

Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015

Select Legislative Instrument No. 16, 2015

made under section 51AE of the

Competition and Consumer Act 2010

**Compilation No. 2**

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**About this compilation**

**This compilation**

This is a compilation of the *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015* that shows the text of the law as amended and in force on 2 January 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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1 Name

This is the *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015*.

3 Authority

This instrument is made under section 51AE of the *Competition and Consumer Act 2010*.

4 Code of conduct

For section 51AE of the *Competition and Consumer Act 2010*, the code set out in Schedule 1:

(a) is prescribed; and

(b) is a voluntary industry code.

Note 1: Only grocery retailers and wholesalers can be bound by the code. For how a retailer or wholesaler agrees to be bound by the code, and ceases to be so bound, see clause 4 of the code.

Note 2: The Commonwealth has expressed the view that retailers and wholesalers that have an annual revenue of $5 billion or more, or a market share of 5% or more, should agree to be bound by the code.

5 Reviews

(1) The Minister administering section 51AE of the *Competition and Consumer Act 2010* must cause 2 reviews to be undertaken in relation to the operation of the Food and Grocery Code of Conduct (the ***code***) set out in Schedule 1.

(2) The first review must:

(a) review the operation of Part 5 of the code; and

(b) start before the end of the period of 2 years after the commencement of this section.

(3) The second review must:

(a) review the operation of the code (other than Part 5); and

(b) start before the end of the period of 3 years after the commencement of this section.

(4) Each review must assess the impact of the code in improving commercial relations between grocery retailers, wholesalers and suppliers.

(5) The Minister must cause a written report about each review to be prepared.

Schedule 1—Food and Grocery Code of Conduct

Note: See section 4.

Part 1—Preliminary

1 Name

This is the *Food and Grocery Code of Conduct*.

2 Purpose of code

The purpose of this code is:

(a) to help to regulate standards of business conduct in the grocery supply chain and to build and sustain trust and cooperation throughout that chain; and

(b) to ensure transparency and certainty in commercial transactions in the grocery supply chain and to minimise disputes arising from a lack of certainty in respect of the commercial terms agreed between parties; and

(c) to provide an effective, fair and equitable dispute resolution process for raising and investigating complaints and resolving disputes arising between retailers or wholesalers and suppliers; and

(d) to promote and support good faith in commercial dealings between retailers, wholesalers and suppliers.

3 Definitions

In this code:

***Act*** means the *Competition and Consumer Act 2010*.

***buying team*** means the employees of a retailer or wholesaler whose role includes at least one of the following:

(a) direct involvement in buying grocery products;

(b) immediate management responsibility for an employee covered by paragraph (a).

***Code Arbiter*** means a Code Arbiter appointed under subclause 31(1).

***delists*** has the meaning given by subclause 19(1A).

***groceries*** includes the following:

(a) food including fresh produce, meat and dairy items (other than dairy items sold for in‑store consumption);

(b) pet food;

(c) non‑alcoholic drinks (other than drinks sold for in‑store consumption);

(d) cleaning products;

(e) toiletries, perfumes and cosmetics;

(f) household goods, electrical appliances and kitchenware;

(g) clothing;

(h) “do‑it‑yourself” products;

(i) pharmaceuticals;

(j) books, newspapers, magazines and greeting cards;

(k) CDs, DVDs, videos and audio tapes;

(l) toys;

(m) plants, flowers and gardening equipment;

(n) tobacco and tobacco products.

***grocery supply agreement***means any agreement between a retailer and a supplier (other than a wholesaler), or between a wholesaler and a supplier, that relates to the supply of groceries to or for the purposes of a supermarket business (whether or not the agreement is the principal agreement between them relating to the supply of groceries) and includes any document:

(a) comprising the agreement; or

(b) made, from time to time, under the agreement.

***Independent Reviewer*** means the Independent Reviewer appointed under clause 37.

***independent review request*** has the meaning given by subclause 37B(2).

***original complaint*** has the meaning given by subclause 37B(1).

***own brand product*** means a grocery product:

(a) produced, processed or manufactured by a retailer or wholesaler; or

(b) produced, processed or manufactured for a retailer or wholesaler (including by a supplier); or

(c) that carries a name or trade mark owned by, or licensed to, a retailer or wholesaler.

***promotion*** means any offer for sale (whether or not accompanied by some other benefit to a consumer):

(a) at an introductory or reduced price, or involving non‑standard sales activity; and

(b) as agreed between:

(i) a retailer and a supplier; or

(ii) a wholesaler and a supplier; and

(c) that is intended to last only for a specified period.

***proposed remedy*** has the meaning given by subclause 36(5).

***retailer*** means a corporation:

(a) to the extent that it carries on a supermarket business in Australia for the retail supply of groceries; and

(b) to the extent that it carries on a business of purchasing groceries from suppliers for the purpose of resale to a person carrying on a supermarket business in Australia for the retail supply of groceries.

***senior buyer***, in relation to a supplier, means the employee within a retailer or wholesaler’s buying team who manages the buyers who buy from the supplier.

***shrinkage*** means a loss of grocery products that:

(a) occurs after a retailer or wholesaler has taken possession of them; and

(b) arises from theft, other loss or accounting error.

***supermarket business*** means a business under which a person sells to consumers bread, breakfast cereal, butter, eggs, flour, fresh fruit and vegetables, fresh milk, meat, rice, sugar and other packaged food or most of those groceries.

***supplier*** means a person carrying on (or actively seeking to carry on) a business of supplying groceries for retail sale by another person (whether or not that other person is the person supplied).

***wastage*** means groceries that are unfit for sale.

***wholesaler*** means a corporation to the extent that it carries on a business of purchasing groceries from suppliers for the purpose of resale to a person carrying on a supermarket business in Australia for the retail supply of groceries.

4 When this code applies

(1) This code binds a corporation as a retailer if the corporation has agreed, by written notice given to the Commission, to be bound by this code as a retailer.

(2) This code binds a corporation as a wholesaler if the corporation has agreed, by written notice given to the Commission, to be bound by this code as a wholesaler.

Note: Clauses 5 and 6 provide transitional arrangements in relation to grocery supply agreements entered into by retailers and wholesalers before being bound by this code.

(3) The corporation ceases to be bound by this code if the corporation, by written notice given to the Commission, withdraws the agreement.

(4) This code does not apply to the extent that it conflicts with:

(a) the Horticulture Code of Conduct; or

(b) the Franchising Code of Conduct.

(5) To avoid doubt, withdrawing agreement to be bound by this code does not remove any obligation under this code that relates to conduct that occurred when the corporation was so bound.

5 Transitional application—retailers

(1) This clause applies if a retailer is a party to a grocery supply agreement entered into before the retailer was bound by this code.

(2) Within 6 months after being bound by this code, the retailer must offer in writing to vary the agreement so that it conforms with the requirements of this code in relation to making grocery supply agreements.

(3) If the supplier concerned accepts the offer, the retailer must so vary the agreement within 6 months after the offer is accepted.

(4) Parts 2, 3 and 6 of this code do not apply in relation to the supply of groceries under the agreement until one of the following occurs:

(a) the agreement is varied under subclause (3);

(b) the period of 12 months that begins when the retailer is bound by the code ends.

6 Transitional application—wholesalers

(1) This clause applies if a wholesaler is a party to a grocery supply agreement entered into before the wholesaler was bound by this code.

(2) Within 6 months after being bound by this code, the wholesaler must offer in writing to vary the agreement so that it conforms with the requirements of this code in relation to making grocery supply agreements.

(3) If the supplier concerned accepts the offer, the wholesaler must so vary the agreement within 6 months after the offer is accepted.

(4) Parts 2, 3 and 6 of this code do not apply in relation to the supply of groceries under the agreement until one of the following occurs:

(a) the agreement is varied under subclause (3);

(b) the period of 12 months that begins when the wholesaler is bound by the code ends.

6A Transitional application—Part 5 of this code

(1) Part 5 of this code does not apply in relation to a retailer or wholesaler who becomes bound by this code until one of the following (an ***application event***) occurs:

(a) the retailer or wholesaler appoints a Code Arbiter;

(b) the period of 2 months after the retailer or wholesaler becomes bound ends.

(2) However, this clause does not apply unless, on and after becoming bound, the retailer or wholesaler has an internal dispute resolution process at all times until an application event occurs.

