

Review of the Grocery Supply Code

Final Report, Decisions and Reasons

16 October 2025



Executive summary

This report describes the process and outcome of the Commission's first review of the Grocery Supply Code

- X1. The Grocery Supply Code (**the Code**) was put in place by Government to rebalance the relationship between the regulated grocery retailers (**RGRs**) currently Woolworths New Zealand, Foodstuffs North Island, Foodstuffs South Island, and their grocery suppliers.
- X2. The Code is intended to promote fair conduct, and prohibit unfair conduct, between RGRs and their suppliers, preventing the major grocery retailers from using their strong negotiating power to force suppliers to accept unfavourable or unfair terms (such as costs and risks the retailers are better placed to manage).
- X3. The Code is also intended to provide greater certainty and transparency for suppliers over the terms of supply, and to contribute to a trading environment in the grocery industry in which there is a diverse range of suppliers, businesses compete effectively, and consumers and businesses participate confidently.
- X4. In line with our statutory duties the Commerce Commission (**the Commission**) has undertaken a review to assess the operation and effectiveness of the Code and to inform further work in this area.

It is important for all New Zealanders that our grocery market works well

- X5. The conditions that the Code is intended to promote – fair conduct, transparency and certainty, should support innovation and investment in the quality and range of grocery products on offer to consumers in line with the Code's purpose.

We are concerned about situations where there is an imbalance in negotiating power

- X6. Having an enforceable code of conduct is important because of the vulnerable position of some suppliers when they substantially rely on New Zealand's major supermarkets as their main route to market. The level of reliance creates an imbalance in negotiating power and the potential for suppliers to have to take on costs and risks that are better placed with the retailer. We expect that negotiations can be firm, but they should be fair.

We have considered a range of information sources in this review

- X7. We have gathered information through several processes including:
 - X7.1. submissions and cross-submissions were invited on a Request for Views paper published in August 2024 and used to help shape the review;
 - X7.2. the TRA x Commerce Commission Grocery Supplier Survey (**Grocery Supplier Survey**) was undertaken in November 2024 and received over 560 responses; and
 - X7.3. submissions and cross-submissions were invited in response to the Draft Report and draft Code released on 5 June 2025.
- X8. We have also considered other information that we have received or observed since the Code has been in place:
 - X8.1. information gathered through our Anonymous Reporting Tool (**ART**), other enquiries to the Commission, stakeholder engagement, Commission compliance activities and investigations related to the Code; and
 - X8.2. the independent review of the equivalent code in Australia, the development of the new Australian Code, and the Australian Supermarket Inquiry.

There is general support for the Code, but some concerns remain

- X9. Through the review we have heard a variety of perspectives. However, there was no suggestion that the Code should be substantially redesigned. In this context we looked to identify immediate areas for focus and/or clarification while also identifying other areas that will be looked at over time.

We focused on the parts of the Code that provide flexibility to negotiate

- X10. A key theme of feedback relating to the effectiveness of the Code was the limited ability for suppliers to push back on unfair retailer demands or behaviour due to a fear of damaging relationships and/or losing shelf space.
- X11. Feedback suggested that, in areas where the Code allows flexibility to negotiate, the suppliers most in need of the protection of a Code may end up agreeing to whatever is asked of them due to an imbalance in negotiating power. Accordingly, instead of providing the flexibility on fair terms that was intended, these exceptions to the Code's protections often become the RGR's baseline expectations on suppliers.

- X12. In this context, we looked carefully at the parts of the Code that allow for a “carve-out” (ie, exception) from the Code’s protections in the grocery supply agreement (**GSA**) in certain circumstances. These clauses relate to unilateral variations, off-setting of payments to suppliers, and some of the payments suppliers make to retailers. We also looked at clause 20 of the current Code (“Funded promotions”) which allows for negotiation regarding excess stock purchased at a promotional price, a practice referred to as investment buying.
- X13. We also considered recent changes to the Australian Code and sought views on introducing a standalone clause prohibiting retaliation by RGRs, similar to that introduced in Australia.

