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# 『園藝行業守則』 (HORTICULTURE CODE) 概述

**『園藝行業守則』(Horticulture Code)是一項強制性行業行為守則，具有法律效力，將於2007年5月14日開始實施。**

## 『園藝行業守則』(Horticulture Code)的適用性

『園藝行業守則』(Horticulture Code)適用於種植者和批發商（交易商）之間的園藝產品交易。

園藝產品定義為未加工的水果、蔬菜（包括蘑菇和其他可食用菌類）、堅果、芳草和其他可食用植物。園藝產品不包括苗圃產品。

守則中未定義「未加工」(Unprocessed)這個詞彙。未加工的涵義將根據每個個案的情況而定。未加工的通常涵義是指產品沒有受到為使其成為一種新形式之目的而進行的某種方式的轉變、改變或修改。

種植者和交易商於2006年12月15日或以後達成的有關園藝產品的任何書面協議都將於2007年5月14日起受守則的約束。

如果種植者和交易商於2006年12月15日之前達成書面協議，則『園藝行業守則』(Horticulture Code)並不適用。但是，如果協議於2006年12月15日之前達成，並且此後於2007年5月14日或以後發生了變更，則『園藝行業守則』(Horticulture Code)將適用於協議變更之後發生的任何交易。如果協議被修改、延期或轉讓，則認為協議發生了變更。

『園藝行業守則』(Horticulture Code)要求交易商作為種植者的代理人或者作為商人與種植者打交道。

代理人是指代表種植者促進園藝產品銷售以獲得佣金或費用的人士。

商人是指購買種植者的園藝產品以轉售該產品的人士。

交易商這個詞彙指代理人和商人兩者。『園藝行業守則』(Horticulture Code)不適用於將產品出口或零售的商人，即便該商人直接從種植者處購買產品。

## 交易條款

根據『園藝行業守則』(Horticulture Code)，所有交易商都必須制訂一份可以公開取得的文件，列出他們與種植者交易的一般條款。

## 園藝產品協議

交易商和種植者只有達成園藝產品協議才能進行園藝產品交易。『園藝行業守則』(Horticulture Code)不允許交易商在一個協議中以代理人 and 商人的雙重身分進行交易。

該協議必須由協議所有各方制訂和簽署。如果交易商的一般交易條款與某個特定的園藝產品協議有衝突，則以協議為準。

## 交易商的義務

交易商必須：

- 接受根據園藝產品協議運送的園藝產品，除非出現協議中規定的某種情況，允許交易商拒絕接受產品
- 在搬運和儲藏種植者所擁有、並且在交易商控制之下的產品時採取所有合理的保護和技能
- 在協議規定的期限內向種植者支付根據協議運送的產品款項。如果交易商未支付協議要求的金額，種植者可以在所欠金額被支付以前暫停協議中的任何進一步發貨，而且/或在發出意圖取消協議的通知之後取消協議。

## 產品的所有權

在園藝產品協議中，園藝產品的所有權：

- 在代理人交易(Agent transaction)中 – 一旦產品由代理人售出，則直接從種植者轉移給第三方購買者
- 在商人交易(Merchant transaction)中 – 當產品發貨給商人後，從種植者轉移給商人

守則中未定義「運送」(Delivery)這個詞彙。運送的涵義將根據每個個案的情況、特別是雙方達成的協議條款而定。雙方可以選擇議定在其特定情況下運送的構成部分，並將此包括在其園藝商品協議中。

如果雙方在其協議中定義「運送」(Delivery)，雙方均應取得法律建議，並確保定義和協議都符合守則，而且他們在簽署協議之前都對此滿意。



# 『園藝行業守則』(Horticulture Code) 概述

## 種植者的義務

如果園藝產品協議的期限為90天或更長時間，在簽署協議之前，交易商必須要求種植者提供以下兩者之一：

- 一份已簽署的聲明，說明種植者已經就協議取得了獨立的法律建議；或
- 一份已簽署的聲明，說明種植者已被告知需要尋求獨立的法律建議，但決定不這麼做。

## 冷靜期

如果協議期限為90天或更長，或協議期限沒有規定，任何一方均可在達成協議以後的14天內或雙方同意的期限內終止協議。但是，協議不得規定少於七天的冷靜期。

## 糾紛的解決

園藝產品協議中產生糾紛的雙方必須首先試圖解決糾紛。如果雙方在三個星期之後還無法解決糾紛，任何一方均可將糾紛提交給園藝調解顧問(Horticulture Mediation Adviser)，調解顧問將從一組具備適當資歷和經驗的調解員中任命一人作為糾紛調解員。

調解員將決定調解的安排，並試圖幫助雙方解決其糾紛。糾紛雙方或其代表必須出席調解並試圖解決糾紛。

進行調解相關的費用將由澳洲政府補貼。但是，雙方需自付出席調解的費用，除非他們另行協定。

## 園藝產品評估員

園藝產品評估員是由調解顧問挑選的個人，具有技術能力和獨立性，對園藝產品協議中出現的事務進行調查和提出報告。

評估員只可對雙方或調解員提出的事項進行調查和提出報告。任命評估員的費用將由任命評估員的方面支付，除非評估員由調解員任命，在這種情況下，除非另有協定，否則評估員的費用將由雙方平均負擔。