Part 1A—Good faith

6B Obligation to deal with suppliers lawfully and in good faith

(1) The retailer or wholesaler must at all times deal with suppliers lawfully and in good faithwithin the meaning of the unwritten law as in force from time to time.

(2) The retailer or wholesaler must not enter into a grocery supply agreement that contains a provision that limits or excludes the obligation to act in good faith, and, if it does, the provision has no effect.

(3) In determining whether the retailer or wholesaler has acted in good faith in dealing with a supplier, the following may be taken into account:

(a) whether the retailer or wholesaler has acted honestly;

(b) whether the retailer or wholesaler has cooperated to achieve the purposes of the relevant grocery supply agreement;

(c) whether the retailer or wholesaler has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;

(d) whether the retailer or wholesaler has not acted in a way that constitutes retribution against the supplier for past complaints and disputes;

(e) whether the retailer’s or wholesaler’s trading relationship with the supplier has been conducted without duress;

(f) whether the retailer’s or wholesaler’s trading relationship with the supplier has been conducted in recognition of the need for certainty regarding the risks and costs of trading, particularly in relation to production, delivery and payment;

(g) whether the retailer or wholesaler has observed any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving a complaint or dispute with the supplier;

(h) whether, in dealing with the retailer or wholesaler, the supplier has acted in good faith.

(4) Subclause (3) does not limit subclause (1).

Part 2—Grocery supply agreements

7 Grocery supply agreement must be in writing and retained

The retailer or wholesaler must not enter into a grocery supply agreement unless it is in writing.

Note: The retailer or wholesaler must keep the original or a copy of each grocery supply agreement to which the retailer or wholesaler is a party while bound by this code (including any document comprising the agreement, and any document made from time to time under the agreement that forms part of the agreement):

(a) during the term of the agreement; and

(b) for 6 years after the agreement ends.

See subclause 42(1).

8 Matters to be covered by agreement

The retailer or wholesaler must not enter into a grocery supply agreement unless the agreement specifies the following:

(a) any requirements the retailer or wholesaler has in respect of the delivery of the groceries;

(b) any circumstances in which the retailer or wholesaler may reject the groceries;

(c) the period within which the retailer or wholesaler must pay the supplier for the groceries and the circumstances in which any payment, or part of a payment, may be withheld or delayed;

(d) if the agreement is intended to operate for a limited time only—the term of the agreement;

(e) in clear terms, any quantity and quality requirements relating to the groceries;

(f) if the agreement provides for termination by one or more parties to it—the circumstances in which it may be terminated.

9 Unilateral variation of agreement

(1) The retailer or wholesaler must not vary a grocery supply agreement without the consent of the supplier concerned.

(2) Subclause (1) does not apply if:

(a) the agreement:

(i) provides expressly for the retailer or wholesaler to make the variation; and

(ii) sets out clearly the changed circumstances in which the variation can be made; and

(iii) if the variation involves a quantitative adjustment to the terms of supply—sets out the basis or methodology for calculating the adjustment; and

(b) the variation is made in accordance with the agreement; and

(c) the variation is reasonable in the circumstances; and

(d) the supplier is given reasonable notice, in writing, of:

(i) the variation; and

(ii) the terms of the variation; and

(iii) the retailer or wholesaler’s reasons for making the variation.

(3) In determining whether the variation is reasonable in the circumstances, regard must be had to the benefits, costs and risks (if any) for the supplier and retailer or wholesaler.

(4) Subclause (3) does not limit paragraph (2)(c).

(5) In any dispute, the retailer or wholesaler has the onus of establishing the matters in subclause (2).

(6) In any dispute in relation to a contravention of subclause (1), a person alleging detriment to a supplier in relation to paragraph (2)(c) has the onus of establishing that detriment.

10 Retrospective variation of agreement

The retailer or wholesaler must not vary a grocery supply agreement with retrospective effect.

Part 3—Conduct generally

Division 1—Application of this Part

11 Application of this Part

This Part does not apply in relation to supplies to a retailer by a wholesaler.

Division 2—Paying suppliers

12 Payments to suppliers

(1) The retailer or wholesaler must pay a supplier for all grocery products delivered and accepted in accordance with a grocery supply agreement:

(a) within the time frame set out in the agreement; and

(b) in any case—within a reasonable time after receiving the supplier’s invoice for the products.

(2) The retailer or wholesaler must not:

(a) set off any amount against a supplier’s invoice or remittance unless the supplier has consented in writing to the set‑off of the amount; or

(b) require a supplier to consent to set off such an amount.

(3) Subclause (2) does not apply if:

(a) the grocery supply agreement provides for the amount to be set off; and

(b) the set‑off is reasonable in the circumstances.

(4) In any dispute, the retailer or wholesaler has the onus of establishing the matters in subclause (3).

Division 3—Requiring payments from suppliers

13 Payments for shrinkage

(1) The retailer or wholesaler must not:

(a) enter into a grocery supply agreement under which a supplier is required to make payments as compensation for shrinkage; or

(b) otherwise require such payments.

(2) Subclause (1) does not prevent the retailer or wholesaler from raising, discussing or agreeing with a supplier proposals and procedures to mitigate the risk and occurrence of shrinkage.

14 Payments for wastage

(1) The retailer or wholesaler must not directly or indirectly require a supplier to make any payment to cover any wastage of groceries incurred at premises of:

(a) the retailer or wholesaler; or

(b) a contractor or agent of the retailer or wholesaler; or

(c) any other entity that is a retailer or wholesaler.

(2) Subclause (1) does not apply if:

(a) the relevant grocery supply agreement sets out expressly and unambiguously the circumstances, which could include negligence, in which the supplier will be required to make payments to cover wastage of the supplier’s groceries incurred at premises of a person or entity referred to in subclause (1); and

(b) the wastage occurs in such circumstances; and

(c) the basis of the payment is set out in the grocery supply agreement; and

(d) the payment is reasonable having regard to the retailer’s or wholesaler’s costs incurred by the wastage; and

(e) the retailer or wholesaler takes reasonable steps to mitigate those costs.

(3) In any dispute, the retailer or wholesaler has the onus of establishing the matters in subclause (2).

(4) If:

(a) the relevant grocery supply agreement provides for the supplier to make payments to cover wastage of the supplier’s groceries; and

(b) the supplier seeks to negotiate a variation of the agreement relating to payments of that kind;

the retailer or wholesaler must not, in the course of the negotiations or as a precondition to entering into the negotiations, seek to negotiate other variations of the agreement unrelated to payments of that kind.

15 Payments as a condition of being a supplier

(1) The retailer or wholesaler must not require a supplier to make any payment as a condition of stocking or listing grocery products.

(2) Subclause (1) does not apply in relation to the retailer if:

(a) the payment is made in relation to a promotion; or

(b) the payment:

(i) is required under the relevant grocery supply agreement; and

(ii) is made in respect of groceries that have not been stocked, displayed or listed by the retailer during the preceding 365 days in 25% or more of its stores; and

(iii) is reasonable having regard to the costs and risks to the retailer in stocking, displaying or listing the grocery products.

(2A) Subclause (1) does not apply in relation to the wholesaler if:

(a) the payment is made in relation to a promotion; or

(b) the payment:

(i) is required under the relevant grocery supply agreement; and

(ii) is made in respect of groceries that have not been stocked or listed by the wholesaler during the preceding 365 days in 25% or more of its distribution centres; and

(iii) is reasonable having regard to the costs and risks to the wholesaler in stocking or listing the grocery products.

(3) Paragraphs (2)(a) and (2A)(a) have effect subject to clause 18 (funding promotions).

(4) In any dispute, the retailer or wholesaler has the onus of establishing the matters in subclause (2) or (2A).

16 Payments for better positioning of groceries—retailers

(1) The retailer must not require a supplier to make any payment to secure either of the following for a grocery product:

(a) better positioning;

(b) an increase in allocation of shelf space.

(2) Subclause (1) does not apply if:

(a) the payment is required under the relevant grocery supply agreement; and

(b) the agreement sets out the particular circumstances in which the payment may be required; and

(c) the payment is reasonable having regard to either or both of the following:

(i) the additional benefits (if any) to the supplier;

(ii) the costs and risks to the retailer of allocating additional or different shelf space.

Note: For example, a grocery supply agreement may provide for a supplier to make a payment in relation to the promotion of the supplier’s product.

(3) In any dispute, the retailer has the onus of establishing the matters in subclause (2).

