know what trading relationships are affected by the Code?										
Yes	6	12	31	8	6					63
No	0	0	0	0	1					1
Clarity required	3	4	6	1	3					17
TOTAL	9	16	37	9	10					81
Where the Code applies to your trading transactions do you have a clear understanding of what you need to arrange with your wholesaler / trading partner?										
Yes	3	9	18	4	8					42
No	0	1	0	0	0					1
Clarity required	6	6	15	2	1					30
Not Applicable	0	0	4	3	1					8
TOTAL	9	16	37	9	10					81
If trading with a wholesaler or other trading partners (not retailer, exporter or processor), have you discussed with them whether your product will be sold under an agency or merchant arrangement?										
Yes	3	6	5	0	6					20
No	6	10	27	5	3					51
If so, have they provided you with terms of trade and/or a Horticulture Produce Agreement / contract that are compliant with the Code?										
Yes	1	5	6	0	6					18
No	5	9	14	3	1					32
Do you feel confident to assess the terms of trade/ contract yourself or will you seek further advice before signing them?										
Feel confident	3	4	8	3	6					24
Not confident and will seek legal	2	5	8	2	1					18

advice										
Not confident and will seek advice from other sources	2	6	6	0	1					15
Not sure	2	1	10	0	1					14
TOTAL	9	16	32	5	9					71
Which of the following would be useful to help you better understand the Code and make the necessary changes to implement it effectively in your business?										
Draft Horticulture Produce Agreements	8	8	23	8	6					53
Workshop: Understanding trading options and what's best for your business	1	7	13	4	1					26
Workshop: Managing your supply chain	3	4	7	3	1					18
Help Desk: Phone or online	6	4	7	4	4					25
Other:	0	0	1	0	0					1

Summary Tables of HAC / ACCC Horticulture Code of Conduct meetings analysis										
1C Victorian meetings										
Question	Robinvale		Mildura	Lilydale	Red Hill	Cranbourne	Tatura & Shepparton	Cobram	Colac & Werribee	Total
Describe your role / business in industry										
Grower	4		4	12	5	1	2	10	4	42
Grower /Packer	1		3	1	0	0	4	1	1	11
Packhouse	0		0	0	0	0	0	0	1	1
Trader	0		0	0	0	0	0	0	1	1
Industry service provider	0		0	1	1	0	1	0	7	10
Other	0		1	0	0	1	0	0	1	3
TOTAL	5		8	14	6	2	7	11	15	68
Do you have a clear understanding of your obligations under the Code?										
Yes	4		4	8	3	1	2	5	3	30
No	0		3	1	0	0	1	1	0	6
Clarity required	1		1	5	2	1	3	4	4	21
Not Applicable	0		0	0	1	0	1	1	1	4
TOTAL	5		8	14	6	2	7	11	8	61
Do you have a clear understanding of your rights under the Code?										
Yes	4		4	8	3	1	2	3	2	27
No	0		2	1	0	0	0	3	0	6
Clarity required	1		2	5	2	1	4	4	5	24
Not Applicable	0		0	0	1	0	1	0	1	3
TOTAL	5		8	14	6	2	7	10	8	60
Do you now know what trading relationships are affected by the Code?										
Yes	3		6	10	6	2	4	4	3	38
No	0		1	0	0	0	0	2	1	4
Clarity required	2		1	3	0	0	3	5	3	17
TOTAL	5		8	13	6	2	7	11	7	59
Where the Code applies to your trading transactions do you have a clear understanding of what you need to arrange with your wholesaler / trading partner?										
Yes	4		3	7	3	1	3	4	3	28
No	0		1	0	0	0	0	1	1	3
Clarity required	1		4	7	2	1	3	6	3	27
Not Applicable	0		0	0	1	0	1	0	1	3
TOTAL	5		8	14	6	2	7	11	8	61
If trading with a wholesaler or other trading partners (not retailer, exporter or processor), have you discussed with them whether your product will be sold under an agency or merchant arrangement?										
Yes	1		3	4	2	0	3	4	2	19
No	4		4	10	3	1	3	6	4	35
If so, have they provided you with terms of trade and/or a Horticulture Produce Agreement / contract that are compliant with the Code?										
Yes	1		1	7	0	0	2	6	2	19
No	3		5	5	3	1	4	2	4	27
Do you feel confident to assess the terms of trade/ contract yourself or will you seek further advice before signing them?										
Feel confident	1		3	7	4	0	5	2	4	26
Not confident and	1		1	1	1	1	0	3	0	8

will seek legal advice										
Not confident and will seek advice from other sources	3		4	5	0	0	1	2	3	18
Not sure	0		0	1	0	0	0	4	0	5
TOTAL	5		8	14	5	1	6	11	7	57
Which of the following would be useful to help you better understand the Code and make the necessary changes to implement it effectively in your business?										
Draft Horticulture Produce Agreements	1		7	9	4	2	2	5	5	35
Workshop: Understanding trading options and what's best for your business	3		2	3	2	1	4	3	2	20
Workshop: Managing your supply chain	2		1	2	0	1	0	1	0	7
Help Desk: Phone or online	0		4	2	1	0	2	2	1	12
Other:	0		0	0	0	0	1	2	0	3

Summary Tables of HAC / ACCC Horticulture Code of Conduct meetings analysis									
1D Western Australian and Tasmania meetings									
Question	Donnybrook	Wanneroo	Total WA					Devonport & Huon Valley (combined)	Total Tasmania
Describe your role / business in industry									
Grower	7	2	9					1	1
Grower /Packer	3	1	4					2	2
Packhouse	0	0	0					0	0
Trader	0	0	0					0	0
Industry service provider	0	0	0					0	0
Other	0	0	0					0	0
TOTAL	10	3	13					3	3
Do you have a clear understanding of your obligations under the Code?									
Yes	5	1	6					0	0
No	0	0	0					0	0
Clarity required	5	2	7					3	3
Not Applicable	0	0	0					0	0
TOTAL	10	3	13					3	3
Do you have a clear understanding of your rights under the Code?									
Yes	5	0	5					1	1
No	0	0	0					0	0
Clarity required	5	3	8					2	2
Not Applicable	0	0	0					0	0
TOTAL	10	3	13					3	3
Do you now know what trading relationships are affected by the Code?									
Yes	8	2	10					2	2
No	0	0	0					0	0
Clarity required	2	1	3					1	1
TOTAL	10	3	13					3	3
Where the Code applies to your trading transactions do you have a clear understanding of what you need to arrange with your wholesaler / trading partner?									
Yes	6	1	7					0	0
No	0	0	0					0	0
Clarity required	4	2	6					3	3
Not Applicable	0	0	0					0	0
TOTAL	10	3	13					3	3
If trading with a wholesaler or other trading partners (not retailer, exporter or processor), have you discussed with them whether your product will be sold under an agency or merchant arrangement?									
Yes	4	2	6					2	2
No	6	1	7					1	1
If so, have they provided you with terms of trade and/or a Horticulture Produce Agreement / contract that are compliant with the Code?									
Yes	3	1	4					2	2
No	6	1	7					1	1
Do you feel confident to assess the terms of trade/ contract yourself or will you seek further advice before signing them?									
Feel confident	4	2	6					1	1
Not confident and will seek legal	1	0	1					0	0

advice									
Not confident and will seek advice from other sources	3	1	4					2	2
Not sure	2	0	2					0	0
TOTAL	10	3	13					3	3
Which of the following would be useful to help you better understand the Code and make the necessary changes to implement it effectively in your business?									
Draft Horticulture Produce Agreements	6	0	6					3	3
Workshop: Understanding trading options and what's best for your business	5	3	8					0	0
Workshop: Managing your supply chain	4	0	4					0	0
Help Desk: Phone or online	5	0	5					2	2
Other:	0	0	0					0	0

1E Summary of additional comments from evaluation forms

- I am concerned that the launch date is too soon as merchants and growers have not had time to agree positions. An agreement between the grower and Agent/Merchant will not be easy.
- Retailers and exporters should be included. Everyone who buys produce should be under the code, eg retailer, processor, exporterthere should be no options for a way out or way around having to be bound by the Code, as currently is the case.
- There is a need for growers to form a body where their major concerns about the Code can be addressed. Very important for these bodies to talk to DAFF about policy and the effect it has on their business. Concerns over how much the Code will impact the traders who the growers perceive to have all the power. The Code is effective when used by large bodies of growers.
- Leave it how it was. I can't see this thing working.
- My trader (merchant) will no longer trade with me unless I accept his Agreement and agree to back dating prior to 15/12/06. So now I have to try to find someone else and this may be difficult.
- QA will be the main obstruction in the running of this Code.
- Only good for big growers, no good for small, particularly when there is a dispute on. Smaller growers will be the most adversely affected.
- Still little transparency – transaction should require details of sales, \$ value and purchases. In the case of sending produce to an agent, growers need a paper trail to show more transparency. Want true information. It would however benefit us to have transparency on price agent sells for. Must report who the agent sold it to. The Code should include more transparency relating to the price of goods sold compared to the price that I receive.
- Not convinced code is tuned to provide best result for grower – in our case price we get depends on sale price at markets but our trader will, we believe resist agency Agreement.
- Concerned about extra costs involved.
- Feel that growers are fairly well looked after with some loop holes that could be used against them.
- Feel that Wholesalers and "Merchants & Agents" have very little protection, especially from the third party.
- What happens if a merchant & agent does not pay in the time specified? What happens if he goes broke?
- Very bad for the NSW banana industry.
- The information looks well detailed – now need to take time to read and understand all the details.
- Concerned that Code of Conduct potentially limits small producers as Agents & Merchants will not want such paper trails for small runs of produce.
- Assessors are yet to be appointed and overall too many things are still unknown.
- Time will tell if tis has the desired effect in the marketplace.
- This code is a waste of time – it doesn't address the real problems of returns of fruit, 14 day payment by retailers, access to markets (all domestic & export) and quality control.
- The Code is so easily avoidable that few will be in it.
- Should have been more consultation with industry. I am regretting that the first time I heard about the code was in a grower magazine 3 weeks ago I listen to the radio and read growers magazines regularly - has the code development process been well advertised?
- I believe the grower is still not going to gain very much as agents and merchants still have control on price returns.
- A number of concerns relating to the operation of a packhouse.

- Since the code only covers transactions between growers and traders, it does not cover packhouse to wholesaler transactions. It would seem in a number of industries, eg avocado, citrus, apple & pear, that many wholesaler transactions are being missed by the Code.
- It is going to be virtually impossible to satisfy the reporting requirements of the Code for the grower in a packing shed operation, if the trader is acting as an agent. This is because in a price pooling situation which packhouses use, the packing shed does not/will not be able to tell the grower which specific prices within a range of prices received relate to their actual produce.
- Given that packhouses use 'price-pooling' it seems unreasonable that they be expected to tell the grower which specific prices their pieces of fruit were sold for. This information would not affect in any way the amount the grower receives. A realistic system of transparency would be to provide any grower contributor to a packhouse with all prices received for produce within the pool and the quantities and grade specifications of units sold at each price.
- Draft templates as soon as possible and some feedback after 14th May 2007 of progress in other States.
- Agents acting on behalf of retailer are exempt. Agents acting in collusion with other agents are still virtually safe, they have significant resources to get at the Assessors. Their ability to blacklist growers who "whistle-blow" is also frightening.

Appendix 2: evaluation questionnaire

Horticulture Australia Council Horticulture Code of Conduct Survey

Thank you for completing this survey. Findings from this survey will be used to help shape further support activities to assist with the implementation of the Horticulture Code of Conduct.

1. Describe your role / business in industry:

<input type="checkbox"/> Grower	<input type="checkbox"/> Trader
<input type="checkbox"/> Grower /Packer	<input type="checkbox"/> Industry service provider
<input type="checkbox"/> Packhouse	<input type="checkbox"/> Other

2. Do you have a clear understanding of your obligations under the Code?

Yes No Some clarity still required Not Applicable

3. Do you have a clear understanding of your rights under the Code?

Yes No Some clarity still required Not Applicable

4. Do you now know what trading relationships are affected by the Code?

Yes No Some clarity still required

5. Where the Code applies to your trading transactions do you have a clear understanding of what you need to arrange with your wholesaler / trading partner?

Yes No Some clarity still required Not Applicable

6. If trading with a wholesaler or other trading partners (not retailer, exporter or processor), have you discussed with them whether your product will be sold under an agency or merchant arrangement?

Yes No

7. If so, have they provided you with terms of trade and/or a Horticulture Produce Agreement / contract that are compliant with the Code?

Yes No

8. Do you feel confident to assess the terms of trade/ contract yourself or will you seek further advice before signing them?

- Feel Confident Not confident and will seek legal advice Not confident and will seek advice from other sources eg industry association, ACCC Not sure

9. Which of the following would be useful to help you better understand the Code and make the necessary changes to implement it effectively in your business?

- Draft Horticulture Produce Agreements (contracts which are Code-compliant)
 - Workshop: Understanding trading options and what's best for your business
 - Workshop: Managing your supply chain (relationships and administration)
 - Help Desk: Phone or online
 - Other:
- PTO

Do you have any other comments / queries about the information provided on the Horticulture Code of Conduct?

Please provide details:

THANK YOU FOR YOUR CONTRIBUTION

Appendix 3 : meeting notes

IMPORTANT INFORMATION ABOUT THE FOLLOWING NOTES

The following meeting notes have been developed by the consultants that attended the regional meetings. They are presented in chronological order.

Issues raised reflect the discussions and questions that took place within and immediately after the meetings.

Identified problems are those issues that meeting participants thought would be a problem with the Code.

Where there is an assessment that 'more information is required' this reflects the consultant's assessment of where additional information is needed to provide clarity for the meeting participants.

The 'Growers Response' is the consultant's assessment of how the meeting participants perceived the Code and the outstanding issues / consensus on the Code

The Questions section is a summary of the questions asked at the meeting. The responses are also a summary and are not meant to reflect the full answer given, but the intent of the answer. Due to constraints to record answers the consultants have used their best endeavours to reflect as accurately as possible, in a brief statement. The responses are predominantly from the ACCC speaker.

The following abbreviations have been used throughout the notes:

HPA: Horticultural Produce Agreement

ToT: Terms of Trade

St George Meeting

Meeting: St George	Location: St George
Date/ Time: 8/03/07 6:30 pm	Duration: 2 hours
Chair: Sheryl Rigg	Presenter: Albert Julum ACCC
Attendance: 15 growers	Crops: grapes, melons, onions

Issues raised

1. Concern that there will be a need for a large number of Assessors.
2. Concern that traders will increase commissions to meet costs of Code paperwork.
3. Concern over when to call in an assessor. Is it necessary to have evidence of wrong doing?
4. Concern about retaliation for growers instigating and therefore disruption to trader / grower relationship.
5. Code should be applied to retailers.
6. Short season issues – no time for mediation.

Identified problems

1. Assessors – number available, cost, perceived conflict of interest.
2. Time for mediation process.
3. Commissions may increase in agent transactions.
4. Concern paperwork load for traders will increase costs which will be passed to growers.
5. Random audits needed to check that returns to grower reflect the price achieved by trader in agent transactions.

More information required

1. More information should be presented to growers on the inclusions required in the Horticultural Produce Agreements. The meeting tended to reflect compliance, mediation and assessment issues.

Grower response

Presentation well received although there was a concern about the Codes ability to make a difference.

Questions

Question	Response
Who will decide if produce is within specifications? Is this in Horticulture Produce Agreement?	No, assessor will decide if specifications are met.
How many Assessors will there be? <i>(It was felt that many assessors would be required.)</i>	Not sure.
Who pays for Assessors?	Traders and growers share costs if trader agrees. If not, grower must pay.

Will ACCC be auditing traders? Eg if on-selling price was different to that received by grower.	Assessor can act after complaint by grower to access trader's records.
Why are buyers not revealed?	Intellectual property of trader and if accessed, grower could sell direct to retailer.
How many trades per day in Australian wholesale markets? Who wrote the Code?	Unsure of the number of trades. The Code was written after consultation process.
Will assessor be able to get information from trader?	Yes. Also, if there are a number of complaints about a specific trader the ACCC will investigate.
How will we handle paperwork?	Have two agreements – agent and merchant. When produce is ready, grower can negotiate with trader about terms of trade.
Is Agreement used for trader selling to exporter?	Yes, similar to trader selling to a retailer.
What about agents selling to agents?	If fair price is given, this is not an issue. Should be checked against daily prices.

Ayr Meeting

Meeting: Ayr	Location: DPI&F Ayr
Date/ Time: 14/03/07 3.00 pm	Duration: 2 hours
Chair: Paul Ziebarth (Growcom)	Presenter: ACCC
Attendance: 27 + John Power (DAFF)	Crops: mangoes, mushrooms, melons, vegetables

Issues raised

1. Traders have already sent out terms of trade in Dec 06 which changed conditions that already existed eg payment in 28 days not 21 days.
Traders will not deal with a grower if you do not accept their terms.
ACCC – If agreement was entered into after 14/12/06, Code applies. Some of these were back dated prior to 14/12/06
2. There should be no application fee for disputes – subsidised by government.
3. ACCC will not act on one complaint eg. different selling price one grower receives. This is logged on ACCC database for future matching to other complaints.

Identified problems

1. Assessors need to act quickly when a problem is identified
2. Concern that if growers complain about treatment of consignment, trader will not deal with grower anymore.
3. Growers who are a long way from market must bear costs such as freight. There should be a grower's Terms of Trade eg merchant should pay freight from farm.
4. Need for unbiased assessors

More information required

1. Advisable to put time frame in agreement for produce to be assessed by trader. This will vary according to type of produce. Difficulty with definition of 'immediately on delivery'
2. Need to better understand if agent receives commission if there is a bad debt from buyer.

Grower response

1. Debate over whether traders will act as agents or merchants.
2. There should be a legislated time for trader to inspect produce after delivery.
3. Unsolicited deliveries will always be treated poorly.

