



FMA | FRESH MARKETS
AUSTRALIA

FMA SUBMISSION

RESPONSE

Horticulture Code of Conduct Review: consultation paper

March 2026

SUBMISSION TO
RESPONSE | Horticulture Code of Conduct: consultation paper

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FMA Position Statements

- **FMA supports** continuation of the Horticulture Code of Conduct as a baseline framework for dealings between growers and traders.
- **FMA supports** a stronger education, guidance and implementation framework, including industry-wide support for practical Code literacy and day-to-day compliance.
- **FMA supports, in principle,** carefully designed mechanisms that allow concerns to be raised confidentially and addressed early in a practical and workable way, including practical dispute resolution pathways where appropriate.
- **FMA supports** simplification of HPA requirements through clearer allocation between Code rules, Code defaults and genuinely negotiated HPA content.
- **FMA supports** practical HPA acceptance pathways, including acceptance by conduct in appropriate cases with safeguards.
- **FMA supports** clearer Code treatment of Delivery, control, agreed services and the passing of ownership in merchant transactions.
- **FMA supports** reduction of unnecessary reporting, audit and implementation burden where requirements are overly prescriptive, duplicative or of limited practical value.
- **FMA supports** retention of merchant formula/method pricing as a legitimate and workable trading model.
- **FMA does not support** removal of merchant formula/method pricing, routine disclosure of buyer identity, or routine reporting of the relationship between the buyer and the trader.
- **FMA supports** a clear and workable mechanism for agreed price to be confirmed in writing under the merchant agreed price model, so the parties can comply with the Code without unnecessary technical breach risk.
- **FMA supports** model-specific reporting settings, including no separate prescribed grower statement for merchant agreed price and calculation-based reporting for merchant formula/method pricing.
- **FMA supports** practical verification pathways in merchant formula/method pricing, including reasonable access to relevant sales records without buyer identification.
- **FMA supports** a more coherent first-sale framework so that first commercial sales by growers are covered by either the Horticulture Code or the Food and Grocery Code, with obligations calibrated to the trading model and commercial context.
- **FMA supports** a Code framework that is clearer, more usable and more workable in practice for growers and traders.



Fresh Markets Australia (FMA) welcomes the opportunity to provide a response to the Horticulture Code of Conduct consultation paper.

1. About Us

FMA is the peak industry body representing Australia's central fresh produce wholesale sector through the five state-based Market Chambers. Those Market Chambers represent fruit and vegetable wholesalers and supporting businesses operating in Australia's central wholesale markets: Brisbane, Sydney, Melbourne, Adelaide and Perth.

Central wholesale markets matter because they are a major, open and competitive channel for fresh produce and a key part of the day-to-day operating environment in which the Code applies. The speed, volume and diversity of transactions in those markets make them directly relevant to questions of trading model design, reporting, agreement architecture, compliance burden and dispute resolution under the Code.¹

Australia's central markets play a significant role in the horticulture supply chain. Collectively, they:

- are supplied by over 14,000 fruit and vegetable growers;
- have an estimated 24 million sales transactions² take place annually;
- have an estimated annual throughput volume of over 4 million tonnes, with a wholesale value now over \$8 billion annually on-sold by over 300 fruit and vegetable wholesalers on the market trading floor; and
- supply more than 21,000 food service businesses, and independent fruit and vegetable retailers³ which rely on the Central Markets

FMA also develops, maintains and publishes key industry resources and services that support the practical operation of the fresh produce supply chain, including FreshSpecs^{®4}, FreshTest^{®5}, FMA's National Dispute Resolutions Service⁶, and FMA's Policy Position including on dispute resolution.⁷ FMA is also responsible for FreshData,⁸ a co-funded initiative, supported by government grant funding, that is designed to promote national market price transparency in fresh produce through verified

¹ Fresh Markets Australia, *Horticulture Code of Conduct Review 2026* webpage, including FMA's public resource "Why Central Markets Matter More Than Ever" and other review materials. The webpage states that it is vital to maintain an effective central market system that facilitates efficient pricing and distribution of fresh fruit and vegetables through the supply chain.

² FMA trader survey, estimated annual transaction volumes: average respondent estimate of 74,531 transactions per trader per year after excluding clear outliers. Applied indicatively across 321 central market trading floor traders, this suggests transaction volumes in the order of 24 million annually.

³ Independent Retailers are defined as greengrocers/fruit and veg shops and supermarkets other than Coles, Woolworths, Aldi and Metcash

⁴ Fresh Markets Australia, *FreshSpecs*[®], <https://www.freshmarkets.com.au/fresh-specs/>

⁵ Fresh Markets Australia, *FreshTest*[®], <https://www.freshmarkets.com.au/freshtest/>

⁶ Fresh Markets Australia, *National Dispute Resolutions Service*, <https://www.freshmarkets.com.au/national-grower-hotline/>

⁷ Fresh Markets Australia – *Policy Position – Dispute Resolution*, <https://www.freshmarkets.com.au/policyposition/>

⁸ Fresh Markets Australia, *FreshData*, <https://www.freshmarkets.com.au/freshdata/>



central market price reporting.

2. Support for Submissions by State Market Bodies and Market Operators

In addition to the matters raised in this submission, FMA supports the submissions being made by Brismark, Freshmark and the Central Markets Association of Australia (CMAA).

These submissions will provide further evidence and practical examples of how the Horticulture Code operates in practice across the central market system. They will assist the reviewer by adding state and market level perspectives, together with the perspective of central market operators and landlords on the operating environment in which trade occurs.

FMA encourages the reviewer and the Australian Government to give due consideration to these submissions as part of the broader evidence base for this review. Taken together with this submission, they help illustrate the commercial realities, compliance impacts and operational issues that should inform practical, proportionate and workable reform.

3. Scope of Submission

This submission is FMA's principal response to the Horticulture Code of Conduct Review: consultation paper. It focuses primarily on how the Horticulture Code of Conduct (the Code) operates in practice for trading floor traders in Australia's central wholesale markets, consistent with FMA's role as the national peak body for the central market wholesale sector. A number of the issues raised are also relevant to other parts of the horticulture supply chain where the Code applies, or where similar questions of clarity, proportionality, usability and compliance arise.

FMA has approached this review on a solutions focused, evidence-based basis. This submission is directed to identifying what is and is not working in practice, examining the reasons for those outcomes, and advancing reform options that are practical, proportionate and workable in a high-volume, fast-moving trading environment.

This submission draws on a defined evidence base, including the completed KordaMentha survey⁹, case studies, evidence and examples from state chambers, training and engagement records, complaint and dispute pathway information, and other operational and policy materials relevant to the way the Code works in practice across the central market system.

This submission is also informed by FMA's Reform Principles¹⁰ for the review, which set out FMA's public framework for practical, proportionate and trusted reform. Those principles have informed the structure of this submission and the way in which FMA has responded to the consultation paper questions.

⁹ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, prepared for Fresh Markets Australia, March 2026, reproduced at Appendix A to this submission.

¹⁰ Fresh Markets Australia, *A Practical Vision for Horticulture Code of Conduct Reform*, March 2026, Appendix B to this submission.



4. FMA's overarching position

FMA supports the continuation of the Code but considers that targeted reform is needed to make it clearer, more workable and better aligned to the commercial realities of contemporary horticulture trade. The key issue for this review is not whether the Code should remain in place, but how it can be improved so that it operates more effectively, commercially and proportionately in practice for growers and traders.

In FMA's view, the central question is whether the Code can operate more effectively in practice, including through clearer obligations, better-calibrated requirements and more workable implementation pathways. Reform should therefore focus on improving practical operation, not increasing regulatory density.

Many of the questions considered in this review do not arise from an absence of regulation, but from the difficulty of applying aspects of the Code clearly, consistently and at scale in a high-volume, fast-moving trading environment. This is particularly important where effective compliance depends not only on legal obligation, but on whether requirements are practical, usable and well understood in day-to-day trade.

FMA also considers that reform should preserve confidence in legitimate trading models and avoid changes that create unnecessary uncertainty, cost or disruption in established areas of trade between growers and traders. The Code must remain capable of operating across different commercial arrangements, provided those arrangements are transparent, lawful (including in good faith) and workable in practice. In that context, reform should be carefully calibrated so that it addresses genuine problems without undermining trading models that continue to serve growers and traders.

This is also an economic question. Central market traders perform important coordination, distribution and price formation functions in highly perishable and time-sensitive environments. Reform that adds unjustified friction, cost or uncertainty risks weakening those functions without delivering corresponding practical benefit.

More broadly, FMA considers that effective reform must extend beyond the drafting of legal obligations alone. A Code that is difficult to understand, implement or scale in practice will not achieve its intended outcomes simply by becoming more prescriptive. In FMA's view, the central question is how the Code can operate more effectively in practice, not simply whether further obligations can be layered onto the existing framework.

The review should also recognise that the Code now operates in a more complex and higher-cost trading environment than when many of its current settings were developed, and in a sector where implementation capacity, system capability and digital readiness remain uneven in practice. This is particularly relevant in central market wholesaling, where compliance often depends on the ability to translate legal requirements into workable POS (Point of Sale), reporting and recordkeeping processes in a high-volume, fast-moving and perishable trading environment. CSIRO has described Australian agriculture as having low levels of digital maturity, and the Australian Government has separately said digital adoption in agriculture is estimated at only



10 per cent, with a three-fold increase in active technology users needed to unlock the sector’s digital potential.^{11 12}

KordaMentha’s analysis also indicates that smaller traders are more exposed to compliance and implementation pressure, including where system capability, staffing and administrative capacity are more limited.¹³ FMA survey work further shows variation in systems used across the sector, with 13.2 per cent of traders surveyed using manual POS systems, mainly among smaller traders.¹⁴ Durable reform should therefore support not only clearer legal obligations, but also stronger industry capability, practical literacy and lower-friction implementation pathways across the supply chain.

5. Response to the consultation paper

FMA’s response to the consultation paper is set out below by reference to the questions and themes raised in the paper. In doing so, FMA focuses on the practical operation of the Code in the central market trading environment, while also identifying matters of broader relevance where appropriate. The response is directed to practical, proportionate and workable reform, informed by the evidence base and policy framework outlined above.

5.1. Key issue 1: Is the Code still required?

FMA position

The Code should continue as a baseline framework for dealings between growers and traders. This review should focus on targeted refinement, including clearer, simpler and more proportionate settings that improve practical operation.

FMA considers that the Code could serve a valuable purpose if appropriately amended. The Code forms part of the framework for good business practice between growers and traders and continues to serve an important role in supporting clear commercial dealings in the horticulture sector. FMA does not approach this review on the basis of an identified market failure requiring a fundamentally different regulatory response. The central question is whether the Code remains fit for purpose and where targeted improvements may assist its practical and proportionate operation.

The Code also continues to provide an important baseline framework for commercial clarity, transparency and dispute resolution between growers and traders. That framework remains valuable and should be retained. However, the practical task for this review is to assess whether those objectives are being delivered through requirements and processes that are

¹¹ CSIRO, *A New Chapter: Growing the value of Australia’s digital agriculture*, 2020, stating that the Australian agriculture industry has “low levels of digital maturity”.

¹² Australian Government, *Digital foundations for agriculture strategy*, 2022, stating that digital adoption in agriculture is estimated at 10 per cent and that a three-fold increase in active technology users is needed to realise the opportunity.

¹³ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report pp 17 to 20, 24.

¹⁴ FMA trader survey, *What POS system do you use?*, based on respondent answers showing 13.2 per cent of traders surveyed used manual POS systems, mainly among smaller traders.



sufficiently clear, simple and workable in day-to-day trade. In that respect, FMA considers that the Code would operate more effectively if it focused more clearly on core minimum protections, supported simpler Horticulture Produce Agreements (HPAs), and provided clearer and more scalable compliance and dispute resolution pathways for parties to use in practice.

In FMA's view, the Code should also be guided by objectives of usability, proportionality, shared responsibility, and improved education and engagement. The Code will work better where it is capable of being understood and applied in day-to-day trade, where obligations are calibrated to the practical realities of the transaction, where responsibility for compliance is not assumed to rest on one party alone regardless of the conduct of the other, and where parties are better supported to understand and use the framework in practice. These objectives would support a Code that is more workable, more trusted in practice, and better able to improve commercial dealings between growers and traders.

5.2. Key issue 2: Is the Code still working as it is intended?

FMA position

Merchant formula/method pricing remains a legitimate and necessary trading mechanism within central market horticulture trade. Merchant formula/method pricing should be retained. Concerns about transparency should be addressed through targeted reform, including fit for purpose reporting, practical verification pathways and clearer model-specific protections, not by abolishing the pricing mechanism or importing agency obligations into merchant trading.

The Code continues to serve an important function, but its practical operation is uneven and, in some areas, no longer well aligned with how horticulture trade actually occurs. The main issue is not the absence of a regulatory framework, but whether particular obligations, processes and pathways remain sufficiently clear, simple and workable in the context of contemporary horticulture trade. This is especially important in high-volume, fast-moving trading environments, where complexity, duplication or uncertainty can reduce usability without improving outcomes. Effective reform must work for both growers and traders. A framework that is not workable for traders in practice will not deliver better outcomes for growers.

This is also an economic issue, not only a compliance issue. Central market traders perform economically important functions across the fresh produce supply chain in highly perishable and time-sensitive trading environments. They contribute to the coordination and distribution of produce, support price formation, reduce transaction costs, and merchants bear commercial risk in moving produce efficiently through the market. Those functions are not costless. In the current operating environment, traders cannot readily absorb further increases in compliance and administrative burden that are not justified by clear practical value. Additional regulatory cost will affect margins, management capacity, investment in systems and people, and may ultimately be passed through the supply chain.¹⁵ Reform should therefore focus on practical value, proportionality and workability, rather than adding friction that weakens the market functions the system relies on.

¹⁵ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report p 9.



5.2.1 Transparency and clarity of trade

5.2.1.1 Transparency as clarity and usability

Transparency and clarity of trade remain important objectives of the Code. However, in FMA's view, these concepts need to be applied carefully and in context. The practical question is not whether more information can always be generated, but what information is materially useful to growers and traders, at what point in the transaction, and through what mechanisms, having regard to the trading model, the pace of trade and the cost and complexity of compliance.

FMA supports transparency that it improves understanding of the transaction. The relevant question is whether particular measures deliver meaningful transparency in practice.

In practical terms, transparency and clarity in central market trade are best advanced by making the key elements of the transaction clear to the parties in a form that is usable in the ordinary course of trade. That includes clarity about the trading model, the applicable pricing mechanism, the core terms of dealing, and the information needed to understand how grower returns are determined. The central question is whether the Code supports those outcomes in a way that is sufficiently simple, timely and workable in practice.

That question cannot be answered in the abstract. The transparency that is relevant to an agreed price transaction will not always be the same as the transparency that is relevant to merchant formula/method pricing or to agent trading. In each case, the objective should be to make the commercial basis of the transaction clear to the parties, together with the information reasonably needed to understand how the grower's return or payment outcome is determined, without imposing requirements that are disconnected from the way the transaction actually operates. Different legal and economic structures require different regulatory treatments. Identical treatment across models is not the same as appropriate treatment.

For that reason, transparency should not be measured only by the volume of information generated or by the extent of post-transaction reporting. The key question is whether the Code produces information that is clear, meaningful and usable for the parties in the context of the transaction and its practical administration. A well calibrated framework should therefore prioritise fit for purpose disclosure, clarity of obligations and outcomes, and information that can be understood and used in practice, rather than additional reporting requirements that add complexity without materially improving understanding.

This need for calibration is reinforced by the realities of central market trade. In a high-volume environment involving multiple growers, multiple buyers, and multiple transaction risks, traders are not simply passive recipients or transmitters of information. They aggregate market signals, manage buyer relationships, assess quality, and navigate asymmetric information and risk across the transaction.¹⁶ Transparency settings should therefore be tailored to the trading model and pricing mechanism, rather than assuming that more disclosure will always produce better outcomes.

¹⁶ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report pp 8 to 9, 17.



5.2.1.2 Pricing by method or formula

This is particularly important in merchant formula/method pricing. In that context, the transparency objective should be clear, the grower must be able to understand the pricing method and the basis on which the return is calculated. That does not require the Code to mandate broad disclosure of downstream trading information as a default position. The better approach is to require practical clarity about how the return is determined, through requirements that are usable, proportionate and aligned to the way the transaction actually operates.

FMA does not support removing the ability to use merchant formula/method pricing under the Code. The central question is whether the Code provides a sufficiently clear and workable framework for that pricing mechanism to operate transparently in practice. Merchant formula/method pricing was specifically considered in the 2017 review and codified for merchants. KordaMentha's analysis confirms that it remains a substantial and established feature of central market trade. It records that 87 per cent of respondents trade as merchants only, with a further 9 per cent trading as both merchant and agent. Among merchants, 41 per cent use formula pricing only and 28 per cent use both formula/method and agreed pricing.¹⁷ The relevant policy question is not whether this mechanism should remain available in theory, but whether it can continue within a framework that is clear, practical and verifiable in operation.

The same evidence shows that removal would not be a workable adjustment. KordaMentha records that, if method/formula pricing were not allowed, only 13 percent of respondents said they would use agreed pricing before or immediately before delivery, while 87 percent said that neither agreed pricing before or immediately before delivery nor operating as an agent would be viable. KordaMentha also identifies additional administrative costs for new accounting procedures, increased hiring for finance teams to manage payments, and greater executive oversight burden if traders were forced away from method/formula pricing.¹⁸ That evidence indicates that prohibition would not be a targeted refinement. It would amount to a substantial structural intervention with significant operational and commercial consequences.

Removing the ability to use merchant formula/method pricing would therefore have significant and adverse consequences. It would reduce commercial flexibility in transactions where a fixed agreed price is not suitable at the outset, disrupt an established pricing mechanism that is widely used in central market trade, and push parties toward less suitable alternatives. KordaMentha concludes that removal would reduce efficiency and profitability for growers and traders while simultaneously creating extra risk for growers.¹⁹

Nor does the evidence support any assumption that agency is the practical alternative. Agency is a different trading model, not simply a different way of pricing. Under agency, ownership of the produce remains with the grower until sale, grower payments

¹⁷ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report p 13.

¹⁸ *Ibid*, p 13.

¹⁹ *Ibid*, p 13.



are deferred until sale proceeds are received by the trader, and bad debts sit with the grower. KordaMentha also identifies additional administrative effort to traders where buyer payments are split between merchant and agency transactions, and notes that agency carries a common law agency relationship label, with failures in proceeds handling or accounting exposing traders to more serious allegations or consequences and driving audit ready reporting and greater executive oversight. Agency is used only in limited cases.²⁰

The cost and payment consequences are also material. KordaMentha notes that GST on commission creates a cashflow drag for growers, even though that GST may later be claimed back through the grower's BAS, and that agency can result in later payment to the grower. It also records that one large trader estimates it would need to hire two additional FTE at a cost of almost \$200,000 per year if it had to act solely as an agent. In its worked example, the net return to the grower is lower in the first instance under agency than under merchant formula/method pricing, and the payment outcome is later.²¹

By contrast, under merchant formula/method pricing the trader purchases the produce and the grower's return is determined in accordance with that pricing method, by reference to the realised sale price to the buyer. This allows the final price outcome to reflect actual market conditions after ownership has passed, rather than requiring the parties to set price too early in a volatile and perishable market. As KordaMentha explains, this operates as a natural hedge by allowing price to adjust to actual outcomes, preserving commercial incentives and transferring price risk to the merchant.²² It also reflects a basic commercial reality - if the trader sells for more, the trader earns more and, under the pricing model, so does the grower. Economically, that is an important reason why merchant formula/method pricing remains an efficient and legitimate pricing mechanism in central market trade. This reinforces that the relevant policy task is to improve the clarity and operation of the model, not to remove it.

The consultation paper also refers to ACCC Recommendation 16 from the ACCC's supermarket inquiry and the associated concern that price setting by method or formula disadvantages growers because growers who trade with merchants are not afforded the same protections as growers who trade with agents. In FMA's view, that concern should be taken seriously, but the key question for this review is whether there are changes that can address those concerns while allowing merchant formula/method pricing to continue. FMA considers that there are, and that they should be directed to fit for purpose protections within merchant trading rather than the importation of agency obligations.

5.2.1.3 Different trading models and protections

The concern identified in the consultation paper needs to be assessed in the context of two different trading models. Agency

²⁰ Fresh Markets Australia, *Horticulture Code in Practice: Trading Model Comparison Table*, Appendix C to this submission; KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report p 13.

²¹ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report p 14.

²² *Ibid*, p 14.



and merchant trading do not allocate ownership, payment timing, bad debt risk or sale obligations in the same way.²³ It does not follow that protections should be identical across both models. The central question is whether the protections and obligations applying to merchant trading are appropriate to that model and whether merchant formula/method pricing operates with sufficient clarity and practical transparency. The policy objective should be fit for purpose protections within each model.

That is why the additional duties imposed on agents cannot simply be lifted across into merchant trading without changing the character of the transaction itself. Those duties reflect the fact that, under agency, the trader is selling on the grower’s behalf, and ownership remains with the grower until sale.²⁴ It is also important to be precise about the existing law. An agent is not automatically required to pursue bad debts in every case they have an option to do so if they state this in the HPA. Under merchant trading, by contrast, the trader purchases the produce to resell, pays the grower within the payment period in the HPA, and bad debts sit with the merchant.²⁵

For ease of understanding, Table 1 below sets out the proposed amendments to the Code as they apply to the trading models using FMA’s practical comparison of agent, merchant agreed price and merchant formula/method pricing under the Code. The table reproduced at Appendix C shows the current Code applications.

TABLE 1: Proposed amendments to the provisions of the Trading Models (Agent and Merchant) under the Code

Note: For ease of review in this draft, proposed insertions are shown by italics/underlining and proposed deletions by strikethrough.

	AGENT	MERCHANT - How does the HPA set the price? AGREED PRICE	MERCHANT -How does the HPA set the price? METHOD/FORMULA
1. Good faith	Both grower and trader must act in good faith, including being honest and not acting arbitrarily.		
2. Role	The trader sells on the grower’s behalf, acts in the grower’s best interests, and sells at arm’s length (unless with grower consent)	The trader buys the produce to resell.	The trader buys the produce to resell.
3. Ownership	Does not pass to the agent, it passes to the third party buyer when sold.	<i><u>On Delivery which occurs when Produce is received by the Merchant and accepted for the purpose of re-sale by the Merchant (regardless of the purpose for which the Produce is dispatched by the Grower) and, where applicable, once any Services provided by the Merchant have been completed and made available for sale. (in the Code).</u></i>	
4. Handling while in control.	While the produce is under the trader’s control, the trader must look after it properly until it is sold.	While the produce is under the trader’s control and still the grower’s produce, the trader must exercise reasonable care and skill in handling and storing the grower’s produce.	
5. Pooling	Is only allowed if same quality	Is only allowed if same quality	
6. Rejection	<i><u>Rejection for reasons in the Code and others as agreed in the HPA. Notification within 24 hours and written reasons within 2 business days of notification (in the Code).</u></i>		

²³ Fresh Markets Australia, *Horticulture Code in Practice: Trading Model Comparison Table*, Appendix C to this submission.

²⁴ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report p 12.

²⁵ Fresh Markets Australia, *Horticulture Code in Practice: Trading Model Comparison Table*, Appendix C to this submission;



	AGENT	MERCHANT - How does the HPA set the price? AGREED PRICE	MERCHANT -How does the HPA set the price? METHOD/FORMULA
7. Proceeds/Price	The amount paid to the grower is the sale proceeds received by the agent from the buyer, less the commission + GST and other deductions permitted under the HPA and depends on the buyer paying.	The price paid to the grower must be agreed in writing before, or immediately upon, <u>Delivery</u> . (<u>new definition of Delivery</u>)	The price paid to the grower is calculated using the method/formula set out in the HPA e.g. <u>Sales price less a margin. This must be by reference to a genuine market-based sale outcomes unless otherwise agreed in writing with the grower OR if government requires - by reference to genuine arm's length sale outcome unless otherwise agreed in writing with the grower (in the Code).</u> <u>The grower can ask for reasonable verification of the sales price (in the Code).</u>
8. Payment The detail is in the HPA	The agent must pay the grower within the payment period in the HPA, once the sale proceeds are received.	The merchant must pay the grower within the payment period in the HPA.	
9. Bad debts	Bad debts sit with the grower.	Bad debts sit with the merchant.	
10. Statement and reporting/<u>Reporting</u>	Reporting period: as set out in the HPA. Statement must include (for that period): delivery date, sale date or dates, produce type and quantity sold, sale price achieved, each deduction (commission, fees, charges), unsold produce and why, any produce destroyed and the cost, and any stock held at period end.	<u>No separate grower statement is required unless otherwise agreed in writing between the merchant and the grower (in the Code).</u> Reporting period: as set out in the HPA. Statement must include (for that period): what was purchased (produce type, quality, quantity), purchase date or dates, delivery date, and the price paid to the grower.	<u>Must give the grower sufficient information to show how the price payable to the grower has been calculated (in the Code).</u> <u>The following must also include unless otherwise agreed in writing (in the Code)</u> Reporting period: as set out in the HPA. Statement must include (for that period): what was purchased (produce type, quality, quantity), purchase date or dates, delivery date, the price paid to the grower, plus the method or formula outputs, including gross sale price, any produce not sold, and any produce destroyed or to be destroyed and why. <u>The information may be given by any method agreed in writing between the merchant and the grower (in the Code).</u>
The variable detail is in the HPA	<u>Delivery and quality specs. (in the Code)</u>		
	<u>Rejection reasons and the written reasons timeframe- (in the Code)</u>		
	Reporting period and statement timing.	<u>Reporting period and statement timing.</u> <u>Any reporting method, period and timing, if agreed.</u>	
	Payment period and payment terms.		
	Commission (GST applies) and any other charges or deductions permitted under the HPA	Services and service charges, if any. Any allowed charges or deductions.	
Trader bad debt recovery role, if any	N/A		
HPA execution	Accepted in writing <u>and Execution by Conduct (in the Code)</u>		



5.2.1.4 Targeted reforms to address the concerns

In FMA's view, concerns about merchant formula/method pricing should be addressed through targeted, model-appropriate reform rather than prohibition or the importation of agency obligations. The practical elements of that reform are addressed below, particularly in relation to reporting, verification and merchant-specific protections.

