

Horticulture Code of Conduct

Response to the Regulation Impact Statement



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1: About HAC and NFF

Horticulture Australia Council (HAC)

Horticulture Australia Council (HAC) is the peak agri-political body representing the horticulture industry in Australia. It represents 95% of the Australian horticulture industry - an industry with more than 20,000 growers employing 130,000 people and a farm gate value of \$8.2 billion.

HAC was formed in June 2000 to effectively deal with the increasing number of critical issues that are threatening and challenging the livelihood of horticultural industry stakeholders. HAC's intention is to speak with one clear, strong voice in order to better promote the worth and importance of the horticultural industry both in Australia and overseas.

HAC currently has sixteen grower association members, including: AUSVEG, Apple & Pear Australia Ltd, Avocados Australia Ltd, Australian Banana Growers Council, Australian Citrus Growers Inc, Australia Dried Fruits Association, Australian Mango Industry Association Ltd, Australian Mushroom Growers Association, Australian Nut Industry Council, Australian Passionfruit Industry Association Inc, Cherry Growers of Australia, Growcom, NSW Farmers Association, Nursery & Garden Industry Australia Ltd, Summerfruit Australia Ltd and Snackfruit Australia Inc.

National Farmers' Federation (NFF)

The National Farmers' Federation is made up of State farm organisations, commodity councils, associates, affiliates and friends of NFF. NFF does not have individual farmer members. By joining a State farm organisation, farmers contribute to and support NFF.

NFF's state member organisations have significant horticulture grower membership from across all major parts of the horticulture industry.

2: Background

On January 18th 2005, the Hon. John Anderson, the Deputy Prime Minister, announced 'The Australian Government is taking the first step to implement its election commitment of a Code of Conduct on trading relationships at wholesale fruit and vegetable markets.'

Since that time the Centre for International Economics (CIE) has been engaged by Government to develop a Regulation Impact Statement (RIS) for a Horticulture Code of Conduct.

As part of the RIS development process CIE asked key stakeholders to respond to a discussion paper which was distributed in May 2005. HAC and NFF provided a joint response in June 2005.

Information collected from key stakeholders was used in the development of a draft RIS and proposed draft Code of Conduct which was released on 22nd July 2005.

CIE have called for submissions from interested parties in response to the draft RIS and proposed Code of Conduct. CIE have also conducted public consultation meetings in Sydney, Hobart, Melbourne, Brisbane, Atherton, Darwin, Mildura, Adelaide and Perth to gather feedback from interested parties. Final submissions are required by 24th August 2005.

HAC and NFF through their industry members and other interested industry groups have consulted widely with growers throughout the consultation phase. This has included individual industry associations holding grower forums in regional areas to explain the draft Code of Conduct and to get feedback from the production sector. The feedback from this process is the basis for this submission.

3. Consultation

As industry leaders HAC and NFF have deliberately taken a role to engage with all production sectors of industry in regard to their requirements in relation to the proposed Code. We understand the complexity of the industry and the importance of developing a Code that has ownership of the industry, is simple, easy to implement, promotes fairness, does not add onerous costs and allows all supply chain partners and consumers to enjoy the benefits which such a Code can offer.

Consultation with industry was extended beyond the current members of HAC and NFF and as a result other key industry groups were asked to participate in our internal consultation processes.

Other groups included in the consultation process include Australian Melon Association, Strawberries Australia, Papaya Australia, Australian Nashi Growers Association, Australian Custard Apple Growers Association, Rambutan and Tropical Exotic growers Association and the Northern Territory Horticulture Association.

A comprehensive consultation and communication process has been implemented by our industry sector with HAC and NFF members and the other industry associations listed above. The aim of this has been to address key issues, provide considered and representative input to the Code development process and keep those industry groups interested in the process informed about developments.

4. Agreed Industry Response to draft RIS and draft Code

General

The following industry response was formed as the result of consultation on the draft RIS and proposed Code of Conduct released by CIE on the 22nd July 2005. The consultation process involved attendance at the public meetings held by CIE, grower's forums held by industry members, verbal and written comments received from industry associations and their representatives, growers and other stakeholders. As well, independent economic and legal advice was sought on specific issues.

NFF and HAC acknowledge that there has been a range of views and associated issues raised as part of the consultations process. We are confident that the views reflected in this submission are representative of the majority of those individuals and groups consulted.

It is important to note that the submission is supplementary to the comprehensive joint submission lodged by NFF and HAC in June 2005 on the requirements for the new Horticulture Code. NFF and HAC have no substantial change in position, at this stage, from the position taken in this first submission to the consultants.

