

## Addisons FocusPapers

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### **Horticulture Code of Conduct – Potential Changes**

**The Horticulture Code Committee is seeking submissions from affected industry sectors (including processors, exporters and retailers) in respect of recommendations made by ACCC to amend and improve the Code.**

The Horticulture Code of Conduct (**Code**) came into effect on 14 May 2007. For further information see our Focus Paper “*Trade Practices (Horticulture Code of Conduct) Regulation 2006*” dated 10 May 2007. The Code is mandatory and was introduced to regulate trade between growers and wholesalers of fresh horticulture produce. The Code applies to wholesalers who trade as agents and also those who trade as merchants. Currently, the Code does not apply to trade between growers and processors, growers and exporters or growers and retailers.

The Australian Competition and Consumer Commission (**ACCC**) recently made 13 recommendations (**Recommendations**) to improve the Code, including extending the Code to apply to trade between growers and processors, growers and exporters, and growers and retailers.

The Recommendations are as follows:

*Recommendation 1: Amend the Trade Practices Act to introduce civil pecuniary penalties and infringement notices in relation to Part IVB provisions, such as the Code and introduce random record audits as an enforcement mechanism available under the Code.*

*Recommendation 2: Amend the Code to regulate first point of sale transactions of horticulture produce between a grower and a retailer, exporter or processor.*

*Recommendation 3: Amend the Code to regulate first point of sale transactions between a grower and a trader in horticulture produce, including in relation to agreements made before 15 December 2006.*

*Recommendation 4: Amend the Code to require a merchant to provide a grower, before delivery, with either a price or a formula for calculating price. Any agreed method used to calculate price must be by reference to the amount received by the merchant from the sale of the produce to a third-party purchaser.*

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*Recommendation 5: Amend the Code to require that if a merchant does not reject the produce within 24 hours of physical delivery, the produce is deemed to be accepted.*

*Recommendation 6: Amend the Code to enable a merchant to deduct the cost of any services that are required to prepare the produce for resale as part of the price amount or as part of the method for calculating the price amount.*

*Recommendation 7: Amend the Code to only permit an agent to recover their commission for services performed under an agency agreement as a deduction from amounts paid by a third-party purchaser.*

*Recommendation 8: Amend the Code to exclude persons who may be an agent's competitor from inspecting that agent's records on a grower's behalf.*

*Recommendation 9: Amend the Code to ensure that transactions between a grower and a cooperative/packing house, in which that grower has a significant interest, are exempt from regulation under the Code.*

*Recommendation 10: Amend the Code to permit agents and growers to engage in pooling and price averaging.*

*Recommendation 11: Amend the Code to exempt transactions entered into in a grower shed at the central markets from regulation under the Code, while permitting parties to these transactions to access the Code's dispute resolution procedure.*

*Recommendation 12: The ACCC also recommends that the costs incurred by the parties to a dispute under the Code dispute resolution procedure be subsidised by the Australian Government to the same extent as the voluntary Produce and Grocery Industry Code of Conduct (PGICC).*

*Recommendation 13: The ACCC also recommends the implementation of further education initiatives regarding the Code and its dispute resolution procedures, including the role of assessors in resolving disputes.<sup>†</sup>*

The Horticulture Code Committee (Committee) was recently re-established to assist the Federal Government in considering and responding to the Recommendations. The Committee comprises an independent Chair and representatives of growers, processors, packagers, retailers, exporters, wholesalers and market owners.

The Committee met on 1 and 2 December 2008 to consider the Recommendations and will meet again in early March 2009 to consider the Recommendations further. Selected industry members will be invited to that meeting to discuss any submissions they may wish to make in respect of the Recommendations.

The Committee is currently seeking from affected industry sectors written submissions that:

- respond to the Committee's deliberations to date; and
- outline other implications that the Recommendations have on affected industry sectors.



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Submissions should be received by the Committee by 6 February 2009 and should address the implications of implementing the Recommendations and not the merits of the Recommendations themselves.

Should you require any further information in respect of the Recommendations, the Committee's deliberations to date or assistance with preparing submissions to the Committee, please contact Jamie Nettleton, Partner or Robin King, Senior Associate.

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<sup>†</sup> *Source of information: Horticulture Code Committee*