We have made changes which will come into force on the later of 1 May 2026 or once the Code’s penalties have been confirmed

- X14. This Final Report has a dual purpose. It describes our review and our view that the Code should be amended to enable it to better meet its purposes under the Grocery Industry Competition Act 2023 (**the Act**). It also sets out our final decisions and reasons in relation to our proposed changes to the current Code. These are summarised in Table X1.
- X15. The changes from the current Code include:
- X15.1. A new provision to address supplier concerns about retaliation.
 - X15.2. Changes to address the practice of “investment buying” where a retailer orders excess stock at a promotional price to sell after the promotional period.
 - X15.3. Changes to remove the ability for retailers to charge suppliers where groceries become unfit for sale (“wastage”) while in the effective control of the retailer (eg, where groceries are damaged or become spoilt while in a retailer’s store).
 - X15.4. The introduction of record-keeping requirements in relation to unilateral variations, funding of promotions, and payments as a condition of supplying a new product.
- X16. The Commission has powers to determine the content of the Code, but it cannot prescribe the level of pecuniary penalty which applies to different contraventions of the Code.
- X17. The Governor-General will therefore need to amend the Grocery Industry Competition Regulations 2023 (**the Regulations**) to prescribe the pecuniary penalties which will apply to the new Code following a recommendation from the Minister.

- X18. This paper includes our recommendation to the Minister on the levels of pecuniary penalty that should apply, including where we have made changes to the Code, such as those made regarding wastage, to the funded promotions clause to address the practice of “investment buying”, and the new record-keeping and retaliation clauses under the Code, as required by s196(4)(b) of the Act.
- X19. The new Code will come into force on the later of 1 May 2026 or when either or both of regulations 9 and 10 of the Regulations, which prescribe the level of penalties applying to contraventions of the Code, are first revoked or amended.

We will continue to support the implementation of the Code through market monitoring and compliance and enforcement activities

- X20. We will promote awareness of the changes and seek information about how they are being actioned.
- X21. In cases where we have chosen not to progress amendments to the Code at this time, (such as payments for a retailer’s business activities), we intend to address the issues raised through market monitoring and compliance and enforcement activities. These activities could lead to further amendment of the Code in the future.
- X22. A strong theme throughout this review has been the desire for the Commission to provide materials to help support understanding and implementation of the Code. We are planning a mixture of updated web material, factsheets and more detailed guidance. Opportunities for feedback in the development of these materials will be tailored accordingly. We anticipate that our continued monitoring and enforcement of the Code will also increase industry understanding of the Code and the Code obligations.

Table X1: Summary of final decisions and reasons

<i>Implementation dates for new Code</i>		
Clause	Final decision	Reasons
Date Code Comes in Force	The new Code will come into force on the later of 1 May 2026 or when either or both of regulation 9 and 10 of the Regulations are first revoked or amended.	This allows a minimum six-month period for industry to prepare for changes and time for the Regulations to be amended to include penalties for new provisions of the Code.

Obligation to offer to vary existing agreements so that they are consistent with the new code clause 5	Provide a one-month period after the new Code comes into force for RGRs to offer changes to existing agreements to make them consistent with any new Code requirements. Provide that RGRs will not be in breach after the one-month period if they act in accordance with the Code, they have made a reasonable offer in writing to vary the agreement, the offer would make the agreement consistent with the requirements of the Code, and the supplier has not accepted the offer.	The amendments are required to ensure that retailers are proactive in reviewing the content of their grocery supply agreements/existing agreements for consistency with the requirements in the new Code and, in the case of inconsistency, offering to vary the grocery supply agreements/existing agreements. The timeframe of one month to make offers after the Code comes into force takes into account the decision that the Code will come into force no earlier than 1 May 2026, which allows a minimum six-month period for the sector to prepare for the new Code. We consider that one month to make offers is sufficient in the context of this notice and the changes to the Code, which have narrowed since the consultation. An RGR that complies with the updated Code requirements in circumstances where their compliance is inconsistent with the GSAs/existing agreements will receive the protections under clause 1(2) of Schedule 1 to the Act. Equally, an RGR that complies in substance with the updated Code requirements will not be in breach of the Code where its agreement is inconsistent with the requirements of the Code, provided they have made a reasonable offer in writing to vary the agreement where that offer would make the agreement consistent with the requirements of the Code and the supplier has not accepted that offer.
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New provision introduced to further discourage retaliation

Final decision	Reasons
Retaliation clause 30 Add new clauses like those included in the recently made Australian Code, and adopting some changes recommended by submitters. The clause will cover retaliation against suppliers for exercising their rights under the Code, a GSA, engaging with the Commission's regulatory processes, or with the dispute resolution scheme. There is also an evidential burden on retailers to establish that their actions weren't retaliation.	Due to the power imbalance between RGRs and suppliers, the serious impact retaliatory conduct has on suppliers, and the fact that such conduct undermines their ability to enforce their rights under the Code, we consider this clause necessary to promote the purpose of the Code. The evidential burden has been placed on RGRs to produce evidence that an action is not retaliatory. This is because of the power imbalance between the RGRs and suppliers and the fact that the RGRs are in the best position to explain and evidence the basis of their own actions. In many cases this evidence should already exist through records kept as part of good business practice.