This is not a new policy direction. In its 2015 recommended changes submission, FMA supported retaining merchant transactions based on a method of determining price, while proposing additional transparency through disclosure of gross sales, deductions and net proceeds, together with reasonable access to relevant sales records to verify sale prices, excluding buyer identity.²⁶ FMA also proposed that merchants using a method of determining price sell at arm's length unless the grower agreed otherwise.²⁷ FMA has since translated the distinction between merchant and agent trading into practical industry guidance and consultation.²⁸ Merchant traders also already operate under the Code's good faith requirement. The better course is to improve the clarity and operation of merchant formula/method pricing within the merchant model, rather than creating a hybrid structure that, in substance, recharacterises the merchant as an agent.

5.2.1.5 Reporting

The consultation paper also refers to concerns raised by the ACCC about the timeliness of trader reporting, the lack of a requirement to provide specific details about who produce was sold to, any relationship between the trader and the buyer, and the ability of growers to verify information reported by traders. Those issues are relevant, but they need to be considered carefully and by reference to the relevant trading model. In FMA's view, the practical question is what reporting information is necessary to allow the grower to understand the transaction outcome and verify that the pricing mechanism has been applied correctly, without imposing requirements that are disconnected from the way the transaction actually operates. Reporting should be judged by whether it helps the grower understand the transaction outcome and, where relevant, verify the basis of calculation. The relevant measure is whether the information is clear, meaningful and usable in practice.

Agent

Agent reporting should be considered separately. Agency already operates within a heavier legal and reporting framework, because the Agent is selling on the grower's behalf and accounting for sale outcomes accordingly.²⁹ The current Code also already imposes substantive conduct obligations directed to the integrity of the sale itself, including the obligation to act in

²⁶ Fresh Markets Australia, *A Practical Vision for Horticulture Code of Conduct Reform*, Appendix B to this submission; Fresh Markets Australia, *Recommended Changes to the Horticulture Code of Conduct*, submission to the Horticulture Code of Conduct Review, September 2015, pp 7 to 8.

²⁷ Fresh Markets Australia, *Recommended Changes to the Horticulture Code of Conduct*, submission to the Horticulture Code of Conduct Review, September 2015, pp 7 to 8, 14 and 18.

²⁸ Fresh Markets Australia, *Horticulture Code in Practice: Trading Model Comparison Table*, Appendix C to this submission.

²⁹ Competition and Consumer (Industry Codes—Horticulture) Regulations 2017 (Cth), Sch 1, cl 29.



good faith,³⁰ to act in the best interests of the grower, and not to sell other than at arm's length unless the grower has first agreed in writing.³¹ In that context, fuller reporting is more understandable. However, FMA does not support adding a routine disclosure requirement about buyer identity or any relationship between the Agent and the buyer unless a clear demonstrated gap in the current framework is identified. Absent that, routine disclosure of that kind would be disproportionate and would move beyond what is necessary for transaction integrity and verification, and into disclosure of commercially sensitive trading relationships without a clear showing of corresponding practical benefit.

Merchant agreed price

For merchant agreed price, separate prescribed reporting will often add little practical value and should not be required as a separate default obligation. In those transactions, the grower already knows the agreed price, the produce sent and the payment outcome. Where growers issue invoices, the agreed price and payment basis are already documented. Where growers do not issue invoices, the produce sent will ordinarily already be known through consignment records and the delivery process, while the agreed price should already have been settled in writing. If quality gives rise to a different commercial outcome, that should be addressed through the agreed price process itself, including any re-agreed price, rejection or other agreed adjustment. In that context, a separate prescribed grower statement is often duplicative rather than informative. FMA's survey results also indicate that merchant agreed price transactions already operate through materially different invoicing pathways in practice, with the largest cohort reporting grower-issued invoices for only 0 to 20 per cent of agreed price turnover and another substantial cohort reporting grower-issued invoices for 80 to 100 per cent of that turnover.³²

A related issue arises in merchant agreed price transactions where price is agreed in the ordinary course of trade but is not reduced to writing before or immediately upon delivery. In a fast-moving perishable supply chain, that can create technical breach risk even where the grower is content with the arrangement and the agreed price is promptly recorded once the parties are able to speak. Reform should therefore support a clear and workable mechanism for agreed price to be put in writing at the first practical opportunity in the course of trade.

Merchant formula/method pricing

For merchant formula/method pricing, more reporting is justified because the grower's return is not self-evident from one agreed figure and the grower should be able to understand the basis on which that return has been calculated. The current Code already requires merchant reporting in method/ formula cases to address matters including produce not sold and

³⁰ Ibid, Sch 1, cl 8.

³¹ Ibid, Sch 1, cl 27.

³² FMA trader survey, What proportion of turnover for merchant agreed price before delivery involves growers issuing invoices? Summary of respondent distribution: 0 to 20% (31 respondents), 20 to 40% (5), 40 to 60% (11), 60 to 80% (7), and 80 to 100% (19).



produce destroyed or to be destroyed.³³ At the same time, the grower statement is often a lag indicator of matters that have already occurred. In many trading relationships, particularly on the central market floor, information about sales, stock on hand, produce not sold, or produce destroyed is already being communicated to growers regularly during the trading period, including daily or several times a day. The better approach is for the Code to require transparency as to the basis of calculation of the grower's return, while allowing the content, form and method of reporting to be settled in the HPA or otherwise by agreement. That may include information about produce not sold, produce destroyed or to be destroyed, or other matters relevant to the calculation of return, where that information is useful in the trading context. Where that information is already being clearly provided through agreed communications, records or other reporting processes, the Code should allow those agreed pathways to satisfy the reporting obligation.

Reporting in practice and system burden

FMA's policy work and industry engagement indicate that traders already report to growers in multiple ways, including through remittance advices, RCTIs, pool reports, system summaries and dashboards. The better approach is to make sure that the information growers need is clearly available through records and reporting pathways already used in practice, rather than through a single highly prescribed post-transaction grower statement in every case. Having said that, an example of systems being developed and not used is evidenced where a dashboard was developed at significant cost to the trader in consultation with their growers and since its implementation only a very small number of the consulted growers have used the dashboard. KordaMentha's analysis also shows that reporting already imposes significant administrative and system costs on traders.³⁴ Most traders prepare grower statements weekly, and the average trader incurs about 15.2 hours per week inputting reporting data into POS systems, at an average annual administrative cost of about \$38,500 per business. KordaMentha also records that traders incur upfront and ongoing POS implementation and maintenance costs to support reporting functionality, with these fixed costs falling disproportionately on smaller businesses. In FMA's view, that is another reason why reporting obligations should be directed to information that is genuinely useful to growers, rather than expanded reporting volume for its own sake.

Buyer identity, buyer relationship and verification

FMA does not support routine disclosure of buyer identity or any relationship between the trader and the buyer. Buyer identity is commercially sensitive information. In some cases, the grower may already understand aspects of the likely downstream channel or buyer requirements, for example where produce must meet specified certification such as HARPS. Routine disclosure of that kind is not necessary to allow growers to understand and verify the transaction outcome. Routine disclosure would create a real bypass risk by exposing traders' customer relationships and enabling growers to approach identified buyers directly, without clearly improving the grower's understanding of how the return was determined. Such disclosure would go

³³ Competition and Consumer (Industry Codes—Horticulture) Regulations 2017 (Cth), Sch 1, cl 36.

³⁴ KordaMentha, Horticulture Code of Conduct Economic Analysis, reproduced at Appendix A to this submission, report pp 17 to 20.



beyond what is necessary to allow the grower to understand and verify the transaction outcome and would instead require disclosure of commercially sensitive trading relationships without a clear showing that this is necessary to verify grower outcomes.

In FMA's view, verification concerns are better addressed through reasonable access to relevant sales records, excluding buyer identity, rather than through routine disclosure of customer information. FMA supports a minimum protection to the effect that, where a merchant is operating under a formula/method to determine the return price to the grower, the grower is entitled, upon request, to reasonable access to the merchant's sales records relating to produce supplied by that grower, for the purpose of verifying the sales prices. This should not include access to information identifying the buyer. Agency should be considered separately. In the agency context, the current Code already contains a more substantial compliance and reporting architecture, reflecting the fact that the agent is acting on the grower's behalf. That does not justify importing agency-style customer disclosure into merchant formula/method pricing. Verification in merchant formula/method pricing is better addressed through reasonable record access and model-appropriate reporting within the merchant framework.

Market transparency

Market price transparency should also be viewed separately from transaction-level verification. FreshData is an FMA initiative and forms part of the industry's practical response to long-standing calls for greater price transparency. It is designed as a verifiable market price reporting tool for central market trade and is relevant to commercial confidence about whether a grower has received a fair market-based outcome, as well as to broader market signals, trends and insights for modern wholesalers and modern growers. This can make an important contribution to transparency and digitisation across the sector. They are not a substitute for transaction-level reporting and verification within the Code. They do however, show that transparency objectives can be advanced through digitised, verifiable market data without requiring routine disclosure of individual customer identities in grower reporting.³⁵ That distinction matters. Market price transparency and transaction-level verification are related but different policy objectives, and the Code should not treat them as interchangeable.

Conclusion

Reporting obligations should therefore reflect the trading model and the practical purpose they serve, fuller reporting in agency, no separate prescribed grower statement as a default for merchant agreed price, and clear calculation-based reporting with workable verification pathways for merchant formula/method pricing. The practical realities of central market trade also matter here. KordaMentha's analysis indicates that traders commonly deal with large numbers of growers, including new growers each year³⁶, which reinforces that grower-trader relationships are not fixed and that growers are able to move between trading relationships over time. That is consistent with independent industry analysis noting that wholesalers may

³⁵ ACCC, Perishable agricultural goods inquiry 2020; www.freshdata.com.au.

³⁶ KordaMentha, Horticulture Code of Conduct Economic Analysis, reproduced at Appendix A to this submission, report p 27.



operate at the mercy of growers in important respects, including because produce is perishable and growers control timely and consistent supply.³⁷ These features do not mean transparency concerns should be dismissed. They do, however, mean that reporting and transparency settings should not proceed on a simplistic assumption that bargaining power or informational advantage always sits with the trader.

5.2.1.6 Clarity of ownership

FMA position

Clarity of ownership is not a major structural defect in the Code, but practical uncertainty can arise where delivery, control, rejection, agreed services and the passing of ownership are not clearly distinguished. FMA supports defining Delivery in plain language in the Code, supported by practical guidance and education, to improve clarity about ownership, responsibility and risk in merchant trading.

The Code already deals with a number of the matters relevant to ownership and responsibility. It requires the HPA to address delivery requirements, the circumstances in which produce may be rejected, and the period within which written reasons for rejection must be given.^{38 39 40} It also provides that the trader must accept produce unless it is rejected in accordance with clause 22, and that while the grower’s produce is under the trader’s control, the trader must exercise all reasonable care and skill in handling and storage until ownership passes.^{41 42}

In that context, FMA does not consider clarity of ownership to be a major structural defect in the Code. However, practical uncertainty can arise because the Code refers to delivery without defining it, and because the relationship between physical receipt, control, rejection, agreed services and the passing of ownership is left to be addressed through the HPA and is not always clearly expressed in practice.

In practice, produce may arrive at the trader’s premises and remain there under the control of the trader pending assessment, acceptance or rejection, which can create uncertainty if physical receipt is treated as though it is the same thing as delivery or acceptance.⁴³ Where those concepts are blurred, there is greater scope for misunderstanding about the respective

³⁷ IBISWorld, Fruit and Vegetable Wholesaling in Australia, September 2025, p 19.

³⁸ Competition and Consumer (Industry Codes—Horticulture) Regulations 2017 (Cth), Sch 1, cl 16(b).

³⁹ Ibid, Sch 1, cl 16(c).

⁴⁰ Ibid, Sch 1, cl 16(d).

⁴¹ Ibid, Sch 1, cl 24(1).

⁴² Ibid, Sch 1, cl 24(2).

⁴³ Ibid, Sch 1, cls 22 and 24.



responsibilities of the grower and trader at different stages of the transaction.

This matters because uncertainty of that kind can affect practical understanding of when responsibility for produce shifts between grower and trader, including while produce remains under the trader’s control, when delivery is taken to occur, whether produce has been accepted or rejected, and where agreed services are undertaken before resale. If those steps are not clearly distinguished, there is greater scope for misunderstanding and avoidable dispute about the allocation of responsibility at different stages of the transaction, particularly where perishable produce is involved and decisions may need to be made quickly.

FMA considers that clarity of ownership is best addressed by defining Delivery in plain language in the Code. The proposed concept is:

*For the purposes of the Code, **Delivery** occurs when Produce is received by the Merchant and accepted for the purpose of re-sale by the Merchant (regardless of the purpose for which the Produce is dispatched by the Grower) and, where applicable, once any Services provided by the Merchant have been completed and made available for sale.*

This would provide a clearer and more workable basis for the surrounding provisions dealing with rejection, merchant services and the passing of ownership. It would also support clearer understanding of when ownership passes, how responsibility applies at different stages of the transaction, and how risk is fairly allocated between growers and traders.

Consistent with FMA’s broader reform principles, that clarity of ownership should also be supported through practical guidance and education. Clearer explanation of how Delivery, control, acceptance, rejection, agreed services and the passing of ownership operate in practice would assist growers and traders to apply the framework more consistently and with greater confidence. This is particularly important in an industry environment where parties have different levels of legal, administrative and digital capability, and where practical usability is critical to effective compliance.

5.2.2 Regulatory burden

FMA position

The Code’s benefits can justify compliance effort, but not all current compliance effort is justified in its present form. Reform should reduce burden where requirements are overly prescriptive, duplicative, inflexible or of limited practical value, while retaining clear and workable protections that support trade between growers and traders. In particular, reform should favour simpler HPA architecture, more usable reporting pathways and a more proportionate compliance framework that is easier to implement in practice.

In FMA’s view, the central regulatory burden issue is whether the current framework directs effort to matters of genuine practical value. Burden is least justified where requirements are duplicative, overly prescriptive, difficult to implement at scale, or poorly aligned with how trade actually occurs.



FMA's evidence indicates that compliance with the Code can involve substantial recurring time and cost for traders. KordaMentha found that in relation to preparing HPAs, it identifies that HPA dedicated staff cost traders an average of \$61,000 in staff and on-costs each year and furthermore costs small traders an average of 14.5% of NPAT compared to 1.5% for large traders⁴⁴ while compliant data recording to support grower reporting imposes average annual administrative costs of about \$38,500.⁴⁵ On an indicative basis, scaling the average annual reporting administration figure of about \$38,500 and the average HPA dedicated staff cost to traders of \$61,000 across the central market trading floor cohort suggests a recurring reporting burden in the order of \$31.9 million per year on central market trading floor traders alone.⁴⁶ FMA does not present that as a precise industry total, but it does illustrate the scale of recurring compliance effort associated with the current reporting framework and HPA management. This reinforces the need to reduce compliance burden where requirements are overly prescriptive, duplicative, inflexible or of limited practical value, while retaining clear and workable protections that support trade between growers and traders.

KordaMentha also found that compliant POS functionality involves additional establishment and maintenance costs, with the overall burden falling disproportionately on smaller traders relative to NPAT (net profit after tax).⁴⁷

This evidence indicates that current compliance architecture carries material recurring cost, and that the burden is not confined to isolated paperwork obligations. It is embedded in staffing, systems, workflows and management time across day-to-day operations.

Furthermore, the evidence points to a need for targeted simplification rather than deregulation. The review should assess where burden arises from duplication, over-prescription, inflexibility or poor alignment with practical trade, and should favour clearer Code settings, simpler HPA architecture, more usable reporting pathways and lower-burden compliance mechanisms that preserve substantive protections.

5.2.2.1 HPA burden and simplification

The current HPA framework carries too many functions simultaneously. It is expected to operate as the principal compliance instrument, the vehicle for the agreed transaction and relationship-specific variables the parties need to settle for the trade to operate, and the repository for a broad range of prescribed matters, even where some of those matters could operate more

⁴⁴ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report p 17 and 24 ; Indicative calculation based on the average annual reporting administration figure of about \$38,500 and HPA management of \$61,000 multiplied across approximately 321 produce wholesalers in Australia's central wholesale markets.

⁴⁵ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report, p 18.

⁴⁶ Ibid, pp 5 and 24.

⁴⁷ Ibid, pp 19 to 20.



simply as Code rules or defaults.

One practical source of regulatory burden is the volume of requirements that must be accommodated within the HPA. The HPA must operate as a legal document that conforms with the Code, but in practice much of what needs to be settled between the parties is business specific and transaction specific in nature. Burden arises where those practical matters must be documented in a HPA that is also required to carry a substantial volume of prescribed material and compliance content. This creates both compliance burden and regulatory risk, because the effort and delay involved in preparing and settling a compliant HPA sits alongside a prohibition on trading unless a compliant HPA is in place.⁴⁸ KordaMentha's analysis also indicates that this is not only a cost issue, but also a time and operational issue, with 82 per cent of traders surveyed spending more than a week following up with growers for their HPAs⁴⁹. Many times after the produce has been received. That combination of legal significance, drafting complexity and operational urgency makes HPA architecture a major burden point in the current framework.

The starting point for simplification is to distinguish more clearly between matters that should operate as baseline protections or Code defaults under the Code and matters that genuinely need to be recorded in the HPA as part of the parties agreed trading arrangement. Where the Code is setting a minimum conduct rule, standard protection or default position, there is often little value in requiring that matter to be restated in each agreement. By contrast, the HPA should focus on the transaction and relationship-specific matters that the parties must actively settle, so that it remains shorter, clearer and more workable in day-to-day trade. It includes the agreed variables that are necessary to give practical content to the trading relationship but not baseline Code settings that can operate more clearly as part of the regulatory framework itself.

This is the key structural simplification issue in the review. A shorter and clearer HPA will only be achieved if the Code itself carries more of the baseline framework.

What follows from that distinction is the need to review the current HPA content requirements more closely. The matters now required to be included in an HPA do not all serve the same function. Some are baseline protections or standard rules that can operate under the Code itself. Some are agreed trade variables that should remain matters for express agreement between the parties. Others are capable of simplification, default treatment or relocation without undermining protection or clarity. The current framework should be reworked on that basis, rather than continuing to require all of those matters to be carried through the HPA in the same way.

In FMA's view, this reallocation task should be approached by function. Some matters should sit in the Code only. Some should operate as Code defaults unless the parties agree otherwise. Some should remain in the HPA because they are genuinely

⁴⁸ Competition and Consumer (Industry Codes—Horticulture) Regulations 2017 (Cth), Sch 1, cl 12(1) and (2).

⁴⁹ KordaMentha, *Horticulture Code of Conduct Economic Analysis* reproduced at Appendix A to this submission, report p 24.



agreement specific. Some require a Code framework with a narrower HPA election. Others should cease to be mandatory altogether. That is the basis on which the clause treatment table below should be read.

FMA has also developed practical guidance materials to help growers and traders understand how the current Code operates in practice^{50 51}. That experience is also relevant here, because of the need for those materials itself reflects the layered and cluttered nature of the current framework. They are not substitutes for the legislation. They are practical tools developed to make the Code more usable in day-to-day trade, and they illustrate that a simpler and clearer allocation between Code rules and HPA content would produce a more workable framework in practice.

This approach is not intended to displace genuine agreement-making or introduce a parallel deemed agreement overlay. It is directed to placing each matter in the part of the framework where it can operate most clearly and with the least friction. Core commercial variables such as pricing methodology, payment periods, commissions, fees and other genuinely negotiated commercial terms should remain in the HPA. Baseline statutory rules, minimum protections and standard operational defaults should sit in the Code wherever that produces a simpler and more workable result. Matters that are already dealt with elsewhere in the Code should not need to be duplicated in the HPA at all. This functional reallocation would preserve substantive protections while reducing duplication, clutter and avoidable legal and administrative effort.

The table below works through the matters in the Code that currently must be included in, depend on, or interact with the HPA, and identifies where each matter should sit in a simplified framework. For ease of reference, the following treatment labels are used:

- Code only: the matter should sit in the Code and should not need to be repeated in the HPA
- Code default, HPA only if different: the Code should provide the default rule, with the HPA only needing to address the matter if the parties agree a different or additional position
- Defined in the HPA: the matter is genuinely commercial, operational or relationship-specific and should remain for agreement between the parties
- Defined in the HPA, except where not required: the matter remains an HPA variable where relevant, but should not be required in trading models where it serves no practical function
- Defined in the HPA, with default: the HPA should identify the matter, but the Code should provide a practical fallback if it is omitted
- Remove mandatory requirement: the matter should no longer be required as a mandatory HPA inclusion, although parties may still use it voluntarily where appropriate.

⁵⁰ Fresh Markets Australia, *Horticulture Code in Practice: Trading Model Comparison Table*, Appendix C to this submission.

⁵¹ Fresh Markets Australia, *Horticulture Code in Practice: Trading Guide for Growers/Traders*, Appendix D to this submission.



This treatment table supports a practical simplification package. It shows how the Code can retain substantive protections while improving usability, reducing unnecessary drafting load and lowering friction in day-to-day compliance. It should also be read alongside the specific reform requests in Section 6 and Appendix G, which distil the main drafting changes arising from this analysis, including the recommendation to define Delivery more clearly in the Code and to simplify the HPA content architecture more generally.

Table 2. HPA content treatment table for simplification

Clause	Matter	Recommended treatment	Current comment / direction
cl 16(a)	Trading model	Defined in the HPA	Code preserves the model architecture, but the applicable model (merchant or agent) still needs to be identified in the HPA
cl 16(b)	Delivery requirements	Code default, HPA only if different	<p>The Code to set delivery requirements including:</p> <ul style="list-style-type: none"> • fit for human consumption • legally compliant • accompanied by documentation • fit for purpose • packed, presented and delivered in line with agreed requirements • labelled to match the stated grade or class <p>The HPA would only need to address delivery requirements where the parties agree a different or additional requirement.</p>
cl 16(c)	Rejection circumstances	Code default, HPA only if different	<p>The Code to set the standard rejection grounds, including:</p> <ul style="list-style-type: none"> • produce must comply with the delivery requirements • if it does not, it is treated as rejected • any rejected produce must then be handled by the trader with reasonable care and skill <p>The HPA would only need to address any different or additional rejection circumstance agreed by the parties.</p>
cl 16(d)	Time for written reasons for rejection	Code only	Code to retain the 24 hour notice of rejection requirement and add a requirement that written reasons be given within 2 business days after notification, rather than leaving that timeframe to the HPA.
cl 16(e)	Insurance	Code only	<p>While produce remains the grower's property but is under the trader's control, the grower may request information about whether insurance exists and the nature and limits of the cover.</p> <p>This would mean no repeated HPA variation when cover changes.</p>
cl 16(f)	Process for varying the agreement	Code only	The Code would provide that a HPA may only be varied by written agreement and is subject to acceptance by conduct. ⁵²

⁵² Note Reform Request 7, page 41

Clause	Matter	Recommended treatment	Current comment / direction
cl 16(g)	Term of agreement	Defined in the HPA	Core commercial term to be agreed by the parties.
cl 16(h)	Quality and quantity requirements	Code default, HPA only if different	<p>The Code to provide that produce must:</p> <ul style="list-style-type: none"> • be supplied in the agreed quantity • meet any agreed quality, size, grade or class requirements. <p>The HPA would only need to address quality and quantity requirements where the parties agree a different or additional requirement.</p>
cl 16(i)	Specifications to determine quality	Code default, HPA only if different	The Code to provide that quality is assessed against FreshSpecs ⁵³ unless the parties agree a different specification in the HPA
cl 16(j)	Treatment if quality/quantity not met	Code default, HPA only if different	<p>The Code to set a default framework where produce does not meet the applicable quality or quantity requirements, including:</p> <ul style="list-style-type: none"> • rejection • renegotiation • disposal • return • pooling • crediting • other agreed handling arrangements. <p>The HPA would only need to address treatment of produce that does not meet quality or quantity requirements where the parties agree a different or additional arrangement.</p>
cl 16(k)	Pooling	Otherwise dealt with by the Code	Pooling is already addressed by cl 23 of the Code. The HPA should only need to specify the relevant quality requirements and specifications for pooled produce.
cl 16(l)	Payment period	Defined in the HPA	Payment terms are commercial and should be defined in the HPA, with no Code default framework.
cl 16(m)	Reporting period	Defined in the HPA, except where not required	Reporting period is the reporting timeframe only and should be defined in the HPA where reporting is required. For merchant agreed price, no reporting period should be required unless the parties otherwise agree. ⁵⁴

⁵³ FreshSpecs is also relevant in this context because it is not merely a conceptual resource. It is an existing industry reference tool with demonstrated ongoing use in practice. FMA's website analytics for the FreshSpecs page, measured by views and filtered to that page only, show sustained activity over the period from 1 August 2022 to 28 February 2026, including traffic from organic search, direct and referral channels and seasonal peaks in demand. That supports its practical relevance as a platform that could be updated and modernised if the review wishes to support clearer and more consistent default approaches to specifications and product description.

