



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

10 March 2026

Mr Chris Leptos AO
Independent Reviewer of Horticulture Code of Conduct Review
Department of Agriculture, Fisheries and Forestry
GPO Box 858
CANBERRA ACT 2601

via email: hortcode@aff.gov.au

Dear Mr Leptos

Horticulture Code of Conduct Review

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to make a submission to the Independent Review of the Horticulture Code of Conduct (the Code), particularly in relation to good faith obligations, dispute resolution processes, improving participants awareness of the Code, and expanding the scope of the Code.

Small businesses make up approximately 97% of all Australian businesses, employing around 39% of the private sector workforce and contributing approximately one-third of Australia's GDP.¹ While small business is often defined as having an annual turnover of \$10 million or less, about 92% of these have a turnover of less than \$2 million.² This highlights that most Australian small businesses operate on a small or micro scale with resources and capabilities that differ markedly from those of larger enterprises.

Horticulture is Australia's third largest agricultural industry. Most growers are small and family-owned businesses.³ Timely dispute resolution is critical in this sector, where growers face tight cash flow, limited bargaining power and highly perishable goods. Delays can threaten business viability, underscoring the need for effective and practical Code settings. Therefore, we provide the following recommendations to the review:

1. The Code should provide for a 'standard' horticulture produce agreement.

A stated objective of the Code was to ensure commercial terms and relationship were governed by a clear written agreement both could rely upon. The requirement for horticulture produce agreements (HPAs) between the parties has been a feature of the Code from the outset yet ASBFEO is still being asked to assist with disputes where there is no HPA. The absence of a HPA also points to scope to improve awareness about the Code, its operations and reasonable expectations and protections the Code seek to embed.

¹ Australian Small Business and Family Enterprise Ombudsman, *Small Business Data Portal: Number of small businesses in Australia; Contribution to Australian Gross Domestic Product; Contribution to Australian Employment*, ASBFEO website, 2025.

² ASBFEO, *Number of small businesses in Australia*, ASBFEO website, 2025.

³ Department of Agriculture, Fisheries and Forestry (DAFF), *Australian horticulture*, DAFF website, accessed 26 February 2026.



The Review should consider whether the creation of a ‘standard’ HPA would have utility in both establishing a default agreement that applies in the absence of a signed written agreement and act as a ‘benchmark’ against which a HPA presented to a grower to agree to can be explained in terms of variations from the standard ‘HPA’.

HPAs could also include a summary of the Code and its purpose and the mechanisms available to a grower for grievances that may arise as it relates to the supply arrangements. This could include encouragement raising and seeking to resolve any disputes between the parties and how and from where external support may be available. The level of assistance sought from ASBFEO would suggest there is a high level of satisfaction with current horticulture supply arrangements or there continues to be limited knowledge about the existence of the Code and/or a hesitation or uncertainty about utilising the mechanisms the Code contains. ASBFEO suspects it is the latter.

2. The Code should expand the list of factors to guide interpretation of the good faith obligation.

ASBFEO considers that the parties would benefit from an expanded list of factors that can be considered to determine whether a party has acted in good faith. Clarity on good faith provisions would support a stronger foundation of expected behaviour between code participants, enabling a more equal commercial relationship. The review should consider the factors set out in the Dairy Code and Food and Grocery Code, including:

- whether they have refrained from acting arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives, and
- whether they have not engaged in retribution in response to complaints or disputes.⁴

Where good faith provisions are clearly articulated, like those in the Dairy Code of Conduct, they can provide for more equitable and fair negotiations without fear of reprisal. This would support better communication and improves transparency and trust between growers and traders.

3. The Australian Government should consider whether the Code’s dispute resolution process is fit-for-purpose, providing growers with access to timely and equitable dispute resolution options, and establish mechanisms for monitoring compliance by signatories and improving data capture relating to complaints.

In ASBFEO’s experience, growers seeking assistance under the Code want disputes resolved efficiently, with minimal costs while preserving commercial relationships. The Code does not currently specify a clear end-to-end timeframe for dispute resolution, nor does it require a respondent to formally acknowledge receipt of a dispute or to respond within a defined period after a notification has been received.

While the Code refers to a three-week timeframe to resolve a dispute, this may not be appropriate in all circumstances. Where disputes relate to produce quality, rejection or acceptance, delays can significantly disadvantage growers due to the perishable nature of horticultural produce and have negative consequences for receipt of payment and ultimately cash flow.