## 其他法律行動

根據『園藝行業守則』(Horticulture Code)或園藝產品協議，無法阻止一方採取任何其他法律行動，即便他們已經委託調解員和/或園藝產品評估員幫助他們解決與園藝產品協議和『園藝行業守則』(Horticulture Code)相關的糾紛。

## 澳洲競爭與消費者公署(ACCC)的職責

違反『1974年交易慣例條例』(Trade Practices Act 1974) (The Act)，包括違反『園藝行業守則』(Horticulture Code)，會對商業、消費者和經濟造成嚴重的損害。澳洲競爭與消費者公署(ACCC)的職責就是通過向交易商和種植者告知其根據法律應有的權利和義務，並且在必要時執行法律，以確保對『園藝行業守則』(Horticulture Code)和『條例』(The Act)的遵循。

## 有關『園藝行業守則』(Horticulture Code)的其他出版物

有關根據『園藝行業守則』(Horticulture Code)應有的權利和責任的詳細資訊，澳洲競爭與消費者公署(ACCC)已出版了『園藝行業行為守則指南』(The guide to the Horticulture Code of Conduct)。該出版物可以從澳洲競爭與消費者公署資訊中心(ACCC Infocentre)訂閱，或者從澳洲競爭與消費者公署(ACCC)網站下載。

## 聯絡方式

### 園藝調解顧問(Horticulture Mediation Adviser)

電話：1800 206 385  
網站：[www.hortcodema.com.au](http://www.hortcodema.com.au)  
電子郵件：[info@hortcodema.com.au](mailto:info@hortcodema.com.au)

### 澳洲競爭與消費者公署(ACCC)

資訊中心(Infocentre)：1300 302 502  
網站：[www.accc.gov.au/horticulturecode](http://www.accc.gov.au/horticulturecode)  
小型商業求助專線：1300 302 021  
小型商業電子郵件：[small.business@accc.gov.au](mailto:small.business@accc.gov.au)

有關澳洲政府對於『園藝行業守則』(Horticulture Code)的政策詢問，請聯絡農業、林業和漁業部(Department of Agriculture, Forestry and Fisheries)，網站為：[www.daff.gov.au/hortcode](http://www.daff.gov.au/hortcode)。

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### 重要通知

此處提供的資訊為截至印刷時的正確內容，並於2007年5月14日之前可能會另有更改。『園藝行業守則』(Horticulture Code)是一項強制性行業行為守則，具有法律效力，將於2007年5月14日開始實施。

本概述向您提供基本資訊。它不涵蓋包括『園藝行業守則』(Horticulture Code)在內的全部『交易慣例條例』(Trade Practices Act)，而且不能代替專業建議。

此外，因為本概述儘量避免法律用語，對於『條例』(The Act)適用性可能過於廣泛。提及的部分規定有例外情況或重要限制性條件。並且，在多數情況下，在確定『條例』(The Act)的適用性時，需要考慮行為發生時的特定環境。

2007年5月由澳洲競爭與消費者公署出版處(ACCC Publishing Unit)製作。

Overview of the Horticulture Code in Traditional Chinese  
Produced by the ACCC Publishing Unit 05/07



Australian  
Competition &  
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Commission

# AN OVERVIEW OF THE HORTICULTURE CODE

**The Horticulture Code is a mandatory industry code of conduct that has the force of law and will come into effect on 14 May 2007**

## Application of the Horticulture Code

The Horticulture Code applies to the trade of horticulture produce between growers and wholesale traders (traders).

Horticulture produce is defined as unprocessed fruit, vegetables (including mushrooms and other edible fungi), nuts, herbs and other edible plants. Horticulture produce does not include nursery products.

The term 'unprocessed' is not defined in the code. The meaning of unprocessed will be determined by the circumstances of each case. The ordinary meaning of unprocessed is produce that has not been converted, altered or modified in some way for the purpose of making it into a new form.

Any written agreement between a grower and a trader for horticulture produce entered into on or after 15 December 2006 will be subject to the code from 14 May 2007.

The Horticulture Code does not apply if a grower and trader entered into a written agreement before 15 December 2006. If, however, the agreement was entered into before 15 December 2006 and is later varied on or after 14 May 2007, the Horticulture Code will apply to any trade that takes place after the agreement is varied. An agreement will be varied if it is amended, extended or transferred.

The Horticulture Code requires that traders deal with growers either as an agent on behalf of a grower or as a merchant.

An agent is a person who facilitates the sale of horticulture produce on behalf of a grower for a commission or fee.

A merchant is a person who buys a grower's horticulture produce to resell that produce.

The term trader refers to both agents and merchants. The Horticulture Code does not apply to a merchant who exports or retails the produce even if that merchant buys produce directly from a grower.

## Terms of trade

Under the Horticulture Code all traders have to make a document publicly available setting out the general terms on which they will trade with growers.

