



Submission

Submission to the
Productivity Commission
On the
**Regulatory Burdens on Business –
*Primary Sector***

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Growcom submission to the Productivity Commission issues paper on Regulatory Burdens on Business – *Primary Sector*

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Executive Summary

There are many regulations that impact on the viability and profitability of horticulture businesses in Queensland. Many of these regulations are seen as complex, time consuming and resource intensive. Considerable effort is required by government and industry stakeholders to ensure that farming enterprises can cope with our future operating environment and to minimise the costs associated with new or changing regulatory requirements.

Overall, the key points raised by Growcom throughout this submission include:

Biosecurity and Quarantine regulations:

- Interstate biosecurity systems are equally as important as our nation biosecurity system;
- There is a need for national consistency and performance standards (including time frames) in relation to our interstate biosecurity systems and associated processes;
- The significant cost to provide information to government, particularly in relation to the Import Risk Analysis process, is unfair to impose on industry. This particularly is unequitable for industries with small response capacities who find themselves vulnerable to imported pests and diseases; and
- Third party providers should be allowed to undertake audits on behalf of government.

Employment and Immigration regulations:

- The horticulture industry is a significant employer, with labour costs representing up to 50% of a business's overall operational costs;
- Employees on a Working Holiday Maker Visa should be exempt from the superannuation guarantee and be taxed at the same rate as Australian residents;
- The Australian Standard Classification of Occupations (ASCO) codes need to be reviewed to better reflect occupations in the horticulture sector. This will significantly increase the industry's ability to access the 457 visa program; and
- Payroll tax impedes employment and industry growth in labour intensive industries such as horticulture.

Environmental regulation:

- There has been a substantial increase in regulatory requirements in the past 10 years which have benefits beyond the farm gate. This must be acknowledged and taken into account. Industry should not have to meet the full costs of the public benefit;
- Overall, there is a lot of confusion and misunderstanding around environmental regulations. There is general consensus that there is just too much regulation and that it is too difficult to follow. There is a need for streamlining and increased recognition of self regulation;
- There are many examples where self regulatory systems have proved successful in achieving industry and government objectives without the need for regulation; and
- Government requirements for meeting legislation requirements can be onerous, time consuming and expensive activities for growers to undertake.

Workplace Health and Safety (WH&S) regulation

- Many growers are unaware of their full obligations under WH&S regulation;

- The rural industry has WH&S issues that are unique to other industries;
- There are many regulations and codes of practices that employers need to be familiar with;
- The WH&S legislation is seen as complex and constantly changing;
- There needs to be increased education and information campaigns undertaken to increase awareness of the issues and responsibilities.

Chemical regulations:

- The timeliness of chemical registrations is a critical issue for the industry;
- The uncertainty around the outcomes of a chemical review process can mean that an industry could be required to invest a substantial amount of money prior to knowing the final outcomes;
- Industry supports a streamlined and coordinated approach to chemical control of use legislation that removes the existing duplicated, confusing and complex legislations;
- Past experiences have demonstrated that controlling chemicals identified as being of security concern can have long term and unintentional consequences on the viability of industry.

Food regulations:

- There needs to be better streamlining of Australia's food regulations to make them more nationally consistent; and
- Industry has demonstrated that self regulatory approaches can be successful.

Other points:

- There are some situations where regulation is required when voluntary arrangements are unsuccessful; and
- Regulatory burdens also have an impact on industry organisations.

Introduction

As the peak body representing the Queensland horticulture industry, Growcom welcomes this opportunity to provide feedback on the Productivity Commission's Issues Paper titled *Annual Review of Regulatory Burdens on Business – Primary Sector*.

Growcom's submission is based on feedback received from growers and stakeholders and focuses on the impact of regulatory burdens at an industry and organisational level. As part of our consultation, we undertook a survey with growers in Queensland and also undertook discussions with industry stakeholders. Additional information was gathered from submissions and grower meetings. Overall, Growcom believes that specific case study examples need to be undertaken to further scope the issues and potential solutions.

Growcom's submission is based around the following quotes taken from the report by the Agriculture and Food Policy Reference Group titled *Creating our Future: Agriculture and food policy for the next generation* (the Corish report):

"The policy settings for agriculture and food must allow the sector to improve, grow and innovate. Good policies are vital for the sector, for the people who live and work in rural Australia, and for the country as a whole.

A policy and operating environment in which incentives rather than sanctions are used to achieve policy goals will bring greater overall benefits to individuals and the community. Where regulatory activities are necessary in the interest of the broader community, they need to be efficient in their operation and effective in achieving their stated objectives.

Regulation must not unnecessarily restrict the sector's capacity to innovate or adjust to change. Where regulations affect cross-border activities, they should be consistent between states and territories. Regulation should be designed to minimise any adverse economic impacts, constraints on competition and administrative burdens. It should also be reviewed regularly for its continued efficiency and effectiveness."

- Agriculture and Food Policy Reference Group, 2006

About Growcom

Growcom is the peak representative body for the fruit and vegetable growing industry in Queensland, providing a range of advocacy, research and industry development services to the sector. Growcom is the only organisation in Australia to deliver services across the entire horticulture industry to businesses and organisations of all commodities, sizes and regions, as well as to associated industries in the supply chain. We are constantly in contact with horticultural business operators and are well aware of the outlook, expectations and practical needs of the industry.

Growcom was established in 1924 as a statutory body to represent and provide services to the fruit and vegetable growing industry. Now a voluntary organisation, Growcom has grower members throughout the state and works alongside other industry organisations, regional producer associations and corporate members. To provide services and networks to growers, Growcom has approximately fifty staff located in offices in Brisbane, Stanthorpe, Bundaberg, Bowen, Ayr, Toowoomba and Tully. Growcom is a member of a number of state and national industry organisations and uses these networks to promote our members' interests and work on issues of common interest.

Growcom has an extensive array of dedicated and experienced staff specialising in many different fields. Growcom staff include:

- Policy and Advocacy team that focus on policy issues affecting all horticulture producers;
- Industrial Relations and Human Resources unit providing IR advice and services to growers on all employment related matters and legislation. Growcom is also registered in the Queensland Industrial Relations Commission as the Queensland Fruit & Vegetable Growers' Ltd Union of Employers;
- Land and Water team located throughout the state that has developed and delivered environmental and water policy and programs for over a decade. The team works to assist horticultural growers to achieve high standards of natural resource management, environmental protection and business profitability by delivering a range of projects and services;
- Industry Development Officers specialising in certain issues such as vegetables, bananas, grapes, apples, pineapples and melons. These officers travel throughout Australia and have established networks and industry contacts. Growcom also has an established pest management and chemical program;
- Department of Immigration and Citizenship (DIAC) outpost officer; and
- Media and communications team as well as a corporate services team.

As a result of our extensive knowledge and experience in the horticulture industry, Growcom is providing this response on the Productivity Commission's Issues Paper titled *Annual Review of Regulatory Burdens on Business – Primary Sector* on behalf of the Queensland horticulture industry.

About the Queensland Horticulture Industry

Queensland is Australia's premier state for fruit and vegetable production, growing one-third of the nation's produce. Horticulture is Queensland's second largest primary industry, worth more than \$1.5 billion per annum and employing around 25,000 people. Queensland's 2,800 farms produce more than 120 types of fruit and vegetables and are located from Stanthorpe in the State's south to the Atherton Tablelands in the far north. The state is responsible for the majority of Australia's banana, pineapple, mandarin, avocado, beetroot and fresh tomato production. There are 16 defined horticultural regions with a total area under fruit and vegetable production in 2001 of 92,710 hectares.

In the ten year period to 2001, there was strong growth in the area under production in Queensland (an increase of 44 per cent), with the Atherton Tablelands, Central Burnett, Coastal Wet Tropics and Western Darling Downs regions all approximately doubling their total areas under production. Furthermore, in the eight year period from 1993 to 2001, the value of fruit and vegetables produced in Queensland increased by 78 per cent.

The Queensland horticulture industry is:

- A major contributor to regional economies and the mainstay of many regional communities;
- The largest high quality supplier of fresh fruit and vegetables to Australian consumers;
- A diverse industry utilising a range of production methods in different locations and climates;

- A resource base for significant value adding throughout the food, transport, wholesale and retail industries;
- The most labour intensive of all agricultural industries, with labour representing as much as 50% of the overall operating costs;
- An industry with significant links to the tourism industry, providing income for thousands of backpackers and “grey nomads” each year;
- A high value and efficient user of water resources in terms of agricultural production;
- A primary and secondary source of income for many families in regional Queensland e.g. through seasonal work in packing sheds; and
- The site for a number of emerging agricultural industries including olives, Asian exotic tropical fruits, culinary herbs, bush foods, functional foods and nutraceuticals.

Section 1 – Maintaining our future competitiveness and viability

Our future operating environment is of real concern to the horticulture industry. Changing political environments, emerging export markets, regulation reforms, consumer expectations and policy frameworks provide a mix of uncertainties that threaten the very existence of the horticulture industry. Considerable effort is required by government and industry stakeholders to ensure that farming enterprises can cope with this future environment, and to minimise the costs associated with new or changing regulatory requirements.

To place this into a real life example, a grower recently described to us about the hardships faced in the industry and how conducting a business while remaining viable is becoming increasingly more difficult. Input costs continue to rise while profit margins are decreasing. Good years were occurring less frequently and had not been as good as previous good years. High staff turnovers and associated training and employment costs were also having a large impact on farmers' bottom line. This business environment is constantly being impacted upon by new and changing regulations.

Key questions facing the rural sector in dealing with this future environment and regulatory requirements include (but are not limited to):

- Will reforms to existing regulation as well as new regulatory requirements place further burdens on farm business productivity?
- What impact will changing political environments and strengthening of national security arrangements have on our businesses?
- What will it cost farmers to access and use natural resources and water? What are the implications for farm viability?
- Will our quarantine and biosecurity systems be stringent enough to preserve our relatively pest and disease free status while maintaining our international market access?
- Will we be able to overcome labour and skill shortages that threaten our productivity? If so, will our workforce costs allow our businesses to operate profitably?
- Will food imports be required to meet the same standards in terms of natural resource management and food safety as Australian produce ie will there be a genuine level playing field?
- Will climate change limit industry growth?
- Will the two major grocery retailers distort the fruit and vegetable market?

Governments can play a key role working in partnership with rural industry and other stakeholders to address these issues and fully engage farmers and their communities to implement reforms using practical and efficient measures. To achieve this outcome, there is a need for governments, rural industry and other key stakeholders to define and commit to a partnership approach to reform implementation and to ensure the future viability and productive growth of the horticulture industry and broader primary sector.

Overall, Growcom believes there needs to be more consistent, national approaches that are efficient and effective across a range of areas that impact on the horticulture industry. In addition, concerns around burdens at an industry level as well as individual enterprise level need to be addressed in areas including biosecurity, employment, environment, workplace health and safety, chemicals and food regulation. These areas will be looked at in more detail throughout this submission.