Scope

In terms of scope of the Code, NFF and HAC support the position that the Code should cover the first transaction from the grower and that it should apply to all parties, including but not limited to central market wholesalers, other wholesalers, produce merchants, brokers, retailers, exporters and processors.

We also believe that the trading relationship beyond the first point of sale should, under certain circumstances be available for scrutiny under the provisions of the Code where it impacts adversely on parties subject to the code. This would be applicable to ensure pricing transparency and to address issues related to trading with related parties.

Similarly it should also be noted that the hybrid model proposed by the consultants engages the third party buyer as the price cannot be set without their involvement.

Trading terms

THE 'HYBRID UMBRELLA'

Firstly and most importantly NFF and HAC strongly oppose the 'hybrid umbrella' as put forward by the CIE in their suggested option for the new Code.

The status quo is unacceptable

The hybrid umbrella as a form of trading arrangement would perpetuate the status quo of the current trading ambiguity while not adequately address the concerns of growers that were behind the Code's commissioning in the first place. This was to align the commerce of the horticultural industry with the methods of trade recognised in common and Australian commercial law, and to deliver the clarity and certainty that this alignment offers to all trading parties. Fundamental to this is a grower's right to know whether a wholesaler is working in the grower's interest as an agent, or whether they are purely acting in their own interests as a merchant.

The hybrid umbrella as proposed by CIE would only codify many aspects of the current unacceptable situation where growers bear all the business risk of a market transaction and would encourage usage of the hybrid to be more entrenched than is the case now.

We note that CIE estimates this hybrid trading relationship currently constitutes around 90 per cent of all trades. Market malfunction is clearly evident with an increasing tendency for large growers (dealing direct) and small growers (farmers markets) bypassing the wholesale market. Unless clarity is brought into market transactions the markets will sink into irrelevancy.

Growers want to have a viable alternative to trading with major retailers, however unless the status quo is changed the market dominance of the retailers will only increase. This will continue to adversely impact the viability of central markets over time.

The hybrid option will limit choice

By offering a hybrid model as an option, the result will be that in reality only one method of trade will be available to growers using the central markets. The hybrid model will be the common method of trade in all capital city markets because it offers the greatest commercial advantage to the wholesalers. This is because ownership and risk lie always with the grower and the disclosure of price and quantity information under any transaction is only required by prior written request by the grower.

Wholesalers will simply refuse to accept consignments under agency and merchant terms, and thus the flexibility sought by CIE to avoid the "one-size-fits-all" will not be achieved. This will continue to perpetuate the adverse selection pressures which operate in the market now and are highlighted in the draft RIS.

While a wholesaler may argue that they have always traded with growers under the hybrid method, we believe that this form of trade has led to systematic problems in horticultural markets. As CIE finds in their report, this has distorted market signals to growers leading to an over supply of lesser quality produce. This has had the effect of lowering the prices and hence returns for all growers irrespective of their produce quality. This demonstrates market failure as growers of higher quality produce are effectively penalised.

Better transparency is required

Growers must receive either the actual and verifiable price for which their produce was sold (less any agreed commissions fees etc.) in the context of an agency arrangement, or an amount that has been agreed up-front with the wholesaler prior to dispatch by the grower or collection by the wholesaler under a merchant agreement.

The hybrid model proposed in the draft Code would leave growers exposed to price manipulation by wholesalers. Under the hybrid umbrella wholesalers will be more able to employ harmful practices such as price averaging/discretion and preferential treatment of different growers for the same product.

We believe the 'hybrid option' offers nothing of benefit in regard to function, flexibility or facility that is not offered by an agency relationship. In a properly functioning market, wholesalers can test the willingness of buyers and sellers to access their services by varying their commissions depending on the level of service provided.

Legal ambiguity does not provide clarity

It is also of concern the Code is attempting to introduce a 'new' type of trading arrangement which cannot override common law principals or breach existing legislation. This is an important point. The proposed 'hybrid method', lacks recognised legal standing in Australian commercial law, whereas both laws of agency and mercantile trade are well established with clear meanings in law. Moreover, being legally ambiguous the hybrid model avoids the force enshrined in law that an agent must act in the best interests of the principal by avoiding conflicts of interest and secure the best possible price for the produce.