⁵⁴ Note Reform Request 3, page 40

Clause	Matter	Recommended treatment	Current comment / direction
cl 16(n)	Statement period	Defined in the HPA, except where not required	Same logic as reporting period (cl 16(m))
cl 16(o)	Grower dispute contact details	Defined in the HPA, with default	The HPA would identify the grower's dispute contact. The Code would also provide that, if no separate grower dispute contact is given, the default is the grower's ordinary contact details set out in the HPA.
cl 16(p)	Trader dispute contact details	Defined in the HPA	The HPA should identify the trader's dispute contact. No default is needed, as the trader completes the HPA.
cl 16(q)	Process for terminating the agreement	Code default, HPA only if different	Code to set the standard termination framework. The HPA would only need to address termination where the parties agree a different or additional process.
cl 17(a)	Agent payment period after sale	Defined in the HPA	Core operational and commercial term of the agency arrangement.
cl 17(b)	Whether commissions / fees / extra costs are contingent on sale or another event	Defined in the HPA	Core commercial term of the agency arrangement.
cl 17(c)	Commission, fees and extra costs basis and amount	Defined in the HPA	Core commercial term of the agency arrangement.
cl 17(d)	Whether agent pursues bad debts	Defined in the HPA	Operational and commercial term of the agency arrangement.
cl 17(e)	Grower role in bad debt pursuit	Defined in the HPA	Operational and commercial term of the agency arrangement.
cl 18(2)(a)	Merchant formula/method pricing	Defined in the HPA	Core commercial term, with no Code default.
cl 18(2)(b)	Price determined before or upon delivery	Defined in the HPA	Core commercial term, with no Code default. ⁵⁵

⁵⁵ Note Reform Request 10, page 37

Clause	Matter	Recommended treatment	Current comment / direction
cl 18(2)(c)	Merchant services and fees	Defined in the HPA	Core commercial term, to be expressly agreed in the HPA.
cl 19	Code prevails over inconsistent HPA terms	Code only	Baseline statutory rule, no need to repeat in the HPA.
cl 20	Cooling-off	Repeal	The grower is simply able to not dispatch product to the trader if they want to discontinue the relationship.
cl 10	Mandatory Terms of Trade	Remove mandatory requirement	
cl 11	Content / operation of Terms of Trade	Remove mandatory requirement	

Taken together, the table shows that HPA simplification is not about reducing protection. It is about allocating matters more clearly across Code rules, Code defaults and genuinely negotiated HPA content. A more functional allocation of those matters would make the framework shorter, clearer and more workable in practice, while preserving the substantive protections the Code is intended to provide. That is the simplification approach reflected in Section 6 and Appendix G.

This simplification exercise should also be supported by an appropriate transitional arrangement under which that existing HPAs in force at commencement can continue to operate without immediate replacement, with the revised HPA framework applying prospectively to new or replacement HPAs entered into after commencement.

5.2.2.2 Reporting burden and statement usability

FMA position

Reporting should focus on the information growers need, not one fixed reporting format. For merchant agreed price, no separate prescribed grower statement should be required. For merchant formula/method pricing, growers should receive clear calculation-based information, while the remaining content, form and method of reporting should be capable of agreement. For agency, the current reporting position is broadly appropriate.

System burden and practical value

Reporting should be assessed by its practical value to growers, having regard to cost and operational burden. Where reporting is costly and operationally demanding, the better approach is not to impose additional or faster reporting as a uniform obligation. The current Code framework for reporting periods and grower statements should not operate inflexibly where the parties wish to adopt different arrangements. Instead, growers and traders should be able to agree in writing to other reporting

arrangements, including no separate grower statement being provided, where that is what they want and where it is practical to do so. However, where the grower's return is based on a sale price, the grower should still receive sufficient information to understand how that return has been calculated. That would better reflect shared responsibility, preserve transparency where it matters, and avoid building unnecessary regulatory burden through one size fits all reporting obligations.

A separate source of regulatory burden arises from the preparation of statements to growers and the systems needed to support that reporting. In this area, the burden does not arise only from the information ultimately provided to growers, but from the effort required to capture, input, reconcile and extract data in a compliant form across high volume trading activity.

KordaMentha found that compliant data recording to support grower reporting imposes average annual administrative costs of about \$38,500, and that compliant POS reporting functionality costs an average of about \$9,000 to establish and about \$4,000 each year to maintain.^{56 57} FMA's survey work

also indicates that statement preparation is not uniform in practice, with 75 per cent of respondents generating statements automatically through a single system and 25 per cent manually collating information across multiple systems (see Figure 1⁵⁸). This shows that Code reporting burden is shaped not only by the information required, but by the systems and operating model through which that information must be produced. This is why reporting reform should focus not just on statement content, but on the system consequences of requiring information to be captured, reconciled and produced in a prescribed way.

Overall, FMA considers that the Code's benefits do justify compliance effort, but not all current compliance effort is justified in its present form. KordaMentha states that *"the Horticulture Code of Conduct already imposes costs on traders that are more acute for small businesses"* and *"large businesses automate their data capture, whereas smaller businesses do this manually"* and *"Up-front system costs for grower statement functionality disproportionately affect smaller businesses"*.⁵⁹

Different reporting needs across trading models

KordaMentha's analysis also shows that merchant remains the dominant trading model in practice, with 87 per cent of respondents trading as merchants only, a further 9 per cent trading as both merchant and agent, and only 4 per cent trading as agents only. Among merchants, 41 per cent use formula pricing only, 28 per cent use both formula/method and agreed pricing,

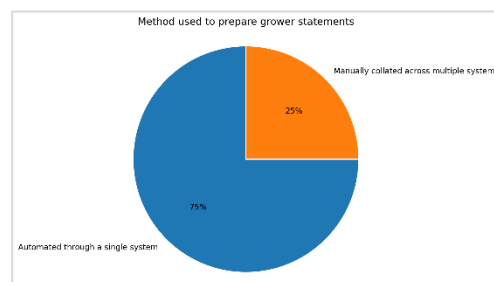


Figure 1: Method used to prepare grower statements

Source: FMA trader survey

⁵⁶ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission pp 5 and 18.

⁵⁷ *Ibid*, pp 5 and 24.

⁵⁸ FMA trader survey, method used to prepare grower statements, based on respondent answers showing 75 per cent generated automatically through a single system and 25 percent manually collated across multiple systems.

⁵⁹ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission pp 5,18 and 19



and 31 per cent use agreed pricing only.⁶⁰ The significance of that evidence is not just the percentages. It is that the Code already distinguishes reporting by model and pricing pathway, and the practical question for this review is whether those distinctions are now calibrated far enough. FMA considers that they do not yet go far enough.

Merchant agreed price

For merchant agreed price, a separate prescribed grower statement should not be required. Where the agreed price has already been settled and the relevant transaction information is already known, recorded or communicated through the trading process itself, a separate prescribed statement adds limited practical value and may be duplicative rather than informative. This is also consistent with FMA survey evidence showing that merchant agreed price transactions already operate through materially different invoicing pathways in practice.⁶¹ The Code should therefore allow the parties to rely on the agreed price record and the ordinary transaction documents or communications, rather than requiring a further prescribed statement in every case. This would reduce unnecessary reporting burden while preserving the substantive protections relevant to how merchant agreed price transactions actually operate.

Merchant formula/method pricing

For merchant formula/method pricing, more reporting is justified, because the grower's return is not self-evident from one agreed figure and the grower should be able to understand the basis on which that return has been calculated. The better approach is for the Code to require transparency as to the basis of calculation of the grower's return, while allowing the content, form and method of reporting to be settled in the HPA or otherwise by agreement. The Code should not require one fixed reporting format where the relevant information is already being clearly provided through agreed communications, records or other reporting processes. In those circumstances, those agreed pathways should be capable of satisfying the reporting obligation.

Agent

For agency, more substantial reporting is more readily justified, given the nature of the model and the legal framework in which it operates. Agency already carries a heavier compliance architecture, including the overlay of agency law and the greater reporting, accounting and oversight consequences that follow from that model. The issue for agency is therefore whether the current requirements remain clear, workable and proportionate in practice. That points against importing agency-style reporting into merchant trading, while supporting the retention of more substantial reporting within agency itself.

Conclusion

⁶⁰ Ibid, p 13.

⁶¹ FMA trader survey, *What proportion of turnover for merchant agreed price before delivery involves growers issuing invoices?* Summary of respondent distribution: 0 to 20% (31 respondents), 20 to 40% (5), 40 to 60% (11), 60 to 80% (7), and 80 to 100% (19).



Reporting obligations should reflect the practical purpose they serve in each trading context. For merchant agreed price, no separate prescribed grower statement should be required. For merchant formula/method pricing, the Code should require clear information showing how the grower's return has been calculated, while allowing the content, form and method of reporting to be agreed between the parties. For agency, the broader reporting framework should be retained. That approach would better align reporting with the legal and commercial features of each trading model, improve practical usability, and reduce unnecessary compliance burden while preserving workable trading arrangements.

5.2.2.3 Audit, implementation and compliance overhead

FMA position

Audit, implementation and compliance overhead under the Code should be proportionate to the risks being addressed and the practical realities of horticulture trade. Compliance frameworks should support lawful and workable trade, not impose unnecessary cost, duplication or prolonged uncertainty through audit processes, system changes or overly complex administrative requirements.

Audit burden and proportionality

A further source of regulatory burden arises through the audit and compliance process itself. In practice, burden is not limited to the time needed to comply with substantive Code obligations. It also arises from the time, cost and management effort required to respond to audits, retrieve and reconcile records, engage advisers, adapt internal systems, and manage prolonged compliance review processes. Where those demands are significant, they can affect business operations well beyond the immediate issue under review.

KordaMentha's analysis indicates that this burden can be substantial. It records that ACCC audits impose direct and indirect costs on traders, with external support averaging \$45,772 and some audits reaching \$250,000. It also records that audits typically last about five months, with some extending beyond 18 months, and includes a case study of one audit that ran for 20 months and generated substantial direct and opportunity costs.⁶²

The evidence does not argue against credible compliance activity. FMA supports credible enforcement and compliance oversight under the Code. However, it does show that audit activity can itself become a significant source of burden, particularly where requests are prolonged, iterative or directed to administrative minutia that do not reflect serious or systemic misconduct. That reinforces the need for a more calibrated compliance architecture, including better proportionality between the issue in question, the scale of the information sought, and the length and intensity of the audit response required. For this review, the relevant issue is whether the form, scale and duration of compliance activity remain proportionate to the issue being examined.

⁶² KordaMentha, Horticulture Code of Conduct Economic Analysis, reproduced at Appendix A to this submission, report pp 21 to 22.



Implementation overhead

Implementation burden should also be considered separately from formal audit activity. In practice, traders do not comply with the Code only by signing agreements or issuing statements. They must also build the Code into business systems, workflows, staff training, recordkeeping practices and internal review processes. Where Code settings are layered, prescriptive or difficult to translate into day-to-day operations, that implementation burden becomes a recurring source of cost and risk.

The evidence discussed above also illustrates the broader implementation challenge. KordaMentha found that compliant data recording to support grower reporting imposes average annual administrative costs of about \$38,500, and that compliant POS reporting functionality costs an average of about \$9,000 to establish and about \$4,000 each year to maintain.⁶³ That evidence is relevant beyond reporting alone. It shows that compliance settings carry real system, workflow and governance consequences in practice.

This is particularly important in central market trade, where businesses operate in a high-volume, fast-moving environment and often rely on a mix of staff experience, manual workarounds and POS functionality to administer compliance. Changes that appear modest at the level of legal drafting can require substantial reconfiguration of templates, system fields, reporting processes, staff instructions and checking mechanisms in practice.

Those costs fall most heavily on businesses operating at scale in perishable, fast moving trading conditions, and particularly on smaller traders with more limited capacity to absorb system redesign, external advice and extended management time away from core trading activity. In that respect, implementation burden is not a one-off adjustment. It is a recurring operational consequence of how the Code is designed and how difficult it is to apply in practice. This is also consistent with the broader evidence that smaller traders are more exposed to compliance and implementation pressure where staffing, systems capability and administrative capacity are more limited.

Compliance overhead in practice

Compliance overhead should be assessed by considering how the framework operates as a whole. In practice, burden is cumulative across documentation, reporting, system configuration, internal checking, training, audit readiness and ongoing review activity. Individual requirements should not be assessed in isolation. The better view is how the framework works in day-to-day trade when those obligations are carried together.

This is also relevant to shared responsibility. In a number of areas, traders carry the primary burden of documentation, reporting and audit readiness, even where effective compliance depends in part on the conduct, cooperation or timely response of growers. Where one party carries most of the regulatory and evidentiary burden in a transaction that in practice depends on interaction between both parties, there is a risk that compliance settings become both inefficient and unfair in

⁶³ Ibid, pp 5, 18 and 20.



operation.

This does not argue for weaker substantive protections. It supports a compliance framework that is more workable and better aligned with practical responsibility. The Code should reduce unnecessary process burden, clarify what must genuinely be done to comply, and avoid settings that require traders to carry disproportionate administrative overhead without corresponding practical value to growers or the integrity of the transaction.

Conclusion

For those reasons, FMA considers that the review should address audit, implementation and compliance overhead directly as part of regulatory burden reform. The objective should be to maintain effective compliance oversight while supporting a framework that is clearer, faster to implement, less duplicative and more proportionate in operation. That should include simplifying Code and HPA architecture, reducing unnecessary prescription, improving the usability of obligations in practice, and adopting a more calibrated compliance approach where the issue is technical, isolated or administrative rather than serious, deliberate or systemic.

5.2.3 Trusted reporting pathways, confidential feedback and confidence in the Code

FMA position

FMA supports practical measures that give growers and traders confidence to raise concerns and seek help under the Code without improper pressure or disadvantage. FMA is open in principle to targeted protections and a confidential pathway, but any reform in this area should address real confidence and usability gaps and should be evidence based, independent, proportionate and workable in practice, particularly in central wholesale markets.

The consultation paper raises a legitimate issue, but it should be approached carefully. The current Code requires growers and traders to deal with each other lawfully and in good faith, but it does not include specific protections against retribution. It also notes that concerns about fear of retribution have mainly arisen in relation to major supermarkets and suppliers, including through aggregators, while acknowledging that it is unclear whether fear of retribution is preventing growers from speaking out in central markets. The available material therefore does not support a single, undifferentiated response across all horticulture channels.

That distinction is also supported by the structure of horticulture trading itself. IBISWorld⁶⁴ states that buyer power in fruit and vegetable wholesaling is moderate and increasing, particularly for major supermarkets, while supplier power is high and steady because wholesalers depend on timely and consistent grower supply in a perishable environment. It also notes that crop variability, limited availability and reliance on suppliers who meet required standards can strengthen supplier leverage. This

⁶⁴ IBISWorld, *Fruit and Vegetable Wholesaling in Australia*, September 2025, p 19,



points to a more complex bargaining setting than a simple one-way power narrative and reinforces the need to assess reform relating to fear of retribution by reference to the particular trading context.

5.2.3.1 Good faith and confidence in practice

The existing good faith obligation remains an important baseline and should continue. However, good faith on its own may not always give parties enough confidence to raise concerns early, particularly where there is uncertainty about where to go, how quickly a matter can be addressed, whether confidentiality can be maintained, and whether raising an issue will push the parties into a formal dispute process. In that respect, practical operation matters as much as the existence of the obligation itself.

That does not mean growers lack any avenue to raise concerns. All HPAs have an internal mechanism for resolution of disputes before moving to a next step. FMA also operates a National Dispute Resolutions Service, including a confidential National Grower Hotline, and unresolved matters can proceed to the formal Code pathway.⁶⁵ That existing pathway is relevant context when considering whether any additional mechanism is needed and how it should be designed.

5.2.3.2 Confidential mechanisms

FMA is open in principle to a confidential feedback mechanism i.e. a survey of traders and growers but does not support assessing that idea in the abstract. Any such mechanism should be assessed by reference to the problem it is intended to address, the structure that would sit behind it, and how it would operate in practice.

A threshold design question is whether the review is, in substance, moving toward a horticulture equivalent of the Food and Grocery Code's Code Mediator and Code Supervisor structure, rather than simply proposing a standalone anonymous survey. If a mechanism of that kind is being contemplated, the review would need to determine who appoints the relevant person or body, who funds it, how independence is protected in practice, what functions it performs, whether it simply explains the Code and available pathways or can also receive confidential complaints and identify broader issues, and what obligations, if any, would fall on parties to cooperate.

These design questions also go directly to proportionality and to the consultation paper's concern about fear of retribution. KordaMentha's analysis shows that traders are already operating in a high volume, low margin environment and that the Code imposes material administrative and financial burdens, with smaller traders least able to absorb additional cost.⁶⁶ That is relevant contextual evidence when considering whether any new confidential mechanism or annual survey would be proportionate in operation. It is also relevant to whether any new pathway would give parties meaningful confidence to raise concerns, including concerns about fear of retribution, without simply adding another layer of process or cost.

⁶⁵ Fresh Markets Australia, *National Dispute Resolutions Service*, <https://www.freshmarkets.com.au/national-grower-hotline/>.

⁶⁶ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report pp 16 to 24.



5.2.3.3 Food and Grocery Code comparison

FMA accepts that the Food and Grocery Code is a relevant comparator, but not a model to be adopted wholesale for the Horticulture Code. It shows that government has been prepared to support structures aimed at confidential issue raising, relationship monitoring and broader intelligence gathering. The consultation paper's express reference to that framework therefore makes the comparison unavoidable.

However, central market trade is not the same as the more concentrated retailer supplier setting that underpins much of the Food and Grocery Code architecture. FMA survey data, from a survey developed by KordaMentha in conjunction with FMA, shows that, among the 53% of FMA members who responded, traders reported 9,114 grower relationships each year and 862 new grower relationships each year. In the central market context, those figures are indicative of the scale of HPA based grower trader relationships and the annual turnover in those relationships, rather than a stable one to one model. On an indicative basis, this equates to about 22,785 grower trader relationships and about 2,155 new grower trader relationships each year across central market trading floor traders.⁶⁷ That supports caution against assuming that a mechanism designed for the Food and Grocery Code can simply be carried across unchanged.

A more tailored approach is therefore likely to be required. The relevant task is to identify what form of confidential or informal support is proportionate and workable, particularly in central markets, and whether it would respond in a meaningful way to concerns about fear of retribution. That includes considering whether the role is limited to explaining the Code and available pathways, or whether it also receives confidential concerns, supports early triage, identifies broader themes and links parties into existing dispute resolution options.

5.2.3.4 Practical reform position

FMA supports targeted reform to improve confidence to raise concerns under the Code, including carefully framed protection against improper retaliatory conduct and, if justified, an independent confidential pathway. FMA is open in principle to targeted protections against clearly improper retaliatory conduct if carefully drafted but does not support broad or subjective provisions that create uncertainty around ordinary commercial decision making. The focus should be on conduct that is genuinely linked to a party raising a Code concern, seeking assistance, or participating in a Code process, rather than decisions taken for legitimate commercial, credit, quality or contractual reasons.

FMA is also open in principle to a confidential feedback mechanism, which may include an annual survey, but only if it is independently administered, genuinely confidential, funded through government, low burden and designed to generate useful evidence from both growers and traders. Any such mechanism should have a clear purpose, credible governance and practical

⁶⁷ FMA survey data, collected through a survey developed by KordaMentha in conjunction with FMA, sample covering 53% of FMA members and 40% of all traders on central market trading floors; total reported grower relationships per year = 9,114; total reported new grower relationships per year = 862; approximately 320 produce wholesalers in Australia's central wholesale markets. Indicative scaling only: $9,114 \div 0.40 = 22,785$; $862 \div 0.40 = 2,155$.



value, including by giving parties greater confidence that concerns can be raised and heard appropriately.

Any reform in this area should therefore focus on practical outcomes: improving confidence to raise concerns, supporting early guidance and confidential issue raising where appropriate, and making the framework more workable in a perishable, fast moving trading environment. Reform should distinguish between trading contexts, remain proportionate to the available evidence, and avoid adopting a Food and Grocery Code model without careful adaptation. Above all, it should respond directly to the concern identified in the consultation paper i.e. whether growers and traders can raise concerns about Code-related conduct, including concerns about fear of retribution, with sufficient confidence that those concerns will be heard and handled appropriately.

5.2.4 Enforcement, education and mediation

FMA position

FMA supports a balanced compliance framework under the Code. Enforcement should remain available and credible for serious, deliberate or systemic non-compliance, but penalty settings should be better calibrated where they attach to administrative missteps, particularly where there is no clear corresponding grower responsibility or no clear harm pathway. Education, guidance and workable mediation pathways should do more of the day-to-day work of supporting compliance and resolving issues early in a perishable, fast moving trading environment.

5.2.4.1 Enforcement approach

The consultation paper is right to treat enforcement, education and mediation together. Since the Horticulture Code was remade in 2017, the ACCC has received 105 enquiries, undertaken 33 compliance checks, and since 2019 has obtained 7 enforcement outcomes, including 15 infringement notices and 2 court enforceable undertakings. Those outcomes have included alleged breaches such as trading without a HPA, not publishing Terms of Trade and failure to include sales price on grower statements. The current enforcement history therefore supports credible enforcement but also shows that the Code's penalty architecture can apply across a spectrum of conduct and should not treat isolated or limited breaches in the same way as serious, repeated or systemic non-compliance.

FMA supports credible enforcement for serious, deliberate or systemic misconduct. However, penalty settings should be reviewed where they attach to administrative missteps, particularly where the breach is technical or procedural in character, not systemic in nature, or arises within a framework that does not reflect shared responsibility across both parties. This is especially important where penalties fall predominantly on traders even though parts of the compliance framework depend on interaction and cooperation between growers and traders. Penalty settings should reflect the nature and seriousness of the conduct and should not apply uniformly across fundamentally different types of breach.



KordaMentha's⁶⁸ analysis also shows why proportionality matters in practice. It states that ACCC audits impose direct and indirect costs on traders, with external support averaging \$45,772 and audits typically lasting five months, with some exceeding 18 months. The case study records one audit that ran for 20 months and generated substantial direct and opportunity costs. That does not argue against enforcement. It does support a more calibrated approach to penalty settings, particularly where the issue is isolated, administrative or technical rather than serious, deliberate or systemic misconduct.

5.2.4.2 Education and guidance

Education and guidance are not peripheral to compliance under the Code. In practice, they already do a substantial share of the work of improving understanding, supporting day-to-day compliance and resolving issues before they escalate.

FMA, through and with its state industry body members, (State Chambers)⁶⁹ already provides substantial education, guidance and support to central market trading floor members on Code compliance. FMA's survey of its 5 state industry body members recorded 44 formal Hort Code training sessions over the past 5 years, 158 one on one support sessions and 219 member enquiries. Chambers were also asked to estimate annual effort on ongoing Code compliance support outside formal training, and 4 of the 5 chambers reported more than 100 hours. That support extended beyond training delivery to one-on-one assistance by phone, email and meetings, informal guidance on HPAs and Code interpretation, follow up after training or Code updates, participation in HPA or Code working groups, helping members resolve issues before they escalate, and engagement with ombudsman, regulators or advisers. Viewed nationally, this shows that Code compliance is already being supported through an established FMA network of education, guidance and early intervention across central market trading floor members.

This issue is also important from a grower literacy perspective. KordaMentha's analysis indicates that traders do not regard grower understanding of the Code as consistently strong. When asked *"on average, how would you rate your growers' understanding of the Horticulture Code of Conduct in relation to their trading arrangements"*, only 23 per cent of respondents rated that understanding as good or very good, while 44 per cent rated it as low or very low⁷⁰. That is a significant practical gap. It reinforces that a credible reform response cannot rely on legal drafting changes alone, or on the assumption that traders will educate growers about the Code in the course of trading relationships. A more structured, grower facing and trader facing Code literacy pathway is needed.

This existing work is important in its own right, and the scale of it should be recognised in the design of future reform. On the survey evidence from FMA's State Chambers alone, the recorded level of ongoing Code support outside formal training exceeds

⁶⁸ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, reproduced at Appendix A to this submission, report pp 16 to 24.

⁶⁹ FMA survey of FMA's state industry body members (state Chambers), being Brismark, Fresh State, Freshmark, Market West and SA Chamber, on chamber delivered Horticulture Code training and support, all 5 chambers responding.

⁷⁰ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, prepared for Fresh Markets Australia, March 2026, p 27, Appendix A to this submission



2,000 hours over five years. On a conservative replacement-cost basis, 2,000 hours of support equates to more than \$250,000 in in kind industry effort already being carried by FMA and the State Chambers without external or government funding. That is before accounting for formal training sessions, one to one support, member enquiries, follow up work, guidance materials and related issue resolution support.⁷¹ That level of existing industry effort should be recognised in future reform design. It also supports more structured education and guidance pathways as part of a workable compliance framework.