Section 2 – Biosecurity and quarantine regulation

Effective and efficient biosecurity and quarantine systems in Australia are extremely important to the future viability of the horticulture industry and broader agriculture sector. Growcom would like to provide some overall feedback in relation to the system, as well as some specific feedback on Import Risk Analysis and Interstate Certification Assurance agreements.

2.1 Overall biosecurity and quarantine system in Australia

The avoidance of pest and disease incursions is of vital importance to the viability of all rural industries. Australia's unique biodiversity and relatively disease free status, along with our reputation as a supplier of fresh, high quality, clean produce must be maintained. Freedom from many of the world's major pests and diseases is a clear advantage in both domestic and global markets.

Industry has very high expectations of Australia's quarantine system, and believes that proper consideration should be given to industry's views as quarantine decisions directly impact on their livelihoods. Growcom and industry does understand that government can not adopt a zero risk policy due to it being impractical and unachievable. In saying this, we still believe there is room for improvement.

Overall, the majority of horticultural trade occurs interstate resulting in the biosecurity systems between states being significantly important. However, these systems currently differ between jurisdictions. International trade is also important, with the horticulture industry requiring an import system which maintains high import quarantine standards to protect Australia's horticultural production base as well as the environment and biodiversity. Industry seeks to maintain a rigorous, science based quarantine system, the elements of which cover a combination of pre-border, border and post border management of quarantine threats with responsibilities shared between governments, industry and the community generally. It must be clear that these systems are developed and operated independently and based on sound scientific principles and analyses to defend the integrity of our environment and production areas, rather than as a barrier to trade.

Growcom supports the findings of the Agriculture and Food Policy Reference Group report (2006) that long term management of Australia's biosecurity would be enhanced by a more co-ordinated approach. There is a need to define roles and responsibilities more clearly and to

develop decision making processes for existing strategies, legislation and operational procedures.

A framework for a coordinated approach would include activities being undertaken by federal and state governments, as well as industry and landholders. This could facilitate adequate surveillance, leading to agreements between governments and participating industries on eradication and/or management strategies, resourcing and cost sharing. Enhanced preparedness and impact mitigation greatly increase the chance of eradication and limit the ability of pest and diseases to become established.

The benefits of a national approach, which would reduce the negative impacts on the industry, would include:

- Increased efficiency of surveillance and testing procedures and improved prospects of early detection of an incursion;
- Improved timeliness and effectiveness of responses to outbreaks, with ultimate benefits to industry and the community;
- Faster responses to pest and disease incursions once detection has been confirmed;
- Enhanced communication strategies, which are critical in dealing with trading partners, domestic industries and the Australian public in the event of an outbreak;
- The ability to draw quickly on resources from unaffected regions, to deploy and combat the incursion in affected regions;
- Significant cost savings from realigning existing overlapping administrative and jurisdictional functions; and
- A national information base facilitating information gathering and sharing, helping to guide strategic planning through consolidated, focused research and development.

2.1.1 Industry suggestions for potential improvements

There have been many suggestions raised by industry as to what government can do to improve our nation's biosecurity and quarantine systems. Horticultural industries need to be well protected by a strong quarantine system and be well prepared for invasive pests and diseases via proactive development and implementation of ongoing industry biosecurity plans. Growcom encourages horticultural industries to become members of Plant Health Australia to develop national biosecurity plans and to implement various strategies to minimise threats from plant pests. There is also opportunity to instigate a levy for biosecurity programs. These programs would be beneficial in avoiding or delaying urgent control and eradication programs.

Other industry comments on Australia's biosecurity and quarantine systems include:

- A comprehensive review of state biosecurity services to ensure capacity to respond and that new and emerging threats are recognised and planned for. Currently, state biosecurity agencies (particularly in Queensland) are under-resourced;
- Each state's biosecurity response is different, with no national drivers or systems in place for consistency. There needs to be uniformity between states, with time frames for discussion making which are risk based for interstate trade;
- State Government is the negotiator, rule maker and paid service provider;
- At a state government level there needs to be a biosecurity policy unit with a clear brief to consider the broader policy implications (eg impact on industry, facilitation of interstate and overseas trade, environmental and community considerations and development of

- long term approached to biosecurity) in recommending appropriate courses of action. A strong policy will also help identify priorities, funding and resources issues and industry engagement processes;
- There needs to be a clear operating principle of reducing industry compliance costs for biosecurity and quarantine matters. This can be done through the recognition of appropriate industry assurance programs (such as FMS) as an alternative to fee for service inspections;
 - Improved industry consultation on declaration areas is needed to avoid areas being bigger than needed and hence adding to compliance costs;
 - Industry needs to be more engaged in AQIS consultative processes to ensure their interests are represented and that they have sound understanding of how AQIS is handling key issues;
 - Promote a better understanding and confidence in the quarantine system (including Australia's appropriate level of protection);
 - Insure that hobby farmers, and growers in peri-urban areas fully understand biosecurity risks and their responsibilities in relation to this. This needs to include further analysis and targeted R&D extension activities regarding the rising biosecurity risks posed by increased levels of peri-urban agriculture;
 - Any free trade agreement must not in any way diminish the principle that quarantine matters be based on pure scientific assessment;
 - The government remain ever vigilant in opposing the applications or use of non-tariff barriers to restrict trade in horticulture products; and
 - Increasing capacity building and engagement for biosecurity issues and response involving industry organisations. This will build awareness, preparedness and response capacity including the need for on-farm biosecurity plans.

Overall, Growcom would like to submit that there should be Industry Outreach Officers (IOOs) from a state government level placed within industry organisations, using a model similar to that of the Department of Immigration and Citizenship (DIAC). This would enhance engagement and awareness of biosecurity and quarantine issues within industry. This initiative would also assist in developing biosecurity programs and building these into Farm Management Systems to increase industry's response capacity to biosecurity issues. We believe that this approach would be extremely beneficial for biosecurity and quarantine issues.

2.2 Import Risk Analysis

An import risk analysis (IRA) identifies the pests and diseases relevant to an import proposal, assesses the risks posed by them and, if those risks are unacceptable, specifies what measures should be taken to reduce those risks to an acceptable level.

In the past there have been concerns that Biosecurity Australia has been compromising the scientific basis of import risk assessment to further Australia's trade agenda. Recent and past controversies concerning the import risk assessments for apples and bananas have led many producers to become very concerned about the future of Australia's biosecurity system.

Overall, Biosecurity Australia needs to improve its consultation with industry, and recognise the enormous cost and effort undertaken by industry in responding to IRA reports. Some of these IRAs have been underway for many years – and have required several submissions from industry to complete technical and scientific responses. For example, the IRA to import apples from New Zealand has been ongoing for 2 decades. This has a substantial cost, which is unfair

to impose on industry. In some cases, industry groups may have a capacity to deliver a substantial industry response to government, however, in other cases the ability to respond is fairly limited. The ability of industry to provide a response to government could disadvantage them throughout the process. As a result, a smaller industry may well be vulnerable to imported pests and diseases.

Growcom acknowledges that IRA reforms were announced in October 2007. Part of these announcements included regulated timeframes for the completion of both standard and expanded IRAs. Although this will provide industry with a better guide as to when certain things will happen, it must not result in quick decisions being made by government to finalise a process just because the timeframe is approaching. It is absolutely vital that government maintains our high biosecurity and quarantine standards to ensure our country remains relatively pest and disease free.

In general, some feedback received about IRAs and the associated processes include:

- The process for IRAs can be drawn out over many years which provides uncertainty for the domestic industry;
- The industry cost in supplying information to government can be a significant burden in relation to costs and resources;
- There needs to be mechanisms that allow for ongoing engagement with stakeholders in order to undergo continued alteration and improvements to the processes and systems put in place; and
- Clear and transparent systems and procedures that allow for industry consultation and input prior to any alterations to import conditions that are in the final IRA.

2.3 Interstate Certification Assurance (ICA) agreements

Around 50-70% of Queensland produce is traded interstate. The ICA process is seen as a significant impediment to free interstate trade to allow access to markets on a reasonable basis. This certification provides assurance that produce is free from pest and disease. While the introduction of this system has been of great assistance to growers trading interstate, there are several major flaws in the operation of the system that must be rectified.

The issues that growers have identified with the ICA system include:

- The lack of uniformity in requirements between state jurisdictions;
- The lack of training options for accreditation of auditors and inspectors;
- The large number of commodity classifications - eg. Separate ICAs required for Kaffir, Tahitan and Finger limes;
- The high number and lack of co-ordination of inspections and audits required - eg. For Freshcare, ISO 9000, QA, ICAs;
- All negotiations are one state government to another state government, with no time frames or uniformity;
- Changing products and procedures - eg. Queensland apples bound for Victoria currently need to be dipped in dimethoate, but this product is to be withdrawn; and
- Inflexibility of enforcement procedures - eg. Consignments of bananas will be declared as Yellow sigatoka if detected on 5% *per leaf*, but this really should be *per tree*.

2.3.1 Potential solutions

Overall, there needs to be support from government for uniformity between state jurisdictions.

Growcom conducted an industry forum on this issue in 2006, in order to scope some possible solutions to these flaws in the ICA system. The outcomes of the forum were a series of recommendations, including the following suggested enhancements to the current system:

- On-farm inspections and audits for certification purposes should be restructured into a single cohesive set of procedures, able to be incorporated into a structured Farm Management System that includes ICAs, Freshcare, QA, ISO 9000, etc;
- Within this restructure, there is scope for broadening the roles and responsibilities of inspectors and auditors so they are credentialed to perform the full range of certifications;
- Inspections and audits to be performed during a single on-site visit, decreasing the frequency of inspections and audits, reducing the burden on growers;
- Entities other than the Department of Primary Industries & Fisheries should be accredited to offer this service, with the same expectations as the current standard;
- Those Queensland commodities currently without ICAs should be provided with them if appropriate;
- The extremely prescriptive technical thresholds that are the legacy of the pre-ICA testing regime (eg. 5% detection per leaf for Yellow sigatoka) should be re-visited; and
- Higher level of government scrutiny and performance standards put in place for negotiations.

2.4 Key points in relation to biosecurity and quarantine regulation

The key points Growcom would like to submit in relation to biosecurity and quarantine regulation are:

- Interstate biosecurity systems are equally as important as our nation biosecurity system;
- There is a need for national consistency and performance standards (including time frames) in relation to our interstate biosecurity systems and associated processes;
- The significant cost to provide information to government, particularly in relation to the Import Risk Analysis process, is unfair to impose on industry. This particularly is unequitable for industries with small response capacities who find themselves vulnerable to imported pests and diseases; and
- Third party providers should be allowed to undertake audits on behalf of government.

Section 3 – Employment and immigration regulation

Employment and immigration regulation and associated issues are a key area of concern for many growers, particularly in light of the labour and skill shortages that continue to constrain the horticulture industry. The horticulture industry is a large employer, particularly of seasonal workers. Employment represents a significant cost to the industry, representing as much as 50% of the overall operational costs.