Changes to address parts of the Code we consider lack sufficient rationale for flexibility

Clause	Final decision	Reasons
Payments for wastage clause 14	Change this provision as proposed in the Draft Report, to no longer allow supplier payments for wastage (groceries becoming unfit for sale) while groceries are in the RGR's effective control.	We consider that the benefits of commercial flexibility enabled by this carve-out are outweighed by the negative impact of RGRs seeking to impose standard provisions for dealing with wastage, which is disproportionately affecting smaller suppliers with less bargaining power. Removing the carve-out leaves a clear provision that can be applied equitably across all suppliers. This benefit outweighs the small amount of detriment to RGRs in not being able to recover very narrow types of damage.
Funded promotions clause 20 (renumbered to clause 18 in Grocery Supply Code 2025)	Clause amended to require a retailer that sells groceries that are part of a funded promotion at a non-promotional price to repay the supplier the portion of the promotional funding relating to those groceries.	We consider that the current approach of requiring an agreement between retailers and suppliers on what happens to additional stock not sold during a promotional period is likely ineffective given the inherent pressure on suppliers to agree to terms to obtain/maintain ranging with retailers. We consider that investment buying undermines transparency and certainty for suppliers about the terms of promotional arrangements with retailers and may not be consistent with the fair and certain trading environment the Code seeks to promote. RGRs might not pass down the benefits invested by suppliers to consumers after the promotional period has finished.

Introduction of record-keeping requirements when certain exceptions in the Code are utilised

Clause	Final decision	Reasons
Unilateral variation of agreement clause 9	Add requirements to the Code for retailers to keep records in relation to the use of this provision for at least 7 years and provide those records to the Commission on request.	The obligation to keep records in relation to each instance of a unilateral variation increases the incentives on RGRs to ensure that their conduct is fair in the circumstances and helps to promote transparency and certainty about the terms of agreements for suppliers. The requirement to provide the records to the Commission on request will also make the process of monitoring compliance with this clause more efficient. It further incentivises RGRs to ensure they are acting reasonably when making unilateral variations reducing the potential for harm.
Payments as a condition of being a supplier clause 15	Add requirements to the Code for retailers to keep records in relation to the use of this provision for at least 7 years and provide those records to the Commission on request.	No submitters raised concerns with the proposed change, which remains the same as the draft.

		The obligation to keep records in relation to any payments as a condition of being a supplier increases the incentives on RGRs to ensure that their conduct is fair in the circumstances. It helps to promote transparency and certainty about the terms of agreements for suppliers. The requirement to provide the records to the Commission on request would also make the process of monitoring compliance with this clause more efficient and increase the RGRs' incentives to comply.
Funding promotions clause 17	Add requirements to the Code for retailers to keep records in relation to the use of this provision for at least 7 years and provide those records to the Commission on request.	Record-keeping will promote fair conduct by requiring RGRs to pay close and case-specific heed to requirements of the carve-out and only apply it in the limited circumstances for which it was intended, rather than to require promotional funding through default provisions in GSAs. The requirement to provide the records to the Commission on request would also make the process of monitoring compliance with this clause more efficient and increase the RGRs' incentives to comply. While we appreciate there will be additional administration, we expect that the retailers would have existing systems in place to ensure compliance with this clause for these agreements so the additional requirement to keep records should not be significantly more burdensome. However, even if the additional burden and compliance cost is substantial, we still consider this requirement warranted.

Clarifications

Clause	Final decision	Reasons
Transport or logistics services clause 11	No changes to this clause	We consider crates and pallets are included within the term logistics and are therefore already addressed in this clause. We have written to each RGR setting out our view that requiring suppliers to directly or indirectly use a particular transport or logistics service is prohibited under clause 11(a) of the Code and that RGRs should be communicating with suppliers in relation to the service standards for transport and logistics rather than specifying certain transport or logistics providers.