If disputes are to be dealt with outside of the Code dispute resolution process, which is conceivably the case if the CIE dispute resolution were to be implemented, it is necessary that the Code conforms as closely as possible to well-understood legal principals. Indeed, in its operation, the hybrid so resembles an agency it's hard to see how a court could accept there is any difference in law. In this regard, there needs to be clarity as to whether the proposed hybrid model is based on a merchant or agent arrangement. At this time the intent is unclear.

Also the proposed Code contradicts itself in parts and therefore may lead to ambiguity which is the very issue which needs to be avoided (see Other issues: Legal considerations p.16-17).

Risks

Another area of concern with legitimising this form of trading is that there is a risk that other first point of trade partners such as produce merchants outside the central markets and exporters will move from their current method of merchant trade to this hybrid model, further disadvantaging growers.

As referred to above, NFF and HAC are also concerned that if the CIE hybrid method of trade is adopted then there are no built-in incentives for the wholesaler to secure the best possible price for the grower (the principal) as required in an agency transaction. The wholesalers could take a margin that is a flat rate margin, rather than a percentage of sale price as is the case with agency trade and therefore remove the incentive to sell produce at the highest price obtainable in the market.

The use of the hybrid also denies incentive to improve market performance. In cases where wholesalers are uncertain about the supply performance of growers, they would trade as agents. But when they are confident of the reliability of growers, it would be a natural step to move to a merchant relationship. This provides incentives for growers to improve their supply performance to secure agreed price sales – invaluable in making business decisions – and for wholesalers to act as merchants as it frees them from the GST obligation, and to submit their transactions to audit while allowing them scope to maximise their profit.

The only way to provide to provide for genuine flexibility in trading options, is through having clear agent and merchant definitions as put forward by NFF and HAC in their June submission.

THE 'MERCHANT UMBRELLA'

NFF and HAC have concerns the definition of a merchant trade proposed in the CIE option provides too much flexibility.

Price determination

In determining price the CIE merchant option states:

"a wholesaler acquires Horticultural Produce from a grower at a price, or pursuant to a schedule of prices, agreed prior to the receipt of the Horticulture Produce by the wholesaler".

In contrast, NFF and HAC support the position that price is determined in writing before the produce being collected by the merchant or the produce being dispatched to the merchant, rather than upon receipt of the produce by the wholesaler.

The CIE position continues the poor practice which already occurs in the industry where growers who have verbally agreed a price in good faith with a wholesaler find themselves renegotiating a price once produce is in transit and committed to a market. It effectively leaves the grower in a position of having no choice but to accept the lower price offered by the wholesaler. The grower has little practical option to re-consign their produce once it's in the hands of the merchant.

Transfer of title

In determining point of transfer of title the CIE option states:

"ownership of the Horticultural Produce passes as and when specified in the Agreed Terms of Trade".

This position however needs to be qualified and should include the words:

"but at a point no later than the collection of the produce by the Trader or it's carrier; or if the grower is responsible for delivering the produce to the Trader, then upon delivery to the Trader".

Providing too much flexibility by allowing the transfer of title to be specified in the Agreed Terms of Trade increases costs.

TRADING WITH RELATED PARTIES

The proposed Code does not adequately address the danger in the market of third party sales the wholesaler may make to a related party (such as another wholesaler or related business) as a device to secure additional profit. As a minimum it should be required that, in any of the trading options, sales can only be made to related parties with the prior written consent of the grower.

Wholesalers' records should be available for scrutiny where there is a case that this practice is occurring.

Title and Risk

NFF and HAC have concerns about the ambiguity surrounding the transfer of title and risk in the CIE hybrid option.

It is also unclear as to what legal context the produce is being held by the trader in the hybrid model, prior to being sold to a third party.

It is unclear as to the extent of the wholesaler's liability as they do not accept risk but have a 'duty of care' and at what point this 'duty of care' is transferred between the parties.

We ask the question, 'why should the grower carry the risk of the produce when it is in the possession of the wholesaler?' Even though title may not have transferred, risk certainly has as the product is out of the control of the grower. This is significant as it impacts on the liabilities of the grower and wholesaler, and clarity should be provided through clear transfer of risk.

The CIE hybrid model also places growers at disadvantage in that the wholesaler may withhold payment if product is rejected by a 3rd party buyer such as a retailer. It also allows responsibility to be passed back to the grower despite the fact that ownership passes to the wholesaler before sale to the 3rd party although the wholesaler has had ample opportunity to inspect the produce while in his possession, and is responsible for its care in that time.

Documentation

Flexibility of terms of trade

The flexibility offered in the CIE option in regard to terms of trade is of concern.

