

## **HORTICULTURE CODE OF CONDUCT REVIEW 2026**

We respond to the Australian Government's call for feedback on the Horticulture Code of Conduct Discussion Paper (the Code).

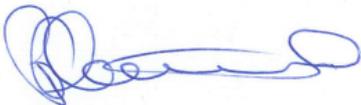
The Code regulates trade between growers and traders of fresh fruits, vegetables and nuts. It aims to ensure clarity and transparency of trading arrangements between horticulture traders and growers and support dispute resolution.

The review of the Code will be undertaken by Mr Chris Leptos AO, and will assess how the needs of the industry have evolved over the last decade, and whether the Code should be repealed, continue in its current form, or continue with improvements.

Fruit Growers Tasmania represents the Tasmanian apple, berry and cherry industries which produce over \$400 million of fruit annually and employ over 10,000 people each year.

We appreciate that the Consultation Paper is the first step in the consultation and strategy development process and would welcome the opportunity to participate in subsequent consultation and any roundtables that are organised.

Yours sincerely



**Peter Cornish**  
**Chief Executive Officer**  
**Fruit Growers Tasmania**

## Is the Horticulture Code still required?

Fruit Growers Tasmania considers that the Horticulture Code remains necessary. The Code continues to provide an important baseline framework to support transparency and fair dealing between growers and traders.

While the Code has improved clarity in some transactions, its practical utilisation across the sector appears uneven. In particular, Fruit Growers Tasmania cannot draw strong conclusions about the effectiveness of the dispute resolution process, as it appears to be rarely used. This low utilisation is likely influenced by limited awareness and understanding of the Code and how it should be applied in practice.

Low dispute numbers should not be interpreted as evidence that problems are absent. Feedback from growers suggests that commercial vulnerability remains a feature of the horticulture supply chain. Many growers report feeling highly exposed in the selling process. One experienced grower characterised parts of the wholesale environment as akin to the “wild west”, reflecting ongoing concerns regarding limited transparency, uneven bargaining power and inconsistent commercial discipline.

Growers also report that the risk of produce being rejected or heavily discounted remains real and commercially significant.

A key structural issue appears to be the low practical penetration of Horticulture Produce Agreements (HPAs). Industry feedback indicates that:

- many growers do not routinely enter into HPAs
- awareness of the Horticulture Code remains generally low
- HPAs are most commonly used only where required by large corporate buyers, particularly in club variety arrangements
- outside these structured supply chains, more informal trading practices remain common

This suggests the issue is not that the Code is no longer required, but rather that it has not yet achieved full cultural or operational embedment across the sector.

Fruit Growers Tasmania therefore considers that the original policy rationale for the Code addressing information asymmetry and bargaining power imbalance clearly persists. The Code should be retained as an important safeguard, but strengthened and modernised to improve:

- awareness and education
- usability in day to day trading
- practical enforceability
- real world coverage across the sector

Improved education about who must use the Code and how it should operate in practice should be a key objective of future reform.

# Is the Horticulture Code still working as it is intended?

## Transparency and clarity of trade

### Price setting by method or formula

Fruit Growers Tasmania supports measures that improve transparency and commercial clarity across horticultural transactions. While the Horticulture Code establishes an important framework, grower feedback indicates that information asymmetry and uncertainty around pricing and sale outcomes remain significant concerns in practice.

Growers are generally price takers within the horticulture supply chain. Their primary responsibility is to produce high quality horticultural products while managing seasonal conditions, labour availability and other production risks. Once produce leaves the farm, it is typically sold into an open market where prices fluctuate according to supply, demand and product quality. This is consistent with how competitive markets operate. However, difficulties arise where growers have limited visibility of prevailing market prices at the time their produce is sold. During peak harvest periods, growers are focused on managing operations on farm and may not have the capacity to closely monitor wholesale market conditions. As a result, they may rely heavily on information provided by traders regarding the price achieved for their produce. This information imbalance reinforces the price taker position of growers and highlights the importance of the Horticulture Code in providing safeguards that improve transparency and help ensure that pricing arrangements operate fairly within the market.

Many growers report limited visibility over how sale prices are ultimately determined, particularly in merchant arrangements. This can make it difficult for growers to assess whether returns reflect genuine market outcomes. The risk of produce being rejected, downgraded or sold at very low prices is viewed by growers as real and commercially material.

Industry consultation suggests that formal Horticulture Produce Agreements (HPAs) are not consistently used across the sector. Awareness of the Code remains relatively low among some growers and HPAs are often only executed where required by larger corporate buyers, including in some club variety supply chains.

Fruit Growers Tasmania considers that the core policy objective of improving price transparency remains valid. However, reforms should focus on practical measures that improve real world usability rather than adding unnecessary regulatory complexity.

