



FMA SUBMISSION

RESPONSE

Horticulture Code of Conduct Review: supplementary consultation paper

June 2026



SUBMISSION TO

RESPONSE | Horticulture Code of Conduct: supplementary consultation paper

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1. Introduction

Fresh Markets Australia (FMA) welcomes the opportunity to respond to the Horticulture Code of Conduct Review: supplementary consultation paper.

This response should be read together with FMA's principal submission, lodged on 2 April 2026. FMA supports the continuation of the Horticulture Code of Conduct, subject to the reform principles and practical qualifications set out in that submission. In summary, the Code should continue as a baseline framework for dealings between growers and traders, but should be clearer, simpler, more proportionate and more workable in day-to-day trade.

The original purpose of the Code remains important. The Code was introduced to increase the clarity and transparency of trading relationships in fresh fruit and vegetable markets and to include a practical and cost-effective dispute resolution mechanism.¹ The 2006 Regulatory Impact Statement (RIS) states that the Australian Government committed to a mandatory horticulture code to increase clarity and transparency in fresh fruit and vegetable trading relationships, with a practical and cost-effective dispute resolution mechanism.

The RIS also set important boundaries for reform. It identified three primary objectives: to address the problem identified, avoid unintended side effects, including penalising those already undertaking business best practice, and make the Code effective. It also referred to improving clarity of transactions, improving transparency about how prices, margins and charges are determined and returned to the grower, maintaining flexible trading options, avoiding prescriptive one-size-fits-all terms, minimising interference where problems do not exist, minimising compliance costs, and providing low-cost, quick and effective dispute resolution. Those RIS objectives and boundaries appear in the reproduced RIS objectives section.

The RIS and the current Terms of Reference provide a practical test for reform. Reform should respond to problems that have been raised with evidence, improve clarity and confidence in trading relationships, support effective compliance, avoid unnecessary regulatory burden, and avoid side effects that penalise businesses already working to comply. For FMA, the practical test is whether the Code is clearer, better understood and not intrusive on day-to-day trade. Reform aim should support practical compliance and confidence in trading relationships, without creating more paperwork, more disputes or more technical breach risk.

Code literacy should be treated as a core implementation requirement for any amendment to the Code. The issues raised in the supplementary consultation paper cannot be addressed through drafting alone. Growers and traders need practical, accessible and model-specific guidance on:

- when the Code applies;
- what an HPA does;
- how deemed agreements and deemed terms would operate;
- how merchant formula/method pricing works:

¹ Centre for International Economics, *Mandatory Horticulture Code of Conduct: A Regulation Impact Statement*, 2005, p 2, reproduced in Fresh Markets Australia, *Horticulture Code of Conduct Review Submission: An Assessment of the Introduction, Justification for and Performance of the Code*, September 2015, Appendix 1.



- what information must be reported and kept; and
- how disputes can be raised and resolved.

The public submissions and consultation material show that key parts of the Code are not always understood or applied consistently, including by stakeholders with an important role in the Code's operation. That includes the distinction between trader roles and price-setting methods, the function of HPAs, reporting obligations, verification rights and compliance responsibilities.

This is important because adding more rules will not fix misunderstanding. If growers, traders, regulators, advisers and industry bodies are not working from the same understanding of the Code, new obligations may make the Code harder to use rather than easier.

FMA considers that any amendments should therefore be minimal, targeted and directed to reducing complexity.

A clearer Code will only succeed if growers and traders can understand it and apply it in day-to-day trade.

It is also relevant that the Code regulates dealings between growers and traders, and places obligations on both. Those obligations include good faith, trading under a horticulture produce agreement, acceptance of that agreement, and record keeping. This is especially relevant to the questions raised in the supplementary consultation paper about deemed agreements, deemed terms, reporting, verification and compliance burden.

The supplementary consultation paper raises issues that go to the practical operation of the Code in Australia's central wholesale markets. These include the pathway for trade where a horticulture produce agreement has been provided but not signed, the treatment of merchant formula/method pricing, the scope and coverage of the Code, the clarity of key definitions, and the reporting and compliance burden carried across the supply chain.

FMA will answer each question in turn under the relevant key issue. Across those answers, FMA will maintain the same position: the Code should continue, but reform should be practical, proportionate and evidence based. It should support clarity and confidence, preserve legitimate trading models, reduce unnecessary duplication and administrative burden, strengthen practical Code literacy and implementation support, and keep the Code aligned with its original objective and purpose.

2. Key Issue - Facilitating trade where there is no signed agreement

Question 1 - Do you support deemed agreements or deemed terms? Are there any unintended consequences?

FMA supports a deemed agreement mechanism to address trade where a trader has produced and published its own Code-compliant standard HPA, but produce is supplied before that HPA has been signed. This should maintain the existing rule that growers and traders must not trade in horticulture produce with each other unless an HPA is in place.² Under that model, the trader's own Code-compliant standard HPA would be treated as the agreement that applies where produce is supplied before signing.

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



The practical issue is how the Code should operate where a trader has provided its own Code compliant HPA, but produce is supplied before that HPA has been signed.

For clarity, FMA treats deemed agreements and deemed terms differently:

- a deemed agreement should mean that the trader's own Code-compliant standard HPA is treated as applying where that HPA has been produced and published by the trader, but has not been signed before produce is supplied
- deemed terms would mean a generic set of HPA terms created by the Code itself as a fallback where no Code-compliant HPA terms exist. FMA does not support that approach.

FMA supports a deemed agreement pathway based on the trader's own Code-compliant standard HPA. However, FMA does not support the creation of generic deemed terms by the Code where no Code-compliant standard HPA exists. In that case, the absence of an HPA should remain a compliance issue.

FMA's proposed model has three parts.

1. *Remove mandatory Terms of Trade*

Mandatory Terms of Trade should be removed from the Code.

Terms of Trade duplicate the HPA and create unnecessary confusion. The HPA should be the central document for trade clarity and Code compliance.

This is consistent with FMA's principal submission, which recommended removing mandatory Terms of Trade and simplifying the HPA framework so that the Code carries baseline rules and the HPA focuses on core commercial and relationship-specific terms.

2. *Replace Terms of Trade with the trader's published standard HPA*

Each trader should prepare and publish its own Code-compliant standard HPA.

That standard HPA should identify the trading model used by the trader. The Code recognises two trader roles: agent and merchant. Where the trader is a merchant, there are two possible price-setting methods, merchant agreed price and merchant formula/method pricing.

The standard HPA must make clear which role applies, because each role has different consequences for ownership, payment, risk, reporting and responsibility.

For merchant formula/method pricing, the standard HPA must show the basis for the calculation so the grower can understand how the grower return will be determined. For the avoidance of doubt, this does not require the published standard HPA to disclose a margin percentage, service fee, deduction or other commercial variable that the trader treats as commercially sensitive. Any such grower-specific variables should be recorded in the terms provided to that grower where they apply.



3. *Treat the trader's published standard HPA as the deemed agreement*

Where a grower supplies produce to the trader, the trader's published standard HPA should operate as the deemed agreement. No signature should be required for that standard HPA to apply.

This gives the grower a clear practical choice:

1. supply produce on the trader's own published standard HPA;
2. agree different or additional Code-compliant terms with the trader; or
3. do not supply produce where there is no published standard HPA and no other HPA is in place.

Any additional or grower specific terms should be recorded in writing and must be Code compliant. These could include different payment timing, different reporting arrangements, agreed services, service fees or charges, contact details, or product specifications that differ from the standard position.

Grower-specific commercial terms should remain between the grower and trader where they are commercially sensitive. The grower must know the terms that apply to that grower, including any agreed service fees or charges. However, negotiated service pricing and similar commercial terms should not need to be published.

Where grower specific terms have been provided but not signed, FMA considers that they should be capable of acceptance by conduct in appropriate circumstances. FMA addresses that issue further in response to Question 2.

Where there is no HPA at all

If a trader has not produced and published a Code-compliant standard HPA, and no other HPA is in place, the deeming pathway should not apply.

That remains a compliance issue. The trader should not receive the benefit of a deemed agreement pathway without doing the upfront compliance work. Equally, the grower also has an obligation under the Code not to trade without an HPA in place.

A visual summary of FMA's proposed model of *Deemed agreements and deemed terms* is included at Appendix A.

Unintended consequences to avoid

FMA supports this model only if it is carefully framed and maintains the obligation on growers and traders to trade under a compliant HPA. FMA has consulted with its members and engaged with grower bodies on other deemed agreement and deemed term options, including generic Code terms and deemed agency. FMA does not support those approaches because they are not practical, would weaken the HPA as the central trading document, create uncertainty about the parties' roles and responsibilities, and risk replacing one compliance problem with another.

The following unintended consequences should be avoided.



1. Creating a deemed agreement where no Code-compliant standard HPA exists

The deeming pathway should only apply where the trader has prepared and published its own Code-compliant standard HPA. If there is no published standard HPA and no other HPA in place, the issue should remain a compliance issue.

2. Creating deemed agency

A trader should not be deemed to be an agent because an HPA has not been signed. That would confuse ownership, payment, reporting, risk and commercial responsibility. It would also blur the distinction between trader roles and merchant price-setting methods, including merchant agreed price and merchant formula/method pricing.

It would also mean traders may need to be ready to operate as agents by default whenever a grower has not signed an agreement, even where their systems, records, accounting, insurance, reporting processes and commercial arrangements are set up for merchant trading. That would be unworkable and would create unnecessary cost and uncertainty.

3. Creating generic deemed commercial terms

The Code should not create a separate set of generic deemed commercial terms. That would add complexity and may weaken the role and undermine the value of HPAs. The deemed agreement should be the trader's own published Code-compliant standard HPA.

4. Publishing commercially sensitive grower-specific terms

Grower-specific commercial terms should be clear between the grower and trader but should not need to be published where they are commercially sensitive. This includes negotiated service pricing, agreed charges and other grower-specific commercial terms.

5. Increasing compliance burden

The model should remain simple to evidence. The purpose of deeming should be to support practical Code compliance, not create another heavy compliance file. The more detailed evidence and good faith issues are addressed in response to Question 2.

Summary position

FMA supports a deemed agreement pathway where the agreement treated as applying is the trader's own Code-compliant standard HPA, produced and published by that trader. FMA does not support generic deemed terms being created by the Code where no Code-compliant standard HPA exists.

This model keeps the HPA central, removes duplication from Terms of Trade, supports HPA simplification, recognises the obligations of both parties, and avoids deemed agency or artificial default commercial terms.



Question 2 - What types of evidence should be required to demonstrate good faith attempts to get an HPA signed?

FMA considers this question should be addressed in the context of the deemed agreement model proposed in response to Question 1.

Under FMA's proposal, the trader's published and Code compliant standard HPA would form the baseline agreement. Should the grower supply produce to that trader, the standard HPA would be deemed agreed. The Code should therefore not require traders to prove repeated attempts to obtain a signed standard HPA.