(4) This clause does not apply to a corporation to the extent that it is bound by this code as a wholesaler.

17 Payments for retailer’s or wholesaler’s business activities

(1) The retailer or wholesaler must not directly or indirectly require a supplier to make any payment towards the costs of any activity (the ***retailer’s or wholesaler’s business activity***) that is undertaken by the retailer or wholesaler in the ordinary course of carrying on a business as a retailer or wholesaler.

(1A) Without limiting subclause (1), the retailer’s or wholesaler’s business activity includes the following:

(a) a buyer’s visit to the supplier;

(b) artwork or packaging design;

(c) consumer or market research;

(d) the opening or refurbishing of a store;

(e) hospitality for the retailer’s or wholesaler’s staff.

(2) Subclause (1) does not apply if:

(a) the relevant grocery supply agreement provides for the payment; and

(b) the payment is reasonable in the circumstances.

(3) In determining whether the payment is reasonable in the circumstances, regard must be had to the following:

(a) the likely benefits to the supplier from the retailer’s or wholesaler’s business activity;

(b) the likely benefits to the retailer or wholesaler from the retailer’s or wholesaler’s business activity;

(c) the costs borne, or contributions made, by the retailer or wholesaler for the retailer’s or wholesaler’s business activity.

(4) Subclause (3) does not limit paragraph (2)(b).

(5) In any dispute, the retailer or wholesaler has the onus of establishing the matters in subclause (2).

18 Funding promotions

(1) The retailer or wholesaler must not directly or indirectly require a supplier to fund part or all of the costs of a promotion.

(2) Subclause (1) does not apply if:

(a) the relevant grocery supply agreement provides for the funding; and

(b) the funding is reasonable in the circumstances.

(3) In determining whether the funding is reasonable in the circumstances, regard must be had to the following:

(a) the likely benefits to the supplier from the promotion;

(b) the likely benefits to the retailer or wholesaler from the promotion;

(c) the costs borne, or contributions made, by the retailer or wholesaler for the promotion.

(4) Subclause (3) does not limit paragraph (2)(b).

(5) In any dispute, the retailer or wholesaler has the onus of establishing the matters in subclause (2).

Division 4—Other conduct

19 Delisting products

(1) The retailer or wholesaler may only delist a supplier’s grocery product:

(a) in accordance with the terms of the relevant grocery supply agreement; and

(b) for genuine commercial reasons.

(1A) The retailer or wholesaler ***delists*** a supplier’s grocery product if:

(a) the product is removed from the retailer’s or wholesaler’s range of grocery products; or

(b) the retailer or wholesaler reduces the distribution of the product across the retailer’s stores or the wholesaler’s distribution centres (as the case may be), and that reduction has or is likely to have a material effect on the supplier.

(2) For the purpose of subclause (1), genuine commercial reasons for delisting a product include the following:

(a) failure of the supplier to meet agreed quality or quantity requirements with respect to the product;

(b) failure of the supplier’s product to meet the retailer’s or wholesaler’s commercial sales or profitability targets as notified to the supplier in, or in accordance with, the grocery supply agreement;

(c) persistent failure to meet the retailer’s or wholesaler’s delivery requirements as notified to the supplier from time to time in accordance with the grocery supply agreement.

(3) Subclause (2) does not limit subclause (1).

(4) To avoid doubt, delisting as a punishment for a complaint, concern or dispute raised by a supplier is not a genuine commercial reason.

(5) Prior to delisting a supplier’s grocery product, the retailer or wholesaler must provide reasonable written notice to the supplier of the retailer’s or wholesaler’s decision to delist the product. The notice must:

(a) include the genuine commercial reasons for delisting the product; and

(b) inform the supplier of the supplier’s right to have the decision to delist the product reviewed by the retailer’s or wholesaler’s senior buyer for the supplier; and

(c) inform the supplier of the supplier’s right to direct a complaint relating to the decision to delist the product to the Code Arbiter for the retailer or wholesaler; and

(d) include the contact details of the Code Arbiter for the retailer or wholesaler.

(6) Subclause (5) does not apply if:

(a) time is of the essence (including for product recalls, withdrawals or safety issues); or

(b) there are persistent issues with supply that have resulted in the retailer or wholesaler being out of stock or stocked at significantly reduced levels.

(6A) The retailer’s or wholesaler’s senior buyer for a supplier must promptly comply, in writing, with any written request from the supplier for:

(a) a statement of the retailer’s or wholesaler’s genuine commercial reasons for the delisting; or

(b) information (or additional information) relating to the delisting.

This subclause applies whether or not the retailer or wholesaler complied (or was required to comply) with subclause (5).

(7) The retailer’s or wholesaler’s senior buyer for a supplier must, after receiving a written request from the supplier, promptly review any decisions regarding delisting made by the retailer or wholesaler and provide the supplier with written notice of the outcome of that review including the basis for the retailer’s or wholesaler’s decision.

(8) To avoid doubt, a decision by the retailer or wholesaler not to extend the agreement, or enter into a new grocery supply agreement, following the expiry of a fixed term grocery supply agreement is not a decision to delist a product.

(9) In any dispute, the retailer or wholesaler has the onus of establishing the matters in subclauses (1) and (6).

20 Funded promotions

(1) If a supplier agrees to make a payment in support of the promotion of a product (the ***funded promotion***), the retailer or wholesaler may hold the promotion only after giving the supplier reasonable written notice.

(2) If the retailer or wholesaler orders a grocery product from a supplier in connection with the funded promotion at a promotional price (whether calculated by way of discount, rebate, credit, allowance or otherwise), the retailer or wholesaler must:

(a) ensure that the basis on which the quantity of the order is calculated is transparent; and

(b) not over‑order; and

(c) if the retailer or wholesaler sells any over‑ordered product other than at, or below, the promotional resale price—pay the supplier the difference between the supplier’s promotional price and the supplier’s full price for the product.

(3) If the retailer or wholesaler has placed an order for a grocery product with a supplier in connection with the funded promotion, the retailer or wholesaler must not do either of the following without the supplier’s written consent:

(a) cancel the order;

(b) reduce the volume of the order by more than:

(i) in the case of an order placed by the retailer—10%; or

(ii) in the case of an order placed by the wholesaler—20%.

(4) Subclause (3) does not apply if:

(a) the retailer or wholesaler gives the supplier reasonable written notice of the cancellation or reduction; or

(b) the retailer or wholesaler compensates the supplier for any net resulting costs, losses or expenses incurred or suffered by the supplier as a direct result of the retailer or wholesaler failing to give reasonable notice of the cancellation or reduction.

21 Fresh produce standards and quality specifications

(1A) This clause applies only in relation to fresh fruit and vegetables.

(1) The retailer or wholesaler must provide any fresh produce standards or quality specifications to a supplier in clear, unambiguous and concise written terms.

(2) The retailer or wholesaler must accept all fresh produce delivered in accordance with relevant fresh produce standards and quality specifications.

(3) The retailer or wholesaler may reject fresh produce only if all of the following conditions are satisfied:

(a) the produce fails to meet relevant fresh produce standards or quality specifications;

(b) the retailer or wholesaler rejects the produce within 24 hours after the produce is delivered to the retailer or wholesaler;

(c) the retailer or wholesaler does not reject the produce after the retailer or wholesaler has accepted the produce.

(4) If the retailer or wholesaler rejects fresh produce because it does not meet relevant fresh produce standards or quality specifications, the retailer or wholesaler must provide written reasons for the rejection to the supplier within 48 hours.

(5) The retailer or wholesaler must communicate any labelling, packaging or preparation requirements for a grocery product to a supplier in clear, unambiguous and concise written terms.

(6) The retailer or wholesaler must provide a supplier with reasonable written notice of any required changes to packaging, labelling or preparation standards (unless the change is required immediately by law) taking into consideration existing stock held by suppliers (where known) and any agreement as to stock coverage in the relevant grocery supply agreement.

(7) The retailer or wholesaler must make any claim for damaged grocery products or shortfalls, or any similar claims, within a reasonable time of, and in any event no later than 30 days after, delivery of the groceries to the retailer or wholesaler (or the retailer’s or wholesaler’s nominee).

Note: See also clause 8 (matters to be covered by agreement).

22 Changes to supply chain procedures

(1) The retailer or wholesaler must not directly or indirectly require a supplier to make any material change to supply chain procedures during the period of the grocery supply agreement concerned.