## Horticulture produce agreements

A trader and a grower may only trade in horticulture produce if they enter into a horticulture produce agreement. The Horticulture Code does not allow a trader to trade as both an agent and a merchant under the one agreement.

This agreement must be written and signed by all parties to the agreement. If the trader's general terms of trade conflict with a specific horticulture produce agreement, the agreement will prevail.

## Trader obligations

A trader must:

- accept horticulture produce delivered under a horticulture produce agreement unless a circumstance specified in the agreement arises that allows the trader to reject the produce
- exercise all reasonable care and skill in handling and storing produce owned by a grower while it is under the trader's control
- pay the grower for produce delivered under the agreement within the period specified in the agreement. If the trader fails to pay the amount required under the agreement the grower may suspend any further deliveries under the agreement until the amount owed is paid and/or cancel the agreement, after giving written notice of the intention to do so.

## Ownership of produce

Ownership of horticulture produce under a horticulture produce agreement passes:

- in an **agent transaction**—directly from the grower to the third party buyer once the produce is sold by the agent
- in a **merchant transaction**—from a grower to a merchant on delivery of the produce to the merchant.

The term 'delivery' is not defined in the code. The meaning of delivery will be determined by the circumstances of each case and in particular the terms of the agreement reached by the parties. The parties may choose to agree on what will constitute delivery in their particular circumstances and include this in their Horticulture Produce Agreement. Where the parties define 'delivery' in their agreement,





# AN OVERVIEW OF THE HORTICULTURE CODE

both parties should obtain legal advice and ensure that the definition and agreement is in accordance with the code and that they are satisfied with the agreement before they sign.

## Grower obligations

If a horticulture produce agreement is for a period of 90 days or more, before signing the agreement the trader must ask the grower to provide either:

- a signed statement that the grower has received independent legal advice about the agreement or
- a signed statement that the grower has been told to seek independent legal advice but has decided not to.

## Cooling-off period

If the agreement is for 90 days or more, or the term of the agreement is not provided, either party may terminate the agreement within 14 days of entering into the agreement, or within a period agreed by the parties. An agreement may not, however, provide for a cooling-off period that is less than seven days.

## Dispute resolution

The parties to a dispute under a horticulture produce agreement must first attempt to resolve the dispute. If the parties cannot resolve the dispute after three weeks, then either party may refer the dispute to the Horticulture Mediation Adviser (mediation adviser) who will appoint a mediator to the dispute from a list of suitably qualified and experienced mediators.

The mediator will decide the arrangements for the mediation and try to help the parties resolve their dispute. The parties to the dispute, or their representatives, must attend the mediation and try to resolve the dispute.

The costs associated with carrying out the mediation will be subsidised by the Australian Government. However, the parties will pay their own costs of attending the mediation, unless they agree otherwise.

## Horticulture produce assessor

Horticulture produce assessors are individuals selected by the mediation adviser as having the technical skills and independence to investigate and report on matters arising under a horticulture produce agreement.

The assessor may only investigate and report on issues that have been referred by the parties or the mediator. The costs of appointing the assessor will be met by the party that appoints the assessor, unless the assessor is appointed by the mediator, in which case the parties will equally share the cost of the assessor, unless agreed otherwise.

## Other legal action

A party is not prevented from taking any other legal action under the Horticulture Code or a horticulture produce

agreement even when they have already engaged a mediator and/or a horticulture produce assessor to help them resolve a dispute relating to a horticultural produce agreement and the Horticulture Code.

## The ACCC's role

Breaches of the *Trade Practices Act 1974* (the Act) including breaches of the Horticulture Code, can cause serious detriment to businesses, consumers and the economy. The role of the ACCC is to ensure compliance with the Horticulture Code and the Act by informing traders and growers of their rights and obligations under the law and enforcing the law if necessary.

## Other publications about the Horticulture Code

For more detailed information about your rights and responsibilities under the Horticulture Code, the ACCC has published *The guide to the Horticulture Code of Conduct*. This publication can be ordered through the ACCC Infocentre or downloaded from the ACCC website.

## Contacts

### Horticulture Mediation Adviser

**Tel:** 1800 206 385  
**Website:** [www.hortcodema.com.au](http://www.hortcodema.com.au)  
**Email:** [info@hortcodema.com.au](mailto:info@hortcodema.com.au)

### ACCC

**Infocentre:** 1300 302 502  
**Website:** [www.accc.gov.au/horticulturecode](http://www.accc.gov.au/horticulturecode)  
**Small business helpline:** 1300 302 021  
**Small business email:** [small.business@acc.gov.au](mailto:small.business@acc.gov.au)

For inquiries on the Australian Government policy for the Horticulture Code, contact the Department of Agriculture, Forestry and Fisheries at [www.daff.gov.au/hortcode](http://www.daff.gov.au/hortcode)

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### Important notice

This overview gives you basic information. It does not cover the whole of the Trade Practices Act, including the Horticulture Code, and is not a substitute for professional advice.

Moreover, because it avoids legal language wherever possible there may be some generalisations about the application of the Act. Some of the provisions referred to have exceptions or important qualifications. In most cases the particular circumstances of the conduct need to be taken into account when determining the application of the Act.

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