This approach addresses the practical problem raised by the supplementary consultation paper: produce may be supplied even though an HPA has not been signed. The solution should keep the HPA central, while avoiding a new evidence-heavy process that requires traders to prove repeated chase steps before trade can continue.

The question remains relevant where there are additional or grower specific terms. These may include service pricing, different payment terms, different product specifications, different reporting arrangements, agreed services, or grower details.

For those grower specific terms, good faith should be practical and mutual. The trader should provide the terms clearly, in writing and through a reliable channel. The grower should then act promptly by accepting, rejecting and not supplying produce, or seeking to negotiate.

This is important in perishable produce trade. Should the grower supply produce after receiving the grower specific terms and having a reasonable opportunity to object in the circumstances, acceptance by conduct should be available. Once produce is supplied, the trader must act quickly to sell it, protect its value and achieve the best available commercial outcome.

FMA does not support evidence requirements such as registered post, a fixed number of emails, repeated calls, or formal chase steps. Those steps would add cost and delay. They would also turn the current HPA signing problem into another compliance task.

That would be inconsistent with the evidence in FMA's lodged principal submission, which shows that HPA administration already creates material time and cost pressure for central market traders. FMA cited KordaMentha's findings that HPA dedicated staff cost traders an average of \$61,000 each year, that those costs are proportionately higher for smaller traders, and that 82 per cent of traders surveyed spend more than a week following up growers for HPAs, many times after produce has been received.³

Evidence should therefore be limited to existing business records such as:

- the published standard HPA;
- a grower-specific schedule;

³ Fresh Markets Australia, *Response to Horticulture Code of Conduct Review: consultation paper*, March 2026, section 5.2.2, p 20 and section 5.2.2.1, p 21; KordaMentha, *Horticulture Code of Conduct Economic Analysis*, Appendix A to FMA submission, report pp 5, 17, 18 and 24.



- an email, SMS or portal record;
- a system record;
- a grower response; or
- a delivery record.

This approach is consistent with FMA's lodged position that the Code should recognise practical HPA acceptance pathways, including acceptance by conduct in appropriate cases with safeguards. FMA's Reform Request 7 also proposes that an HPA, and any amendment to it, should be able 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.⁴

This should be supported by national Code literacy, so growers and traders understand their responsibilities before produce is supplied. Growers should understand that grower-specific terms should be accepted, rejected or negotiated promptly, and that supplying produce after receiving applicable terms may have consequences.

The problem being addressed is the gap between the Code's written HPA requirement and the reality that produce may continue to be supplied after HPA terms have been provided but before a signature is returned. The deemed agreement pathway should close that gap while keeping the HPA as the central trading document. It should not excuse trade where no Code-compliant HPA has been produced or provided.

Summary position

FMA does not support a prescribed evidence checklist for good faith attempts to get an HPA signed.

Under FMA's proposed deemed agreement model, the trader's own Code compliant standard HPA would be deemed agreed should the grower supply produce to that trader. For any grower specific terms, existing business records should be enough to show that the trader provided the terms through a reliable channel and that the grower had a reasonable opportunity to respond.

This model recognises the obligations of both parties, supports practical acceptance by conduct, avoids registered post or fixed chase steps, and reduces the risk that the current HPA signing burden is replaced by a new compliance burden.

Question 3 - What terms could be deemed if an HPA is not signed?

FMA does not support creating generic deemed terms under the Code.

Consistent with the model proposed in response to Question 1, FMA supports deemed terms only where they are the terms in the trader's own published Code-compliant standard HPA. That HPA should be prepared and published by the trader and

⁴ Fresh Markets Australia, *Response to Horticulture Code of Conduct Review: consultation paper*, March 2026, FMA Position Statements, p 3 and section 6, Reform Request 7, p 41.



should contain the Code required terms relevant to the trader's role and trading model.

For a merchant, the standard HPA should state whether the price-setting method is merchant agreed price or merchant formula/method pricing. It should also set out the standard terms that apply to the trading relationship, including payment timing, delivery and quality requirements, reporting arrangements where required, rejection process, dispute process, and any standard services or charges.

Any additional or grower specific terms should sit outside the published standard HPA unless they form part of the trader's standard position. These may include different payment timing, different reporting arrangements, negotiated service fees or charges, grower details, or different product specifications. They should apply only where they have been provided to the grower in writing and accepted, including by conduct in appropriate cases.

If the trader has not produced and published a Code compliant standard HPA, and no other HPA is in place, no deemed terms should apply. That should remain a compliance issue.

Summary position

FMA supports deemed terms only where those terms are the terms of the trader's own published Code compliant standard HPA.

If the trader has not produced and published a Code compliant standard HPA, and no other HPA is in place, no deemed terms should apply. That should remain a compliance issue rather than corrected by creating generic deemed terms.

This approach keeps the HPA central, avoids generic default terms and deemed agency, protects commercially sensitive grower specific terms, and keeps the deeming pathway limited to traders that have done the upfront compliance work.

In short, the Code should not create commercial terms where no Code-compliant HPA terms exist.

Question 4 - If a grower or trader seeks to alter the HPA in writing, but that HPA variation is not signed for an extended period, which HPA should apply – the older HPA that is signed, or the variation to the HPA that is unsigned?

FMA considers that the HPA either deemed or otherwise accepted should continue to apply unless and until the variation takes effect.

A variation may be proposed by either the grower or the trader. The same rule should apply in both cases. A variation should take effect if it is signed, accepted in writing, or accepted by conduct, including by continuing to trade after the stated effective date where clear written notice has been provided and the other party has had a reasonable opportunity to object.

FMA does not support prescribing a fixed notice period for all variations. Whether there has been a reasonable opportunity to object should be assessed in context, having regard to the nature of the proposed variation, how clearly it was provided, the stated effective date, and whether the parties continued to trade after that date.



Where a variation is not signed, it should only apply if it has been provided clearly, in writing and through a reliable communication pathway, the other party has had a reasonable opportunity to review it and object, and the parties continue to trade after the stated effective date.

FMA supports a practical pathway where a variation can be issued with a clear future effective date. For example, a variation may state that it will apply from a specified date unless the other party objects or seeks to negotiate before that date. If the other party does not object and continues to trade after that date, that conduct should be capable of showing acceptance.

Time alone should not make an unsigned variation binding. Silence alone should not be treated as agreement. There should be clear notice, a reasonable opportunity to object, and continued trade after the stated effective date.

This is consistent with FMA's lodged position that the Code should recognise practical HPA acceptance pathways, including acceptance by conduct in appropriate cases with safeguards. FMA's Reform Request 7 proposes that an HPA, and any amendment to it, should be able 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.⁵

Some matters should also be removed from the variation problem. Insurance is one example. FMA's lodged principal submission proposed that insurance should sit in the Code, rather than requiring repeated HPA variation when cover changes. While produce remains the grower's property but is under the trader's control, the grower should be able to request information about whether insurance exists and the nature and limits of the cover.⁶

Summary position

FMA considers that the signed HPA should apply unless and until a variation takes effect.

An unsigned variation should be able to take effect where it has been provided clearly in writing, the other party has had a reasonable opportunity to object, and the parties continue to trade after the stated effective date.

This approach applies whether the variation is proposed by the grower or the trader. It supports practical acceptance by conduct, avoids treating silence alone as agreement, and reduces repeated HPA variation for matters that should sit in the Code or be dealt with as factual updates.

FMA does not support a single mandatory notice period for every variation. The Code should require clear notice, a stated effective date and a reasonable opportunity to object, while allowing the HPA to specify any agreed notice period or process.

⁵ Fresh Markets Australia, *Response to Horticulture Code of Conduct Review: consultation paper*, March 2026, FMA Position Statements, p 3 and section 6, Reform Request 7, p 41.

⁶ *Ibid*: section 5.2.2.1, cl 16(e), p 23.

3. Key Issue – Method or formula-based price setting

FMA supports retaining merchant formula/method pricing as a legitimate price-setting method within the merchant role.

Other submissions also support retaining merchant formula/method pricing, or caution against removing it without stronger evidence. Freshmark, Brismark, CMAA, AUSVEG, AFPA and QFVG support retaining the model, with appropriate transparency or documentation requirements. Melons Australia says it should not be removed without independent economic analysis. Metcash and the Small Business Development Corporation WA caution against major change without proper assessment of grower outcomes, market impacts and commercial consequences. Fruit Growers Tasmania and ASBFEO also support practical reforms that improve price transparency and Code usability without adding unnecessary complexity.

FMA’s position is that the model should be retained. Any reform should be based on clear evidence, should preserve the merchant role, and should not import agency obligations into merchant trading. The distinction in Figure 1 is important:

- agent and merchant are trader roles;
- merchant agreed price and merchant formula/method pricing are price-setting methods within the merchant role; and
- the price-setting method does not change the trader role.

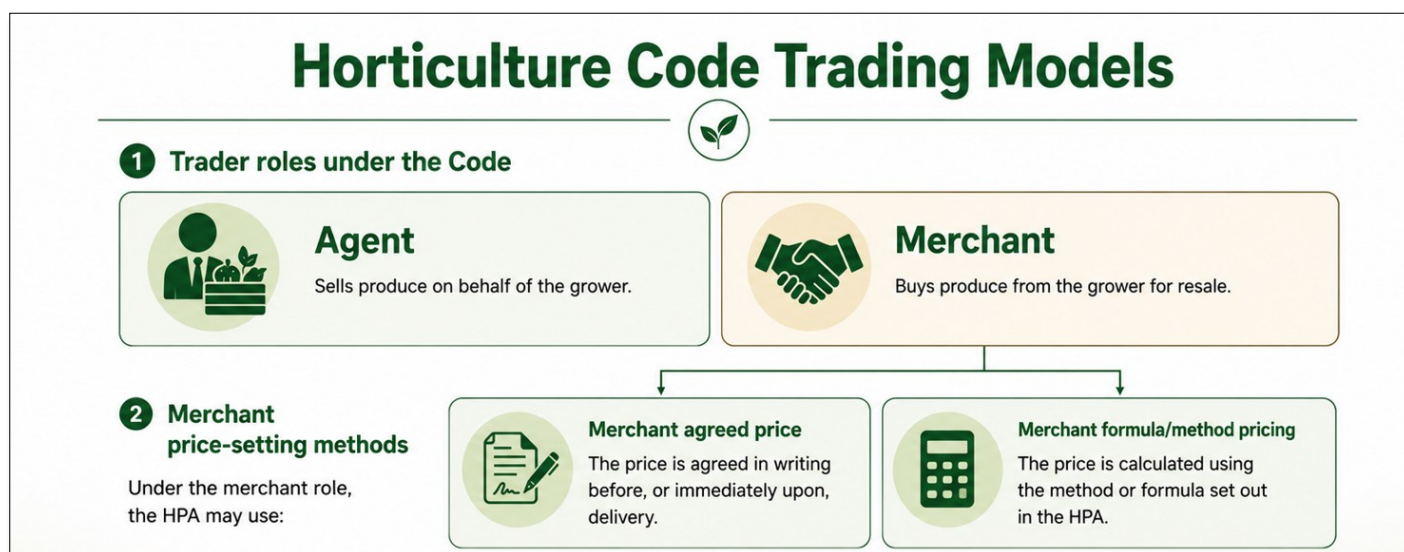


Figure 1: Trader roles and merchant price-setting methods

The HPA already states the key trading facts, including the trader role, price-setting method, payment terms, reporting and any services or charges. The issue is making sure growers and traders understand what those terms mean before produce is supplied.