Questions

Question	Response
Are mediators having more power than previously?	Do not know
What is defined as a successful mediation outcome? eg. gained \$1/ tray but in reality was a \$20 loss	Not defined
How long does 3 rd party have to return produce if not up to their standard? (Returns currently up to 7 days after sale)	Ownership should change when transferred to 3 rd party. Should be stated in agreement that this is the case.
What happens when produce sits in the sun for a long period?	Invoke mediation process but this should only be a problem in an agency agreement.
What about when produce is returned to trader from retailer in poor condition?	Call in mediation
Who is responsible for bad debts from buyers?	Credit service in markets organises retailers to pay traders, so there should be no bad debts to traders.
Who pays for assessors?	Party who seeks service.
Will there be a generic agreement?	Yes, HAC and Australian Chamber of F & V Wholesalers are working on these.
Will these be easily accessible to growers?	Not sure where they will be available, perhaps on DAFF website.
Why is freight not paid by merchant?	Such terms should be negotiated as part of agreement which may be difficult for smaller growers.
Is it legal to not sign contract and continue to send produce?	No, ACCC would view this dimly.
Will traders be enforced to act as either an agent or a merchant?	Yes, ACCC will enforce.
If there are only a small number of complaints and grower took separate legal action, would grower have access to other complaints?	No, contravenes privacy laws

Bowen Meeting

Meeting: Bowen	Location: DPI&F Research Station
Date/ Time: 14/03/07 6.00 pm	Duration: 2 hours
Chair: Dale Williams	Presenter: Albert Julum ACCC
Attendance: 20 + John Power (DAFF) and a representative from Growcom	Crops: bananas, tomatoes, vegetables, mangoes

Issues raised

1. Ensuring that the prices received are correct ie. the price obtained by the trader
2. Difficulty in setting price before trader sees produce
3. Need for Agreement to define trading status as agent or merchant. Some stated a preference that a hybrid arrangement still existed.
4. Difficulty of setting agreed price on delivery as this time may be inconvenient eg. 2 am.
5. Retailers should have been included.
6. Significant positive is the ability to compare agent transactions in one market to gauge performance.

Identified problems

1. Retailers dump over ordered produce back onto markets which should be subject to Code.
2. Existing Agreements entered into before 15 December 2006.
3. Growers require more flexibility in Agreements. There was little support in this area at previous consultation meetings. Need to reflect mature business relationships between growers and traders. Some growers have arrangements where trader decides price on the day of sale but a merchant agreement is used.

More information required

1. Bowen growers would like another meeting with HAC / DAFF.

Grower response

Meeting felt that Code did not reflect their wishes for flexibility in Agreement.

Questions

Question	Response
When does price have to be set if acting as a merchant?	Two times - On farm or on delivery.
Does Code apply to traders outside central markets?	Yes, does not apply to retailers and exporters.
Why are retailers allowed to reject produce without this being part of the Code?	A policy issue, not ACCC.
If merchant Agreement is made but some produce is below specification, is the transaction cancelled? Is this subject to audit?	If grower agrees, then change can be made in contract. Call in Produce Assessor.

When does trader have to give grower a sales report?	Specified in HPA.
Retailers send produce back to market if they over order. Why are they not subject to Code?	Policy issue
What is done if retail buyer does not pay agent?	This is not covered by the Code. Market credit service covers agent bad debts.
Will agent follow up bad debts or does grower do this?	Specified in HPA.
Can growers include in Agreement that agents will not receive commission if bad debt is incurred with buyer?	Yes.
Will ACCC approve draft Agreements?	No, this is a role for grower organisations.
Is mediation based on 'without prejudice'?	Any mediation process can be used in court. It is not 'without prejudice'.
Will the Assessor check merchants and agents?	Yes, both. Assessor could do an audit by checking with buyers the prices they paid.
Could ACCC take action against a grower who continues to send inferior produce labelled high grade	Yes, if there was a large amount of this poor supply.
How do growers know they are receiving correct prices? We need an impartial report of market prices.	Assessor could check agents records. Merchant price agreements are set before sale.
If I send to a merchant saying get me the best price, what type of Agreement is this?	Agent Agreement.
Have agency fees been agreed?	No.
What is definition of delivery?	This must be decided by trader and grower.
If grower already has Agreement with trader, can he continue with that?	This will remain in place until a change is made to the Agreement.

Innisfail Meeting

Meeting: Innisfail	Location: DPI&F South Johnstone
Date/ Time: 15/03/07 2.00 pm	Duration: 1.5 hours
Chair: Keith Noble (Growcom)	Presenter: David Sutherland ACCC
Attendance: 16 (4 left within 5 minutes of start) + Kris Newton (HAC), John Power (DAFF)	Crops: bananas, pumpkins, lychee

Issues raised

1. Merchant vs agent – Traders may lean towards merchant agreements due to not wanting the transparency of an agency Agreement.
2. Growers have been told by traders that they must accept terms of trade but growers can negotiate terms of trade with trader.
3. Growers do not know the retail prices obtained so are not sure if their reports are correct. There is no transparency.
4. Agent transaction report must include GST as a tax invoice. (GST payable on commission).
5. Fees – what will assessors charge?

Identified problems

1. Quality changes each week, so concern that Terms of Trade will need to constantly change.
2. Issues of relationship between trader and grower about fruit quality issues.

More information required

1. Cost of mediation – will government cover costs?

Grower response

Disappointment in lack of transparency in transactions between grower, buyer and trader.

Questions

Question	Response
Will growers be offered agency Agreements?	This may be unlikely as traders are indicating that they will prefer merchant Agreements (K.Noble).
What happens with bananas where prices can not be agreed until ripening is done?	Price should still be agreed upon delivery
If grower and merchant can not agree on price, can grower forward to another merchant?	This should be included in Agreement.
Can trader change from agent to merchant for different transactions?	Yes, the contract length is determined by negotiation.
Is access to the trader's computer enough evidence of reporting?	Probably, although unsure.

Can we access the records of sales to buyers by traders?	Yes, through assessor.
If merchant is also retailer, does Code apply?	No.
Does Code apply if trader sells to retailer?	Yes.
Will there be draft Agreements? And will they be ready in time?	HAC and DAFF are developing four sets of templates? Two HPA and two Terms of Trade documents.
Are these being developed in conjunction with trader?	Yes.
How many assessors will there be? Who pays them?	Not sure, DAFF have advertised for EOI. Whoever calls them in.
Why did agents send out contracts in December?	To tie growers into contracts before 15 December 2006 when Code was ratified.
Does agreement include percentage commission?	Yes, if acting as agent.
Can a group of growers take a complaint to an assessor?	No, as the complaint would be based on different Agreements.
Will there be random audits?	Not at this stage but DAFF can change policy.
Are there reviews of the legislation?	Formal review after 2 years but changes can be made after this time.
Why are supermarkets not included?	Problems were mainly with traders and supermarkets have signed to the voluntary Grocery Code.

Tully Meeting

Meeting: Tully	Location: Country Club, Ayr
Date/ Time: 15/03/07 6.00 pm	Duration: 1 hour 10 mins
Chair: Keith Noble (Growcom)	Presenter: David Sutherland ACCC
Attendance: 14	Crops: lychee, exotic fruits, bananas

Issues raised

1. Packing sheds – Who should Agreement be with? Needs to be examined more closely to clearly determine where Agreement should lie. There are different structures in packing arrangements. ACCC – If packing shed deducts a marketing fee and returns money to grower, Code should apply at this stage.
2. ACCC will not do spot audits. If there are consistent breaches, ACCC will investigate. Agreement and paper trail will facilitate this process.

Grower response

Very quiet meeting with few questions.

Questions

Question	Response
Who is the independent arbitrator of the standard of produce?	Assessor who will be nominated by Mediation Adviser. They will be independent of central market.
How long will mediation take?	Assessor will advise same day.
Are chain stores exempt?	Yes, if selling direct to retailer.
What happens if retailer sends produce back to market?	Ownership returns to grower who must negotiate with a trader.
What transparency is there in transactions?	Assessors have to be allowed access to selling records on grower's behalf.
Does the Code prevent 'price gouging'?	No, this is not unlawful.
Does a packing shed have to show different traders used for marketing? Does the Code apply to packhouse?	Code does not apply if only packing. If paid a marketing fee, Code applies.
What if grower sells to an agent who sells to his own family who acts as a merchant?	Transactions must be 'at arm's length'. Call in Assessor.
How does grower maintain price?	Could put a reserve in Agreement.
Is organic produce covered?	Yes.

Atherton Meeting

Meeting: Atherton	Location: International Club, Atherton
Date/ Time: 16/03/07 2.00 pm	Duration: 1.5 hours
Chair: Keith Noble (Growcom)	Presenter: David Sutherland ACCC
Attendance: 9	Crops: vegetables, potatoes, lychee, peanuts, longan, bananas

Issues raised

1. Grower using a small local agent who sells to a central market agent. Who pays grower? Who should agreement be with?
2. When is merchant price agreed.
3. One trader is advertising that growers will be able to access their records on computer. It was felt that some traders are willing to make changes to attract grower's business.

Identified problems

1. Length of payment – grower needs to identify suitable traders who will trade on their terms

More information required

1. The ACCC presentation states that 'Delivery' is undefined so can be negotiated between grower and trader' ie. the definition of 'Delivery' can be defined by / decided between the grower and trader.
2. Draft agreements are required as soon as possible.

Grower response

Concern that traders will play growers against each other. Very positive that Code will be successful.

Questions

Question	Response
What are the terms for length of payment?	This is negotiated between trader and grower. Once it is agreed, it is binding.
Can contracts be drawn early?	Yes, at any time
Does agent have to pay if they do not receive payment from buyer?	Must define who follows up on bad debts in agreement
Does merchant have to report price sold produce for?	No
What action will be taken against traders who breach Code?	It will depend on level of breach and repeat offences. Can not be fined – no penalties but trader could have to make restitution. This would be a compliance order.
Is license lost if trader closed down with continual breaches?	No, there are no licenses. If court injunction breached, jail could result.
Is there a registry of problems with trader?	No, ACCC does not keep a register.

Does agreement define who defines produce?	Yes, depending on agreement
If merchant changes price after agreement, is this breach of Code?	No, can not change price.
If a small agent sells to another agent, who is the agreement with?	The small agent and grower should have an agreement.
Does agency agreement specify who money comes from?	
When does merchant have to agree price?	At farm or upon delivery
Where else does a similar Code apply?	Not sure
Will Code encourage imports as product replacement?	It would probably be cheaper for traders to buy local produce
Will there be a review of the Code?	In 2 years, but there is also a Review Committee that is constantly reviewing
Why are retailers not included in the Code?	Large retailers are signatories to the voluntary Grocery Code
What do traders feel about the code?	They feel that business will grind to a halt.
Will traders mainly act as agents or merchants?	Likely most will act as merchants
Does agreement have to be changed for each delivery?	No, could be for a longer period. For merchant agreements, price could be confirmed for each consignment.
Is there GST on sales?	

Mareeba Meeting

Meeting: Mareeba	Location: Mareeba Soccer Club
Date/ Time: 16/03/07 6.00 pm	Duration: 2.5 hours
Chair: Keith Noble (Growcom)	Presenter: David Sutherland ACCC
Attendance: 56 + Kris Newton (HAC) and a representative from Growcom.	Crops: mangoes, potatoes, bananas (1)

Issues raised

1. Too difficult to determine if trader is acting as merchant or agent.
2. There should be default times in Code for reporting etc.
3. An agent should send copy of retail sale he has made on grower's behalf.
4. Traders will introduce tighter controls on produce specifications
5. Need to carefully identify grower's own produce so can be sure that trader is dealing with your fruit if there is a dispute.
6. Daily market reports are false and should be investigated by ACCC. Need unbiased reports of prices in market.

Identified problems

1. Not enough policing power for ACCC.
2. Identification and definition of 'delivery'.
3. If trader tells grower he will not accept produce, grower will lose perishable product.
4. Traders will not agree to merchant Agreements.
5. Traders will bring in imports and not take local produce.
6. Short season – problem of chasing who buys produce.
7. Need to have a 3-way docket with grower, agent and retailer for traceability.

Grower response

1. Legislators do not understand grower's needs.
2. Growcom does not represent all growers.
3. If no growers have Agreements, Code can not get off ground.

Questions

Question	Response
If you happy with trader, do you have to use HPA?	Yes.
What if trader claims he is neither agent or merchant?	Must be one or other.
Does a 90 day Agreement set price of produce?	It is entirely up to negotiation between grower and trader?
What period of time is set for contacting grower about fruit quality?	Immediately on inspection.
Who has responsibility to change Code? Who do we write to?	Federal government (DAFF or local member). Reviewed in two years.
If retailer returns produce to agent, who owns it? If retailer bought it, can he return it?	Depends on arrangements in Agreement. If producer has changed ownership to retailer, he can not return it.
Is Code providing assistance with pursuing bad debts?	Yes, the method for this can be stated in the Agreement.
Can Agreement include written evidence of retail sale?	Yes, this could be included.
What happens if trader leaves mediation?	Breach of Code – ACCC will become involved and there could be a court case.
Is trader allowed to sell to his own company or family as an agent?	Agent must 'act in grower's best interests' or is in breach of Code. Assessor can follow through on sale.
Why does Code not define 'delivery'?	Delivery should be defined in Agreement. Varies with crops.
What if produce is handled incorrectly?	Assessors should be called in.
Who will Assessors be?	Not yet employed.
What are the costs?	Not yet determined.
Who will pay Assessor?	Whoever called them in.
Why is there no requirement to disclose buyer? Mediators would not be required if there was disclosure of buyers.	Buyers are the intellectual property of the trader. Grower could trade directly with the buyer.
Why are retailers left out of the Code?	All direct transactions are covered by voluntary Produce & Grocery Code. Traders who work on behalf of retailers should be included in the Code.
Are traders required to give buyer's names to mediators?	Yes, to Assessor.

Gayndah Meeting

Meeting: Gayndah	Location: Orange Grove Motor Inn, Gayndah
Date/ Time: 20/03/07 1:30 pm	Duration: 1 hour 10 mins
Chair: Alan Jenkins (Growcom)	Presenter: Albert Julum ACCC
Attendance: 28	Crops: citrus

Issues raised

1. Wholesaler has stated that they must set Terms of Trade. They will not accept a range of grower terms. Use of draft agreement may solve this problem.
2. Price averaging. Grower would prefer average price to prevent overload of paperwork when partial sales of a consignment are made.
3. Where grower is packing for other growers for a fee and marketing on their behalf but not charging a fee, is the grower acting as an agent? Concern that there was then no Agreement needed between the grower who was packing and the central market wholesaler.
4. Some packing sheds are grower owned cooperatives. Where should agreement exist in this situation?

Identified problems

1. When is an agreement required between grower – packer- agent?
2. Setting prices in merchant Agreement. The timing for this could be inconvenient.
3. Who needs to call in assessor if there is a dispute on delivery? Without the evidence of assessor, it is very difficult to progress dispute resolution.

More information required

1. Growers need to be aware of the need to contact ACCC with complaints to establish a pattern of behaviour.

Grower response

Seemed happy with Code but need clarification on packhouse issues.

Questions

Question	Response
Can we charge interest on overdue payments?	Yes, if you put this in the Agreement.
Do Agreements before 15 December have to be lodged anywhere?	No, these are binding unless changes are made when the Agreement becomes subject to the Code.
If consignment is sold at different times, will agent pay at different times?	Yes.
Can you ask agent to pay after entire consignment is sold?	Yes.
What is an agency transaction?	An agent helps grower to find a buyer and charges commission.

If cartons are sold at different prices, can trader average prices?	Must show individual prices in their records Trader could report less frequently.
Does a packer have to have an Agreement with growers if he markets on their behalf?	Yes.
Could packer have a long term Agreement with growers for a \$0 fee?	No, must have an agency Agreement.
Can packer act as a merchant and then pay extra profit to grower?	Unsure, need to check
What about second transaction between packer and trader?	Unsure, need to check
Is there an automatic process for mediation adviser to contact ACCC?	No, this is up to grower.
Do I need Agreement with chain store? Why?	No, policy issue. This issue should be addressed to DAFF and grower organisations.
Is there scope for duty of care by traders?	Yes, must maintain quality. Otherwise grower should call in assessor.
If grower sells to supermarket and broker pays me, do I need an Agreement?	Yes.
What if trader sends out agreement on 13 May, is there a time limit on grower's ability to peruse Agreement?	Unconscionable conduct. ACCC would examine issue.

Bundaberg Meeting

Meeting: Bundaberg	Location: DPI&F Research Station
Date/ Time: 21/03/07 3.00 pm	Duration: 2 hours
Chair: David de Paoli (Bundaberg Fruit and Vegetable Growers)	Presenter: Albert Julum ACCC
Attendance: 34 + representative from BFGV and Growcom.	Crops: tomatoes, vegetables, avocados, mangoes, tomatoes

Issues raised

1. Concern about need for amount of contact between grower and trader to dispute quality
2. Smaller growers will be disadvantaged due to less negotiating power.
3. Random audits should be added to Code.

Identified problems

1. Will this solve cash economy in the markets?

More information required

1. Background to establishment of Code.
2. Draft Agreements

Grower response

Concerned about wholesaler campaign to convince growers that Code is unworkable.

Questions

Question	Response
How can grower recover debt, if you do not know who buyer is?	Agent must let grower know in this case.
How do you know selling price of produce?	Trader should tell grower the correct price. If in doubt, ask assessor to intervene.
What stops agent selling to himself?	Transaction must be 'at arm's length' and mediation should be involved. ACCC can examine records.
What about agent who has share in retail outlet?	Should inform grower that he is doing this.
Can assessor go in anonymously?	No
Does Code include payment terms?	Must be detailed in Agreement.
Can agent ask grower to pay his expenses?	This would have to be negotiated.
Why do I have to have an Agreement if I have dealing with him for years?	It is best to set those terms down.
What happens if agent returns produce to grower after buyer refuses it?	The arrangements for returns should be detailed in Agreement.
Can grower use any assessor?	Yes

Will there be more merchants on the markets?	If there is lack of choice, ACCC will examine the issue.
Would ACCC prosecute growers?	No response.
Is there protection for growers against errors made by agents?	Act says agent has a 'duty of care'.
Can Agreement say produce has to be sold in 24 hours?	Yes, after this period, Agreement is void.
With long term Agreements, is there a release clause?	Could choose to use another trader, if there is no exclusivity clause.
Will records be kept of sales?	Yes, traders are required to do this.
What will it cost for traders to comply? Will this be passed on?	Do not know.
If agent is not paid by buyer, will he pay grower?	Set this into Agreement.