ASBFEO considers Code participants would benefit from:

- a clearer dispute resolution pathway, including defined stages

⁴ *Competition and Consumer (Industry Codes—Dairy) Regulations 2019*, s 11(4). *Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024*, s 16(3).



- mandatory acknowledgement of disputes by respondents
- time-limited response requirements, calibrated to the nature of the dispute.

ASBFEO considers that transparency, effective monitoring and grower confidence are central to the effective operation of the Code. Reliance on formal complaints alone as a measure of Code effectiveness risks understating issues in a sector characterised by ongoing commercial relationships and power imbalances, where growers may be reluctant to raise disputes due to fear of reprisal.

To strengthen grower confidence in the Code, ASBFEO supports the introduction of mechanisms that provide greater visibility of how the Code operates in practice, while reducing the burden and risk on individual growers. An independent Code monitor or reviewer could play a critical role in this regard by collecting, analysing and reporting on de-identified data relating to both dispute resolution and broader compliance with Code obligations.

Independent monitoring could encompass:

- collection of data on informal requests for assistance, as well as formal disputes raised under the Code
- analysis of the nature, causes and outcomes of disputes
- reoccurring areas of concern
- monitoring of timeframes for dispute acknowledgement and resolution
- identification of practices that may undermine fair and transparent dealings
- monitoring compliance with the Code including HPAs
- reporting of the number of reports received by the ACCC regarding misconduct or breaches of the Code.

ASBFEO has received matters raising concerns that some small businesses have received HPAs that are unclear on when the transfer of ownership from grower to merchant occurs. These practices could expose growers to heightened financial risk, particularly where disputes arise or payment is delayed.

Transparency could be further strengthened through complementary data gathering mechanisms such as annual, anonymous grower surveys, which would enable the collection of feedback on what is working well under the Code and where pain points persist, without exposing growers to reporting that could jeopardise commercial relationships. These mechanisms would complement existing ACCC confidential reporting of misconduct and code breaches, providing a richer evidence base for monitoring Code effectiveness.

ASBFEO considers that enhanced transparency, supported by independent monitoring and improved data collection, would materially strengthen the credibility and effectiveness of the Code and better support fair, transparent and commercially sustainable relationships between growers and traders.

- 4. The Australian Government should develop an education strategy to provide training to small growers, agents and merchants to improve understanding of their obligations and the dispute resolution processes available under the Code.**



Many growers operate small or family-run enterprises with limited access to legal advice or compliance resources. Similarly, smaller agents and merchants may not have formal governance or compliance frameworks. Improving the education and awareness of small growers, agents and merchants could strengthen compliance culture while lowering compliance costs, reduce the number of disputes that arise, and support more timely and cooperative resolution of issues.

ASBFEO recommends the development of an education strategy to support growers, agents and merchants. Training should be tailored for the intended audience and cover common questions and issues that arise in the industry and that are regulated by the Code. This could include information on produce rejection, quality disputes, pooled returns, and payment calculations.⁵ Education materials should explain not only the legal obligations under the Code, but also how the dispute resolution process operates in practice, including the role of produce assessors and mediation advisors. Resources and delivery modes should be optimised for businesses located in regional and remote areas and for culturally and linguistic diverse small businesses.

ASBFEO considers the Supporting Fresh Produce Suppliers – Food and Grocery Code Education Program is a useful example for the provision of training for small business on the Code. The program provides up to \$2 million in grants for industry-led training to improve fresh produce suppliers' understanding of their rights and obligations under the Food and Grocery Code.⁶ A similar approach could be adopted for small businesses operating under the Horticulture Code.

5. The Australian Government should consider expanding the Code to include nursery (greenlife) products, to address the regulatory gap affecting this sector.

ASBFEO acknowledges that Greenlife Industry Australia and Bunnings have introduced a *Statement of Principles* outlining how Bunnings will work with greenlife suppliers. While this initiative represents an improvement for greenlife suppliers, it may not provide the same level of protection as a mandatory industry code or fully address existing power imbalances.

While the *Statement of Principles* outlines processes for dispute and complaint handling, including options for confidential reporting to an independent whistleblower in relation to unethical, fraudulent or inappropriate conduct, it does not appear to include key protections such as access to independent dispute resolution and escalation mechanisms.