(2) Subclause (1) does not apply if:

(a) the retailer or wholesaler gives the supplier reasonable written notice of the change; or

(b) the retailer or wholesaler compensates the supplier for any net resulting costs, losses or expenses incurred or suffered by the supplier as a direct result of the retailer or wholesaler failing to give reasonable notice of the change.

(3) Paragraph (2)(b) does not prevent a supplier from waiving a right to compensation under that paragraph.

(4) This clause has effect subject to clause 9 (unilateral variation of agreement).

23 Business disruption

The retailer or wholesaler must not threaten a supplier with business disruption or termination of a grocery supply agreement without reasonable grounds.

24 Intellectual property rights

(1) The retailer or wholesaler must respect the intellectual property rights held by suppliers in relation to grocery products, including intellectual property rights in branding, packaging and advertising.

(2) To avoid doubt, subclause (1) does not create, confer or extend any intellectual property rights in or of the supplier.

(3) In developing or producing own brand products, the retailer or wholesaler must not infringe the intellectual property rights held by a supplier in relation to grocery products, including rights relating to branding, packaging designs or advertising.

(4) In any dispute relating to a breach of this clause, any relevant actions of the supplier in relation to the intellectual property rights of the retailer or wholesaler must be taken into account.

25 Confidential information

(1) This clause applies if a supplier discloses confidential information to the retailer or wholesaler in connection with the supply of grocery products, including confidential information relating to product development, proposed promotions or pricing.

(2) The retailer or wholesaler must not use that information other than for a purpose for which it was disclosed and may only disclose it or make it available or accessible to employees or agents of the retailer or wholesaler (as the case may be) who need to have that information in connection with that purpose.

(3) The retailer or wholesaler must establish and monitor systems to ensure compliance with subclause (2).

(4) To avoid doubt, information is not confidential information for the purposes of this clause if the information:

(a) is publicly available; or

(b) comes into the possession or knowledge of the retailer or wholesaler:

(i) independently of the supplier; and

(ii) without any breach of subclause (2) on the part of the retailer or wholesaler.

26 Product ranging, shelf space allocation and range reviews

(1) The following must be published or provided to all suppliers with whom the retailer or wholesaler has grocery supply agreements:

(a) the retailer’s or wholesaler’s product ranging principles;

(b) in the case of a retailer—the retailer’s shelf space allocation principles.

(2) The retailer or wholesaler must act in accordance with the retailer’s or wholesaler’s principles and keep them up to date.

(3) Within a reasonable time before conducting a range review, the retailer or wholesaler must provide suppliers who might be affected by any outcome of the review with clearly expressed written notice of:

(a) the purpose of the range review; and

(b) the key criteria governing ranging decisions.

(4) Following the range review, the retailer or wholesaler must provide affected suppliers with a reasonable period of time to discuss the outcomes of the review, including the basis for the retailer’s or wholesaler’s final decisions.

(5) The retailer or wholesaler must apply:

(a) the retailer’s or wholesaler’s product ranging principles; and

(b) in the case of a retailer—the retailer’s shelf space allocation principles;

without discrimination (including without discrimination in favour of the retailer’s or wholesaler’s own brand products, as the case may be).

(6) This clause does not limit clause 19.

27 Transfer of intellectual property rights

(1) The retailer or wholesaler must not directly or indirectly require a supplier to transfer or exclusively license any intellectual property right held by the supplier in relation to a grocery product as a condition or term of supply of an equivalent own brand product of the retailer or wholesaler (as the case may be).

(2) Subclause (1) does not prevent the retailer or wholesaler from:

(a) holding an intellectual property right in an own brand product of the retailer or wholesaler; or

(b) having an exclusive right to the retail sale of an own brand product of the retailer or wholesaler; or

(c) making the holding of a right covered by paragraph (a) or (b) by the retailer or wholesaler a condition or term of supply by the supplier of an own brand product of the retailer or wholesaler, to the extent the product, recipe or formulation of the product:

(i) was developed or formulated by or for the retailer or wholesaler; or

(ii) is customised by or for the retailer or wholesaler.

27A Price increases

(1) This clause applies if:

(a) the retailer or wholesaler has a grocery supply agreement with a supplier for the supply of groceries; and

(b) the supplier informs the retailer or wholesaler, in writing, of an increase in the price (the ***price increase***) of groceries supplied under the agreement; and

(c) if the price increase is in respect of fresh fruit and vegetables that are supplied under the agreement and the agreement includes a mechanism to negotiate on a regular basis the price of those fresh fruit and vegetables—any negotiations about the price increase are not concluded within 5 business days after the supplier informs the retailer or wholesaler of the price increase.

(2) Within 30 days of being informed by the supplier of the price increase, the retailer or wholesaler must, in writing, notify the supplier whether the retailer or wholesaler:

(a) accepts the price increase; or

(b) accepts an increase in the price of the groceries supplied under the agreement but does not accept the amount of the price increase; or

(c) does not accept the price increase.

(3) If the supplier is notified of a matter referred to in paragraph (2)(b) or (c), the supplier may request the retailer or wholesaler to enter into negotiations about an increase in the price for the groceries.

(4) A retailer or wholesaler that enters into such negotiations must engage in the negotiations in good faith and take all reasonable steps to conclude its position on the negotiations without delay.

(5) The retailer or wholesaler must not require the supplier to disclose commercially sensitive information in relation to the following:

(a) the price increase;

(b) negotiations about an increase in the price for the groceries.

Note: Nothing in this clause affects the rights of a supplier to determine the price of groceries that the supplier supplies.

27B Information about price increases

The retailer or wholesaler must give to its Code Arbiter, in sufficient time for the information to be included in the Code Arbiter’s report in respect of a financial year under clause 36D, the following information in relation to the financial year:

(a) the total number of notifications given under subclause 27A(2) by the retailer or wholesaler to any supplier during the financial year;

(b) the number of those notifications that were not given within the 30‑day period required by that subclause;

(c) the total number of negotiations entered into during the financial year following requests made under subclause 27A(3);

(d) the number of those negotiations in which the retailer or wholesaler did not conclude its position on the negotiations within the period of 30 days starting on the day (the ***notification day***) the retailer or wholesaler was notified of the relevant proposed price increase by the supplier;

(e) for each of the negotiations to which paragraph (d) applies, the number of days the retailer or wholesaler took to conclude its position on the negotiations starting from the notification day for the relevant proposed price increase.

29 Freedom of association

(1) The retailer or wholesaler must not provide an inducement to prevent a supplier from:

(a) forming an association of suppliers; or

(b) associating with other suppliers for a lawful purpose.

(2) The retailer or wholesaler must not discriminate, or take any other action, against a supplier for:

(a) forming an association of suppliers; or

(b) associating with other suppliers for a lawful purpose.

30 Provision of contact details

(1) The retailer or wholesaler must make available to its suppliers, and keep updated:

(a) contact details of the retailer or wholesaler’s buyers and senior buyers for the supplier; and

(b) contact details for the retailer or wholesaler’s Code Arbiter.

(2) The contact details must include position titles and contact telephone numbers.

Part 5—Dispute resolution

Division 1—Retailer’s or wholesaler’s Code Arbiter

31 Retailer or wholesaler must appoint a Code Arbiter

(1) The retailer or wholesaler must appoint a Code Arbiter for the retailer or wholesaler in relation to this code.

(2) The retailer or wholesaler must notify the Commission and the Independent Reviewer of:

(a) the Code Arbiter’s appointment; and

(b) contact details for the Code Arbiter to be used by suppliers to raise a complaint with the Code Arbiter.

(3) The retailer or wholesaler must pay costs of the Code Arbiter as necessary to ensure the Code Arbiter is sufficiently resourced to perform the Code Arbiter’s functions.

(4) The retailer or wholesaler must not unduly influence, or attempt to unduly influence, the Code Arbiter in the performance of the Code Arbiter’s functions.

(5) The retailer or wholesaler must ensure that the Code Arbiter has access to:

(a) all documentation held by the retailer or wholesaler in relation to any dispute with a supplier relating to the retailer’s or wholesaler’s obligations under this code; and

(b) the retailer’s or wholesaler’s buying team for the purposes of discussing issues relating to the retailer’s or wholesaler’s obligations under this code.

(6) The retailer or wholesaler must give the Code Arbiter authority to enter into an agreement on behalf of the retailer or wholesaler to settle a dispute relating to the retailer’s or wholesaler’s obligations under this code.