Gympie Meeting

Meeting: Gympie	Location: Gympie Packhouse
Date/ Time: 22/03/07 10 am	Duration: 1 hour 10 mins
Chair: Paul Ziebarth (Growcom)	Presenter: Albert Julum ACCC
Attendance: 25 + representative from Growcom	Crops: beans, mangoes

Issues raised

1. The Code is unworkable, grower should inspect produce themselves.
2. Need to know market price fluctuations.
3. Difficult to make trader act as either agent or merchant and would like grower to maintain status rather than change on produce delivery.
4. Concern about collecting bad debts through an agency arrangement.
5. Grower needs to be on call early in the morning to agree on price, if price determined 'upon delivery'. Should be trend toward setting price earlier.

Identified problems

1. Being unable to determine prices ahead of time.
2. Growers do not understand the difference in merchant and agent status.

More information required

1. Draft Agreements
2. Market prices – how to obtain market pricing information.
3. Information about produce deliveries expected into the market.

Grower response

One grower stated that growers will not be able to trade with the markets anymore. Others felt that there were too many problems in the markets and the Code will help solve these.

Questions

Question	Response
Do I have to have an Agreement?	Yes, it is law.
How are prices set now?	A combination of factors from trading sessions to contracts to chain stores.
Can Agreement be either as agent or merchant?	Yes.
Why were contracts sent out before 15 December 2006?	Wholesalers were trying to tie growers into contracts before 15 December 2006.
If I wish to continue dealing with an agent, how do I know I have covered everything in the Agreement?	Try to include these things in Agreement, particularly with issues where there was a past problem.
Is it up to grower how tight he wants the Agreement?	Yes, as long as it meets Code requirements.
Where does legal advice come from?	From local solicitors, industry organisations.

How could a grower deal with a trader for as long as 90 days?

That is grower's choice.

Caboolture Meeting

Meeting: Caboolture	Location: Caboolture RSL
Date/ Time: 22/03/07 7:00 pm	Duration: 2 hours
Chair: Paul Ziebarth Growcom	Presenter: Albert Julum
Attendance: 19 + representative from Growcom	Crops: lemons, lychee, pineapples, custard apples avocados, stone fruit, mangoes

Issues raised

1. Traders have made it obvious that growers will be responsible for extra costs eg cold storage, moving pallets.
2. Still do not know what price produce is sold for – need random audits.
3. Transparency – need more frequent reports.
4. Bad debts – specify in agreement that agent only sells to buyers registered with the market credit service.
5. Agent selling to other agents – must be 'arm's length' transaction
6. Growers can have numerous Agreements in place.
7. Can include specification for quality in agreements.

Identified problems

1. Difficult for growers to negotiate with traders.

More information required

1. Need for draft Agreement
2. Delivery status – problem of mixed loads. Need for 'delivery' options to be more clearly defined.

Grower response

Mainly trying to understand information. Keen to have draft Agreements.

Questions

Question	Response
Can details be added to consignment note?	If the wording covers the Code.
Is there a draft Agreement available?	Very soon.
If extra charges are not in Agreement, do growers have to pay them?	No, breach of contract.
What if the trader has unfavourable Terms of Trade and grower needs to use that trader?	Not covered in the Code.
Is there a difference between an Agreement and a contract?	Agreement is a contract when it is signed.
Does grower have to get written confirmation of price for trader?	Yes, need written evidence.
How often are reports sent?	As often as requested in Agreement.

What about traders outside the markets where the credit service does not exist?	Must specify debt collection in Agreement.
What can be done about the need for agreeing on merchant price at unreasonable times?	Price setting will occur at other times, particularly in relation to trader's long term supply contracts.
If grower is happy with current arrangements, can he continue with those?	Yes.
Do you have an Agreement for only one consignment?	Yes.
Are there sunset clauses in Agreement?	Yes, can include these.
What happens if fruit is ripened in transport? Who is responsible?	Transport company or grower must state in Agreement when fruit is on truck.
Do you need more than one Agreement if two different products go to one trader?	No.
Are traders supplying contracts or should growers chase these?	Growers should do this.
What if trader refuses to have a contract?	They are in breach of the Code.
Should growers sign short term Agreements until dust settles?	Good idea.
What about ability of smaller growers to negotiate?	There are a lot of small growers who make a large proportion of the market and traders need produce to operate.
What about the rebate for retailers, is this included in Code?	Only in agency Agreements – grower needs to agree to this rebate in the contract and it should be treated as an expense and itemised.
What is the best way to set up agreements for grower groups who market together?	Group should determine Agreement between them selves.
Does the Code apply to chain stores?	No.
Does Code apply to processors eg Golden Circle?	No.
Will traders and growers each have a copy of the agreement?	Yes.
Is there another repository for Agreements?	No.
What is the review process	Two year formal review. In meantime, DAFF will be setting up a review committee.
Packing group has agreement between grower and packing shed. Can we still pool prices?	Traders will not be allowed to average in agent transactions. Intent in marketing groups is different. As long as grower groups agrees to mechanism and this in Agreement, this would be consistent with the Code

Nambour Meeting

Meeting: Nambour	Location: DPI&F Research Station
Date/ Time: 30/03/07 7:30 pm	Duration: 1 hours
Chair: Paul Ziebarth (Growcom)	Presenter: Albert Julum
Attendance: 16	Crops: pineapples, avocados, custard apples, lychee, strawberry

Issues raised

1. Paying for Assessor – how much and who pays?
2. Definition of 'delivery' in merchant Agreement so it is clear when ownership passes from grower to merchant.
3. Pooling – still concerns about the acceptability of this practice.
4. Packhouses that provide a facilitating role are now regarded as traders. Agreements between grower and packhouses are required under the Code when the Agreement should be between the packhouse and market. Grower cooperatives do not then have Agreements with traders and are not covered by mediation process.
5. Code does not catch unincorporated bodies. If they trade across state boundaries, Corporations Act would catch this.
6. How do agents set price? Delivery is 9 pm to 4 am. Wholesale representatives indicated that price is set between 6-9am on market floor. Two different types of sales – telephone and market floor. Price has not been set for telephone orders until after the morning market.

Identified problems

1. No market regulators – growers must rely on dispute resolution.

ISSUES RAISED BY BRISMARK REPRESENTATIVES

2. *Traders went in to Code meetings with grower interests at heart.*
3. *Issues of traders having produce on the market floor with no Agreements.*
4. *Traders will be able to sue growers if they do not deliver.*
5. *Other problems Brismark representatives raised:*
 - *Time insufficient after delivery for agreement on price with merchant*
 - *Difficulty of agent having to trace every consignment and not being able to average prices*
 - *Time frame is too short for traders to have systems in place (ACCC responded that these are policy issues).*

Brismark representatives also indicated that:

- *Commissions will rise to 18 – 30% because traders have to bear risk.*
- *Wholesalers will include product specifications in Terms of Trade.*

- *There is a problem of literacy with some growers (ACCC explained that it would be Unconscionable Conduct for wholesaler to not explain Agreement to grower).*

More information required

1. Packhouses - where the Code will apply in specific supply chains and the requirement for packhouse - trader relationship to be covered
2. Pooling of prices in packhouses
3. Market Credit Services which cover traders for bad debts in retail sales.

Grower response

Concern about lack of clarity on issues such as packhouses and pooling.

Questions

Question	Response
Is there an onus on merchants to pay for Assessor?	Whoever calls in the Assessor pays for the service.
How is policing of Agreements carried out?	Complaints to ACCC.
Does this only occur if there is an issue?	Yes.
Does ACCC have right of entry to inspect?	No.
What are the penalties for breaching the Code?	No monetary penalties. ACCC takes out injunction and advertises the breach.
Are there penalties if growers do not have Agreements?	ACCC could take action and breach growers.
Why did the Farm Produce Marketing Act have two days to set price and the Code has 'on delivery'? (Brismark)	Policy issue.
When Code is law will growers be able to modify it?	Yes, but as it is the Code will provide a paper trail.
Is price setting time frame in Code?	No, different products have different times eg allowing for ripening.
What will happen to second grade produce?	Must be specified in Agreement that it is second grade.
Should solicitors draw up Agreements?	No, but it is advisable for them to look at them. If Agreement is more than 90 days, must get legal advice or waiver this right.

Greenbank Meeting

Meeting: Greenbank – Brisbane	Location: Greenbank RSL
Date/ Time: 26/03/07 6.00 pm	Duration: 1.75 hours
Chair: Paul Ziebarth (Growcom)	Presenter: David Sutherland ACCC
Attendance: 4	Crops: vegetables, custard apples, lychee

Issues raised

1. Grower expected that existing Agreements would be void when the Code came in. (Grower had signed Agreements before 15 Dec 2006).
2. If a grower markets for another grower, is there an agency arrangement if no fee is charged? Definition of agent is 'acts for a fee or commission'.
3. Adding specifications sheet into Agreement is a good idea.

Identified problems

1. Draft Agreements will not be useful due to lack of power of smaller grower to negotiate.

Grower response

Some concern about enforcement of Code, transparency of transactions, duty of care to produce was expressed.

Questions

Question	Response
Can a trader be an agent and a merchant?	Yes, for different transactions.
Can a trader make excess profit from a transaction?	Must clarify price arrangement before sale.
Can a grower top up an order from another grower?	Yes, but must have an Agreement in place.
What can a small grower do to negotiate with a trader?	The Code will only document what is agreed to give transparency.
Can growers agree with a merchant for a set price for the season?	Yes.
Can agents change records of sales without detection?	If they do, a third party (assessor) can inspect records. Change of records is fraud.
When does trader have to notify grower of rejections?	Immediately.
Is 14 May 07 the start date?	Yes.
What are the penalties for breaking the Code?	Breach of Part 4B of the Trade Practices Act. No penalty but ACCC could take trader to court where an injunction is granted. A breach of an injunction is contempt of court.

Boonah Meeting

Meeting: Boonah	Location: Cultural Centre
Date/ Time: 27/03/07 6.00 pm	Duration:
Chair: Paul Ziebarth (Growcom)	Presenter: David Sutherland
Attendance: 4 + representative from Growcom	Crops: Pack houses and broccoli

Notes taken by Jan Davis (Growcom)

Issues raised

1. Several queries about operations of packhouses particularly with averaging.
2. Time of price setting – problems of early hours of the morning.
3. Concern about lack of definitions in Code.
4. New product specifications demanded by traders.
5. Retail sector should be covered by Code.

Identified problems

1. Growers will lose money
2. Want to do business the way it has always been done but this will not be legal.
3. Concern about what is meant by one transaction.
4. A grower / trader at the meeting indicated that agency transactions would be too onerous in paperwork for traders.
5. Onerous to report every day, if this is required.

Grower response

Code is not what growers wanted in transparency.

Supportive of group effort by growers to join credit agencies.

Berri meeting

Meeting: Berri	Location: Berri Hotel
Date/ Time: 28/3/07 5.50pm	Duration: 1.5 hrs
Chair: Kent Andrew (Citrus Growers SA)	Presenter: Anthony Parker, James Blindell ACCC
Attendance: 21 (mainly packers)	Crops: citrus

Issues raised

1. Paperwork & product tracking impost on packers.
2. Lack of understanding by ACCC of the reality of how citrus is packed and marketed.
3. Apparent discrepancy in ACCC advice regarding application of code to fruit destined for export etc.
4. Puts barrier between grower and packer – doesn't address wholesaler issues.
5. Stated that packing shed has obligations to report and so will have to require the subagent (market wholesaler) to provide records and info to enable shed to meet its obligations under the Code.

Identified problems

1. Apparent discrepancy in ACCC advice regarding application of Code to fruit destined for export etc.
2. How will packer enforce need for wholesaler to provide information to pass on to grower.

More information required

Need for thorough supply chain mapping of product through the packing shed into various channels, in order to provide clear, graphic understanding of application of rules and obligations under the Code.

Grower response

Growers present had a good understanding of operations of packhouse, as in pooling of product, selling on consignment.

Packer response

Dismay at the fact that their role as agent or merchant will require major changes to how they do business and apparently not help in dealings with market wholesalers.

Questions

Question	Response
Commonly supply to packing shed in bin lots – will end as mixture of export/domestic/juice.	Code doesn't apply if direct from grower to exporter, but if goes via packing shed, all of shipment is covered by the Code, because it is all either agent or merchant transaction.
When bins are loaded on the truck, sign off on transfer of ownership to packer, for GST reasons.	

How does this work if sold on consignment?	Timeframe for payment in Terms of Trade covers this, eg. within a month of sale to third party.
Code applies between grower and shed, but not between shed and wholesaler. It has put paperwork between grower and packing shed.	Assumes packing shed is acting as an agent.
Who pursues bad debt?	Needs to be covered in HPA
Wasn't this supposed to be aimed at wholesalers?	If you are a grower, sending to a packing shed and the packing shed acts as an agent, the grower and packing shed have to have a HPA
Wouldn't packing shed have to have agreement with the agent? (comment: It subverts the whole original purpose – the aim was wholesale market regulation. Great for the vegetable industry but hopeless for us).	The relationship between the packing shed and wholesaler is not covered by the code, but the packing shed is obliged as an agent to keep records of sales, quality etc. Packer can't avoid responsibility for this, so must require its "sub-agent" (the market agent) to keep proper records.
At the previous citrus packer meeting with ACCC (Mildura) it was indicated that fruit for export was totally excluded.	If the shed is not an agent for the grower then talking about grower to sub-agent relationship. Need to clarify role of shed. If only packing it, but the grower is dealing with the wholesaler, then Code applies between grower and wholesaler.
There is no requirement on the agent in the markets to do that work.	It will still have the regulatory effect because the shed has obligations to report and so will have to require the subagent to provide records and info to enable shed to meet its obligations under the Code.
If there is any problem between the agent and sub-agent, can't use the mediation process of the Code?	No, that is a separate relationship that falls outside the Code.
Packing shed has to do a deal with grower on one portion of the fruit – domestic only. Has added a layer of cost.	Don't want to get into a debate on policy side. Code applies unless you cut out the packer as an agent and deal directly with eg. exporter.
	Ongoing Q & A on whether export fruit is covered. Insists exclusions only apply if direct grower to export or supermarket
If the packer sells to a city-based exporter does it apply.	If packing shed acts as an agent then your relationship is with the agent and is covered by the Code. If you deal direct, then its not.
Could cost us a lawyer's fee every time.	Not an obligation, just a safeguard.
What power will grower have against packing shed (in negotiation HPA)?	Code will build in minimum terms.
Citrus Board had a generic template with basic standards – was sent to ACCC, but no response as yet.	ACCC is looking at a number of drafts, but not able to provide legal advice.
The wholesalers circulated document before Dec 14 th , 2006? It basically negated the HPA – was that legal?	ACCC not in a position to advise on that.

Understood that HPA was going to be sufficient?	Code covers relationship between grower and trader. Packing shed has to be aware of its obligations to provide feedback to grower on price etc. Has to ensure it gets the info from the sub-agent. Shed is delegating its responsibility to that sub-agent.
Are we making it harder than we need to? What is the information you have to feedback to grower, within a specified time?	Date of Sale, Time of delivery, Price received etc
Time limit on that?	Built into the Agreement.
Typical for fifty growers to deliver in a week and sell on to 20 different agents, they might sell to other agents. How do you keep track?	Need to have an identification system to track through. The pooling system and the averaging process can't happen under the Code.
Principle intent was to improve relationship between grower and market agent. But citrus approach will be incompatible with this, unless shed acts as a merchant. May only be compatible at great cost. Logistics are impossible	ACCC can't change how Code will operate, appreciate frustrations, but your avenue is to take it up with DAFF, Minister, local federal member.
Won't be worthwhile dealing with small growers with a few bins	Take on board, but issues are common across a number of areas.
What does 'bought' mean - when it is paid, when delivered?	No definition of 'bought' or of delivery – needs to be defined in HPA. The HPA doesn't affect rights of grower to seek payment, all it does is define role of agent in pursuing debt
Who is paying for mediation?	50:50 split plus govt subsidy
Appalled at the lack of understanding of the citrus industry. What is ACCC role in oversight of the Agreements?	Compliance & enforcement role, not auditing. Response to complaints & enquiries. ACCC have no role in reviewing Agreements.

Gatton Meeting

Meeting: Gatton	Location: DPI&F
Date/ Time: 29/03/07 6.00 pm	Duration: 2 hours
Chair: Ian Rickuss	Presenter: David Sutherland ACCC
Attendance: 31	Crops: persimmon, stone fruit, avocados, vegetables

Issues raised

1. ACCC stated that a packhouse is not an agent if they do not charge a commission or fee.
2. Standard Agreements / contracts required.
3. Definition of delivery – ownership passes when price is agreed or at delivery.
4. Merchant will not make a transaction on a downward market without costs to grower.
5. May have to operate on purchase orders so traders know how much product they will have on the floor.

Identified problems

1. Transfer of ownership – this could be the biggest problem. Traders may push out the time frames for 'delivery'.
2. Traders will go back to being agents so growers carry all the risks. Credit services could cover this.

Grower response

Mostly responsive to concept. Concerned about selling on a downward market in merchant agreement.

Questions

Question	Response
If I pack for a neighbour and then market his produce, am I an agent of merchant?	Look closely at what you do. Probably best to talk to lawyer to determine best way to trade.
Can delivery point be extended?	Yes, if you are prepared to take the risk.
What if grower and merchant can't agree on price?	Grower retains ownership and could use another merchant.
Will this become law?	Yes.
Can assessor see agent's books? What if they keep two sets of books? Assessor needs to be able to see buyer's books.	Yes. Two sets of books is fraud. If acting as agent, there will be GST records.
Did Code lead to Fresh Specs coming from market?	This is connected – the traders have said they will be specifying what produce they want.
A broker orders produce to go direct to retailer. Is this covered by the Code?	Yes.
Will the Code over-ride common law requirements?	If it conflicts, yes.