This is particularly important for merchant formula/method pricing. Growers should understand their options before supplying produce. That includes understanding whether the trader’s standard HPA provides for merchant agreed price or merchant formula/method pricing, what each pricing method means in practice, and whether the grower wishes to supply on those terms, seek different terms, or supply through another trading arrangement.



FMA supports clear grower-trader communication about HPA terms before trade begins. The deemed agreement pathway proposed by FMA would allow the trader's published standard HPA to apply where the grower supplies produce, but it should still be supported by practical Code literacy so growers understand the terms they are supplying under.

Code literacy is therefore essential. The current review process has highlighted that key Code concepts are not always being understood or applied consistently, including by stakeholders with important roles in the Code's operation. That includes the distinction between trader roles and merchant price-setting methods, the function of HPAs, reporting obligations, verification rights and compliance responsibilities. Adding new obligations before that shared understanding is improved risks making the Code more complex, not more workable.

FMA therefore supports retaining merchant formula/method pricing, strengthening Code literacy, improving practical guidance and keeping the HPA as the central trading document.

Question 5 - Should the method or formula-based pricing be amended to introduce new requirements?

Not on the present evidence.

FMA does not support amending the Code to impose additional agent-like obligations on merchants who use merchant formula/method pricing.

The supplementary consultation paper raises possible new requirements for merchants using method or formula price setting, including:

- a best interests duty for a merchant using merchant formula/method pricing, requiring the merchant to act in the grower's best interests;
- reasonable care and skill in handling produce;
- arm's length sales requirements, directed to related-party sales or conflicts of interest;
- agent-style reporting, including some of the same reporting obligations as an agent under clause 29(1); and
- expanded inspection of records relating to the sale of the horticulture produce, consistent with clause 55.

The supplementary consultation paper also recognises that method or formula price setting by merchants is widespread, allows growers and traders to respond to market variability, and that prohibiting it could be very disruptive for growers and traders.

On the present evidence, FMA does not consider that the case has been made for new Code obligations targeted at merchant formula/method pricing.

FMA considers those options should be separated. Some would import agency obligations into merchant trading and should not be adopted. On the present evidence, none of the options justifies new Code obligations for merchant formula/method pricing.



The case for new Code obligations has not been made. Any change should be supported by genuine and transparent evidence of the problem, a clear explanation of why existing Code obligations are not sufficient, and a proper assessment of cost, practicality and unintended consequences.

That evidence threshold is particularly important where a proposed change would remove, restrict or fundamentally alter a legitimate pricing method that is widely used in fresh produce trade. The submissions do not show a consistent grower position that merchant formula/method pricing should be removed. Some grower representative submissions support retaining the model with appropriate clarity or documentation requirements, while others raise concerns. That mixed record does not support a conclusion that the model itself should be removed or converted into agency by another route.

FMA's principal position is that merchant formula/method pricing should be retained. Any concern about its use should first be tested against genuine and transparent evidence, and addressed through:

- an active national Code literacy program for growers, traders, regulators, advisers and industry bodies;
- a simplified HPA framework; and
- proportionate compliance action where serious, repeated, deliberate or systemic non-compliance is substantiated.

FMA does not regard Code literacy as simply publishing more material online. It should involve practical implementation support, including plain-English tools, worked examples, workshops or briefings, direct engagement with growers and traders, and a shared understanding across key stakeholders about how the Code operates in real trade.

Any inspection of records pathway must also protect buyer identity and commercially sensitive customer information from disclosure.

FMA does not support new requirements that would import agency obligations into merchant trading. In particular, FMA does not support a best interests duty, routine buyer identity disclosure, or any requirement that converts merchant formula/method pricing into agency by another route.

Summary position

FMA does not support new Code requirements for merchant formula/method pricing at this stage. The case for new obligations has not been made on the present evidence.

FMA would participate constructively in further consultation on the specific matters raised in the supplementary consultation paper that may be capable of being adapted to the merchant role, including reasonable care and skill, limited arm's length wording and limited inspection of records.

FMA does not support a best interests duty, buyer identity disclosure, agent-style reporting, or requirements that convert merchant formula/method pricing into agency by another route.



Question 6 - What obligations should a merchant using a method or formula price setting have to ensure grower protection and sale price transparency? What would these proposed obligations achieve?

FMA considers that “grower protection” should be framed carefully in this context.

Merchant formula/method pricing is a price-setting method within the merchant role. The relevant protections should operate within that model. Any grower protections should operate in that model. Those protections should help the grower understand the method or formula set out in the HPA, see how the return was calculated, verify the relevant sale price where needed, and have confidence that produce is handled with reasonable care and skill while it is under the trader’s control.

The current Code already contains protections:

- trade must occur under an HPA;
- the method or formula must be set out in the HPA:
- where merchant formula/method pricing is used, the Code already requires additional reporting information, including the gross sale price and information about produce not sold or destroyed, because the grower’s return is calculated by reference to sale outcomes after produce is supplied;
- good faith also applies to both growers and traders.

The first protection for growers is clear understanding before they accept the HPA terms, whether by signing or by conduct. If a grower does not wish to supply under merchant formula/method pricing, the grower should understand the commercial consequence, they may choose not to supply under that HPA and may seek another trading arrangement, whether with that trader or another trader. The Code should not require a trader to offer a different trader role or pricing model.

The point is that the grower should understand the trader role, the price-setting method and the practical consequences before produce is supplied. Practical grower protection comes from clear pre-trade understanding and safeguards that can operate within merchant formula/method price-setting method without changing the merchant role.

FMA’s primary position is that the case for new Code obligations has not been made on the present material.

Those matters should be assessed by whether they would:

- help the grower understand how the return was calculated;
- allow practical verification where there is a genuine concern or dispute;
- protect buyer identity and commercially sensitive customer information;
- avoid routine duplicate reporting; and
- preserve merchant formula/method pricing as a price-setting method within the merchant role.

FMA does not support importing agent-style reporting into merchant formula/method pricing. Reporting should be model-specific, calculation-based and capable of being provided through practical methods agreed between the grower and trader.

FMA does not support a best interests duty or require buyer identity disclosure.



This approach is consistent with FMA's principal submission, which opposed prohibiting merchant formula/method pricing and opposed importing agency obligations into merchant trading.

Summary position

FMA does not consider that the case for new Code obligations for merchant formula/method pricing has been made on the present evidence.

FMA does not support a best interests duty, routine buyer identity disclosure, agent-style reporting, or any requirement that gives merchant formula/method pricing the practical character of agency.

Any change should be assessed by whether it helps growers understand how their return was calculated, supports practical verification where there is a genuine concern or dispute, protects buyer identity and commercially sensitive customer information, avoids routine duplicate reporting, and preserves merchant formula/method pricing as a price-setting method within the merchant role.

Question 7 - Are there unintended consequences for growers and traders if merchants using a method or formula price setting have similar obligations as an agent and how could they be mitigated?

Yes. There would be significant unintended consequences if agent-style obligations were applied to merchant formula/method pricing.

The supplementary consultation paper canvasses whether some obligations similar to those applying to agents should apply to merchants using method or formula pricing. FMA does not accept that agent-style obligations should be treated as a single package. Some are tied to the legal character of agency and should not be imported into merchant trading. In FMA's view, the test should be substance, not label. If a requirement gives merchant formula/method pricing the practical character of agency, it should not be adopted merely because it is described as a merchant obligation. FMA's principal submission also cautioned against a simple one-way power imbalance narrative. In central market trade, the bargaining setting is more complex. Wholesalers depend on timely and consistent grower supply in a perishable environment, and crop variability, limited availability and reliance on suppliers meeting required standards can strengthen supplier leverage. That does not mean there are no information or bargaining concerns. It means any reform should be assessed in the actual trading context and should not assume that agent-style duties are the correct answer for merchant formula/method pricing.

The most significant risk is a legal best interests duty. Traders often say they work in the best interests of their growers, or that they want to achieve the best outcome for the grower. That is normal commercial language. It is also how long term trading relationships are maintained. It reflects the commercial need to maintain grower confidence and supply.

A legal best interests duty is different. It would require a merchant to justify ordinary commercial decisions by reference to the grower's interests, even though the merchant has bought the produce to resale and carries merchant risk. That is particularly problematic in central market trade, where price is fundamentally shaped by supply and demand, as well as quality, volume,



timing, perishability and buyer demand on the day. A merchant cannot control those market conditions. The merchant's role is to trade within them.

That would create uncertainty for both parties. It would also make HPAs more complex and may reduce the willingness of traders to offer merchant formula/method pricing. Traders would need to protect their ordinary commercial rights in much more detail, including rights to choose buyers, manage timing of sale, respond to quality issues, manage credit risk, clear deteriorating produce, discount stock, dispose of unsaleable produce, recover service costs, manage customer relationships, and protect confidential customer information.

It would also increase compliance and audit burden. If a best interests duty applied, traders may need to keep more evidence showing why ordinary trading decisions were made. That could include evidence about buyer choice, sale timing, price negotiations, quality assessment, stock handling, credit decisions, clearance decisions and customer management. That would move the Code away from simpler HPAs and practical compliance.

Agent-style reporting would create similar risks. Agency reporting is heavier because the agent sells on behalf of the grower and accounts for sale outcomes in that role. FMA's principal submission states that agency already operates within a heavier legal and reporting framework, and that fuller reporting is more understandable in that context. It also states that concerns about merchant formula/method pricing should be addressed through targeted, model-appropriate reform rather than importing agency obligations into merchant trading.⁷

The compliance burden is also material. FMA's lodged principal submission identifies that Code reporting burden is shaped by the information required, the systems used, and the need to capture, reconcile and produce information in a prescribed way. It also records that KordaMentha found the current Code already imposes costs on traders that are more acute for small businesses, including where smaller businesses rely on manual processes.⁸

Those risks can be mitigated by keeping the distinction between agent and merchant. Merchant formula/method pricing is a price-setting method within the merchant role. It should not be given the practical character of agency by another route.

FMA does not support a best interests duty, routine buyer identity disclosure, or agent-style reporting being applied to merchant formula/method pricing.

The limited matters on which FMA would participate in further consultation are addressed in response to Questions 5 and 6.

Summary position

FMA considers that applying agent-style obligations to merchant formula/method pricing would create significant unintended

⁷ Ibid; sections 5.2.1.4 and 5.2.1.5, pp 14 to 15.

⁸ section 5.2.2.2, pp 27 to 28; KordaMentha, *Horticulture Code of Conduct Economic Analysis*, Appendix A to FMA submission, report pp 5, 18 and 19.



consequences.