		We do not consider that the definition of “logistics” needs to explicitly include crates as submitted by Horticulture New Zealand (Hort NZ), as in our view, an ordinary and natural interpretation of “logistics” and “logistics services” in the context of grocery supply to retailers includes containers used for transporting groceries. We do not think it is desirable to try to define specific examples of “logistics” as this could have the unintended effect of narrowing the term. It is better to allow “logistics” to continue to be interpreted based on context, including future technological change.
Unduly hindering or obstructing supply to competitors clause 22	Remove “to competitors” from the title of this clause	The clause was introduced to ensure that suppliers are free to make decisions that are in their commercial interest and to ensure that RGRs do not use their market power to hinder or obstruct a supplier. The existing text of the clause refers to “unduly hindering or obstructing a supplier from supplying to any other party”. We consider the words “to competitors” in the title of the clause should be removed to avoid confusion.
Areas where change was proposed but an alternative approach will be taken		
Clause	Final decision	Reasons
Payments to suppliers clauses 12(2) to 12(4)	No changes to this clause	Information received suggests that requiring RGRs to provide a quarterly summary of payments and deductions when requested would not significantly increase transparency compared to the information already made available to suppliers. We will include targeted questions on this topic in upcoming surveys of suppliers to test their ability to monitor and dispute set-offs against payments of their invoices.
Payments for retailer’s business activities (including merchandising) clause 16	No change to current clause.	We intend to undertake more work to determine the range of payments that may fall under this clause. In the immediate term we consider providing guidance and carrying out targeted monitoring and compliance assessments of RGR conduct may be sufficient to promote fair conduct, transparency, and certainty in relation to these payments. The outcomes of this work will inform the need for future Code changes.

- X23. In addition to the changes to the Code we have explained in this paper, we are taking the opportunity to make minor changes to the way the Code is drafted. These are technical changes that do not adjust rights or obligations in any substantive way.

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Associated documents

Publication date	Reference	Title
15 October 2025	ISSN 1178-2560	Grocery Supply Code 2025
5 June 2025	ISBN 978-1-99-133253-0	Review of the Grocery Supply Code Draft Report Decisions and Reasons
5 June 2025	n/a	Draft Grocery Supply Code 2025
5 June 2025	n/a	TRA x Commerce Commission Grocery Supplier Survey January 2025
1 August 2024	ISBN 978-1-991287-61-8	Request for views on Issues and opportunities to consider within the review
28 August 2023	SL 2023/193	Grocery Supply Code 2023

Glossary

Term/Abbreviation	Definition
ACCC	Australian Competition and Consumer Commission
Act	Grocery Industry Competition Act 2023
ART	The Commission’s Anonymous Reporting Tool
Australian Code	Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024
Code	Grocery supply code provided for by Part 2 of the Act, currently the “Grocery Supply Code 2023” located in Schedule 2 of the Grocery Industry Competition Regulations 2023; the new Code will be the Grocery Supply Code 2025
Commission	Commerce Commission
Draft Report	The Review of the Grocery Supply Code Draft Report, Decisions and Reasons published on 5 June 2025
Fresh produce	Refers to products such as fruit, vegetables and mushrooms
FCC	United States of America’s Federal Communications Commission
FSNI	Foodstuffs North Island Limited
FSSI	Foodstuffs South Island Limited
Groceries	Defined in the Act as goods in any of the following categories: fresh produce; meat, seafood or meat substitutes; dairy products; bakery products; chilled or frozen food; pantry goods or dry goods; manufacturer-packaged food; non-alcoholic drinks; personal care products; household consumables; and pet care products.
Grocery supply agreement (GSA)	Defined in the Code as having the same meaning that supply agreement has in section 17 of the Act - an agreement with a supplier; in the context of the Code this would be an agreement with a supplier in connection with the supply of groceries.
Grocery Supplier Survey	TRA x Commerce Commission Grocery Supplier Survey January 2025
Hort NZ	Horticulture New Zealand
MBIE	Ministry of Business, Innovation and Employment
Minister	Minister of Economic Growth
NZFGC	New Zealand Food & Grocery Council

Private label	Also known as home brands, own brands, store brands or generic products. These are products that are manufactured for sale under a retailer's brand.
Promotion	Defined in the Code as (a) any offer for sale (whether or not accompanied by some other benefit to a customer)— (i) at an introductory or reduced price, or involving non-standard sales activity; and (ii) as agreed between a retailer and a supplier; and (iii) that is intended to last only for a specified period; or (b) any advertising or other in-store or online marketing activity (including a giveaway or an in-store product placement or promotional display)— (i) as agreed between a retailer and a supplier; and (ii) that is intended to last only for a specified period
Regulations	Grocery Industry Competition Regulations 2023
Request for Views paper	The Request for Views on issues and opportunities to consider within the review published on 1 August 2024
Retailer	Defined in the Code as a regulated grocery retailer
Regulated Grocery Retailer (RGR)	Currently defined in section 8 of the Act as Foodstuffs North Island Limited; Foodstuffs South Island Limited; and Woolworths New Zealand Limited (including all franchises, transacting shareholders and interconnected bodies corporate of the listed companies).
Supplier	Defined in the Code as a person carrying on (or actively seeking to carry on) a business of supplying groceries for sale by another person (whether or not that other person is the person supplied)
Wastage	Defined in the Code as groceries that are unfit for sale
WWNZ	Woolworths New Zealand Limited

