



Horticulture Produce Assessors

Role

The role of a Horticulture Produce Assessor is set out in the Horticulture Code of Conduct Schedule of the Trade Practices (Horticulture Code of Conduct) Regulations 2006.

Only persons on the list of assessors compiled by the Horticulture Mediation Adviser may perform the role set out in the Regulations and described in this document.

Under the code, assessors investigate and report on any matter arising from a horticulture produce agreement.

An assessor may be appointed to investigate a matter of interest by either party to an agreement or by a mediator appointed under the code.

The 'matters of interest' may include, but are not limited to, whether a wholesaler who has rejected produce did so in accordance with the code and the relevant agreement, and whether the price paid was calculated in accordance with the code and agreement.

Assessors should have appropriate qualifications, which could include some or all of the following:

- an understanding of the code and their specific role
- a good understanding of how transactions are undertaken in the fresh fruit and vegetable industry
- experience in undertaking activities related to inspecting and assessing the quality of produce
- the ability to analyse financial records
- a capacity to meet the legal requirements of assessors under the code.

Assessors are required to provide an independent and unbiased assessment of the matters at hand and treat the parties to the agreement equally and fairly.

The names and qualifications of assessors will be available on the Office of the Mediation Adviser's website (www.hortcodema.com.au). The Horticulture Mediation Adviser (HMA) with the assessors' consent, publish assessors' contact details so they can be contacted by growers or wholesalers. Assessors should notify the HMA of any changes to their details on (02) 9267 8472 or 1800 206 385.

The panel of assessors is reviewed by the HMA every 12 months. To remain on the panel, an assessor is expected to:

- comply with the codes provisions with respect to assessors
- agree to follow the procedures for assessors set out in this document
- attend information sessions held by the Australian Competition and Consumer Commission (ACCC) on the horticulture industry and the code.

Relationship with the Australian Government

The Australian Government does not enter into contractual relationships with assessors, nor provide them with retainers or other fees.

Relationship with the Horticulture Mediation Adviser

The HMA does not enter into contractual relationships with assessors, nor provide them with retainers or other fees.

Appointment

An assessor may be appointed at any time by either party to a horticulture produce agreement, regardless of whether or not a mediator has been appointed.

If a mediator has been appointed, the mediator may appoint an assessor to investigate the matters arising from an agreement.

An assessor can only undertake an investigation, or prepare a report, if he or she has been formally appointed by a party to an agreement or a mediator.

Assessors can only investigate and report on those matters that are referred to them by the person or persons who made the appointment.

Once an assessor has been appointed, it is recommended that the assessor informs all the parties involved. In some cases, it may be appropriate to meet with the parties separately or contact them by telephone.

Under the code, the appointment of an assessor is not transferable. If an assessor is unable to continue with an appointment, he or she should advise the party that appointed them and provide them with the opportunity to appoint a new assessor.

It is important to note that contractual issues relating to an appointment are not covered by the code. Assessors should seek independent advice with regard to individual circumstances.

Investigations

All parties to a horticulture produce agreement must comply with reasonable requests from an assessor in the course of his or her investigation.

If one or both parties fail to comply, they are in breach of the code.

The code does not specify what constitutes a 'reasonable' request. What is 'reasonable' depends on the circumstances of a case.

It is up to assessors to exercise their judgement on a case-by-case basis. However, the code does require a trader to allow an assessor to inspect:

- any horticulture produce supplied by the grower under an agreement that is in the possession of the trader
- the financial and other records of a trader (when acting as an agent) that relate to the grower, or horticulture produce sold by the agent on behalf of the grower
- the records of a trader (when acting as a merchant) that relate to his or her trade in produce up to the point at which ownership had passed from the grower.

What constitutes a 'reasonable' timeframe for complying with a request also depends on the matter at hand, the type of produce involved and other circumstances. Assessors should exercise their judgement in determining what is reasonable in the context of the particular case. With that in mind, the following examples are only intended to provide general guidance:

- if the request is about inspecting produce, then it is not unrealistic to expect that the inspection could take place immediately, with due consideration given to the markets operating hours and the availability of the produce
- if the request is to inspect an agent's records—financial or otherwise—a reasonable time delay may be between two and seven working days, depending on the type, number and age of the records.

Other considerations may include:

- providing a written request to inspect financial and other records
- taking into account the peak trading periods of wholesale markets and the business hours of wholesalers to help avoid undue disruption.

If an assessors request is refused, they should contact the ACCC.

Costs

Unless otherwise agreed, the costs associated with appointing an assessor will be met by the party that appoints the assessor. If the assessor is appointed by the mediator, each party involved in the mediation will pay half the costs unless otherwise agreed.

Fees

The code does not stipulate or regulate the fees assessors may charge for their services.

Agreements on fees and payment methods are commercial matters for assessors and the appointing party or parties. Assessors' should seek advice in relation to these matters.

Working hours

To fulfil their roles, assessors will most probably be required to attend fruit and vegetable central wholesale markets.

As these markets are normally trading during the early hours of the morning, assessors are expected to be available at these times—particularly if they are required to inspect produce.

Reporting

An assessor must prepare his or her report as soon as practicable, and provide copies to all parties to the horticulture produce agreement in question and, if the assessor was appointed by a mediator, to the mediator.

Assessors may wish to develop a standard agreement and specific terms of trade. This could be published online and linked to the HMA's web site.

The assessors report must not include information that a party is not entitled to obtain under the horticulture produce agreement or under the code (despite the assessor possibly accessing that information as part of an investigation).

For example, the code does not require an agent to provide the grower with details of who bought their produce. While an assessor has a right to see this information, it cannot be made available without the agents consent.

Assessors are not required to report to the Australian Government. However, they may be asked to help with monitoring activities, such as surveys.

Produce specifications

Wholesalers involved in Australian central markets may refer to 'FreshSpecs' within their horticulture produce agreements. FreshSpecs are produce specifications developed by the Australian Chamber of Fruit and Vegetable Industries to meet the requirement for 'Class One' produce delivered to the six central wholesale markets.

FreshSpecs outlines the specifications for fruit and vegetables, such as the major or minor defects and conditions of receipt.

Further information on FreshSpecs is available online at **www.freshmarkets.com.au**

Further information

This brochure is intended as a guide only. To help assessors fully understand their roles and responsibilities under the code, there is more detailed information about the code available online at **www.daff.gov.au/hortcode**

Assessors may wish to seek their own legal advice.

Additional information on the code—in the form of a compliance manual, DVD and other material—is available from the ACCC website at **www.accc.gov.au/industrycodes**