32 Who can be appointed Code Arbiter

(1) A Code Arbiter must not be engaged by the retailer or wholesaler in any capacity other than as Code Arbiter.

(2) Despite subclause (1), a Code Arbiter appointed by a retailer or wholesaler may be engaged by the retailer or wholesaler in another capacity during a financial year if the retailer’s or wholesaler’s market share:

(a) is less than 15% in that financial year; or

(b) was less than 15% in either of the previous 2 financial years.

33 Function of the Code Arbiter

(1) A function of the Code Arbiter is to deal with complaints that arise in relation to the conduct of retailers and wholesalers towards suppliers, to the extent that conduct is regulated by this code.

(2) The Code Arbiter must develop a written complaints handling procedure that is consistent with this code.

(3) The Code Arbiter must act in accordance with the procedure. The Code Arbiter must also:

(a) provide a copy of the procedure to the retailer or wholesaler and the Independent Reviewer; and

(b) review the procedure annually and update it as necessary; and

(c) if the procedure is updated—provided a copy of the updated procedure to the retailer or wholesaler and the Independent Reviewer.

(4) The retailer or wholesaler must publish an up to date copy of the procedure on the retailer’s or wholesaler’s website.

34 Referral of complaints to Code Arbiter

(1) A supplier may direct a complaint relating to a matter covered by this code to the Code Arbiter. The complaint must be in writing.

(2) The complaint must also include the following:

(a) the supplier’s identification details, including business or trading name;

(b) contact details for the supplier, or the person dealing with the complaint on behalf of the supplier, including the name, title and telephone number of that person;

(c) details of the conduct giving rise to the complaint, including any documents or other information that would assist the investigation of the complaint;

(d) the provisions of this code that are relevant to the complaint.

Confidentiality requirements

(3) The Code Arbiter must not disclose to the retailer or wholesaler the identity of a supplier who has made a complaint, except with the express consent of the supplier.

(4) The Code Arbiter must observe any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving a complaint.

35 Investigation by Code Arbiter

Investigation of complaint

(1) The Code Arbiter must take all reasonable steps to:

(a) investigate the complaint; and

(b) conclude the investigation within 20 business days, or a longer period as extended under subclause (2).

(2) With the written agreement of the supplier, the Code Arbiter may extend the period referred to in paragraph (1)(b) by a period of a specified number of days.

Complaints that are vexatious etc.

(3) If, after investigating the complaint, the Code Arbiter is satisfied that the complaint is vexatious, trivial, misconceived or lacking in substance, the Code Arbiter must give the supplier written notice to that effect.

(4) The Code Arbiter must not be satisfied that a complaint relating to clause 9 (unilateral variation of agreement) or 10 (retrospective variation of agreement) is vexatious, trivial, misconceived or lacking in substance only because the supplier’s only ground in relation to the complaint is detriment to the supplier.

(5) A notice under subclause (3) must set out:

(a) the Code Arbiter’s reasons for being satisfied that the complaint is vexatious, trivial, misconceived or lacking in substance; and

(b) that the supplier may take further action in relation to the matter under clause 37B (independent review request) or 38 (mediation or arbitration).

(6) The Code Arbiter must give the retailer or wholesaler a copy of the notice. Unless the supplier has expressly consented to their identity being disclosed to the retailer or wholesaler, the Code Arbiter must first redact from the copy of the notice any information that would disclose the identity of the supplier.

Other complaints

(7) Subclauses (8) and (9) apply to complaints that are not dealt with under subclause (3).

(8) The Code Arbiter’s investigation of the complaint:

(a) must include consideration of the retailer’s or wholesaler’s obligation to deal lawfully and in good faith (see clause 6B); and

(b) may include consideration of whether the retailer or wholesaler has acted fairly in dealing with the supplier.

(9) In considering for the purposes of paragraph (8)(b) whether the retailer or wholesaler has acted fairly in dealing with a supplier, the Code Arbiter may take the following into account:

(a) whether the retailer or wholesaler has not acted in a way that denied the supplier the benefits of the contract, or undermined those benefits for the supplier;

(b) whether the retailer or wholesaler has acted in accordance with the legitimate and reasonable expectations of the supplier;

(c) whether the retailer or wholesaler has had due regard to:

(i) the nature of the relationship between the retailer or wholesaler and the supplier; and

(ii) the individual characteristics of the supplier that were known, or ought to have been known, by the retailer or wholesaler.

36 Determination by Code Arbiter of proposed remedy

(1) After investigating a complaint under clause 35, or after reconsidering a complaint under clause 36B, the Code Arbiter must determine what (if any) action should be taken by the retailer or wholesaler in response to the complaint.

(2) Without limiting subclause (1), the Code Arbiter may determine that the retailer or wholesaler should:

(a) pay compensation to the supplier; or

(b) vary, subject to clause 9 (unilateral variation of agreement), a grocery supply agreement with the supplier.

(3) However, the Code Arbiter may not determine that the retailer or wholesaler pay compensation to the supplier in excess of $5 million in relation to the complaint.

(4) If the Code Arbiter determines that the retailer or wholesaler should pay compensation of $5 million to the supplier in relation to the complaint, the Code Arbiter may make a recommendation that the retailer or wholesaler also pay an additional amount of compensation.

(5) If the Code Arbiter determines that the retailer or wholesaler should take action in response to the complaint, that action is the ***proposed remedy*** for the supplier in relation to the complaint. A recommendation under subclause (4) does not form part of the ***proposed remedy***.

(6) Before determining that a retailer or wholesaler should vary a grocery supply agreement, the Code Arbiter may consult with the retailer or wholesaler, or the supplier, or both.

(7) Within 5 business days after the conclusion of the investigation, the Code Arbiter must give the supplier a notice in writing setting out:

(a) the determination made by the Code Arbiter under subclause (1); and

(b) the Code Arbiter’s reasons for making that determination; and

(c) if the Code Arbiter determined a proposed remedy—the timetable for the proposed remedy; and

(d) that the supplier may take further action in relation to the matter under clause 37B (independent review request) or 38 (mediation or arbitration).

Note: If the Code Arbiter was satisfied that the complaint was vexatious, trivial, misconceived or lacking in substance, the Code Arbiter may combine a notice given under this subclause with the notice given under subclause 35(3).

(8) The Code Arbiter must give the retailer or wholesaler a copy of the notice. The Code Arbiter must first redact from the copy of the notice any information that would disclose the identity of the supplier unless:

(a) the supplier has expressly consented to their identity being disclosed to the retailer or wholesaler; or

(b) the supplier has accepted a proposed remedy in relation to the complaint.

36A Acceptance by supplier of proposed remedy

(1) The supplier may accept the proposed remedy by written notice given to the Code Arbiter at any time before the remedy lapses.

(2) If:

(a) the supplier notifies the Code Arbiter that the supplier accepts a proposed remedy that has not lapsed; and

(b) the retailer or wholesaler has given the Code Arbiter authority to enter into an agreement on behalf of the retailer or wholesaler as required by subclause 31(6);

the Code Arbiter must enter into an agreement on behalf of the retailer or wholesaler with the supplier under which the retailer or wholesaler agrees to take the specified action that is the proposed remedy.

(3) The retailer or wholesaler must comply with the agreement.

When a proposed remedy lapses

(4) The proposed remedy lapses at the end of the period of 20 business days beginning on the day the supplier receives the notice under subclause 36(7). However, if within that period, the supplier:

(a) requests the Independent Reviewer to review the Code Arbiter’s process in dealing with the complaint under clause 37B; and

(b) notifies the Code Arbiter that the supplier has done so;

the proposed remedy lapses as specified in subclause (5) or (6) of this clause (whichever is applicable).

Note: If the remedy is proposed as a result of a reconsideration of a complaint, the period is 10 business days instead of 20 business days: see subclause 36B(3).

(5) If the Independent Reviewer decides not to conduct an independent review, the proposed remedy lapses 10 business days after the day the supplier receives notice of the decision under subclause 37C(3).

(6) If the Independent Reviewer completes the independent review, the proposed remedy lapses 10 business days after:

(a) the supplier receives notice of the outcome of the review under subclause 37D(7), unless paragraph (b) of this subclause applies; or

(b) for a case where the Independent Reviewer recommends that the Code Arbiter reconsider the complaint—the supplier receives notice under subclause 36B(2) of the outcome of the reconsideration.