Chapter 1: Introduction

The Code was introduced in 2023

1. The Grocery Supply Code (the **Code**) is a set of rules put in place by Government to rebalance the relationship between the major grocery retailers and their suppliers.
2. The regulated grocery retailers (**RGRs**) that currently have obligations under the Code - Woolworths New Zealand (**WWNZ**), Foodstuffs North Island (**FSNI**) and Foodstuffs South Island (**FSSI**) have a combined national market share of just over 80% of New Zealand's grocery retail market.¹
3. The Code is intended to promote fair conduct, and prohibit unfair conduct, between these retailers and their suppliers, preventing the RGRs from using their strong negotiating power to force suppliers to accept unfavourable or unfair terms (such as costs and risks the retailers are better placed to manage). It is also intended to provide greater certainty and transparency for suppliers over the terms of supply and contribute to a trading environment in the grocery industry in which there is a diverse range of suppliers and businesses compete effectively, and consumers and businesses participate confidently.
4. The conditions that the Code is intended to promote – fair conduct, transparency and certainty, should support innovation and investment in the quality and range of grocery products on offer to consumers in line with the Code's purpose.

Review of the Grocery Supply Code

5. The Grocery Industry Competition Act 2023 (**the Act**) requires the Commerce Commission (**the Commission**) to undertake a review within two years of the Code coming into force and to report to the Minister as soon as practicable after completing the review.²
6. The purpose of the review, as set out in section 20(4) of the Act, is to:
 - 6.1. assess the operation and effectiveness of the Code; and
 - 6.2. assess whether the Code should be amended, revoked or replaced.
7. The findings in our review have been informed by several sources of evidence including:
 - 7.1. submissions received on our Request for Views in which we sought submissions on the operation and effectiveness of the Code and areas for focus;

¹ Commerce Commission "2024 Annual Grocery Report" (6 August 2025) at p. 58, https://www.comcom.govt.nz/_data/assets/pdf_file/0028/368047/Annual-Grocery-Report-2024-6-August-2025-.pdf.

² Section 20 of the Act.

- 7.2. the results of the TRA x Commerce Commission Grocery Supplier Survey (**Grocery Supplier Survey**) which received over 560 responses;
- 7.3. developing a Draft Report that reflected feedback from these processes alongside information gathered through our Anonymous Reporting Tool (**ART**), other enquiries, stakeholder engagement, and submissions and cross-submissions received from stakeholders on that Draft Report;
- 7.4. Commission compliance activities and investigations related to the Code; and
- 7.5. the independent review of the equivalent code in Australia, the new Australian Code, and the Australian Supermarket Inquiry.

This paper

- 8. This Final Report has a dual purpose. It describes our review and our view that the Code should be amended to enable it to better meet its purpose under the Act. It also sets out our final decisions and reasons in relation to our proposed changes to the current Code.

Chapter 2: Background

The Grocery Supply Code

9. The Code is secondary legislation provided for by Part 2 of the Act and was developed in response to recommendation six of the Market Study into the Grocery Retail Sector.³
10. The purpose of the Code is to promote the purpose of the Act, which is to promote competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand (the overall purpose of the Act).⁴
11. The purpose statement at section 16 of the Act sets out that the Code will do this by:
 - 11.1. promoting:
 - 11.1.1. fair conduct between RGRs and suppliers; and
 - 11.1.2. transparency and certainty about the terms of agreements between RGRs and suppliers; and
 - 11.2. contributing to a trading environment in the grocery industry:
 - 11.2.1. that includes a diverse range of suppliers;
 - 11.2.2. where businesses compete effectively; and
 - 11.2.3. in which consumers and businesses participate confidently; and
 - 11.2.4. prohibiting unfair conduct between RGRs and suppliers.
12. The Act defines the RGRs that have supply code obligations and includes provisions concerning the designation of other retailers as regulated parties with supply code obligations. The grocery retailers that currently have obligations under the Code are Foodstuffs North Island, Foodstuffs South Island, Woolworths New Zealand and their respective related parties.⁵

³ Commerce Commission “Market Study into the retail grocery sector – final report” (8 March 2022) at p. 413, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf. Market Study into the retail grocery sector, Commerce Commission March 2022.