Future reform should build on practical work already done by industry, rather than starting from scratch. FMA has already developed reform and literacy tools, including the framework in Appendix B, the trading model comparison material in Appendix C, the grower and trader guides (decision trees) in Appendix D, and practical training materials already used in trader education and in sessions with grower bodies and DAFF. These resources provide a practical foundation for a broader national Code literacy initiative. Innovation in this context should focus on lower-friction delivery and better reach, including more accessible digital formats, model-specific pathways, worked examples, decision tools, practical reference resources, webinar content and short-form video explainers that improve understanding without adding unnecessary process burden. This should also include attention to language, literacy and cultural accessibility, including for growers and traders with English as an additional language and across the diversity of cultural and business backgrounds represented in the horticulture supply chain. That national literacy approach should be developed and implemented with the involvement of the key system participants, including DAFF, the ACCC, the ASBFEO, peak grower bodies and FMA, so that the resulting materials are trusted, practical, consistent and better able to reach growers and traders across the supply chain. Appendix F reproduces FMA's pre-Budget submission, which includes related proposals concerning a National Horticulture Code Education and Awareness Program, FreshData and FreshSpecs. Although developed separately, those proposals remain relevant to this review because they are directed to improving understanding, capability, transparency and confidence in how the Code operates in practice.

5.2.4.3 Mediation and early resolution

The consultation paper records that, since 2019, the ASBFEO has received 14 requests for assistance under the Horticulture Code, with 5 matters referred to mediation, 3 resolved at mediation and 3 resolved informally. That indicates mediation remains an important part of the framework, but also that relatively few matters proceed into formal mediation. The relevant question at this stage is whether the formal mediation pathway is sufficiently accessible, timely and workable once a matter has reached it in a perishable, fast moving trading environment.

FMA's policy material points to a practical mismatch between the current mediation settings and the realities of central market trade. The current three-week period before mediation can be out of step with a perishable goods environment, where

⁷¹ FMA survey of FMA's state industry body members (state Chambers), Code education, guidance and support activities, based on responses from 5 state industry body members showing 44 formal training sessions, 158 one on one support sessions, 219 member enquiries, and more than 100 hours a year of ongoing compliance support reported by 4 of the 5 chambers.



produce moves quickly and parties often need early clarification, issue triage or confidential assistance before positions harden. FMA has responded to that need in part by preparing practical dispute-resolution guidance,⁷² to support practical understanding of the existing dispute pathway. That guidance is intended to help parties understand the current framework. It does not remove the need to consider whether the mediation pathway itself is sufficiently workable in practice. This supports consideration of earlier triage, faster access to informal assistance, and a mediation pathway that can respond more effectively to the pace and commercial realities of perishable trade.

Rather than relying too heavily on enforcement alone, FMA considers that the more effective approach is a balanced framework in which enforcement, education and mediation operate together, but each performs a distinct role. Enforcement should remain available and credible for serious, deliberate or systemic non-compliance. At the same time, many day-to-day Code issues are more likely to be addressed effectively through clearer guidance, practical education, early support and a mediation pathway that is workable for the commercial realities of perishable trade where formal dispute resolution becomes necessary.⁷³

5.3. Key issue 3: Scope of the Horticulture Code of Conduct

FMA position

FMA supports a practical, proportionate and trusted first-sale framework under which all first commercial sales by growers are covered by either the Horticulture Code or the Food and Grocery Code. Reform should improve clarity, usability and Code literacy while addressing coverage gaps through evidence based whole of supply chain policy.

5.3.1 Why reform is needed

The review's own scope discussion highlights an important structural issue in the modern horticulture supply chain. The current Code framework is centred on dealings between growers and traders. The reviewer notes, however, that horticultural supply chains have evolved and that some first-sale pathways may now sit beyond that framework, including because growers are increasingly trading with processors and exporters outside the Code, value-add processing and export growth are reshaping trading patterns, and meal kits have become an increasingly important business model. The review therefore raises whether current Code boundaries remain effective in that environment. That is a significant starting point. It recognises that first-sale pathways have diversified and that current coverage settings may no longer align neatly with how horticultural produce is marketed in practice.

FMA submits that the issue should be approached as a matter of competition and regulatory design rather than sectoral preference. Growers may now sell produce through multiple first-sale channels, while regulatory coverage remains uneven.

⁷² Fresh Markets Australia, *Horticulture Code in Practice: Dispute Resolution*, relevant pages, Appendix E to this submission.

⁷³ Fresh Markets Australia, *A Practical Vision for Horticulture Code of Conduct Reform*, relevant pages, Appendix B to this submission.



Some first-sale transactions fall within the Horticulture Code. Buyer categories outside the traditional trader model do not all present the same bargaining power dynamics, and uncovered channels do not all need to be treated identically. Some first-sale transactions fall within the Horticulture Code. Some fall within the Food and Grocery Code, but only where the buyer is a major grocery business covered by that regime. Other first-sale transactions may sit outside both codes altogether.

That uneven coverage is increasingly difficult to justify given the diversity of modern routes to market. Independent industry material supports the proposition that horticulture moves through a range of channels, including fresh domestic distribution, export and processing.⁷⁴ Hort Innovation's statistics framework combines production, international trade, processing volumes and fresh market distribution, and its more recent reporting also incorporates retail market value and food service market value in profiling horticultural supply chains.⁷⁵ This is consistent with first-sale transactions feeding multiple downstream pathways, rather than a single traditional route.

Importantly, this does not mean that all covered buyer categories must be subject to identical obligations. FMA submits that coherent first-sale coverage should be paired with requirements calibrated to the relevant trading model, commercial function and regulatory risk. The question is whether first-sale transactions should fall outside both codes because of buyer classification gaps, even though the transaction is still a first commercial sale by the grower.

5.3.2 Changed commercial conditions

The reviewer's discussion of processing is particularly important. On the reviewer's account, processing is an important avenue for growers both to address quality variation and to add value, while high capital costs may create barriers to entry and, when combined with perishability and distance constraints, may allow established processors to exert considerable market power in dealings with growers. Whether or not that proposition is uniform across all processing categories, it supports reconsideration of Code boundaries considering changed commercial conditions.

The same is true of export and newer commercial models. The reviewer identifies export as an increasingly important priority for some growers and points to the growth of higher-value export markets. Independent industry material also identifies prepared meal manufacturing, including meal-kit related activity, as an established commercial category, while general line grocery wholesalers supply supermarkets, convenience stores and food-service establishments and include fruit and vegetables within their product mix.^{76 77} These channels matter because they show that produce may now move at first sale to a broader range of commercial buyers than the current Code framework contemplated.

⁷⁴ Hort Innovation, *Australian Horticulture Statistics Handbook 2024/25: Introduction* (2025) 3.

⁷⁵ Hort Innovation, *Final Report: Australian Horticultural Statistics Handbook* (Project MT21006, 2025).

⁷⁶ IBISWorld, *Prepared Meal Manufacturing in Australia* (Industry Report OD5478, May 2025).

⁷⁷ IBISWorld, *General Line Grocery Wholesaling in Australia* (Industry Report F3601, May 2025.)



5.3.3 Practical usability and education

A further reason to address this issue is practical usability and education. In a supply chain where growers may sell produce through trader, processor, export, food service, retail and other channels, uneven code coverage makes it harder for growers to identify at the outset of a transaction what framework applies and what documentation is required. Under the Horticulture Code, a HPA is central to regulated dealings between growers and traders. Suppliers to major grocery businesses are automatically covered by the Food and Grocery Code, which establishes a framework for grocery supply agreements. In a diversified first-sale environment, a clearer coverage model would make it easier to explain to growers which stream applies to their transaction and what first-sale agreement requirements follow from that classification.

The policy issue, therefore, is one of regulatory coherence. Where growers have multiple genuine pathways to market, first-sale protections should not depend on arbitrary gaps created by buyer classification. If some channels are regulated and others are not, regulatory architecture may affect commercial incentives, channel choice and bargaining dynamics. It may also create incentives for transactions to be structured through uncovered categories as business models evolve.

5.3.4 A coherent first-sale coverage model

Accordingly, FMA considers that all first commercial sales of fresh horticultural produce by a grower should be covered by either the Horticulture Code of Conduct or the Food and Grocery Code. This does not require identical treatment of all buyers, nor does it require either code to regulate downstream conduct generally. It requires a more coherent first-sale framework. The Food and Grocery Code should continue to apply where that regime already covers the relevant grocery buyer. The Horticulture Code should operate as the residual first-sale protection framework for other commercial buyers acquiring fresh horticultural produce directly from growers, including where the produce is purchased for resale, export, processing, manufacture, meal preparation, food-service supply or retail sale, subject to any principled exclusions the review considers appropriate.

That approach would better align regulation with contemporary trading patterns, reduce the risk of coverage gaps influencing channel choice, and make the framework simpler to communicate and use in practice.

6. Consolidated reform requests

FMA's overall position is that the Code should continue, but should be reformed through targeted, practical and proportionate changes that improve clarity, usability and workability in practice. The analysis above supports a reform package directed to four practical objectives:

- preserving workable trading models,
- simplifying HPA and agreement architecture,
- reducing unnecessary compliance burden, and
- building capability, confidence and system coherence.



The grouped reform requests below set out FMA's principal reform priorities, their practical effect and the related Appendix G reference where indicative drafting options are provided. Where a reform request has a drafting dimension, the related Appendix G reference identifies an indicative drafting direction. Other reform requests are policy or implementation measures and do not require indicative drafting text.

Reform request	In practice	Reference
A. Preserve workable trading models		
1. Retain the Code as a baseline framework	This would keep the Code as the core framework for dealings between growers and traders, while focusing reform on targeted refinement rather than added regulatory density.	
2. Retain merchant formula/method pricing	This would retain merchant formula/method pricing as a legitimate trading model, while addressing transparency concerns through fit for purpose reporting, practical verification pathways and clearer trading model-specific protections, rather than prohibition or the importation of agency obligations into merchant trading.	
3. Adopt a model-specific reporting framework	This would align reporting with the trading model. <ul style="list-style-type: none"> No separate prescribed grower statement would be required for merchant agreed price For merchant formula/method pricing, growers would receive clear calculation-based information, while the remaining content, form and method of reporting could be agreed between the parties. Agency reporting would remain broader. 	Item G1
4. Provide a limited verification pathway in merchant formula/method pricing	This would give growers, on request, reasonable access to relevant sales records for the purpose of verifying sales prices under merchant formula/method pricing, excluding information that identifies the buyer.	Item G2
5. Apply a targeted integrity protection under merchant formula/method pricing	This would require the agreed method/formula to be applied by reference to genuine sale outcomes. If government prefers an arm's length formulation, it should be confined to the application of the merchant formula/method model and should not import broader agency duties into merchant trading.	Item G3

Reform request	In practice	Reference
B. Simplify HPA and agreement architecture		
6. Simplify HPA architecture by reworking the requirements by function	This would move more baseline protections, Code rules and default settings into the Code, so the HPA can focus on the transaction and relationship-specific matters the parties actually need to settle. It would also allocate matters more clearly between Code rules, Code defaults, HPA-defined terms and non-mandatory content.	Item G5
7. Recognise acceptance of the HPA through conduct	This would allow a HPA and any amendment thereto to take effect through conduct where the trader has provided it before trade through a reliable communication pathway and the grower then supplies produce under that trading relationship, subject to appropriate safeguards.	Item G4
8. Provide transitional arrangements for existing HPAs	Existing HPAs in force at commencement may continue without immediate replacement, with the revised HPA framework applying prospectively to new or replacement HPAs entered into after commencement.	Item G8
9. Remove the mandatory Terms of Trade requirement	Clauses 10 and 11 would no longer require Terms of Trade as a mandatory compliance document, while optional supplementary terms that are not inconsistent with the Code could still be used.	Item G6
10. Define Delivery more clearly in the Code	This would explain Delivery in plainer language, so the Code more clearly distinguishes delivery, control, rejection triggers, agreed services and the passing of ownership in merchant transactions.	Item G7
C. Reduce unnecessary compliance burden		
11. Reduce regulatory burden where requirements are overly prescriptive or duplicative	This would remove, simplify or make more flexible requirements that add compliance effort without improving practical protection, while retaining clear and workable protections that support trade between growers and traders.	
12. Adopt a more proportionate compliance architecture	This would support a more calibrated compliance approach, including in audit activity, implementation expectations and compliance response, especially where issues are technical, isolated or administrative rather than serious, deliberate or systemic.	



Reform request	In practice	Reference
<p>13. Allow a limited defence in no-harm cases justified by trading circumstances</p>	<p>This would provide a limited defence in specific cases where contemporaneous evidence shows that a party acted in good faith, the position taken was justified by the trading circumstances at the time, the other party accepted that position at the time or later confirms that acceptance, and no material harm occurred. Any acceptance or confirmation would be confined to the specific dealing and circumstances and would not otherwise be used against either party in the event of prosecution for any breach of the Code.</p>	
<p>D. Build capability, confidence and system coherence</p>		
<p>14. Support improvements to mediation and dispute resolution pathways</p>	<p>This would support, in principle, earlier, more accessible and workable dispute resolution in a perishable trading environment, including more practical mediation settings and better usability for growers and traders. In a perishable goods context, potential disputes need to be raised by growers with the trader in a timely way so they can be properly examined while the relevant facts remain available, particularly where the issue concerns quality and the deterioration of produce after sale by the trader.</p>	
<p>15. Support practical confidence-building measures where supported by the evidence</p>	<p>This would allow carefully structured confidence-building measures, such as an independently administered survey or similar mechanism, and targeted protection against clearly improper retaliatory conduct, where they are evidence-based, proportionate and workable and improve confidence to raise concerns under the Code.</p>	
<p>16. Strengthen education, guidance and practical implementation support</p>	<p>This would support day-to-day compliance through stronger education, guidance and practical implementation support across the supply chain, while allowing enforcement to deal with serious, deliberate or systemic misconduct.</p>	
<p>17. Create a coherent first-sale framework across the Horticulture Code and Food and Grocery Code</p>	<p>This would bring all first commercial sales by growers under either the Horticulture Code or the Food and Grocery Code, with obligations calibrated to the relevant trading model and commercial context rather than treated identically across all buyers.</p>	
<p>18. Amend scope and definitions to support</p>	<p>This would amend the Code's scope and definitions to support a coherent first-sale framework and contemporary routes to market. It would review current coverage settings, including references to unprocessed</p>	<p>Item G9</p>



Reform request	In practice	Reference
coherent first-sale coverage	horticultural produce, retailers and exporters, so that first commercial sales are not left outside the Code through outdated categories or avoidable drafting gaps. The aim is clearer, more workable coverage across modern first-sale channels, while still allowing obligations to be calibrated to the relevant trading model and commercial context.	

Where a reform request has a drafting dimension, the related Appendix G reference identifies an indicative drafting direction. Other reform requests are policy or implementation measures and do not require indicative drafting text.



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AUSTRALIA

Appendix A

KordaMentha,

Horticulture Code of Conduct

Economic Analysis, Prepared for

Fresh Markets Australia,

March 2026

March 2026

Horticulture Code of Conduct – Economic analysis

Fresh Markets Australia

KordaMentha
Advisory



Issues considered

The issues considered during this review have been specifically limited to the matters set out in the Letter of Engagement dated 11 November 2025.

Sources of information

The information set forth in this review has been obtained from the records provided by management of Fresh Markets Australia and discussions with the directors and management of Fresh Markets Australia, their advisers and lenders. In many instances, we have relied on the representations of these parties and individuals.

The statements and opinions contained in this report are given in good faith. However, in the preparation of this report, we have relied upon the accuracy and completeness of information provided by the above parties.

Scope and limitations

This report has been prepared by KordaMentha with care and diligence, however, KordaMentha does not make any representation or warranty, expressed or implied, as to the accuracy or completeness in this report and any liability therefore (including in respect of direct, indirect or consequential loss or damage) is expressly disclaimed.

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No person shall be treated as a client of KordaMentha or be entitled to the protections afforded to clients of KordaMentha, solely by virtue of having received this report.

KordaMentha acts as an independent contractor and nothing in this report or the nature of any services shall be deemed to create a fiduciary, agency or other relationship between KordaMentha and any recipient, or its security holders, employees or creditors, nor shall any of the foregoing persons rely on this report. This report is neither an expressed nor an implied commitment by KordaMentha to act in any capacity for the Recipient. Any commitment to act for the Recipient shall only be set forth in a separate agreement.

We have no responsibility to update this report for events or circumstances occurring after the date of this report, apart from any subsequent arrangement.

Any information, projections or statements provided in this report are solely the responsibility of the parties providing the information, projections or statements and we have not independently verified such information, projections or statements. Accordingly, we accept no responsibility for the accuracy of the information contained in this report.

Unless otherwise stated, all figures included in this report are expressed in Australian dollars and have not been adjusted for the time value of money.

The decision to implement any or all of the recommendations that arise from this Engagement, or to take or refrain from taking any actions pursuant to the conclusions in this report, is entirely at the discretion of Fresh Markets Australia.

Yours sincerely,

Tom Considine
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Partner
Tom.Considine@kordamentha.com

Background

The Horticulture Code of Conduct (the Code) is being independently reviewed to assess how the needs of the fruit and vegetable industry have evolved over the last decade, and whether the Code should be repealed, continue in its current form, or continue with improvements.

Fresh Markets Australia (FMA) is developing a submission to the review, providing a view of how the Code could be improved from the perspective of traders (defined across).

Separately, FMA has engaged KordaMentha to develop this Economic Analysis to:

- Assess the impact of Supermarket Inquiry Recommendation 16 regarding method / formula pricing
- Estimate the regulatory burden of the existing Horticulture Code of Conduct on traders (drawing on a survey issued to FMA members – i.e. traders operating on the central market trading floor).

This report is aimed at supporting the submission that FMA is developing. While the insights and conclusions reached in this report are useful for understanding the current regulatory environment, this report is not a submission to the independent review of the Code.

Structure of this report

This report is structured as follows:

- Executive summary – p4
- Current state assessment – p7
- Economic analysis – p15
- Summary – p23
- Appendix A: Survey summary – p25.

What is a trader?

The Horticulture Code of Conduct defines a trader as an agent or a merchant, where:

- **merchant** means a person who purchases horticulture produce from a grower for the purpose of resale of that horticulture produce, but does not include:
 - (a) a person who purchases the produce for export by that person; or
 - (b) a person who purchases the produce for retail sale by that person.
- **agent** means a person who sells horticulture produce on behalf of a grower to a person for a commission or fee.

Executive summary

Executive summary

The Horticulture Code of Conduct imposes costs on traders that are more acute for smaller businesses

Traders play a critical role in horticulture trading and cannot absorb additional costs

There are approximately 321 traders in Australia’s fresh produce markets. These traders facilitate trade of horticulture produce between growers and buyers by enabling the trade, storage and distribution of fresh produce. Traders play an integral and complex role through a high-volume, low-margin operating model – traders cannot absorb additional costs.

The Horticulture Code of Conduct already imposes costs on traders that are more acute for smaller businesses

The Horticulture Code of Conduct was introduced to ensure the transparency and clarity of transactions between traders and growers, and provide a dispute resolution framework. The Code imposes a compliance burden on traders through HPAs, reporting and audits. These costs are proportionately higher for smaller traders.

Key regulatory costs of the Horticulture Code of Conduct

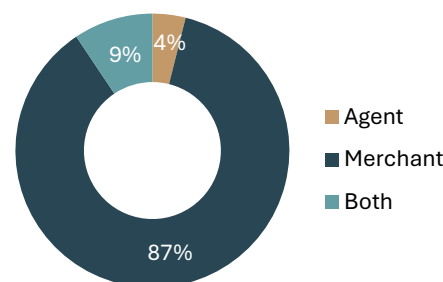
Preparing HPAs	Reporting	Auditing
HPA-dedicated staff cost traders an average of \$61,000 in staff and oncosts each year	Compliant data recording costs traders an average of \$38,500 each year in administrative effort	Traders rely on external support such as legal advisors that cost from \$3,500 to as much as \$250,000
HPA-dedicated staff costs small traders an average 14.5% of NPAT compared to 1.5% for large traders	Compliant reporting in POS systems cost an average of \$9,000 to establish and \$4,000 each year to maintain – these are direct financial costs	A recent audit took over 20 months and cost this trader almost \$250,000 (including \$150,000 in foregone business development)

Flexible price determination is critical for traders that operate with seasonal and highly fluctuating produce

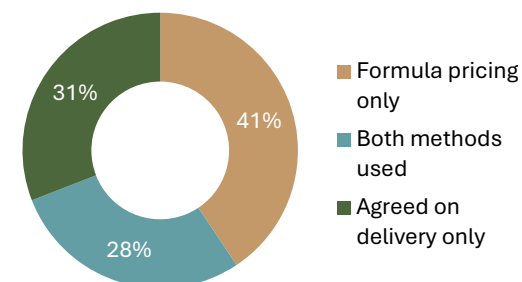
The most recent review of the Code in 2017 specifically considered the pricing approaches available to merchants and concluded that method / formula pricing is permitted.

Method / formula pricing is critical for merchants. As shown in the figures below, nearly all traders act as merchants and the majority use method / formula pricing.

Trading model



Pricing approach for merchants



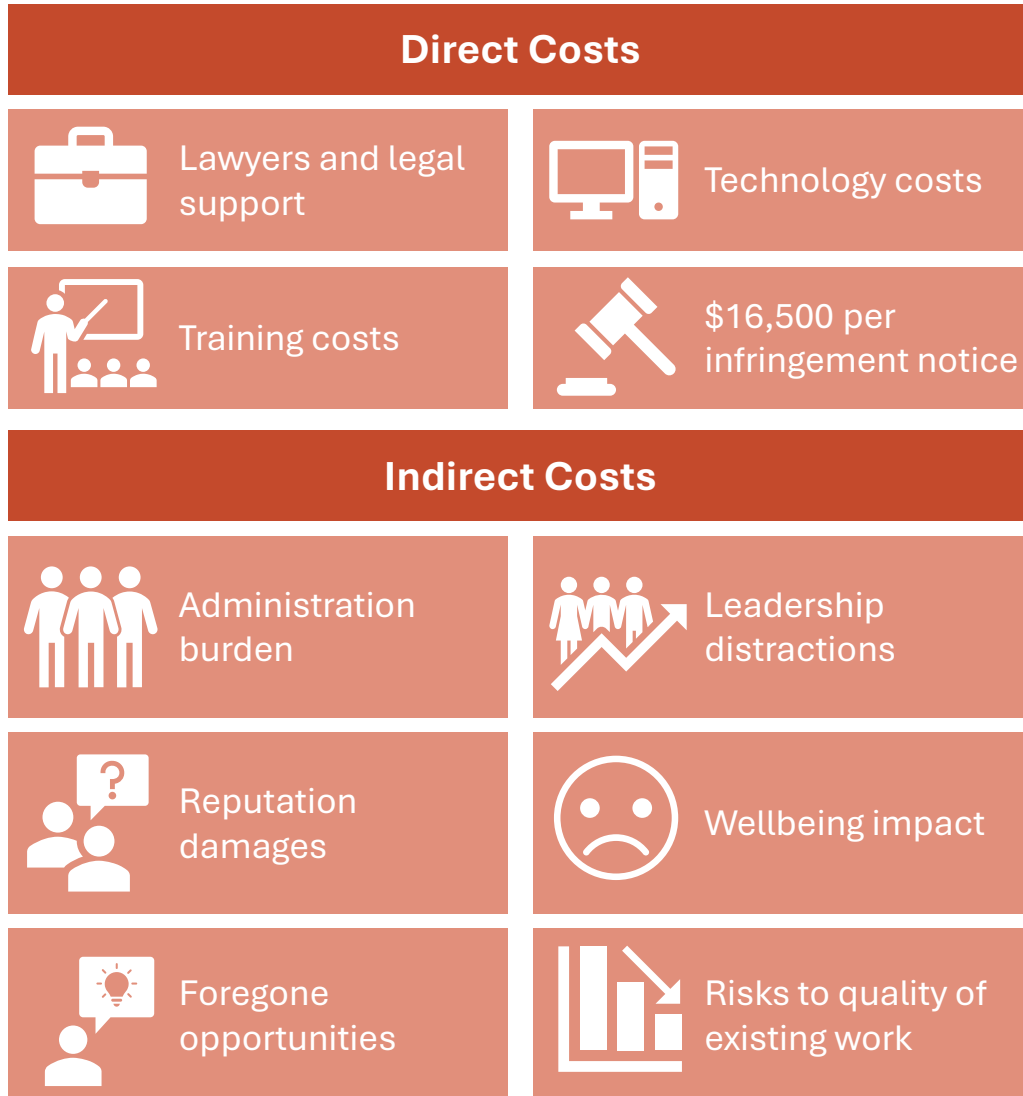
Source: FMA Members Survey, February 2026

These businesses rely on its flexibility – 87 per cent of traders claim that agreed pricing or trading as an agent would be unworkable if formula pricing was prohibited. Eliminating method / formula pricing would:

- impose additional costs and administrative burden on traders
- create a cashflow drag for growers, as GST becomes payable on commission under agency arrangements
- defer grower payments until sale proceeds are received by the trader (e.g. where sales are realised over an 8-week period).

