



What does the Horticulture Code of Conduct cover?

The Horticulture Code of Conduct applies to all relationships between growers and Traders (acting as either agents or merchants) in Australia where the transaction between them relates to unprocessed;

- a) Fruits, and
- b) Vegetables, including mushrooms and other edible fungi, and
- c) Nuts, and
- d) Herbs, and
- e) Other edible plants

But does not include nursery products.

What can I do if I have a dispute relating to my Horticulture Produce Agreement?

The Code provides a process for resolving horticulture disputes. Under this process a person with a horticulture dispute must send a letter or Notice of Dispute to the other party setting out:

- (a) the nature of the dispute; and
- (b) what outcome the complainant wants; and
- (c) what action the complainant thinks will settle the dispute.

A Notice of Dispute you can use is included in this information.

After the letter or Notice is sent to the other person, both parties are required by the Code to try to settle the dispute.

Many disputes are settled at this stage and mediation is therefore unnecessary in such cases.

If the parties cannot settle the dispute within 3 weeks of sending the letter or Notice of Dispute then either party may make an application to the HMA requesting that a mediator be appointed.

The parties are free to go to court or appoint their preferred mediator and are not required to use the HMA's mediators.

Note – The HMA may be able to assist the parties to communicate and resolve the matter prior to mediation. The HMA may discuss with you processes for effectively communicating with the other party. Contact the HMA directly to talk through your dispute and options.

What does the HMA require from me to appoint a mediator?

If 3 weeks have lapsed since sending the Notice of Dispute, and no agreement has been reached, you can forward to the HMA,

- a) A copy of the Notice of Dispute sent to the other party,
- b) The full contact details for both yourself and the other party,
- c) \$50 application fee, and
- d) a letter asking the HMA to appoint a mediator.

What happens next?

The HMA will then appoint a mediator from the national panel.

Both sides must attend the mediation and try to resolve the dispute. Failure to do so would be a breach of the Code and of the Competition and Consumer Act (formerly the Trade Practices Act).

The mediation will be held where and when the mediator decides in consultation with the parties.

What is mediation?

Mediation is informal and is like a meeting around a table. The mediator is an independent person who helps the parties to decide how to resolve their dispute and to work together to reach a binding settlement, which both parties can live with.

A mediator is not like a judge and does not decide the outcome.

What are the advantages of mediation?

Mediation

- is confidential (to the extent permitted by law)
- allows everyone to have their say
- is cost-effective and much cheaper and quicker than the courts
- leads to results that meet the parties' real needs
- allows an independent person to help the parties understand each other, communicate, identify options and come to agreement

Most HMA mediations take 2-4 hours on the same day.

Going to court is generally prohibitively expensive and causes considerable stress over a longer period. Almost all court cases are settled before a judge hears the matter. Mediation means the case is settled in a fraction of the time and at much less expense.

What procedure should I expect?

Once the HMA appoints the mediator, the mediator will contact the parties and

- send them a mediator appointment agreement for them to sign before the mediation
- ask for a payment to be made before the mediation to cover costs for any travel, telephone conference, videoconference and mediation room hire charges
- inform them of where and when the mediation will be held
- ask whether any preparation should occur for the mediation such as preparing a summary of the problem to send to the other party and the mediator before the mediation

When the mediation occurs, the mediator will allow everybody to state the problem as they see it. The mediator will help the parties decide what is a reasonable outcome for them.

The parties can bring advisers if they wish, but it is not compulsory to do so.

The mediator will usually meet with the parties separately at some stage during the meeting.

At the end of most mediations there will be an agreement which the parties make. The mediator will assist them to write it down. That written record will normally be a binding contract.

The mediator will also hand out feedback forms, which the parties can send to the HMA after the mediation giving their opinions of the mediation.

What does mediation cost?

There is a \$50 application fee payable (to the HMA) by the party requesting mediation. The HMA pays the mediator's fees.

There may be an additional room hire charge/videoconference charge or travel costs of the mediator, which the parties pay equally. The parties pay their own travel costs.

Who are the Mediators?

The HMA has established a specialist panel of horticulture dispute mediators with mediators across Australia. They have all been trained in mediation. All are experienced commercial mediators and most have experience in horticulture matters.

The panel is subject to quality control and review by the HMA.

What can an Assessor do?

The Horticulture Mediation Adviser (HMA) has established a list of Horticulture Produce Assessors.

Horticulture Assessors can help to resolve a disagreement by investigating and providing an independent report on any trade matter arising under a Horticulture Produce Agreement.

Growers and wholesalers can directly appoint assessors to report on matters including the condition and quality of produce, or whether a transaction was conducted according to the requirements of an agreement or the code.

Their report is not binding but is a helpful guide to how issues may be resolved.

An assessor may be appointed by any party to a horticulture produce agreement or by a mediator who has been appointed by the HMA.

You do not need to ask the HMA to appoint an assessor.

A list of assessors can be found on the HMA website www.hortcodema.com.au or by contacting the HMA directly.

Note - The party appointing the assessor pays the assessor's fees or if the mediator appoints the assessor then the parties pay the assessor's fees equally. See Part 6 of the Code.

More information on the HMA

The HMA is funded by the Federal Department of Agriculture, Fisheries and Forestry. The role of the HMA is specified in the Horticulture Code of Conduct.

HMA staff have up to 21 years' experience resolving disputes by mediation.

Legal Issues

The Horticulture Code of Conduct is a mandatory Code prescribed under the Federal Competition and Consumer Act (formerly the Trade Practices Act). Failure to comply with the Code is a breach of the Act. Failure to comply with an agreement reached at mediation is also a breach of the Code and of the Act.

Copies of the Code are available from the Australian Competition and Consumer Commission (ACCC) or on our website www.hortcodema.com.au . A manual on how to comply with the Code is also available from the ACCC.

Part 5 of the Code contains the dispute resolution provisions. These cover disputes arising under a horticulture produce agreement or the Code.

All horticulture produce agreements entered into or varied on or after 14 May 2007 are covered by the Code. Parties to such agreements can invoke the mediation procedures under Part 5 of the Code.

TO:
(GROWER'S NAME/ AGENT'S NAME/ MERCHANT'S NAME)
DELETE AS APPLICABLE

ATTENTION:
(NAME THE PERSON TO RECEIVE THE NOTICE)

**NOTICE OF DISPUTE
CL 32(2) & 32(3) HORTICULTURE CODE OF CONDUCT**

I / WE
HEREBY SET OUT DETAILS OF A DISPUTE AS REQUIRED BY CLAUSE 32(3):

(a) NATURE OF DISPUTE (tell what dispute is about)

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(b) DESIRED OUTCOME (say what you want to achieve)

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(c) ACTION REQUIRED TO SETTLE THE DISPUTE (set out what you want the other side to do to resolve the dispute)

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IF YOU DO NOT NOW TRY TO AGREE HOW TO RESOLVE THE DISPUTE YOU WILL BE IN BREACH OF THE CODE. IF WE CANNOT AGREE HOW TO RESOLVE THIS DISPUTE WITHIN THE NEXT TWENTY-ONE DAYS, THEN I / WE WILL CONTACT THE HORTICULTURE MEDIATION ADVISER (Tel 1800 206 385) TO APPOINT A MEDIATOR.

Signed (COMPLAINANT) Date.....

Name in block letters