NFF and HAC acknowledge, given the extent of the scope of the Code (assuming that the Code will apply to first point of sale) and the complexity of the industry, that there needs to be a greater degree of flexibility in the agent and merchant options originally offered by the NFF / HAC in the June submission offered to CIE. This is particularly in relation to payment terms and notification periods for agreed specifications and should take into account the type of product and the specific supply chain partner (eg. processors).

However, we are concerned that the extent of flexibility offered by the CIE option could significantly disadvantage growers given the market power advantage that wholesalers have over growers. This will mean that the terms of trade document will have minimal documentation for growers unless growers make a concerted effort to request such information. This is difficult for growers given that the wholesaler is the buyer of grower's produce and they are able to withhold payment or may refuse to trade with that grower in future.

For example, in the CIE hybrid model, it is of concern that detailed pricing and quantity information is only available upon request of the grower. We believe it should be mandatory to disclose this information, unless the grower has specifically requested for it not to be. By putting the onus on the grower to request the information which should be provided as a matter of course, growers will be discouraged for fear of jeopardising their commercial relationship with their wholesaler. The power relationship between the two parties has to be recognised in this context.

Notification of intent to supply

NFF and HAC flag concern about the practicality for a Notification of Intent to Supply to be signed off by both parties before dispatch of product by the grower. Given the time lines often adhered to in day-to-day harvesting, packing and dispatch of produce and the hours of operation of many trading business, we believe that another mechanism needs to be investigated.

Further, the draft Code does not stipulate when the wholesaler's terms of trade document is given to the grower. It is important that this occurs before trade occurs between the two parties.

Pricing

It is important that growers are paid, and informed of the true price for which their produce was sold (less agreed charges and commissions).

The practice of price averaging and discretionary pricing which now commonly occurs in the market is unacceptable. These practices result in distorted price signals and growers being unable to gauge the true value of their produce. This further entrenches the information asymmetry that exists within the market.

For the horticulture sector to operate efficiently it is imperative that growers can obtain clear market signals to make informed management decisions. The result of not having clear signals introduces inefficiencies and imposes unnecessary costs on the sector and the community.

We also do not believe that wholesalers should use grower's funds through the extension of payment terms, beyond acceptable business norms to fund the working capital costs of their business unless this is made transparent to the grower and some allowance / compensation is made for this in the terms of trade.

Dispute Resolution

In regard to dispute resolution NFF and HAC believe that the dispute resolution model offered by the consultant would fail as a means of effectively resolving disputes.

It is of concern that:

- both parties must agree
- a party can withdraw from mediation at any point.
- there is also no process for making a finding
- there is no indication if disclosure of relevant documents is mandatory under the Code – this is imperative for dispute resolution to be effective.

It is understood that disputes that are considered a breach of the Code would be dealt with under the Code's dispute resolution mechanism. Industry also requires that any dispute that arises between parties as a result of their trading relations which is not considered a breach of the Code can also be handled under the same dispute resolution process.

Growers see merit in having independent horticultural inspectors used to validate quality and pricing issues. However, it seems improbable that inspectors will have the required expertise to audit both quality and pricing and for this reason we propose that quality disputes be left to the commercial services that now operate in the industry to fulfil this role.

Inspectors should be mutually agreed between the parties. To support this process the Code Management Committee should provide a list of suitably qualified inspectors for selection and these inspectors should satisfy an appropriate accreditation process. It is important to realise that it may be impractical in some instances for a horticultural inspector to be involved in the dispute process because of the practical availability of such a service and the cost to attain the service ie. for disputes in regional areas where no qualified people are available.

In regard to mediation, the consultant effectively suggests that any commercial mediator could be appointed to resolve disputes. The industry feels strongly that this should be a single person or organisation that understands the nature of the industry, issues inherent in dealing with highly perishable products and the details of the Code of Conduct. This will assist in reducing costs to industry (there would be a requirement for a mediator who is not familiar with the industry to expend significant time in each mediation gaining the background industry knowledge), ensuring there is consistency in the way disputes are handled and providing confidence in the mechanism.

In successful mediation growers and wholesalers should agree to sign a contract outlining the terms of agreement of the dispute resolution.

If the mediation step is not successful an independent third party (arbitrator / statutory officer) is still required to make a finding and to order redress. We accept this may require amendment to the Trade Practices Act but it would meet the objective of effective dispute resolution short of taking protracted and expensive civil action.