What does 'pay' mean?	When the money is in grower's account.
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Toowoomba Meeting

Meeting: Toowoomba	Location: DPI&F Toowoomba
Date/ Time: 30/03/07 9.00 am	Duration: 1.5 hours
Chair: Ian Rickuss	Presenter: Albert Julum ACCC
Attendance: 15 + representatives from Growcom & ANZ Bank	Crops: avocados, vegetables

Issues raised

1. Packhouses need to separate costs in report to grower eg. sorting, packing, marketing.
2. Good relationships with traders can continue under the Code.
3. Will growers have produce returned under agency Agreements?
4. ACCC informed growers that Collective Bargaining Notifications are now legal – growers can join together to set prices.
5. ACCC stated three rulings at this meeting.
 - Cooperative packhouses must have an Agreement between grower and packhouse.
 - Packhouses can only pool prices for one day. They need to be able to track boxes of fruit so they can report to individual growers.
 - No Code applies to Buyer's agents.

Identified problems

1. Traders blacklisting growers who report them to mediator.

Grower response

Positive reception but there is considerable concern about the rulings for packhouses and pooling.

Questions

Question	Response
How many Assessors will there be, where will they be situated and will they be unbiased?	They will be in or near markets and will be available within hours.
Why are retailers not included in the Code? Why doesn't Code limit profit of retailers?	Retailers are covered by the voluntary Produce and Grocery Code.
If a buyer's agent is acting for a chain store, who is giving price to grower?	Agent.
What if trader is charging a commission from both grower and buyer?	This is illegal and ACCC would intervene.
How can growers beat traders who blacklist them?	Boycott issues will be dealt with by ACCC. There are many other traders to use in the market.
What if I am selling direct to buyers from a flea market?	Code does not apply.

Who is financing the ads on the radio about the Code?	BrisMark.
What if I have signed a contract before 15 December 06?	Any change to the Agreement after 14 May will bring the Code into play.
Why are traders so concerned about showing GST on agent's commission?	This is an issue for ATO.
Can you clarify the issue between growers and cooperatives?	See above.
Does grower know who has bought produce?	No, only exception is if grower has to collect bad debts.
Does trader have to protect quality of produce?	Yes, there is a 'duty of care'.
What if fruit requires ripening?	There will be a fee for this service and price can be agreed after this time.
Do we have until 14 May to organise this?	Yes.

Stanthorpe Meeting

Meeting: Stanthorpe	Location: DPI&F Applethorpe
Date/ Time: 30/03/07 7:30 pm	Duration: 2 hours
Chair: Paul Ziebarth (Growcom)	Presenter: Albert Julum
Attendance: 39	Crops: stone fruit, apples, vegetables, tomatoes, capsicum

Issues raised

1. Transparency of transactions has been clouded. Need clear guidelines on:
 - selling onwards in agency transactions
 - Need to know names of buyers; problem with only assessors getting buyer's names, if queried.

Identified problems

1. No random audits which would help maintain transparency.

Grower response

Code is not what growers wanted in transparency.

Supportive of group effort by growers to join credit agencies. The meeting would like Growcom to have a policy position that credit services distribute funds straight to grower.

Questions

Question	Response
Is GST involved?	Only in agent transactions.
Are agents responsible for bad debts?	This must be negotiated in Agreement.
Does Code have four year sunset clause?	Review after two years but no sunset clause.
Can we get a report fortnightly?	Every day if you wish. Must be negotiated in Agreement.
What evidence does grower have that price received was what was actually achieved?	Mediator can look at books and follow up with buyers.
Who is paying for ads on radio?	Brisbane Market Ltd.
Why were supermarkets not included in Code?	Code was to provide Agreement between wholesaler and grower. This already exists between chain stores and grower.
Will agent be aware that assessor is checking on transactions?	It depends if trades will stand out as different. Assessor may be able to ask for a range of trades on a day.
What prevents agents selling to themselves?	If the price received is not market level, call in assessor. Must be an arm's length transaction.
Will ACCC prosecute traders?	If serious breach of Code, Enforcement Committee makes the decision to pursue.
How timely will this be?	As quickly as possible to get an injunction.

Are Assessors employed by growers or ACCC?	Mediation Advisor appoints them. Grower pays for their services.
When should Agreements be in place?	Before 14 May 2007. Templates being developed and available soon.
In relation to bad debts, can grower stipulate that all debts go through the credit agencies?	Yes. In Sydney, grower may have to join credit service.
Can credit services distribute straight to grower?	Yes, this is a logical step from the Code.

Yeppoon Meeting

Meeting: Yeppoon	Location: Yeppoon Bowls Club
Date/ Time: 2/04/07 7:30 pm	Duration: 2 hours
Chair: Ian Groves (Yeppoon Fruit & Veg Growers)	Presenter: David Sutherland
Attendance: 20	Crops: pineapples, lychee, sweet potato, avocados, custard apples

Issues raised

1. Marketing groups – need to examine the structure. Some employ a marketing coordinator who directs fruit selling but never actually takes possession of fruit. In some marketing groups, the coordinator is paid a fee by growers. Growers do their own packing. Payment for produce may come from marketing group or direct from trader in the markets.
2. Ownership – this issue needs clarifying in relation to returned produce.

Identified problems

1. Licensed varieties – there is a plant breeder's right contract between the licence owner and the grower. The fruit must be sold through the licensee. Is a separate HPA required?
2. Ownership issue – should have included companies and unloaders to have accountability in change of ownership changes.
3. Packhouse fees – HPA should not be used if packhouse is charging a packing fee, not a marketing fee.

More information required

1. Draft Agreements – needs input from wholesalers.

Grower response

There is considerable concern about packhouses and pooling. The suggestion was to define a packhouse as a 'grower'.

Questions

Question	Response
In agent Agreement, what is definition of 'sold'?	Should be defined in HPA
Do agents have to report who they sold product to?	No, unless grower has to chase bad debts. If grower is suspicious of the trader should call in Assessor.
Who pays for Assessor? Could you write into agreement that cost is shared?	Whoever calls them out. Yes, this could be written into Agreement.
Who will appoint Assessors? It is important to have independence.	Office of Mediator.
Does mediation have to be face to face?	No, it could be by phone or video link.
If there are fruit quality issues, can Assessor be called in immediately?	Yes.

Why does Code not apply to supermarkets?	Voluntary Grocery Code applies in this situation.
What about a review process?	Formal review in two years.
What about chasing bad debts? Should you specify who agents sells to re: credit rating?	Can specify that agent only sells to buyers registered with market credit service.
In merchant process, when message of price arrives, is this an offer?	Yes, then you must agree to it.
What about pooling?	Packhouse must be able to track individual produce.

Lismore meeting

Meeting: Lismore	Location: NSW DPI, Alstonville
Date/ Time: 2/05/07 10.00am	Duration: 2 hours
Chair: John Rogers (NSW Farmers)	Presenter: Albert Julum, ACCC
Attendance: 31 growers	Crops: Avocados, Custard apple, sub-tropical fruit

Issues raised

1. Availability of traders 'books' for inspection.

Identified problems

1. Grower groups, designed to improve market power through scale, feel encumbered by the Code, since they will need to develop Agreements with the individual suppliers, but the Code will not apply to their relationships with traders.
2. Tracking of an individual supplier's fruit will be difficult under pooling arrangements.

More information required

1. As above, the various scenarios regarding packhouses and/or marketers/grower groups need to be clearly developed and explained.

Grower response

Information seemed to be accepted fairly calmly by growers, except for those involved in collective marketing, who raised concerns after the meeting. Advantages of the Code were discussed.

Questions

Question	Response
Concerned about sales through a trader with its own retail outlet	Has to be an arm's length transaction – if not, must inform the supplier'. Can use an Assessor to inspect the trader's books to check on this.
How would we as growers know?	Some markets provide reports on market prices. Can speak with other growers regarding pricing. Can use an Assessor to check trader's books, on spec. If ACCC started to get a number of complaints, they may go in and check specifics (in future, ACCC will have search warrant powers).
Will standard Agreements be available?	HAC and others are working towards a national template.
Regarding the 90-day Agreement, does this mean a new Agreement every 90 days?	You can agree to extend beyond 90 days.
Do you have to get legal advice?	Trader must recommend this, but you can waive your rights.
Are edible flowers covered by the Code?	Yes.
Are Macadamias covered by the Code? Processors are varying their payment times to us at the moment.	If the supplier is selling direct to processors, the Code does not apply.

If the trader goes broke, while acting as an agent, will the suppliers be preferred creditors as any money comes in?	You would need to ask the Trust or administrators under commercial law.
Example of growers operating collectively, using a packhouse to clean/polish and deliver fruit. Grower group sells first grade fruit themselves, but second grade fruit is pooled and sold by the packhouse.	This was dealt with after the meeting, with the advice being that, for the first grade fruit, the Code applies to the grower-grower group transaction. For seconds, the Code applies to the grower-packhouse transaction.
Example of growers (custard apples) continuing to pack and dispatch their own fruit but using a marketer to coordinate marketing.	This was dealt with after the meeting. It appears that the marketer is not involved directly in the transaction, so would not be covered by the Code, but needs more clarification
How will the code help reduce the retailers role?	The Code was not designed to change the relationship with retailers. A lot of people do deal direct with retailers due to the transparency of the arrangement. It is in the growers interests to have strong, healthy, efficient market system.
If we have both agent and merchant Agreements in place, do we need to confirm?	Yes for each shipment, you need to agree which one applies.
When Trader is acting as an agent, they don't own the product, why can't they name the customer? (To enable supplier to correlate price quoted and price paid)	It is not a requirement of the Code. You can arrange to undertake your own spot checks, through an Assessor.
How is the Assessor appointed?	The Accord Group (as the Mediation Advisor) appoints the Assessors.
Existing people who assess produce in the markets mostly work on behalf of traders – would they have to have an agreement with ACCC?	No, the Mediation Advisor appoints them. You do not have to use an Assessor from the appointed panel, but a non-panel member wouldn't have any authority under the Code. If the trader doesn't agree, the supplier can still appoint an Assessor.
Code enables traders books to be inspected – does that mean that they have to keep their books at the market?	Not sure on this, other than they have to have books available.
What will happen regarding GST liability?	This is for the Tax Office, but it is assumed that they will be liable for GST on their service fee / commission, if acting as an agent.
How to deal with situation where fruit from different growers is pooled in order to make up a consignment	Pooling is ok provided each supplier's product can be identified downstream.

Coffs Harbour meeting

Meeting: Coffs Harbour	Location: RSL club
Date/ Time: 3/04/07 10.00am	Duration: 2.5 hrs
Chair: Michael Burt	Presenter: Albert Julum, ACCC
Attendance: 16 growers	Crops: Avocado, Russian Garlic, Banana, Kiwifruit, organics

Issues raised

1. Onerous for small growers and for Traders dealing with small growers.
2. Status of nuts regarding processing.
3. 'Delivery' time for a ripened crop such as bananas.
4. Confirmation of transaction – eg one-way fax confirmation.

Identified problems

1. Tracking actual transactions in the markets – smaller growers feel unable to drive this.
2. Grower-Packer has dual relationship; Code applies to his fruit packed and sold to Trader, but also to him as the packer /trader of his neighbours fruit, but all the fruit is pooled and sold together.

More information required

1. Clarification of application of TPA / contract law on overall agreement and individual transactions.
2. Background to the Code – where did it come from, how were growers consulted, why are supermarkets exempt, what are options to change the regs, etc.

Grower response

Some attendees generally negative about the Code (particularly from banana industry perspective) on basis of the local industry comprising small growers. Believe the Code will impose paperwork on growers but not be able to track any misconduct by traders.

Contrasting approach from some attendees with differentiated, sought after products that have ability to set the price for their product. However, they recognise that Code may require compliance by them as marketers.

Questions

Question	Response
Timeframe for Assessor to check disputed product.	Within hours.
If using a packhouse – do they have an Agreement with the trader?	They are not caught by the code, but they should have an Agreement.
If using an agent and their customer doesn't pay, then the onus will be back on the grower to chase the money?	Yes, understand this has always been the case. Unless you have an arrangement in your Agreement that the agent will do this for you.
If the agent agrees a long payment time with the end-customer then it will be even longer before the grower gets paid	You may want to put in your Agreement with the agent the time period when you need to be paid

Will there be a standard form?	Template currently being worked on and will be made available.
Process needs to be simplified to avoid legal process.	May make sense to be cautious in first instance with getting initial agreement checked. There may be some legal firms specialising in horticulture.
With Kiwifruit, the season is over in 3 weeks, therefore it is less than 90 days – do we need a new Agreement each year?	You could adopt the previous years Agreement.
How will we get both parties to agree?	Traders are in this to make money, so they will need to negotiate.
What protection is there for growers if the merchant goes broke?	Applies to any industry – if someone goes out of business, then the creditors are at risk.
They should have thought of this before deregulating the old bond system. The Code will be detrimental for small growers.	This is a policy issue and you need to contact the grower organisations write to DAFF or Minister McGauran.
Are eggs covered by the code?	No.
Nuts – at what stage are they not classified as processed?	Don't know precisely. Will follow this up, but could be a legal issue. Page 6 of booklet indicates mere grading does not constitute processing. If grower supplies direct to processor it is not covered by the Code.
Why isn't export and retail covered?	Can't answer this, raise with your grower organisation.
Traders will not want to show the Terms of Trade, or will black list all anyone that asks.	Must tell ACCC – can be anonymous. ACCC have prosecuted Woolworths and Coles in past when they boycotted liquor suppliers.
Examples of Woolworth and Coles rejecting perfectly good produce – they are the real problem.	ACCC can't really comment on this. As already stated, industry would have liked to have supermarkets included, but this was not the case in the end.
If Sydney agent sells to a Melbourne agent, is it covered by the Code?	An agent must act in the best interests of the grower – should make you aware of it beforehand. Could put this in the Agreement.
Who will pay the Assessors?	The party who engages the Assessor will pay.
Cost?	Don't yet know, but advised that it could be \$100-150. This will be arranged by the Mediation Advisors.
Bananas require ripening process, before can be assessed.	Need to get 'delivery' time agreed to suit this sort of issue.
What happens with all the cash sales, such as people who come in and buy a single tray of fruit?	The trader will have to report back on these.
With dispute resolution, you have three weeks to try to resolve it then two weeks for mediation – produce will be long gone by then.	If there is some issue with the product, then you call in the assessor on day one – so will have report available.
Nothing has changed, you have more paperwork .	You now have the services of the Assessor.

Code gives us a threat against the trader.	Code is designed to give you transparency – previously, there would have been no paperwork to help resolve a dispute.
Could the trader cancel the Agreement before expiry?	Contract law applies.
What happens when a grower deals with a growers agent and then this agent seeks to act for retailers	It depends on who is paying that Trader – there would be a conflict of interest if they act for both parties. The fact that the Trader is acting for you would be covered by the HPA.
When will the sample Agreements be made available?	Grower organisations are aiming to get these to you asap.
Why so soon – why 14 th May?	
Is the Code a draft - can the Code be amended?	The ACCC booklet is draft, just in case, but the Code is unlikely to be changed prior to May 14 th . Down the track, regulations can be amended, eg. some growers have suggested random checks should be done by Assessors, but that is not in the Code at present.
Who will appoint Assessors?	This is up to the Mediation Advisor.
Will there be a bio provided for each Assessor?	Again, this is up to the Mediation Advisor.
So, are phone calls not good enough, you have to have it in writing now?	You could fax back 'as agreed on the phone' and "if you don't agree, contact me" (comment) Not sure about this – contract law says you need to have offer and acceptance (comment) There is some confusion between a contract on a particular transaction and an Agreement on the trading relationship over a period of time.
I have seen the supermarket buyer come along and insist on buying fruit that was already sold to a previous buyer.	ACCC would be prepared to go in on a case like this.
Can you protect the grower's names?	Can't guarantee anonymity – need to have witnesses in court.
What is to stop the trader destroying one piece of paperwork and writing a new one?	This process is designed to give you more transparency. There will always be people who want to get around the rules, but most people want to do the right thing. If we are concerned, the ACCC would be prepared to do an investigation.
This was put together with the best of intentions, but it really just puts a lot of extra paperwork on small growers.	Don't believe it will be a lot of extra paperwork – should have been doing this anyway to protect yourself.
Setting up initial documentation is a worry – its a new area for most solicitors, they can do a general agreement, but don't know all the particulars.	Try local law society for people with understanding of the issues.

Camden / Cobbitty meeting

Meeting: Camden	Location: University of Sydney, Cobbitty
Date/ Time: 3/04/07 7.00pm	Duration: 3 hrs
Chair: Ed Biel	Presenter: Martino Santi, ACCC, Sydney
Attendance: 20 growers + David Gachugu (DAFF), Dave Badewitz, Rhys Benny, Frank Lilley (ACCC) and representatives from NSW Farmers.	Crops: vegetables, summerfruit

Issues raised

1. Collective bargaining by small business
2. Useful summary by ACCC that the code basically covers the following:
 - the agreement,
 - whether acting as merchant or agent,
 - dispute handling
 - Late payment by Traders
 - Some confusion between agreement on conduct and supply agreements

Identified problems

1. Effective distribution of foreign-language versions of the information.
2. Fear of bullying/exclusion by Traders if their practices are questioned.
3. Getting legal advice or ACCC support if agreements offered by Traders don't comply.

More information required

1. Status of potted herbs.
2. Confirmation of status of phone call/fax/sms to confirm record of transaction agreement.

Grower response

Do not believe the Code would help small growers against market power of traders.

Concern that for small growers in height of fruit harvest season could not comply with needs for dispute resolution – just the basic paperwork would be a problem.

There was good discussion of the overall situation in the Sydney Markets, the need to work together to promote change in practices.

Questions

Question	Response
How will you know where and how to distribute LOTE (non-English) versions of materials? (NSW Farmers)	Through grower associations, the web and ACCC has a database of ethnic associations. Available in Arabic, Punjabi, Khmer, Vietnamese, Khmer.
Is turf covered by the Code?	No, it is a nursery product.
Flowers	No, unless edible.
Are pot-grown herbs covered by the Code?	To be confirmed by ACCC.