⁴ Section 16 of the Act.

⁵ Section 8 of the Act.

13. The Act also sets out that the Code may contain any provisions that are necessary or desirable to promote its purpose in connection with the supply of groceries. This includes regulating or prohibiting any conduct in connection with an RGR and specifying any requirements about the content or form of a supply agreement.⁶ Further information on the permitted content of the Code is provided in **Attachment A**.
14. Development of the first Code was led by MBIE. Parallel to the development of the Act an initial consultation was held in July 2022 seeking feedback on the design of a Grocery Supply Code of conduct.⁷ In June 2023 when the content of the Act was largely confirmed (prior to its assent) a further consultation sought views on a draft code largely modelled on the Australian equivalent that was in place at that time.^{8,9}
15. The Code, which is set out in Schedule 2 of the Grocery Industry Competition Regulations 2023 and made by an Order in Council, came into force on 28 September 2023.¹⁰
16. The Code is divided into four parts:
 - 16.1. Preliminary;
 - 16.2. Good faith;
 - 16.3. Grocery supply agreements (**GSAs**); and
 - 16.4. Conduct generally.
17. A feature of the Code is that it requires GSAs to be made in writing, covering certain matters.¹¹ This is a significant change in some instances, for example, where agreements were only verbal.

⁶ Section 17 of the Act.

⁷ Ministry of Business Innovation and Employment “New Zealand Grocery Code of Conduct Consultation” (August 2022), <https://www.mbieg.ovt.nz/dmsdocument/22647-new-zealand-grocery-code-of-conduct-consultation-paper>.

⁸ Ministry of Business Innovation and Employment “Exposure final - New Zealand Grocery Supply Code of Conduct” (June 2023), <https://www.mbieg.ovt.nz/dmsdocument/26803-consultation-paper-exposure-final-grocery-supply-code-of-conduct>.

⁹ Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015 <https://www.legislation.gov.au/F2015L00242/latest/text>, the Australian Code has recently been re-made, which we will discuss later in this report.

¹⁰ Schedule 2 of the Act, Grocery Supply Code.

¹¹ Grocery Supply Code cl. 7 and 8.

18. The Commission has multiple responsibilities in relation to the Code including enforcement powers, the requirement to review the Code and the ability to amend, revoke and replace the Code via a determination. Since the initial Code that was made by an Order in Council is automatically revoked as soon as a determination made under s12(1)(a) comes into force, any changes to this Code by the Commission will require the making of a new code.¹²

Process of the review

19. As noted in the introduction of this report, the Act requires the Commission to review the Code within two years after coming into force and to report to the Minister as soon as practicable after completing the review.¹³
20. The purpose of the review, as set out in section 20(4) of the Act is to:
- 20.1. Assess the operation and effectiveness of the Code; and
 - 20.2. Assess whether the Code should be amended, revoked or replaced.

Request for views

21. On 1 August 2024 the review was launched, and the Commission published a Request for Views paper.¹⁴
22. The Request for Views sought feedback on whether the Code is effective in relation to its purpose, issues that are impacting the Code's operation and effectiveness and opportunities to improve.
23. To guide feedback the purpose was separated into the following series of objectives:
- 23.1. Promote the purpose of the Act;¹⁵
 - 23.2. Promote fair conduct between RGRs and suppliers;¹⁶
 - 23.3. Prohibit unfair conduct between RGRs and suppliers;¹⁷
 - 23.4. Promote transparency about the terms of agreement between RGRs and suppliers;¹⁸

¹² Under clause 5 of Schedule 1 of the Act, the first Code is revoked as soon as the Commission makes a determination under s12(1)(a) of the Act.

¹³ Section 20 of the Act.

¹⁴ Commerce Commission "Request for views on issues and opportunities to consider within the review" (August 2024), https://comcom.govt.nz/_data/assets/pdf_file/0021/360282/Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-1-August-2024.pdf.

¹⁵ The purpose of the Act under section 3 is to promote competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand.

¹⁶ Section 16(a) of the Act.

¹⁷ Section 16(a) of the Act.

¹⁸ Section 16(b) of the Act.

- 23.5. Promote certainty about the terms of agreement between RGRs and suppliers;¹⁹
- 23.6. Contribute to a trading environment in which businesses compete effectively;²⁰
- 23.7. Contribute to a trading environment where consumers and businesses participate confidently;²¹ and
- 23.8. Contribute to a trading environment that includes a diverse range of suppliers.²²
24. The Request for Views process sought stakeholder submissions between 1 August and 16 September 2024. Submissions were published on the Commission’s website on 18 September and, following an extension of time, cross-submissions were requested by 11 October 2024.²³
25. Submissions were received from 17 parties as shown in the following table.