Executive summary

ACCC audits impose direct and indirect costs on traders



Source: FMA Members Survey, February 2026. FMA Case Study Interview, February 2026



Current state assessment

KordaMentha

Fruit and vegetable wholesale a big part of the economy



\$12.6b in annual revenue



\$415.7m in annual profit



1,474 businesses nationally



14,414 people employed



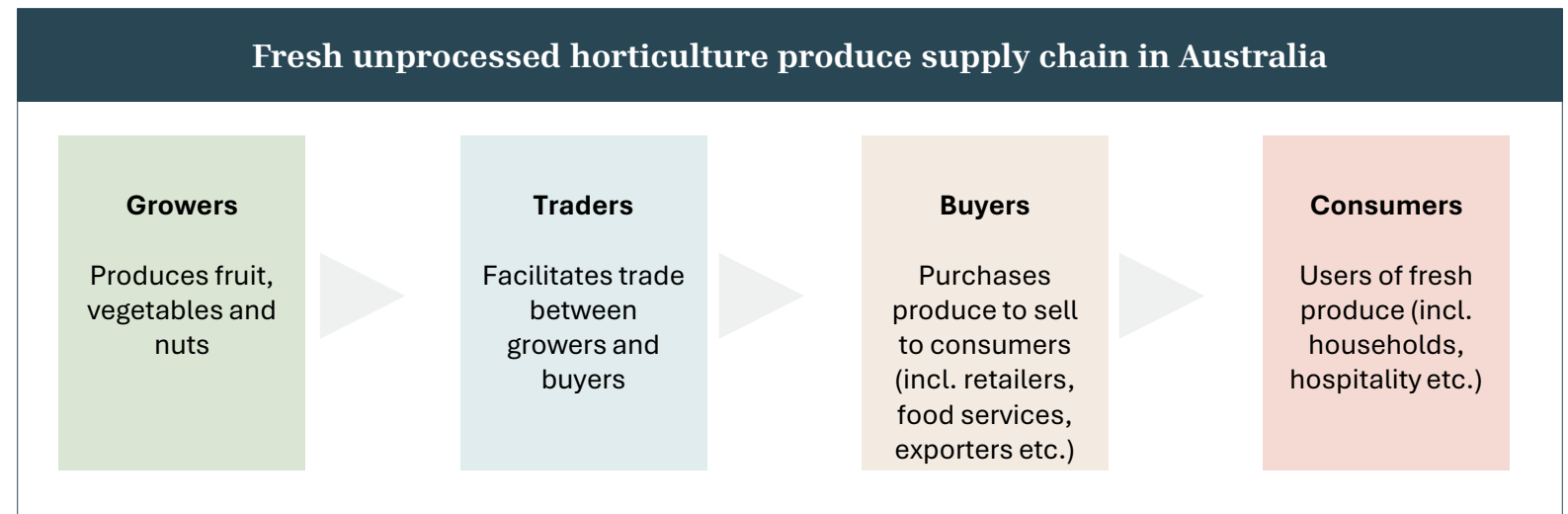
\$627.5m in annual wages

Traders play a critical role in the supply chain

There are approximately 321 produce wholesalers in Australia's central wholesale markets. These traders facilitate trade of horticulture produce between growers and buyers by enabling the transport, trade, storage and distribution of fresh produce. They allow growers to focus on core business of fruit and vegetable farming and processing by:

- Navigating a complex freight and logistics system on behalf of growers
- Managing relationships with a range of buyers to ensure they can clear as much product as possible at competitive prices
- Constantly interpreting and sharing price signals from markets across Australia on a variety of produce that are often seasonal and have variable pricing
- Storing and handling perishable goods that require specific conditions to maintain their properties and value
- Assessing and validating the quality of produce, often navigating asymmetric information with the grower

Traders fulfil an integral and complex role while running a high-volume, low-margin operating model – there is no room for traders to absorb additional costs.



Traders deliver key economic benefits that create downward pressure on grocery prices and promote the stable supply of perishable foods nationally

Benefits align with economic / competition theory

Information aggregation and price discovery

Traders are constantly collecting and interpreting price signals across the market, often on produce with seasonal and highly variable pricing.

Prices set by wholesalers often reflect aggregated market conditions, which promotes price discovery and equity for growers.

Reduce transaction costs and promote competition

Compared to major supermarkets, independent retailers such as smaller grocery stores and greengrocers:

- don't have their own distribution centres that can handle the transport, storage and distribution of produce
- lack the purchasing power to directly work with growers.

Traders help these smaller businesses access retailers without incurring excessive search costs, which promotes competition.

Economies of scale and scope

The central markets:

- Centralise transport and distribution services, which reduces fixed operating costs for wholesalers
- Provide shared infrastructure that spreads fixed costs across many transactions

This allows goods to move more cheaply through the supply chain than if every grower handled distribution independently.

Information efficiency and price signals

Growers expect traders to make a certain margin on horticulture produce. The transparent nature of this commercial arrangement encourages growers to seek competitive prices if the margin of one trader is set higher than other traders.

This reduces arbitrage opportunities created by information asymmetry, which ultimately smooths the price profile faced by buyers and end consumers.

Risk bearing and uncertainty reduction

Traders absorb risk and reduce uncertainty across the supply chain by:

- Holding inventories and absorbing price risk
- Managing demand uncertainty on behalf of growers
- Buffering producers and buyers from short-term market fluctuations

This allows producers to focus on production and buyers on sales.

Matching supply and demand

Growers often deal with a single or select few number of traders (e.g. in a one-to-one or one-to-few relationship).

Simultaneously, traders transact with a large quantity of differentiated buyers seeking diverse products at fluctuating prices (e.g. in a one-to-many relationship).

This coordination supports continuous market clearing.

The Code aims to ensure the transparency and clarity of transactions between traders and growers, and provide a dispute resolution framework





The Horticulture Code of Conduct

Horticulture Code of Conduct (the Code) is a mandatory industry code prescribed under the Competition and Consumer Act 2010. Its purpose is twofold:

- To regulate trade with Horticulture Produce Agreements between Growers and Traders to ensure transparency and clarity of transactions; and
- To provide a fair and equitable dispute resolution procedure for disputes under the Code or a horticulture Produce Agreement

The Code applies to Growers and Traders of unprocessed fruit and vegetables – see diagram below.

The key elements of the Code are:

 <p>Obliges both Growers and Traders to deal in good faith.</p>	 <p>Traders must report to Growers. Growers and Traders must keep certain records.</p>
 <p>Traders and Growers must have a Horticulture Produce Agreement (HPA) containing certain information.</p>	 <p>Includes penalties for breaching certain sections of the code.</p>
 <p>Traders must publish their Terms of Trade.</p>	 <p>Provides a process for dispute resolution.</p>
 <p>Merchants must explain how price will be calculated.</p>	



The Code requires traders to have a Horticulture Produce Agreement with each grower

The Code imposes the following requirements on traders to establish and manage HPAs:

1. Before entering into HPA - Publish compliant Terms of Trade

- Will a trader act as a Merchant or and Agent or either, payment terms and insurance for when produce is in the traders control.

2. At time of agreement - Offer a compliant HPA - i.e.:

- Trader completes a compliant HPA and gives to Grower
- The HPA must be signed or accepted by the Grower before trade can commence
- Keep the signed HPA and issue to Grower

3. During the agreement - Adhere to the Terms of the HPA

- Apply the Price determination processes
- Payment terms
- Provide compliant Grower Statements in the agreed timeframe
- Keep all records – including prescribed records

4. If a dispute arises - Follow the steps in the HPA

5. At all times - Act in good faith

- Penalties - Applied by ACCC if a trader breaches their responsibilities

Horticulture Produce Agreements include contractual terms that govern the trade between the trader and grower:



How growers are to deliver fresh produce



Any quantity requirements



Under what circumstances the trader can reject delivery



The FreshSpecs/Other Produce Specifications used for quality



How price (merchant) or commission (agent) will be calculated



When the trader must pay the grower for their produce



Payment must align with the terms in the HPA



A trader must accept delivery unless rejected under the Code for reasons outlined in the HPA



An agent must act in growers' best interests



A trader must take care and skill in handling produce



Requirements of pooling produce



Whether an agent will pursue bad debts for the grower

The Code permits traders to choose whether they act as an agent or a merchant, and how they price

The table below summarises the key differences between agents and merchants, also considering the distinction between method and formula pricing

	Agent	Merchant – Agreed price	Merchant – Method/Formula
1. Good faith	Both grower and trader must act in good faith, including being honest and not acting arbitrarily.		
2. Role	The trader sells on the grower’s behalf, acts in the grower’s best interests.	The trader buys the produce to resell.	
3. Ownership	Does not pass to the agent, it passes to the third-party buyer when sold.	Usually on delivery. If a merchant service is provided, ownership passes when the service is finished. Price agreed later is not a standard Code pathway.	
4. Handling while in control	While the produce is under the trader’s control, the trader must look after it properly until it is sold.	While the produce is under the trader’s control and still the grower’s produce, the trader must exercise reasonable care and skill in handling and storing the grower’s produce.	
5. Proceeds and pricing	The amount paid to the grower is the sale proceeds received by the agent from the buyer, less the commission + GST and other deductions permitted under the HPA and depends on the buyer paying.	The price paid to the grower must be agreed in writing before, or immediately upon, delivery.	The price paid to the grower is calculated using the method/formula set out in the HPA e.g. Sales price less a margin.
6. Payment	The agent must pay the grower within the payment period in the HPA, once the sale proceeds are received.	The merchant must pay the grower within the payment period in the HPA.	
7. Bad debts	Bad debts sit with the grower.	Bad debts sit with the merchant.	
8. Reporting	Reporting period agreed in the HPA		
9. Grower statement information	Delivery date, sale date or dates, produce type and quantity sold, sale price achieved, each deduction (commission, fees, charges), unsold produce and why, any produce destroyed and the cost, and any stock held at period end	What was purchased (produce type, quality, quantity), purchase date or dates, delivery date, and the price paid to the grower.	What was purchased (produce type, quality, quantity), purchase date or dates, delivery date, the price paid to the grower, plus the method or formula outputs, including gross sale price, any produce not sold, and any produce destroyed or to be destroyed and why.

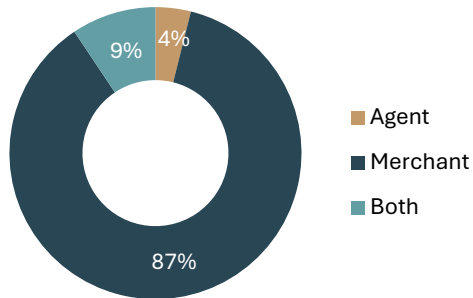
Source: Fresh Markets Australia

The 2017 review of the Code endorsed traders acting as either agents or merchants and codified method / formula pricing for merchants

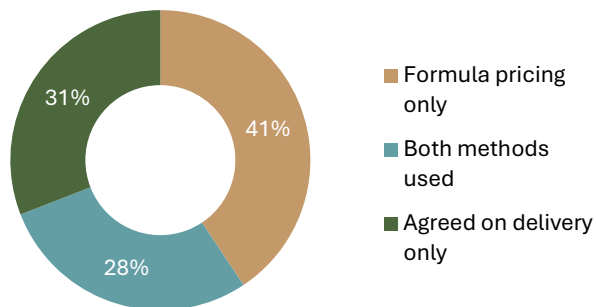
Method / formula pricing was reviewed and codified in the most recent review of the Code

The Horticulture Code was reviewed in 2017. This review specifically considered the pricing methods available to merchants and concluded that both agreed and method / formula pricing are permitted. Today, nearly all traders act as merchants and the majority use method / formula pricing. Flexibility is also key – 28 per cent of merchants use both formula / method and agreed pricing.

Do you operate as a merchant, agent or both?



As a merchant, what pricing approaches do you use?



Agency drives cost and risk

- GST becomes payable on commission, which creates a **cashflow drag** for growers
- **Grower payments are deferred** until sale proceeds are received by the trader
- Buyer payments are often split between merchant and agency transactions. This creates **administrative effort**.
- Agency reflects a common law agency relationship label. Failures in proceeds handling or accounting can lead to more serious allegations / consequences, which drives **audit ready reporting and more executive oversight**.

Agency is used only in limited cases such as legacy grower relationships and licence-driven exclusive product lines.

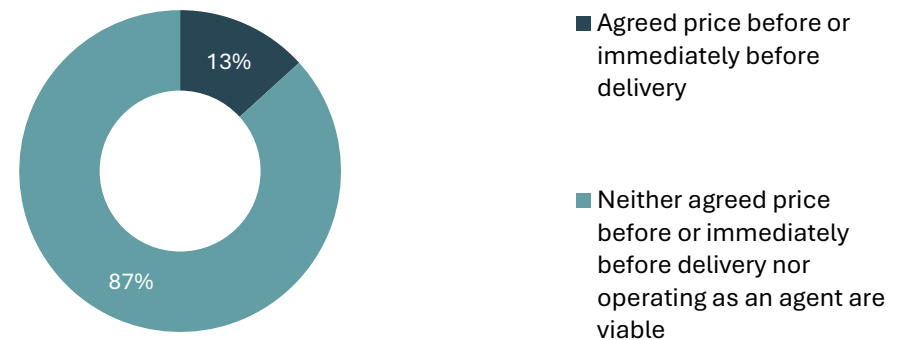
Prohibiting method / formula pricing is not a viable option for most traders and would impose additional costs

Method / formula pricing is critical for merchants. These businesses rely on its flexibility – most would be unable to use agreed pricing if method / formula pricing was prohibited. By eliminating method / formula pricing, the following additional costs would be incurred:

- Additional administrative costs for new accounting procedures (returned sales)
- Increased hiring for finance team to manage payments between retailers and growers
- Increases the burden on executives to conduct internal oversight.

Removing method / formula pricing would reduce efficiency and profitability for growers and traders, while simultaneously creating extra risk for growers.

If method / formula pricing was not allowed in the new Code, how would your business typically price?



Source: FMA Members Survey, February 2026

Formula pricing is critical in markets with volatile prices and deliver better prices for growers

Growers and traders are better off when traders act as merchants

As described on the previous slide, agency creates additional costs in terms of administrative effort, executive oversight and audit burden. These impacts are difficult to quantify, but one large trader estimates that they would need to hire two additional FTE at a cost of almost \$200,000 per year if they had to act solely as an agent.

In addition, agency can result in later payment, an added GST cash flow drag, and a shift in cash flow pressure and buyer credit risk from the trader to the grower. The table below sets out an example where the gross sale price is \$100,000 and the trader margin or commission and service charge are the same under both an agency and a merchant formula pricing model. In this example, the payment terms under merchant formula pricing is due 14 days after sale of the consignment, while under agency payment is due 14 days after receipt of the sale proceeds by the trader, with the full sale proceeds received roughly eight weeks after sale.

	Gross sale price: \$100,000	
Method	Agent	Merchant (formula pricing)
Trader margin or commission (15%)	\$15,000	\$15,000
Service charge	\$2,000	\$2,000
GST	\$1,700	\$200
Net return to grower	\$81,300	\$82,800
Payment outcome	Full payment ~8 weeks after sale	Full payment 14 days after sale

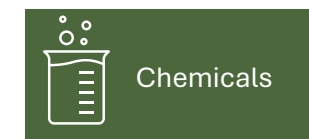
Source: Fresh Markets Australia

Markets with volatile prices require pricing flexibility

Formula pricing is a form of flexible price determination where growers are paid the realised market price less an agreed wholesaler margin. It reflects the realities of a highly volatile, perishable market by allowing prices to adjust to actual outcomes rather than estimates made before delivery.

The model acts as a natural hedge, preserves incentives, and transfers price risk to merchants, while providing growers with income certainty and transparent reporting.

Some form of flexible pricing is common practice in similar industries that have volatile prices, including:



Economic analysis

The approach to this economic analysis aligns with guidance from the Office of Impact Analysis

Scope

The Office of Impact Analysis defines regulatory compliance cost as both:

- **Substantive compliance cost:** costs incurred to deliver the outcomes being sought (usually purchase and maintenance costs) – these can be thought of direct costs (i.e. costs that would appear on a financial statement).
- **Administrative cost:** costs incurred by regulated entities primarily to demonstrate compliance with the policy (usually record keeping and reporting costs) – these can be thought of as indirect or opportunity costs.

This section of the report identifies and quantifies the regulatory burden imposed by the Horticulture Code of Conduct in these categories that are recognised by government.

NPAT assumption

Many of the graphs included in this analysis present costs as a proportion of net profit after tax (NPAT) to show the proportionate impact of regulatory compliance costs. Data on NPAT is not readily available. Industry sources engaged by FMA for this report suggest that NPAT can be as low as 1.1%. IBISWorld suggests (before tax) profit is 3.3%.¹ Analysis in this report conservatively assumes an NPAT of 2.0%.

¹ IBISWorld Wholesale Trade F3605 Fruit and Vegetable Wholesaling in Australia, September 2025

Approach

This report estimates cost in the following areas that Fresh Markets Australia has identified where the Code imposes regulatory burden:



Preparing and establishing HPA's: The Code places the onus on Traders to manage HPA's. This includes HPA set up and timely return.



Reporting: Traders must report to Growers at regular intervals. These 'Grower Statements' include information such as price, volume, quality and timing.



Audits: The ACCC enforces the Code and conducts random compliance checks (audits) of traders. Audits can span many months and require financial and time investment from traders.

Data for this analysis has been obtained from a survey that was distributed by Fresh Markets Australia to its members in each state and territory. These members are traders operating on the central market trading floor, so it does not capture other traders such as providores, off-market wholesalers, packhouses etc. It is understood that traders operating on the central market trading floor represent most trade. The survey consisted of 54 questions that was sent to 240 members and we received 128 responses. Appendix A provides more detail on the survey.

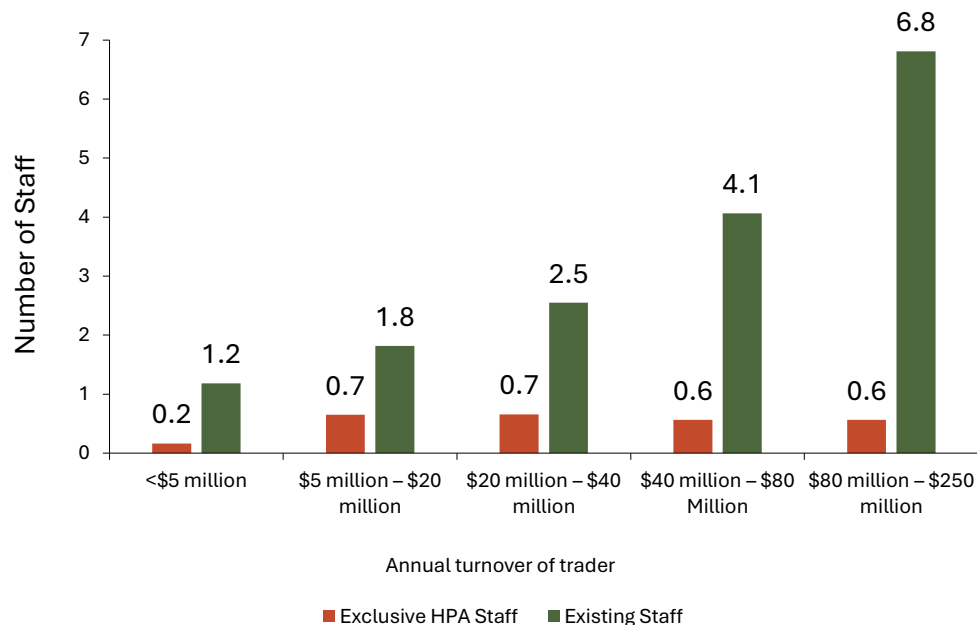
The burden of preparing and establishing HPAs is highest for the smallest traders

The Horticulture Code of Conduct requires traders to establish a Horticulture Produce Agreement (HPAs) with growers before they trade. Each HPA must be individually prepared and maintained by traders. Traders devote substantial administrative time to drafting, updating and managing agreements across large and frequently changing grower bases.

Large traders absorb cost of managing HPAs internally

Small and large businesses typically take a different approach to preparing and managing HPAs. Larger businesses have the scale to integrate their HPA responsibilities into the workload of existing staff. Small traders do not have the scale to distribute HPA compliance among existing staff. This is shown in the graph below. All businesses employ a relatively similar number of HPA-dedicated staff, but larger businesses draw on other staff to manage compliance.

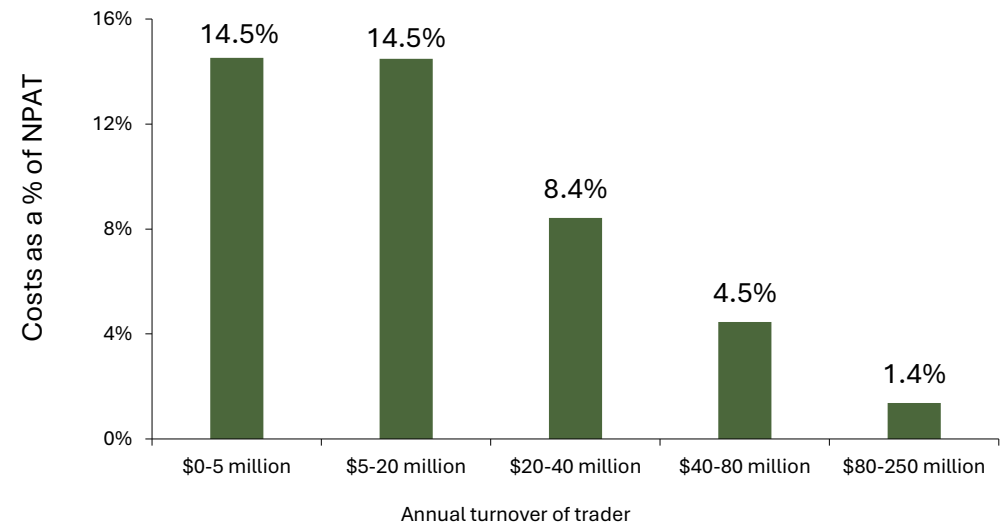
Number of staff involved in HPA compliance



The HPA compliance burden is higher for smaller traders

Small traders incur the most cost due to HPA compliance requirements. As shown in the figure below, HPA-dedicated staff costs are a much higher portion of NPAT for small businesses compared to large businesses. These represent a direct financial cost to businesses because of the Code.

Cost of HPA-dedicated staff



Source: FMA Member Survey, February 2026

Note: >\$250 turnover is excluded, only one response was recorded and cannot be used as a representative sample.

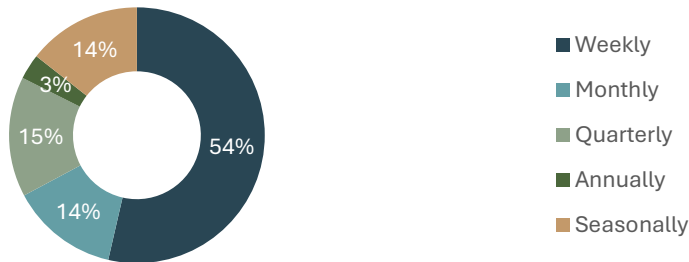
Large businesses automate their data capture, whereas smaller businesses do this manually

The Code requires traders to produce grower statements at regular intervals to provide information such as price, quantity and volume. Traders devote time, effort, resources and system costs into developing grower statements. Many traders equip their point of sale (POS) system with functionality to produce grower statements based on the information it collects.

Reporting is costly for traders

Traders determine their grower statement frequency. As shown in the graph below, most traders develop grower statements each week.

Grower statement frequency



Source: FMA Member Survey, February 2026. Note, some traders produce statements at multiple frequencies. The above graph captures each trader's most frequent grower statement frequency (e.g. a trader who does grower statements weekly and monthly will appear in the graph as weekly).

Cost of inputting data into POS System

Developing grower statements is an administrative burden for traders. The average trader incurs resource effort to input data into the POS system:

15.20
Ave. hours per week

\$38,500
Annual cost per business

Source: FMA Member Survey, February 2026. Average annual salary of \$77,512 + 21.86% on-costs

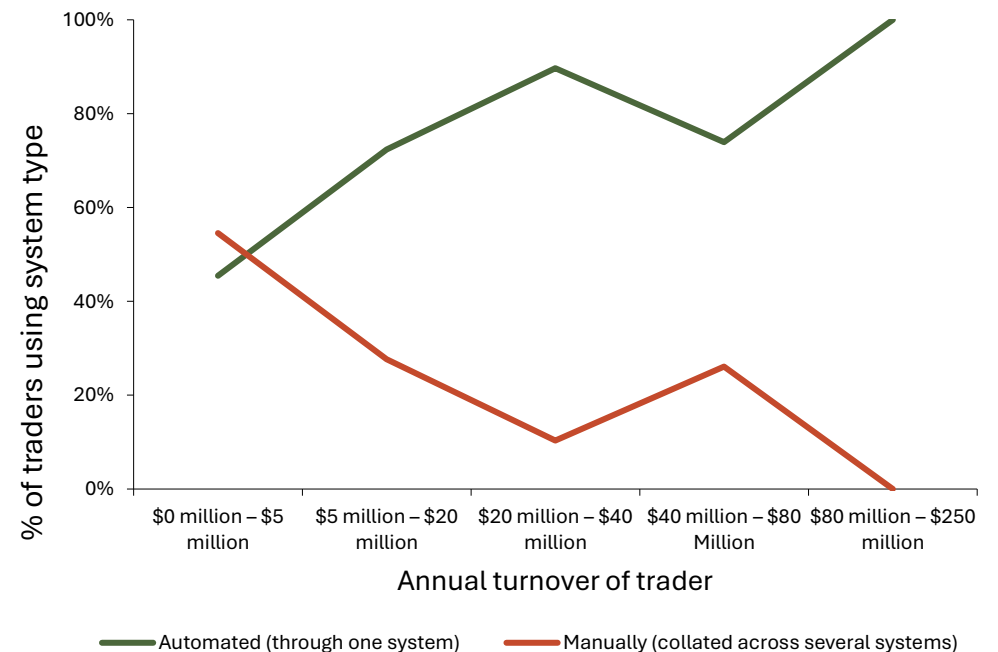
Source: FMA Members Survey, February 2026

Note: >\$250 turnover is excluded, only one response was recorded and cannot be used as a representative sample.