Honey?	No.
Can an agent sell on to a related person?	Must act in best interests of the grower. Should be an arms-length transaction. If related, must let the grower know.
Is it still allowed to sell on to other Traders in the markets – how will they let us know?	You can put in the Agreement whether this is allowed. Traders must report certain things to the grower.
Timeframe for reporting?	The Agreement can specify this to suit the parties.
How will you know if they write down the true sale price?	If this is in dispute, an Assessor can be hired to check the facts.
If the Trader is engaged as an agent and instructed to get the best price possible and report monthly – on a \$1 market, he achieves 90c. What can you do a month later?	If records are falsified, there is little that can be done. However, the Mediation Advisor could access the customer details on your behalf and corroborate the actual price. The Trader must make records available for inspection by the growers for 12 months (but growers cannot access customer information directly).
Any limit on the deductions an agent can make?	This is governed by market power, not subject to the Code.
Who will draw up the HPA?	Industry associations are preparing proformas.
Will it be on DAFF website?	Through industry associations.
What happens if you have a signed agreement already?	If it was signed, extended or amended after December 15 th 2006, it must comply.
Do you need an Agreement for every shipment?	Your choice, can be long-term Agreement.
If I am selling to a merchant, it applies and if I am supplying to an agent, but what if I am supplying to an agent, who sends it to a supermarket?	If the agent is acting on behalf of the grower, in the growers best interests, then the Code applies, even if it goes on to a supermarket.
Example of grower, packing for Woolworths with WW stickers	Code applies if the intermediary is acting for you, but not if acting for WW, in which case its as though you are dealing direct with the supermarket or the agent that is working for them, so the Code doesn't applies.
Why doesn't it cover grower to retailer sales?	Policy issue.
There is some confusion in the Sydney markets between merchant and agent. Since GST applies on the agent's fee, then if you are not getting charged GST, then they are a merchant.	Under the Code the Trader is not allowed to be a hybrid. If they are a merchant then the price must be agreed up front, so in each Horticultural Produce Agreement, it must clarify whether they are acting as a merchant or agent.
What happens to agreements made before that time (Dec 14 th) or if the trader says "if you continue to send product then you are accepting the Agreement I sent you"?	Any change made to the agreement after Dec 14 th , even an extension, must comply. If you didn't sign it, then get legal advice.
If the price is quoted at \$10 in the morning and the price drops, what happens?	Depends on the HPA – if trader is acting as a merchant then price change is their problem.
What happens to the next sale you make – have had warnings from agents already on what will happen.	ACCC does sue people.

How long is that going to take? We can't afford to lose one consignment.	At the end of the Agreement, you have the choice to go to someone else.
If I don't trust the trader then I won't deal with him.	The Code will not change the power relationship in the markets – if you grow something that is not in demand, then you have no power.
I am promised payment in three weeks. My trader dates the cheques at three weeks, but I don't receive them until six weeks.	If this breaches your Agreement then you can take action. If your HPA says "21 days from receipt" then six weeks is a breach. Give the Mediation Advisor a call and lodge the complaint with them.
Can you trade within the cooling-off period?	Yes.
Can they define 'delivery' until they sell product. If that is all they are prepared to offer – then we are back to square one.	It comes down to what you are prepared to argue on. The Code allows flexibility in defining delivery but you can't make an Agreement that is against the Code.
Major issue in this is the need to get legal advice if we are offered a take it or leave it Agreement that we are uncomfortable with. Need to have a legal clearing house.	Maybe your grower association will do this.
Is there a role for the ACCC to vet the Agreement offered by the trader?	ACCC can't provide legal advice, but can consider a complaint, if your advice is that the Agreement doesn't comply.
Expected turnaround time for ACCC?	Twenty eight days is the aim, but legislators understood this was too long. Therefore have built in the Mediation and Assessment roles. But more complex investigations can take months or years if legal action is involved.
If selling to a merchant, do you need a new Agreement every day as the price changes?	You agree to the price separately – could be an SMS.
Is a phone call enough?	For Agreement to exist, you must be able to store it, eg paper, email, sms.
My agent is saying you have to sign the fax and return it, that's the only way it is legal	Probably not the only way it becomes legal, but if that's what you have agreed, that's fine.
What is the benefit of dealing with a trader as an agent or as a merchant?	It depends on if you want to play the market or go for a set price. It's like whether to take a fixed or variable interest rate on a mortgage.
If the Mediator is called in, how quick will it be?	Three weeks, but if an Assessor is called in, this will be quicker. To cover yourself, it may make sense to get an Assessor in asap (at your cost).
Is there a register of Traders that don't pay the Assessor?	
Would the Mediator transfer Assessor's costs to the 'loser' of the dispute?	The Mediator is not an arbitrator or a 'judge' - he/she only facilitates a satisfactory outcome.
It is impractical to do all this at the grower's busiest time – harvest time.	
How can you prove whether they are acting in your best interest?	They have to keep records and they have to act on an arms length basis.

How will ACCC assess the success of the Code?	People will be able to report breaches, so 1. direct complaints 2. feedback from industry associations.
We are price-takers.	Collective bargaining by small business may be ok. This enables multiple businesses to collectively deal with a large buyers (limit of \$3m/transaction – check this). Dairy farmers are using this with their processors and grape growers are looking at it.

Richmond (NSW) meeting

Meeting: Richmond	Location: UWS, Poolside conference centre, Richmond
Date/ Time: 4/04/2007 11.00am	Duration: 2 hrs
Chair: Joe ?	Presenter: Frank Lilley, ACCC
Attendance: 13 growers, 2 traders + David Gachugu (DAFF), Dave Badewitz, Rhys Benny, Martino Santi (ACCC), representatives from industry associations, media and NSW DPI.	Crops: vegetables, mushroom

Issues raised

1. How to negotiate reasonable terms as small growers.

Identified problems

1. Pursuing bad debts.
2. Growers/intermediaries operating through Growers Markets in D shed.

More information required

1. Understanding incorporation – how to determine (eg re growers markets).
2. Freshspecs – how this will work, impact on growers.

Grower response

Many queries related to the sense of unequal balance of power in negotiating agreements.

Questions

Question	Response
What defines processed? eg. shrink-wrapping	Not defined by the Code.
Why doesn't it apply to supermarkets? They are the biggest problem.	Policy issue.
Can the Terms of Trade vary between growers / traders?	Yes, but there are some basic essentials. They don't have to be identical to the HPA.
Is an Agreement needed every single day or covering a period of time?	No, the Agreement is just covering the a general way of doing business.
Where are the Terms of Trade published?	On the traders website or their premises.
Agent doesn't have to pursue bad debts?	Depends on the Agreement that you have with trader.
If the Agent has been paid a commission, why isn't he responsible?	You can include this in the Agreement.
(comment) Chambers are introducing Freshspecs, which will make it easy for them to reject produce.	
What if you can't agree on terms – what happens to the produce?	Cover this in the Agreement.
Who is policing the Agreements?	ACCC will act on complaints. The action we take

	depends on a range of factors.
If trader has a public document – can this be binding on everyone?	No, must have a signed Agreement, but can use the Terms of Trade as the guts of the HPA. There are likely to be a number of standard templates around. The basic clauses will be around: payment arrangements, quality and delivery.
Cooling off period? What about growers markets in D Shed?	If a trader comes over to D shed and buys produce, will need an Agreement under the Code.
If a grower sells to another grower who sells it on?	Then he is a trader, but the Code does not apply if both parties are non-incorporated, so may not apply to growers in D shed.
How do we know if an agent is incorporated?	
When does delivery occur?	Your price must be set before produce is sold on to someone else.
How have traders responded to this – how will they deal with it?	Can't really answer this – they have raised some practical difficulties, just as growers have.
If I don't agree with what the Trader puts forward, what choice do I have?	If you don't agree, don't sign.
What is the timeframe for mediation?	Three weeks. There is no limit on when you can bring an issue to mediation, but it is not sensible to delay.
Does the agent have to tell you who he has sold to?	Not unless it is a bad debt and it is your role to chase the bad debt. If there is nothing in the Agreement, then the agent is responsible for chasing the debt, but it is the grower's debt
How does it work if the merchant allows it to warm up and get ruined?	They have a duty to care for the product. It may sometimes be hard to prove, but you do have rights.
If quality is disputed at 3 or 4 am, how does the Assessor process work?	Mediation advisor will determine this.
(Comment) In the past it has always operated on trust.	Why would a contract change that?
Does there need to be an Agreement for trader to trader deal?	No.
If the trader returns produce to you, what is the timeframe for him to do that?	You have to build this into the HPA.
What is there to stop the trader ringing other traders to put them off?	Can't answer this.

Orange meeting

Meeting: Orange	Location: Nashdale Hall
Date/ Time: 4/04/07 7.30pm	Duration: 2 hrs
Chair: Peter Darley	Presenter: Rhys Benny, ACCC
Attendance: 20 growers + Dave Badewitz, Martino Santi, Frank Lilley (ACCC) and representatives from NSW DPI	Crops: apples, cherries

Issues raised

1. Need to review exclusion of supermarkets in Code.
2. Need to review failure of Code to require agents to disclose names of customers.

More information required

1. Since supermarkets are to remain covered under the existing Produce and grocery Industry Code of Conduct, any future grower training/awareness campaign about the Code should include options for dealing with disputes with supermarkets.
2. Cost and details of mediation / assessment processes.

Grower response

Relatively low-key discussions

Questions

Question	Response
As a merchant, when does ownership change hands?	On delivery, according to the agreed terms in the HPA.
Can you just state on the consignment note whether they are to act as merchant or trader?	You need to agree in advance with the trader.
Any default position?	No, must agree upfront.
Does code apply to a retailer's agent?	Depends if he is acting for the grower or the supermarket.
Can agent avoid the Code by selling on to a retailer?	Yes, if he is acting for the retailer, but they cannot serve two masters – if they are the growers agent they must act in the growers best interests.
Is there a time limit on rejection?	Must be immediate – in writing. Your HPA must specify criteria for rejection and timeframe.
(Comment) Problems arise when supermarket buys produce but then rejects it.	
What if it is 3am when they inspect and reject produce?	If they want to inspect before pricing, then they can price at your agreed delivery time.
It is important to know the name of the customer so you can check through and confirm price quoted by the agent. This aspect should be reviewed (for livestock sales, are told who buys the stock).	There will be a review process. The Assessor can access the customer information. However – what would stop you selling direct to your agent's customer? (Growers' response – not interested in that).

Who is responsible to pursue debt?	Must cover in the Agreement. If the grower then you have right to get debtors details.
If, in a dispute about price, the Assessor finds that you weren't paid the right amount, what happens then?	Depends on whether a breach of the contract or the Trade Practices Act.
Current understanding is that the traders operate as merchants in order to avoid GST.	Yes, existing practice is a 'hybrid' model – will not exist under the Code.
Cost of mediation and attending mediation will be more than the cost of disputed item.	You don't have to attend in person, can use phone or be represented.
Are assessment costs reimbursed if you are proven right?	Not specified in the Code, but could be negotiated.
Where do the Assessors and Mediators come from?	Mediation Advisor is an independent body appointed by the government. Mediates only, not a judge. They appoint Assessors. Costs of mediation will be 'minimal'.
Will draft Agreements be on the website?	Templates will be posted by industry organisations, <u>not</u> ACCC website.
Does Trader have to disclose if linked to a buyer?	Yes. Must be an arms length deal or else must tell the grower.
What about agents selling to other agents?	This may be more difficult under the Code as they have to act in growers best interest and report price.
National Fresh buy on behalf of Coles, for a commission. If rejected, the produce goes back to the grower.	This is outside the Code.
What is the status of a Grower Marketing Group that buys from growers at a predetermined price and on-sells to another party?	If group is <u>buying</u> produce, it is a merchant and Code applies. Any subsequent rejection is the group's problem. If group acts as an intermediary, it is an agent and Code applies. Any subsequent rejection is the growers problem, but the group as an agent can still try to find another buyer.
If, in a price dispute, the Assessor is sent in by the mediator, does Assessor have powers to inspect buyer's books?	No.
What constitutes a breach and what are the penalties?	Any breach of the Agreement is a breach of the code. There are no prescribed penalties, but could be remedies such as damages, etc. Any individual or the ACCC could take action

Young meeting

Meeting: Young	Location: Young RSL Club
Date/ Time: 5/04/2007 11.00am	Duration: 2 hrs
Chair: Peter Darley	Presenter: Dave Badewitz, ACCC
Attendance: 31 growers + Rhys Benny, Martino Santi, Frank Lilley (ACCC) and representatives from NSW Farmers and DAFF.	Crops: Cherries

Issues raised

1. Several queries relating to whether the trader works for retailer or grower.
2. Concern about lack of consultation with the process leading to the Code.

Identified problems

1. Cherries are a highly perishable crop and require rapid movement through the chain and good cold chain practices. There is concern that Code requirements could require night-time negotiations.

More information required

1. Confirm legality/applicability of the "\$1 sale" option
2. Management of debt-collection options – could market credit service apply? Why was the PromptPay service rejected by growers when offered previously?
3. General principles of fair trading under the broader terms of the TPA?
4. What are existing best practice cool chain systems for cherries and can these be incorporated into HPAs for cherries?

Grower response

Strong interest from local growers, some of whom expressed vociferous opposition to the Code. It was difficult to ascertain exactly what the concerns were, but comments indicated concern about outside interference, bureaucracy and possible disruption where good relationships existed with traders. Some growers indicated (after the meeting) varying opinions about the value of the Code, not all negative.

Questions

Question	Response
Will agreements signed prior to December 15 th still stand?	Yes, until it is extended or amended.
What if the grower has a good relationship with their agent and don't want a contract?	After 14 th May, they must have a written Agreement.
Exports are excluded, but many traders are exporters. What if they aim to export but end up selling domestically?	You need to clarify this in the Agreement.
How can the bad debt sit with the grower when he doesn't select the end customer?	
Why didn't they talk to growers – was there a vote?	Explained background and confirmed that all issues are to be recorded and taken back to HAC

Does Agreement state the timeframe it is current for?	Doesn't have to specify, but is at least seven days.
Truckload arrives at market at 2 am – will be get a phone call then?	To be dealt with later in talk.
What about the trader buying on behalf of the retailer?	If retailer pays direct to grower – Code doesn't apply. If produce is sold to trader first, Code applies.
Many traders in the markets are buying for retailers.	They cannot serve two masters.
Sale by trader to another trader?	Code doesn't apply.
Does this create a loophole for them to get around the Code?	No.
If you do a deal for 14 days payment and retailer deals as 60 days – everyone will turn into a merchant.	If that happens, then as a merchant it is the trader's problem as they take on the risk. We have had conflicting reports on whether they will all become agents or all become merchants.
Is agent paying GST on commissions?	That is an ATO question. We believe they will be liable on their commission.
They all call themselves merchants now.	They operate as hybrids and so choose which way to go to best suit them.
Does this mean that there is no liability back to the Market Credit Service? Because it will now be the growers fruit. At present it becomes the traders fruit.	Nothing to stop you having the same arrangements that you have now. Until now, the protection offered under the Credit Service was offered as a service, but you would still have been paying for this. Now it is transparent. You can put it into your Agreement.
(Comment) Previously, growers were offered the PromptPay service, but growers were slow to take it up.	
If you sell via an agent, so he sells it on – is he obliged to report price and customer?	No reporting of customer (unless a bad debt), but must report price and time of sale.
What if the retailers return the product? (eg. QA can be used to justify changing their mind). Concerned at exposure of traders to this risk.	
Are there any specifications about how they have to care for product?	They have to use due care and skill.
How is price-fixing going to be solved? How will you stop them?	This fails under existing law in TPA. ACCC have pursued several people under this.
If there is a good relationship, a prior agreement and a new party agrees to buy at \$1/box plus a further "in good faith" payment at a later date. "ACCC agreed this was ok at the Chambers Conference last week"	Be careful with this as the price must be a price not a formula.
Exporters either seek out customers for given product or else feed back market signals.	It is ok to test the market for an idea of price, but they mustn't actually complete the sale, otherwise it is an agency transaction.
Does pre-sale really matter?	Policy question.
How can growers afford mediation?	Cost will be subsidised – use other avenues first.

Haven't addressed who is paying for this. Will there be any charge on growers for this. Is it going to put any more money in grower's pockets.

Griffith meeting

Meeting: Griffith	Location: Griffith RSL
Date/ Time: 5/04/2007 7.00pm	Duration: 2.5 hrs
Chair: Geoff Moar	Presenter: Frank Lilley, ACCC
Attendance: 10 growers or packers + Rhys Benny, Martino Santi, Dave Badewitz (ACCC) and representatives from NSW Farmers, DAFF and growers organisation.	Crops: citrus mainly

Issues raised

1. Most citrus growers supply to a packing house, so 'delivery' needs to be after packing since pack out determines the value of the consignment.
2. Issues related to grower group-owned packing operations.
3. Multiple consignments of fruit to export/domestic/processed.

Identified problems

1. Change in quality of fruit during shipment.

More information required

1. Issues need to be rolled into overall discussions with packing sector.

Grower response

Similar issues to Berri meeting, but fewer concerns were raised about extra paperwork between growers and packers.

Questions

Question	Response
Is this draft or real?	Still has to pass Parliament, but unlikely to change.
Some packers will deal with the lot – export, domestic, processing	Code applies to that first transaction between the grower and packer.
Can we use pre-existing documentation that describes quality?	Use any system, refer to it in the HPA.
Supply and demand affects the perception of quality	If acting as a merchant, the trader takes the risk. Can build flexibility into the Agreement to account for seasonal factors. Delivery doesn't have to be exactly when the truck arrives, but it can't be after the produce is sold, if it is to be a merchant transaction.
After two days, product can go off?	Grower and packer can negotiate – packer may order beforehand, giving a rough idea of price, firmed up after packing.
What if the grower just turns up with their fruit?	Packer has option to agree to accept it or can require notification.
Can you cancel an Agreement when payment is late?	Can do this, or may choose to negotiate.
Is price in dollars or can it be a formula?	Formula is not allowed.
Can it be a minimum price?	No, this is a type of formula.