Submission only			Submission and Cross-Submission	Cross-submission only
Received through ART	Under Anonymity	Other		
2 submissions	5 submissions	Goulter’s Vinegar Products Ltd Brewers Association of New Zealand New Zealand Specialist Cheesemakers Association New Zealand Winegrowers Retail New Zealand	Foodstuffs North Island and Foodstuffs South Island (Foodstuffs) Hort NZ New Zealand Food and Grocery Council (NZFGC) WWNZ	Edgecumbe Supermarket Ltd

¹⁹ Section 16(b) of the Act.

²⁰ Section 16(c) of the Act.

²¹ Section 16(c)(i) of the Act.

²² Section 16(c)(ii) of the Act.

²³ Commerce Commission “Review of the Grocery Supply Code” (accessed 26 September 2025), <https://comcom.govt.nz/regulated-industries/grocery/review-of-the-grocery-supply-code#projecttab>.

26. Submissions are available on our website and discussed further within this report.²⁴

TRA x Commerce Commission Grocery Supplier Survey

27. The review of the Code was one of the drivers for the online supplier survey undertaken between 14 November and 2 December 2024.²⁵ While the survey also sought to inform other grocery-related projects, its objectives included:
- 27.1. Understanding suppliers' recent interactions with RGRs;
 - 27.2. Evaluating suppliers' awareness of the Code, the Grocery Industry Dispute Resolution Scheme, and the Commission's ART; and
 - 27.3. Gathering feedback on the GSAs made over the past year.
28. An email with a link to the survey was sent to over 4,000 grocery supplier contacts obtained from RGRs via a statutory notice.
29. 562 participants completed the survey. Results from the survey are available on our website and are discussed further within this report.²⁶

Developments in Australia

30. Issues central to the content of the New Zealand Code have also been considered in Australia under the Independent Review of the Food and Grocery Code of Conduct (2024), the Australian Treasury's subsequent development of a mandatory code as set out in the Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024 (**Australian Code**) and the Australian Competition and Consumer Commission (**ACCC**) Supermarket Inquiry (2025).^{27,28,29.}
31. These developments are relevant as the New Zealand Code was modelled on the Australian Food and Grocery Code of Conduct that was in place at that time.³⁰
32. Changes and recommendations from the Australian processes are discussed later in this report.

²⁴ Available at: <https://www.comcom.govt.nz/regulated-industries/projects/review-of-the-grocery-supply-code/>.

²⁵ TRA x Commerce Commission "Grocery Supplier Survey" (January 2025), https://comcom.govt.nz/_data/assets/pdf_file/0031/366646/Commerce-Commission-x-TRA-Grocery-Supplier-Survey-Report-5-June-2025.pdf.

²⁶ Available at: <https://comcom.govt.nz/regulated-industries/grocery/information-for-suppliers>.

²⁷ The Australian Treasury "Independent Review of the Food and Grocery Code of Conduct Final Report" (June 2024), <https://treasury.gov.au/sites/default/files/2024-06/p2024-534717-final-report.pdf>.

²⁸ Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024 <https://www.legislation.gov.au/F2024L01651/latest/text>.

²⁹ ACCC "Supermarkets Inquiry Final Report" (February 2025), https://www.accc.gov.au/system/files/supermarkets-inquiry_1.pdf.

³⁰ Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024, <https://www.legislation.gov.au/F2024L01651/latest/text>.

Other information considered in the review

33. In addition to the inputs described above, insights from the following information sources were considered in this review:
- 33.1. The 2022 Market Study into the Grocery Retail Sector;³¹
 - 33.2. Material related to the development of the Act and the Code;
 - 33.3. Relevant information obtained as part of the current Wholesale Supply Inquiry under s 55 of the Act;³²
 - 33.4. Information provided during the merger clearance process for the proposed Foodstuffs North Island/South Island Merger;
 - 33.5. Other enquiries received from suppliers, including through the ART;
 - 33.6. Questions/ feedback received during engagements with suppliers in 2024/2025 including webinars;
 - 33.7. Discussions with the RGRs; and
 - 33.8. Commission compliance activities and investigations related to the Code.

Consultation on the Draft Report

34. On 5 June 2025 we published the Review of the Grocery Supply Code Draft Report, Decisions and Reasons Paper (**Draft Report**) accompanied by a draft Code.³³
35. The submission and subsequent cross-submission period ran from 5 June to 11 August 2025.
36. Submissions on the Draft Report were received from 16 parties, as shown below.