Inputting data into the POS system is more time-consuming for small business

Small businesses have capital constraints and are less likely to have automated systems, instead having to collate data and report manually. 60% of survey respondents with a turnover under \$5 million per annum reported collating data manually, resulting in increased administration costs.

Method of collating information in grower statements



Up-front system costs for grower statement functionality disproportionately affect smaller businesses

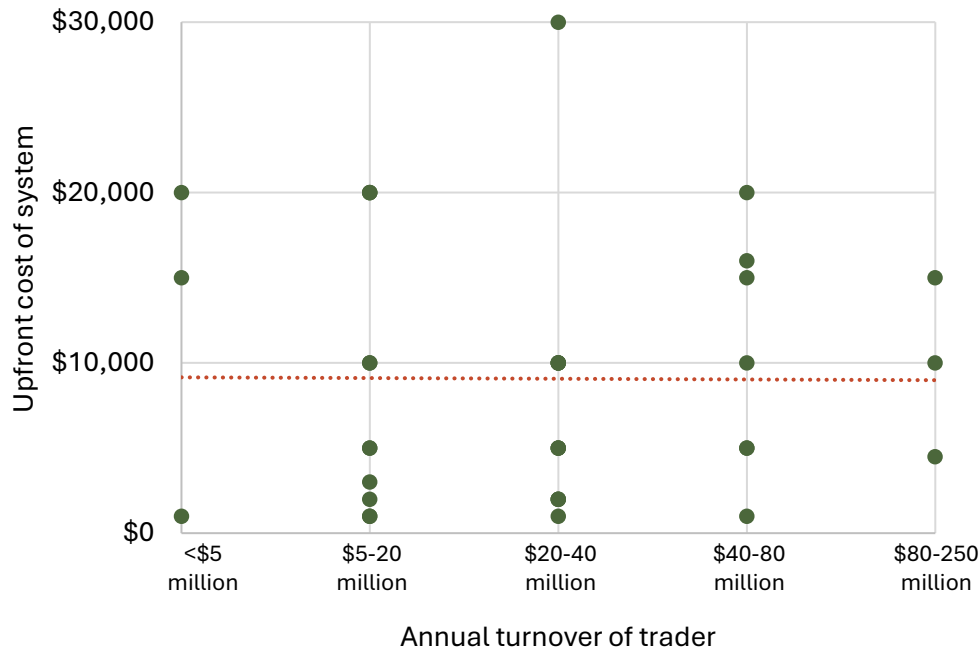


Traders equip their POS system with automated (and compliant) grower statement functionality to fulfil their reporting requirements under the Code. This requires traders to incur upfront and/or ongoing costs. POS system costs (both upfront or ongoing) disproportionately affect smaller businesses.

Upfront system costs do not scale by business size

40% of traders incur up-front costs to implement a compliant POS system. These costs average \$9,100 and are similar across all turnover sizes of traders. Consequently, identical compliance costs impose a disproportionate financial burden on small traders. These costly upfront expenses also represent switching costs that prevent smaller businesses from moving to more affordable platforms.

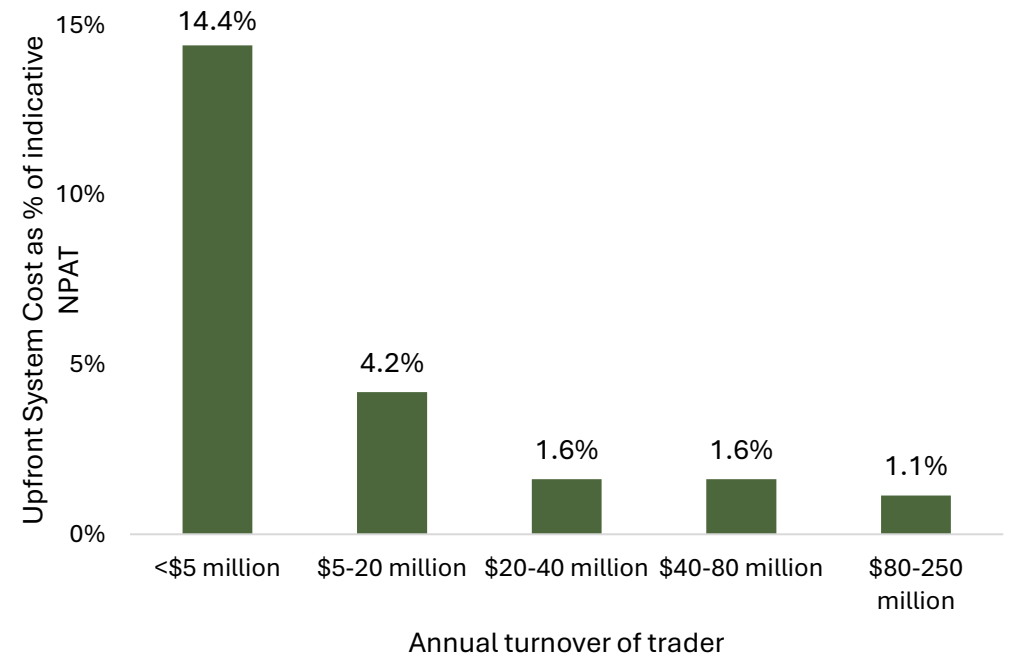
POS system upfront costs by trader size (turnover)



Small businesses incur the most up-front POS system costs as a proportion of profit

While large wholesalers can absorb fixed costs through economies of scale to achieve lower unit prices, smaller businesses cannot. Since fixed costs do not vary with the level of production, businesses with smaller scale face a higher average fixed cost per unit, raising total average costs and reducing price competitiveness.

POS system upfront costs



Source: FMA members survey 2026

Note: >\$250 turnover is excluded, only one response was recorded and cannot be used as a representative sample. For upfront costs, outliers from \$40,000 and above removed.

Ongoing system costs for grower statement functionality disproportionately affect smaller businesses



Traders equip their POS system with automated (and compliant) grower statement functionality to remain compliant under the Code. This requires traders to incur upfront and/or ongoing costs. POS system costs (both upfront or ongoing) disproportionately affect smaller businesses.

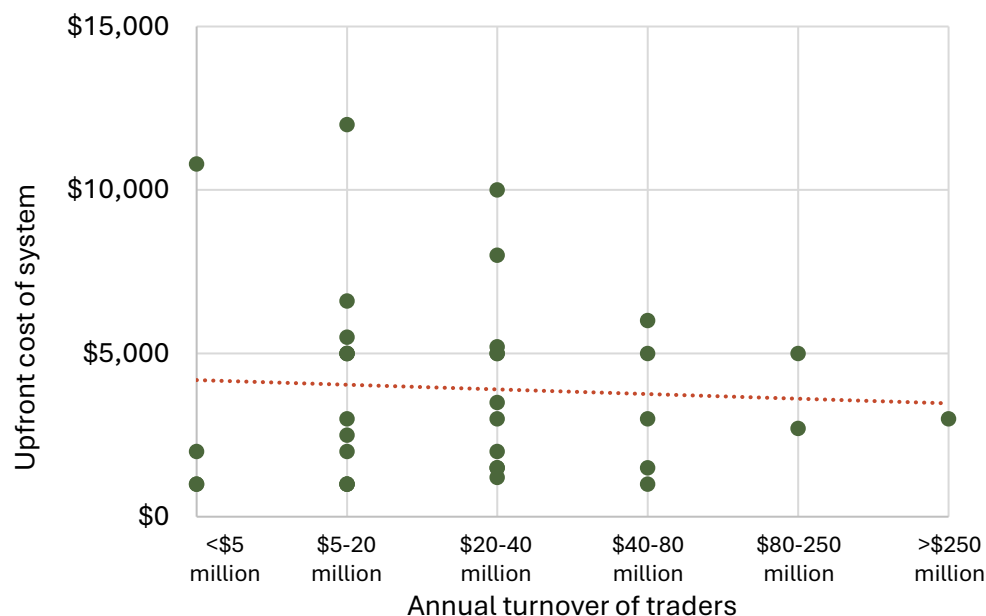
Ongoing system costs are most expensive for small traders

38% of traders pay ongoing (annual) costs to maintain the reporting functionality within their POS system. These costs average \$3,900 per annum and can be as much as \$12,000 per annum. Smaller traders tend to spend more on these ongoing POS systems, with many spending upward of \$5,000 annually to meet technology requirements.

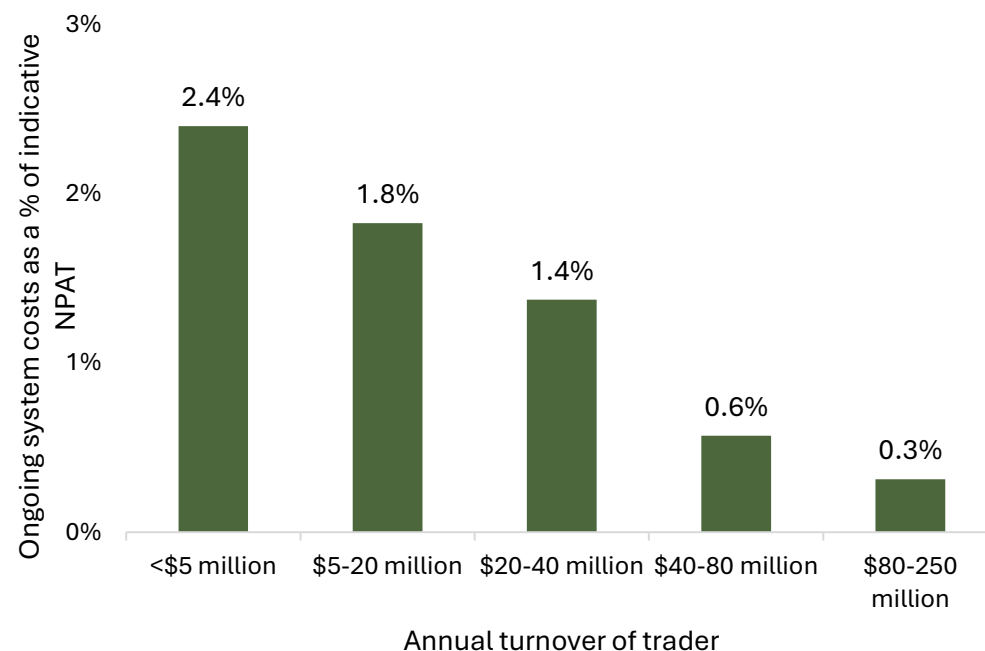
Ongoing system costs represent a larger portion of profits for small businesses

The ongoing costs of maintaining a compliant POS system are higher for small traders, costing an average of 2.40%. This leaves small traders with even thinner margins and less capacity to absorb revenue shocks that occur in the fresh produce industry.

POS system ongoing costs by trader size (turnover)



POS system ongoing costs



Source: FMA members survey 2026.

Note: For upfront costs, outliers from \$40,000 and above removed. For ongoing costs, outliers from \$30,000.



ACCC audits impose direct and indirect costs on traders

The Australian Competition and Consumer Commission (ACCC) enforces the Code and conducts random compliance checks of growers and traders. During these checks, the ACCC may review HPAs, inspect record-keeping systems and conduct interviews. These compliance checks operate in practice as regulatory audits and create burdens on traders.

Overview

Audits create a complex challenge for traders to navigate, imposing direct costs:

- **Direct costs:** Penalties, external advisors and training for staff
- **Indirect cost:** Administrative effort and delay costs.

Primary activities that cost traders during audits includes:

- Gathering documents and evidence
- Drafting response letters for regulators
- Consulting with external advisors and lawyers

These activities divert staff from core trading functions and can disrupt normal business operations.

When audits extend over several weeks, they impose a substantial administrative burden and add materially to traders' overall compliance load. Additionally, the audit process features limited upfront engagement and can include fragmented information requests that do not account for administrative and system limitations. The absence of communication prevents traders from efficiently handling the burden of the workload, adding to overall costs and complexity of the ordeal.

Challenges

External costs	External support averages \$45,772 for lawyers, accountants and IT support and can be as much as \$250,000
Duration	Audits typically persist for five months with repeated interruptions to business activities. Some audits exceed 18 months.
Admin burden	Time cost to staff exceeds tens of thousands of dollars, consuming effort on regulatory burdens instead of revenue-generating tasks.
Fees and fines	Penalties for non-compliance cost \$16,500 per infringement notice.
Training costs	Traders can be ordered to conduct additional compliance training, costing approximately \$5,000
Wellbeing impact	Staff frequently experienced detriment to wellbeing, including being threatened by regulators.

Source: FMA Members Survey, February 2026



One recent audit took 20 months and cost this trader approximately \$250,000

In 2023, an established trader was subject to an ACCC compliance audit that required the trader to produce 14 months of grower statements and related records, signed HPAs, a supplier or grower list extract, and the business terms of trade document. The audit impacted the trader beyond financial costs, including operational and wellbeing impacts.

Direct costs

External consultants

The trader hired external lawyers and accountants to ensure the audit was handled correctly. The external fees totalled \$5,000 over the duration of the audit.

During the audit, an additional \$2,700 was spent on an IT professional to develop a compliant reporting system and updating quality data to achieve compliance standards.

Fees and fines

Under an enforceable undertaking, Directors of the company were required to provide compliance training at their own cost, totalling \$5,000. Additionally, the firm had to pay fines of \$62,600 for trading without at least four HPAs.

Total direct costs: \$75,300

Opportunity Costs

For the duration of the audit, efforts across the business were redirected from profit-making activities. The audit reduced the time that leadership staff could use on grower communication, business improvements and debt management. The business estimates the foregone business development at \$150,000 over the duration of the audit.

Indirect costs

Administration

To comply with auditing demands, the trader used an estimated ten hours of administrative staff time to collate the requested documents and preparing them into usable documents for leadership staff.

Throughout the audit, the trader was repeatedly required to provide further evidence as sporadic requests were made by the regulator. Approximately forty of these were completed over the duration of the audit, each one taking an estimated two and a half hours.

Total administration cost: \$5,000 in salaries and oncosts

Leadership

Once the documents were processed, the firm's CEO, directors and finance team spent 200 hours drafting response letters and consulting with external advisors.

Total leadership cost: \$19,000 in salaries and oncosts

Total staff costs: \$24,000

\$250,000

Estimated audit cost

Summary

The Code imposes regulatory compliance burden that is highest for smaller traders

The Code imposes a costly regulatory burdens for traders. Small traders are affected most as they do not have the scale to absorb the administrative and financial requirements of the Code.



Preparing HPAs

HPA-dedicated staff cost traders an average of \$61,000 in staff and oncosts each year

Small traders cannot absorb the compliance burden among their existing staff

HPA-dedicated staff costs small traders an average 14.5% of NPAT compared to 1.5% for large traders

82% of traders spend more than a week following up with growers for their HPAs



Reporting

Compliant data recording costs businesses an average of \$38,500 each year in administrative effort

Large traders can automate data collection, but smaller traders cannot

Complaint reporting functionality in POS systems costs an average of \$9,000 to establish and \$4,000 each year to maintain – these are direct financial costs

Reporting requirements and costs are the same for all businesses, so smaller traders are affected most



Auditing

Traders rely on external support such as legal advisors that cost from \$3,500 to as much as \$250,000

Audits can take up to two years to complete and requires input across the business – the time commitment distracts traders from their core business.

Infringement notice penalties average \$51,000 per business per audit

One recent audit took 20 months and cost this trader almost \$250,000 in direct and indirect costs (including \$150,000 in foregone business development)

Appendix A: Survey summary

KordaMentha

FMA Member Survey Summary

A diverse and effective response was achieved

Effective response rate and participation from across Australia

Out of 240 members, 128 recorded a complete response to the survey.

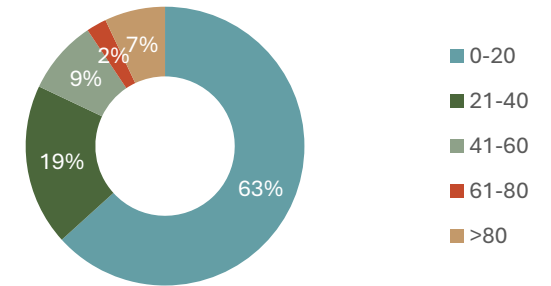
This represents 40% of all traders on central market trading floors, and 53% of FMA members across the country.

A variety of topics and response types were collected

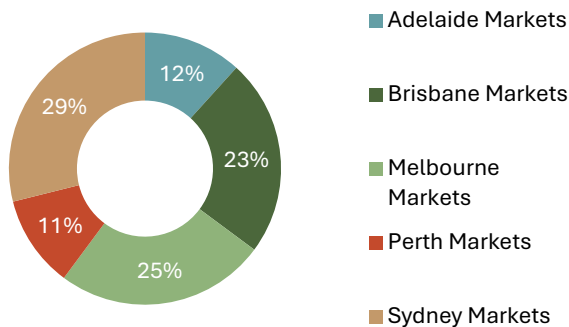
54 questions were asked of respondents across a range of topics, including business information, compliance activities and audits.

Questions answers ranged from numerical, multi-choice and yes/no

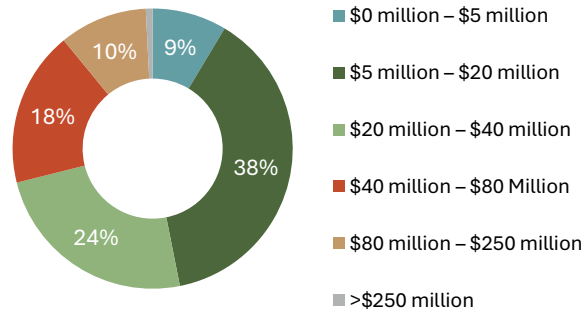
How many FTE staff do you employ?



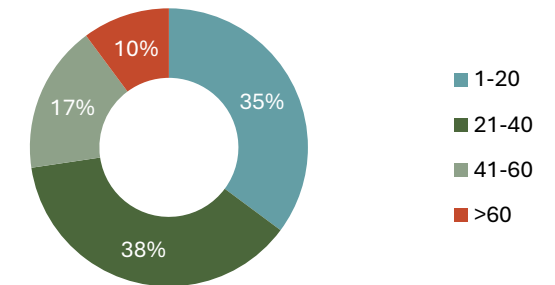
Where is your business located?



What is the annual turnover of your business?

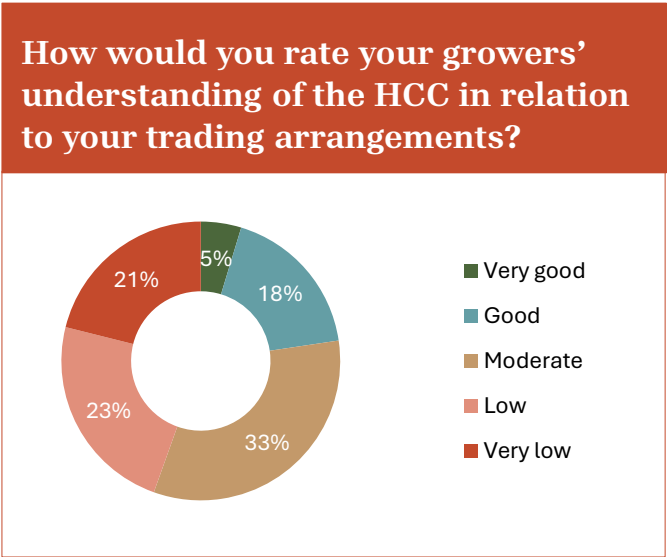
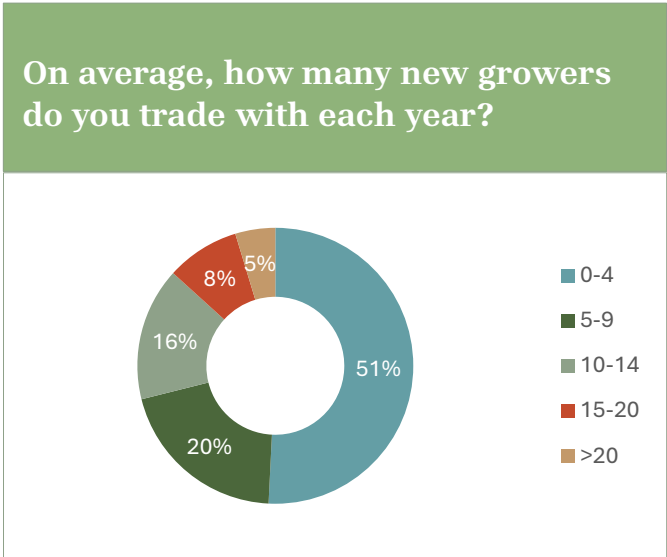
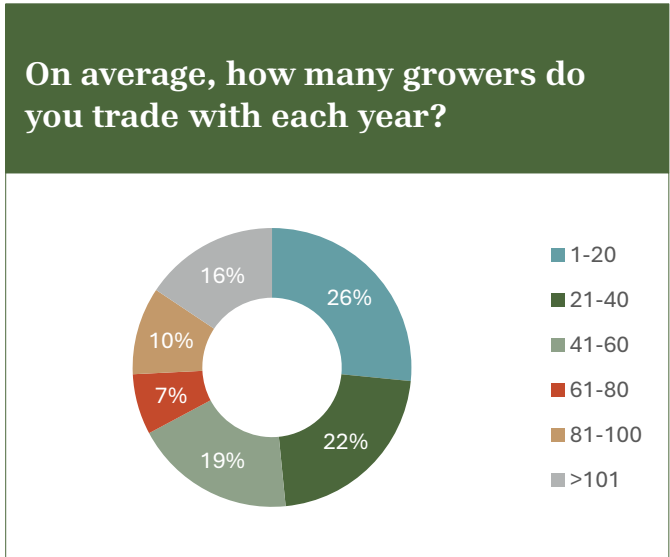
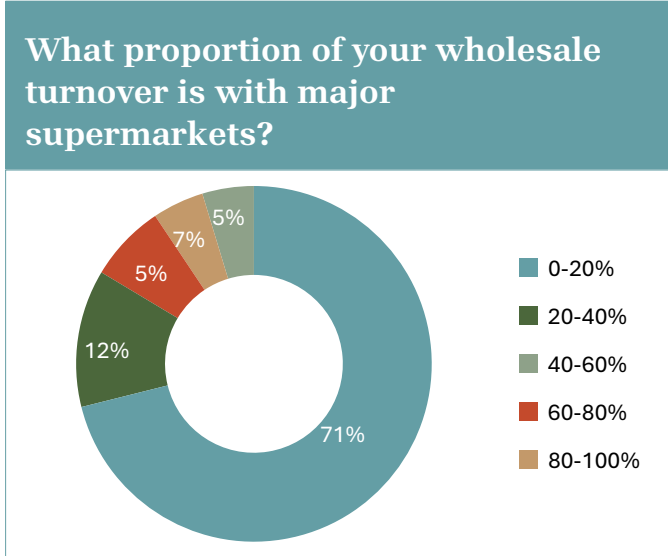
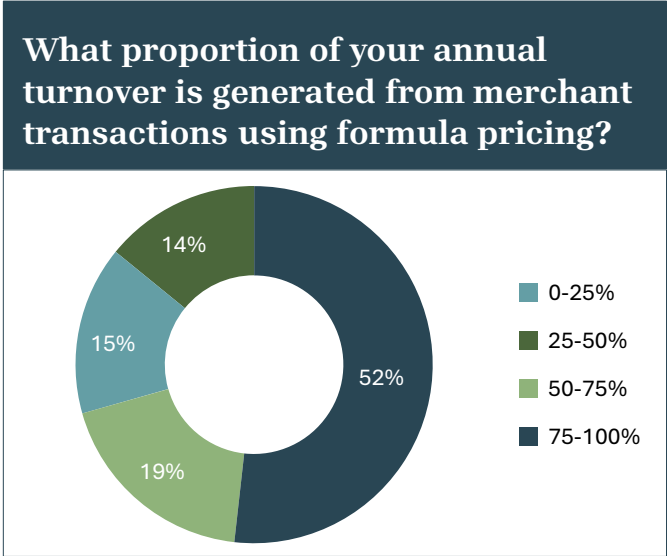
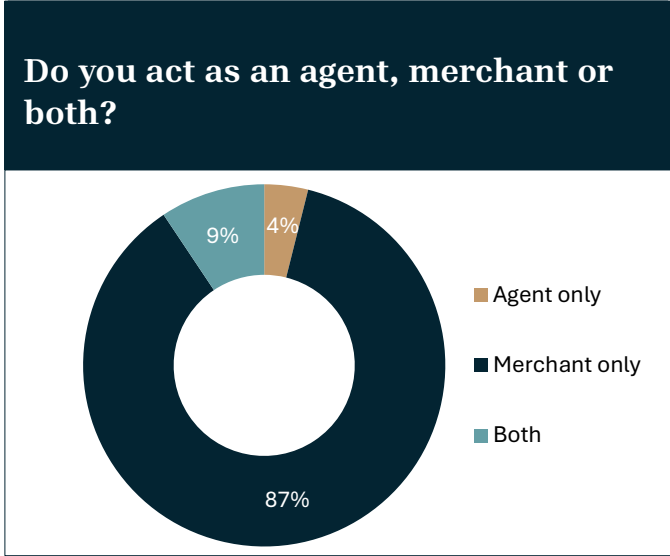


How many years has your business traded for?



