

## Article for April/May 2007 “Australian Citrus News”

### DOES THE MANDATORY HORTICULTURE CODE APPLY TO YOUR BUSINESS?

A mandatory Horticulture Code, that becomes law on 14 May 2007, has been introduced by the Australian Government. The Code applies to all trade between growers and traders of horticulture produce with the exception of transactions between growers and retailers and growers and exporters. The Code prescribes the way business will be done, sets minimum terms of trade and requires written contracts. If you are a grower or trader (i.e. an agent or a merchant), trading in horticulture produce, it is important that you understand your rights and obligations under the Code.

To understand your rights and obligations under the Code you need to understand the key principles governing the Code. In short, the Code ensures that:

- traders develop and make available to growers their general written terms of trade
- grower and trader agreements are in writing and signed by the parties
- growers and traders address key issues in written agreements with each other
- merchants agree to a price with growers before or immediately on delivery of produce
- important information, particularly regarding prices obtained by agents for a grower’s horticulture produce in wholesale markets is provided to growers
- a cost-effective and timely way to resolve disputes between growers and traders is available.

It is important to note that your rights and obligations under the Code are determined by the nature of your transaction rather than the label that each party uses in that transaction (i.e. whether you call yourself grower, packer, marketer or a wholesaler). The Code places different obligations on agents and merchants, making it important to understand the differences between the two. An agent is defined as a person who sells horticulture produce on behalf of a grower to a third person for a commission or fee. A merchant is defined as a person who buys horticulture produce from a grower to resell that produce. A merchant does not however include a person who exports or retails the produce.

#### Transactions in which growers sell produce on behalf of other growers

In a situation where one grower is selling another grower’s produce, in order to ‘top-up’ his own produce to meet an order from a wholesaler, the grower is acting as an agent for the other grower for the purposes of the Horticulture Code. In these circumstances, the Code requires the two parties to enter into a horticulture produce agreement before they trade. If such transactions occur on a regular basis the parties may wish to enter an agreement that provides for a number of transactions rather than an agreement for each transaction.

### Packing sheds

The Horticulture Code does not contain any specific reference to packing houses or sheds, rather it focuses on the nature of the transactions that take place between growers and traders of horticulture produce – whether acting as either agents or merchants. Therefore, a transaction involving a packing house will be covered by the Horticulture Code only where the house acts as either:

- a merchant - purchasing and then on-selling a grower's horticulture produce or
- an agent - selling horticulture produce on behalf of a grower.

Where a packing shed purchases horticulture produce from a grower as a merchant, or where it sells produce on behalf of a grower as an agent the transaction will be covered by the Code.

However, if a packing shed is involved in a transaction where the produce is altered from its original state, for example by flavouring or cooking it, that transaction may not be covered by the Code because the produce could be said to be processed.

### The role of the ACCC

The Australian Competition and Consumer Commission (the ACCC) is responsible for compliance with the Trade Practices Act and the Horticulture Code. The ACCC achieves this by providing information on its website, through educational publications and presentations and where necessary, enforcement action.

The ACCC has been working with a wide range of industry associations to ensure that all industry participants will have an opportunity to access the information they need in order to comply with the Code. In particular, the ACCC has been assisting associations to educate their members regarding their rights and obligations under the Code.

For information about the Horticulture Code visit the ACCC website [www.accc.gov.au](http://www.accc.gov.au) or call the ACCC Infocentre on 1300 302 502.