The main risks are legal uncertainty, more complex HPAs, increased audit evidence burden, higher reporting burden, and confusion between merchant trading and agency.

Those risks should be mitigated by preserving the distinction between agent and merchant. Merchant formula/method pricing should remain a price-setting method within the merchant role.

FMA does not support a best interests duty, routine buyer identity disclosure, agent-style reporting, or any requirement that gives merchant formula/method pricing the practical character of agency.

4. Key Issue – Scope and Coverage

FMA supports consistent first sale/trade coverage across the horticulture supply chain. Where horticulture produce is first sold or traded by or on behalf of a grower, the transaction should be covered by either the Horticulture Code or the Food and Grocery Code.

The reason is practical. Growers now use many supply channels. These include;

- central market traders;
- off-market traders;
- processors;
- exporters;
- independent retailers;
- food service suppliers;
- aggregators;
- packhouses; and
- other wholesale purchasers.

The Code should reflect that changed trading environment.

A number of submissions also identify uneven coverage across first sale pathways. CMAA, Brismark, Freshmark and AUSVEG support broader first point of sale coverage where the Food and Grocery Code does not apply. Metcash also supports reassessing coverage for large retailers not governed by the Food and Grocery Code and for fresh produce wholesalers where the Horticulture Code better fits their operations.⁹

FMA recognises that some submissions caution against broader scope without further evidence. FMA's position responds to

⁹ Central Markets Association of Australia, *Submission: Review of the Horticulture Code of Conduct*, March 2026, pp 12, 18; The Queensland Chamber of Fruit and Vegetables Co-operative Limited (Brismark), *Submission: Review of the Horticulture Code of Conduct*, April 2026, pp 19 to 20; Freshmark, Response to Horticulture Code of Conduct Review consultation paper, April 2026, pp 6 to 7, 31 to 32; AUSVEG, *Horticulture Code of Conduct Review Submission*, March 2026, pp 7, 14; Metcash Food & Grocery Pty Ltd, *Submission to the Horticulture Code of Conduct Review*, March 2026, pp 1 to 3.



that concern.

Coverage should be consistent where first sale or trade risks are comparable, but obligations should be practical, proportionate and matched to the trader's role, the trading model and the risk being addressed.

FMA's support for consistent first sale/trade coverage should be read together with its broader reform position. Broader coverage should not mean simply extending the current Code settings into additional supply pathways. If the Code is to apply more consistently across first sale/trade transactions, it should do so through a clearer, simpler and more workable framework.

That means scope reform should proceed with targeted Code simplification, practical implementation planning and active Code literacy.

Processors

Question 8 - Should the Horticulture Code cover trade between growers and processors?

Yes, where the transaction involves the first sale/trade of horticulture produce by or on behalf of a grower, and where the transaction is not covered by the Food and Grocery Code.

This follows the position set out above. FMA supports consistent first sale/trade coverage across the horticulture supply chain. Processor transactions should be considered as part of that framework where the same first sale/trade risks arise.

FMA also recognises that the consultation record is mixed. Some submissions support including processors, including Fruit Growers Victoria and Melons Australia. Others caution against expansion without stronger evidence or further consultation, including AFPA and the ACCC.¹⁰

For that reason, FMA supports coverage in principle, but only through a practical model that fits processor transactions.

Question 9 - If they are covered, what obligations should apply to trade between growers and processors?

Processor obligations should be practical and limited to the risks in the transaction.

The core requirements should focus on:

- written terms before supply;
- product specifications;
- price or price-setting method;
- payment timing;
- delivery and acceptance;

¹⁰ Fruit Growers Victoria, Submission to the Horticulture Code of Conduct Review, March 2026, pp 1 to 2; Melons Australia, Submission to the Horticulture Code of Conduct Review, March 2026, pp 3 to 4; Australian Fresh Produce Alliance, Submission to the Independent Review of the Horticulture Code of Conduct, March 2026, pp 22 to 24; Australian Competition and Consumer Commission, Submission to the 2026 Review of the Horticulture Code of Conduct, March 2026, p 15.



- quality assessment;
- downgrades or price adjustments;
- dispute resolution; and
- records needed to verify payment or deductions.

The Code should not simply copy central market obligations into processor arrangements. Processor trade may involve different commercial settings, including programmed supply, product specifications, contract growing, processing grades, and different timing for quality assessment and payment.

Question 10 - If they are covered, what are the potential costs and benefits to growers and processors of this inclusion?

Please provide data to support your response.

The potential benefits are:

- more consistent baseline protections across first sale/trade pathways;
- clearer written terms before supply;
- clearer product specifications, quality assessment and downgrade processes;
- clearer payment timing; and
- access to dispute resolution.

The potential costs are mainly implementation and compliance costs. Processors may need to review or update contracts, systems, staff training, reporting processes and dispute handling procedures.

Those costs should not be assessed by assuming the current Code remains unchanged. If government considers broader coverage, it should do so alongside targeted Code simplification, including simpler HPAs, removal of unnecessary duplication, clearer reporting settings and practical Code literacy. Those reforms would reduce compliance cost and make any coverage change more workable.

FMA's position is that those costs should be managed through simple requirements, practical guidance and a reasonable transition period. The aim should be a workable baseline, not a heavy compliance model.

Question 11- Are there other non-regulatory alternatives that could address concerns regarding trade with processors?

Education, guidance, and model agreements would help. They should form part of any reform package.

However, education alone would not fully address uneven coverage where a processor is part of the first sale/trade pathway from the grower. If the policy objective is consistent first sale/trade coverage, there needs to be a clear Code framework.

Education should support the Code, not replace it where coverage is needed.



Question 12 - If processors were to be included in the Horticulture Code, should trade with growers that have a collective bargaining class exemption from the ACCC be explicitly exempted from the requirements of the Horticulture Code?

Where growers are already covered by a collective bargaining arrangement that deals with the same matters, the Code could recognise that arrangement to avoid duplication.

However, the existence of a class exemption should not automatically remove Code protections. The key question should be whether the transaction has clear written terms, price and payment clarity, quality assessment processes and a practical dispute pathway.

Question 13 - How should unprocessed horticulture produce be defined?

Unprocessed horticulture produce should mean horticulture produce that remains in fresh form and has not been converted into a different product or substantially altered in character.

Ordinary post-harvest handling should not be treated as processing. This should include:

- washing;
- grading and sorting;
- cooling, ripening, and, storage;
- trimming;
- transport;
- quality assessment;
- packing, bagging and labelling.
- presentation for sale.

where those steps are used to preserve, assess, prepare or market the produce in fresh form.

The definition should include steps that convert produce into a different product or substantially alter its character (bagging whole produce or whole salad leaves should not, by itself, be treated as processing.) This may include:

- cutting or shredding where the produce becomes a prepared product;
- mixing with other ingredients;
- cooking;
- juicing and pulping;
- freezing;
- canning or pickling; and
- incorporating produce into a ready-to-eat meal should generally be treated as processing.

For example, carrots supplied as fresh carrots remain unprocessed produce. Carrots cooked or added to a casserole have been processed into another food product.



This approach gives growers and buyers a practical line: fresh produce handling remains within unprocessed horticulture produce, while conversion into another product is treated as processing.

Question 14- What is your understanding of processing and therefore what a processor does in relation to horticulture produce?

A processor is a person or business that acquires horticulture produce for that purpose. That is different from a person who only handles fresh produce for sale in fresh form. The Code should draw a clear line between ordinary fresh produce handling and processing. The test should focus on whether the produce remains in fresh form, not simply whether it has been packed, bagged or presented for sale.

Export

Question 15 - Should the Horticulture Code regulate trade between a grower and trader where the produce is exported?

FMA supports the principle of consistent first sale/trade coverage where the transaction is a domestic transaction between a grower in Australia and an Australian trader or exporter, and where the Food and Grocery Code does not apply.

FMA does not support extending the Code to offshore buyers, overseas sale arrangements, export logistics or the downstream export chain. That would be inappropriate and unworkable. The Code is an Australian industry code directed to dealings between growers and traders. It should not attempt to regulate foreign buyers or the commercial and regulatory arrangements that apply after produce has entered the export pathway.

Export trade needs careful treatment. Exporters operate in a high-pressure environment involving international contracts, freight, logistics, foreign exchange, market access, biosecurity, phytosanitary requirements and overseas buyer expectations. Any change should be developed with exporters and should avoid adding unnecessary cost or duplication.

The issue has been raised in other submissions. CMAA supports processors and exporters coming under the Code and says all parties sourcing commercial quantities of fresh produce direct from growers should be regulated, except those covered by the Food and Grocery Code. Brismark's grower survey records that 16.3% of growers sell to exporters, and Brismark supports coverage for parties purchasing fresh produce from growers for resale where the Food and Grocery Code does not apply. AUSVEG also supports extending the Code to exporters, aggregators, processors and other wholesale purchasers acquiring produce directly from growers. Freshmark similarly supports bringing first-sale pathways under the Code, apart from those already covered by the Food and Grocery Code, including domestic transactions involving exporters where the relevant transaction is the purchase of horticultural produce from a grower for resale.¹¹

¹¹ Central Markets Association of Australia, *Submission: Review of the Horticulture Code of Conduct*, March 2026, pp 12 to 13; The Queensland Chamber of Fruit and Vegetables Co-operative Limited (Brismark), *Submission: Review of the Horticulture Code of Conduct*, April 2026, pp 19 to 20; AUSVEG, *Horticulture Code of*



FMA also recognises the caution raised by AFPA and the ACCC.¹²

For that reason, FMA's position is targeted. If export-related coverage is considered, it should be limited to the domestic first sale/trade between the grower and the Australian trader or exporter, where comparable first sale/trade risks arise and where the Food and Grocery Code does not apply. It should not regulate offshore buyers, overseas sale contracts, freight, market access, biosecurity, phytosanitary requirements or the export logistics chain.

Questions 16 - What are the unintended consequences of regulating or not regulating trade of horticultural produce that is exported?

The main risk of regulating too broadly is duplication and added cost for exporters. Export trade already involves complex commercial and regulatory settings, including market access, freight, treatment, documentation, biosecurity and importing country requirements. A poorly designed extension could add uncertainty, slow trade and increase compliance cost without improving grower outcomes.

The main risk of not regulating at all is uneven treatment. A grower may have baseline protections where produce is sold through one first sale/trade pathway, but not where the produce is destined for export. That may leave gaps in written terms, price or price-setting method, payment timing, quality assessment and dispute pathways.

The better approach is a narrow and practical line. The Code should apply only to the domestic first sale/trade between the grower and trader, where the Food and Grocery Code does not apply. It should not regulate overseas buyer arrangements, export logistics, freight, market access or importing country requirements, except where those matters are part of the agreed terms between the grower and trader.

Question 17 - Is a definition of 'export' required to clearly identify export related operations conducted onshore?

