

Questions and Answers

At the Fruit West Co-operative Annual General Meeting held on 11 November 2016, 10 questions were received from Mr Vic Grozotis, a Member of the Co-operative, and read into the Minutes of the meeting. Answers were prepared subsequent to the AGM and have been provided personally to Mr Grozotis. The following Q&A sheet is published to remove any doubt, and stop speculation, as to the correct position with regard to Fruit West's commercialisation of the ANABP 01 variety and the Bravo™ branded apple, for the benefit of all growers.

- Q1. Is there a financial agreement between Pomewest/FWCL outlining the relationship between the two parties both on a governance and financial aspect?
Is this available to the growers?

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| (a) | Yes |
| (b) | No |

- Q2. What % of grower fee for service monies has been forwarded to FWCL? Are these monies in the form of a grant/loan? Are they to be paid back to Pomewest and over what time frame?

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| (a) | Information not available to FWCL. |
| (b) | Grant |
| (c) | No |

- Q3. In the event that FWCL becomes highly profitable will monies be transferred to PW for the benefit of all the growers?

<p><i>FWCL monies are dealt with according to the Co-operative's charter to function in the interest of the WA fruit industry, as set out in the FWCL rules and more particularly in Rules 7.1 and 49.4.</i></p> <p><i>In the event that Fruit West becomes highly profitable the capacity of the board to function in the interest of the fruit industry in WA would be considerably enhanced.</i></p>

Rule 7.1 Primary Activity

- (a) the acquisition of commodities from members for disposal or distribution; and
 - (b) securing and commercialising Plant Breeders' Rights licences for horticultural plants for the benefit of members; and
 - (c) provision of contract services to Agricultural Produce Commission Producers' Committees, and
 - (d) provide producers with competitively priced value for money input and output services where commercially prudent, sustainable and practicable.
- are primary activities of the Co-operative.

Rule 49.4 Industry good function

Without limiting in any way the powers contained in these rules the board can enter commercial fee earning agreements, with or without financial assistance from the Co-operative, to do with the delivery of industry good functions such as –

- (a) advertising and promotion of horticultural produce;
- (b) controlling or developing the means of controlling pests and diseases likely to affecting the quality or volume of output of horticultural produce;
- (c) the provision of extension services for the early adoption of horticultural industry research output;
- (d) the provision of educational programmes relating to the horticultural industry including production and business management systems;
- (e) the development of markets for horticultural produce in Western Australia and elsewhere;
- (f) the provision of market forecasting for the agricultural produce;
- (g) establishing systems of inspection for the agricultural produce for the purpose of quality control or pest and disease control;
- (h) formulating and managing market based accredited producers schemes;
- (i) establish systems to facilitate grading, packaging and storage of the horticultural produce including weight and uniformity (including uniformity of ripeness) within packages.

- Q4. Who can become a member of FWCL, what are the criteria for membership, do members have voting rights or power to influence the direction of FWCL board members?
Can an Eastern States grower become a FWCL member can he also take a role as a board member?
Can applicants be denied membership to FWCL and under what reasoning?

(a) *Governed by FWCL rules (Constitution).*

8.2 Membership prerequisites

A person is not qualified to be admitted to membership of the Co-operative unless -

- (a) *the person is a Western Australian producer of horticultural produce; and*
- (b) *the person is liable to fund directly or indirectly fee-for-service payments to the Agricultural Produce Commission; and*
- (c) *there are reasonable grounds for believing the person will be an active member of the Co-operative.*

(b) *Members have conventional voting rights as set out in the Co-operatives Act 2009 (WA) and the FWCL rules (Constitution).*

- Q5. What advantages do co-op members have over and above growers who may choose to grow BRAVO apples (*sic*) but choose not to become members of FWCL?
Will cooperative members be given preference to new varieties by FWCL board?

(a) *Rights and obligations of Membership as set out in the Co-operatives Act 2009 (WA) and the FWCL rules (Constitution).*

(b) *The Co-operative's commercialisation rights in any new variety will be constrained by the terms and conditions imposed by the owner of the PBR/IP.*

NB: *The apple variety being grown is ANABP 01. Bravo™ is the brand name for fruit of the ANABP 01 variety that meets the required Quality Specification.*

- Q6. Under what powers/mechanism are the Fruit West Co-operative Ltd Board members being paid for "consulting fees for extensive expert executive functions outside non-executive director duties which are over and above normal Director Fees?
Was a special resolution passed at any FWCL AGM for these "consulting fees" to occur?

(a) *Co-operatives Act 2009 (WA) and the FWCL rules (Constitution)*

(b) *Special resolution not required.*

- Q7. How are non-active FWCL memberships going to be managed in the future?
If a member wishes to cease membership will membership monies be refunded?
Can memberships be transferred between growers?

(a) *In accordance with the requirements of the Co-operatives Act 2009 (WA) and the FWCL rules (Constitution).*

(b) *Yes - share capital will be repaid in accordance with the Co-operatives Act 2009 (WA) and the FWCL rules (Constitution).*

(c) *Yes – but only if the nominee member meets the prerequisite requirements and is accepted by the board as a member in accordance with the FWCL rules (Constitution).*

Q8. We are led to believe that new contracts are to be drawn up for FWCL members. What are the changes in the contract and can members influence changes in the contract?

- (a) *An improved Growers Agreement has been drawn up for growers of the ANABP 01 variety. Growers of the ANABP 01 variety are being invited to enter a Deed of Variation to amend their Propagation Agreement to gain the benefits of the improved Growers Agreement, which are principally:*
- *Licence Term would end 13/11/2037 aligning with life of ANABP 01 variety PBR (current Non-Propagation Agreement expire 2 July 2024);*
 - *Ability for growers to deal direct with nurseries on price and terms for purchase of ANABP 01 trees;*
 - *Greater clarity around export plans for fruit;*
 - *Provisions for Topworking and sourcing of Topworking material;*
 - *Brand protection clarified through more functional restraint obligation clauses; and*
 - *Clearer pathway for value-adding and brand protection through managed supply chain and oversight of licenced packers.*
- (b) *The Grower Agreement must reflect certain prescribed Terms and Conditions imposed by the WAAA as owner of the ANABP 01 variety PBR and associated Trade Mark intellectual property rights. As such FWCL has limited scope to go beyond the changes being proposed for the existing Non-Propagation Agreements.*

Q9. What influence does DAFWA have over FWCL and the manner in which it runs its business?

- (a) *None directly, however the Western Australian Agriculture Authority (WAAA), as owner of the ANABP 01 and Bravo™ IP, has appointed DAFWA to administer the Licences awarded to FWCL that impose a range of conditions on FWCL as the Licensee.*

Q10. What % of CEO (Nardia's) time is spent on Pomewest activities versus FWCL? Who administers the division, sets KPI's and assesses performance?

- (a) *FWCL has a Shared Services Agreement with Pome West based on accessing staff resources of approximately 0.5 FTE.*
- (b) *FWCL and Pome West for their respective interests.*