



Australian  
Competition &  
Consumer  
Commission

# The Horticulture Code and You

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# The ACCC: what we do

- National regulator: oversees laws on consumer protection, equitable competition, product safety, infrastructure access
- Also regulates some specific industries (such as energy, telecommunications), industry codes (franchising, food & grocery) and price monitoring (airports, postage, stevedoring)
- An independent statutory agency within the Treasury portfolio
- Dual educative and enforcement function
- Enforcement agency...does not set policy

# What is the Horticulture Code?



Prescribed mandatory code made under the Competition and Consumer Act

Applies to you if you're a farmer growing fruit or vegetables and sell through an agent or to a merchant.

Protects farmers in their business relationships with agents or merchants

# Who does the Code apply to?

## Growers and traders of unprocessed fruit and vegetables

A **grower** is the person who grows the fruit and vegetables

A **trader** is an agent – a person who sells fruit and vegies on your behalf for a commission or fee

A trader is also a merchant – a person who buys your fruit and vegetables to resell them



**Horticulture produce** is unprocessed fruit, vegetables (including mushrooms and other edible fungi), nuts, herbs and other edible plants, but excludes nursery products.



The Code does **not** apply to purchasers of horticulture produce who sell directly to consumers, for export or for processing

# The Code in a nutshell



You **must** have a written contract - Horticulture Produce Agreement (HPA).  
The HPA must contain certain things



Traders **must** publish their terms of trade



Obliges **both** growers and traders to deal in good faith



Merchants **must** explain how price will be calculated



Growers and traders **must** keep certain records



Includes **penalties** for breaching certain sections of the Code



Provides a process for dispute resolution

# Horticulture Produce Agreements (HPA)

How you are to deliver your fruit and vegies

Under what circumstances the trader can reject delivery

Any quantity and quality requirements

The FreshSpecs Produce Specifications used for quality

Requirements of pooling produce

When the trader must pay you

Whether an agent will pursue bad debts for you

How price (merchant) or commission (agent) will be calculated

A trader must accept delivery unless HPA allows rejection

A trader must take care and skill in handling produce

Payment must be as per HPA

An agent must act in your best interests



# Quality of produce



**FreshSpecs**  
PRODUCE SPECIFICATIONS

SHOW ALL

FRUITS

HERBS

VEGETABLES



Alfalfa and Onion Sprouts



Alfalfa Radish Sprouts



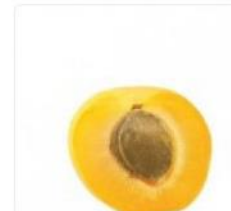
Alfalfa Sprouts



Apple



Apple-Toffee



Apricot



Artichoke



Asian Vegetable Leafy



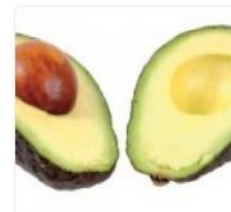
Asian Vegetable Other



Asian Vegetable Root



Asparagus



Avocado



# Produce ownership

## Agent

Directly from you to the third-party buyer once the agent sells the produce

## Merchant

On delivery if the price or a method or formula has been agreed beforehand

Or

At the time the agreed service is completed

Or

At the time the grower and merchant agree on a price



# Record keeping

## Traders must keep:

Any HPA they enter into

Any written notice by the trader of the offer or acceptance of a HPA

Any written termination by the trader of a HPA

Any notice of rejection of horticulture produce including reasons for the rejection

Statements for each reporting period give to a grower

## Growers must keep:

Any HPA they enter into

Any written notice by the grower of the offer or acceptance of a HPA

Any written termination by the grower of a HPA

# Transition period

**I was not required to comply with the old Code because I traded under a written agreement entered into before 15 December 2006**

You have until 1 April 2018 to enter into an HPA that is compliant with the new Code.

If you amend your existing written agreement or enter into a new HPA before 1 April 2018, the entire new Code will apply to you from the day you amend the agreement or enter a new HPA.

**I am trading under a written HPA that complies with the old Code:**

You have until 1 April 2018 to amend or enter into a new HPA that is compliant with the Code.

Until you amend your HPA or enter into a new one, your existing HPA must continue to comply with the old Code.

If you amend your existing HPA or enter into a new HPA prior to 1 April 2018, the entire new Code will apply to you from the date you amend your existing HPA or enter a new HPA.

**I am currently trading in horticulture produce without an agreement**

**You do not have a transition period.** You must comply with the Code and enter a compliant HPA before trading in horticulture produce.

# Dispute resolution



The complainant must inform the other party in writing of the dispute

The parties must then try to resolve the dispute.

No resolution? Either party may ask the mediation adviser to appoint a mediator.

Once a mediator is appointed, the mediator can decide how, where and when they will carry out the mediation and both parties **MUST** attend

Horticulture Mediation Adviser (HMA)

[www.horticulturecode.com.au](http://www.horticulturecode.com.au)

1800 475 467 (free call within Australia)

# ACCC's role



We are responsible for regulating compliance with Code

During the transition period we will primarily focus on education and guidance

We will take appropriate enforcement action in line with the principles of our Compliance and Enforcement Policy. More information – [www.accc.gov.au/cepolicy](http://www.accc.gov.au/cepolicy)

We can ask parties covered by the code for information or documents they are required to keep, generate or publish under the code.

# ACCC contacts & resources



**Small business helpline**

**1300 302 021**



**[www.accc.gov.au/agriculture](http://www.accc.gov.au/agriculture)**



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