



**Produce and Grocery
Industry Ombudsman**

Produce and Grocery Industry Ombudsman

Fourth Annual Report

1st October 2004 – 30th September 2005

*Office of the Produce and Grocery Industry Ombudsman.
Provided under contract to the Commonwealth Government by MEDIATE TODAY Pty Limited
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The Australian Produce and Grocery Industry has established a voluntary Code of Conduct to promote fair trading between industry participants.

In the event of disputes, the Produce and Grocery Industry Ombudsman provides independent mediation services to participants in the industry.

This fourth annual report covers the activities of the Industry Ombudsman for the period 1st October 2004 to 30th September 2005. Full information on the Code of Conduct and the responsibilities of the Industry Ombudsman are provided at www.pgio.com.au.

Ombudsman's Foreword

Effective 11th February 2005, the Retail Grocery Industry Code of Conduct was renamed the Produce and Grocery Industry Code of Conduct (the Code). The Retail Grocery Industry Code Administrative Committee which administers the Code unanimously agreed to change the name of the Code to make it more relevant to the industry sectors that it covers. The committee has adopted the new name of "Produce and Grocery Industry Code Administration Committee" (CAC) and the Ombudsman becomes the "Produce and Grocery Industry Ombudsman". There is a need for consequential changes to the Code which are under consideration by CAC.

The year 2004/2005 has been dominated by the Federal Government's announcement on 1st October 2004 that a re-elected Coalition Government would introduce a mandatory horticulture code of conduct aimed at improving the transparency of trading transactions in the wholesale fresh fruit and vegetable sector. It is intended that the new code will be prescribed under Section 51AE of the Trade Practices Act 1974 and will be developed under a seven stage process, including extensive industry consultation.

This historic announcement is part of a package of responses that the Government has made to the recommendations of the independent enquiry into the operation of the existing voluntary Code and the office of the Ombudsman (the Buck report). These detailed responses are being considered by the industry and, following consultation may result in amendments to the provisions of the voluntary Code.

Effective 1st October 2004 the Minister for Small Business and Tourism, The Hon Fran Bailey MP, approved funding for the Ombudsman to mediate disputes relating to wine grapes under the Code. As a consequence a number of mediation applications from wine grape growers were received which is reflected in an increase in the volume of work undertaken by the Ombudsman. These disputes largely reflect a change in market conditions for wine producers resulting in reduced requirement for fruit and downward pressure on the prices paid for wine grapes.

Attending industry conferences and field meetings continues to be the most effective means of educating industry participants on the Code and services provided by the Ombudsman. From each conference and field meeting attended there has been an increase in enquiries from that particular sector about the services provided by the Ombudsman.

Bob Gaussen and David Holst
Produce and Grocery Industry Ombudsman
November 2005

Ombudsman's mandate

The Ombudsman's office responds to enquiries from produce and grocery industry participants involved in vertical commercial relationships in the production, preparation and sale of food, beverages and non-food grocery items, including (but not limited to) primary producers, manufacturers and/or processors, wholesalers, importers and/or distributors, brokers and/or agents and grocery retailers.

The Code covers a wide range of both produce and product which are defined under Section 4 of the Code "Definitions".

"Produce means yield, especially of fields or gardens, waterways, dams or oceans, including yield from plants and/or animals under cultivation and/or harvested from the wild, for sale as raw horticultural and agricultural goods. Produce includes yield of freshwater and marine life and yield which is food or non-food."

This includes fruit, vegetables, cattle meat, sheep meat, chicken and turkey meat, grains, fish, cane, dairy, cotton, eggs, rice and flowers. From 1st October 2004 the Ombudsman has accepted disputes in the wine grape sector.

"Product means that which may be generated or made by a process of industrial transformation, including any produce that has been subject to any process or treatment resulting in an alteration of its form, nature or condition that is sold in the industry."

This includes all processed foods sold in supermarkets including products such as breakfast cereals, biscuits, breads, jams, confectionary, tinned foods and fruits of all varieties, frozen foods, bottled drinks, soups etc.

The objects of the Produce and Grocery Industry Code of Conduct are to:

- Promote fair and equitable trading practices amongst industry participants;
- Encourage fair play and open communication between industry participants as a means of avoiding disputes; and
- Provide a simple, accessible and non-legalistic dispute resolution mechanism for industry participants in the event of a dispute.