Growcom is in the early stages of an Industry Partnerships Programme initiative with the Department of Agriculture, Fisheries and Forestry to develop a Horticulture Industry Workforce

Plan that will significantly build upon our industry's capacity to identify and respond to workforce issues and challenges impacting upon our productivity. However, this project is in the very early stages. In the meantime, Growcom will provide some feedback on employment and immigration issues that have been raised by our growers and stakeholders.

3.1 Superannuation and taxation issues

Growcom has received feedback from growers relating to the Superannuation Guarantee system that seasonal and casual workers on Working Holiday Maker (Temporary) Visas (subclass 417) should be exempt to relieve the financial burden on growing industry employers to fund overseas workers' retirement.

The Queensland horticulture industry relies heavily on seasonal and casual workers, a significant number of whom are working holiday makers (WHM) on Subclass 417 Visas, to fulfil the industry's extensive and growing labour requirements. These employees are short term with legal maximum of 6 months with one employer (some visa holders also have the opportunity to extend their visa if they meet the associated requirements).

Currently, any employee earning \$450 a month or more is eligible to receive the superannuation guarantee levy into a superannuation fund of their choice. The minimum superannuation guarantee for employees is 9% of their gross wage. Growcom is seeking adjustments to the superannuation support system to exempt seasonal workers on the WHM Visa.

The reasons this exemption is being sought:

- Increased labour costs for growers, who perceive it to be an additional tax burden;
- WHM are in Australia for a limited time and we suggest that it is not an employer's responsibility to fund their retirement which will in the majority of cases, be spent outside of Australia;
- Not all countries have a mandatory requirement for employers to contribute to superannuation funds. WHM may not understand the Australian superannuation system and even forget about the money by the time they personally retire;
- WHM (and other eligible temporary visa holders) can access their superannuation benefits once their visa has expired or been cancelled – ie. when they leave Australia. They therefore take all monies overseas with them; and
- The money is wasted if not claimed and could have been better utilised.

The impact of this issue is demonstrated in the example below:

A banana grower currently employs 50 casual workers who are on a WHM visas. Each of these employees works on average 30 hours a week for 6 months on the current minimum casual wage (\$16.57 per hr). The minimum amount of superannuation that this employer must contribute is \$58,160 over that 6 month period – which can only be accessed by the WHM when they leave Australia.

The frustration for horticulture businesses is that many of these employees do not access this superannuation when they depart the country - the significant contribution made by employers is seen to provide little or no real benefit to the employee and even when it does, it provides no benefit to the Australian economy.

Employers could better utilise this money by employing additional staff or making horticultural employment more appealing with increased wages and conditions. The labour shortage in the horticultural industry is a serious and growing concern for employers and for Growcom who represent them. In the example provided above, \$58,160 represents the wages of an additional 4 seasonal workers working close to fulltime hours over the same six month period.

Further to this, in relation to taxation, Growcom has received feedback from the industry that the increased tax removed from wages of backpackers, or those on a visa, is unfair as it reduces the attractiveness of occupations in an industry that is not known for its high wage rates. In many instances, this can result in the overseas worker claiming they are an Australian resident to avoid the increased taxation rate. This leads to further compliance issues.

3.2 Australian Standard Classification of Occupation (ASCO) codes

The ASCO codes used within Australia's skilled migration programs, including the temporary business visas, are difficult to use in relation to the horticulture industry. The types of specialisations and roles of skilled workers within this industry do not usually fall within the classifications set out in the ASCO codes. This has recently been further demonstrated through the inquiry by Department of Immigration and Citizenship (DIAC) into the position of production horticulturists. Growcom prepared a detailed submission in response to this inquiry which provided an analysis of the different skills and experience required for certain occupations within the horticulture industry. As an example, the types of skills and qualifications required by those working in the industry could fall within many fields including:

- Biology;
- Botany;
- Entomology;
- Chemistry;
- Mathematics;
- Genetics;
- Physiology;
- Statistics;
- Computer science;
- Communications;
- Natural Resource Management;
- Business;
- Plant nutrition and pathology;
- WH&S;
- Finance; or
- Workforce planning.

As the industry is always changing, there are also emerging fields that are not reflected in the ASCO codes. Through consultation within Growcom, the following feedback was gathered relating to emerging skills and qualifications required within the industry:

- There is an emerging field involving the use of spatial data, precision agriculture and information technology tools to support farm planning and day to day farm management (in the paddock, in the office and in the supply chain);

- There are new technologies for horticulture such as irrigation scheduling, GIS, GPS, farm planning and design and satellite tracking for guidance in planting and other technical aspects that require specific skills and qualifications;
- Skills involving the ability to meet requirements of natural resource allocations and management regulations as well as voluntary catchment and regional management plans; and
- Specific qualifications and competency associated with risk management assist businesses to respond to current issues and emerging themes.

At this present time, the ASCO codes do not accurately reflect occupations within the horticulture industry and as a result severely restricts the industry's ability to successfully utilise the 457 visa program. Growcom would like to submit that the ASCO codes need to be reviewed and updated to accurately reflect these occupations, including emerging skill requirements. Changes to the ASCO codes to accurately reflect occupations and associated skill requirements in the horticulture industry would significantly increase horticulture employers' ability to access the 457 visa program. This will be beneficial as the demand for skilled labour continues to rise.

3.3 Working Holiday Maker Visas

A large proportion of growers within the Queensland horticultural industry rely on working holiday makers or backpackers for their seasonal employment requirements. There are many growers who find this labour source adequate and sufficient to fulfil their seasonal labour needs. Recent changes to the Working Holiday Maker (WHM) Program allow working holiday makers who have worked as a seasonal worker in regional Australia for a minimum of three months to apply for a second working holiday visa.

Growcom has received specific feedback in relation to the WHM visa program including:

- The definition of "regional Australia" (defined by postcodes) excludes certain pockets of horticulture growers in Queensland that could utilise workers on a WHM visa. As a result, workers on these visas who are looking for the opportunity to apply for a second visa would not look for work in these areas. One particular area where this occurs is on the Sunshine Coast, particularly around Caboolture, where there are many strawberry growers. Growcom has discussed this issue with government, however it has not been rectified;
- People on a WHM visa who do wish to apply for a second visa require the grower who employed them to fill out paperwork to verify that employment. This is seen by some growers as a nuisance, as the worker could have employed with them many months prior; and
- Checking the work entitlements of visa holders is seen as time consuming. This can particularly be an issue when a grower employs a large number of seasonal workers during an extremely busy picking period.

The busy employment period in a horticulture business focuses around harvest time when a grower is picking, packing and sending their produce to market. This is the time of year when a grower earns their income. The grower will require many seasonal workers however will not have abundant time to spend checking work entitlements and other employment related documentation. As a result, the system for checking entitlements needs to be streamlined and easy. Growcom believes that growers should also be given some leniency if they have been doing the right thing in the past however have made a small error during their busy period. This

should particularly be taken into account in relation to the Migration Amendment (Employer Sanctions) Act 2007. However, Growcom expects that those maliciously doing the wrong thing (such as confiscating a person's passport effectively keeping them "hostage") should be punished accordingly.

3.4 Payroll Tax

Payroll tax is viewed by primary producers as an inefficient tax on employment and impacts severely on those sectors of labour-intensive industries such as horticulture and is insensitive in relation to the profitability of individual businesses. Growcom submits that this impedes employment and industry growth that have the potential to be major contributors to the national economy.

Growcom recognises that the Queensland Government raised the threshold to \$1 million however we also note that in recent years there has been a broadening of the definition of 'payroll' to include employer superannuation contributions and taxable eligible termination payments. We propose that the threshold level should be indexed to the CPI each year and exclude the superannuation guarantee charge of 9% from the calculation and commit to no further broadening of the payroll tax base.

3.5 Key points in relation to employment and immigration regulations

The key points Growcom would like to submit in relation to employment and immigration regulations are:

- The horticulture industry is a significant employer, with labour costs representing up to 50% of a business's overall operational costs;
- Employees on a Working Holiday Maker Visa should be exempt from the superannuation guarantee and be taxed at the same rate as Australian residents;
- The Australian Standard Classification of Occupations (ASCO) codes need to be reviewed to better reflect occupations in the horticulture sector. This will significantly increase the industry's ability to access the 457 visa program; and
- Payroll tax impedes employment and industry growth in labour intensive industries such as horticulture.

Section 4 – Environmental regulation

Environmental protection and natural resource management are important issues for growers. Much of Queensland's horticulture industry is located close to sensitive environments such as the Great Barrier Reef, Ramsar wetlands and the Murray Darling basin. Fruit and vegetable growers in Queensland aim to be responsible custodians of natural resources, however highly complex regulatory, policy and planning systems make natural resource management a major challenge for growers. There has been a substantial increase in regulatory requirements in the past 10 years which have had benefits beyond the farm gate.

Growcom supports the sustainable development of the horticulture industry in Queensland. This requires horticultural enterprises to be profitable, socially viable and environmentally responsible. Growcom and its members aim to work in partnership with government, research organisations, regional natural resource and catchment management bodies, the community

and other stakeholders to address natural resource management issues. Growcom believes an overarching framework is needed to encourage and coordinate sustainable natural resource management at local, regional, state and national levels.

4.1 Specific environmental regulation

There is abundant state and federal government legislation in relation to the environment and conservation. While many regulations are state based, there are likely to be drivers from a national level. Many horticulture growers in Queensland are unaware of what they need to do, and who they need to talk to. Feedback has also been received by Growcom that growers simply do not take environmental regulations into account. Other growers may even go through the processes, which are time consuming, before becoming aware that they did not have any responsibilities under the Acts. Overall, there is a lot of confusion and misunderstanding around this issue. There is general consensus that there is too much environmental regulation and that it is too difficult. There is a need for streamlining and increased recognition of self regulation.

There are many similarities in environmental regulation, and apparent duplication on some aspects. Specific issues have been raised about the Environment Protection and Biodiversity Conservation Act and the Integrated Planning Act.

4.1.1 Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the Australian Government's key national environmental legislation. The EPBC Act regulates any development or activity if it is likely to have a significant impact on any matters of national environmental significance (NES), such as:

- World Heritage properties;
- National Heritage List places;
- Wetlands listed under the Ramsar Convention as wetlands of international importance;
- Nationally threatened species and ecological communities listed under the EPBC Act;
- Migratory species listed under the EPBC Act;
- The Commonwealth marine environment; and
- Nuclear actions, including uranium mining.

