



Important information for Fruit and Vegetable Growers

The Federal Government's new Horticulture Code of Conduct is now in force.

The Code contains requirements for fruit and vegetable Growers and Traders (Wholesalers). All fruit and vegetable growers should act now to ensure that you and your wholesaler complies with the Code, so that you benefit from what the Code can provide.

Objectives of the Code

The objectives of the Horticulture Code of Conduct are to regulate trade between Growers and Traders and to provide fair and equitable dispute resolution procedures.

Requirements of the Code for Growers

There are a number of specific obligations imposed on Growers. These requirements are summarised below.

- 1 A Grower must not trade in horticulture produce with a Trader unless the Grower has entered into a Horticulture Produce Agreement (HPA) with the Trader.
- 2 HPA's must be in writing and be accepted by the parties to that agreement either by signing the document or by providing written notice of acceptance. Written notice may include email.
- 3 Growers and Traders may use any dispute resolution procedures they choose to resolve horticulture disputes that may arise between them. However, if a dispute is progressed in accordance with the Code, all parties must participate in the dispute resolution process.
- 4 If a formal mediation process is commenced, the parties must attend mediation to try and resolve the dispute.
- 5 Parties to a dispute must comply with reasonable requests made by a Horticulture Produce Assessor.
- 6 Growers must keep the prescribed records identified in the Code, including details of any Trader that the Grower deals with, for a minimum of six (6) years.
- 7 Growers must retain a copy of all HPA's entered into or agreed to, and any copy of the written termination of a HPA for a minimum of six (6) years.
- 8 Growers must at all times deal with a Trader in good faith.

These are specific requirements under the Code and failing to meet these obligations could result in monetary penalties being imposed.

The immediate requirement for Growers is to agree to the terms of a Horticulture Produce Agreement (HPA) with each Trader they do business with. The term "Trader" is defined in the Code and includes:

- any other Grower who you may sell produce to for subsequent on-sale to a third party;
- any pack house or grower cooperative which buys and markets your produce, where that business is a separate entity to the Grower;
- other "off-Market" Wholesalers who market your produce; and
- Market Wholesalers who receive your produce and sell it as either an agent or merchant.

The Code applies to transactions between all parties who meet the definition of being a Trader or a Grower. It does not just apply to Wholesalers in a Central Market.

It is therefore important that Growers engage with all Traders they are doing business with and that you move immediately to agree to the terms of a Code compliant HPA.

Central Market Wholesalers are seeking your cooperation

The Central Market Wholesaling sector has been proactive in developing standard form Terms of Trade and HPA documents.

These documents have been developed by Solicitors to be compliant with the Code and have been reviewed by the ACCC.

Market Wholesalers are currently customising these standard format documents and will be sending all their Growers a copy of the required HPA, and an attached Schedule to the HPA which includes the relevant detail relating to each specific Grower.

To ensure Code compliance, Growers need to:

- Understand that Traders and Growers are required to have HPA's in place;
- Review, negotiate and accept the terms of HPA's with all Trader's which you are doing business with; and
- Note that acceptance can be in writing or by way of an email, fax or text message.

The Code requires that Traders and Growers must not trade in horticulture produce unless they have a Code compliant HPA in place. A penalty of up to \$63,000 can apply for a breach of this requirement.

For more information about the Code, please email code@freshmarkets.com.au or visit the ACCC website www.accc.gov.au/business/industry-codes/horticulture-code-of-conduct.

To register your email address so you receive further topical information about the Code and the fresh produce industry, please simply send an email, noting your contact name and email address to communications@freshmarkets.com.au.