Yes. If export-related domestic transactions are addressed in the Code, definitions of both "export" and "exporter" would be needed. The definition should distinguish between:

- the domestic first sale/trade between the grower and trader;
- onshore export preparation activities; and
- the downstream export sale or overseas supply arrangement.

Onshore export preparation may include grading, packing, cooling, storage, consolidation, inspection, treatment, documentation, container loading and freight preparation. Those activities should not, by themselves, decide whether the

Conduct Review Submission, March 2026, p 14; Freshmark, Response to Horticulture Code of Conduct Review consultation paper, April 2026, pp 6 to 7, 31 to 32..

¹² Australian Fresh Produce Alliance, *Submission to the Independent Review of the Horticulture Code of Conduct*, March 2026, pp 22 to 24; Australian Competition and Consumer Commission, *Submission to the 2026 Review of the Horticulture Code of Conduct*, March 2026, p 15.



domestic first sale/trade is covered.

A practical definition should make clear that export means the movement, or intended movement, of produce from Australia to an overseas market. It should also make clear that the Code only applies to the domestic grower-trader transaction, unless export-related matters are expressly included in the grower-trader agreement.

An “exporter” should be defined only for the purpose of identifying the Australian party who acquires horticulture produce from a grower in Australia for export. It should not include offshore buyers, overseas customers, freight providers, customs brokers, treatment providers, logistics providers or other participants in the downstream export chain.

Question 18 - Should the Horticulture Code cover trade between growers and non-Food and Grocery Code covered retailers?

Yes. Where a retailer sources horticulture produce directly from a grower as part of the first sale/trade pathway, and the retailer is not covered by the Food and Grocery Code, the transaction should be covered by the Horticulture Code.

This follows FMA’s opening position. Comparable first sale or trade pathways should be subject to consistent Code settings. Direct supply to a retailer should not sit outside both Codes simply because the retailer is not large enough, or structured in a way, to be covered by the Food and Grocery Code.

This is a clear area of uneven coverage. CMAA and Freshmark supports all parties sourcing commercial quantities of fresh produce direct from growers being regulated, except those covered by the Food and Grocery Code.¹³ Brismark also supports applying the Code to all first point of sale transactions by growers unless covered by the Food and Grocery Code, and specifically identifies independent retailers, smaller grocery retailers and food service businesses sourcing direct from growers.

¹⁴

AUSVEG likewise recommends extending the Code to entities that are the first point of sale and not currently covered by the Food and Grocery Code. It says this would promote consistency across supply pathways and give growers equivalent protections regardless of the route through which produce is sold.¹⁵

Metcash also supports reassessing retailer coverage. It submits that the Horticulture Code should be extended to cover large retailers not regulated by the Food and Grocery Code.¹⁶

¹³ Central Markets Association of Australia, *Submission: Review of the Horticulture Code of Conduct*, March 2026, pp 4, 12 to 13, 18; Freshmark, Response to Horticulture Code of Conduct Review consultation paper, April 2026, pp 6 to 7, 31 to 32.

¹⁴ The Queensland Chamber of Fruit and Vegetables Co-operative Limited (Brismark), *Submission: Review of the Horticulture Code of Conduct*, April 2026, pp 4, 19 to 20.

¹⁵ AUSVEG, *Horticulture Code of Conduct Review Submission*, March 2026, pp 7, 14.

¹⁶ Metcash Food & Grocery Pty Ltd, *Submission to the Horticulture Code of Conduct Review*, March 2026, pp 1 to 3.



Question 19 - If so, what obligations should apply to trade between growers and these retailers?

The obligations should be practical and matched to the retail transaction.

Where a retailer buys direct from a grower on an agreed price basis, the core requirements should focus on:

- written terms before supply;
- product specifications;
- price or price-setting method;
- payment timing;
- delivery and acceptance;
- quality assessment and any downgrade or price adjustment process;
- reporting to the extent required by that price basis;
- dispute resolution; and
- records needed to verify payment, deductions or adjustments.

If a retailer uses a trading model that operates like agency, merchant formula/method pricing or agreed pricing, then the obligations should match that model.

Nuts

Question 20- Should each of these nuts be included or excluded from the Horticulture Code: almonds; chestnuts; hazelnuts; macadamias; pecans; pistachios; walnuts?

FMA does not support excluding nuts from the Horticulture Code as a commodity category.

Nuts should be treated in the same way as other horticulture commodities. Where a grower supplies nuts as part of a first sale/trade transaction, the transaction should be covered by the same Code framework that applies to other horticulture produce.

FMA does not support a commodity-by-commodity approach that would include some nuts and exclude others. That would add complexity and create new uncertainty. The better approach is to regulate by reference to the transaction, not the commodity.

Question 21 - What are costs and benefits of including or excluding nuts from the Horticulture Code?

The benefit of including nuts is consistency. Growers and traders would have the same baseline framework for written terms, price or price-setting method, payment timing, quality assessment and dispute pathways.

The cost of excluding nuts is that it would create another coverage gap. It would also make the Code harder to explain and apply, because parties would need to ask whether the produce is a particular commodity before asking what kind of transaction is occurring.



FMA's position is that nuts should remain within the Code framework and should be regulated consistently with other horticulture commodities.

Question 22- Are there unintended consequences of continuing to include or exclude nuts from the Horticulture Code and if so, can they be mitigated?

Yes. Excluding nuts could create uneven treatment and unnecessary confusion.

However, including nuts does not mean every nut transaction should be treated in the same way. The obligations should depend on the type of transaction. For example:

- if the transaction is a first sale/trade transaction, the ordinary first sale/trade rules should apply;
- if the Code is extended to processing transactions, nut processing transactions should be treated in the same way as other processing transactions;
- if the Code is extended to export transactions, nut export transactions should be treated in the same way as other export transactions.

This avoids a special carve-out for nuts while still allowing practical obligations to be matched to the transaction.

Question 23 - Are there other non-regulatory alternatives that could ensure effective competitive, sustainable and productive markets?

Education, guidance and model terms may help parties understand how the Code applies to nut transactions, especially where there is processing, aggregation, pooling or export.

However, non-regulatory options should not replace Code coverage for nuts where equivalent transactions involving other horticulture commodities would be covered.

5. Key Issue – Clarification of definitions and terms

Question 24 - How should these terms be defined: agent, merchant, point of delivery?

FMA supports targeted clarification of Code terms where it helps growers and traders understand and apply the Code.

FMA accepts that confusion can arise between the legal terms used in the Code and the language used in day-to-day market/grower trade. That confusion should be addressed through clearer Code terminology, stronger Code literacy, fewer HPAs requirements and practical guidance.

FMA supports in principle further consultation on whether “commission seller” would be a clearer replacement term for “agent”. FMA is cautious, however, because “commission” is also an entrenched market term and may be used colloquially in ways that do not align with the legal meaning of agency under the Code.



FMA also supports in principle further consultation on whether explanatory labels such as “method or formula merchant” and “fixed price merchant” would help growers and traders understand the two merchant pricing methods. Any such labels should make clear that they are not separate trader roles. They are pricing methods within the merchant role.

FMA does not support broad changes to the Code’s core trader structure. The Code should continue to distinguish between trading roles and merchant pricing methods, whether those concepts are described using the current terms or clearer replacement terms.

For delivery, if government is minded to define delivery in the Code, FMA’s established standard HPA definition should be used as the basis for that work, with HPAs continuing to deal with operational detail where needed.

In particular, the Code should:

- retain clear trading role definitions, with further consultation on whether “commission seller” would improve understanding of the current agent role;
- retain the definition of merchant, or any clearer replacement term that preserves the merchant role; and
- clearly name the two existing merchant pricing methods, with further consultation on whether “method or formula merchant” and “fixed price merchant” would improve understanding.

Question 25 - What are the unintended consequences and potential costs and benefits of changing the definition or not defining these terms?

Changing terminology may have benefits if it helps growers and traders better understand how the Code applies. This is particularly relevant where Code terms are used differently in day-to-day market trade. A clearer term such as “commission seller” may help explain the current agent role, and explanatory labels such as “method or formula merchant” and “fixed price merchant” may help explain merchant pricing methods.

The risk is that new labels may create new confusion if they are not tested properly. Terms such as “commission” and “fixed price” may also have market meanings that do not always align neatly with the legal concepts in the Code. Any change should therefore be tested with growers and traders before being adopted.

The main cost is implementation. HPA’s may need to be updated as well as guidance material, training and systems. If the changes require existing HPAs to be reissued and re-signed, the cost and disruption would be much greater. HPA reissue would involve legal review, template updates, communication with growers, issuing revised agreements, following up signatures and managing trading risk during the transition. In practical terms, a terminology change that requires HPA reissue could affect up to about 22,785 existing HPA relationships across central market trading floor traders, plus about 2,155 new grower-trader relationships each year.

That is a real cost and scale issue. FMA survey data, collected through a survey developed by KordaMentha in conjunction with FMA, showed that the survey sample reported 9,114 grower relationships each year and 862 new grower relationships each



year. 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 traders¹⁷

The practical difficulty is also supported by KordaMentha's analysis, which found that HPA-related administration is already a material time and operational issue, with 82 per cent of traders surveyed spending more than a week following up growers for HPAs.¹⁸

The main risk of changing definitions too broadly is that the Code could blur the existing agent and merchant distinction. That would create more uncertainty around ownership, risk, reporting and payment. This would be a poor outcome, because the current agent and merchant architecture is workable and should be retained.

FMA also cautions against assuming that further definition alone will resolve misunderstanding. A term can be defined in the Code and still be poorly understood if growers, traders and advisers do not engage with the Code, the HPA or the practical operation of the supply chain. The issue is also practical Code literacy, including understanding how HPAs, trader roles, price-setting methods and delivery operate in day-to-day trade.

That is particularly relevant to delivery. FMA identified that delivery needed practical definition after the 2017 Code review and addressed that issue in its standard form HPAs. That definition has operated in practice under the current Code arrangements and, to FMA's knowledge, has not been challenged. If government is minded to define delivery in the Code, FMA's standard HPA definition should be used as the basis for that work. The Code should also preserve the ability for HPAs to deal with operational detail for particular commodities, services and trading arrangements.

This is consistent with a number of submissions that identify education, awareness and practical guidance as central to improving the Code's operation. AUSVEG identifies limited awareness of the Code and recommends a structured education campaign, including plain-English guidance, practical case studies and standardised HPA templates. AFPA recommends that reform prioritise education, engagement and targeted enforcement rather than adding further regulatory complexity. Woolworths similarly recommends a dedicated education service to help smaller farming businesses understand HPAs, reporting requirements, inspection rights and dispute pathways.¹⁹

¹⁷ . FMA survey data, collected through a survey developed by KordaMentha in conjunction with FMA, cited in Fresh Markets Australia, Response: Horticulture Code of Conduct Review: consultation paper, March 2026, p 26.

¹⁸ KordaMentha, Horticulture Code of Conduct Economic Analysis, prepared for Fresh Markets Australia, March 2026, p 24, Appendix A to Fresh Markets Australia, Response: Horticulture Code of Conduct Review: consultation paper, March 2026.