Potential areas for improvement include:

- strengthening requirements for documented quality assessments where produce is rejected or significantly downgraded
- targeted education to improve understanding and uptake of HPAs and Code obligations

- consideration of simple, plain English model agreement clauses to support more consistent industry practice

## Reporting

Many growers operate without formal Horticulture Produce Agreements (HPAs). As a result, the reporting framework established under the Horticulture Code does not always activate in practice, limiting its effectiveness.

Even commercially experienced growers report limited visibility over what occurs once produce leaves the farm and enters the supply chain. Key areas where transparency may be limited include confirmation of the final sale price, the identity of the buyer and whether the transaction occurred at arm's length.

Some growers have indicated that the introduction of the Horticulture Code has improved the quality and consistency of statements provided by traders and that the reporting requirements have added a useful layer of transparency to the selling process, while others continue to report lack of transparency surrounding value and quality of the product. Not all growers consider it necessary to know the identity of the final buyer. However, Fruit Growers Tasmania recognises that access to this information could improve market transparency and help address power imbalances that may arise between smaller growers and aggregators, particularly where aggregators are also growers.

Overall, the issue appears to be less about the concept of reporting itself and more about inconsistent real world compliance and usability. Where reporting requirements are not consistently applied, the intended transparency benefits of the Code are not fully realised.

Any consideration of digital reporting enhancements should focus on improving practical outcomes for growers, while avoiding additional compliance burden or cost for industry participants. Reporting reforms should also be accompanied by improved education about Code obligations and stronger enforcement to ensure the requirements are consistently applied.

## Clarity of Ownership

The consultation paper correctly identifies that there can be uncertainty around when horticultural produce is considered delivered and when ownership and risk transfer between growers and traders.

From a grower perspective, this issue can have significant commercial implications. Once produce leaves the farm, growers often have limited control and limited visibility over how it is stored, handled or marketed. In practice, responsibility for quality deterioration or loss during this period can become unclear.

Under current arrangements, the Code distinguishes between transactions conducted through agents and those conducted through merchants, which can create confusion about when ownership transfers. Where produce is sold via an agent, ownership may remain with the grower until the produce is sold to a third party buyer. While this structure may suit certain trading models, it can also place substantial risk on growers who no longer have practical control over the product once it has entered the trader's supply chain.

Growers have indicated that the risk of produce not being accepted, being downgraded or in some cases being destroyed is a genuine concern. Where ownership remains with the grower but handling and storage are controlled by the trader, accountability for losses or deterioration can become difficult to determine.

Any reforms in this area should also recognise the broader challenge of low awareness and uptake of formal Horticulture Produce Agreements. Without greater adoption and enforcement of the Code, improvements to ownership provisions may not be fully realised in practice.

## Regulatory burden

The relatively low uptake of Horticulture Produce Agreements (HPAs) across parts of the industry suggests that the current regulatory framework may be difficult for some participants to navigate. In many cases, trading arrangements between growers and traders still begin as verbal agreements based on established commercial relationships.

While formal agreements are important for clarity and protection for both parties, the current structure of HPAs may be perceived as overly complex. Clause 16 of the Code requires a large number of elements to be included in an agreement, which may create barriers for growers and traders seeking to prepare compliant agreements or fully understand the agreements they are entering into.

In practice, some growers report that the administrative effort involved in preparing a compliant HPA can discourage their use, particularly where trading relationships are long standing or where transactions are seasonal or occasional in nature. Simplifying the structure and requirements of HPAs could encourage greater adoption and improve compliance.

One possible approach would be to streamline the mandatory elements required within an HPA. Certain core provisions could remain mandatory, while other elements could be incorporated through standardised terms within the Code that apply automatically unless varied by agreement between the parties.

For example, provisions relating to rejection processes, timeframes for providing reasons for rejection, insurance coverage and dispute processes could potentially be standardised within the Code itself.

Fruit Growers Tasmania notes that the reporting requirements for statements provided to growers appear to be broadly effective. Growers report that the information currently required in these statements provides a useful level of transparency and should largely be retained.

## Deemed agreement

Fruit Growers Tasmania supports consideration of standard deemed terms of agreement that would apply where a written Horticulture Produce Agreement is not in place.

The consultation paper correctly notes that growers are sometimes slow to sign agreements provided by traders and there are also cases where agreements are not offered. In these circumstances, a set of deemed terms could provide a baseline level of protection and clarity for both parties.

A deemed agreement framework could operate in two ways. First, it could provide default terms that apply automatically where no written HPA exists. Second, it could supplement written HPAs by filling any gaps where particular provisions have not been included.

This approach could help ensure that minimum standards apply across the industry, while still allowing flexibility for growers and traders to negotiate arrangements that suit their specific circumstances.

Fruit Growers Tasmania considers that certain core provisions should form part of any deemed agreement framework and should operate as minimum requirements. These could include provisions relating to pricing transparency, ownership and risk transfer, rejection processes and reporting obligations.

A deemed agreement model may also help reduce administrative complexity by allowing HPAs themselves to be simplified, with certain standard provisions incorporated directly into the Code rather than requiring them to be restated in every agreement.