36B Reconsideration by Code Arbiter

(1) This clause applies if:

(a) a supplier has made an independent review request in relation to the complaint; and

(b) the Independent Reviewer has:

(i) conducted an independent review; and

(ii) recommended under subclause 37D(6) that the Code Arbiter reconsider the complaint.

(2) The Code Arbiter must, within 10 business days of the recommendation:

(a) reconsider what (if any) action should be taken by the retailer or wholesaler in response to the complaint; and

(b) make a determination under clause 36 in relation to the complaint; and

(c) notify the retailer or wholesaler, the supplier, and the Independent Reviewer, in writing accordingly.

(3) If the notice referred to in paragraph (2)(c) determines a proposed remedy, the reference in subclause 36A(4) to 20 business days is taken instead to be a reference to 10 business days.

36C Records to be kept by Code Arbiter

If a complaint is made, the Code Arbiter must keep the following for at least 6 years:

(a) a record of the complaint;

(b) a record of the investigations undertaken to investigate the complaint;

(c) if the Code Arbiter gives notice under subclause 35(3) that a complaint is vexatious, trivial, misconceived or lacking in substance—a copy of the notice;

(d) a copy of each notice given under subclause 36(7);

(e) a summary of any action taken in response to the complaint.

36D Report by Code Arbiter

(1) A Code Arbiter must prepare a written report in respect of each financial year.

(2) The report must set out the following:

(a) the number of complaints received for investigation in the financial year;

(b) in general terms and without identifying a complainant—the nature of the complaints received;

(c) the time taken to investigate each complaint;

(d) the outcome of each investigation;

(e) whether or not each complaint was resolved to the satisfaction of the complainant;

(f) the number of complaints in relation to which the Code Arbiter made a recommendation under subclause 36(4) (about paying compensation in excess of $5 million);

(g) any information given to the Code Arbiter by the retailer or wholesaler under clause 27B (information about price increases) in relation to the financial year.

(3) The Code Arbiter must give a copy of the report to the following:

(a) the retailer or wholesaler;

(b) the Commission;

(c) the Independent Reviewer.

(4) The Code Arbiter must prepare the report, and give copies of it as required by subclause (3), within 30 business days after the end of the financial year.

(5) Within 1 business day of being given a copy of the report, the retailer or wholesaler must publish a copy of the report on the retailer’s or wholesaler’s website.

Division 2—The Code’s Independent Reviewer

37 Minister to appoint an Independent Reviewer

(1) The Minister is to appoint an Independent Reviewer by written instrument.

(2) A person is not eligible for appointment as the Independent Reviewer unless the Minister is satisfied that the person:

(a) has appropriate qualifications, knowledge or experience in procedural fairness; and

(b) has experience working in Australian industry.

37A Functions of the Independent Reviewer

(1) The functions of the Independent Reviewer are:

(a) to consider requests to review Code Arbiters’ processes in dealing with complaints; and

(b) to identify and address emerging and systemic issues in the grocery supply chain relating to the operation of this code; and

(c) to publish non‑binding guidance material relating to compliance with this code; and

(d) to conduct an annual survey of suppliers, retailers and wholesalers relating to the operation of this code.

(2) In performing functions under paragraph (1)(b) the Independent Reviewer must act collaboratively with stakeholders in the grocery supply chain, including the following:

(a) Code Arbiters;

(b) retailers and wholesalers;

(c) suppliers;

(d) relevant industry representative bodies.

37B Supplier may request an independent review of Code Arbiter’s process

(1) If:

(a) a supplier has directed a complaint (the ***original complaint***) relating to a matter to a Code Arbiter; and

(b) the supplier is dissatisfied with the steps taken by the Code Arbiter under clause 35;

the supplier may request the Independent Reviewer to review the Code Arbiter’s process in dealing with the complaint. The request must be in writing.

(2) A request under subclause (1) (an ***independent review request***) must also include the following:

(a) the supplier’s identification details, including business or trading name;

(b) contact details for the supplier, or the person dealing with the independent review request on behalf of the supplier, including the name, title and telephone number of that person;

(c) details of the process giving rise to the independent review request, including any documents or other information that would assist the Independent Reviewer to review the Code Arbiter’s process.

Confidentiality requirements

(3) The Independent Reviewer must not disclose to the retailer or wholesaler the identity of a supplier who has made an independent review request, except with the express consent of the supplier.

(4) The Independent Reviewer must observe any confidentiality requirements relating to information disclosed or obtained in the course of considering independent review requests and conducting independent reviews.

37C Independent Reviewer’s discretion to conduct an independent review

(1) The Independent Reviewer must consider the independent review request and decide within 10 business days of the request being received:

(a) to conduct an independent review of the Code Arbiter’s process in dealing with the complaint; or

(b) not to conduct an independent review of the Code Arbiter’s process in dealing with the complaint.

Deciding not to conduct an independent review

(2) Without limiting the Independent Reviewer’s discretion under subclause (1) to decide not to conduct an independent review, circumstances in which the Independent Reviewer might decide not to conduct an independent review include the following:

(a) where the supplier accepted a proposed remedy in relation to the original complaint;

(b) where the Independent Reviewer considers that the independent review request is vexatious, trivial, misconceived or lacking in substance;

(c) where the Independent Reviewer considers that the independent review request does not relate to the Code Arbiter’s process in dealing with the complaint.

(3) If the Independent Reviewer decides not to conduct the independent review, the Independent Reviewer must notify the supplier and the Code Arbiter. The notice must:

(a) be in writing; and

(b) set out the Independent Reviewer’s reasons for deciding not to conduct the independent review.

37D The independent review

(1) If the Independent Reviewer decides to conduct the independent review, the Independent Reviewer must notify the supplier, the retailer or wholesaler, and the Code Arbiter in writing.

(2) If the Independent Reviewer decides to conduct the independent review, the Independent Reviewer must take all reasonable steps to:

(a) consider the independent review request; and

(b) complete the review within 20 business days of giving the supplier the notice referred to in subclause (1).

(3) Without limiting subclause (2), the steps the Independent Reviewer may take include requesting information relating to the original complaint from one or more of the following:

(a) the Code Arbiter;

(b) the supplier;

(c) the retailer or wholesaler.

(4) A retailer, wholesaler or Code Arbiter who receives a reasonable request from the Independent Reviewer to provide information relating to the original complaint must comply with the request within 10 business days of receiving it.

(5) The 20 business day period referred to in paragraph (2)(b) (including the period as extended by a previous application of this subclause) is worked out not counting any days on which the Independent Reviewer is waiting to receive information the Independent Reviewer has requested as mentioned in subclause (3).

(6) Following the consideration, the Independent Reviewer may make one or more recommendations to the Code Arbiter. Unless the supplier has accepted a proposed remedy in relation to the original complaint, the Independent Reviewer may recommend that the Code Arbiter reconsider the original complaint.

(7) Within 5 business days of completing the review, the Independent Reviewer must give the supplier and the Code Arbiter a notice in writing:

(a) stating that the independent review is complete; and

(b) setting out the recommendations (if any) made to the Code Arbiter under subclause (6); and

(c) setting out the Independent Reviewer’s reasons for making those recommendations.

(8) The Independent Reviewer must give the retailer or wholesaler a copy of the notice. Unless the supplier has expressly consented to their identity being disclosed to the retailer or wholesaler, the Independent Reviewer must first redact from the copy of the notice any information that would disclose the identity of the supplier.

(9) If the Independent Reviewer becomes aware, in connection with the independent review request, that a breach of this code may have occurred, the Independent Reviewer may give particulars of the breach to the Commission. The Independent Reviewer must give a copy of the particulars to the retailer or wholesaler concerned.

37E Annual report

(1) The Independent Reviewer must prepare a written report in respect of each financial year.

(2) The report must:

(a) be prepared by the first 30 November after the end of the financial year; and

(b) set out the Independent Reviewer’s activities in the financial year.

(3) The Independent Reviewer must:

(a) give a copy of the report to the Commission; and

(b) publish the report on the Independent Reviewer’s website.

(4) The Independent Reviewer must not publish information that the Independent Reviewer is satisfied is confidential commercial information. The Independent Reviewer may consult with the retailer, wholesaler or supplier concerned for the purpose of determining whether information is of that character.

(5) The report must not identify, or be reasonably capable of being used to identify, a supplier.

