

## Addisons FocusPapers

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### **Trade Practices (Horticulture Code of Conduct) Regulations 2006**

#### **1. Introduction**

The Horticulture Code of Conduct ("**the Code**") commences on 14 May 2007. The Code is mandatory and applies to all transactions between growers and wholesalers of fresh fruit, vegetables, nuts, herbs and other edible plants. No business can be conducted between growers and wholesalers unless a horticultural produce agreement prepared in accordance with the Code is signed.

The Code applies to both wholesalers who trade as agents and those who trade as merchants. The Code does not apply to trade between growers and processors, growers and exporters or growers and retailers.

#### **2. The obligations imposed on wholesalers and growers**

##### **2.1 Publication of terms of trade**

A wholesaler must prepare and make publicly available a document that sets out the preferred terms and conditions on which the wholesaler is prepared to trade with growers. A copy must be provided to growers upon request. This document must specify:

- whether the wholesaler acts as an agent or a merchant;
- any requirements the trader has in respect of delivery of produce to the trader;
- any quality requirements;
- any circumstances in which the trader may reject produce delivered by the grower;
- the period within which the trader will pay the grower;
- insurance details; and
- any additional matters, not inconsistent with the Code.

##### **2.2 Horticulture Produce Agreements**

It is mandatory for all wholesalers and growers who trade to enter into a signed, written agreement known as a Horticulture Produce Agreement. The agreement must set out how trade will be conducted and must specify, among other things:

- whether the wholesaler acts as merchant or agent;
- quantity and quality requirements relating to the produce;
- method of delivery;

- circumstances in which produce may be rejected;
- duration of the agreement;
- details of the wholesaler's insurance arrangements in relation to produce;
- pricing; and
- transfer of title and risk in produce.

This list is not exhaustive.

## 2.3 **Legal advice and cooling-off period**

A grower must have the opportunity to take legal advice before entering into a Horticulture Produce Agreement with a wholesaler of 90 days' duration or more and must be afforded a cooling-off period (generally 14 days after signing the agreement) within which to cancel the agreement.

## 2.4 **Written transaction information**

Wholesalers must provide growers with written reports setting out information relating to transactions on a regular basis. For example, where a wholesaler acts as a merchant, it must provide information to the grower about the price and quantity of the produce bought from the grower. Wholesalers acting as agents must report to growers on the amount of produce sold and the prices received.

## 2.5 **Dispute resolution**

Parties to a Horticulture Produce Agreement are free to resolve disputes as they choose. However the Code sets out a mediation process that is mandatory if nominated by a wholesaler or grower in respect of a dispute between them.

Alternatively, an independent assessor may be appointed. The role of the independent assessor is to investigate and report on matters arising under a Horticulture Produce Agreement.

## 3. **Enforcement**

The Code will be enforced by the ACCC. The Trade Practices Act 1974 (Cth) ("Act") prohibits corporations from contravening a mandatory industry code, such as the Code. A person who suffers loss or damage as a consequence of a contravention of the Code may recover damages under section 82 of the Act. Contravention of the Code may also lead to an agreement being declared void or unenforceable under section 87, or an injunction under section 80 of the Act. There is, however, no criminal sanction for a contravention of the Code.

## 4. **Further information**

Please contact:



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**Jamie Nettleton**

**Partner**

Direct Line: +61 2 8915 1030

Direct Fax: +61 2 8916 2030

Email: [jamie.nettleton@addisonslawyers.com.au](mailto:jamie.nettleton@addisonslawyers.com.au)

**Robin King**

**Solicitor**

Direct Line: +61 2 8915 1003

Direct Fax: +61 2 8916 2003

Email: [robin.king@addisonslawyers.com.au](mailto:robin.king@addisonslawyers.com.au)

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