¹⁹ AUSVEG, Horticulture Code of Conduct Review Submission, March 2026, pp 4 to 7; Australian Fresh Produce Alliance, Submission to the Independent Review of the Horticulture Code of Conduct, March 2026, pp 3 to 5; Woolworths Group, Submission to the 2026 Horticulture Code of Conduct Review, March 2026, pp 3 to 4.



Question 26 - Is it useful to discontinue using the term ‘agent’ in the Horticulture Code, so that it is not confused with the colloquial meaning?

Potentially, but only if a replacement term clearly improves understanding and does not create new confusion. The Code’s architecture is already clear: a trader can be an agent or a merchant. An agent sells produce on a grower’s behalf for a commission or fee. A trader cannot act as both agent and merchant under the same HPA.

FMA supports in principle further consultation on whether “commission seller” would be a clearer replacement term for “agent”. That term may help explain the current Code role because an agent sells on behalf of the grower for a commission or fee. FMA is cautious, however, because “commission” is also an entrenched market term and may be used colloquially in ways that do not align with the legal meaning of agency under the Code.

Any replacement term should be tested with growers and traders before being adopted. If the term changes, HPAs, guidance material, training, compliance systems and industry templates may need to be reviewed and updated. Existing compliant HPAs should not be made non-compliant simply because terminology changes.

The bigger issue is Code literacy. The confusion identified in the supplementary consultation paper is part of a broader problem: growers and traders need clearer, practical information about how the Code works in real trade. That includes trader roles, price-setting methods, HPAs, reporting, record keeping, dispute pathways and the commercial settings in which produce is traded. This is consistent with FMA’s principal submission, and the pre-Budget submission reproduced at Appendix F to that submission, which proposed a National Horticulture Code Education and Awareness Program to improve whole-of-sector market and Code literacy.

Question 27 - Is there value in further defining merchants in the Horticulture Code by their price setting method?

Yes. There is value in further defining or clearly labelling the two merchant pricing methods already recognised in the Code.

The Code currently defines merchant, but it does not separately define the two merchant price-setting methods. Clause 32²⁰ provides that the price paid by a merchant is either:

- an amount agreed in writing between the merchant and the grower either before, or immediately upon, delivery of the produce to the merchant; or
- an amount calculated by a method or formula specified in the horticulture produce agreement.

FMA also supports in principle further consultation on whether plain-English labels such as “fixed price merchant” and “method or formula merchant” would improve understanding. The important point is that any label must make clear that both remain merchant trading. They are pricing methods within the merchant role, not separate trader roles.

If “fixed price merchant” is used, guidance should make clear that the agreed price applies to the produce, consignment,

²⁰ Competition and Consumer (Industry Codes, Horticulture) Regulations 2017 (Cth), Sch 1, cls 5, 18(2), 32.



delivery, product line, grade, class or trading period agreed between the grower and merchant. It should not be taken to mean that a price is fixed for future supply unless that is what the parties have agreed.

The value is practical. As outlined in Figure 1, agent and merchant are trader roles. Merchant agreed price and merchant formula/method pricing are merchant price-setting methods within the merchant role. The price-setting method does not change the trader role. Defined labels would help HPAs, guidance and education materials use the same language. They would also help growers, traders and advisers distinguish between the trader role and the pricing method.

This would retain the existing agent and merchant architecture while making the two existing merchant pricing methods easier to identify and apply in practice.

Question 28 - Can delivery be defined in the Horticulture Code in such a way that is fair to and protects both growers and traders, or should this be a matter that is better dealt with in the Horticulture Purchase Agreement (HPA) between a trader and grower?

FMA supports greater clarity about Delivery. If government is minded to define Delivery in the Code, FMA considers that the definition should be based on the practical definition already used in FMA's standard form HPAs, with HPAs continuing to deal with operational detail for particular commodities, services and trading arrangements. FMA's preferred definition is:

"Delivery occurs when Produce is received by the Trader and accepted for the purpose of sale or re-sale, as applicable to whether the Trader is trading as an Agent or Merchant under the HPA, and, where applicable, once any Services provided by the Trader have been completed."

FMA identified the need for a practical delivery definition when implementing the 2017 Code and addressed it in its standard form HPA. That definition has operated under the current Code arrangements and, to FMA's knowledge, has not been challenged. If a definition is inserted into the Code, it should build on that established industry approach rather than create a new concept that may disturb existing HPAs.

Delivery is already an operative concept under the Code. HPAs currently must specify delivery requirements, rejection circumstances and the period for giving written reasons for rejection. The Code also contains a provision headed "Acceptance by trader of deliveries". Delivery is also currently relevant to reasonable care and skill, agent reporting, merchant ownership, merchant payment and merchant reporting.²¹

The proposed definition is fair to both growers and traders. It avoids treating physical arrival alone as Delivery before the Trader has received the Produce, accepted it for the relevant purpose, and completed any agreed Services that must occur before acceptance. It also gives growers and traders a clearer point from which the consequences of Delivery can be understood and applied.

²¹ Ibid: Sch 1, cls 16(b) to (d), 22, 24, 29(1)(a), 34, 35 and 36.



The definition should remain event-based rather than time-based. Delivery should turn on receipt, acceptance for the relevant trading purpose and completion of any agreed Services, rather than an artificial fixed time after dispatch, arrival or unloading. A fixed time rule would not reflect the practical supply chain and could create unnecessary time-stamping, system changes and disputes about when the relevant clock started or stopped.

The HPA should continue to deal with the practical detail as required.

This matters because produce is not always transported by the Trader. It may be transported by the grower, by a transporter engaged by the grower, by a third-party logistics provider, or under arrangements managed by the Trader. There may also be unloaders, market access processes or other handling steps before the Trader has practical control of the Produce.

For that reason, Delivery should not be treated as the same thing as dispatch from the farm, transport, unloading or physical arrival at a market or premises. The Code already recognises control as important by requiring a trader to exercise reasonable care and skill while the grower's horticulture produce is under the trader's control. A practical Delivery definition should therefore align the consequences of Delivery with receipt, acceptance, any agreed Services and the point at which the Trader has practical control for the relevant trading purpose.²²

The consequences of Delivery will still differ depending on whether the Trader is trading as an Agent or Merchant. For an Agent, Delivery is relevant to receipt, acceptance or rejection, reasonable care and skill, reporting and later sale, but ownership remains with the grower until the Agent sells the Produce. For a Merchant, Delivery may also affect ownership, payment and reporting.²³

For that reason, any Code definition should provide a common default position only. It should leave the HPA to specify a different delivery point or process where appropriate, and to deal with the detail needed for particular commodities, services and trading arrangements, provided the HPA remains consistent with the Code

6. Key Issue – Compliance and reporting burden

FMA position

FMA does not condone breaches of the Code. Traders covered by the Code should comply with it, whether they are large or small, and whether they operate on a central market trading floor, in another market area, or elsewhere in the supply chain.

In relation to the operation of the Code:

- FMA is not the enforcer of the law;
- FMA role is to provide support to its members with training, guidance, template documents and practical Code literacy;

²² Ibid: Sch 1, cl 24.

²³ Ibid: Sch 1, cls 24, 29(1)(a), 30, 34, 35 and 36



- FMA represents the central market wholesale sector through its state industry body members;
- FMA can lead, educate and influence through that network, but it cannot compel conduct by individual businesses, non-members or broader first-sale participants

FMA does not support exempting smaller traders from the Code on the basis that compliance may be weaker or harder to monitor. That would leave growers with different protections depending on who they trade with and would make the Code harder to understand.

All traders covered by the Code should comply. The practical answer is to make the Code clearer, simpler and more workable, support better Code literacy, remove unnecessary duplication, and respond to compliance issues in a proportionate way.

Evidence relevant to Questions 29 to 37 is set out in *Appendix B: Evidence relevant to compliance and reporting burden*.

Question 29 - How widespread is non-compliance with the Horticulture Code (in certain parts of the central markets) and other parts of the supply chain?

FMA recognises that compliance issues have been raised and that any substantiated non-compliance should be addressed. FMA does not dismiss those concerns.

However, FMA considers that the review should distinguish between:

- serious, repeated, deliberate or systemic non-compliance; and
- uneven compliance issues relating to documentation, reporting, Code literacy and practical Code application

That distinction is important. The Code has existed in mandatory form for almost two decades, including under the current 2017 Code with civil penalty provisions. Where serious or systemic non-compliance is said to be widespread, the response should be based on specific evidence about the conduct, the obligations affected, the scale of the issue and whether the issue reflects misconduct, Code complexity, poor Code literacy or implementation burden. The scale of grower-trader relationships also matters. FMA survey data, collected through a survey developed by KordaMentha in conjunction with FMA, indicates about 22,785 grower-trader relationships across central market trading floor traders, with about 2,155 new grower-trader relationships each year on an indicative basis. At that scale, documentation and HPA administration issues should be assessed carefully. Some may reflect Code complexity, poor Code literacy or implementation burden, rather than serious or systemic misconduct.

Central markets are a significant, high-volume part of the horticulture supply chain. FMA's principal submission identifies over 14,000 growers supplying Australia's central markets, an estimated 24 million annual sales transactions, over 4 million tonnes of produce, and more than \$8 billion in annual wholesale value on-sold by over 300 fruit and vegetable wholesalers on the market trading floor.²⁴ At the same time, KordaMentha's survey evidence shows that a material proportion of trader turnover

²⁴ Fresh Markets Australia, *Response to Horticulture Code of Conduct Review: consultation paper*, lodged 2 April 2026, p 4 and fn 2.



is not sourced directly from growers.²⁵

Serious misconduct should be dealt with directly. Administrative complexity, poor Code literacy or inconsistent Code application should not be treated as systemic abuse.

Further evidence relevant to this answer is set out in *Appendix B: Evidence relevant to compliance and reporting burden*.

Question 30 - What is the best solution for non-compliance:

- a) increase ACCC compliance checks in the areas where it is alleged that there is a high level of known non-compliance**
- b) exclude those areas of high known non-compliance from the Horticulture Code (perhaps based on a low-turnover threshold) as the Horticulture Code is not appropriate for 'micro' traders, or**
- c) do nothing about this issue?**

FMA does not support option (b) or option (c).

FMA does not support excluding smaller traders from the Code because they may be harder to monitor or may have lower practical compliance. If a trader is covered by the Code, that trader should comply with the Code. Removing smaller traders from the Code would leave growers with different protections depending on who they trade with and would make the Code harder for growers to understand.

FMA also does not support doing nothing. Where non-compliance is substantiated, it should be addressed.

Option (a) may have a role, but more compliance checks are not enough on their own. In FMA's view, Code literacy is the major issue.

FMA also notes that the public submissions do not show broad support for increasing regulatory burden as the primary response to Code issues. Better Code literacy, practical guidance and proportionate compliance settings are required.

Routine compliance activity should not be increased before there has been an active Code literacy and implementation process for growers, traders, regulators, advisers and industry bodies. That process should cover the existing Code and any changes made through this review. It should involve practical training, worked examples and direct engagement, not simply publishing more guidance material online.