The Code's scope is intended to cover all industry participants in the Australian produce and grocery industry on a voluntary basis. Larger industry representative organisations and the major retailers are signatories to the Code and involved in its management through the CAC.

The Code is essentially in two parts: conduct guidelines for industry participants and dispute resolution procedures. The conduct guidelines provide a guide for the industry without creating legal relationships or obligations and cover four key areas:

- Standards and specifications for produce;
- Product labelling, packaging and preparation;
- Contracts; and
- Voluntary notification of retail business acquisitions.

The Code declares industry participants support a dispute resolution scheme that:

- Considers all vertical supply disputes arising between industry participants;
- Gives all industry participants an opportunity to resolve disputes, in the first instance, under internal procedures;
- Encourages unresolved disputes to be referred to the Ombudsman as an alternative to litigation;
- Considers all disputes fairly and impartially;
- Will not jeopardise the underlying commercial relationship;
- Respects the confidentiality of applicants and respondents; and
- Encourages an equitable and timely resolution of disputes.

The Code establishes a two-stage dispute resolution scheme.

Stage 1 encourages applicants to raise disputes with the respondent who should utilise a published internal dispute resolution procedure. The Code states that such disputes should be resolved in good faith, confidentially and on a without-prejudice basis.

Stage 2 encourages unresolved disputes to be referred to the Produce and Grocery Industry Ombudsman ("the Ombudsman").

The Ombudsman is required to provide an independent mediation service to the produce and grocery industry in accordance with the Code. Consumers who are not industry participants are not covered by the Code.

Through the annual report, the Ombudsman produces statistics on the operation of the Code and reports generally on the effectiveness of the Code.

The Year in Review

Independent Review of Code

During 2003 the Federal Government commissioned an independent review of the Retail Grocery Industry Code of Conduct. In responding to the recommendations Government announced a wide range of initiatives, including:

- Work with industry to clarify and strengthen the voluntary code provisions, particularly those relating to transparency and improved business practices.
- Develop and fund, in consultation with industry, a widespread Code education and promotional campaign to increase awareness of the Code (including its coverage and dispute resolution provisions) and encourage greater commitment to the Code by the industry.
- Continue to fully fund the mediation service provided by the Ombudsman and clarify its role.
- Separate the role of promotion of the Code from the provision of mediation services.
- Continue to provide secretariat support to the RGICAC.
- Work with CAC to improve Code transparency, internal dispute resolution procedures and representation for growers.

On 1st October 2004 the then Deputy Prime Minister, The Hon. John Anderson MP announced that a re-elected Coalition Government would introduce a mandatory horticulture code of conduct aimed at improving the transparency of trading transactions in the wholesale fresh fruit and vegetable sector. This statement followed failure of industry parties to reach agreement on fundamental issues, particularly those relating to transparency and improved business practices.

As a consequence of these announcements, industry parties were engaged in two separate areas of consultation with government over codes of conduct.

- Discussion on the principles and scope of a mandatory code of horticulture; and
- Discussion on amendments to the existing voluntary produce and grocery industry code of conduct consistent with the government's initiatives.

Mandatory Code of Horticulture

The Government has announced that the mandatory horticulture code ("the Horticulture Code") will be prescribed under Section 51AE of the Trade Practices Act 1974. Responsibility for developing the Horticulture Code has been assigned to the Department of Agriculture, Fisheries and Forestry (DAFF) with the ACCC to be responsible for legal enforcement.

At the time of writing this report, DAFF has engaged consultants to prepare a regulation impact statement and exposure draft of the Horticulture Code. Their consultative draft has been released and responses considered. The next step is for the final report to be presented to government and government's decisions announced.

