



3 June 2026

Mr Chris Leptos AO
Independent Reviewer of Horticulture Code of Conduct Review
Department of Agriculture, Fisheries and Forestry
GPO Box 858
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via email: hortcode@aff.gov.au

Dear Mr Leptos

Horticulture Code of Conduct Review – supplementary consultation

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to make a further submission to the Independent Review of the Horticulture Code of Conduct (the Review). This submission is supplementary to the submission which the ASBFEO lodged on 10 March 2026 (March Submission).

Of the 5 issues raised under the supplementary consultation, this submission will address issues:

- facilitating trade where there is no signed Horticulture Produce Agreement (HPA)
- inclusion of processors, exports and nuts in the Horticulture Code of Conduct (the Code).

Facilitating trade where there is no signed HPA

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

The ASBFEO's position, as articulated in our March Submission, is to support deemed agreements or terms. Specifically, the ASBFEO advocates for the development and adoption of a 'standard' HPA which would establish a default—or deemed— agreement containing deemed terms that apply in the absence of a signed HPA. The standard HPA could also set a specific benchmark against which a HPA negotiated between parties could be assessed.

The benchmark set by the standard HPA should:

- reflect and reinforce the requirements of the Code, including, for example, obligations to deal in good faith, how produce can be delivered and accepted or rejected and engagement with internal and external dispute resolution processes (alongside any Code requirements)
- respond to what the Review demonstrates to be the most critical flaws in the Code including, for example, particular sources of ambiguity, as well as power imbalances between traders and growers
- be illustrated by examples of good practice in how the requirements ought to be applied, and communicated through clear and practical guidance materials.

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

The Supplementary Consultation Paper highlights that it is not uncommon for parties to a horticultural transaction to have drafted and negotiated—but simply not signed—an HPA. The threshold required to demonstrate the existence of an HPA should be low, and not be required to



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meet standards set by formal rules of evidence. Proof of good faith attempts by one or more parties to sign a HPA should be able to be discharged with reference to all relevant materials and surrounding circumstances, including:

- oral and written communications
- business records
- conduct of the parties, or other individuals.

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?

The ASBFEO's position is that a pre-existing signed HPA should apply over and supersede any unsigned variation to it. If, however, there is clear evidence that both parties accepted and were operating in accordance with the varied terms, then this new agreement should apply.

The inclusion of processors, exports and nuts in the Code

The ASBFEO supports the extension of the Code to cover trade between growers and processors. This will provide a more fulsome coverage of trade relationships within the sector. This is in line with our support for maximising the coverage of the Code – subject to the caveat that it does not unduly burden growers or traders.

The ASBFEO does not have a specific position with respect to the remaining questions set out under this issue in the supplementary consultation.

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 Lynda McAlary-Smith

Australian Small Business and Family Enterprise Ombudsman