FMA Member Survey Summary

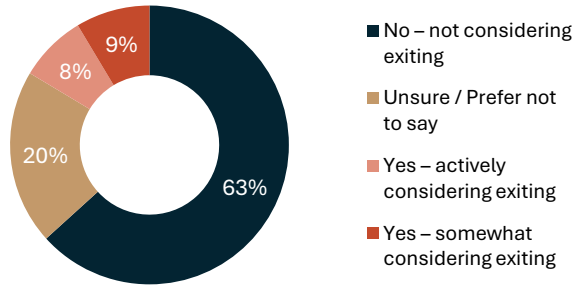
The survey provided several key insights into trading activities



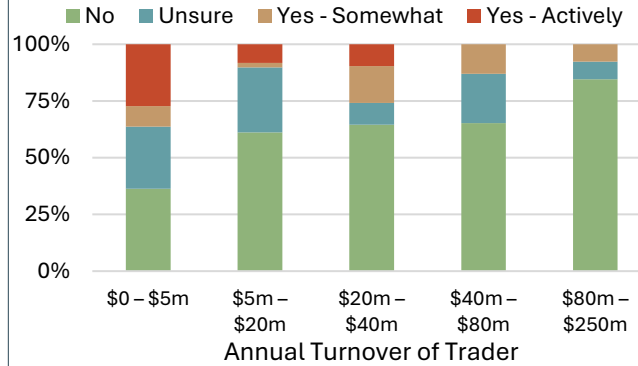
FMA Member Survey Summary

The survey highlighted attitudes towards the current regulatory regime

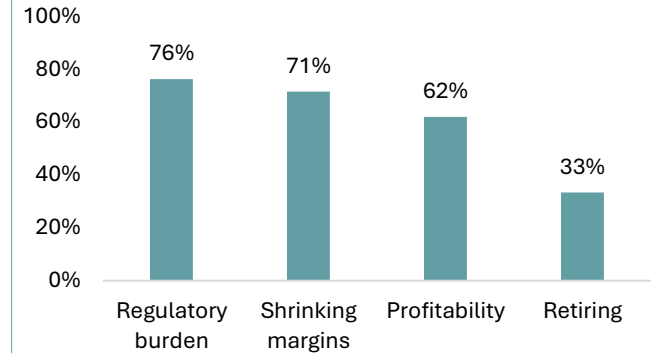
Are you currently considering exiting the central market wholesale sector within the next 12 months?



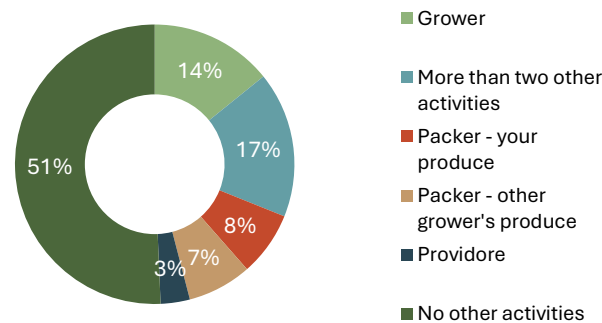
Are you currently considering exiting the central market wholesale sector within the next 12 months?



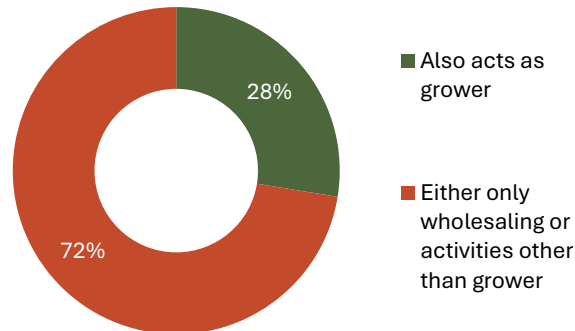
What is the main reason you are considering or would consider exiting the central market wholesale sector?



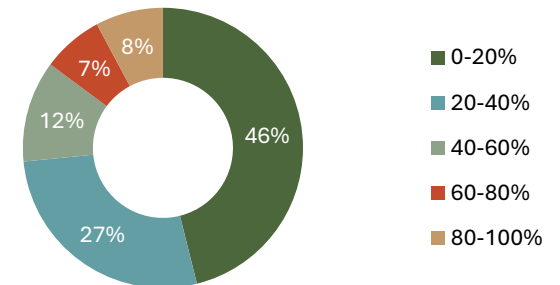
What activities in addition to wholesaling does your business undertake?



What proportion of traders also act as growers



What proportion of your annual turnover is not sourced directly from growers?



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Appendix B

Fresh Markets Australia,

Practical Vision for Horticulture

Code of Conduct Reform,

March 2026



A PRACTICAL VISION FOR **HORTICULTURE** **CODE OF CONDUCT** **REFORM**





FMA
FRESH MARKETS
AUSTRALIA

FMA'S VISION FOR THE CODE

FMA's vision is for a Horticulture Code of Conduct that is practical, proportionate and trusted. It should strengthen fairness through improved clarity and usability, while supporting the commercial realities of Australia's fresh produce supply chain. The Code should evolve into a framework that growers and traders can confidently use and see value in.



PRICING WITH PURPOSE

FMA's vision for Pricing with Purpose recognises that the merchant method/formula pricing is a legitimate and essential practice in central market trading. The Code should retain this flexibility. The priority is practical understanding of what the Code requires under each trading model. This can be supported through national Code literacy, simpler plain language HPAs, and tools that make the trading model, pricing method, and key expectations clear.

- Retain the merchant method/formula pricing model as legitimate and essential central market practice.
- Support practical understanding of Code requirements under each trading model.
- Use plain language tools and fit for purpose HPAs that make model and pricing method clear.



INDUSTRY EVOLUTION

The review should recognise what sits within the Code and what is better addressed through broader Industry Evolution. FreshData is progressing as a national, verifiable market price transparency tool and should be strengthened as the sector's core system level mechanism. System level transparency options, including aggregated annual reporting, can build confidence and understanding where they are low burden and do not add red tape. Any remaining coverage gaps should be examined through evidence based whole of supply chain policy, rather than adding cost and complexity within the Code. The outcome should be clearer obligations, lower burden compliance, and a Code that both parties can use with confidence.

- Keep the Code focused on what it is best placed to regulate.
- Strengthen FreshData as the sector's core system level mechanism.
- Support system level transparency options, including aggregated annual reporting, where they are low burden and do not add red tape.

REFORM PRINCIPLES

SHARING THE RESPONSIBILITY



At the heart of this vision is Sharing the Responsibility and confidence in the Code framework. Compliance obligations should be workable and applied in ways that reflect how trade occurs in perishable markets. For HPAs, both parties should be able to access the current agreement, understand the trading model, and apply it consistently. Low burden approaches should confirm the agreement is in place for both parties. A national, coordinated education program is essential to lift Code literacy, supported by clear advice pathways and early guidance.

- Apply, shared, role based obligations for growers and traders.
- Keep HPAs accessible to both parties and confirmed as in place, useable in practice.
- Support a national Code literacy program with clear advice and early guidance.

MODERNISING THE CODE THROUGH SIMPLIFICATION



FMA is committed to Modernising the Code through Simplification. The review should remove or streamline requirements, paperwork and processes that add cost without improving outcomes. HPAs and grower statements should be shorter, clearer and fit for purpose, with reporting focused on substance and usability. FMA supports a simple deemed baseline of minimum protections as a backstop where an HPA is not yet finalised. It should encourage timely HPAs, not replace them, and allow opt out only through an explicit written agreement that is clear to both parties. Reforms should reduce duplication, recognise real world operational limits, and avoid cost shifting, particularly as margins tighten.

- Remove duplication and streamline requirements that add cost without improving outcomes.
- Simplify Code related paperwork and processes, while keeping the core rules that support fair dealing, legal clarity, and business confidence.
- Use deemed baseline protections as a backstop, with opt out only by explicit written agreement.



FMA | FRESH MARKETS
AUSTRALIA

Re: Fresh Markets Australia's open letter on the 2026 Review of the Horticulture Code of Conduct

Fresh Markets Australia (FMA) welcomes the 2026 Review of the Horticulture Code of Conduct and the opportunity to improve a framework that sits at the heart of trade at the first point of sale.

Central markets move billions of dollars of fresh fruit and vegetables each year and support thousands of independent family businesses around the country. In a fast moving, perishable environment, the Code must be practical and fair. It should be easy to understand and workable day to day, reflecting how trade happens across the fresh produce supply chain.

Our objective in this Review is simple: a Code that growers and traders can use with confidence. Obligations should sit with the party that controls the relevant information and decisions, and they should apply consistently wherever trade occurs under the Code. Just as importantly, both growers and traders need clear guidance and straightforward advice, so the Code is understood in practice, not just on paper.

The Review is also an opportunity to take out unnecessary complexity. Current Horticulture Produce Agreements and reporting requirements, while well intentioned, have become time consuming, costly and, in some cases, duplicate information that is already available through existing commercial systems. Reform should protect key safeguards, but reduce paperwork, remove duplication and avoid cost shifting onto businesses that are already operating on tight margins.

It is important that the Code continues to recognise the three established trading models used in practice: agent arrangements, merchant agreed price and merchant method/formula pricing. Merchant method/formula trading was formally codified in the 2017 amendments to the Code and remains a normal part of central market trade. The focus in this Review should be on clearer explanation and simpler documentation of these trading models, so obligations are understood and applied consistently, not on removing tools that reflect how trade occurs. Finally, the Code should concentrate on what it does best: setting clear terms, supporting fair dealing and providing practical pathways to resolve disputes. Broader transparency goals are increasingly supported through system level initiatives, including FreshData and other market reporting mechanisms. Where transparency can be delivered in low burden ways outside the Code, that should be encouraged rather than adding complexity within the Code itself.

FMA is committed to working constructively with Government, growers and regulators so the Review delivers a clearer, workable Code that strengthens confidence at the first point of sale and across Australia's fresh produce sector.

Yours sincerely,

Brett Collins

Brett Collins
Chief Executive Officer
Fresh Markets Australia

Shane Schnitzler

Shane Schnitzler
Chairman
Fresh Markets Australia



Appendix C

Fresh Markets Australia, Horticulture Code in Practice Trading Model Comparison Table, March 2026

A quick guide to the three trading pathways under the Horticulture Code of Conduct, showing how each works in practice and what to do if something goes wrong: **Agent, Merchant (Agreed price), and Merchant (Method/Formula).**

The Code's purpose is regulating trade between growers and traders for transparency and clarity of transactions and providing a fair dispute resolution procedure.

	AGENT	MERCHANT How does the HPA set the price? AGREED PRICE	MERCHANT How does the HPA set the price? METHOD/FORMULA
1. Good Faith	Both grower and trader must act in good faith, including being honest and not acting arbitrarily.		
2. Role	The trader sells on the grower's behalf, acts in the grower's best interests, and sells at arm's length (unless with grower consent)	The trader buys the produce to resell.	
3. Ownership	Does not pass to the agent, it passes to the third party buyer when sold.	Usually on delivery. If a merchant service is provided, ownership passes when the service is finished. <i>Price agreed later is not a standard Code pathway.</i>	
4. Handling while in control	While the produce is under the trader's control, the trader must look after it properly until it is sold.	While the produce is under the trader's control and still the grower's produce, the trader must exercise reasonable care and skill in handling and storing the grower's produce.	
5. Pooling	Is only allowed if same quality.		
6. Rejection	Rejection can only happen for reasons listed in the HPA, with notification within 24 hours and written reasons.		
7. Proceeds/ Price	The amount paid to the grower is the sale proceeds received by the agent from the buyer, less the commission + GST and other deductions permitted under the HPA and depends on the buyer paying.	The price paid to the grower must be agreed in writing before, or immediately upon, delivery.	The price paid to the grower is calculated using the method/formula set out in the HPA e.g. Sales price less a margin
8. Payment The detail is in the HPA	The agent must pay the grower within the payment period in the HPA, once the sale proceeds are received.	The merchant must pay the grower within the payment period in the HPA.	
9. Bad debts	Bad debts sit with the grower.	Bad debts sit with the merchant.	
10. Statement and reporting	Reporting period: as set out in the HPA. Statement must include (for that period): delivery date, sale date or dates, produce type and quantity sold, sale price achieved, each deduction (commission, fees, charges), unsold produce and why, any produce destroyed and any stock held at period end.	Reporting period: as set out in the HPA. Statement must include (for that period): what was purchased (produce type, quality, quantity), purchase date or dates, delivery date, and the price paid to the grower.	Reporting period: as set out in the HPA. Statement must include (for that period): delivery date, sale date or dates, produce type and quantity sold, sale price achieved, each deduction (fees, charges), unsold produce and why, any produce destroyed and any stock held at period end.
Other variable detail is in the HPA	Delivery and quality specs.		
	Rejection reasons and the written reasons timeframe.		
	Reporting period and statement timing.		
	Payment period and payment terms.		
	Services and service charges, if any.		
	Commission (GST applies) and any other charges or deductions permitted under the HPA.	Any other charges or deductions permitted under the HPA.	
Trader bad debt recovery role, if any.	N/A		
Concerns and disputes	See Horticulture Code in Practice, Dispute Resolution Guide.		



Appendix D

Fresh Markets Australia, Horticulture Code in Practice - Trading Guide for Growers and Traders, March 2026

The Code expects growers and traders to act in **good faith** in their dealings with each other. ACCC guidance on good faith focuses on honest, cooperative dealings and fair conduct, including during disputes.

The Code requires growers and traders to keep specific records in writing (paper or electronic) and retain them for at least **6 years**.

This covers day to day trading under the Code and points you to the **Horticulture Code in Practice - Dispute Resolution Guide** if any issues become disputes.

What growers must keep (Minimum 6 years)

- HPAs, and written notices of offer or acceptance
- Written terminations of HPAs
- A written record of the name of all traders dealt with

- | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Are you supplying horticulture produce to a trader? (Trader is not retailer, exporter or processor.)</p> <p>YES → Continue</p> <p>NO → The Code does not apply</p> | <p>2. Do you have a written Horticulture Produce Agreement (HPA) that you have signed or accepted before trading starts?</p> <p>YES → Continue</p> <p>NO → Trading should not start without a HPA under the Code.</p> <ul style="list-style-type: none"> • Request a HPA immediately. • Do not send produce to the trader until the HPA is signed or accepted by you. | <p>3. Does the HPA clearly state whether the trader acts as a merchant or an agent?</p> <p>YES → Follow the relevant Trading Model pathway below.</p> <p>NO → The HPA does not meet the Code requirements.</p> <ul style="list-style-type: none"> • Ask for an amended HPA that clearly states the role. • Go to Horticulture Code in Practice - Dispute Resolution Guide if needed. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

TRADING MODEL PATHWAY			
<p>MERCHANT TRADING MODEL</p> <p>A merchant buys your produce and then resells it. They take ownership.</p>	<p>AGENT TRADING MODEL</p> <p>An agent does not buy your produce. They sell it on your behalf and must act in your best interests and sells the produce at arm's length except with consent.</p>		
<p>4A. Does the HPA clearly say the price determination is an agreed price (set before or at delivery)?</p> <p>YES → You are trading with a Merchant (Agreed Price) Go to Step 6</p> <p>NO → Continue</p>	<p>5. Does the HPA clearly say that the trader is acting as an Agent and sells produce on your behalf and does not take ownership and whether the trader will pursue the bad debts of the grower?</p> <p>YES → You are trading with an Agent Go to Step 6</p> <p>NO → The Trader may be misrepresenting their role See Step 8</p>		
<p>4B. Does the HPA set out a formula for determining price?</p> <p>A formula must be transparent, clear, and set out in the HPA and may include, but not limited to:</p> <ul style="list-style-type: none"> • Sale price • Margins <p>YES → You are trading with a Merchant (Formula Price) Go to Step 6</p> <p>NO → The trader may be breaching Code</p> <ul style="list-style-type: none"> • Merchant pricing arrangements must be either agreed price or formula price. • Go to Horticulture Code in Practice - Dispute resolution Guide Step 1 	<p>6. Are you being paid in line with the Code and within the timeframe in the HPA?</p> <table border="0" style="width: 100%;"> <tr> <td style="background-color: #e0f2f1; padding: 5px; vertical-align: top;"> <p>Merchant (agreed price)</p> <ul style="list-style-type: none"> • Trader must pay the agreed price regardless of their resale outcome. • Any fees or deductions must be specified in the HPA for the service (service details and the fee), and no other charges apply. • Payment timing is as set out in the HPA. • GST applies to services and a tax invoice should be provided. <p>Merchant (formula price)</p> <ul style="list-style-type: none"> • Trader must pay the price calculated under the formula set out in the HPA • Any fees or deductions must be specified in the HPA for the service (service details and the fee), and no other charges apply. • Payment timing is as set out in the HPA. • GST applies to services and a tax invoice should be provided. </td> <td style="background-color: #fff9c4; padding: 5px; vertical-align: top;"> <p>Agent</p> <ul style="list-style-type: none"> • Trader must pay any sales proceeds less any deductions (commissions, fees and anything else) permitted under the HPA. • Payment timing is as set out in the HPA. </td> </tr> </table> <p>YES → Continue</p> <p>NO → The Trader may be breaching the Code See Step 8 → Continue</p>	<p>Merchant (agreed price)</p> <ul style="list-style-type: none"> • Trader must pay the agreed price regardless of their resale outcome. • Any fees or deductions must be specified in the HPA for the service (service details and the fee), and no other charges apply. • Payment timing is as set out in the HPA. • GST applies to services and a tax invoice should be provided. <p>Merchant (formula price)</p> <ul style="list-style-type: none"> • Trader must pay the price calculated under the formula set out in the HPA • Any fees or deductions must be specified in the HPA for the service (service details and the fee), and no other charges apply. • Payment timing is as set out in the HPA. • GST applies to services and a tax invoice should be provided. 	<p>Agent</p> <ul style="list-style-type: none"> • Trader must pay any sales proceeds less any deductions (commissions, fees and anything else) permitted under the HPA. • Payment timing is as set out in the HPA.
<p>Merchant (agreed price)</p> <ul style="list-style-type: none"> • Trader must pay the agreed price regardless of their resale outcome. • Any fees or deductions must be specified in the HPA for the service (service details and the fee), and no other charges apply. • Payment timing is as set out in the HPA. • GST applies to services and a tax invoice should be provided. <p>Merchant (formula price)</p> <ul style="list-style-type: none"> • Trader must pay the price calculated under the formula set out in the HPA • Any fees or deductions must be specified in the HPA for the service (service details and the fee), and no other charges apply. • Payment timing is as set out in the HPA. • GST applies to services and a tax invoice should be provided. 	<p>Agent</p> <ul style="list-style-type: none"> • Trader must pay any sales proceeds less any deductions (commissions, fees and anything else) permitted under the HPA. • Payment timing is as set out in the HPA. 		
<p>7. Are you receiving the statements required by the Code? Trader must provide a statement to the grower for the period set out in the HPA.</p>			
<p>For Merchants (For the period in the HPA):</p> <ul style="list-style-type: none"> • What was purchased: produce quality and quantity • When it was purchased: purchase date or dates • What was paid: price paid to the grower • Delivery date: the date the produce was delivered to the merchant • If price is formula based, additionally gross sale price, any produce not sold, and any produce destroyed or to be destroyed (and why) 	<p>For Agents (For the period in the HPA):</p> <ul style="list-style-type: none"> • Key dates: delivery date, and sale date or dates • What sold: produce type and quantity • Calculation: price achieved, and each deduction taken • What did not sell: unsold volumes, why, any destroyed (and cost), and any stock held at period end 		
<p>YES → Trader is compliant</p> <p>NO → Trader may be breaching the Code → Continue</p>			
<p>8. Do you believe the trader has acted unfairly, did not follow the HPA, or did not follow the Code or has your trader raised an unrectified concern or dispute with you?</p>			
<p>YES → Go to Horticulture Code in Practice - Dispute Resolution Guide.</p> <p>NO → End</p>			

The Code expects growers and traders to act in **good faith** in their dealings with each other. ACCC guidance on good faith focuses on honest, cooperative dealings and fair conduct, including during disputes.

The Code requires growers and traders to keep specific records in writing (paper or electronic) and retain them for at least **6 years**.

This covers day to day trading under the Code and points you to the **Horticulture Code in Practice - Dispute Resolution Guide** if any issues become disputes.

What Traders must keep? (Minimum 6 years)

- HPAs, and written notices of offer or acceptance
- Written terminations of HPAs
- Notices rejecting produce and reasons for rejection
- Statements given to growers for each reporting period
- A written record of the name of all growers dealt with

1. Are you trading horticulture produce with a grower?

- YES** → Continue
NO → The Code does not apply

2. Have you published your compliant Terms of Trade?

- YES** → Continue
NO → Publish compliant Terms of Trade → Continue

3. Does your HPA include the mandatory Code requirements? This includes:

- Trader type (merchant or agent)
- Payment terms and timing
- Quality and delivery specifications
- Dispute resolution process
- How the agreement can be varied or ended
- Cooling off period
- Process for varying or terminating
- Merchant: price determination - agreed price, or method or formula set out in the HPA
- State the reporting period, and the trader must provide the statement required by the Code for that period

- YES** → Continue
NO → Amend the HPA so it meets the Code requirements → Continue

4. Do you have a written Horticulture Produce Agreement (HPA) that is signed or accepted before trading starts?

- YES** → Follow the relevant Trading Model pathway below
NO → Trading must not start without an HPA under the Code
- Prepare a compliant HPA and have it signed/accepted by the grower before trader can commence
 - Provide a copy to the grower.
 - Pause trading until the HPA is in place.
 - When HPA is in place → Follow the relevant Trading Model pathway below
 - Go to **Horticulture Code in Practice - Dispute Resolution Guide** if needed.

TRADING MODEL PATHWAY

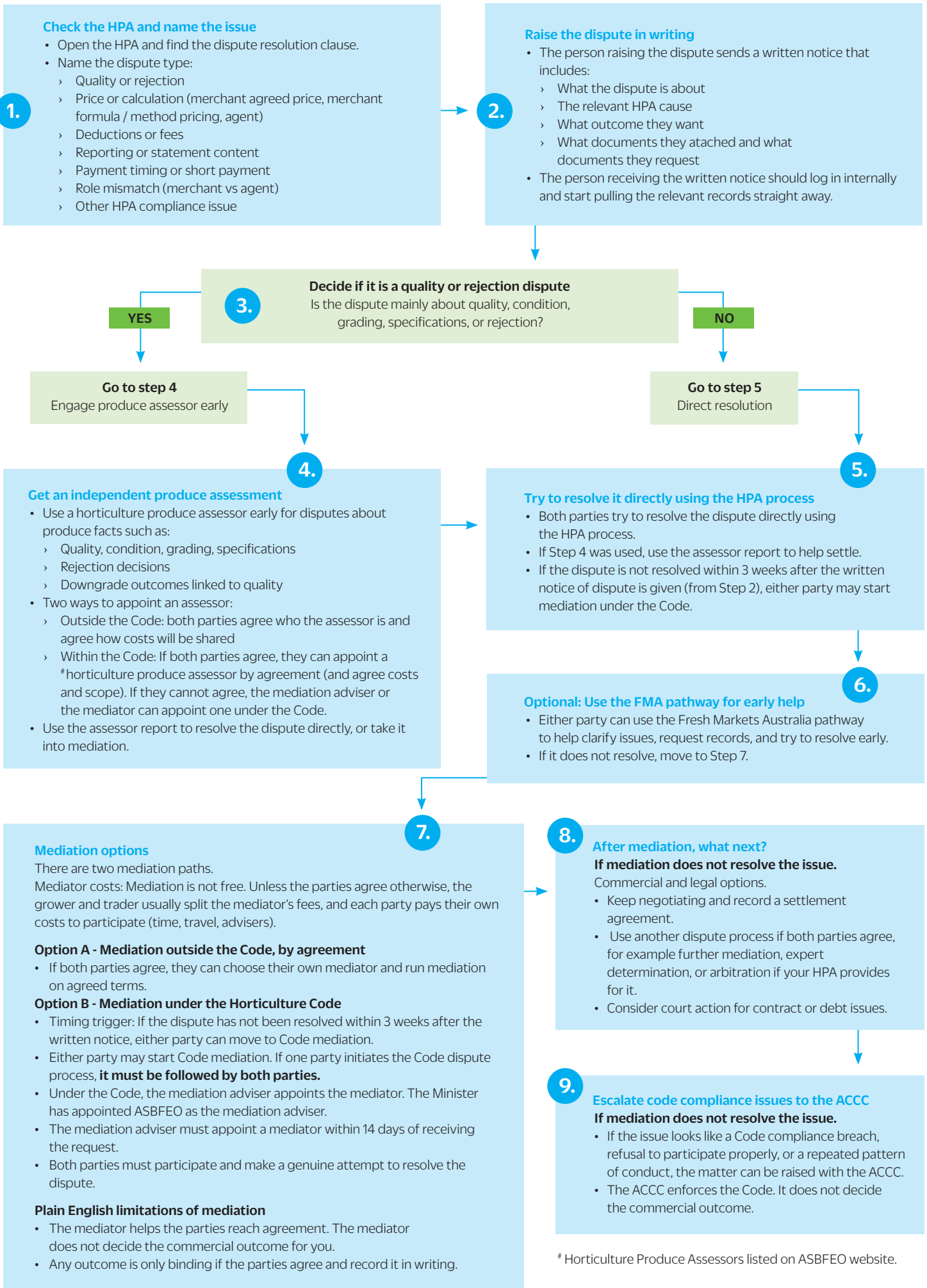
MERCHANT TRADING MODEL	AGENT TRADING MODEL
<p>A merchant buys produce from a grower and then resells it. You take ownership.</p>	<p>An agent does not buy the produce. You sell it on the grower's behalf and must act in the grower's best interests and sell the produce at arm's length except with consent.</p>
<p>5A. Does the HPA clearly state the price determination is an agreed price (set before or at delivery)? YES → You are trading as a Merchant (Agreed Price) Go to Step 6 NO → Continue</p>	<p>5C. Does the HPA clearly say that you are acting as an Agent? YES → You are acting as an Agent in line with the Code → Continue NO → Your role may not be correctly described in the HPA.</p> <ul style="list-style-type: none"> • Treat this as a priority compliance risk • Update the HPA or align your practices to the stated role and reissue the HPA to the grower for signing/acceptance
<p>5B. Does the HPA set out a formula for determining price? A formula must be transparent, clear, and set out in the HPA and may include, but not limited to:</p> <ul style="list-style-type: none"> • Sale price • Margins <p>YES → You are trading as a Merchant (Formula Price) Go to Step 6 NO → Your role may not be correctly described in the HPA</p> <ul style="list-style-type: none"> • Treat this as a priority compliance risk • Update the HPA or align your practices to the stated role and reissue the HPA to the grower for signing/acceptance 	
6. Are you paying the grower in line with the Code and within the timeframe in the HPA?	
<p>Merchant (agreed price)</p> <ul style="list-style-type: none"> • You must pay the grower the agreed price regardless of your resale outcome. • Any fees or deductions must be specified in the HPA for the service (service details and the fee), and no other charges apply. • Payment timing is as set out in the HPA. <p>Merchant (formula price)</p> <ul style="list-style-type: none"> • You must pay the grower the price calculated under the formula set out in the HPA. • Keep records to show how the formula was calculated. • Any fees or deductions must be specified in the HPA for the service (service details and the fee), and no other charges apply. • Payment timing is as set out in the HPA. <p>GST applies to services. Tax invoices are managed under tax law and your commercial arrangements. Keep your invoicing approach consistent with your role and the HPA.</p>	<p>Agent</p> <ul style="list-style-type: none"> • You must pay the grower any sales proceeds less any deductions (commissions, fees and any extra deductions) permitted under the HPA. • Payment timing is as set out in the HPA. <p>GST applies to commissions and some fees. Tax invoices are managed under tax law and your commercial arrangements. Keep your invoicing approach consistent with your role and the HPA.</p>
<p>YES → You are compliant NO → You may be breaching the Code → Correct your practices and make good with the grower if relevant → Continue</p>	
7. Are you providing the statements required under the Code? As a Trader you must provide a statement to the grower for the period set out in the HPA.	
<p>For Merchants (For the period in the HPA):</p> <ul style="list-style-type: none"> • What was purchased: produce quality and quantity • When it was purchased: purchase date or dates • What was paid: price paid to the grower • Delivery date: the date the produce was delivered to the merchant • If price is formula based: gross sale price, any produce not sold, and any produce destroyed or to be destroyed (and why) 	<p>For Agents (For the period in the HPA):</p> <ul style="list-style-type: none"> • Key dates: delivery date, and sale date or dates • What sold: produce type and quantity • Proceeds paid: price achieved, and each deduction taken • What did not sell: unsold volumes, why, any destroyed (and cost), and any stock held at period end
<p>YES → You are compliant NO → Provide the missing statement information and records. Consider whether you need to update your reporting system → Continue</p>	
8. Has the grower raised an unrectified concern or dispute, or have you raised an unrectified concern or dispute with the grower?	
<p>YES → Go to Horticulture Code in Practice - Dispute Resolution Guide. NO → End</p>	