Some feedback received in relation to the EPBC Act:

- The definition of significant impact – there is uncertainty around when this trigger will apply;
- Government should enhance information and consultation processes related to the operation of the EPBC Act so that stakeholders better understand the associated regulations and requirements;
- There is a lack of certainty amongst growers as to their responsibilities regarding potential off-farm impacts. There needs to be an avenue for growers to receive direct, case by case advice on how to comply with the Act;
- The Booth vs Bosworth case (the flying fox case) has created uncertainty about the interaction and degree of overlap between the state based wildlife protection laws and requirements for approval under EPBC Act. Duplicated state legislation needs to be removed;

- There are substantial costs around protecting crops from major economic damage from flying foxes and parrots;
- Growers must not be left to bear the costs of the conservation of flying foxes or other pests; these costs must be shared across the whole community;
- The EPBC Act needs to take into consideration the economic and social impacts during the decision making process; and
- The Act appears to have been designed to cover larger projects and developments. As a result, it presents numerous practical difficulties to growers, particularly those who usually operate as one or two person businesses.

4.1.2 Integrated Planning Act (1997)

Growcom has limited knowledge of planning and development issues in the horticulture industry. However, we are aware that vegetation management in particular is regulated through the *Vegetation Management Act 1999* and the *Integrated Planning Act 1997* (IPA). Growers who also need to build infrastructure on their properties, such as dams or packing sheds, may also need to go through the processes relating to IPA.

Growcom supports the idea of IPA in bringing all development related assessment processes into the one system. However, Growcom has received some feedback from the industry in relation to IPA and associated processes and building regulations. These include:

- Delays in the process and extended timeframes; and
- General confusion in relation to the processes and what is required.

4.2 National Water Initiative and the *Water Act 2000*

The National Water Initiative (NWI) is a comprehensive strategy driven by the Australian Government aimed at improving water management across Australia. This initiative was developed in an effort to continually improve the productivity and efficiency of our water use, while maintaining healthy river and groundwater systems. Overall, the National Water Initiative includes conditions that state and territory governments must abide by. In Queensland, these conditions have resulted in problems around the development of Land and Water Management Plans.

4.2.1 Land and water management plans

In Queensland (under the *Water Act 2000*), the Department of Natural Resources and Water (DNR&W) is required to ensure sustainable use of water resources. As part of this responsibility it must ensure that there are no unacceptable impacts on water resources through the use of water allocations. Where new water allocations are purchased, a Land and Water Management Plan (LWMP) approved by DNR&W is required before the water can be used for irrigation.

A LWMP can differ depending on which region the growers' business is located. However, as a general overview, a LWMP needs to include the following:

- A physical description and inventory of the resources of the property;
- Details of the proposed water use and associated land development;
- Land management and water management practices; and

- Proposals for monitoring to ensure sustainable practices.

The objective of the LWMP is to develop a system for on-farm land and water use that achieves sustainable development and use of water by landholders; and appropriate use of water and related land-use practices.

Growcom recently held a meeting Emerald to assist fruit and vegetable growers in the process of completing the documentation for a LWMP. Growers attending this meeting had many concerns relating to the guidelines and implementation and assessment processes involved. Growcom received substantial feedback from this meeting that was further raised with the State Government. Although this feedback is related to the Fitzroy Basin, many of the issues have also been raised by growers in other areas of the state.

Growers in the Fitzroy basin see LWMPs as a regulatory requirement that acts as a hindrance to their farming operations. They are seen to be inflexible, impractical, costly, time consuming and of no purpose to a farming operation except for providing the ability for them to trade water. With refinement to the guidelines and application process it is foreseeable that the growers would be able to comply with LWMPs whilst continuing a practical farming operation that does not adversely impact on the environment.

The concerns that were raised by growers in relation to the LWMPs were:

- **Level of detail required by the Government** was seen as excessive and invasive and did not necessarily have any meaningful application. There was also an evident sense of confusion and suspicion as to the intentions of DNRW (Government) with respect to the use of the information and data collected from LWMPs. A concern exists that this information may in the future be used against the growers to determine water allocations and intervene in the future expansion and development of land and infrastructure.
- **Practical application of Guidelines** - Problems in the practical on farm applicability of the requirements of LWMPs were identified as a major concern.
- **Inconsistencies between different regions with respect to land and water management plan guidelines and the process of application and assessment** - Particular reference was made to the Burnett Mary region where the LWMP process is seen to be easily carried out and approved as opposed to the difficulties faced within the Fitzroy Basin. This was seen as extremely inequitable and providing growers in the Burnett region with a competitive advantage. An example was given that a LWMP developed in the Fitzroy region cost a grower more than \$8000 before it was considered to meet the requirements set for the region. It is also of concern that the guidelines for LWMPs are more closely aligned to the cotton industry and furrow irrigation and do not align with horticultural industry needs.
- **A practical approach to the application of the Guidelines needs to be adopted** - There is a perception that DNRW staff implementing the application of the guidelines may not have practical on-farm knowledge. Growers emphasised that they wanted practical on-farm knowledge from staff who can relate to the way they are running their farming operation. They suggested that additional staff resources be allocated to engage with growers on-farm to meet LWMP requirements. Trying to solve a problem in a prescriptive way may adversely affect the farming operation and environment. For

example having diversion channels across tracks disrupts traffic flow and a full spray tank can spill chemicals when navigating diversion channels.

- It was suggested an initial on farm assessment be completed by a practically minded representative to identify and assess:
 - current runoff management measures that are in place; and
 - the need for additional; or changes to existing runoff management arrangements.Discussion is then needed with the landholder with regard to a range of runoff management options that would:
 - be within the landholders capability;
 - best achieve the desired outcomes of a LWMP; and
 - allow for the continuation of a practical farming operation.

In our experience, these sorts of needs are best met by people with an in-depth understanding of horticultural practices. One model that might be worth further investigation is the Rural Water Use efficiency program where we have worked with government to deliver positive outcomes on the ground. Growcom is aware of the need for LWMPs, however is disappointed that their roll out is causing such a high level of grower unhappiness. It is fair to say that with the exception of the Burnett Mary region, growers find the process difficult and expensive.

Growcom would like to acknowledge that some work is being done by the Queensland Government to address some of the issues raised by industry and we are waiting on the distribution of a draft policy. It is hoped that many of the issues raised above will be resolved by this policy document, however to date we have not been engaged in its development.

Further to this, there is an initiative underway in Queensland to implement a system where only one plan is needed to comply with different state legislation and associated requirements. This is supported by industry who had provided significant input to government over many years. However, the process is taking too long and is utilising too many resources. The delays in the process are also resulting in government undertaking work at tangents to this initiative.

4.3 Protection of the Great Barrier Reef

The Australian and Queensland Governments developed the Reef Plan to address the sediment, nutrients and chemicals that could affect the health and the future of the Reef. It focuses on actions to halt and reverse the decline in water quality in Reef catchment areas. There are many horticulture enterprises identified in reef catchments, producing a variety of different crops. This includes Queensland's most valuable producing area (in terms of value of production); the Coastal Wet Tropics where the majority of Australia's bananas and tropical fruits are produced.

Growcom is concerned that there has been a lack of delivery with respect to a number of the key actions in the plan and, more importantly, a lack of progress toward the plan's goal: to halt and reverse the decline of water quality entering the Reef within 10 years. This would suggest that a fundamental rethink of how *The Plan* operates and is funded is needed, rather than just the recent update of actions and pushing out of milestone delivery dates.

The main concern by industry is that perceived inaction will result in regulatory action by government, which is seen as a negative step in relation to this issue. Growcom strongly endorses the concept of self management approaches and believes that industry led approaches are the best mechanism to deliver on-ground outcomes.

Growcom's overarching issues and recommendations are outlined below:

- Industry has no ownership over *The Plan* or the revised actions and milestones as we have had no input into their development, despite being allocated a number of key actions and being the primary recipients of any criticism about reef water quality impacts. This makes it very difficult to support the revisions, particularly since there have been no funding pathways identified for us to deliver on these actions. We are committed to the sustainable and profitable management of land and water resources and as such support the principles espoused by the plan but as the representatives of those who will deliver on-ground, the current top down approach is flawed and demonstrably not working. We contend that we are the best placed to implement self management programs as growers operate within a production centric paradigm. We are also best placed to deliver extension as part of an integrated Water Quality Management program as we are able to translate NRM issues into production centric language and tap into grower drivers. ***We recommend that industry be fully included in any planning process and funded to deliver a long-term, strategic and integrated program to deliver water quality outcomes.***
- There is still a high level of uncertainty around the actual contribution of horticulture to poor water quality entering the reef and even in forums such as the Great Barrier Reef Marine Part Authority (GBRMPA) reef water quality advisory committee meetings there is debate amongst researchers about whether we are a high risk industry. This makes it difficult to convince growers that there is actually a problem, especially when new urban development has a significantly higher per hectare contribution to poor water quality than any agricultural activity. ***We recommend that an assessment of the contribution of horticulture to poor water quality entering the reef be undertaken and that any reef plan looks at all potential contributors of diffuse pollution entering the reef catchment rather than focusing solely on agriculture.***
- The horticulture industry encompasses over 120 different commodities each with different farming methodologies. Whilst it is straightforward to develop motherhood statements about improving nutrient application and developing nutrient management plans, there are still a number of gaps about what the optimum practices for many of these crops are, particularly with respect to water quality outcomes. ***We recommend that as part of an integrated water quality program delivered by industry, research is conducted into the link between practice and water quality outcomes and a benchmark of current practice is undertaken to enable effective monitoring and evaluation.***

Growcom has a strong track record in delivering NRM outcomes through partnerships with government as evidenced by the success of the rural water use efficiency initiative. A significant and targeted investment in an industry led water quality program potentially through a reef stream of the Natural Heritage Trust would ensure that government has given voluntary measures and genuine, properly funded and supported trial before considering more onerous regulatory options.

We recognise that efforts have been made to improve the level of industry engagement with respect to the reef plan. However, as the representatives of the on-ground implementers, we urge government to take advantage of industry experience and understanding of our sectors to deliver water quality outcomes for the reef and fully engage us in the reef planning process. For example, Growcom's Farm Management Systems initiative (outline in section 4.4.3) will have a

key priority in reef catchments of implementing management practices and processes that minimise sediment and nutrient movement from the farm.

4.4 Current self-regulatory industry activities

There are many voluntary, industry led activities that are assisting the horticulture industry in their environmental protection and natural resource management goals and objectives. These are not counter-productive to government policy objectives and should be a positive indication that self-regulated systems can be successful in achieving both government and industry goals and objectives. Some of these initiatives are described in more detail below.

4.4.1 Horticulture for Tomorrow

Australian horticultural industries, facilitated by Horticulture Australia Ltd (HAL), are working on a national initiative known as Horticulture for Tomorrow that includes the following:

- Pilot projects investigating the potential to enhance partnerships between horticulture growers and industry groups with catchment authorities or regional Natural Resource Management (NRM) groups;
- The development of a national strategic plan for natural resource management (NRM strategy), which has scoped the relevant NRM issues for horticulture and suggested ways in which industry organisations and growers can proactively address them at farm, catchment, industry, supply chain and market scales; and
- A national guideline for environmental assurance in the Australian horticulture industry was funded by NHT through the Australian Government's Pathways to Industry Environmental Management Systems (EMS) Program.

