

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

- 1. Are you supplying horticulture produce to a trader? (Trader is not retailer, exporter or processor.)**

YES → Continue

NO → The Code does not apply
- 2. Do you have a written Horticulture Produce Agreement (HPA) that you have signed or accepted before trading starts?**

YES → Continue

NO → Trading should not start without a HPA under the Code.

 - Request a HPA immediately.
 - Do not send produce to the trader until the HPA is signed or accepted by you.
- 3. Does the HPA clearly state whether the trader acts as a merchant or an agent?**

YES → Follow the relevant Trading Model pathway below.

NO → The HPA does not meet the Code requirements.

 - 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 align="center">MERCHANT TRADING MODEL</p> <p align="center">A merchant buys your produce and then resells it. They take ownership.</p>	<p align="center">AGENT TRADING MODEL</p> <p align="center">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>	
<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>YES → Continue</p> <p>NO → The Trader may be breaching the Code See Step 8 → Continue</p>	
<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>	

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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
A merchant buys produce from a grower and then resells it. You take ownership.	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>5A. Does the HPA clearly state the price determination is an agreed price (set before or at delivery)?</p> <p>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?</p> <p>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?</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 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>	