

# Landmark decision on Code

...and how the new Code applies to you >

## The road to legislation

1998	Joint Parliamentary Committee looked at market power and practices in the retail grocery industry.
2000	Federal Government implemented a voluntary Retail Grocery Industry Code of Conduct (RGICC).
2003	Independent review of RGICC, recommended it be mandated.
Aug - Sep 2004	Horticulture industry negotiated with Federal Government - if re-elected it would introduce legislation to mandate a code of conduct for horticulture.
Jan 2005	Federal Government confirmed mandatory code would be implemented.
Sept 2006	Federal Government proposed an 'enforceable code' which was rejected.
Sept 2006	Mandatory Horticulture Code of Conduct approved by Federal Cabinet.
Dec 2006	Federal Agriculture, Fisheries and Forestry Minister, Peter McGauran announces code to be tabled in Parliament in 2007.
May 2007	A mandatory Horticulture Code of Conduct becomes law on May 14.

**For nearly 10 years, the horticultural industry has strongly lobbied the Federal Government for a mandatory code of conduct. On May 14 their dream will be realised as the new Horticulture Code of Conduct becomes law.**

The landmark decision by the Federal Government, last year, to mandate the Horticulture Code of Conduct has been branded a monumental win for the entire horticultural industry.

Australian Citrus Growers (ACG) President, March Chown said it was a historic victory for the industry and provided clarity in transactions between the buyer and the seller – which is normal business practice.

**“Put simply, the Code's purpose is to improve the clarity and transparency of transactions.”**

Mr Chown said the enforceable Horticultural Code of Conduct would give growers the ability to trade in a fair and open market and provide a robust dispute resolution with minimum red tape.

He said, with respect to the citrus industry, most trade relationships were between growers and packers and the Code re-defined whether an entity was a grower/packer, a packer or a packer/marketer (trader).

“It will make the 'deal' between growers and packers more concrete because in most cases there is no written contract or clear terms of trade between both bodies,” he said.

Put simply, the Code's purpose is to improve the clarity and transparency of transactions between growers and traders of fresh produce. It will be mandatory under the Trade Practice Act 1974 and will be enforced by the Australian Competition and Consumer Competition (ACCC).

Growers envisage that threats and intimidation will be a thing of the past for those dealing with wholesalers when the Code becomes law.

And the majority of the citrus industry's packers say that the Code will not affect the way business is handled between them and the growers as most already have some form of agreement.

Mildura Fruit Company's (MFC) Managing Director, Russell Whitcombe said, in the past, the Company had strong contractual arrangements with suppliers with the terms of trade spelt out.

Mr Whitcombe said obviously MFC would review the new Code to ensure the Company complied with the new terms.

He said he could understand why some growers in the industry saw the need for a mandatory code as they had previously been taken advantage of by traders.

“The new Code will protect a small minority of growers that have previously lost money in business deals,” he said.

**“...it was a historic victory for the industry and provided clarity in transactions between the buyer and the seller.”**

**Australian Citrus Growers (ACG) President, March Chown**

EJT Packers Director, John Bailey agreed with Mr Whitcombe's view on the new Code, adding that most 'reliable' packers already had signed agreements with their suppliers.

Mr Bailey said EJT Packers had always had supply agreements with their growers and the Company would have to review the legislation of the new Code before forming any contracts.

He said the worst part of the new Code would be getting every grower/supplier to sign the contract – 100 growers' means 100 contracts.

“We have a hard enough time trying to get our growers to send in their spray diaries twice a year,” he said.

Mr Bailey believes the majority of the citrus industry's relationships between growers and packers were 'healthy' and the new Code was probably more focused towards concerned stonefruit and vegetable sectors.

The Code allows for a contract, usually one page, between grower and wholesaler, and can be either for one-off sales or ongoing supplies and sent via fax or email (see story page X).

## Why growers want a mandatory code

Growers have long been calling for a mandatory code to oversee trading relationships between themselves and their trading partners.

According to Horticultural Australia Council's Chief Executive Officer, Kris Newton the reason is simple. Despite forming the core link in the fruit supply chain, growers have the least amount of power, she said.

Ms Newton said growers had been unable to get contractual clarity and effective dispute resolutions systems.

“Under a mandatory code, parties are obliged to participate and must follow the guidelines of the Code and, if there are problems, participate in the prescribed

dispute resolution mechanisms,” she said.

Recently, the Federal Minister for Agriculture, Fisheries and Forestry, Peter McGauran, appointed a Horticulture Code Mediation Advisor, the Accord Group. Mr McGauran said that mediation would be an important part of the Code's operation, with many disputes speedily resolved without the need for expensive legal action.

The Accord Group is an international dispute resolution firm, based in Sydney, specializing in mediation, conciliation, facilitation and training.

Mr McGauran said the Accord Group would develop a network of independent horticulture assessors who would work in the wholesale markets.

“Growers and wholesalers will be able to have an assessor investigate and report on matters such as produce quality and transaction details,” he said.

“The assessors will be able to help resolve concerns by quickly establishing the facts of a transaction, regardless of whether or not the grower and wholesaler are in mediation.”

Mr McGauran said that importantly, the Accord Group also acted as the Ombudsman under the voluntary Producer and Grocery Industry Code of Conduct and would provide seamless contact for people in the horticulture industry wanting to resolve disputes.

*For more information about the Horticulture Mediation Adviser Tel: 1800 206 385 or view the Department of Agriculture, Fisheries and Forestry's website at [www.daff.gov.au/hortcode](http://www.daff.gov.au/hortcode)*



# Getting into Code mode

...how the new Code applies to you.

**Australia's consumer watchdog, the Australian Competition and Consumer Commission (ACCC), is responsible for compliance with the new mandatory Horticultural Code of Conduct. The following information explains how the new code will affect each sector of the citrus industry.**

**A** mandatory Horticulture Code, that becomes law on May 14 2007, has been introduced by the Federal 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 (for example, an agent or a merchant) trading in horticulture produce, it is important that you understand your rights and obligations under the Code.

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.
- 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 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.*

## ACCC Horticulture Code of Conduct road shows

Date	City	State	Time	Contact
Tue Apr 17	Perth Markets	WA	10am	Western Australian Fruit Growers Association, Allan Hill Tel: (08) 9455 2075
Wed Apr 18	Renmark	SA	1pm	ACG, Tel: (03) 5023 6333
Mon Apr 23	Robinvale	Vic	7pm	VFF, Lis Blandamer, Tel: (03) 9207 5571
Tues April 24	Swan Hill	Vic	10.30am	VFF, Lis Blandamer, Tel: (03) 9207 5571
Tues Apr 24	Mildura	Vic	7pm	VFF, Lis Blandamer, Tel: (03) 9207 5571
Tues May 1	Cobram	Vic	7pm	VFF, Lis Blandamer, Tel: (03) 9207 5571

**"The Code prescribes the way business will be done, sets minimum terms of trade and requires written contracts."**

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 (for example, whether you call yourself grower, packer, marketer or a wholesaler).*