The consultative draft has identified the following objectives for the Horticulture Code:

- Raise clarity and transparency in the way business is conducted.
- Ensure:
 - ❖ minimal cost and price averaging (cross subsidisation);
 - ❖ minimal supplies of costly unsolicited, unwanted produce.
- Ensure costs of marketing remain efficient and competitive by ensuring flexible trading options remain and:
 - ❖ transacting parties can negotiate mutually advantageous arrangements to take advantage of individual economic strengths and circumstances;
 - ❖ there are no prescriptive, 'one-size-fits-all' set of terms and conditions;
 - ❖ disputes are minimised, non-litigious, low cost and fair;
 - ❖ producer and consumer prices are not adversely impacted;
 - ❖ anti-competitive structures are not imposed that might force some players out of the market; and
 - ❖ existing efficient market arrangements that already achieve the desired objectives can continue unrestricted.
- Ensure costs of compliance and enforcement are not so onerous as to create disincentives for conforming to the Horticulture Code.

Produce and Grocery Industry Code of Conduct

Responsibility for policy advice and administration of the Code remains with the Office of Small Business (OSB) within the Department of Industry, Tourism and Resources.

CAC members are engaged in discussions with government to increase the representation of growers on CAC and develop amendments to the Code consistent with government policy. The first decisions have been to clarify the coverage of the Code by renaming to Produce and Grocery Industry Code of Conduct and the Ombudsman to Produce and Grocery Industry Ombudsman; and to note Government's decision to commence funding the Ombudsman to mediate disputes in the wine grape sector.

It is proposed that the promotion campaign for the Code will commence in 2006 after the scope of the horticulture code is determined; including whether the horticulture code will operate together with the voluntary Code or act to exclude the voluntary Code in defined areas.

Consistent with government policy to separate the role of promotion of the Code from the provision of mediation services, the Ombudsman has ceased promotion of the Code and restricted public presentations to an education function on the dispute resolution procedures of the Code.

Code Administration Committee (CAC) Members Activities

A number of CAC members have undertaken activities in support of the Code to inform their members and to encourage proactive resolution of the inevitable disputes that arise in business. Each CAC member was requested to contribute a brief statement on their activities for inclusion in this annual report.

"National Farmers Federation (NFF)

Through its farm organisation members NFF has highlighted the benefits of the government-subsidised mediation service offered through the Code by the Ombudsman, which at this stage is the primary reason for NFF's continued involvement with the Code.

During 2005 NFF has been extensively engaged in the development of the mandatory Horticulture Code agreed to in the 2004 election to address the failure of negotiations to bring about improved business standards, particularly at Australia's wholesale markets. NFF believes this new Code will increase the attractiveness of the wholesale markets as a place for growers to do business though the requirement of clear terms of trade and mandatory dispute resolution.

As a result, in NFF's and its members consultations with farmers the weaknesses of the current voluntary arrangements, such as: no requirement to enter bone fide mediation; no requirement to provide documentation; often no clear terms of trade; and the problem of intimidation of farmers from those they sell to – and how these problems can be best addressed - have been the main themes in industry fora.

From NFF's perspective grower consultations have been extensive in New South Wales and Victoria where there seems to be good understanding of the ombudsman's role (at the farm organisation level). Despite the efforts of NFF some sectors and some states remain quite unaware of the Ombudsman and the voluntary Code and effective promotion of the code is viewed as fundamental to its success.

The Ombudsman has been used on several occasions – some mediations have been successful, some not often due to the weaknesses of the Code described above. There is a feeling among our members that often lip service is paid to the voluntary Code and real commitment is lacking when it comes to dealing with actual problems.

NFF members feature the Ombudsman's services in newsletters and e-mails and in the past members have found the Ombudsman's participation at industry events extremely valuable. NFF feels it is vital that the Ombudsman continues to be strongly promoted where possible."

"Coles Myer Supermarkets

During the year Coles Myer Supermarkets undertook a merging of their Coles and BiLo National Offices. This resulted in changes to roles and responsibilities for many team members under the new organisational structure along with the appointment of many new personnel into the merged Buying, Promotions and House brands functions. To ensure that these team members as a whole continue to deal in a professional manner with any disputes that may arise with suppliers, the CML Supermarkets 'issue Resolution Guidelines' and the CML Supermarkets internet pages for Suppliers on 'Issue Resolution' and Joint Responsibilities' were reviewed, updated and reissued to reinforce CML Supermarkets commitment to the standards

required under the Produce and Grocery Industry Two Stage Dispute Resolution Process.”

“National Association of Retail Grocers of Australia (NARGA)

The following activities have been undertaken during the year.