## Fear of retribution

Fruit Growers Tasmania acknowledges that the majority of transactions between growers and traders occur in good faith and reflect long standing commercial relationships within the industry.

However, growers may sometimes be reluctant to raise concerns or pursue formal dispute processes due to fears of potential commercial consequences. Given the relatively concentrated nature of some horticulture supply chains, growers may be concerned that raising complaints could affect future trading opportunities.

In some cases, growers have described situations where a trader or aggregator may reduce communication or cease purchasing produce after a dispute or complaint has been raised. For example, a trader may have previously indicated that they intend to purchase produce, but once

the crop becomes available they may stop responding to calls or emails, leaving growers to seek alternative markets at short notice.

Another concern raised by some growers relates to situations where produce is aggregated and sold alongside produce from multiple growers. Where the aggregator is also a grower, there may be a perception that their own produce is prioritised for sale ahead of other growers' produce. This can potentially affect the timing of sales and the final price received. While it can be difficult to determine whether such practices constitute retribution, commercial strategy or simply market dynamics, the perception of potential disadvantage can contribute to reluctance to raise concerns.

Fruit Growers Tasmania supports consideration of additional protections against retribution within the Horticulture Code, while recognising that distinguishing between legitimate commercial decisions and retaliatory conduct may be challenging in practice.

Mechanisms that allow growers to provide confidential feedback on trading practices may assist regulators and policymakers to better understand industry dynamics. Fruit Grower Tasmania agree that an anonymous survey of growers and traders operating within wholesale markets could provide valuable insights into market behaviour and help identify areas where further oversight or reform may be required.

### [Anonymous feedback via annual grower survey](#)

Fruit Growers Tasmania supports the concept of introducing an annual survey of growers and traders to provide feedback on how the Horticulture Code is operating in practice. A confidential mechanism for gathering feedback may help regulators better understand industry experiences and identify emerging issues within the horticulture supply chain.

However, it is unclear how effective an annual survey alone would be in capturing the full range of grower experiences. In many cases, growers are more comfortable sharing concerns through trusted relationships and direct conversations rather than through formal survey mechanisms.

Fruit Growers Tasmania's experience is that face to face discussions or facilitated industry forums often generate more detailed and candid feedback. For this reason, there may be value in combining an annual survey with periodic consultation processes led by trusted intermediaries such as industry peak bodies.

Peak bodies are well positioned to gather feedback from growers through existing networks and engagement activities. Periodic consultation exercises, for example every three to four years, could complement the survey process and provide deeper insights into the effectiveness of the Code and the experiences of growers and traders.

A combined approach could help ensure that feedback mechanisms capture both broad industry sentiment and more detailed insights into how trading arrangements operate in practice.

## Enforcement, education and mediation

Fruit Growers Tasmania supports the introduction of an informal mediation pathway similar to that used under the Food and Grocery Code of Conduct. A fast, accessible and low cost dispute resolution process could assist growers and traders to resolve issues before they escalate into more formal disputes.

Improving education and awareness of the Horticulture Code should also be a priority. Feedback from growers suggests that overall awareness and understanding of the Code remains relatively low, including knowledge of dispute resolution mechanisms that are currently available.

Industry peak bodies can play an important role in supporting education and awareness initiatives. This could include publishing explanatory materials, hosting industry forums or webinars and facilitating opportunities for growers to ask questions directly of regulators or subject matter experts. Simplified explanatory resources, clearer guidance materials and streamlined agreements could also help improve industry understanding of Code requirements.

Fruit Growers Tasmania notes that the number of financial penalties issued under the Code has historically been relatively low and has often related to administrative errors rather than substantive market conduct. As such, the effectiveness of the enforcement framework may depend less on the size of penalties and more on how regulatory oversight is applied in practice.

Greater clarity around enforcement priorities and stronger monitoring of key obligations may help improve compliance across the sector. Ensuring that the Code is both well understood and consistently enforced will be important to achieving its intended objectives.

## Scope of the Horticulture Code

Fruit Growers Tasmania notes the increasing use of protected or “club” varieties within the horticulture sector, where intellectual property holders impose specific conditions on how produce is grown, marketed and sold. These arrangements are typically governed by formal agreements and can include restrictions on pricing, branding and market access. While such models may provide greater coordination and, in some cases, improved returns, they also concentrate a significant degree of control with the variety owner or marketer. This can create an inherent power imbalance, particularly where growers have limited ability to negotiate terms or influence how their produce is ultimately marketed. This raises questions about whether the current scope of the Horticulture Code adequately captures these evolving supply chain models and whether additional consideration should be given to how power imbalances are managed in both structured and unstructured trading environments.

In addition, Fruit Growers Tasmania acknowledges that supply chain structures and trading practices continue to evolve and future reviews may wish to consider whether the current scope of the Code remains appropriate as the industry develops.