In this regard we understand that we cannot expect the ACCC to have the capacity to take action on the many Code breaches that are likely to be exposed by the inspectors. However, if this is the option chosen by the CIE, NFF and HAC would like explicit advice in the consultant's next RIS on exactly what the expectations of the ACCC's role regarding Code enforcement are, including the likely threshold for the ACCC's involvement.

One potential problem of the ACCC being the enforcer of the Code is that NFF and HAC believe that it can take up to six months for the ACCC to prosecute a case, and this must be done in the Federal Court which is expensive to use. We therefore request that the consultant assess this option against the growers preferred model.

Clarification is also required on whether material found in the mediation discovery process can be used in further dispute resolution processes, but industry would see this as a beneficial inclusion.

Cost of dispute resolution

The cost of mediation is of concern, possibly in the order of \$2500 (as is the case for the Franchise Code). Industry believes for dispute resolution to be equitable and effective that the Government should provide this service on the same basis as occurs in the current Produce and Grocery Industry Code of Conduct (PGICC) and the cost structure of the PGICC dispute resolution model should be used as a guide.

Indeed under the existing draft Code and arrangements industry will be able to continue to use the Produce Grocery Industry Ombudsman (PGIO). This needs to be expressly mentioned by the CIE in their RIS as it has potential to significantly reduce the cost of the Code on industry (if not Government). The PGIO costs a maximum of \$50 to use, while the Franchise model would cost up to \$2,500 to use. Under existing institutional arrangements Government would bear the bulk of the cost of mediation. NFF and HAC request that this is reaffirmed in the new Code, not left silent which is currently the case.

CIE states as a principal in its report that those who cause a problem should pay to correct it, or as expressed elsewhere, the loser in a dispute should pay. However, this is not carried through in the proposed cost sharing recommendations that require that inspections of disputed consignments will be "at the grower's expense" and parties to mediation are "equally liable" for its cost.

We propose that in all cases, the party found to be at fault must bear the full cost of any action. It is inequitable that a party found to be without fault, and has suffered loss, should carry the cost for the wrongful action of another party.

Code Administration

It is imperative that any Code Management Committee formed under the umbrella of the Code is equally balanced between grower and trader representatives and that a suitably qualified and independent chair is appointed.

Growers believe that it is inappropriate for market owners / landlord representatives to be included on the Code Management Committee. Although an integral part of the industry, they do not have any direct impact on the trading relations between growers and traders.

It is important that the Code Management Committee is effective as fine tuning of the provisions of the code by the Committee will ensure the success of the Code. If the committee is continually divided on issues along the lines of their respective place in the supply chain then these should be brought to the attention of the DAFF for consideration and correction.

Industry supports the position that Government fund the activities of the Horticulture Code Management Committee and secretariat in order to ensure the independence, and perceived independence of Committee chair and secretariat.

NFF and HAC acknowledge that an extensive and comprehensive communication and training campaign outlining market participant's responsibilities will need to be undertaken and that grower and wholesaler industry associations would be best able to target and inform their member's of the Code's impact. Industry would however suggest that it is important for the Code to be effective that this is not limited to written information kits but should also include a blended training approach ie face-to-face workshops and supporting written material in a similar way to the GST roll-out. Government support in the form of funding and expertise to assist in delivering this training would also be required.

It is proposed that the first review of the Code should take place between two to three years of the Code being implemented. It may be necessary for some fine tuning of the Code to be undertaken by the code management committee before the first review of the Code.

Costs and benefits

Obviously growers do not want excessive costs imposed in the application of the Code and although there will be some costs associated with compliance it is important that this is weighed by the benefits to growers and the sector.

We do not believe the cost benefit analysis provided by CIE in relation to the growers options adequately accounts for the benefits that industry will gain by introducing contractual clarity and transparency that only the growers' option provides. See notes in Other Issues: Economic Assessment p.17.

We believe that the hybrid option would reduce these benefits although the implementation cost may be similar.

As stated earlier, we also do not believe that wholesalers should use growers' funds through the extension of payment terms, beyond acceptable business norms to fund the working capital costs of their business unless this is made transparent to the grower and some allowance / compensation is made for this in the terms of trade.

Other issues

Economic assessment

Data in the CIE report shows that according to the Sydney markets, the market's share of total fruit and vegetable sales has fallen from around 85 per cent in 2001 to around 45 per cent in 2005. This has imposed large economic costs on the industry and we do not believe this has been adequately reflected by the CIE in their report. NFF and HAC believe that this major shift in the allocation of resources has been significantly driven by the information asymmetries between the informed (wholesalers) and the uninformed (grower) parties.