- Giving the Code prominence on the NARGA website. In particular, this involves providing a full copy of the Code, a copy of the Ombudsman's Information Sheet on Dispute Resolution for Produce and Grocery Industry and a link through to the Ombudsman's website.
- We continue to update members following all meetings of the Code Administration Committee in relation to all developments involving the Code and the Ombudsman.
- Maintaining a dialogue with the Ombudsman about Code developments and application of the Code to the retail grocery sector, with the most recent meeting held in May 2005.
- Developments involving the Code and Ombudsman are listed for discussion at each NARGA Directors' Meeting.”

“Queensland Retail Traders and Shopkeepers Association (QRTSA)

The QRTSA publishes the monthly Australian Retail Magazine which goes to QRTSA members in QLD, northern NSW and the Northern Territory. It also is sent to our affiliate Associations and their members in NSW, Tasmania, South Australia and Western Australia.

On every occasion we receive something from the Ombudsman office relating to the code we:

- Publish the articles, information in the magazine.
- Include in our email bulletin which goes out once a month to approximately 50% of our members and other contacts.
- Depending on what the article or press release may be, we would at times send to the various banner group managers with the QRTSA membership and/or Executive Committee Members.

The last item used was printed in the August issue.”

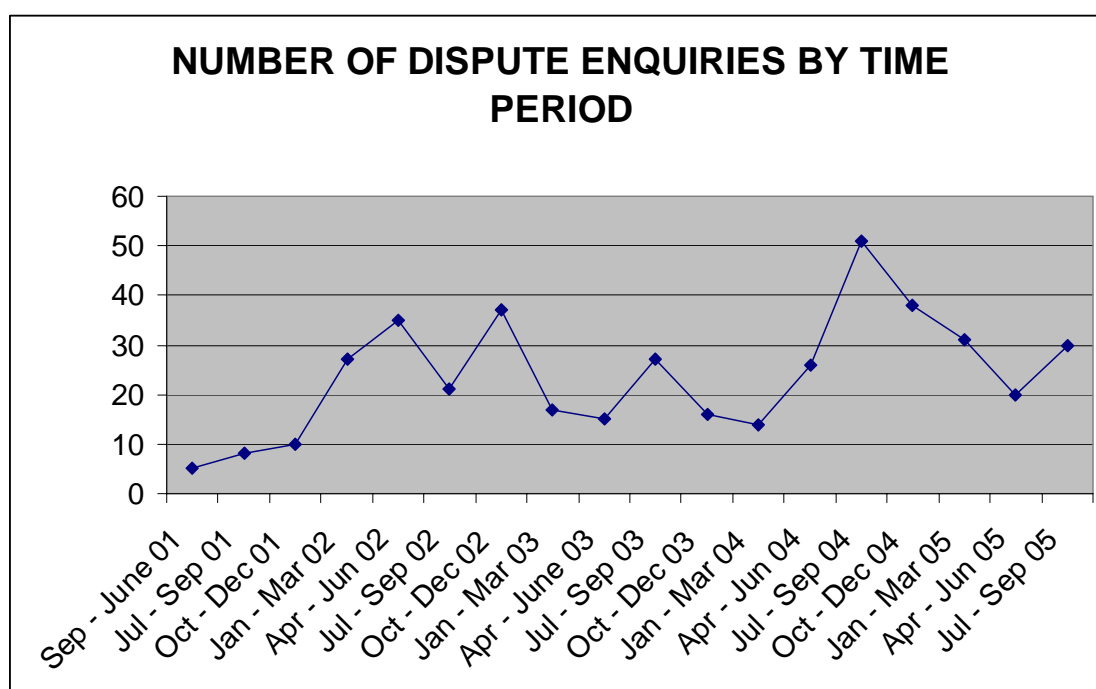
Facts & Figures

How many dispute enquiries?

There was an increase in the number of dispute enquiries from 107 to 119 (including 7 wine grape applications) from the previous year. Once again the emphasis remained in the eastern states; however enquiries were received from every State, the ACT and the Northern Territory.

Effective 1st October 2004 the Minister for Small Business and Tourism, The Hon Fran Bailey MP, approved funding for the Ombudsman to mediate disputes relating to wine grapes under the Code. This decision was widely publicised in wine grape regions. While resulting in only 5 formal enquiries in the second half of 2004, some 16 wine grape mediation applications were received in the quarter ending 31st December 2004.