37F Annual survey

(1) The Independent Reviewer must conduct a survey of suppliers, retailers and wholesalers for the purpose of:

(a) identifying emerging and systemic issues in the grocery supply chain relating to the operation of this code; and

(b) assessing systemic compliance with this Code.

(2) The Independent Reviewer must publish the results of the survey on the Independent Reviewer’s website. This may be done as part of the report required by clause 37E.

(3) The Independent Reviewer must conduct the survey, and publish the results, annually.

(4) The results of the survey must not identify, or be reasonably capable of being used to identify, a supplier.

Division 3—Mediation and arbitration

38 Supplier may seek mediation or arbitration

(1) A supplier may seek either mediation or arbitration of a complaint or dispute relating to a matter covered by this code.

(2) However, if the supplier has begun a process under Division 1 (about the Code Arbiter) or Division 2 (about the Independent Reviewer) in relation to the complaint or dispute, the supplier must not seek mediation or arbitration of the complaint or dispute until the process:

(a) has been completed; or

(b) should have been completed.

(3) The retailer or wholesaler:

(a) must take part in the mediation or arbitration in good faith; but

(b) is not required by this code to take part in both mediation and arbitration in relation to the same complaint or dispute at the same time.

Note: See subclause 39(3) for when the retailer or wholesaler will be:

(a) taken to take part in the mediation or arbitration; and

(b) taken to be trying to resolve the dispute in good faith.

(4) In any dispute, the retailer or wholesaler has the onus of establishing the matters in subclause (3).

(5) Despite paragraph (3)(a), the retailer or wholesaler is not required to take part in the mediation or arbitration if the mediator considers or the arbitrator determines that:

(a) the complaint or dispute is vexatious, trivial, misconceived or lacking in substance; or

(b) the supplier is not acting in good faith; or

(c) the supplier has accepted a proposed remedy in relation to the complaint or dispute and the retailer or wholesaler has taken the specified action that is the proposed remedy.

(6) However, if the complaint or dispute relates to clause 9 (unilateral variation of agreement) or 10 (retrospective variation of agreement), the mediator or arbitrator must not consider or determine that the complaint is vexatious, trivial, misconceived or lacking in substance only because the supplier’s only ground in relation to the complaint or dispute is detriment to the supplier.

39 Conduct of mediation and arbitration

(1) Mediation or arbitration for the purposes of this code must be conducted in accordance with Resolution Institute Arbitration Rules 2016, as in force on the day Schedule 2 to the *Competition and Consumer (Industry Codes—Food and Grocery) Amendment Regulations 2020* commences.

(2) If the mediator or arbitrator is not agreed by the parties within 10 business days of a supplier referring a matter, the mediator or arbitrator must be appointed by the Resolution Institute in accordance with the rules of the Institute.

(3) For the purposes of paragraph 38(3)(a), the retailer or wholesaler:

(a) is taken to take part in the mediation or arbitration if the retailer or wholesaler is represented at the mediation or arbitration by a person who has authority to enter into an agreement to settle the dispute on behalf of the retailer or wholesaler; and

(b) is taken to be trying to resolve the dispute in good faith if the retailer or wholesaler approaches the resolution of the dispute in a reconciliatory manner, including by doing the following:

(i) attending and participating at meetings that are arranged at reasonable times;

(ii) at the beginning of the mediation or arbitration process, making it clear what the retailer or wholesaler is trying to achieve through the mediation or arbitration;

(iii) observing any obligation relating to confidentiality that applies during or after the mediation or arbitration process;

(iv) not taking or refusing to take action during the dispute, including refusing to accept goods or to make payments, that has the purpose or effect of applying pressure to resolve the dispute.

(4) All costs of any mediation or arbitration are to be determined under the rules referred to in subclause (1).

(5) This clause does not apply in relation to a complaint directed to a Code Arbiter.

Part 6—Compliance

40 Duty to train staff with respect to this code

(1) Within 6 months of being bound by this code, the retailer or wholesaler must provide its buying team with:

(a) a copy of this code; and

(b) training on the requirements of this code.

(2) The retailer or wholesaler must provide any person who becomes part of the retailer or wholesaler’s buying team after the retailer or wholesaler is bound by this code with:

(a) a copy of this code; and

(b) training on the requirements of this code.

(3) The retailer or wholesaler must comply with subclause (2) within 20 business days after the person becomes part of the buying team.

(4) The retailer or wholesaler must provide annual retraining to its buying team on the requirements of this code.

42 Keeping records

(1) The retailer or wholesaler must keep the original or a copy of each grocery supply agreement to which the retailer or wholesaler is a party while bound by this code (including any document comprising the agreement, and any document made from time to time under the agreement that forms part of the agreement):

(a) during the term of the agreement; and

(b) for 6 years after the agreement ends.

(2) The retailer or wholesaler must keep the original or a copy of each of the following for at least 6 years from when the document is made or given, as the case requires:

(a) an offer made under subclause 5(2) or 6(2) to vary a grocery supply agreement;

(b) notice of variation of a grocery supply agreement given under paragraph 9(2)(d) or under former paragraph 10(2)(d);

(c) notice of a decision to delist a product given under paragraph 19(5)(a);

(ca) a request of a kind mentioned in subclause 19(6A), and any statement or information given as a result of such a request;

(d) notice of the outcome of the review of a decision to delist a product given under subclause 19(7);

(e) reasons for rejection of fresh produce given under subclause 21(4);

(f) notice of required changes to packaging, labelling or preparation standards given under subclause 21(6);

(g) notice of material change to supply chain procedures given under paragraph 22(2)(a);

(h) notice of a range review given under subclause 26(3);

(ha) a proposed price increase informed in writing by a supplier under subclause 27A(1);

(hb) a notification given under subclause 27A(2);

(hc) a request to enter into negotiations about a price increase made in writing by a supplier under subclause 27A(3);

(i) notice that a complaint is vexatious, trivial, misconceived or lacking in substance given under former paragraph 35(2)(b);

(j) a summary of action that has or will be taken in response to a complaint and the timetable for the action given under former subclause 36(2);

(k) a code compliance manager’s report prepared under former subclause 41(1);

(l) a summary of action that has been taken to comply with an agreement entered into under subclause 36A(2) (about acceptance of a proposed remedy);

(m) a copy of a Code Arbiter’s report given to the retailer or wholesaler under paragraph 36D(3)(a).

Part 7—Application, saving and transitional provisions

Division 1—Competition and Consumer (Industry Codes—Food and Grocery) Amendment Regulations 2020

43 Definitions

In this Division:

***amending Regulations*** means the *Competition and Consumer (Industry Codes—Food and Grocery) Amendment Regulations 2020*.

***new code*** means this code, as amended by the amending Regulations.

***old code***means this code, as in force immediately before the commencement of this clause.

***relevant code provisions*** means the following provisions of the new code:

(a) the provisions of Part 2 (other than clause 10);

(b) the provisions of Part 3 (other than subclause 14(4)).

44 Application—clause 6 of new code

Clause 6 of the new code applies in relation to a wholesaler that becomes bound by the new code on or after the commencement of this clause.

45 Application—clause 6A of new code

Clause 6A of the new code applies in relation to a retailer or wholesaler who becomes bound by the new code on or after the commencement of this clause.

46 Application—wholesalers bound by old code

(1) This clause applies in relation to a wholesaler if:

(a) immediately before the commencement of this clause, the wholesaler:

(i) was a party to a grocery supply agreement; and

(ii) was bound by the old code; and

(b) immediately after that commencement, the agreement does not conform with the requirements of the relevant code provisions in relation to making grocery supply agreements.

(2) Within 18 months after the commencement of this clause, the wholesaler must offer in writing to vary the agreement so that it conforms with the requirements of the relevant code provisions in relation to making grocery supply agreements.

(3) If the supplier concerned accepts the offer, the wholesaler must so vary the agreement within 6 months after the offer is accepted.

(4) The relevant code provisions do not apply in relation to the supply of groceries under the agreement until one of the following occurs:

(a) the agreement is varied under subclause (3);

(b) the period of 24 months that begins when this clause commences ends.

(5) To avoid doubt, clause 6 of the old code does not apply in relation to the wholesaler.

47 Application—retailers bound by old code

(1) This clause applies in relation to a retailer if:

(a) immediately before the commencement of this clause, the retailer:

(i) was a party to a grocery supply agreement; and

(ii) was bound by the old code; and

(b) immediately after that commencement, the agreement does not conform with the requirements of the relevant code provisions in relation to making grocery supply agreements.