4.4.2 Freshcare

Freshcare is the national, industry-owned, on-farm food safety program for the fresh produce industry. It was developed in response to requests from growers, wholesalers, packers, and processors for a food safety program that met the requirements of both retailers and food safety legislation.

The Freshcare Code of Practice is based on the international standard for Hazard Analysis and Critical Control Points process (HACCP). Certification to the Freshcare code by an accredited auditor provides independent verification that a recognised and rigorous food safety program is followed by the enterprise. All participants in the Freshcare Program are required to complete a Freshcare approved training course to ensure a full understanding of the Freshcare Code of Practice and the requirements for its implementation on-farm.

The Code of Practice for the *On-Farm Food Safety Program* for Fresh Produce covers many issues in relation to food safety. Freshcare is also expanding to provide growers with optional environmental certification. A Code of Practice for *Environmental Assurance* is being prepared based on the national guidelines prepared through the Horticulture for Tomorrow initiative. The Code will include elements to address fertilisers and soil additives, water management, and land and soil management.

4.4.3 Growcom Farm Management System Initiative

A Memorandum of Understanding (MOU) between the Queensland Government and the Queensland Farmers Federation (QFF) on Farm Management Systems (FMS) was signed by the Premier and the President of QFF on 31 March 2005. It is operational for five years, and the concepts are based on the national framework for Environmental Management Systems (EMS) in agriculture. FMS is a voluntary, flexible and holistic management approach to manage risk, particularly environmental risk.

Growcom is a member of QFF and is coordinating the development and delivery of the Fruit and Vegetable FMS Initiative. The FMS is being developed to become our major mechanism for facilitating the uptake of good agricultural practice (often referred to as BMP) and integrates our other activities for on-ground delivery.

Growcom is developing an FMS support service to assist growers to design and implement their own FMS. The support service will include a team of regionally based facilitators and an FMS resource kit. This resource kit includes:

- information, templates and decision support tools for property planning, risk assessment, priority setting, action planning, documenting management procedures, record keeping, monitoring and internal reviews;
- material to cover farm management issues such as environmental risks, natural resources, food safety, quality assurance, workplace health and safety, quarantine, climate variability, community relations, and business planning; and
- information and recommended practices for environmental management drawn from the Farmcare Code of Practice and current recommended practices for irrigation management from the Water for Profit program.

Formal links are being developed between Growcom and the EnviroVeg and Freshcare programs. It is intended that the FMS Initiative incorporate the resources and recommendations of these programs. This will allow growers to use their FMS as the documentation required to achieve certification to the Freshcare Environmental Code or the EnviroVeg Environmental Assurance process.

4.4.4 Farmcare Code

The *Farmcare Code of Practice for Sustainable Fruit and Vegetable Production in Queensland* (Farmcare Code) was developed through a joint Growcom and Horticulture Australia Limited project. The code was launched in 1998 and distributed to all fruit and vegetable growers in Queensland. The code provides the foundation for the environmental management component of the FMS initiative and was also extensively referenced in the development of national resources such as the national environmental assurance guidelines and EnviroVeg. This Code is currently being reviewed and will be re-released shortly. The code is currently recognised under the *Environmental Protection Act 1994*.

The Farmcare Code provides growers with guidance on efficient and careful use of natural resources, particularly water and soils, and minimising environmental impacts related to horticultural land use, particularly run-off of sediments, fertilisers and pesticides into waterways. It has been heavily promoted in the industry and incorporated into property and business planning programs and industry environmental management training courses. It is now drawn into the Fruit and Vegetable Industry FMS Initiative and Growcom's FMS resource kit.

4.4.5 Water for Profit program

The Water for Profit team have achieved 100% awareness of the program and water use efficiency measures through field days and general information output, and is currently achieving 65% involvement in activities such as workshops, on farm trials and farm visits. Via on farm trials Water for Profit has assisted growers to achieve \$49.6 million of water savings and or increases in productivity since July 2003. (Total \$207 million since commencement of program which equates to 25% water use efficiency improvement) The team is currently developing a process for improving the water use efficiency of packing sheds to enable growers to better use a valuable resource. The collated information will provide growers with practical tools that will enable the reuse of water supplies whilst maintaining food safety quality assurance.

To assist growers to better manage water resources Water for Profit has developed the water use efficiency module for the Growcom FMS. This module enables growers to identify risks to their water use efficiency on their own enterprises and provides an action plan for them to follow. Early trials indicate that this will be a valuable tool for growers.

The success of Water for Profit is mainly due to providing the growers with a sense of ownership and involvement. All workshops cater for varied learning styles and rely on growers bringing something of their own so that when they return home the days learning directly relates to their farming enterprise. Follow up visits to assist growers with improvement thus impacts the learning and promotes uptake.

4.5 Key points in relation to environmental regulation

The key points Growcom would like to submit in relation to environmental regulation are:

- There has been a substantial increase in regulatory requirements in the past 10 years which have benefits beyond the farm gate. This must be acknowledged and taken into account. Industry should not have to meet the full costs of the public benefit;
- Overall, there is a lot of confusion and misunderstanding around environmental regulations. There is general consensus that there is just too much regulation and that it is too difficult to follow. There is a need for streamlining and increased recognition of self regulation;
- There are many examples where self regulatory systems have proved successful in achieving industry and government objectives without the need for regulation; and
- Government requirements for meeting legislation requirements can be onerous, time consuming and expensive activities for growers to undertake.

Section 5 – Workplace Health and Safety regulation

5.1 Background information

Workplace health and safety (WH&S) affects every horticulture business in Queensland. Rural work often involves a variety of tasks, in extremely busy periods and often in physical isolation from other workers. In addition, varying climatic conditions, the exposure of family members and visitors to risk (as the family home is often on the farm), the use of seasonal labour forces and other factors expose people to potentially dangerous situations.

Because of this, rural industry has specific hazards and risks that do not generally occur in other industries. These risks and hazards include surrounding plant and equipment, hazardous chemicals, electricity, manual handling, rough terrain, harsh environmental conditions, dangerous animals and insects as well as other people. These factors require solutions suited to the industry, rather than those transplanted from other sectors.

Primary producers and workers are in a high risk group for workplace injury and disease. While the horticulture industry has a lower risk of injury than some other primary industries, farm injuries in all sectors have an impact in terms of pain and suffering, and often impose a major financial burden on businesses.

However, current statistics on WH&S incidents in the rural sector are not encouraging. For example, FarmSafe Australia has published the following on their website:

- Around 150 persons die from non-intentional injury on Australian farms each year (this includes all sectors). These deaths are of workers, bystanders to work and others and occur in a range of circumstances on farms of different agricultural enterprise types; and
- Australia-wide there were 4,316 workers' compensation claims made in the year 2002 for injury in the agriculture sector. Of these, more than 1,378 (32%) were in horticulture and fruit growing industries.

These statistics show that more needs to be done to ensure the safety of all those working in the rural sector, and those visiting rural workplaces. The increasing regulatory requirements and associated burdens do not appear to be improving the situation.

5.2 The issues

Many issues or concerns have been raised by growers in relation to WH&S in the Queensland horticulture industry. Growers who participated in a survey conducted by Growcom in May 2007 made these comments in relation to WH&S:

- Growers are unsure of their obligations in relation to WH&S;
- It does not matter how much care you take, growers are always made ultimately responsible for any incident;
- Time taken to record all requirements – small business do not have the time available;
- Putting impractical requirements into a farm setting;
- Employees need to have some responsibility for their actions;
- Growers cannot control the behaviour of all employees;
- It is too easy for primary producers to be taken advantage of by staff making illegitimate claims;
- The system is biased towards the individual; and
- WH&S is truly one of my biggest concerns as a primary producer and often makes me question whether or not the business is worthwhile.

Although regulation is primarily state based, the same issues and confusion occur around the nation. Standards are also generally endorsed from a national level, such as from the Australian Safety and Compensation Council, which is part of the Department of Employment and Workplace Relations.

Queensland growers need to be familiar with their obligations and responsibilities in relation to a number of regulations and issues, including:

- *Workplace Health and Safety Act 1995;*
- *Workplace Health and Safety Regulation 1999;*
- *Workers' compensation and Workers' Compensation and Rehabilitation Act 2003;*
- *Electrical Safety Act 2002 and Electrical Safety Regulation 2002;*
- Codes of practice;
- Risk assessment process;
- Record keeping;
- Registrable plant;
- Prescribed occupations and activity;
- Workplace Health and Safety Officers;
- Asbestos management and removal;
- Workplace Health and Safety inspectors;
- *Anti-discrimination Act 1991;*
- *Queensland Industrial Relations Act 1999 and Queensland Industrial Relations Regulation 2000;* and
- Federal industrial relations legislation.

Further, there is limited knowledge within the industry of new regulations or enforcements in relation to WH&S such as roll over protection structures (ROPS) and the lifting of current rural exemptions. The WH&S legislation is seen as complex and constantly changing.

During a recent survey undertaken by Growcom, a grower quoted the following:

It seems no one anymore has to take responsibility for their own actions and in some cases stupidity. For example, we have employed someone, trained them on what to do and what not to do when climbing a picking ladder, they go to the field, climb to the absolute top of the ladder (which they were expressly told not to do), fall off and break their wrist and we have to cop a 6 month work cover claim...I ask you...is this a fair system? Another example, we employ someone who has a history of shoulder and back problems (unbeknown to us) and then after we terminate their employment, they come back the next day with a shoulder problem claiming it happened while employed by us...while the Workcover people admit this person has a history of claims and that it is likely it didn't happen at our farm we have no recourse. This person has been on Workcover for nearly 2 years...again...is this a fair system?

We have invested money in training workplace health and safety officers, we use reams and reams of paper printing out booklets on our workplace health and safety policy, we spend hours training people in safe work practices and we are still the subject of claims due to people's stupidity and because the Government tell them and teach them that it is ok for someone else will pay for your stupidity and you don't have to take responsibility for your actions. I would also like to add that we do have some legitimate claims here in our workplace and I have no hesitation in ensuring those people are taken care of in the correct manner.

- Queensland grower, Gin Gin, 2007

5.3 Potential solutions

The feedback Growcom has received from growers regarding WH&S is that they are not fully aware of their responsibilities under the Act and that the Department's Inspectors are reactive

rather than proactive. Industry is also generally concerned about the lack on consultation taking place on the development of new or revised legislation.

Growcom supports a change to inspectors' role to ensure they play a more proactive role in assisting industry to understand its obligations, ensure compliance and decrease the number of incidents. Furthermore, the hard work undertaken by growers to implement risk assessment processes that reduce the risks surrounding the likelihood of an incident occurring should receive some type of incentives, for example, a small reduction in their work cover insurance.

Growcom supports a WH&S framework that promotes mutual responsibility between employers and employees. Growcom expects that all WH&S initiatives are practicable, efficient and well considered. They should protect all people on farm while recognising the competitive business environment in which horticulture businesses operate.