Generally the mix of enquiries has been more broadly based than previous years with a growth in the number of disputes involving contract growers with refiners and/or processors. Retailers, including, Coles, Woolworths, Aldi and the independent sector were the subject of a negligible number of enquiries.



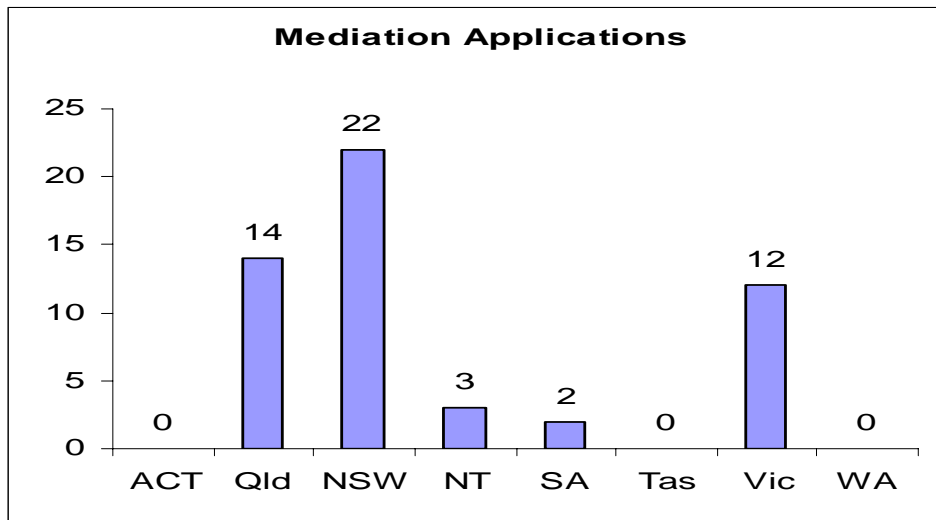
Number of dispute enquiries by year

Years	Enquiries
2001/2002	93
2002/2003	96
2003/2004	107
2004/2005	119

Note: Includes 9 wine grape enquiries from 1st July 2004

How Many Mediation Applications?

There were 53 mediation applications during the year which was an increase of 20 over the previous year. The increase is explained by the availability of funding for mediation of wine grape disputes resulting in 19 formal applications. However only 12 matters proceeded to mediation with 5 applications withdrawn and 2 applications referred by the Ombudsman to other agencies. These disputes arose following reduced demand for grapes by processors and termination of some previous long standing business practices.



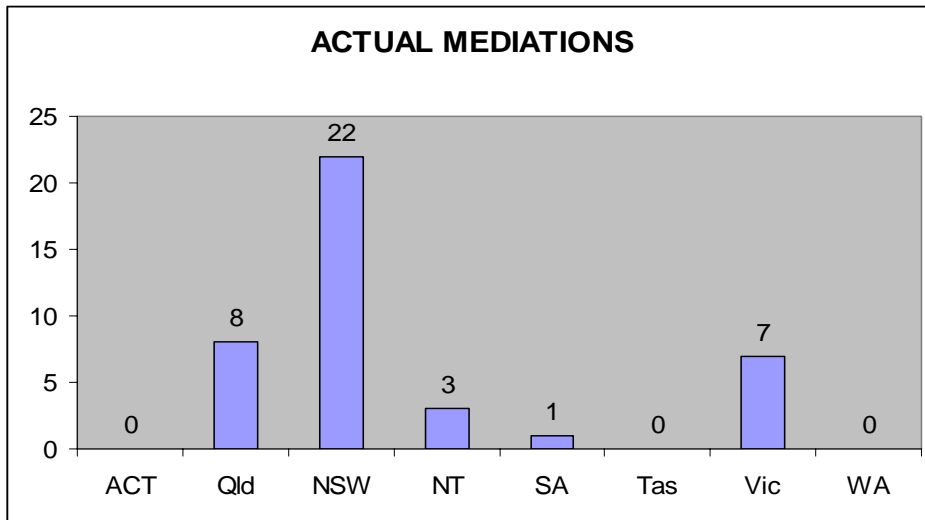
Number of Mediation Applications received by State / Territory

ACT	0
Qld	14
NSW	22
NT	3
SA	2
Tas	0
Vic	12
WA	0
Total	53

Note: Includes 19 wine grape applications from 1st October 2004

How much mediation?