Put simply, growers are choosing to enter into higher-cost framework under the supermarket model as this provides the contractual clarity and certainty that is lacking the wholesale markets.

In assessing the growers' option NFF and HAC urge the CIE to investigate the costs that the existing ambiguous arrangements continue to have for industry. We believe the 'economics of information' provides the tools to explain the operation and inefficiencies of the current horticulture market. It is only by properly assessing these costs that the implementation costs of the grower option can be properly weighed. NFF and HAC urge the CIE to draw more fully on economic models such non co-operative game theory with asymmetric information.

Legal considerations

In analysing the draft RIS and draft Code we sought legal advice in regard to a number of issues in the draft RIS and Code. These issues have been flagged with CIE through our member NSW Farmers' Association, but at the time of writing this submission has not had a response.

In summary, we seek clarification on whether the Code has the power to introduce a 'new' type of trading arrangement ie the proposed hybrid model?

In the proposed hybrid model, we seek clarification on:

- what legal basis the wholesaler has possession of the goods and therefore what level of liability the wholesaler then has to the goods?
- what event (trigger) will cause title to pass from the grower to the wholesaler?
 - Is it the securing of the third party buyer?

- Is it the agreement of the third party buyer to pay a set price for the goods?
- Is it the agreement of the third party buyer to take possession of the goods?
- Is the price determination by reference to the sale price to the third party or is it by reference to the Terms of Trade?
- Given that the hybrid model is most probably a merchant arrangement then to what extent can the wholesaler return the goods to the grower in the event that the buyer returns the goods to the wholesaler?

We also note that there are inconsistencies in the proposed Code in relation to Clause 29 which states:

The Wholesaler must pay to the Grower the price for a consignment of Horticulture Produce calculated in accordance with the Agreed Terms of Trade. The Agreed Terms of Trade may, for example, specify that the price is the price received by the Wholesaler less any commission or other fees and extra costs specified in the Agreed Terms of Trade.

Reference to the word “may” in clause 29 should cause the clients concern and as can be seen clause 29 appears to be in conflict with the definition of a Hybrid Relationship because under the definition of a Hybrid it is stated:

“at a price to be determined by reference to the price at which the Wholesaler re-sells the Horticultural Produce less a commission or fee;”

Further considerations

We also raise the following issues for further consideration in regard to the impact of the Code on:

- ‘single desk’ marketing arrangements such as those that exists for export of citrus to the USA and the potato marketing arrangements in Western Australia .

These arrangements have provided effective marketing mechanisms and should not be negatively impacted.

- existing contractual arrangements including those within the processing sector.

The processing sector has some specific peculiarities that require comment, in particular:

- payment terms can vary significantly up to a point where growers are effectively paid over a twelve month period for a single delivery of a crop.
- price can be referenced to final processed product
- the time required for validation of produce quality may need to be referenced quality of processed product

- arrangements where growers agree to pool produce to meet specific market needs

There are a range of situations in which this occurs. Such situations are usually covered by contractual arrangements and the growers may use a broker or wholesaler as intermediaries in the supply chain.

It is important that these arrangements can be dealt with or accommodated by the Code.

Terminology

The terminology applied to parties in the trading relationship needs to be consistent in any Code proposed. Often in within the industry the words wholesaler, agent, merchant and trader are used interchangeably although they each have a specific meaning. This causes unnecessary confusion.

It is important that these terms are clearly defined and are addressed in any education program developed as part of the Code implementation process.

5. Conclusion

NFF and HAC believe that the only way to provide for contractual clarity, transparency and genuine flexibility in trading options, is through having clear agent and merchant definitions as put forward by NFF and HAC in their June submission.

The interim submission to the CIE outlined the requirements of the production sector in relation to the proposed Code. In essence NFF and HAC's position has not substantially changed. Although, as the Code is intended to be the first point of sale, less prescriptive payment terms and notification periods for agreed specifications may need to be considered. This consideration should take into account the type of product and the specific supply chain partner (eg. processors).

Effective dispute resolution is very important to the industry and we encourage CIE to revisit the key elements of the grower option. We believe this offers an effective, independent and cost effective solution.

We also encourage CIE to further consider the benefits to industry of having an effective Code that provide contractual clarity and transparency.

NFF and HAC believe it is important that industry has the opportunity to comment on the final RIS proposed by CIE. Paramount are our concerns that we have a cost-effective, workable Horticulture Code of Conduct providing the contractual clarity and transparency required

6. Contact details

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