Normally we operate on a pack out basis – that is, run the fruit through and decide if overall value is \$X per tonne	Therefore 'delivery' may be two days after packing, or what you agree, but delivery can't occur after you have sold it.
Who will police it?	Everybody – competitors, clients, etc.
Then what happens – we get blacklisted	Can't answer this, but blacklisting is in breach of the TPA.
What about packers Agreement with traders?	This is not covered under the Code, but you still have contractual rights.
What happens if someone won't sign?	After May 14 th – both in breach of the Code.
Why can't you pay the grower a bonus?	You could do this, but you can't write it into the HPA.
What if grower agrees a price of \$300 and someone else offers \$500?	This is different to the HPA – this would be a supply Agreement.
There could be a packing shed, owned by growers – fruit is packed and sold and then returns to growers – avoids GST.	Depends on ownership structure, but if separate entity, then Code applies. There are many ways to structure businesses – need to get good accounting/tax advice.
Could act as an agent with zero commission?	Yes.
What if the packer is also an exporter?	Code doesn't apply – effectively grower is selling direct to exporter
What if packer/exporter also sells domestically?	The Code applies per transaction, not to the particular entities.
A lot of packing sheds already have an Agreement eg re quality, payment terms, often appear on delivery dockets.	You can absorb these into the Terms of Trade and HPA, but a delivery docket is not a signed Agreement.
How do you arrange to amend the HPA?	Could have a term in there eg review HPA after twelve months. Most Agreements would contain a clause regarding exit.
How do you know the true price as a grower? How do you know if records are falsified?	Can use the Assessor to check out.
What if the merchant sells on to supermarket and three days later they reject it?	That is the merchant's problem.
Traders have threatened to bring in tight standards – if the product didn't comply but you discussed this with them and sent an email confirming the discussion, would that satisfy?	Can't say what a court would accept, but generally it is good to have notes of phone calls, emails, faxes etc.
Some export product is sold on consignment, with pricing returns delayed up to six months.	OK, if acting as agent.
Why doesn't Code apply to retailers agents?	Counts as the same as grower selling to retailer – agents cannot serve two masters.

Perth Markets Meeting

Meeting: Perth Markets, WA	Location: Boardroom, Chamber of Fruit & Veg Industries WA
Date/ Time: 17/04/2007 10.00am	Duration: 2 hrs
Chair: Robert McFerran, CFVIWA	Presenter: John Martin, ACCC
Attendance: 20 traders approximately + Vern Gardner, Rhys Benny (ACCC) and a representative from the State Agriculture Minister's office.	Crops: All

Issues raised by Traders

1. Why are supermarkets included?
2. What to do when growers will not sign Agreement?
3. Applicability of Freshspecs?
4. GST status of agency transaction?
5. Defining 'delivery'
6. Likely focus of ACCC scrutiny and nature of penalties?

Identified problems

1. Growers with phone/fax machines that fail to transmit.

More information required

Definition of 'public availability' of Traders Terms of Trade needs clarification in light of ACCC response 'to anyone that wants to deal with you and that you want to deal with'....at other sessions it has been stated that they will be on agents website.

Trader response

This meeting was aimed Market Traders in Perth Markets.

It should be noted that the Perth Markets have operated under State legislation for the past six years which, while looser than the proposed Code, may have already corrected some irregularities the Horticulture Code is looking to address.

Separately to the ACCC meeting it was noted that two traders in the Perth markets already employ a full transparent reporting system to their grower suppliers, but have not enjoyed significant increase in business as a result.

Questions

Question	Response
	(Comment by Commissioner Martin: ACCC operating principles are Commonsense, Simplicity, Certainty)
What is your view of the definition of a Merchant or Agent?	Merchant takes over ownership, whereas Agent does not. The 'Hybrid' model led to confusion that in part drove the need for the Code. Agent facilitates transfer from grower to purchaser and must accept instructions of owner. Merchant must agree price before accepting delivery.

What constitutes delivery?	Can be spelled out in HPA, eg. with mango or banana, may be after ripening.
Could the description 'Received in a state ready for sale' be used?	Fine – if agreeable to both parties. You can tailor the HPA as required, but preferably keep it simple.
In practice, we can be acting as either an agent or a merchant – often at the whim of the grower	Need two Agreements and need a confirmation of your status for each transaction. Can't be both in the one transaction.
With an agents Agreement, is there a GST ruling on this?	(Rob McFerran – CFVIWA need to get a new ruling on this as the 2000 ruling said charge was a margin, not a commission).
Freshspecs – have ACCC looked at and adopted these?	No, but they can be put in the Agreement, if desired
Trader must give their Terms of Trade to any grower that requests them.	Only if you are trading with them.
It says they must be publicly available?	To 'anyone that wants to deal with you and that you want to deal with'. General Terms of Trade are unlikely to have commercially sensitive information.
What constitutes 'written Agreement' prior to Dec 15 th – signatures?	Must be a signed Agreement.
What if the grower is not an incorporated business?	Applies when <u>either</u> party is incorporated. Transaction is only exempt from the Code if both parties are unincorporated and trading within a State, not inter-state.
What if the grower refuses to sign and keeps sending?	Get in touch with ACCC and inform the grower the produce can't be sold. That is why ACCC are urging traders to tell suppliers about the Code. Hopefully Agreements will be brief and easily faxed. (Comment: If they keep on sending consignments and you have kept a paper trail showing that you have done everything you can, you would have a strong case)
If the supplier keeps sending on the basis of the Agreement that the trader has sent, isn't that affirming the Agreement?	Fair point, but they are still acting illegally and you are in a difficult position.
Any leniency around 14 th May?	No formal leniency, but ACCC only act on complaints, not a policeman. Looking for blatant disregard of the law.
Why aren't retailers included?	Decision made by government (DAFF), on basis that retailers already have contracts.
What has been the general reaction to the code – there are a lot of wholesalers outside the central markets	Difficult to tell until the 14 th .
We know a lot of packers, who are subject to the Code, are concerned about the pooling issue.	ACCC has run some meetings regarding packhouse issues. ACCC is aware of the issues and is looking at options.

<p>In the first 12 months, where will ACCC scrutiny be?</p>	<p>Tracking trends of complaints/mediation, doing some reality checks. Its hard to predict exactly, but we will make public the areas where problems are, say after 3 months.</p>
<p>Explain the process when a complaint is made and the penalties?</p>	<p>ACCC can get court declarations and injunctions, can rule on restitution, damages under Part 5. You can agree to a signed, court-enforceable undertaking to avoid full proceedings.</p>
<p>If, say, two parties are happy but a 3rd party complains?</p>	<p>First, we will talk to the two parties – if it is a technical issue, we will suggest they comply. We won't jump in guns blazing on the basis of competitors complaining (if the market is not affected). It also depends on how blatant the breach is.</p>
<p>There is an impression that the Code is aimed at the Central markets – wouldn't like to think this is the case?</p>	<p>The ACCC is very market-oriented and sees the Central Markets as crucial to the industry.</p>

Donnybrook Meeting

Meeting: Donnybrook, WA	Location: Donnybrook Resource Centre
Date/ Time: 17/04/2007 7.00pm	Duration: 2 hrs
Chair: Angelo	Presenter: Vern Gardner, ACCC
Attendance: 13 growers + John Martin (ACCC commissioner)	Crops: Apples

Issues raised

1. The "\$1 option" has been established in WA situation (ref Mercer Mooney agreement), whereby product is purchased at \$1/carton, with the trader remitting further proceeds of on-selling after sale, on a trust basis.
2. Issues raised regarding availability of assistance in securing payment – relates not to this Code, but is a general small business management issue.

More information required

1. Overall business management assistance relating to options for chasing payments from customers – not a Code issue.

Grower response

Overall there were perceived lower levels of concern, possibly due to the Perth Markets having been under State Regulation for past 6 years.

Questions

Question	Response
What is the process for defining the price – currently quoted as a range?	Fax, email, SMS – any written or recordable form
With mango ripening by the agent – if they stuff it up, where does the grower stand?	Needs to be covered in the HPA.
If they default on price?	You have it in writing.
Is it possible for Trader to purchase price at a nominal value and then pay a 'marketing bonus' afterwards? (\$1 option)	Cannot write this into the contract, as comprises a "method" – you can do it if you want to, but the risk falls to you. (Can also do this if signed as pre - Dec 15th contract)
How does it help with issue of trader not advising of the price until 24hrs or more later?	An agent is not allowed to average price out without your ok. They have to operate at arms length and have your approval to do anything – you need to spell this out in the HPA.
Agents are talking about the 15% margin not being enough.	The fee needs to be written into an agency contract – need to shop around. ACCC are very interested if traders are collectively agreeing on extra margin
(Comment: Normally the nett price is given)	(Comment - under the Perth Markets Authority Act – can agree to a hybrid Agreement).
If agent becomes insolvent, what rights/protection are there for grower	Not addressed by this legislation. (Comment: Nothing really protects you against your customer's insolvency).

What tools are there to force payment?	Various eg. institute proceedings through local Clerk of Court. Some Trade Associations will provide limited assistance. Check with WA Fruit Growers Assn – regular legal advice in their magazine.
Are agents and merchants coming along to presentations in good faith?	In WA meetings, only had one come along so far to clarify position.
Will ACCC be doing spot audits of contracts?	No. ACCC is complaint or information-driven. Resources are directed depending on scale of breach. ACCC will be monitoring Code implementation closely.
How can I get out of an existing contract	Check termination clauses.
On p3 and p8 of booklet – definitions of merchant – excludes export, processing and retail	The code is designed to deal with situation re intermediaries, not direct dealing.
If the contract says \$X/tray and someone can undermine the contract such as with imports, can they do it?	That would indicate they are not looking after your best interests - they must deal at arms length.
Cost of Assessor if trader doesn't like the quality?	To be determined, but you need to consider best option – accept price or get independent assessor.
If Agent must report 'details of deductions'- will we get sale price less commission = nett price?	Yes, but in an agency agreement under the Code, ie as sale to third party.
What about GST on agents fee?	That's the agents problem and is a Tax Office issue

Wanneroo Meeting

Meeting: Wanneroo	Location: Olympic Sports Club, Madelay
Date/ Time: 18/04/2007 7.30pm	Duration:
Chair: Jim Trandos	Presenter: John Martin, ACCC
Attendance: 11 growers	Crops: vegetables

Issues raised

1. Situation with IGA / Metcash. (Unique situation in WA due to Regulations about trading hours and staff numbers – favours smaller independent retailers, many of whom collaborate in purchasing through wholesaler such as Metcash). ACCC stated that most likely Metcash would be in a trader relationship with growers supplying direct, and would need HPA.

Identified problems

1. Concerns about grower responsibilities / options regarding chasing payment from 3rd party buyers.

More information required

1. Applicability (if any) of Chambers Credit Services in all the markets

Grower response

Overall mood was negative. Several attendees were smaller growers who feel that any dispute they raise with traders will have repercussions. It was suggested that it would be more useful to receive training in negotiation and marketing options.

Questions

Question	Response
What is situation with IGA/Metcash? They have a warehouse and sell on to independent supermarkets.	Metcash will need a merchant contract if they are on-selling to a franchisee – depends on legal arrangement of each store – mostly it appears that Metcash are acting as a wholesale merchant, buying and then re-selling at a profit.
Why aren't Coles and Woolworths in?	Problem was caused by intermediaries, growers dealing direct with the chain stores have a transparent contract
What about the ethics of supermarket behaviour?	They are not in the Code – it was a government decision. ACCC is happy to hear about complaints.
How do you keep to a set price in the contract right through the season?	You don't – the price is set per consignment, it is not in the contract.
Agents work together – they all know the price weeks ahead.	If you have evidence of collusion, can let ACCC know.
What if agent sells on to another agent?	Agent must act in client's interest, at arms length. If there is a conflict of interest, they have to get approval from grower.
How will we know? Is there a random audit?	ACCC doesn't do audits. But you can go and inspect the books. Grower groups suggested random audits, but not in the Code.
Under the Code, I don't have access to the 3 rd party (purchaser) details in order to check the price they paid	You need to have something to trigger this.

If agent sends on to another agent – how do I know.	'Arms- length' is not determined by the Code, it is determined by law. ACCC can investigate it. Can't be prescriptive, but ACCC will be dealing with issues as they arise and we will be very proactive about any systemic issue. (We won't respond every time someone complains.)
In Code, says debt collection is responsibility of grower (p13)	Not necessarily – the HPA needs to specify.
If agent sells produce to a buyer who doesn't pay, then we have to chase the money?	Not in markets other than Perth. Under Perth Markets Act you can have it reviewed (?)
How can I claim payment when I have never met him?	Anyone can claim debt on your behalf.
Why don't you know the answers?	ACCC has L-plates on too.
It's a toothless tiger – not enough follow-up. How does the Assessor follow up?	Assessor is appointed by the Mediation Advisor, not by ACCC.
Will the code be reviewed?	Yes, in twelve to twenty-four months.
If we have no contract in place by the 14 th , what then?	Depends – traders may/may not want to take the risk dealing without a contract.

Robinvale Meeting

Meeting: Robinvale	Location: Robinvale Golf Club
Date/ Time: 23 / 04/ 2007 7.00pm	Duration: 2 hrs
Chair: Lis Blandamer	Presenter: Cynthia Trubicoff ACCC
Attendance: 28 growers + Celia Himelreich (ACCC) and a representative from VFF,	Crops: Tablegrapes

Issues raised

1. Supermarkets, exporters and their agents should be covered – 'Code only covers 15% of table grape trade'.
2. Potential cloaking of supermarket fees to agents as 'advertising fees' or other.

Identified problems

1. Major issue with table grapes – difficulty of developing uniform set of standards

More information required

1. 'Agency law' was mentioned regarding supermarket's agents. The industry should consider an overview of agency law as part of overall business training package for growers.

Grower response

Negative response from these table grape growers. Concerned they had not been involved with the consultation process regarding the development of the Code. Disappointed at limited application of the Code for their industry markets.

Great concerns expressed over ability of Horticultural Market Assessor to resolve quality disputes, given lack of standards in the industry. (This was explained on the basis that, with table grapes, there are so many factors to take into account, given the scope for variability within bunches as well as between bunches and between varieties. Growers assessing quality are therefore integrating a range of factors, leading to wide variations between different consignments of "Class 1" fruit. Trays are typically packed by each grape-growing enterprise, often as the grapes are picked in the field.)

Questions

Question	Response
(Comment: How does grower know what the agent is doing with the product – he is likely to sell it before taking delivery. Very difficult to police this from 1000km away)	
Can Trader move fruit from say Brisbane to Melbourne, given that it might deteriorate along the way?	Grower has to approve any such movement. If you can prove it deteriorated under trader's care then that is a breach of the Code.
Who decides whether he is operating as an agent or merchant?	Have to state in the HPA whether Agent or Merchant. Have to state this for each transaction, if have agreements covering both.
This is not feasible – I am ringing ten agents two or three times a week.	In future, will have to be in writing.

There may be a discrepancy between the description in the agreement and the actual quality sent, because we send many different varieties and grades.	You will have: <ol style="list-style-type: none"> 1. an overarching agreement covering eg whether agent or merchant, delivery arrangements, dealing with any problems, etc 2. Order Form or Consignment note contains details of each actual transaction.
(Comment: Who determines what class the fruit is? Could be a logistical nightmare re quality issues in grapes)	
Should apply to agents dealing with supermarkets.	Doesn't apply – in Agency Law, the buyer's agent becomes 'an arm of' the supermarket. Therefore Code doesn't apply.
Retailers, exporters are excluded, so Code will only cover 15% of our industry	Supermarket deals already involve contracts.
Agent accepts grower price, puts commission on top and sells to supermarket.	If he is operating as an agent for you under an HPA then he is in breach of the code if he takes a cut from the supermarket as well.
The Buyer will turn to the agent and say 'send a bill for advertising' and so agent's fees will get paid that way.	The Code does give you rights.
If we are smart we will deal on merchant basis. (Comment: This takes the natural fluctuations out of the market if everyone sets their own pricing)	That means they take the risk.
Who physically pays the grower?	Build this into your HPA.
Who decides who chases the bad debts? We might potentially be chasing 50 bad debts	Therefore you have an option to build this into your Agreement. But it always remains your produce under an agency Agreement.
Agents sent letters out pre Dec 15 th – where does this stand?	Legally that Agreement stands if you signed it prior to Dec 15 th – that would make it outside the Code so long as it lasts, unless amended or extended.
How will the Assessor assess the grade? The industry doesn't have standards	You need to raise with your association
(Comment: Problem is agreeing first point of sale most growers sell through agent to supermarkets)	
(Comment: Agents don't work for supermarkets, work for themselves. Supermarkets employ buyers.)	
If exporter comes onto my property and buys fruit, is he covered or not?	If they on-sell it before they export it, they are covered by the Code.
When I send to South Australia, I am required to get a health certificate – the assessor for this charges \$38.50/hr. What will it cost to get a market assessment?	Not determined yet.
Will it be audited?	Not routinely – this will depend on the pattern of complaints.

What are the penalties	<ol style="list-style-type: none"> 1. ACCC tries to resolve the dispute, otherwise, court action... 2. seek injunctions. 3. seek damages. 4. If misleading/deceptive conduct, there are significant penalties.
Can I determine as a grower if I want agent or merchant services?	Yes – up to trader whether he accepts.
It takes a while to build up relationship with an agent, growers feel intimidated, that's why its difficult for growers to accept the code	This will involve a cultural change and it will have challenges and take time.
If we register a complaint, is it anonymous	Yes.
Is price-fixing covered?	Yes – serious consequences for this. Anonymity can apply – but makes prosecution more difficult.
Roadside sales covered?	No, Code doesn't apply to these.
When does Freshspecs apply?	No information on this – has been developed by the Chambers.

Swan Hill Meeting

Meeting: Swan Hill	Location: "Grain Shed"
Date/ Time: 24/04/2007 10.30am	Duration: 2 hrs
Chair: Lis Blandamer, VFF	Presenter: Cynthia Tubicoff, ACCC
Attendance: 6 growers + Celia Himmelreich, (ACCC) and a representative from VFF and a Rural Counsellor.	Crops: Summerfruit

Issues raised

No new issues raised.