41 matters were mediated during the year which was an increase of 13 over the previous year (12 from wine grape applications). No applications were rejected on jurisdictional grounds and no matters joined.



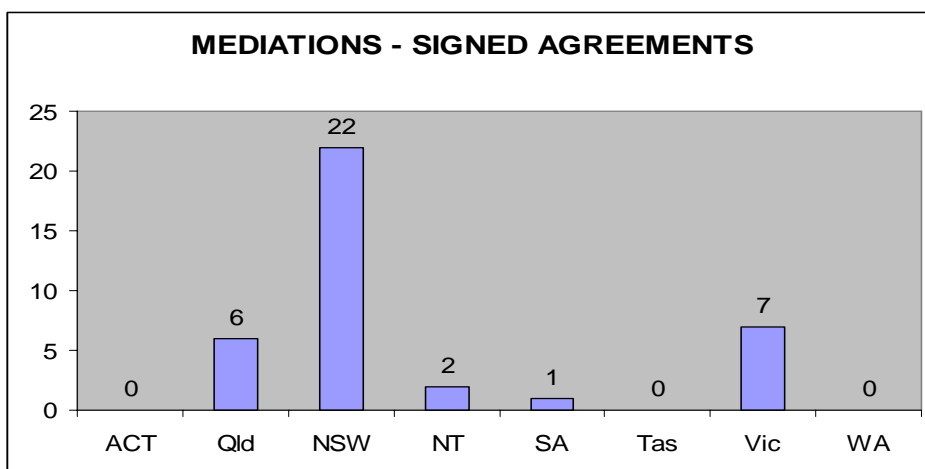
Number of Mediations undertaken by State / Territory

ACT	0
Qld	8
NSW	22
NT	3
SA	1
Tas	0
Vic	7
WA	0
Total	41

Note: Includes 12 wine grape mediations from 1st October 2005

What is the success rate for mediations?

Of the 41 matters proceeding to mediation, the parties were able to sign formal settlement agreements in 93% of cases (38 matters).



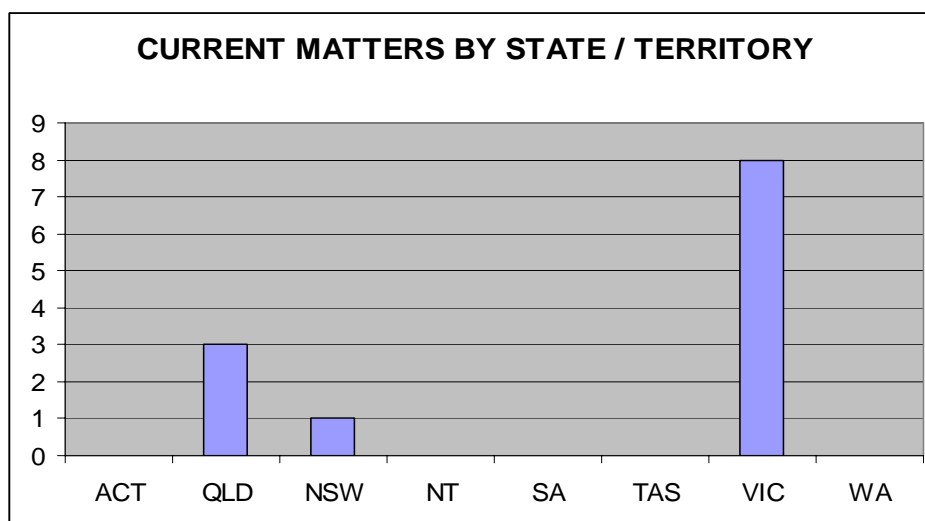
Number of formal mediations resulting in signed agreements between the parties.

ACT	0
Qld	6
NSW	22
NT	2
SA	1
Tas	0
Vic	7
WA	0
Total	38

Note: Includes 9 wine grape agreements from 1st October 2005

How many current matters?

There are 12 matters currently in progress awaiting agreement by the parties to a time and place for mediation.