Once that shared understanding is improved, compliance activity can be better targeted to serious, repeated, deliberate or systemic non-compliance, rather than technical or administrative issues caused by confusion about how the Code operates.

²⁵ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, prepared for Fresh Markets Australia, March 2026, report p 28, reproduced as Appendix A to Fresh Markets Australia, *Response to Horticulture Code of Conduct Review: consultation paper*, lodged 2 April 2026.



Growers and traders need to understand:

- when the Code applies; what an HPA does
- what must be recorded;
- what must be reported; and
- what each party must do to trade in good faith.

FMA's education and support role should be supported by a clearer and simpler Code.

The Code also places obligations on both growers and traders. This matters where a trader provides an HPA, the grower does not sign it, and the grower continues to send produce. In that situation, it is not fair or practical for all compliance risk to sit with the trader alone. The obligation to act in good faith and to trade with an HPA applies to both parties.

FMA's preferred approach is to:

- keep all covered traders within the Code;
- improve Code literacy;
- simplify the Code and remove unnecessary duplication;
- support practical guidance; and
- use proportionate compliance responses.

Compliance responses should match the nature of the breach, with serious treatment for repeated, deliberate or systemic non-compliance.

Further evidence relevant to this answer is set out in *Appendix B: Evidence relevant to compliance and reporting burden*.

Question 31- How could any unintended consequences of the proposed approaches be mitigated?

The main risk is that compliance activity becomes a substitute for fixing the Code.

That unintended consequence can be mitigated by:

- clear guidance on the difference between serious misconduct and technical or administrative non-compliance;
- stronger Code literacy for growers and traders;
- simpler HPA requirements, reporting and record keeping obligations;
- practical examples;
- proportionate responses, including education and rectification where appropriate; and
- stronger consequences for repeated, deliberate or systemic non-compliance.

This includes making sure penalty settings match the nature of the breach. Repeated, deliberate or systemic non-compliance should be treated seriously. Technical or administrative non-compliance should be approached differently where education, rectification or clearer guidance would be the more proportionate response.



FMA does not support excluding smaller traders from the Code. That would reward lower compliance, distort competition, leave growers with different protections, and make the Code harder to explain.

That risk can be mitigated by keeping all covered traders within the Code but making the Code simpler and more usable for smaller businesses.

The best mitigation is a clearer and simpler Code, practical education, proportionate compliance responses and serious consequences for serious breaches.

This education task should not be limited to growers and traders. The review process has highlighted the need for better shared understanding across all key stakeholders involved in the Code's operation, including regulators, dispute resolution bodies, advisers and industry bodies. That includes practical understanding of HPA requirements, reporting obligations, dispute pathways and the role of fresh produce assessors.

This reinforces the need for an active Code literacy and implementation program, not simply additional written guidance. Growers, traders and key stakeholders need practical training, worked examples and direct engagement so the Code is understood and applied consistently.

Question 32 - What are the costs and benefits of the proposed approaches to non-compliance?

The costs and benefits depend on whether the response is targeted to the issue being addressed.

Increasing compliance checks

Targeted compliance checks may have benefits where they are directed to repeated, deliberate or systemic non-compliance. They may improve confidence in the Code and identify conduct that should be addressed.

The cost is that broad or poorly targeted checks can impose burden that is not proportionate to the issue being examined, particularly where the issue is technical, administrative or caused by poor Code literacy.

Those costs are not only financial. They include management time, external advice, disruption to normal trading, system changes, staff training, audit readiness, relationship strain, and time taken away from moving perishable produce through the market. FMA's principal submission referred to KordaMentha's evidence on audit burden, including external support costs, management time, long audit duration and opportunity cost.²⁶

Excluding smaller traders from the Code

Excluding smaller traders from the Code may reduce compliance burden for those traders in the short term. However, the consequences would be significant. Growers would have different protections depending on who they trade with, compliant

²⁶ Fresh Markets Australia, Response to Horticulture Code of Conduct Review: consultation paper, lodged 2 April 2026, section 5.2.2.3; KordaMentha, Horticulture Code of Conduct Economic Analysis, prepared for Fresh Markets Australia, March 2026, report pp 21 to 22.



traders would be placed at a disadvantage, and the Code would become harder to understand and apply.

That also raises a competition concern. A Code that places compliance cost on traders who are visible and engaged, while removing or lowering obligations for other traders performing similar functions, risks distorting competition rather than improving conduct.

Doing nothing

Doing nothing would avoid immediate regulatory change, but would not improve Code literacy, reduce unnecessary duplication, or make compliance easier for growers and traders. It would also leave compliant traders carrying the cost of compliance while others may face less practical pressure to meet the same standard.

FMA's preferred approach

FMA considers the best cost-benefit outcome is achieved by keeping all covered traders within the Code while making the Code clearer, simpler and easier to comply with. A clearer and simpler Code would:

- reduce unnecessary compliance cost;
- improve grower understanding; support more consistent trading practice; and
- allow compliance action to focus on conduct that matters.

Poor Code literacy, complex paperwork and practical implementation problems should be addressed through education, templates and rectification. Repeated, deliberate or systemic breaches should attract stronger consequences.

Further evidence relevant to this answer is set out in *Appendix b: Evidence relevant to compliance and reporting burden*.

Question 33 - Do growers review published terms of trade before engaging with a trader?

FMA is not aware of evidence as to whether growers routinely review published Terms of Trade before engaging with a trader.

In FMA's experience, Terms of Trade operate mainly as a compliance document. The practical trading document is the HPA. That is where the grower and trader should be able to see the trading model, pricing approach, payment terms, reporting arrangements and other terms that apply to their trading relationship.

In FMA's view, grower understanding before trade would be better supported by access to the trader's standard Code-compliant HPA, rather than a separate Terms of Trade document.

Question 34 - Should the requirement for traders to publish terms of trade cease? What are the unintended consequences of this and how could these be mitigated?

FMA supports removing the separate requirement to publish Terms of Trade and replacing it with a requirement for each trader to publish its own standard Code-compliant HPA. This would give growers a more useful document to review before trade, reduce duplication, and keep the HPA at the centre of the Code.



The main unintended consequence would be the risk that the replacement requirement becomes too prescriptive or requires publication of commercially specific terms that are better dealt with directly between the grower and trader.

The published standard HPA should be the trader's standard position only. A trader may choose to include standard commercial terms in the published HPA, where those terms form part of the trader's usual position. However, grower-specific terms should be recorded separately where agreed with the grower.

Further evidence relevant to this answer is set out in *Appendix B: Evidence relevant to compliance and reporting burden*.

Question 35 - What, if any, value do growers find in their growers' statements of trade?

A grower statement is a record of trading activity for a reporting period. By its nature, it is prepared after the relevant trading activity has occurred. It tells the grower what has happened during that period. It does not usually assist with decisions being made during the trade itself.

FMA's member feedback is that prescribed grower statements have limited practical value where the grower already receives the relevant information through ordinary trading documents or communications. Some traders report that growers ask why they receive a separate grower statement and, in some cases, ask for it to stop.

Where the statement repeats information already provided through invoices, remittance advices, account reports, emails, text messages, phone contact or other regular updates, it adds little practical value and creates another compliance step.

FMA's position is that the value lies in useful information for the grower, not in a prescribed statement for its own sake.

Further evidence relevant to this answer is set out in *Appendix B: Evidence relevant to compliance and reporting burden*.

Question 36 - If a trader provides detailed regular reporting to a grower, could this replace the need for growers' statements to be provided periodically?

Yes, where the grower receives the required information in another usable form.

FMA supports a model-specific reporting framework. This is consistent with FMA's principal submission, which proposed that:

- no separate prescribed grower statement should be required for merchant agreed price,
- merchant formula/method pricing should provide clear calculation-based information, and
- the remaining content, form and method of reporting should be capable of agreement between the parties.²⁷

A separate periodic grower statement should not be required where detailed regular reporting already gives the grower the information required under the Code. That reporting may be provided through the trader's ordinary systems and documents,

²⁷ Fresh Markets Australia, Response to Horticulture Code of Conduct Review: consultation paper, lodged 2 April 2026, Reform Request 3, p 40 and Appendix G1, pp 95 to 96.



provided the grower can access and retain the relevant information.

This is particularly important in central market trade with an estimated 24 million annual sales transactions across central market trading floor traders. At that scale, duplicate reporting requirements create cost without necessarily improving grower understanding.

The form and timing of reporting should suit the trading model, the trader's systems and the agreement between the grower and trader.

Question 37 - How could any unintended consequences related to replacing grower statements with regular reporting be mitigated?

Any replacement of prescribed grower statements should be carefully framed so that it does not create a new, more onerous reporting obligation by another route.

FMA supports regular reporting replacing periodic grower statements where the grower receives the required information in another usable form. However, this should not lead to mandatory daily reporting, real-time reporting, prescribed reporting formats or system requirements that many traders cannot meet without significant cost.

That would go beyond the intended purpose of the Code. The Code should support clarity and transparency in grower-trader dealings, including useful information about the grower's own produce and practical dispute resolution. It should not be turned into a prescribed reporting system, a real-time market information tool, or a technology mandate for traders.

The unintended consequences can be mitigated by making the requirement practical, model specific and role specific.

- For merchant agreed price, no separate prescribed grower statement should be required unless otherwise agreed in writing. The grower should receive or have access to records showing the produce, agreed price and payment outcome.
- For merchant formula/method pricing, the grower should receive information showing how the grower's return has been calculated. That should include the method of calculation and the information needed to understand the calculation outcome. This should be provided in a form the grower can access and retain.
- For agent arrangements, the required information should still be provided, but the Code should allow that information to be provided through regular reporting rather than a separate periodic statement, where the grower receives the required information.

The Code should also remain technology neutral. Reporting should be capable of being provided through invoices, remittance advices, account reports, email, text message, portal access or another method agreed between the grower and trader. The focus should be on the grower receiving the necessary information, not on prescribing a single document or system.

Records should still be kept so that information can be checked if a genuine issue arises. That gives growers a verification pathway without requiring duplicate reporting in every case.



Further evidence relevant to this answer is set out in *Appendix B: Evidence relevant to compliance and reporting burden*.

7. Other matters

Mandatory post-implementation review

FMA considers that any remade Code should include a mandatory post-implementation review.

That review should occur after:

- a 12-month transition period; and
- a further 3 years of practical operation of the amended Code.

The review should be confined to the amendments made through this review process. It should not reopen the whole Code unless there is clear evidence that broader review is needed.

The purpose of the post-implementation review should be to assess whether the amendments have achieved their intended purpose. In particular, it should consider whether the amendments have:

- improved grower and trader understanding of the Code;
- reduced unnecessary duplication and administrative burden;
- supported more workable HPAs and reporting arrangements;
- improved clarity and confidence in grower-trader dealings;
- supported practical compliance; and
- avoided unintended compliance cost or disruption.