Identified problems

1. Supermarkets are claimed to renege on their pre-set buying arrangements in order to buy cheaper fruit off the market floor. Question over whether the agents selling to supermarkets in this situation are acting for grower or for supermarket (and paid two commissions?).

Grower response

Focus was on disruption to marketing caused by supermarket practices.

Questions

Question	Response
Problem is with the supermarkets – they have supply agreements with marketing companies, but they by-pass this during gluts and buy direct from agents on the floor to market as specials. Eg pre-Christmas, supermarket orders 100 pallets off the marketing company/ category manager who gives order to grower. Then, they take 90 pallets off the market floor instead.	In future, need an HPA with the agent as primary Agreement. (If agent is acting on growers behalf, selling to supermarket – wouldn't apply for orders prepared for marketing company buying for supermarket).
(Comment: If merchant is a good operator – if grower has already sent photos / brix testing results, price can be set before it leaves the farm. Price is often set a week before – in this case they are acting as a merchant....open book system – retail price set in advance).	
Grower could ask for three columns in report – sell price, commission, grower return?	Yes.
What if agent goes broke?	Same situation as any business that goes broke – not covered by Code.
Where can I go for help to draft HPA?	May be useful for your lawyer / advisor to use the compliance manual (due in two weeks). This has checklists etc for them.

Mildura Meeting

Meeting: Mildura	Location: The Settlers Club
Date/ Time: 24/ 04/2007 7.30pm	Duration: 2 hrs
Chair: Lis Blandamer, VFF	Presenter: Celia Himmelreich, ACCC
Attendance: 20 growers + Cynthia Tubicoff (ACCC) and a representative from VFF.	Crops: Table grapes, citrus, dried grapes, wine grapes

Issues raised

1. In the wine industry, the Code will apply where agent sells to winery on behalf of grower.
2. Dried fruits (dried by grower) would appear to be not covered by the code (as 'processed').
3. Nuts: In the case of nuts – if just cracked, then they are unprocessed, but if crushed, flavoured etc, then processed.

Identified problems

1. Potential for Australian Chambers' "Freshspecs" to be used to drive inflexible quality standards and provide an excuse for downgrading.
2. Expectation by some traders that growers will sign back-dated contracts in order to avoid code compliance.

More information required

1. What is the timeframe for response and decision in cases where disputes are referred to ACCC?
2. Dried fruits: Code states that only unprocessed produce is included, but ACCC to confirm.
3. Are almond, macadamia etc industries aware of where growers/processors fit with the Code?

Grower response

Overall attitude that traders would continue to have the upper hand in the marketplace and find ways to hide their charges in the return to growers. Growers are also sceptical that ACCC / mediation services will be able to cope.

Note that although Mildura is a strong citrus region, there was little representation from that industry, since there have been other ACCC interaction with the industry, particularly regarding packing house issues.

Questions

Question	Response
Where can you find out what the produce was sold for?	You have the right to inspect their books to confirm price received, but not buyer details.
What about different grades?	They have to report the price for each consignment – no averaging.
How soon does the trader have to inform the grower of any problem with produce?	HPA needs to cover this.

In the wine industry, only application of the Code is where agent sells to winery on behalf of grower. Agent could avoid the code by receiving fee from winery instead – agent works on behalf of winery.	Yes.
Market agents could get around Code in the same way.	If they do, they have to let grower know they are working for processor/retailer.
Agents are sending Agreements now, asking for signing by May 14 th . (Comment: The agents are sending out contracts dated 14 th December, asking growers to back date them)	No problem if Agreement is compliant (if signed prior to December 15 th 06, doesn't have to comply)
If agent acts on behalf of processor, can grower not know who produce goes to?	If acting on behalf of processor, not covered by Code, but not allowed to charge grower a fee as well (can't be an agent for both).
How do you know who they are acting for?	Offer them an HPA – if they decline, they are acting for processor.
Trader fee will switch from grower to processor (but still paid by grower – factored into price)	You may want to look at your contract with processor – industry will need to insist on negotiating contract.
(Comment: Franchise code covered everybody – no 'outs' as in this Code)	
I short term, if agents refuse to sign, they will take someone else's produce.	Feel free to let them know that you will be letting ACCC know.
Where does paperwork/Agreement come from? (Comment: if dealing with a new agent, ring them up and first ask for their Terms of Trade, or else send them your own Terms of Trade).	Can be either party, but industry have developed templates.
On growers market, what if a wholesaler comes to buy product? (Comment: Not allowed to sell citrus on grower's market – is this legal under Commonwealth Law?)	Needs HPA.
Define processing, eg 'marketer' or 'processor'	Doesn't matter what they call themselves – if they find a buyer then they are covered by the Code. (Comment: In the case of nuts – if just cracked, then they are unprocessed, but if crushed, flavoured etc, then processed).
If only one transaction / year – still need HPA?	Yes.
What if quality parameters vary with season / time of year?	May depend on relationship with trader whether need to include full range of acceptable specifications. (Comment: Specs can be listed on individual consignment note).
Role of mediators?	Facilitate an outcome, can't force an outcome, or make a ruling.
If outcome is not forthcoming?	May escalate up to ACCC or other options.

What is the timeframe for ACCC to respond and reach a decision?	To be advised.
If say, after four days, the dispute is resolved in the growers favour, does the trader have to pay for the growers loss?	Under mediation or litigation, the grower.s loss would be taken into account.
What about product brought from NZ?	Not covered under the Code.
Export?	Not covered if sell direct to exporter.
If packer is also an exporter?	If acting as a middleman, the packer is covered by the Code.
Dried fruit – dried by the grower?	Code states that only unprocessed produce is included, but ACCC to confirm.
Once you become a pest (eg regular questioning of grade) to an agent they are likely to stop dealing with you.	Aim is to put in place an operating environment through the Agreement that captures the parameters of definitions, to reduce need for grade disputes. (VFF Comment: Australian Chamber have developed Fresh specs and are advising members to use these – based on WW specs) Courts will take into account industry understanding of what constitutes Quality A or Quality B
Has ACCC estimated how many disputes they may have to deal with (reference ACCC comment that 87 of Franchise Code disputes are solved by mediation)?	No, ACCC don't know how many will ignore the Code. Hope for similar success rate, but disputes and parameters will be different.
Has ACCC appointed extra staff to cope?	The Horticultural Mediation Advisor has employed extra staff. ACCC have been well-resourced to do the job.
Are ACCC running similar seminars for agents and merchants?	Yes, ACCC is educating the entire industry.
Would you need a separate HPA for every line of produce?	Not necessarily.

Lilydale Meeting

Meeting: Lilydale (Yarra Valley)	Location: Swinburne University
Date/ Time: 26 / 04/ 2007 4.00pm	Duration: 2 hrs
Chair: Lis Blandamer, VFF	Presenter: Celia Himmelreich, ACCC
Attendance: 27 growers including representatives from Australian Apple and Pear Growers, Strawberries Australia and CGA + representatives from VFF and the Victorian Strawberry Association.	Crops: Fruit, including Apples, cherries, strawberries, also nuts, vegetables

Issues raised

1. Quality definition and assessment issues (as per other sessions).
2. On-selling between traders leading to double commissions.
3. Merchants charging handling fees.

Identified problems

1. Urgency – short timeframe to sign agreements before Code in force (ACCC response is to allay such concerns referring to need for transition period).

Grower response

Although very close to the Melbourne Markets, it appeared that few growers are regular visitors or are familiar with the market operations or with their traders.

The growers that were more familiar with their traders appeared to have fewer issues and tended to be looking for 'business as usual'.

Questions

Question	Response
By the time an Assessor is called, the produce will be of no value. How will you have a dispute with an agent who is acting on your behalf?	Need to both agree on quality parameters upfront.
(Comment: Agent can't tell you the price until on-sold – unless he reports every day, could be sitting unsold after a week.)	
Disputes are always about price, not quality. If you send down quality A and the agent says it is quality B wouldn't he tell you straight away?	It all hangs on the delivery date – most products likely to need an assessment soon. All this would go in the Agreement.
Who does it benefit?	You will have the right to negotiate – once agreed, put it in writing. It is for you to negotiate how you do business.
If you have a three year agreement and want to change it before then, is it possible?	This is Contract Law rather than a Code issue – depends on your HPA.
We as growers should be contacting everyone we deal with very soon, by May 1 st , to allow for 14 day cooling off period and implementation on 15 th May?	Date is not that critical – on the 15 th May the Code comes under ACCC jurisdiction. This will be an introduction phase, with ACCC unlikely to take action, so don't panic if you can't get Agreements in place by 14 th May.

Can you put the estimated price range in the Agreement?	Yes.
Have you come across any Terms of Trade from Traders to compare ours to?	Apparently the Chambers have developed a version, but ACCC haven't assessed it.
I already have an Agreement with my Trader – why do I need a new one?	You don't, necessarily – if you are happy with the Agreement, stick with it.
Why are supermarkets not covered?	Apparently they already operate under contracts.
I have been polled by a Morgan Poll asking 'were you aware that there will be a price advantage to supermarkets because they are not included?'	Be aware that if growers still have problems with supermarkets not keeping commitments, the Code can be amended by Ministerial order.
Re: bad debts – if the agent doesn't take responsibility for the debt, we will be out of business.	It's an unlikely scenario – most agents would chase up debts themselves.
Which way are traders going – merchant or agent?	Not clear at this stage.
When GST was introduced, all agents became merchants (but haven't been acting as merchants).	A trader could act as a merchant but have a two day window on delivery to enable them to make their mind up.
How will it work when the agent distributes it around to other agents, so you pay a double commission – could you have "no on-selling" in the Agreement?	Yes, could put it in the Agreement, although doesn't have to be as it is automatically a breach of the Code – they need to be operating at arms-length and in your interests.
(Comment: Need to be aware there are agents who are preferred suppliers to supermarkets, so may need to be prepared for some on-selling to access supermarket trade)	
Currently my agent gives me a nett price every day, what will happen now?	Under the Code, you need to have a written Agreement.
We sometimes get hit with fees for restacking, sorting, transport etc, on merchant sale.	Code states that 'merchant cannot charge fees for finding a buyer or other services'.

Red Hill (VIC) Meeting

Meeting: Red Hill	Location: Scott House
Date/ Time: 27/04/2007 1.00pm	Duration: 1.5 hrs
Chair: Peter Cochrane, VFF	Presenter: Celia Himmelreich, ACCC
Attendance: 7 growers	Crops: Cherries, apples, Vegetables

Issues raised

No new issues

Identified problems

nil

More information required

nil

Grower response

Few comments were made at this meeting.

Questions

Question	Response
Code doesn't apply to merchants who buy directly in order to retail or export?	Correct, hence supermarkets are not included.
How does it apply where fruit from grower 2 is sold by grower 1?	You need to look at the individual transaction type and determine if grower 1 is acting as an intermediary.

Cranbourne Meeting

Meeting: Cranbourne	Location: Sandhurst Golf Club
Date/ Time: Friday 27/04/ 2007 4.30pm	Duration: 2 hrs
Chair: Peter Cochrane, VFF	Presenter: Celia Himelreich, ACCC
Attendance: 7 growers + representative from VICDPI	Crops: vegetables

Issues raised

1. Status of back-dated Dec 14th Agreements.
2. Having to negotiate price in the middle of the night.

Identified problems

No new problems.

More information required

1. What constitutes an amendment to a pre-December 14th Agreement, eg does a new phone number amount to an amendment and require it to comply with the Code?
2. Can 'delivery' be agreed as '5 minutes before sale'?

Grower response

Small group included larger growers who indicated they were happy with current market conditions and arrangements and were looking for a way to continue these if possible.

Questions

Question	Response
What is there to stop you agreeing 'delivery' as '5 minutes before sale'?	If you want to set price on delivery and define it this way, that's fine.
But it has to be in writing, we don't want to do this at 1 am. ...if we wait til 5am or 6am the produce is already sold.	It's useful for ACCC to have this feedback and you also need to feed it through to DAFF.
They should have listened to industry and included supermarkets.	There could be an option to change the regulation down the track, if needed.
Has the presentation been delivered to traders?	Yes – the feedback ranges from 'unnecessary paperwork' to 'it could improve things'.
What will the auditing process be?	ACCC don't do audits, but respond to complaints.
What if two people are happy without an Agreement and have no problems?	It is in the growers interests to use the protection of the Code.
What about Agreements that were sent out over the past few months?	Apparently some traders are asking growers to sign back-dated agreements – if this happens, please let the ACCC know. Although growers may not want to this, anonymity is guaranteed unless the individual gives permission.
What is the timing of reporting from trader to grower?	This should be in your HPA.
Could the Assessors be used to assess disputes between growers and retailers?	This wouldn't fall under the Code, but it might be an option.

<p>If both parties are happy with an Agreement signed pre-December 14th, is it legal?</p>	<p>Yes.</p>
<p>If some growers sign "a pre-December 14th Agreement, then traders will refuse to deal with growers that didn't sign. If they don't sign, the growers business is gone.</p>	<p>If you sign a back-dated Agreement, then you risk a breach of the Code. Remember that the agents need your product.</p>
<p>If I change a minor detail, eg. the phone number on a pre-December 14th Agreement, does this amount to an amendment and require it to comply with the Code?</p>	<p>Not sure. ACCC will send an update on this via the Hort Code Information Update, so please subscribe.</p>

Tatura Meeting

Meeting: Tatura (ie west of the Goulburn)	Location: DPI Offices
Date/ Time: 30/04/2007 3.00pm	Duration: 2 hrs
Chair: Lis Blandamer	Presenter: Celia Himelreich, ACCC
Attendance: 5 growers (inc 4 packers) + representatives from HAL, Fruit Growers Victoria, Apple & Pear Australia Ltd	Crops: Fresh and processed pomefruit & stonefruit

Issues raised

1. Packhouses are seen by Code to be operating as agents, yet they do not charge a 'commission' – ACCC suggest that the other fees charged to growers in effect include a commission or service fee for marketing the product (often through Market Trader – in effect a secondary agent who is also charging a commission). Clearly the packhouse is not just charging packing fees as it generally pays the grower, often this includes advance part-payments.

Identified problems

1. Identifying and separating/tracking fruit from different growers and also the grower/packer's own fruit

More information required

1. Why would grower need to know price/date etc information related to merchant sale, as stated in ACCC's slide "Responsibilities of Merchants"?
2. More explanation of packinghouse scenarios – VFF/ACCC to run another meeting on this issue.

Grower response

Some managers / staff from packhouses were unaware they would have agents responsibilities under Code and require HPAs with their growers.

Need to get information out regarding packhouse scenarios.

Questions

Question	Response
Growers send their product to a packing house, who then sells via a wholesaler to the retailer. The packhouse charges a fee and the wholesaler charges a commission. Some packhouses remit a part-payment to the grower on receipt.	Under the Code, the packhouse would be the agent. The code will require the packhouse and wholesaler (secondary trader) to be more transparent. In effect, the packing fee includes a commission for marketing the product as well as for other services such as storing, grading and packing. ACCC has written some articles on this
All the packers in the Goulburn Valley are also growers, so pack their fruit alongside others.	Business must have clarity over which hat they are wearing.
If you can't differentiate between your own fruit and other growers fruit, what can you do?	You have to be able to separate fruit.
Will have to increase admin to cover extra costs?	What extra costs? You must need to track, manage and pay for each grower's fruit now?

<p>If say blending four growers fruit to make up a consignment of a particular grade and size, will it need four consignment notes?</p>	<p>No, the trader / your customer doesn't need to know that.</p>
<p>As grower-packers, the place we think protection is needed is in the markets.</p>	<p>Fair point, noted, but a policy issue to raise with DAFF. There is nothing to stop you setting up any contract you like with your customers in the markets, but it won't have the force of the Code. Code will be reviewed and monitored and it is possible to amend it in the future.</p>
<p>Sometimes two different companies are set up to deal with fruit-growing and packing side of business. Do they need an Agreement with themselves?</p>	<p>If they are run as separate businesses then Code will apply.</p>
<p>(Comment: Seems like Code is protecting the smallest sector of the industry (in volume) even though it comprises multiple growers).</p>	
<p>Why would grower need to know price/date etc information (stated in slide "Responsibilities of Merchants")?</p>	<p>This is flexible, depends on needs of grower / trader.</p>
<p>Can we assume that ACCC will deal with this in an understanding way, during transition period?</p>	<p>Yes, only concerned about blatant disregard of the law in the initial period.</p>
<p>Concerned that only a couple of packers attending today. We attended as growers, didn't know Code would apply to us as packers – many others in the valley would be quite unaware of Code implications. As smaller operations, may be harder for them to comply.</p>	<p>VFF/ACCC to arrange another meeting focussed on Goulburn Valley packers asap.</p>

Shepparton Meeting

Meeting: Shepparton (ie east of the Goulburn)	Location: Overlander Hotel
Date/ Time: Mon 30/04/2007 7.00pm	Duration: 2 hrs
Chair: Lis Blandamer	Presenter: Celia Himmelreich, ACCC
Attendance: 5 growers + representative from HAL and DPIVIC	Crops: Fresh and processed pomefruit & stonefruit

Issues raised

1. Possibility of overnight negotiations (also raised elsewhere).
2. Agents/Category Managers acting for supermarkets.

Identified problems

No new problems identified

Grower response

In contrast to Tatura, attendees were interested from grower perspective, with packhouse issues hardly raised. The growers present indicated that they were happy with current trading relationships and wanted to continue these.

Questions

Question	Response
Why are traders allowed to choose whether to be an agent or a merchant? It just allows them to play the market	It is not the purpose of the Code to dictate people's business operations.
What if I want to carry on dealing with my regular agent without an Agreement?	You will be breaching the Code.
Who will monitor this?	ACCC doesn't audit, but relies on complaints coming in.
Many growers in this district are happy with their arrangements.	It shouldn't be a major task to comply – reference the templates developed by industry.
Where is the transparency under the Code? We will be told everything except who it was sold to – how is a grower supposed to know if the price quoted is right?	Code does provide everything except buyer identity – more than currently available.
Is there any truth in comments about growers being wakened at 3am?	Not necessarily – depends on your Agreement.
Does request to cancel Agreement have to be in writing?	Yes.
Will there be a database kept in case a lot of people complain about a particular trader?	Yes.
When will the Code be reviewed?	Maybe between 1-2 years (as well as ongoing monitoring).
Do any other agricultural commodities have similar codes?	Aware of some voluntary codes , eg. cattle, but not aware of mandatory codes.