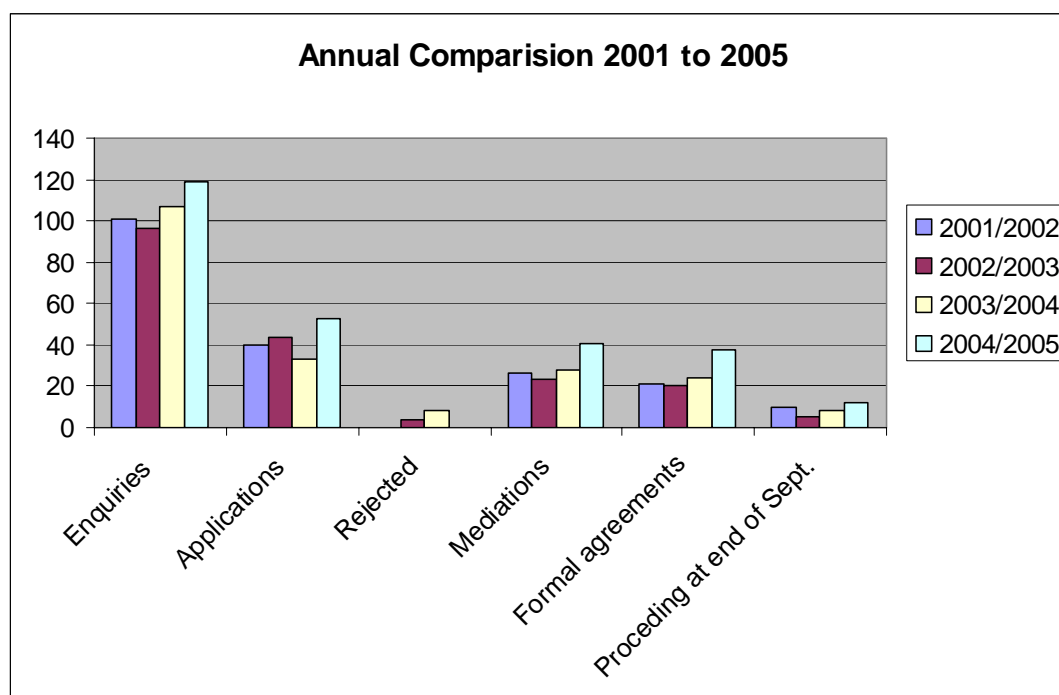
Current matters by State / Territory

ACT	0
QLD	3
NSW	1
NT	0
SA	0
TAS	0
VIC	8
WA	0
Total	12

Four year comparison

Experience over the last four years indicates continued support for the dispute resolution process under the Code. Enquiries and formal applications for mediation have increased reflecting the inclusion of wine grape disputes. Most enquiries arise from areas where the Ombudsman has visited or industry associations have conducted seminars.

We note that the eastern States are more strongly represented in our activities. From discussions with the National Farmer Federation, we believe that there is a lack of knowledge and promotion of the Code in South Australia and Western Australia.



Comparison 2001 to 2005

	2001/ 2002	2002/ 2003	2003/ 2004	2004/ 2005
Enquiries	101	96	107	119
Applications	40	44	33	53
Rejected	0	4	8	0
Mediations	26	23	28	41
Formal agreements	21	20	24	38
Proceeding at end of Sept.	10	5	8	12

Note: Includes wine grape statistics from 1 July 2004

Areas of concern and systemic problems

Over the past three annual reports, we have identified areas of concern and systemic problems within the industry. A number of these issues are at the centre of the Government's current investigation into the implementation of the Horticulture Code.

The issues we have raised do not apply solely to horticulture and are included in general industry discussions between government and CAC over amendments to the voluntary Code.

During the past twelve months we have not encountered new areas of concern or systemic problems. We encourage the parties in their discussions.

Relationship with the ACCC

The Office of Ombudsman enjoys a positive relationship with the ACCC. In particular the Small Business Commissioner, John Martin, has been most helpful in working with the Office of the Ombudsman.

Contacting the Ombudsman

The Office of the Produce and Grocery Industry Ombudsman is provided by Mediate Today Pty Limited and reports to the Office of Small Business in the Commonwealth Department of Industry, Tourism and Resources in Canberra.

We welcome telephone and written enquiries.

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