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Appendix E

Fresh Markets Australia, Horticulture Code in Practice Dispute Resolution, March 2026



1. Check the HPA and name the issue

- Open the HPA and find the dispute resolution clause.
- Name the dispute type:
 - › Quality or rejection
 - › Price or calculation (merchant agreed price, merchant formula / method pricing, agent)
 - › Deductions or fees
 - › Reporting or statement content
 - › Payment timing or short payment
 - › Role mismatch (merchant vs agent)
 - › Other HPA compliance issue

2. Raise the dispute in writing

- The person raising the dispute sends a written notice that includes:
 - › What the dispute is about
 - › The relevant HPA cause
 - › What outcome they want
 - › What documents they attached and what documents they request
- The person receiving the written notice should log in internally and start pulling the relevant records straight away.

3. Decide if it is a quality or rejection dispute
Is the dispute mainly about quality, condition, grading, specifications, or rejection?

YES
Go to step 4
Engage produce assessor early

NO
Go to step 5
Direct resolution

4. Get an independent produce assessment

- Use a horticulture produce assessor early for disputes about produce facts such as:
 - › Quality, condition, grading, specifications
 - › Rejection decisions
 - › Downgrade outcomes linked to quality
- Two ways to appoint an assessor:
 - › Outside the Code: both parties agree who the assessor is and agree how costs will be shared
 - › Within the Code: If both parties agree, they can appoint a #horticulture produce assessor by agreement (and agree costs and scope). If they cannot agree, the mediation adviser or the mediator can appoint one under the Code.
- Use the assessor report to resolve the dispute directly, or take it into mediation.

5. Try to resolve it directly using the HPA process

- Both parties try to resolve the dispute directly using the HPA process.
- If Step 4 was used, use the assessor report to help settle.
- If the dispute is not resolved within 3 weeks after the written notice of dispute is given (from Step 2), either party may start mediation under the Code.

6. Optional: Use the FMA pathway for early help

- Either party can use the Fresh Markets Australia pathway to help clarify issues, request records, and try to resolve early.
- If it does not resolve, move to Step 7.

7. Mediation options

There are two mediation paths.
Mediator costs: Mediation is not free. Unless the parties agree otherwise, the grower and trader usually split the mediator's fees, and each party pays their own costs to participate (time, travel, advisers).

Option A - Mediation outside the Code, by agreement

- If both parties agree, they can choose their own mediator and run mediation on agreed terms.

Option B - Mediation under the Horticulture Code

- Timing trigger: If the dispute has not been resolved within 3 weeks after the written notice, either party can move to Code mediation.
- Either party may start Code mediation. If one party initiates the Code dispute process, **it must be followed by both parties.**
- Under the Code, the mediation adviser appoints the mediator. The Minister has appointed ASBFEO as the mediation adviser.
- The mediation adviser must appoint a mediator within 14 days of receiving the request.
- Both parties must participate and make a genuine attempt to resolve the dispute.

Plain English limitations of mediation

- The mediator helps the parties reach agreement. The mediator does not decide the commercial outcome for you.
- Any outcome is only binding if the parties agree and record it in writing.

8. After mediation, what next?
If mediation does not resolve the issue.
Commercial and legal options.

- Keep negotiating and record a settlement agreement.
- Use another dispute process if both parties agree, for example further mediation, expert determination, or arbitration if your HPA provides for it.
- Consider court action for contract or debt issues.

9. Escalate code compliance issues to the ACCC
If mediation does not resolve the issue.

- If the issue looks like a Code compliance breach, refusal to participate properly, or a repeated pattern of conduct, the matter can be raised with the ACCC.
- The ACCC enforces the Code. It does not decide the commercial outcome.

Horticulture Produce Assessors listed on ASBFEO website.



Appendix F

Fresh Markets Australia, 2026–27 Federal Pre-Budget Submission: education, transparency and capability initiatives



2026–27 Federal Pre-Budget Submission

Submitted by Fresh Markets Australia

EXECUTIVE SUMMARY

Fresh Markets Australia (FMA), representing Australia’s fresh produce central market wholesalers, submits this 2026-27 Federal Pre-Budget proposal seeking targeted Commonwealth investment to strengthen transparency, compliance, and quality assurance across the fresh produce sector.

These initiatives directly support the growth of the fresh produce industry in Australia, as well as the objectives of the Horticulture Code of Conduct (the Code), a mandatory industry code under the *Competition and Consumer Act 2010* designed to improve clarity and transparency of transactions in trade between growers and traders.

The Horticulture Code of Conduct is set for its review in 2026 and the below funding recommendations align with FMA’s requests to the Federal Government to enhance the value of the Code.

FMA proposes Commonwealth support for three priority initiatives:

- 1. National Horticulture Code of Conduct Education and Awareness Program**
Funding requested: \$1 million
- 2. Continued Commonwealth Funding for FreshData**
Funding requested: \$500,000
- 3. Funding for FreshSpecs®**
Funding requested: \$300,000

These initiatives are aligned with the Government’s objectives for fair, transparent, competitive agricultural markets and will deliver measurable benefits to growers, traders, retailers, and consumers.

AT A GLANCE

What is proposed

Targeted Commonwealth investment in three complementary, industry-led initiatives that strengthen transparency, capability, and confidence across the Australian fresh produce trading system.

Why now

The Code is scheduled for review in 2026. Strengthening education, data, and quality reference tools ahead of the review supports informed participation, consistent understanding, and a level playing field for growers and traders across all trading channels.



What is requested

Initiative	Purpose	Funding requested
National Code Education and Awareness Program	Improve practical understanding of the Code and how horticulture markets operate	\$1.0 million
FreshData	Extend and strengthen FreshData as the national, reference point for crop-level verifiable wholesale price trends	\$0.5 million
FreshSpecs®	Maintain and modernise nationally consistent quality reference standards	\$0.3 million
Total		\$1.8 million

Benefit

- Improved transparency and confidence in horticulture trading
- More consistent understanding of rights and obligations under the Code
- Better informed commercial decision-making across the sector
- Stronger foundations for the 2026 review of the Code
- Enhanced market price transparency across the fresh produce supply chain
- Improved fresh produce supply chain understanding of price and quality.



ABOUT FRESH MARKETS AUSTRALIA

FMA is the national peak body representing fruit and vegetable wholesalers and supporting businesses operating within Australia's central markets.

Australia's central markets collectively generate approximately \$8 billion in annual wholesale turnover and play a critical role in the national fresh produce supply chain. Through these markets, wholesalers connect more than 10,000 growers with independent retailers, exporters, foodservice operators, and the public.

FMA's role includes:

- Delivering industry support services, primarily through its state-based industry bodies
- Providing education and training to support compliance with the Code, including practical guidance on trading practices, transparency, record-keeping, and the use of digital education and delivery methods
- Representing a coordinated national industry position on policy, regulatory, and government matters
- Providing industry data, statistics, and market intelligence to support evidence-based decision-making
- Promoting confidence and integrity in central markets, enhancing the reputation of FMA, its members, and the broader fresh produce sector

Central markets remain the backbone of Australia's fresh produce distribution network, operating as an aggregated farm-gate at national scale that underpins price discovery, competition, and supply chain resilience.

1. NATIONAL HORTICULTURE CODE OF CONDUCT EDUCATION AND AWARENESS PROGRAM

Funding requested: \$1 million

A coordinated national program delivered with key Code stakeholders, including the Australian Competition and Consumer Commission (ACCC), the Australian Small Business and Family Enterprise Ombudsman (ASBFEO), the Department of Agriculture, Fisheries and Forestry (DAFF), the independent Code Reviewer, fresh produce grower industry bodies, and FMA to improve understanding of the Code, strengthen market literacy, and support confidence across the horticulture trading system.

Background

The Code is a mandatory industry code introduced in 2007 to regulate trade between growers and traders across the horticulture sector and to support transparency, clarity, and fair dispute resolution.

The Code requires:

- Written, Code-compliant Horticulture Produce Agreements (HPAs)
- Good faith dealings between growers and traders
- Transparent terms of trade
- Record-keeping practices consistent with the Code



- Access to dispute resolution through ASBFEO
- Compliance oversight by the ACCC

Formal disputes under the Code remain relatively limited, and trading relationships across much of the sector are generally strong. However, understanding of how the Code operates in practice, particularly in different trading environments and business models, remains uneven.

Many growers and traders, including those operating outside central markets or not reached through established industry education channels, rely primarily on high-level regulatory guidance. This guidance does not always explain how the Code interacts with day-to-day commercial realities such as supply and demand, price formation, risk allocation, and differing trader models. This can lead to inconsistent understanding and application of the Code across the sector.

Proposal

FMA proposes a national education and awareness program delivered collaboratively with five key stakeholder groups:

- The ACCC
- ASBFEO
- DAFF and the independent Code Reviewer
- Fresh produce grower industry bodies
- Fresh Markets Australia

The program would focus on whole-of-sector market and Code literacy, ensuring that growers and traders, regardless of trading channel or business model, have a shared and practical understanding of how the Code operates.

The program would include a mix of in-person and digital education activities, such as:

- National workshops, webinars, and online briefings explaining how horticulture markets operate, including supply and demand dynamics, price formation, and how these interact with the Code
- Practical Code guidance materials explained in real trading contexts
- Worked examples illustrating how HPAs and terms of trade operate across different trading arrangements
- Targeted outreach to smaller growers and traders
- Multilingual resources to support culturally and linguistically diverse participants
- A coordinated communications campaign for users of the Code

Delivery would also include targeted digital and social media engagement to reach growers and traders who do not routinely engage through formal industry channels.

Digital delivery methods would be used to increase reach, consistency, and accessibility, particularly for regional and smaller operators.



Outcomes

The program would support:

- Improved understanding of how horticulture markets operate across different trading channels
- Stronger, more consistent understanding of how the Code applies in real commercial settings
- A more level playing field for traders through shared expectations and common understanding
- Continued strength in grower–trader relationships through clarity and confidence
- Greater confidence in market processes and transactions across the sector

2. CONTINUED COMMONWEALTH FUNDING FOR FRESHDATA

Funding requested: \$500,000

FreshData is the only national, central-market-based verifiable price reporting system for fresh produce, originally established with Commonwealth support in the 2021–22 Federal Budget. It is uniquely positioned to meet grower, industry, and ACCC expectations for improved wholesale price transparency and to operate as a leading platform for daily market analytics.

Background

Grower groups, the ACCC, and multiple industry reviews have consistently called for greater transparency in fresh produce pricing, particularly at the wholesale level.

FreshData is uniquely positioned to support this objective because:

- It captures actual wholesale transaction data, rather than indicative or list prices
- It operates independently of retailer-controlled systems
- It covers a broad national range of fresh produce traded through central markets
- It functions as a centralised pricing reference, consistent with approaches used in other agricultural commodity markets

FreshData aggregates de-identified wholesale price data over a 24-hour reporting cycle from participating central market traders, providing a robust and independent picture of daily fresh produce pricing in Australia.

Proposal

FMA seeks continued Commonwealth investment to:

- Expand FreshData’s data coverage and analytical capability
- Improve grower access to timely and reliable wholesale price information
- Integrate FreshData outputs into Code education and awareness activities, supporting transparency and informed trading
- Support interoperability with industry systems and data standards
- Maintain, secure, and modernise the FreshData platform to ensure long-term reliability and confidence



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Outcomes

Continued funding would enable FreshData to operate as a trusted, verifiable platform for daily fresh produce market analytics, providing the sector with an independent and credible reference point for wholesale price trends and market insights.

This would support:

- Improved market transparency and efficiency
- More informed grower decision-making
- Greater confidence in wholesale price signals and market conditions
- Stronger evidence to inform industry discussion and policy development

3. FUNDING FOR FRESHSPECS®

Funding requested: \$300,000

FreshSpecs is a national fresh produce quality specification framework codified in the Code that supports fair trading, clear quality interpretation, and efficient supply chain outcomes across the horticulture sector.

Background

FreshSpecs maintained by FMA in consultation with industry. It provides a well-established foundation of consistent, practical quality standards for fresh produce, supporting transparency, confidence, and efficient trading outcomes.

As market practices, supply chains, and quality assessment methods continue to evolve, there is an opportunity to modernise and refresh FreshSpecs to ensure it remains contemporary, accessible, and fit-for-purpose across a diverse and fast-moving sector. Periodic updating and digitisation would support consistent application and usability, and ensure quality specifications continue to operate as a clear and practical reference point for market participants.

Proposal

FMA seeks Commonwealth funding to support the ongoing modernisation and accessibility of FreshSpecs as a nationally consistent quality specification framework referenced in the Code.

Funding would enable FMA to:

- Progressively update and extend FreshSpecs across additional commodities, in consultation with grower industry bodies and market participants
- Explore the use of emerging technologies, including image recognition and related tools, to support consistent and efficient quality assessment
- Digitise and enhance specifications to improve accessibility, usability, and consistency of application across diverse trading environments



- Deliver targeted education and guidance for growers, traders, and quality assurance teams to support consistent understanding and application of specifications

The proposed investment would enable FreshSpecs to continue operating as a contemporary, practical reference point that supports transparency, confidence, and efficient trading across the horticulture sector.

Outcomes

Funding would support:

- More consistent understanding and use of nationally recognised fresh produce quality specifications
- Improved efficiency in quality assessment and communication between growers, traders, and buyers
- Greater confidence among market participants in the interpretation of quality standards used in commercial transactions
- Continued alignment with the Code's objectives of clarity, transparency, and confidence in trading practices

CONCLUSION

The proposed investments in FreshData and FreshSpecs are complementary. FreshSpecs provides nationally consistent quality reference standards, while FreshData provides independent, crop-level wholesale price information. Together, they support a coherent national approach to transparency, informed market participation, and confidence in trading outcomes.

Alongside the proposed national education and awareness program, these initiatives would contribute to sustained, long-term benefits for growers, wholesalers, and consumers, while supporting the Government's objectives for fair, competitive, and transparent agricultural markets.

FMA welcomes the opportunity to discuss this submission further and to support the development of practical, proportionate outcomes through the 2026 review of the Code. Should you require any additional information, please contact FMA Principal Advisor, Gail Woods, at gwoods@freshmarkets.com.au.

Appendix G

Indicative

drafting

directions for

selected reforms



This appendix sets out indicative drafting options for selected reforms referred to in section 6. These drafting options are intended to illustrate the direction and practical operation of the reforms proposed by FMA. They are not intended to represent a complete redraft of the Code.

G1 Model-specific reporting framework

In practice

This would align reporting with the trading model. No separate prescribed grower statement would be required for merchant agreed price. For merchant formula/method pricing, growers would receive clear calculation-based information, while the remaining content, form and method of reporting could be agreed. Agency reporting would remain broader. This reflects the practical point that reporting should focus on the information growers need, not one fixed format across all transactions.

Suggested wording

Indicative drafting proposition only

- “(1) If the merchant purchases horticulture produce from a grower at a price agreed before or immediately upon delivery, no separate grower statement is required unless otherwise agreed in writing between the merchant and the grower.*
- (2) If a merchant purchases produce from a grower on the basis of a method or formula for determining the price paid to the grower, the merchant must give the grower sufficient information to show how the price payable to the grower has been calculated.*
- (3) Unless otherwise agreed in writing between the merchant and the grower, the information required under subsection (2) must include:*
- (a) the quality and quantity of the produce bought by the merchant;*
 - (b) the date or dates of the purchases by the merchant from the grower;*
 - (c) the date on which the produce was delivered to the merchant;*
 - (d) sufficient information to show how the price payable to the grower has been calculated; and*
 - (e) any other reporting agreed in writing between the merchant and the grower.*
- (4) The information required under subsection (2) may be given by any method agreed in writing between the merchant and the grower.*
- (5) The information required under subsection (3), other than paragraph (d), may be agreed in writing between the merchant and the grower not to be provided.*
- (6) Agency reporting requirements continue to apply separately under the Code.”*



G2 Verification in merchant formula/method pricing

In practice

This would give growers, on request, reasonable access to relevant sales records for the purpose of verifying sales prices under merchant formula/method pricing, without requiring routine disclosure of buyer identity or importing agency reporting into merchant trading.

Suggested wording

Indicative drafting proposition only

[New subclause under minimum protections]

“Where the merchant purchases produce under an agreed method or formula to determine the price paid to the grower, the grower is entitled, upon request, to reasonable access to the merchant’s sales records relating to produce supplied by that grower, for the purpose of verifying the sales prices. This does not include access to information identifying the buyer.”

G3 Merchant formula/method pricing integrity

In practice

This would require the agreed merchant method/formula pricing approach to be applied by reference to genuine sale outcomes. It is directed to integrity in the application of the merchant method or formula, rather than importing the broader agency duties of acting in the grower’s best interests or selling on an arm’s length basis generally. If government prefers an arm’s length formulation, it should be confined to the application of the agreed method or formula.

Suggested wording

Indicative drafting proposition only

[New provision dealing with integrity of merchant formula/method pricing]

“If a merchant purchases horticulture produce from a grower on the basis of a method or formula to determine the price paid to the grower by reference to a sale or sales by the merchant, the merchant must apply the agreed method or formula by reference to genuine market-based sale outcomes. Any departure from that position should occur only where otherwise agreed in writing with the grower.”

Alternative wording if government prefers an arm’s length formulation

Indicative drafting proposition only

[Alternative formulation]

“If a merchant purchases horticulture produce from a grower on the basis of a method or formula to determine the price paid to the grower by reference to a sale or sales by the merchant, the merchant must apply the agreed method or formula by reference to genuine arm’s length sale outcomes. Any departure from that position may occur only where otherwise agreed in writing with the grower.”



G4 HPA acceptance through trusted transmission and conduct

In practice

This would allow an HPA to be treated as accepted through conduct where the trader has provided it before trade through an agreed or otherwise reliable communication pathway, but the grower has not signed and returned it before supplying produce. It would reduce unnecessary non-compliance risk arising from signature delay alone, while preserving the requirement for the HPA to be given before trade and subjecting conduct-based acceptance to appropriate safeguards. This practice would also apply to variation of the HPA.

Suggested wording options

Indicative drafting proposition only

[New provisions dealing with HPA taking effect and variation by conduct]

“A horticulture produce agreement, or a written variation of a horticulture produce agreement, takes effect to its terms if:

- (a) the trader gave the agreement or variation to the grower before trade commenced through an agreed or otherwise reliable communication pathway; and*
- (b) the grower had a reasonable opportunity to review the agreement or variation; and*
- (c) after receiving the agreement or variation, the grower supplied produce to the trader under the trading relationship without signing and returning the agreement; and*
- (d) the grower’s conduct objectively indicated acceptance of trading on the basis of the agreement or variation.”*

G5 HPA content reallocation and simplification

Reform area

HPA architecture

In practice

This would allocate baseline protections, Code rules and default settings more clearly within the Code, so the HPA can focus on the transaction and relationship-specific matters the parties actually need to settle. The supporting clause-by-clause allocation analysis is set out in section 5.2.2.1.

Suggested wording

Indicative drafting direction only. See section 5.2.2.1 for the clause-by-clause analysis supporting this reform direction.

Item G6: Removal of mandatory Terms of Trade requirement

Reform area

Terms of Trade



In practice

This would remove the requirement for Terms of Trade to exist as a separate mandatory compliance document. Traders could still use published standard trading terms where they choose to do so, but those terms would not be a compulsory element of the Code architecture. The HPA would remain the operative agreement between the trader and grower, and parties could still use supplementary written terms that are not inconsistent with the Code.

Suggested wording

Indicative drafting proposition only

[Amendment removing mandatory Terms of Trade requirement]

Remove any requirement that a trader prepare, publish or make publicly available Terms of Trade as a mandatory document for the purposes of the Code.

G7 Delivery definition and ownership clarity

Reform area

Delivery and ownership

In practice

This would state more clearly how delivery, control, acceptance, rejection, agreed services and the passing of ownership operate in merchant transactions. Delivery would be explained in plain language, so the Code more clearly identifies when Delivery occurs for merchant transactions, including where agreed services are performed before resale and where produce is rejected in accordance with the agreement. This would improve legal clarity and practical usability, particularly in a central market environment where produce may be handled, graded, stored or otherwise dealt with before sale.

Suggested wording

Indicative drafting proposition only

[Definition or operative provision dealing with Delivery]

“Delivery occurs when Produce is received by the Merchant and accepted for the purpose of re-sale by the Merchant (regardless of the purpose for which the Produce is dispatched by the Grower) and, where applicable, once any Services provided by the Merchant have been completed and made available for sale.”

G8 Transitional arrangements for existing HPAs

Reform area

Transitional arrangements

In practice

This would support orderly implementation of the revised HPA framework by allowing existing HPAs to continue according to their terms, rather than requiring immediate replacement on commencement. The amended HPA content requirements would apply to new HPAs, or to HPAs replacing earlier agreements, entered into on or after commencement.



Suggested wording

Indicative drafting proposition only

[Savings or transitional provision]

“A HPA in force immediately before the commencement of the amending instrument may continue in force in accordance with its terms despite the amendments made by that instrument.

The amended HPA content requirements apply to a HPA entered into, or replacing an earlier HPA, on or after commencement.

For the avoidance of doubt, a HPA in force immediately before commencement is not required to be replaced solely because of the commencement of the amended Code.”

G9 Scope and definitions for coherent first-sale coverage

Reform area

Scope and definitions

In practice

This would update the Code’s scope and definitions, so they better reflect contemporary first-sale channels and reduce uncertainty at the edges of coverage. In particular, it would clarify the treatment of unprocessed horticulture produce and review current exclusions or limitations relating to retailers and exporters, so that first commercial sales are not left outside the Code through avoidable drafting gaps.

Suggested amendments

“Clause 5 Definitions

merchant means a person who purchases horticulture produce from a grower for the purpose of resale of that horticulture produce”

“Clause 7 Meaning of horticulture produce

(1) Horticulture produce is the following:

- (a) fruit;
- (b) vegetables, including mushrooms and other edible fungi;
- (c) nuts;
- (d) herbs;
- (e) other edible plants.”



FMA State Bodies



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