



Australian
Competition &
Consumer
Commission

A guide for business

How the Horticulture Code helps you

April 2017



If you're a farmer growing fruit or vegetables and sell through an agent or to a merchant, there's a law that says you must have a written contract. It's called the Horticulture Code of Conduct (Code).

The Code also says that this contract must include certain things, like how price is calculated and when you get paid.

Having a written contract protects you. It details what you and the agent or merchant can and can't do. This creates transparency around your relationship with the agent or merchant. The Code also sets out a way for the parties to try to resolve disputes.

The Code details when agents or merchants must pay you and how they must treat you. If someone breaks certain parts of the Code, the Australian Competition and Consumer Commission (ACCC) can ask a court to issue a penalty.

The Code:

- requires growers and traders to have a contract called a horticulture produce agreement (HPA) and applies to all HPAs
- obliges all parties to deal in good faith
- obliges merchants to explain how price will be calculated
- includes penalties for breaching certain sections of the Code
- requires you, agents and merchants to keep certain records.

If you have an existing written HPA signed before 1 April 2017, you have until 1 April **2018** to make sure it includes the things the Code says it should include. This includes all HPAs entered into prior to 15 December 2006 when the original Code was introduced. If a HPA is changed before 1 April 2018, the whole Code will apply from the date it is changed.

Some parts of the Code will apply to all HPAs from 1 April 2017. These parts include the obligation to deal in good faith and the dispute resolution procedure.

Use the information in this overview and on the ACCC website to ensure your HPAs follow the Code.

Who the Horticulture Code applies to

The Horticulture Code applies to transactions between:

- growers of fruit and vegetables, and
- traders of fruit and vegetables.

The Code covers fruit and vegetables that are unprocessed. This includes mushrooms and other edible fungi, nuts, herbs and other edible plants but does not include nursery products. The Code calls these things 'Horticulture Produce'.

The Code calls you, the person who grows the fruit and vegetables, a grower.

The Code calls agents and merchants 'traders'. A trader cannot act as both an agent and a merchant under the one HPA.

An agent is a person who sells fruit and vegetables on your behalf for a commission or a fee.

A merchant is a person who buys your fruit and vegetables to resell them.

The Code does not apply to a merchant or a grower supplying a merchant who:

- buys fruit and vegetables for export
- buys fruit and vegetables to sell directly to consumers (for example, a supermarket)
- buys fruit and vegetables to process them (for example, to turn tomatoes into sauce).

Documented terms of trade

The Code says that all traders have to publish and make publicly available a document setting out the general terms on which they are prepared to trade with growers. Typically this would cover things like delivery requirements, quality requirements, when deliveries can be rejected and when you will be paid.

Horticulture produce agreements

A trader and a grower can only trade in fruit and vegetables if they enter into a contract called a HPA. Traders must trade as an agent or a merchant under a single HPA. They can't trade as both.

A HPA must be in writing. You can accept one by either signing or by accepting a written notice of offer in writing (such as by email).

Under the Code your HPA must include:

- how you are to deliver your fruit and vegetables
- under what circumstances the trader can reject your fruit and vegetables
- any quantity and quality requirements
- the FreshSpecs Produce Specifications or other specifications used to determine quality
- if a trader plans to pool horticulture produce, the quality requirements of the produce to be pooled
- when the trader must pay you
- whether an agent will pursue bad debts for you
- how price (merchant) or commission (agent) will be calculated.

Trader obligations

A trader must:

- accept fruit and vegetables delivered under a HPA unless the HPA allows the trader to reject the fruit and vegetables
- exercise all reasonable care and skill in handling and storing fruit and vegetables owned by you.

A merchant must pay you for fruit and vegetables within the time the HPA says they must pay you. If they don't, you can, after giving written notice, stop deliveries or end the HPA.

An agent must:

- pay you the price they get for your fruit and vegetables, but can keep any commissions, fees and extra costs you have agreed to in the HPA
- act in your best interests and sell your fruit and vegetables on an arm's-length basis.

Produce ownership

Ownership of fruit and vegetables under a HPA passes:

- directly from you to the third-party buyer once the agent sells the fruit and vegetables, in an agent transaction
- in a merchant transaction:
 - on delivery of the fruit and vegetables to the merchant—if the price or a method or formula for calculating the price has been agreed before delivery
 - at the time the agreed service is completed—if the price or a method or formula for calculating the price has not been agreed before delivery and the merchant is to perform a service
 - at the time the grower and merchant agree on a price—if the price or a method or formula for calculating the price has not been agreed before delivery and the merchant is not providing a service.



Cooling-off period

If the HPA is for 90 days or more, or the HPA does not set out a term, either party may end the HPA in writing within 14 days of entering into the agreement, or within a period (of seven days or more) agreed by the parties.

Record keeping

Under the Code you must keep certain types of records for at least six years.

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 given 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.

Traders must also make a written record of the name of all growers and traders they deal with. Growers must make a written record of all traders they deal with. These records must be kept by traders and growers for six years from the day the record is made.

Dispute resolution

If you and a trader disagree over a HPA, you can resolve the dispute using any process you and the trader want to. However, the Code sets out a dispute resolution process. If either you or the trader commences this process, you must both participate in it.

You and the trader must first attempt to resolve the dispute. If you and the trader cannot resolve the dispute after three weeks, then either of you can ask a mediator to help you. You and the trader must each pay half the costs of the mediator as well as your own costs of attending the mediation, unless you agree otherwise.

The ACCC's role

The ACCC regulates the Code and is responsible for ensuring people understand it and comply with it. The ACCC can seek penalties or issue infringement notices if certain sections of the Code are breached.

If you want to know what a HPA should look like, we have prepared some examples which are available on the [ACCC website](#).

Horticulture Code details

More information on new requirements under the Code is available on the [ACCC website](#).

Contacts

ACCC

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