A post-implementation review would give government and industry a practical checkpoint to test whether the amended settings have worked. If they have not improved Code understanding, reduced unnecessary burden or supported better practical compliance, that should be identified before the settings become entrenched.

FMA also considers that any post-implementation review should occur only after an active Code literacy and implementation program has been delivered. The operation of the amended Code should not be assessed before growers, traders, regulators, advisers and industry bodies have had a reasonable opportunity to understand and apply the changes in practice.

Appendix A | Deemed agreements and deemed terms



Question 1: Deemed agreements and deemed terms

FMA proposed model

1



FMA response

- Use the trader's standard HPA as the baseline.
- Use a follow-on agreement or grower-specific schedule for additional matters.
- If the trader makes good faith attempts and there is no objection, the follow-on document is deemed agreed.
- No deemed agency. No deemed baseline if no standard HPA is published or otherwise made available.

2



The problem

- HPAs are central to transparency and clarity under the Code.
- The practical issue is confirming which HPA terms apply in real trade.
- Terms of Trade and HPAs can overlap and create confusion.
- The framework needs to be clear, usable and low burden for growers and traders.

3

FMA's proposed model: the trader's standard HPA



1. Publish the trader's standard HPA

Published on the trader's website or a suitable third-party industry website.



2. Standard HPA is the baseline

Sets out the trader's standard arrangement unless different or additional terms are agreed in writing.



3. Record additional matters

Use a follow-on agreement or grower-specific schedule for matters that are specific to the grower or differ from the standard HPA.



4. Good faith attempts

The trader makes good faith attempts to have the follow-on document signed. If there is no objection within a reasonable time, it is deemed agreed.



The trader's standard HPA should identify:

- ✓ the standard trading arrangement
- ✓ merchant agreed price, merchant formula/method pricing, or agency
- ✓ the basis of any method or formula
- ✓ standard payment and reporting arrangements
- ✓ services offered
- ✓ how different or additional terms are agreed



The follow-on agreement or grower-specific schedule may record:

- ✓ payment timing, if different
- ✓ reporting arrangements, if different
- ✓ agency commission, fees or charges
- ✓ services that apply to that grower
- ✓ grower contact and notice details
- ✓ any agreed departure from the trader's standard HPA
- ✓ FreshSpecs is the default unless different specifications are agreed

4

How the model answers Question 1



Deemed agreement

- The follow-on agreement or grower-specific schedule can be deemed agreed.
- This applies where the trader's standard HPA is in place, the follow-on document has been provided, good faith attempts have been made, and the grower has not objected.



Deemed terms

- The deemed baseline is the trader's standard HPA.
- The Code should not invent a separate set of commercial terms.
- The Code should not deem a trader to be an agent.

5

Unintended consequences to avoid



- Broad deemed terms may weaken HPAs.
- Deemed agency would create confusion about ownership, payment, reporting and risk.
- The trading model should be clear before trade.
- The pathway should not create a new heavy audit file.
- If no standard HPA is published, there should be no benefit of a deemed baseline.



Shared responsibility

The trader publishes the trader's standard HPA. The grower should seek it out before sending produce. Both parties should understand the trading basis before trade occurs.



Appendix B | Evidence relevant to compliance and reporting burden

B.1 Central market scale and transaction volume

FMA's principal submission identifies Australia's central markets as a high-volume, high-value trading environment. FMA records that central markets are supplied by over 14,000 fruit and vegetable growers, have an estimated 24 million annual sales transactions, have annual throughput of over 4 million tonnes, and have wholesale value of more than \$8 billion annually on-sold by over 300 fruit and vegetable wholesalers on the market trading floor. The 24 million transaction estimate is based on an FMA trader survey average of 74,531 transactions per trader per year, applied indicatively across 321 central market trading floor traders after excluding clear outliers.²⁸

The 321 figure refers to central market trading floor traders. It should not be read as all businesses operating in central market precincts, including other trading areas or grower trading areas.

B.2 Not all central market turnover is sourced directly from growers

KordaMentha's survey evidence shows that a material proportion of central market trader turnover is not sourced directly from growers. In response to the question "What proportion of your annual turnover is not sourced directly from growers?", respondents answered as follows:²⁹

Proportion of annual turnover not sourced directly from growers	Share of respondents
0 to 20%	46%
20 to 40%	27%
40 to 60%	12%
60 to 80%	7%
80 to 100%	8%

This matters because the Code applies to grower-to-trader dealings. The existence of high-volume central market trade should not be treated as meaning every central market transaction is a direct grower-to-trader transaction regulated by the Code.

B.3 Growers use multiple pathways to market

The Brismark Roy Morgan Grower Survey records that growers use multiple distribution channels. Brismark reported the

²⁸ Fresh Markets Australia, *Response to Horticulture Code of Conduct Review: consultation paper*, lodged 2 April 2026, p 4 and fn 2.

²⁹ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, prepared for Fresh Markets Australia, March 2026, report p 28, reproduced as Appendix A to Fresh Markets Australia, *Response to Horticulture Code of Conduct Review: consultation paper*, lodged 2 April 2026.



following percentages of growers selling produce:³⁰

Distribution channel	Share of growers
Through a Central Market Wholesaler	84%
Direct to an independent retailer	22%
To processors	21%
Direct to major supermarkets or retail chains	18%
To exporters	16%
Through an off-market wholesaler	13%
Direct to a food service industry supplier	10%
Other	11%

Brismark also noted that up to 25% to 30% of sales transactions by growers could be occurring outside the Horticulture Code and the Food and Grocery Code.³¹

B.4 Code literacy and industry support

FMA's principal submission records that FMA and State Chambers already provide substantial Code education and support to central market trading floor members. The FMA State Chamber survey recorded 44 formal Horticulture Code training sessions over five years, 158 one-on-one support sessions and 219 member enquiries. Four of the five chambers reported more than 100 hours of ongoing Code compliance support outside formal training.³²

FMA's principal submission also cited KordaMentha evidence that traders do not regard grower understanding of the Code as consistently strong. Only 23% of respondents rated grower understanding as good or very good, while 44% rated it as low or very low.³³

B.5 Compliance activity and enforcement outcomes

The January 2026 *Horticulture Code of Conduct Review: consultation paper* records that since the Horticulture Code was remade in 2017, the ACCC received 105 enquiries on the Code and undertook 33 compliance checks. Since 2019, it obtained 7 enforcement outcomes, including 15 infringement notices and 2 court enforceable undertakings. The infringement notices related to alleged breaches including trading without an HPA, not publishing Terms of Trade and failure to include sales price on

³⁰ Brismark, *Submission: Review of the Horticulture Code of Conduct*, April 2026, p 7.

³¹ Ibid: p8

³² Fresh Markets Australia, *Response to Horticulture Code of Conduct Review: consultation paper*, lodged 2 April 2026, section 5.2.4.2.

³³ KordaMentha, *Horticulture Code of Conduct Economic Analysis*, prepared for Fresh Markets Australia, March 2026, report p 27, reproduced as Appendix A to Fresh Markets Australia, *Response to Horticulture Code of Conduct Review: consultation paper*, lodged 2 April 2026.



grower statements.

The same consultation paper records that since 2019 ASBFEO received 14 requests for assistance under the Horticulture Code, of which 5 were referred for mediation.

B.6 Penalty framework and proportionality

The Horticulture Code contains civil penalty provisions applying to traders, growers and both parties. FMA's background material records 19 penalty provisions, including trader obligations relating to good faith, Terms of Trade, HPAs, rejection notices, record keeping, agent statements and merchant statements; grower obligations relating to good faith, trading without a compliant HPA and record keeping; and obligations applying to both parties in relation to dispute resolution and assessor requests.

The January consultation paper records that the Horticulture Code generally provides penalties of up to 300 penalty units, while other industry codes use different penalty structures, including the Franchising Code example of 600 penalty units for standard breaches and higher penalties for serious corporate breaches.

This supports FMA's position that penalties should match the nature of the breach. Repeated, deliberate or systemic non-compliance should be treated seriously. Technical or administrative non-compliance should be approached differently where education, rectification or clearer guidance would be the more proportionate response.

B.7 Compliance cost, audit burden and implementation burden

FMA's principal submission referred to KordaMentha evidence that Code compliance carries material recurring cost. KordaMentha found that HPA-dedicated staff cost traders an average of \$61,000 in staff and on-costs each year, and that compliant data recording to support grower reporting imposes average annual administrative costs of about \$38,500. FMA's principal submission estimated, on an indicative basis, recurring reporting and HPA management burden in the order of \$31.9 million per year across the central market trading floor cohort.³⁴

FMA's principal submission also referred to KordaMentha evidence on audit burden. KordaMentha recorded that audits impose direct and indirect costs on traders, with external support averaging \$45,772 and some audits reaching \$250,000. It also recorded that audits typically last about five months, with some exceeding 18 months, and included a case study of one audit that ran for 20 months and generated substantial direct and opportunity costs.³⁵

B.8 Reporting and grower statements

FMA's principal submission supports model-specific reporting. It states that for merchant agreed price, no separate prescribed

³⁴ Fresh Markets Australia, *Response to Horticulture Code of Conduct Review: consultation paper*, lodged 2 April 2026, section 5.2.2.

³⁵ Ibid: section 5.2.2.3; KordaMentha, *Horticulture Code of Conduct Economic Analysis*, prepared for Fresh Markets Australia, March 2026, report pp 21 to 22.



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.³⁶

FMA's background training material also shows the current statement obligation as a reporting-period document. The statement is provided after the reporting period and must be provided within the statement period. The required information includes, for all price determinations, matters such as grower reference, quality and quantity purchased, dates, price paid and deductions. For formula or method, additional matters include gross sale price, basis of gross sale price, produce not sold and produce destroyed or to be destroyed.

Metcash and Rainfresh provide a useful supporting example. Their submission says that in Rainfresh's market floor trading, terms of sale are negotiated order by order and reflected in the invoice, delivery docket or purchase order. It also says published Terms of Trade are rarely, if ever, accessed or used by growers, and that meaningful commercial terms are in the purchase order or invoice.

B.9 Terms of Trade and standard HPAs

FMA's position is that the separate requirement to publish Terms of Trade should be removed and replaced with a more useful pathway based on the trader's own standard Code-compliant HPA. The published standard HPA should show the trader's standard position only. Grower-specific terms, including different payment timing, reporting arrangements, product lines, services, fees, margins or contact details, should be recorded separately where agreed with the grower.

Metcash and Rainfresh's submission supports the practical concern about Terms of Trade. It says published Terms of Trade are rarely, if ever, accessed or used by growers, and are necessarily generic, with meaningful commercial terms in the purchase order or invoice.

B.10 FreshData and broader market price transparency

FMA's Principal submission records that FMA is responsible for FreshData, a co-funded initiative supported by government grant funding and designed to promote national market price transparency in fresh produce through verified central market price reporting.

FreshData is relevant to the broader transparency environment. It should not be treated as a substitute for grower-specific information required under the Code for a grower's own produce.

³⁶ Ibid: section 5.2.2.2.



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