Growcom calls for:

- Proactive changes to WH&S Inspectors' role in focusing on their primary aim of reducing workplace incidents through education, as well as compliance. Inspectors' roles should focus on initiatives and innovative procedures to help producers in complying with regulations;
- Closer consultation between Government and industry on the removal of rural industry exemptions from the *Act*. A further 20% increase in funding to farm safety awareness programs to increase training and awareness of WH&S issues across the rural sector is required;
- Amendment to the *Workplace Health & Safety Act 1995* to increase the obligations of employees, including a more reasonable and equitable distribution of 'duty of care' and obligations under the *Act* and commensurate penalties for breach of these obligations by employees;
- Increased funding for training and education programs designed to clearly identify the mutual responsibility of employers and employees and promote a culture of co-operation and self-regulation;
- Increase businesses uptake of enforceable undertakings by reducing the costs associated with the scheme and encouraging business to develop and commence enforceable undertakings which provide broader benefits to the workforce and community; and
- Financial assistance to industry organisations for the development of generic risk management assessments for specific industry groups, which can then be customised for individual farms.

Other suggestions from growers include:

- Developing checklists that growers can have on the wall in packing sheds, offices etc;
- Details of training programs where WH&S Officers can be trained;
- Clear definitions of who is responsible;
- Development of practical safety programs for farm owners, managers and workers;
- Financial incentives and phase-in periods to maximise uptake of changes demanded by legislation;
- Workcover premiums reflected of performance and WH&S systems in place according to the Australian Standard AS/NZ 4801; and
- Funding for WH&S research, monitoring and risk reduction strategies and processes.

5.4 Key points in relation to workplace health and safety regulation

The key points Growcom would like to submit in relation to workplace health and safety regulation are:

- Many growers are unaware of their full obligations under WH&S regulation;
- The rural industry has WH&S issues that are unique to other industries;
- There are many regulations and codes of practices that employers need to be familiar with;
- The WH&S legislation is seen as complex and constantly changing;
- There needs to be increased education and information campaigns undertaken to increase awareness of the issues and responsibilities.

Section 6 – Chemical regulation

Chemicals are regulated by a complex web of legislation, with the purpose of the regulation to ensure an appropriate balance between the benefits of society, such as increased agricultural production, and the risks to human health and the environment associated with exposure to potentially harmful substances.

An area of concern is the duplication and inconsistency of chemical regulations between the Australian Government and state and territory governments. There are numerous existing legislation in Queensland and the nation controlling the purchase, transport, storage and/or use of chemicals. These include:

- Agricultural and Veterinary Chemicals Act 1994
- Agricultural and Veterinary Chemicals Code Act 1994
- Agricultural and Veterinary Chemicals Act (Queensland) 1994
- Agricultural Chemicals Distribution Control Act 1966
- Agricultural Chemicals Distribution Control Regulation 1988
- Chemical Usage (Agricultural & Veterinary) Control Act 1988
- Chemical Usage (Agricultural & Veterinary Control Regulation 1999

Growcom will provide some specific feedback in relation to the Australian Pesticides and Veterinary Medicines Authority (APVMA), Chemical Control of Use legislation and the control of chemicals of security concern.

6.1 Australian Pesticides and Veterinary Medicines Authority (APVMA)

The APVMA regulates chemicals up to the point of retail sale, and has the role of assessing chemicals before registration, as well as reviewing them once on the market. APVMA also has the capacity to issue permits for minor use (such as off-label permits, supply/use permits and export permits) as well as emergency and research permits.

Growcom has received some general feedback in relation to the APVMA:

- The timeliness of registration of agricultural and veterinary chemicals is a critical issue for agvet chemical users and manufacturers/distributors; and

- Sections of APVMA that are responsible for issuing permits are seen to be sufficiently under resourced and therefore are unable to turn around applications in the promoted time frame of 3 months.

Growcom would like to provide some additional feedback on the chemical review progress and in particular, the review of dimethoate and fenthion.

6.1.1 Current APVMA review of Dimethoate and Fenthion

Currently, the APVMA is undertaking a review of the chemicals dimethoate and fenthion, which has been occurring for many years. The review is anticipated to have a potentially adverse effect in terms of retaining access to many currently approved uses. These chemicals are extremely important in terms of interstate and international trade of horticulture produce and the uncertainty around the outcomes is placing millions of dollars worth of produce at stake.

Numerous fruit and vegetable commodities are considered “at risk” as a consequence of this review, due to the heavy reliance upon dimethoate and fenthion for in-field and post-harvest control of fruit fly and other pests. If the review identifies particular commodities which, when consumed, contain dimethoate or fenthion residues which will exceed the measure of short-term dietary intake, then the use of these chemicals for those applications may no longer be permitted.

Dimethoate and fenthion are regularly used for pre-harvest and post-harvest fruit fly control and, in some cases, post-harvest treatment with one of these chemicals is currently the only accepted fruit fly disinfestation treatment to gain access to certain markets. Trade which could be affected includes domestic trade (from fruit fly infested areas into fruit fly sensitive markets) and some international markets (including New Zealand and Pacific Islands).

The review outcomes, particularly if they result in approval to use dimethoate or fenthion as a post-harvest disinfestation treatment being withdrawn, could also impact upon producers within the Fruit Fly Exclusion Zone or other non-infested areas of Australia. If a non-infested area has a fruit fly outbreak and fruit movement out of that area requires a disinfestation treatment, then the absence of an alternative to dimethoate or fenthion could seriously impact upon the ability of those quarantined areas to trade freely at times when an outbreak occurs.

Industry groups are considering the likely impact of the potential loss of post-harvest uses of dimethoate and fenthion. For commodities with inedible peel the use of dimethoate and fenthion might be maintained if the dietary exposure estimates can be significantly reduced. However, residue trial data is required to allow any such refinements to occur. Relevant data appears to be limited or not available and as both are generic compounds manufacturers are reluctant to fund the research required to generate the required data.

Therefore, to preserve uses the onus to generate data is falling on the affected industries. Many of these industries are funding the generation of new insecticide data to maintain the uses or are looking at the development of alternate procedures to satisfy interstate quarantine requirements.

Growcom held an industry forum in Queensland in December 2006. This forum resulted in the issue being brought to the forefront. Further to this, Growcom was supportive of the Australian Government Department of Agriculture, Fisheries and Forestry (DAFF), through the Office of the Chief Plant Protection Officer, appointing a National Coordinator to address the plant quarantine

and market access issues associated with the reviews of dimethoate and fenthion. Overall, it is seen as important for a national and consistent approach to this issue to ensure that all industry's needs and requirements are addressed.

The feedback Growcom would like to submit in relation to this issue and the associated regulatory burdens are:

- The chemical review process and potential restrictive outcomes will have a high impact on the horticulture industry;
- Industry has put forward substantial resources to improve the research and data available to the APVMA;
- State governments will also need to commit substantial resources to develop new biosecurity plans and market access requirements to reflect restrictions to these important chemicals; and
- Uncertainty around the outcomes of the review means that the investments need to be made despite the final verdict.

6.2 Chemical Control of Use legislation

The control of use of chemicals is undertaken separate from the APVMA by state and territory governments throughout Australia. In Queensland, the state government has been undertaking a review to investigate consolidating the *Agricultural Chemicals Distribution Control Act 1966* and the *Chemicals Usage (Agricultural and Veterinary) Control Act 1988* into a single Act. This process has been underway for more than 8 years, which is considered to be far too long and resulting in the wasting of resources for both government and industry.

Growcom has submitted the following feedback on this review to the state government:

- Industry supports the consolidation of existing regulation into a single Act;
- Legislation controlling the use of AgVet chemicals should be as simple, transparent and consolidated as possible;
- Consolidation would assist in reducing unnecessary duplication and remove confusion and complexity resulting from the current legislative arrangements;
- Nationally consistent AgVet legislation, with consideration for each state and territory's particular conditions will eliminate confusion regarding what particular actions are allowed in each state and benefit industries operating across state borders;
- Growcom was supportive of the proposal that the new legislation have the capacity to recognise the benefits of industry initiatives, such as environmental Codes of Practice and other risk-based, on farm programs such as FMS;
- Growcom was generally supportive of the proposal for the new legislation to include a general duty of care obligation on users of AgVet chemicals and other agricultural inputs to take reasonable care to prevent or minimise harm to the health and safety of human beings, non-target species, the environment and trade;
- However, Growcom was less supportive of the extension of this general duty of care outside the area intended for treatment. Introduction of this provision could allow growers to be held liable for unintentional contamination through activities with the potential for off site consequences.

6.3 Control of chemicals of security concern

The Queensland horticulture industry was significantly impacted upon when security sensitive ammonium nitrates (SSAN) were restricted in 2005. Currently producers who wish to use SSAN have to hold a licence, which can be obtained by demonstrating to government that there is a legitimate need to use SSAN, that it will be stored and transported securely and that the producer as an individual is not of security concern. This experience demonstrated that with government placing control measures on the use of a particular chemical, it had unintentional consequences on the viability of the industry. This included suppliers and resellers not stocking SSAN due to onerous requirements.

Growcom recently submitted a detailed submission to the Department of Prime Minister and Cabinet on the Council of Australian Government's discussion paper on the control of chemicals of security concern (CoSC). It is seen as extremely important that government does not implement control measures without adequate consultation as occurred in relation to SSAN. Overall Growcom submitted that this issue is extremely complex and detailed and requires government to undertake an extensive consultation process both within government and industry. Government must also undertake a detailed impact analysis on placing control measures on all legitimate users of CoSC within all sectors of the economy.

The main points made by Growcom in our submission were:

- Growcom is supportive of Government policies to protect the nation from terrorism;
- Growcom believes it is extremely important for an effective and efficient control framework to be developed that minimises the impact on legitimate users of security sensitive chemicals and formulated products containing CoSC;
- Growcom supports an overarching framework involving the risk management of CoSC utilising existing industry and government frameworks and systems, to minimise any negative impacts and financial burdens on legitimate chemical users;
- The control framework must be risk based to ensure the control measures put in place are suitable to the level of security risk identified for each chemical. This must be based on accurate and robust data that accurately reflects the reasoning behind this designated risk level, and is also a practical and common-sense based approach;
- Growcom strongly believes that any control framework must take into account all existing industry and/or government initiatives relating to the purchasing, transporting, storing and using of CoSC;
- A control framework must be applied to all activities within the chemical supply chain;
- Growcom is supportive of a nationally consistent and coordinated control framework that replaces existing state and nationally based chemical control frameworks;
- Past experiences have demonstrated the unintentional consequences of placing control measures of chemicals can have a significant and long lasting impact on industry;
- Government must seriously consider the benefits of placing restrictions and control measures on chemicals identified as being of security concern against the financial, social and productive viability or burdens on all sectors of Australia's economy;
- Finally, all the concerns of the Queensland horticulture industry must be taken into consideration by COAG in conducting and finalising the review.