Greenlife products currently fall outside the scope of any industry-specific code so considering their inclusion in the Horticulture Code would allow the Government to assess whether additional protections are needed to support fair, transparent and commercially sustainable trading relationships.

6. The Australian Government should ban unfair trading/business practices that distort competition and harm small business.

Unfair trading/business practices are types of commercial conduct that are not currently prohibited by law but can nevertheless distort competition and significantly harm consumers and

⁵ Mark Napper and Alan Wein, *Independent Review of the Horticulture Code of Conduct: Final Report*, Department of Agriculture and Water Resources, Australian Government, 2015, p 49.

⁶ Australian Government, *Funding to build fresh produce suppliers' understanding of the Food and Grocery Code*, business.gov.au website, accessed 26 February 2026.



small businesses. In ASBFEO's view, these practices typically occur when there is a power imbalance and one (usually larger) business acts in a way that disadvantages the other party.

Small and family-owned businesses are often subject to unfair trading/business practices which can cause the small business financial or other detriment. In fact, small and family business owners, particularly those from culturally and linguistically diverse backgrounds, often share similar vulnerabilities to individual consumers.

While the Code provides for written HPAs and includes a principles-based obligation to act in good faith, growers continue to face information asymmetries and power imbalances that may expose them to unfair trading/business practices. This may include where the business:

- acts, or fails to act, to the detriment of the other party
- acts in a manner that is not reasonably necessary to protect its legitimate commercial interests
- does not follow the intent of the agreement as struck and related expected or agreed practices
- undertakes a practice that could be an unfair contract term if it became a term of a written contract, including applying/enforcing duties and/or obligations that accompany, but are not reflected in, a contract
- conducts itself in a manner (including through a third party) that disadvantages the other business.

The ASBFEO has long advocated for unfair trading practices protections for small business, and we acknowledge the Australian Government's work to progress draft legislation on Unfair Trading Practices protections for consumers. However, we continue to advocate for equivalent protections for small businesses in business-to-business dealings and urge the Government to progress as a priority its current work on extending unfair trading protections to small business.

7. Enhance small business access to justice through reforms that leverage existing processes in the Federal Circuit and Family Court of Australia and Federal Court of Australia

The effectiveness of the range of requirements under Australia's various Industry Codes of Practice relies on the ability (or willingness) of small businesses to raise issues and enforce requirements under these codes, including utilising alternative dispute resolution.

Mandatory alternative dispute resolution is an important and generally effective mechanism for dealing with a broad range of disputes under the codes, however, it does not always achieve a resolution and does not address the information asymmetries and power imbalances that often exist between parties. Where a dispute is not resolved, the next step is to either initiate formal legal action or abandon the dispute altogether. Unfortunately, given the time, cost and complexity of taking legal action this pathway is out of reach for many small businesses.

To enhance small business access to justice, ASBFEO advocates for reforms to existing processes in the Federal Circuit and Family Court of Australia (FCFCOA) and Federal Court of Australia (FCOA) that could encompass:

- expanding availability of the Small Claims Process in the FCFCOA to apply to matters under mandatory industry codes, including the Horticulture Code of Conduct, with case



Australian Government



Australian
Small Business and
Family Enterprise
Ombudsman

management determining suitability based on a monetary threshold of damages sought (indicative \$250,000) and/or the complexity of issues to be determined

- ensuring simplified processes in the FCA are available for less complex, lower monetary value cases, including on appeal from the FCFCOA. The processes could include concise statement method, request for expedition and urgent claims, with sufficient protections enacted against tactics and the threat of cost orders that would otherwise discourage vulnerable parties, including small businesses, with a valid matter to bring
- establishing an Industry Codes List (ICL) within the Commercial and Corporations National Practice Area of the FCA. This would leverage the existing approach of the Insurance List, building a body of expertise and provide expedited consideration of policy issues and interpretation arising from industry codes.

Such reforms would provide small business with timely and cost-effective means to directly pursue their commercial interests and receive a determinative outcome. The knowledge that parties can access a binding court determination more easily could also incentivise parties to resolve disputes early, thereby enhancing the effectiveness of the Code.

If you require any further information, please do not hesitate to contact the Policy and Advocacy team via email at advocacy@asbfeo.gov.au.

Yours sincerely

The Hon Bruce Billson

Australian Small Business and Family Enterprise Ombudsman