Where do packers fit within the Code?	Packing shed is defined according to nature of transaction.
Is there any reference in the Code to packhouses	No, roles are defined by activity, eg. if the shed is finding a buyer for your fruit, then it is an agent.
So Costas are acting as a wholesaler?	If an agent is acting on behalf of a supermarket, they are not covered by the Code. (Comment: The code as it stands may not provide answers to all the issues that growers may have wanted. Code does have the potential to be amended)
Need materials in Languages other than English (LOTE)	ACCC do have LOTE materials available and would like assistance in distributing these.

Cobram Meeting

Meeting: Cobram	Location: Barooga Golf Club
Date/ Time: 27/04/2007 7.00pm	Duration: 3 hrs
Chair: Philip Pullar	Presenter: Celia Himelreich, ACCC
Attendance: 22 growers + representative from VFF and Victorian Peach & Apricot Growers Assn (VPAGA)	Crops: Fresh and processed fruit, strawberries

Issues raised

1. Who is responsible for levies – agent or merchant?
2. Growers want to access details of who bought their produce from their agent (common issue, but held very strongly here).

Identified problems

1. Defining 'delivery' where fruit is held in coolstore for months before grading and packing.

More information required

Does the Horticulture Produce Assessor have powers of entry etc?

Grower response

Growers were disappointed the Code did not enable them to gain details of retail buyers in order to confirm the price paid with their returns from agents. While it was mentioned that Assessors can do this on their behalf, this option needs to be developed and explained more clearly.

Growers were concerned that 'nothing would change' under the Code.

Questions

Question	Response
Packers may be storing growers fruit for six months in bins in CA (controlled atmosphere) storage, before sorting and packing	Sounds like an agency transaction, need to define 'delivery' in the HPA.
Some packhouses offer a price per bin guaranteed, but payment is not on delivery but a few months later and also may depend on final packout result.	Aim of the Code is to clarify that part of the transaction.
Doesn't protect grower from buyer going broke	Code doesn't protect business against bankruptcy
Code ought to protect grower against problems beyond the packhouse.	Important that you provide this feedback to DAFF.
(Comments: Why have the Code? It is only repeating what we are already doing. It won't it just force everyone to be an agent? Can agree to periodic reporting – nothing has changed)	
Was this designed to help the grower?	Designed to help the whole industry.
Under Roles and Responsibilities of Merchants – if merchant has taken ownership, why does grower need to know sale information?	There as a safeguard in case terms of payment are extended payment period, to enable grower to track transactions.

If agent doesn't get paid, grower has to chase debt?	No – agent has to make clear whether or not they will chase the bad debt – generally they do this, so it appears unlikely that grower will have to chase the debt.
Agent might sell a couple of pallets worth to many different buyers.	You can request to see this information – if agent is not reporting, you have a legal right to see it.
If I have had a 20 year relationship with someone, can I agree that I don't want to see their records – if agent offers that option. (otherwise he won't deal with me)	He would be in breach of the Code.
Do ACCC act on complaints, or random checks?	We receive complaints about potential breaches and review whether there is a breach
I won't be complaining because the next time they won't deal with me.	You would be surprised how many businesses report each other in if they feel that others are not complying. Also, if ACCC litigates, we make sure it is well publicised. (Ref. Franchise and Oil Codes)
If a dispute arises, we need to be able to access past records of sales and customers, (to check on past transactions, in case problems there too)	Can only do this if chasing debt.
Who is responsible for levies – agent or merchant?	Either can deduct levies – Code allows for this to happen as it usually would.
Most fruit in this region goes to processors – why were processors and retailers excluded?	Apparently the relationships they have with growers are already covered by contracts. Policy issue to refer to DAFF.
Can I have two agreements with one trader.	Yes
How can it be transparent if I can't go to check on who the fruit was sold to?	If the agent provided you with the buyers details, you could potentially cut the agent out of future deals. You have the option of making a complaint to the Mediator and using a Horticultural Produce Assessor or to check these details.
Why aren't exporters included – they generally won't provide contracts – generally sell on consignment, can't get a forward price.	Refer to DAFF.
Agents are sending out Agreements now.	Because the law takes effect from 14 th May – is legal requirement to get these in place. Any Agreement signed after 15 th December 2006 would be covered by the Code.
Does the Horticulture Produce Assessor have powers of entry etc?	Not sure but assume so – need to confirm.
(Comment: The DAFF information on the website ought to be downloadable in B&W and without photos, for growers on slow internet access	

Colac Meeting

Meeting: Colac	Location: COPACC Centre
Date/ Time: 10/05/2007 1.20pm	Duration: 1 hr 10 mins
Chair: n/a	Presenter: Celia Himmelreich, ACCC
Attendance: 1 grower, 1 trader + representatives from VFF, ACCC	Crops: Potatoes, Vegetables

Issues raised

1. 'Seed' potato consignments are sometimes diverted to fresh sales, in which case they would fall under the Code, so may need HPA for first transaction to cover this possibility.

More information required

(non-code, but related) What does AUF transport code say about reporting timing of delivery?

Grower response

The issues raised were generally specific to the two attendees and they appeared to be satisfied that these were addressed.

Questions

Question	Response
Seed potatoes. Should be excluded as non-food nursery product, But sometimes potatoes are bought as seed potatoes, but the market moves and so they are re-sold as market potatoes for consumption. May not know this when take delivery.	The first transaction is what counts, therefore you would need an HPA with your grower-supplier of seed potatoes if they could end up being sold on as edible market product.
Invoicing – should the grower invoice the end-purchaser in an agency transaction?	No – relationship is between grower and trader.
If agents paying freight, how does he handle this? Remit amount received less commission, less freight?	Yes, but would have to be clearly listed so grower is clear exactly on amount received for product.
Levies?	This is covered in the code – the merchant can continue to take out levies as required to by Levy Regulations.
To sell to public in growers markets, you have to have a council-approved packing shed. (Food hygiene regs). So if I use my approved shed to pack for someone else and on sell, then I am a trader?	You would be, but as you are selling direct to the public, you would be exempt from the Code.
What about dealing with eg McCains (processor)?	The industry has an application in to ACCC for collective bargaining, as not covered by the Code.
Reporting requirements seem to emphasise 'time' of delivery, eg p15 says <u>time</u> and date of delivery.	Depending on product, may be crucial, eg strawberries deteriorate very quickly.

Werribee Meeting

Meeting: Werribee	Location: Italian Club
Date/ Time: 10/05/2007 5.20pm	Duration: 2 hrs 10 mins
Chair: n/a	Presenter: Celia Himmelreich, ACCC
Attendance: 7 growers, 1 packer/ trader, 1 lawyer, 1 journalist, + representative from VGA / AUF and VFF.	Crops: Vegetables

Issues raised

1. "\$1 option" (has been raised elsewhere).
2. Inadequate industry consultation.
3. Definition of 'processed'.
4. Possibility to vary Terms of Trade in the way they are applied to individual Agreements (so long as exceed minimum conditions in published terms of trade).

Identified problems

1. May not want to show terms of trade to someone the trader does not want to deal with.

More information required

1. Definitions needed for 'processed' - two examples given were cut and wrapped pumpkin and salad mixes.

Grower response

Generally grower response to Code is not positive. Claims of lack of consultation.

Questions

Question	Response
Was there a vote on this? Same as R&D levy – no one wants that either.	There has been some feedback that some growers are not happy, but DAFF did significant consultation. However, as the attendance here tonight shows, it is difficult to consult if people don't engage.
Will there be a transition period?	Some businesses will struggle to get their affairs in order, so will only be looking for blatant disregard of the Code.
Chopped, wrapped pumpkin – would this count as 'processed'?	Has not been defined, but sounds like minor change to product, so not processed
Where do packhouses fit in?	It depends on the transaction.
I am a packhouse and might send the broccoli I receive to various markets, export, retail etc, and charge a fee.	That means you would be an agent. Under the Code, the agent must chase any bad debt on behalf of the grower – if agreed in the Agreement.
	The Code is not going to stop people going broke – that's a normal risk of business.

In a grower-merchant Agreement, what happens if they don't perform to the Agreement eg sell produce in two days?	That wouldn't apply in a merchant agreement – they have bought it so it's up to them when they re-sell.
Why would an agent want to chase bad debts – they will all act as merchants.	There are a number of different possible scenarios, but the point is that it has to be agreed up-front who will chase debts
The agent may not get paid for four weeks, but pays the grower in three weeks	Code doesn't stop that happening – not designed to stifle business practices – can agree anything in contract. The problem at the moment is that people operate without contracts.
Grower to grower transactions?	Depends on what they are doing – if A sells to B so that B can make up an order, then B is acting as a merchant and A – B needs an HPA. (but note the need to track the two streams of product separately).
What about salad mix, including ingredients grown by various growers but blended and marketed by one?	This would need to be confirmed – only washing the leaves so not clear if processed or not.
Could I leave the consignment note open as to whether the trader chooses to be an agent or merchant on the day?	It could work, but if he opts for merchant then he needs to agree a price with you before he can sell it on
What if he can't get hold of me at 3am?	That's the risk you run with this approach, unless you can fix the price before you send it to him.
What about volume? eg. when the trader says send 20 pallets and grower sends 40.	That's the grower's risk, if the volume differs from that agreed on the consignment note. Trader could phone the grower and agree to sell, but if trader refuses, it is the grower's risk.
Who provides the Terms of Trade?	Trader, generally, but you can refer to the HAC/NFF Template (not ACCC endorsed) and also page 7 of ACCC booklet to compare. (Comment: The wholesaler can't necessarily enforce his Terms of Trade on the grower – it is negotiable. Provides minimum conditions....eg if payment period was 30 days you might negotiate something better for large trading volumes.)
Does trader legally have to provide the Terms of Trade even when the parties have no intention of trading?	The Terms of Trade have to be publicly available.
Could be very confusing – multiple different Agreements with different terms.	Can standardise if you want to – it is up to you how you operate – just a case of putting it in writing rather than verbal.
Is ACCC going to look at all Agreements?	No.
How do you know that agents aren't going to put on the squeeze?	ACCC responds to complaints. The 1300 number logs 80,000 calls per year.
Does this mean I can only have an Agreement with one agent?	No.
Why would I want to cancel an Agreement eg if the trader doesn't pay? I just won't deal with him again.	It just gives you the right to cancel.

Why can't I cancel any time I want?	It's a contract law issue – depends what is in the contract about termination.
(Comment: Contract to deal and contract to supply are two different things – don't have to lock supply in)	
What does the agents report comprise?	Volume, date and time received, date sold, price received, deductions.
How fast will Assessors get to deal with problems?	They are aware they are dealing with perishable produce and need to move fast.
If the merchant and grower are happy with past business and sign an HPA agreeing a buy price of \$1/box, and then merchant pays grower extra after the sale ('gift cheque')	If you are lining up a buyer, then you are acting as an agent. Grower would put themselves at risk.

Devonport Meeting

Meeting: Devonport	Location: Squibbs Packing Shed, Spreyton
Date/ Time: 10/05/2007 4.00pm	Duration: 1.25 hrs
Chair: n/a	Presenter: Amir Paz, ACCC
Attendance: 1 grower, 1 grower/packer	Crops: apples, cherries

Issues raised

1. Some apple varieties may exhibit disorders some time after being taken out of storage and packed – need to manage this in specifications and in regard to ownership / responsibility.

Identified problems

1. Slow payment by wholesale customers and hence by packing shed.

Grower response

Growers present appeared comfortable with the arrangements. One grower uses a packing shed to pack and market for him. One grower/packer only sends own fruit to wholesale markets and has long-term relationship.

Questions

Question	Response
Does every separate apple variety need its own Agreement?	Every transaction needs to refer to an Agreement, but this could cover a range of varieties and cover a whole season.
I sold two tonnes of cherries and received a thick pad of paperwork from the agent, with details of every individual sale.	Haven't heard of this – there are reporting requirements under the code, but hopefully these can be streamlined.
I supplied Golden Delicious apples to a supermarket via an agent once. They were perfect when packed, but were showing up the Bitter Pit disorder by the time the retailer inspected them and were returned to me.	They remain your product until the supermarket accepts ownership, so it's your problem. You may want to strengthen the quality specifications on this particular variety if it is prone to the problem, eg. move it through the system quickly if that reduces likelihood of disorder?
Will the Code have any effect in speed of payments (3 or 6 months or more)?	As a grower using a packing shed who acts as an agent for you, you need to build payment terms into your Agreement. Up to packing shed to then move to collect money from the customers in the wholesale markets more quickly, through Agreements with them. But Code has no jurisdiction to enforce this next level of Agreements – rely on contract law.

Huon Valley Meeting

Meeting: Huon Valley	Location: Grove Research Station
Date/ Time: 11/05/2007 4.00pm	Duration: 2.25 hrs
Chair: none	Presenter: Amir Paz, ACCC
Attendance: 6 (including 3 grower/packers) + 1 consultant.	Crops: apples, cherries, summerfruit

Issues raised

1. Cost of compliance – legal advice on Agreements and changes to reporting systems.
2. Packhouse issues related to:
 - reporting to grower on fruit being consigned to multiple markets from each consignment
 - fruit is received from grower and stored for several months before packing and sale, etc (as also raised elsewhere)
3. How to comply regarding reporting, but without inundating growers with unwanted information.

Identified problems

1. Growers with limited communication technology eg. no fax machine.
2. Situations where orders for retail or export are cancelled and divert to central markets.

More information required

1. Can detailed transaction information be provided in a separate summary report and/or on request only, to avoid unnecessary paper when reporting to growers?

Grower response

General response to the Code was negative – seen as costly and burdensome for packers and that costs would impact on growers. Also, communication regarding Code discussions/negotiation through peak industry body had apparently been ineffective.

However, some of issues raised would not apply to the packers present, since HPA would apply between packer and grower, not packer and market wholesaler.

Only three packers were present, but all were anxious regarding the risk of accidental non-compliance. They requested support to review their systems to ensure compliance, but ACCC are unable to do this. It was suggested that the 'follow-up' session would be helpful.

Questions

Question	Response
Various Terms of Trade are being sent through, ranging from 2 – 31 pages. If I am not happy with one, can I offer them the template one instead?	Trader can create whatever they like, provided it complies with Code (if it breaches Code, talk to ACCC). You don't have to accept theirs, but they don't have to accept yours, either.

Is there any leeway on Monday 14 th as there is no way we can get this done?	Legally you should, but ACCC only involved if there is a complaint. Shouldn't be a major problem if you are trying to do the right thing.
Even today, our solicitor is raising multiple issues, eg if we get X bins from a grower, where do we take ownership, given we don't market it for several months.	Normally, if you are a merchant, you would take delivery when you accept the bins, but if there are months delay before marketing, would have to make effective delivery later as you would not know the price to pay.
Some will go for export – won't apply. Each bin will have a% for retail, b% export, c% to wholesale, etc. We don't know what a, b and c are going to be when the bin is delivered.	Then look at 'delivery' being when the product becomes ready for sale, then at that time you account for those boxes.
	Say you receive fruit in bins. You charge a packing fee (service charge) not covered by the Code. After packing, if the grower decides to do their own marketing, then it does not come under the Code. But if you, as the packer, do the marketing, then <u>you</u> need to decide whether to act as agent or merchant.
What if, for that consignment of apples, the packer was a merchant for some and an agent for the rest?	It would be sufficient to record, say, X tonnes traded as a merchant and Y tonnes as an agent. But note that you can't decide <u>after</u> it is sold whether to be an agent or merchant – the transaction ('delivery') takes place at the time it is ready for sale.
If imports come in, what agreement will apply?	Code will not apply.
(Comment: so we will not be competitive... the whole thing has been drawn up on the basis of the transaction between small growers and wholesalers, but it doesn't reflect our businesses. Where did the Code come from and why weren't we informed/consulted?)	(Comment: The policy side of things is up to DAFF, but there were two years of consultation with industry organisations. But worth mentioning that some of the stories ACCC got from growers in the past were quite amazing, such as losing a whole seasons crop and afraid to complain. Also, with the franchising code, there were similar levels of concern, but now it is well-supported.
(Comments: A lot of growers just have a phone, not even a fax machine, so it is not practical for them.)	
What about the fruit we already have in store – is it covered? We don't have an Agreement at present.	If you just have a verbal Agreement at present, the best way to avoid problems is to put it in writing. What is to stop you agreeing on Monday re the fruit you are trading then?
Can the agent sell our fruit without speaking to us?	If that is normal practice, yes, so long as they are acting as a true agent in your best interests.
Could the Agreement say they will let us know the price within 14 days (given that it is sold over a week or so).	The most important principle is that you have access to the records.
What happens with retail/export fruit when orders are cancelled and it goes to the markets?	
Can we write an Agreement that summarises what we do now?	Yes, any document is ok, so long as you don't breach the Code.
Would have liked to see an audit process rather than blanket the whole industry.	Without the Code, ACCC would have no powers to act on any problems an audit showed up.

What if grower and marketer have same owners but are run as separate entities?	If you as the packer / marketer have another entity that does the growing, then the Agreement is between you as a trader and them as a grower. The Code doesn't cover any other Agreement with the market wholesaler.
If packer acts as a merchant on understanding that 'price will be determined at the time product is accepted by customer' is it acceptable under the Code?	Doesn't sound like it is in the spirit of the Code – you cannot wait until the product is sold on before buying it from the grower, or you are an agent.
What about paying a nominal amount and then the balance as a bonus once it is sold?	If you say it is \$50/bin and then pay them \$250, its not in the spirit of the Code – looks very much like trying to avoid it which is a breach.
Would you be able to come and look at our business operations and tell us what to do in order to comply?	ACCC can't provide legal advice
	(Comment: Nothing to stop you keeping an Agreement in place for a long time, just use the invoices or orders to change price / quality etc)
Do we have to provide all the paperwork of every transaction when most growers really don't want all that? Can it be made available "on request" instead?	Will check – appears that the information must be provided in the report, rather than as a separate transaction report