Growcom believes the vast majority of producers within the Queensland horticulture industry are legitimate and safe users, as well as security conscious in relation to the risk management

of agricultural chemicals. There are existing frameworks and practices in place that need to be recognised by COAG when determining a framework for the control of CoSC.

6.3.1 Industry feedback on chemicals of security concern

As part of Growcom's submission on chemicals of security concern, we undertook a survey and consultation with growers and industry stakeholders. The issues and concerns that were raised include:

- There are situations and procedures that are seen to be at a significantly higher level of security risk than the use of chemicals in agriculture;
- The list of chemicals identified as being of security concern as so extensive and commonly used that extensive restrictions placed on them would have long lasting and devastating economic and social impacts on the horticulture industry;
- Many of the chemicals identified are commonly available to the home or hobby gardener through popular retail outlets;
- Many of the identified chemicals are generic products that are cost effective and are widely used in pest management and fertilisation options in fruit and vegetable crops;
- Growers indicated that there might be alternatives for some of the identified chemicals. However, growers presently use the most cost effective, efficient and safest chemicals available, therefore alternatives are most likely to be more expensive, not as efficient or as safe to use;
- The biggest concern for growers was that it will become more difficult to obtain and use the chemicals identified as being of security concern, some of which international and state governments require the industry to use before plants and produce can be sent interstate and internationally;
- If any of the chemicals are restricted, government will need to find replacement chemicals that will perform and achieve the same end results;
- The agriculture industry is being asked to carry a huge compliance cost where there is very little evidence to suggest the broader community will be safer;
- This is likely to hurt struggling rural communities that are already faced with drought and other issues affecting productivity;
- Global competitors are still able to use these chemicals which will result in the horticulture industry being less competitive in the global market; and
- Restrictions and control measures on common fertilisers will place unreasonable pressures on an already cost squeezed industry, which may force growers out of business and reduce the industry's overall productive and financial capacity.

Some of the potential impacts on the horticulture industry as identified by producers as a result of restrictions placed on important chemicals are:

- Loss of markets as a result of reduction in quality and yields, further reducing incomes;
- Increased costs due to control requirements, more manual labour, training etc;
- Increased constraints on time from more bookwork, staff training etc;
- Alternatives to chemicals are more expensive, less convenient and efficient to use;
- Inability to meet customer specifications due to inferior products, loss of quality etc;
- Loss of organic markets; and
- The manufacturers who currently produce the CoSC are likely to also experience increased compliance costs relating to security regulations, with these costs likely to be passed onto consumers.

One specific issue in the horticulture industry is that many producers lease or own other farms often up to an hours travel from the main farm. Larger enterprises may own and/or lease up to ten farms. A huge cost impost would be likely if CoSC regulation and/or guidelines did not utilise existing systems. For example, should there be one main place for storing inventory or should the chemicals be delivered directly from suppliers to the main farm and/or satellite farms. Overall the logistics of keeping register/inventories of chemicals becomes more complex when using just-in-time supply and when there is more than one central point of chemical delivery and storage.

Many of the CoSC are critical to the sustainability of growers' businesses and the horticulture industry. Many of the current alternatives to these chemicals also appear on the list. Past experiences from the restriction of SSAN have shown that agricultural chemical supply businesses will make a commercial decision with regards to chemicals that government places restrictions on, as instead of complying with onerous requirements, resellers have decided not to stock the products. Many growers are likely to be forced out of business, reducing industry capacity and impacting rural and regional communities. The international competitiveness of the horticulture industry will also be severely impacted upon, as not only will the local industry be weakened, but the restricted chemicals and fertilisers will continue to remain easily assessable in competing nations, including USA, Asia and the EU.

Government must seriously consider the benefits of placing restrictions and control measures on chemicals identified as being of security concern against the financial, social and productive viability or burdens on all sectors of Australia's economy.

6.3.2 Managing and implementing a security control framework

Growcom strongly supports industry self regulation above government regulation. In addition, it has been demonstrated that industry can undertake self regulation activities as demonstrated throughout Growcom's submission, in particular Growcom's FMS program and safety audit programs such as Freshcare.

Growcom submitted the following in relation to managing and implementing a security control framework:

- There must be a nationally based and coordinated control framework or system that replaces existing state and nationally based chemical control frameworks. This will reduce duplication and confusion throughout the nation, further reducing the negative impacts on industry;
- Government must manage any unintentional consequences of implementing a security control framework before any negative impacts are felt by any sector of the economy;
- Government must provide a type of funding to industry if restrictions and regulations are to be placed on growers in relation to the use of chemicals identified as being of security concern for the ultimate goal of "the public good";
- Government must undertake an extensive information and education campaign on any control framework and control measures that are implemented; and
- Peak industry groups and stakeholders must be constantly consulted and engaged with throughout the review process to ensure that industry's needs and requirements are being met.

6.4 Key points in relation to chemical regulation

The key points Growcom would like to submit in relation to chemicals regulation is:

- The timeliness of chemical registrations is a critical issue for the industry;
- The uncertainty around the outcomes of a chemical review process can mean that an industry could be required to invest a substantial amount of money prior to knowing the final outcomes;
- Industry supports a streamlined and coordinated approach to chemical control of use legislation that removes the existing duplicated, confusing and complex legislations;
- Past experiences have demonstrated that controlling chemicals identified as being of security concern can have long term and unintentional consequences on the viability of industry.

Section 7 – Food regulation

Growcom acknowledges that the Bethwaite review is currently underway and is examining ways to streamline Australia's food regulations to make them more nationally consistent. Growcom supported the submission by the Queensland Farmers Federation and also provided the below comments on behalf of the Queensland horticulture industry.

Consistent legislation

Growcom agrees with the areas for improvement as identified in the issues paper. Growcom believes that the Bethwaite Review must examine all government and industry driven frameworks, systems and initiatives currently underway in relation to food regulation and food safety. It is important that government takes into consideration existing industry arrangements and builds upon them.

Growcom strongly supports industry self regulation above government regulation. It has been demonstrated that industry can undertake self regulation activities as demonstrated by Growcom's Farm Management Systems program and the industry driven food safety programs, namely Freshcare. These industry driven, self regulated initiatives demonstrate what industry can achieve and should be a base for any government food regulatory system. This system must be based on a practical and common-sense approach in addition to being nationally coordinated and consistent.

Growcom is also aware of several state and national initiatives being undertaken by both government and industry in relation to food safety and regulation. Growcom's primary concern is the duplication of effort and work being undertaken, which only results in confusion and the wasting of resources. There must be effective communication channels and coordination established between all food regulatory system initiatives.

Growcom is strongly supportive of industry self regulation above government regulation. However, there are instances where self regulation is not sufficient in its approach. If self regulation does not achieve its objectives, then a regulatory approach may be required. This has been the case in relation to country of origin labelling, where retailers are required through regulation to inform consumers through labelling of the origin of fresh fruit and vegetables.

Growcom is supportive of government regulation in instances such as this where the final result is a beneficial and positive impact on the industry.

Growcom wishes to raise a specific issue in relation to inconsistencies between Australian Pesticides and Veterinary Medicines Authority (APVMA) and Food Standards Australia New Zealand (FSANZ) regarding maximum residual limited (MRLs) in fresh produce and food products. The issue for the horticulture industry is that when a new pesticide is registered or an existing pesticide registration is extended by APVMA it is not transposed in the Food Standards Code by FSANZ immediately. There can be lengthy transition periods of up to 15 months, where some fresh produce can technically be a MRL violation despite the fact the chemical is legal. This is a national issue that has been raised by industry stakeholders for many years, however it must be recognised that this issue has still not been rectified.

This issue relating to MRL has further demonstrated the importance of establishing better engagement mechanisms to allow for government to recognise and improve (where appropriate) industry concerns relating to the food regulatory system.

Consistent implementation

Growcom agrees with the areas raised for improvement in the issues paper. Past experiences have demonstrated that adoption and enforcement of food regulatory standards at state and territory levels is very inconsistent, resulting in confusion between states and negative impacts on the industry. Growcom believes there should be a national framework that reduces confusion, duplication of effort and the waste of resources.

Growcom also supports the idea of a common auditing system that addresses all government regulation issues within a horticulture business. For example, an auditing system that addresses food safety, biosecurity requirements, workplace health and safety etc all at the one point in time. This system would reduce the time constraints placed on growers as well as reduce the complications and duplication of effort required in undertaking a variety of audits.

Improved governance

Growcom agrees with the areas for improvement as identified in the issues paper. In particular Growcom strongly agrees with the point that the “the volume of work limits ability for stakeholder involvement in all issues”. This is further complicated by the lack of industry resources in addition to inconsistencies between the states and territories.

Overall, there is a lack of engagement by government with industry stakeholders as well as a lack of government engagement between states. This impacts both on the governance and viability of any food regulatory system. This impact was recently demonstrated through the lack of engagement between interstate government departments relating to a salmonella scare with a potential link to rockmelons. This link was never demonstrated, however one state government department made this potential link public knowledge before consulting with industry or with other state departments. This had devastating impacts on the industry, with produce sales declining significantly resulting in huge impacts on growers' bottom line. Furthermore, no compensation was given to growers impacted by this debacle.

7.1 Key points in relation to food regulation

The key points Growcom would like to raise in relation to food regulation are:

- There needs to be better streamlining of Australia's food regulations to make them more nationally consistent; and
- Industry has demonstrated that self regulatory approaches can be successful.

Section 8 – Other areas of importance

There are a few additional areas of importance that Growcom would like to provide feedback on to be included within this review. These are the horticulture code of conduct, taxation and regulatory burdens on industry organisations.

8.1 Horticulture Code of Conduct

The Horticulture Code of Conduct (the Code) was introduced by the Federal Government on the 14 May 2007. This Code is a mandatory code under Section 51AE of the *Trade Practices Act 1974* and was introduced to improve the transparency and clarity of transactions between growers and traders of fresh fruit and vegetables. The Code also provides for independent assessment of transactions and low cost mediation of disputes.

The Code was developed to address the lack of commercial transparency in grower / trader transactions. It will benefit growers and traders by improving business practices in the fruit and vegetable wholesale sector. Growers will also benefit from better information about how traders buy and sell their produce.

The key requirements of this Code are that:

- Traders publish their preferred 'terms of trade';
- Growers and traders use written contracts or horticulture produce agreements;
- Traders are clearly defined as either agents or merchants for any transaction;
- Traders provide written transaction information to growers;
- Independent assessment is available on transactions; and
- Low cost mediation is available if disputes arise.

The Code covers transactions between growers and traders of fresh fruit and vegetables in Australia.

8.1.1 Circumstances around why the Code was introduced

In December 1998, the Federal Government established the Joint Parliamentary Committee on the Retailing Sector to look into and report on issues of market power and practices in the retail sector, from suppliers to sellers, that might require government intervention to equal the playing field. One of the key recommendations of the committee was the introduction of a mandatory code to ensure accountability and fairness throughout the chain. Instead, the Government chose to implement a voluntary code to see how it would work and to review it in three years to monitor its effectiveness. This was called the Retail Grocery Industry Code of Conduct.