(2) Within 6 months after the commencement of this clause, the retailer must offer in writing to vary the agreement so that it conforms with the requirements of the relevant code provisions in relation to making grocery supply agreements.

(3) If the supplier concerned accepts the offer, the retailer must so vary the agreement within 6 months after the offer is accepted.

(4) The relevant code provisions do not apply in relation to the supply of groceries under the agreement until one of the following occurs:

(a) the agreement is varied under subclause (3);

(b) the period of 12 months that begins when this clause commences ends.

(5) To avoid doubt, clause 5 of the old code does not apply in relation to the retailer.

48 Application—retrospective variation of grocery supply agreements

Clause 10 of the new code applies in relation to:

(a) grocery supply agreements that come into force on or after the commencement of this clause; and

(b) grocery supply agreements that were in force immediately before that commencement and that are varied, renewed or extended after that commencement.

49 Application—payments for wastage

Subclause 14(4) of the new code applies in relation to:

(a) grocery supply agreements that come into force on or after the commencement of this clause; and

(b) grocery supply agreements that were in force immediately before that commencement and that are varied, renewed or extended after that commencement.

50 Appointment of Code Arbiter (no code compliance manager)

(1) This clause applies in relation to a retailer or wholesaler who becomes bound by the old code before the commencement of this clause, if the retailer or wholesaler has not nominated a code compliance manager before that commencement.

(2) Part 5 of the new code does not apply in relation to the retailer or wholesaler until one of the following (an ***application event***) occurs:

(a) the retailer or wholesaler appoints a Code Arbiter;

(b) the period of 2 months after the commencement of this clause ends.

(3) However, this clause does not apply unless, on and after becoming bound, the retailer or wholesaler has an internal dispute resolution process at all times until an application event occurs.

51 Transition from code compliance manager to Code Arbiter

(1) This clause applies to a retailer or wholesaler who:

(a) is bound by the old code immediately before the commencement of this clause; and

(b) nominated a code compliance manager before that commencement.

(2) Within 2 months after the commencement of this clause, the retailer or wholesaler must appoint a Code Arbiter.

(3) Subject to subclause (4), Part 5 of the old code continues to apply in relation to the retailer or wholesaler until the Code Arbiter is appointed.

(4) If:

(a) a supplier has directed a complaint to a retailer’s or wholesaler’s code compliance manager under Division 2 of Part 5 (complaints) of the old code; and

(b) the process of dealing with the complaint has not been completed at the time the relevant retailer or wholesaler appoints a Code Arbiter;

then, on and after the commencement of this clause, Part 5 of the new code applies in relation to the complaint as if it had been made to the Code Arbiter under clause 34 of the new code on the day on which it was actually made to the code compliance manager.

Note: The process of dealing with a complaint may be completed by the code compliance manager being satisfied under subclause 35(2) of the old code that the code compliance manager was not required to investigate the complaint.

52 Code compliance managers’ obligations

Transfer of complaints to Code Arbiter

(1) If subclause 51(4) applies to a complaint, the code compliance manager must give the Code Arbiter:

(a) any information in the code compliance manager’s possession or control that the Code Arbiter reasonably requires for the purpose of dealing with the complaint; and

(b) any other assistance the Code Arbiter reasonably requires for the purposes of fulfilling the Code Arbiter’s responsibilities in relation to the complaint.

Records

(2) The code compliance manager must give records and summaries retained under clause 36 of the old code to the retailer or wholesaler.

Reports

(3) Despite the repeal of clause 41 of the old code by item 17 of Schedule 2 to the amending Regulations, that clause continues to apply, in relation to the first 6‑month period ending after the commencement of that item, as if that repeal had not happened. However, the report need not cover a complaint to which subclause 51(4) applies.

53 Retailer’s or wholesaler’s obligations

A retailer or wholesaler must keep records and summaries received from the code compliance manager under subclause 52(2) for the remainder of the 6 year period referred to in subclause 36(3) of the old code.

54 Code Arbiter’s report

The first report to be prepared by a Code Arbiter under clause 36D of the new code must be prepared in respect of the first financial year to end after the commencement of that clause.

55 Independent Reviewer’s annual report

The first report to be prepared by the Independent Reviewer under clause 37E of the new code must be prepared in respect of the first financial year to end after the commencement of that clause.

56 Independent Reviewer’s annual survey

The first survey to be conducted by the Independent Reviewer under clause 37F of the new code must be conducted within 12 months after the commencement of that clause.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Name | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015 (SLI No. 16, 2015) | 2 Mar 2015 (F2015L00242) | 3 Mar 2015 (s 2) |  |
| Competition and Consumer (Industry Codes—Food and Grocery) Amendment Regulations 2020 | 2 Oct 2020 (F2020L01281) | Sch 3 (items 17, 22): 2 Jan 2021 (s 2(1) items 4, 6 (first occurring)) Remainder: 3 Oct 2020 (s 2(1) items 1–3, 5, 6 (second occurring)) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| s 2 | rep LA s 48D |
| s 4 | am F2020L01281 |
| s 5 | rs F2020L01281 |
| **Schedule 1** |  |
| **Part 1** |  |
| c 3 | am F2020L01281 |
| c 4 | am F2020L01281 |
| c 5 | am F2020L01281 |
| c 6 | am F2020L01281 |
| c 6A | ad F2020L01281 |
| **Part 1A** |  |
| Part 1A | ad F2020L01281 |
| c 6B | ad F2020L01281 |
| **Part 2** |  |
| c 10 | am F2020L01281 |
| **Part 3** |  |
| **Division 1** |  |
| c 11 | rs F2020L01281 |
| **Division 2** |  |
| c 12 | am F2020L01281 |
| **Division 3** |  |
| c 13 | am F2020L01281 |
| c 14 | am F2020L01281 |
| c 15 | am F2020L01281 |
| c 16 | am F2020L01281 |
| c 17 | am F2020L01281 |
| c 18 | am F2020L01281 |
| **Division 4** |  |
| c 19 | am F2020L01281 |
| c 20 | am F2020L01281 |
| c 21 | am F2020L01281 |
| c 22 | am F2020L01281 |
| c 23 | am F2020L01281 |
| c 24 | am F2020L01281 |
| c 25 | am F2020L01281 |
| c 26 | am F2020L01281 |
| c 27 | am F2020L01281 |
| c 27A | ad F2020L01281 (md) |
| c 27B | ad F2020L01281 (md) |
| Part 4 heading | rep F2020L01281 |
| c 28 | rep F2020L01281 |
| c 30 | am F2020L01281 |
| **Part 5** |  |
| **Division 1** |  |
| Division 1 | rs F2020L01281 |
| c 31 | rs F2020L01281 |
| c 32 | rs F2020L01281 |
| c 33 | rs F2020L01281 |
| c 34 | rs F2020L01281 |
| c 35 | rs F2020L01281 |
| c 36 | rs F2020L01281 |
| c 36A | ad F2020L01281 |
| c 36B | ad F2020L01281 |
| c 36C | ad F2020L01281 |
| c 36D | ad F2020L01281 |
| **Division 2** |  |
| Division 2 | rs F2020L01281 |
| c 37 | rs F2020L01281 |
| c 37A | ad F2020L01281 |
| c 37B | ad F2020L01281 |
| c 37C | ad F2020L01281 |
| c 37D | ad F2020L01281 |
| c 37E | ad F2020L01281 |
| c 37F | ad F2020L01281 |
| **Division 3** |  |
| c 38 | am F2020L01281 |
| c 39 | am F2020L01281 |
| **Part 6** |  |
| Part 6 heading | rs F2020L01281 |
| c 41 | rep F2020L01281 |
| c 42 | am F2020L01281 |
| **Part 7** |  |
| Part 7 | ad F2020L01281 |
| **Division 1** |  |
| c 43 | ad F2020L01281 |
| c 44 | ad F2020L01281 |
| c 45 | ad F2020L01281 |
| c 46 | ad F2020L01281 |
| c 47 | ad F2020L01281 |
| c 48 | ad F2020L01281 |
| c 49 | ad F2020L01281 |
| c 50 | ad F2020L01281 |
| c 51 | ad F2020L01281 |
| c 52 | ad F2020L01281 |
| c 53 | ad F2020L01281 |
| c 54 | ad F2020L01281 |
| c 55 | ad F2020L01281 |
| c 56 | ad F2020L01281 |