



Mr Tony Simovski
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Dear Mr Simovski

Government Response to Independent Review of the Horticulture Code of Conduct

This letter certifies that the Independent Review of the Horticulture Code of Conduct was informed by a process and analysis equivalent to a Regulation Impact Statement (RIS) as set out in 'The Australian Government Guide to Regulations' (the Guide).

The Review Process

On 3 June 2015, Minister for Agriculture, the Hon. Barnaby Joyce MP and the then Minister for Small Business, the Hon. Bruce Billson, launched an independent review of the mandatory Horticulture Code of Conduct. The review was undertaken by Mr Mark Napper and Mr Alan Wein and was provided to government in November 2015.

The review was conducted over the course of four months, from July to October 2015. In total, the review was informed by 44 submissions, of which 39 were made publicly available. The reviewers also held meetings with a range of growers, traders, and other interested stakeholders during a public consultation phase of the review in August and September 2015. Following the release of the review's final report in February 2016, the government conducted targeted consultations with key industry stakeholders.

Review's recommendations and RIS requirements

The review made 13 specific recommendations to the government to improve the code. The Office of Best Practice Regulation (OBPR) has agreed that nine of the recommendations to be implemented do not change the regulatory burden. The government has also decided to undertake a number of additional amendments to the code following further stakeholder consultation. OBPR has determined these proposals to be minor in nature. A breakdown of recommendations falling into these categories is included at [Attachment A](#).

Addressing the RIS questions

The Department of Agriculture and Water Resources considers that the process and analysis undertaken by the review has addressed the seven RIS questions set out in the Guide.

Questions 1 and 2

The Trade Practices (Horticulture Code of Conduct) Regulations 2006 regulate trade in horticulture produce between growers and traders of fresh fruit and vegetables. The code also establishes a dispute resolution procedure.

The government introduced a mandatory code to improve the clarity and transparency of transactions between growers and wholesalers of fresh fruit and vegetables. The Horticulture Code commenced on 14 May 2007. The government's decision followed concerns expressed by the grower community over a number of years about the need to improve commercial transparency. The government agreed to a mandatory code after it became clear that growers and wholesalers could not agree on a voluntary code.

The key issues the code aimed to address are a lack of clarity about when a wholesaler is trading as an agent or a merchant; a failure to invest in written documents of trade, including written transaction information and trading agreements; and the need for a dispute resolution process, including independent assessment of transactions and compulsory mediation.

Concerns have been raised about the code's overall effectiveness, especially the number of transactions occurring outside of its coverage. The independent review made a range of findings based on industry consultations, submissions and research. These findings are detailed in the report, and informed the recommendations.

The review found the code was deemed ineffective by the majority of the horticulture industry. The review also found that a majority of horticulture produce transactions do not occur under the code (as pre-code contracts were exempted) and there was not sufficient enforcement of the code. Additionally, stakeholders were unconcerned about complying with the code. The review recommended that government action is needed to give the industry an opportunity to improve the transparency of its commercial operations.

Question 3 and 4

The review considered and discussed three policy options:

- a) allowing the code lapse on its sunset date of 1 April 2017
- b) renewing the current code
- c) remaking the current code with amendments.

The final report weighed stakeholders' views, considered the benefits of potential reforms and made recommendations which, in the opinion of the reviewers, were the best options for reform.

Question 5

The four month review process provided interested stakeholders with opportunities to comment on changes to the code. The review included the release of an issues paper on 3 August 2016, followed by a two month consultation period, including both written submissions and face to face meetings with growers and traders from Canberra, Melbourne, Sydney, Perth, Brisbane, Mareeba and Darwin.

Question 6

The review recommended remaking the code with amendments, which the reviewers believed, would improve general business practices and align the code with other industry codes.

Question 7

The department will work with the Office of Parliamentary Counsel to develop the new code and consistent with general Commonwealth legislative reform, exposure draft legislation will be released for public consultation before the new code is enacted.

The department will also work with the Australian Competition and Consumer Commission (ACCC), the enforcement agency, to implement the new code. The department and the ACCC will monitor the introduction of the code and will bring any potential issues to the attention of the government.

Estimation of Regulatory Burden

Table 1 sets out the regulatory costs and savings arising from the implementation of the government response to the review. These costs have been agreed with OBPR. As the overall impact is a regulatory cost increase, offsets will be identified by the department.


Table 1 – Regulatory costs and savings for government response to the review

Proposed regulatory action	Regulatory cost to business per year
Recommendation 6 Proposed Regulatory Action 1 – That contracts currently exempted from the Horticulture Code must be made code compliant.	\$190,800
Recommendation 6 Proposed Regulatory Action 2 – That growers who currently operate under pre-code contracts must enter into a Horticulture Produce Agreement.	\$387,400
Recommendation 6 Proposed Regulatory Action 3 – That growers who currently operate under pre-code contracts must be given a statement regarding produce received each reporting period.	\$726,300
Recommendation 6 Proposed Regulatory Action 4 – That a trader trading as a merchant must agree with the grower (who currently operates under a pre-code contract) on a price in writing before, or immediately upon delivery of the produce.	\$1,226,100
Total regulatory cost	\$2,530,600
Deregulatory savings	
Regulatory Offset – Removal of the requirement that a trader must confirm that a grower has sought legal advice about the Horticulture Produce Agreement, and that a grower must confirm with a trader that they have sought legal advice about the HPA, or waived their right to do so.	\$24,200
Total deregulatory savings	\$24,200
Net cost of new regulatory actions	\$2,506,400

I am satisfied that the review represents a thorough analysis of the impacts on stakeholders and certify that the process and analysis above are equivalent to those required for a RIS as set out in the Guide. A one page RIS summary is at [Attachment B](#) and the independent review is at [Attachment C](#).

Should OBPR have any questions in relation to this matter, please contact Bradley Lockley, Assistant Director, Horticulture Policy on 02 6272 3407 or Bradley.Lockley@agriculture.gov.au.

Yours sincerely



David Williamson
Deputy Secretary
Department of Agriculture and Water Resources
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