After three years of voluntary arrangements, the Government appointed consultant Mr Neill Buck to conduct an independent review in 2003. He completed his review and submitted it to government in December 2003. The review was released by government in July 2004 and contained the main recommendation that the Retail Grocery Industry Code of Conduct should be a principles based code underpinned by regulation.

One of the major issues growers throughout Australia have consistently raised with their industry groups was the difficulty in getting a fair, written contract with wholesalers. Wholesalers constantly blurred the line between whether they were trading as a merchant or an agent. When we would try to resolve these issues, the biggest impediment was the lack of paperwork and the absence of contracts between the grower and wholesaler.

The existing voluntary code of conduct has not worked for several reasons. Despite being aware of this voluntary code, wholesalers would not follow it. This Code also lacked focus on clear-cut contracts and open trading practices. The absence of clear contracts has had many implications that no other industry sector would accept. This situation basically meant that growers could easily find themselves at the whim of their wholesaler with little option other than to accept unfair prices, poor trading terms and inconsistent business practices.

Furthermore, in the event of a dispute, the grower had little ability to challenge the wholesaler as there was no written contract and no access to written prices received for their produce to allow them to make informed market decisions. For this reason, disputes were often not escalated as the grower could not substantiate the claims. There was also substantial evidence from the ombudsman appointed to handle disputes under the code, that the voluntary system had not been successful.

While there are many positive, successful business relationships between some growers and wholesalers, professional practices need to be engendered across all traders, not just those who, by nature, play fair. This situation perpetuated longstanding behaviours that no other industry would stand for. As a result, several government reviews recommended the implementation of a mandatory code of conduct, which was further pushed by industry groups and growers around the country.

Industry has recorded many case studies which demonstrate the reasons behind why the Code was introduced and the difficult situations that many growers faced. Many either had to endure the situation or consider a costly legal battle. Exacerbating this was the typical lack of written contracts between growers and wholesalers, a situation the Code aims to redress. Some of these case studies are included below:

Case study 1 – Payment three months late, \$10,000 less

In early March 2006 (just before Cyclone Larry hit), a north Queensland banana grower sent his bananas to Sydney as part of his ongoing business dealings. However, the grower did not receive payment for these bananas until three months later, despite several requests to the wholesaler. When payment was received, it fell vastly short of the \$30 a box indicated by the wholesaler; the grower received just \$10 a box. As a result, this grower received a payment approximately \$10,000 less than what was anticipated.

The banana grower was extremely angry as he believed the wholesaler had received abundant profit at his expense and misfortune. This grower was advised to contact the industry

ombudsman as the only avenue of getting a reasonable outcome. The wholesaler refused to participate in mediation.

Case study 2 – Same truck, different prices

At around the same time, another north Queensland banana grower received \$10 a box for his fruit, when other growers received \$30 a box. When this grower questioned the wholesaler, he was told his fruit had been damaged because it had arrived in a truck with a temperature of 50 degrees (bananas need to be kept at around 12 to 17 degrees).

However, this grower was aware that other growers' fruit was also on the same truck (at obviously the same temperature), which arrived undamaged. The grower wants compensation and pursued the matter. However, the opportunity for a satisfactory outcome was limited by voluntary mediation.

Case study 3 – I need you, but I won't pay you

A large vegetable producer supplies a particular wholesaler on a regular basis. But the wholesaler reneged on paying for produce that had already been sent. There was no written contract for the transaction, as the wholesaler—like many—avoids this liability and relies on a “good relationship”. As a result, the grower must rely on the expectation that the transaction will run smoothly based on trustworthy, professional behaviour.

When the wholesaler refused to pay for previously supplied produce, the grower stopped supplying vegetables, to stem any further financial losses. The wholesaler retaliated by threatening to take legal action against the grower as the lack of supply threatened the wholesaler's contract with a major retail chain. In this case, the grower contacted the ombudsman. However, the wholesaler refused to attend mediation. The grower was considering legal action.

Case study 4 – I'll tell you the price when it suits me

A successful grower was attempting to enter the organic produce market. Currently, there are limited specialty organic wholesalers available. This particular grower is well educated and aware of the need for contracts and negotiation processes. When the grower met with the specialised organic wholesaler regarding their proposed relationship—which required the wholesaler to identify whether they would be acting as an agent or merchant—the grower was told by the wholesaler that they “did not do business that way”.

The wholesaler stated the grower's produce would be sold and he would be told a price after the sale was completed.

8.1.2 How the Code will improve business practices

Previously, the blurring of roles between growers and traders allowed wholesalers to avoid responsibility and minimise risk. This allowed wholesalers to maintain business practices which suited them but disadvantaged growers, maximising their profits at growers' expense. In the absence of universal and transparent trading arrangements in the wholesale sector, many growers had sought to bypass wholesalers by dealing directly with retailers. Growers were seeking to strengthen the sector by ensuring they can do business with confidence through all sectors of the supply chain.

A mandatory code between wholesalers and growers will deliver the following benefits:

- A fairer trading environment;
- Improved contractual clarity – growers will now know whether their wholesaler is acting as an agent or a merchant and have it in writing;
- Better transparency – if a wholesaler is acting as an agent then growers will be able to access information about what price their product was purchased for and what commission was charged;
- Clarity in regard to who has title and risk of the produce, and the subsequent impact of this; no longer will produce automatically be returned to the grower to bear all the risk if produce was over ordered or requirements changed;
- Improved processes in the case of a dispute;
- Growers will quickly know how their product is performing in the marketplace;
- Existing positive, professional relationships between growers and wholesalers will be strengthened and supported;
- Wholesalers using current loopholes in the system to rip growers off will be acting illegally and can be penalised;
- The rogue behaviour of some wholesalers currently tarnishing the entire sector will be stopped;
- The role of the central markets will be strengthened as they will no longer be perceived as a place of one-sided trading;
- The current imbalance of power between growers and wholesalers will be rectified, creating improved business relationships; and
- The horticulture sector will have in place basic business practices every other industry takes for granted.

Improved business practices, greater transparency and confidence in the sector will increase investment, improve innovation and ensure the continued development of an efficient production sector. In addition, the mandatory code is regarded as minimal market intervention, requiring only the use of simple contracts and documented terms of trade.

8.1.3 Transition period after the introduction of the Code

Growcom is aware that there is much debate around the implementation of the mandatory code. The Code will bring about a change in the horticulture wholesaler sector, and it is only natural for there to be a transition period and some reluctance to change business practices. However, there was a demand for a mandatory industry code following the failure of the voluntary code. The mandatory code enshrines basic good business practice in law, meaning that those people who do not follow these principles are choosing to act illegally and risk the associated penalties.

The Australian Competition and Consumer Commission (ACCC) recently presented at the Code launch in Canberra early in May 2007. During this speech the circumstances around the introduction of the other mandatory code (the Franchising Code of Conduct) and the associated transition period were discussed. When this code was implemented, there was uproar that the code would mean the end of the franchising sector and that it would destroy growth in the sector. This resistance was seen for a few years, however change occurred and the industry has prospered. The franchising code, and the associated industry structure, is now seen as one of the best practices in the world. Several countries are now looking at our model for implementation in their industries.

This sentiment has also been expressed in the Australian Financial Review in April 2005:

“After a controversial initiation, Australia’s mandatory Franchising Code of Conduct may have turned into a world-leading example of industry regulation.

“When it was introduced in 1998, there was anger toward it,” says chief executive of the Franchise Council of Australia, Richard Evans...

Evans says that since the mid 1990s, the franchise industry has changed and the FCC has become a bonus.

“There’s more than 850 franchise systems in this country; we’re the most franchised nation per capita in the world and we still have 20 per cent annual growth in the franchise system. We’ve matured very quickly—especially since 2002—and one of the factors behind that is the code. It’s improved business practices and created an environment where franchisees are more confident about investing. There’s also been an increase in disclosure, and the quality of documentation and operations manuals. Because of this financiers are more likely to lend against a brand and the business system.”

He says the FCC contains uniform requirements for both franchisors and franchisees and the fact that commonwealth law supports it means there is a very low rate of non-compliance.

“In 1998, international franchises were making the comment don’t go to Australia, due to the law changes. Now we are leaders in the world – other countries visit us to find what the secret is.”

- Australian Financial Review April 21, 2005, p.13

The Australian, on August 22, 2006 also reported the following:

“When the franchising code of conduct was introduced in 1998 to deal with concerns plaguing the industry, the nay-sayers claimed specific regulation would harm growth of the sector. It did not, and the level of complaints to the Australian Competition and Consumer Commission has fallen over the period since 1999”

- The Australian August 22, 2006

The Horticulture Code of Conduct is anticipated to have the same positive and beneficial impacts on the horticulture industry.

8.2 Taxation

Taxation is an area of great regulatory complexity for growers, adding hours each month to the administration burden of running a farm business. Growcom would support the Productivity Commission reviewing this area to ease the taxation regulatory burden on horticultural businesses.

Growcom does not have the expertise to provide a detailed response to this issue. However we do anticipate that this issue will be raised during the review. Growcom would support any recommendations that result in a simplification of the taxation system and an easing of the onerous regulatory burdens associated with it.

8.3 Regulatory burdens impact on industry organisations

Growcom would also like to raise the issue of regulatory burdens having a major impact on industry organisations. At any point in time there is usually several consultation processes occurring where industry organisations are expected to submit a detailed submission on behalf of industry. These consultation processes usually involve time frames that are not viewed as reasonable. Growcom places resources into undertaking this role and providing the best submission we can in the time frame given. Undertaking consultation with industry is time consuming and resource intensive. This is largely seen as industry groups being a “voluntary” service provider for government.

However, in many incidents, industry views and feedback is often put to the side. Furthermore, there are numerous examples where industry has participated in a review, placed much time and resources into the discussion, only to have the final government “product” placed on a shelf to collect dust. In some circumstances, the issue will be raised again in many years time and the industry will be required to do the process all over again, most likely with different staff members and different government representatives. This is extremely frustrating for industry and a substantial waste of time and resources. These resources could be seen as an opportunity cost, as they could be allocated to initiatives to increase industry’s performance.

Smaller industry organisations can sometimes be directed through a door and into a room they did not plan on entering. This has been demonstrated through food safety issues, where a small industry organisation was pushed into a corner and basically informed that their product was causing the concern, when in reality, there was not sufficient proof or chain of evidence to prove these claims. However, the industry suffered through the decline in customer sales, and the growers bore the cost.

8.4 Key points in relation to other areas of importance

The key points Growcom would like to submit in relation to other areas of importance are:

- There are some situations where regulation is required when voluntary arrangements are unsuccessful; and
- Regulatory burdens also have an impact on industry organisations.

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