



## Horticulture Code of Conduct – Fact Sheet

8 December 2006

The NFF and HAC Steering Committee have worked closely with Government over the past two years to develop a workable and effective Code of Conduct for Horticulture.

The group, made up of growers and grower representatives, believe that, with some critical improvements, this Code is a very simple and cost effective code.

A summary of key points of the draft Regulations are set out below.

### Purpose of the Code

The draft Code states that the purpose of this code is to:

- a. regulate trade in horticultural produce between growers and traders to ensure transparency and clarity of transactions; and
- b. provide a fair and equitable dispute resolution procedure for disputes arising under this code or a Horticulture Produce Agreement.

### Scope

The code covers **all** transactions of unprocessed edible horticultural produce (fruit, vegetables, nuts, mushrooms and other fungi, herbs and other edible plants), except where it is intended for export, retail sale or under a statutory potato marketing scheme.

### Clear definitions of Merchant and Agent

The code defines each trading method as:

#### **Agent –**

- A person who sells produce on behalf of a grower to a person for a commission or fee;
- The Agent must act in the best interests of the grower;
- Ownership of the produce does not change hands;

- An Agent must report to the grower at agreed intervals and, on request, provide details of sale (excluding buyer's name and details).

#### **Merchant**

- A person who purchases horticultural produce from a grower for the purpose of resale;
- Price can only be the fixed cost and agreed to prior, or immediately upon delivery, of the produce;
- Ownership of the produce passes on delivery;
- The merchant must provide a statement for the reporting period specifying quality, quantity, price agreed, date and delivery time.

### Published Terms of Trade

Critically, under the draft Code, traders must publish terms of trade and provide a copy to growers on request. These should include:

1. trading method (agent or merchant);
2. opening hours;
3. any commissions payable (if acting as agent);
4. delivery;
5. quality;
6. payment terms;
7. insurance;
8. dealing with bad debts;
9. any additional charges.

### Horticulture Produce Agreements

Each transaction must have a written Horticulture Produce Agreement (HPA) between the parties. This can be as simple as a single page, signed by both parties, and be for any transactions from a single consignment to a seasonal agreement.

If an agreement is made for more than 90 days, a cooling off period applies; and it is advised, but not compulsory, that growers seek legal advice on any such Agreement for their own protection.

An HPA would include:

- trading relationship for that agreement;
- delivery requirements;
- price agreed (if merchant).

A trader cannot act as an agent and a merchant in a single agreement.

In either arrangement, but particularly in an agent relationship, the trader must take all reasonable care with the produce under their care.

### What growers wanted

Growers asked us to fight:

- to ensure contractual clarity and transparency in the sale of produce; and
- for minimum terms of trade that clearly define the nature of produce sales transactions (agency or merchant), and distinguishes obligations and responsibilities associated with each transaction type.

Although the scope of the Code does not cover retailers and exporters, we have argued, and will continue to argue, for the scope to include "first transaction from the grower".

### Dispute resolution process

The draft code specifies two main mechanisms for dealing with disputes:

- Horticulture Produce Assessors
- Mediation Advisor.

**A Horticulture Produce Assessor** can be called upon to assess quality and contractual issues during the mediation. They are suitably qualified to investigate and report on matters arising under a Horticulture Produce Agreement (HPA) - eg quality of rejected produce and disputes regarding payment.

Each party must comply with all reasonable requests for access, by the Assessor, to the disputed produce and any transaction records relating to the HPA.

**A Mediation Advisor** is called when the two parties are not able to resolve the dispute.

The dispute resolution process follows normal procedures:

1. A complaint to the other party is lodged in writing.
2. The parties attempt to resolve the dispute (a Horticulture Produce Assessor may be called upon at this stage for an independent assessment).
3. If not resolved, a request goes to the Mediation Advisor to appoint a mediator.
4. It is compulsory for both parties to attend mediation.
5. Costs are shared equally between the two parties.

### Where to from here?

The draft Code is expected to be presented to Parliament early in 2007.

Parliament must then have 15 sitting days in which to review the Regulations.

There will be a national awareness/education campaign to ensure both growers and traders are aware of their rights and responsibilities under the new arrangements.

### Conclusion

This Code is still in the draft stages and we will continue to negotiate with government, to get the best deal possible for growers.

There has been a significant amount of 'misinformation'/scaremongering circulated recently about the provisions of the draft Code, with suggestions that it will impose significant costs or paperwork on growers. We hope this Fact Sheet will assist to clarify matters; and urge all growers to contact their Peak Industry Body/grower representative organisation if they have any questions or are still unclear about the facts.

### Key Steering Committee Contact Details:

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