Submission only			Submission and Cross-Submission	Cross-submission only
Received through ART	Under Anonymity	Other		
3 submissions	3 submissions	Viscount FCC Grocery Action Group Consumer NZ	Foodstuffs Hort NZ NZFGC WWNZ	1 ART submission 2 Anonymous submitters

³¹ Commerce Commission “Market study into the retail grocery sector” (8 March 2022), https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

³² Refer s 55 of the Act.

³³ Available at: <https://comcom.govt.nz/regulated-industries/grocery/review-of-the-grocery-supply-code#projecttab>.

37. All submission and cross-submission documents can be found on the Commission's webpage for the review of the Grocery Supply Code.³⁴
38. We have considered all submissions and cross-submissions made in response to the Draft Report. This Final Report, Decisions and Reasons paper explains our reasons for the Code amendments.

³⁴ Commerce Commission "Review of the Grocery Supply Code" (accessed 25 August 2025), <https://comcom.govt.nz/regulated-industries/grocery/review-of-the-grocery-supply-code?target=documents>.

Chapter 3: Assessment of the operation and effectiveness of the Code and final decisions

Context

Expectations for RGRs

39. When the Code was first implemented in September 2023, the Commission published an open letter setting out expectations for the RGRs in relation to it, including:
- 39.1. Publicly committing to the Code and its objectives;
 - 39.2. Ensuring that all relevant staff and associated parties are aware of the Code and are properly trained on it;
 - 39.3. Communicating the Code to suppliers, including what changes they can expect and how to raise issues;
 - 39.4. Setting up systems and processes to capture supplier feedback, including potential breaches of the Code;
 - 39.5. Ensuring that the RGR has appropriate accountability and resourcing within the business to implement the Code successfully;
 - 39.6. Publicly reporting on compliance with the Code on a regular basis; and
 - 39.7. Engaging constructively with the disputes resolution service once it is established.³⁵

³⁵ Commerce Commission “Open letter to the grocery sector, introduction to the Grocery Supply Code” (28 September 2024) at para 14-14.7, https://comcom.govt.nz/_data/assets/pdf_file/0026/328355/Open-letter-to-the-grocery-sector-Introduction-of-the-Grocery-Supply-Code-14-September-2023.pdf.

Commission Activities

40. The Commission sought to support implementation by:
 - 40.1. releasing a factsheet about the Code in September 2023 and a checklist for suppliers in February 2024;^{36,37}
 - 40.2. presenting at webinars hosted by NZFGC and HortNZ;^{38,39}
 - 40.3. engaging with each of the RGRs to understand their approach to the new obligations;
 - 40.4. providing feedback on template GSAs developed by each RGR;⁴⁰
 - 40.5. undertaking a compliance monitoring project to assess RGR compliance against their obligations surrounding range reviews, including an assessment of the end-to-end process for a completed review of a category;
 - 40.6. establishing the ART to encourage reporting of concerns about conduct;
 - 40.7. undertaking the Grocery Supplier Survey described in Chapter 2; and
 - 40.8. responding to concerns reported through the ART or reported directly to the Commission, with investigations currently underway.
41. The Commission has encouraged suppliers to consider the new GSAs issued by RGRs carefully before agreeing to terms. There is no obligation on suppliers to sign agreements.
42. The Commission has also sought to establish connections with Māori businesses and will continue to seek their input to support future work on the Code.
43. The Commission acknowledges that during this review several submitters identified the need for more guidance, more feedback or more visible enforcement of the

³⁶ Commerce Commission “Fact Sheet: The Grocery Supply Code” (28 September 2024), https://comcom.govt.nz/_data/assets/pdf_file/0022/329710/Commerce-Commission-Grocery-supply-code-factsheet-28-September-2023.pdf.

³⁷ Commerce Commission “Grocery Supply Code Checklist for Suppliers” (29 February 2024), https://comcom.govt.nz/_data/assets/pdf_file/0025/344950/Grocery-Supply-Code-Checklist-for-Suppliers-29-Feb-2024.pdf.

³⁸ Food and Grocery Council “Webinar – Grocery Commissioner update on the Grocery Supply Code” (19 September 2023), <https://www.fgc.org.nz/event/webinar/>.

³⁹ Horticulture New Zealand “Grocery Code of Conduct” (18 February 2024), <https://www.hortnz.co.nz/news-events-and-media/media-releases/grocery-code-of-conduct>.

⁴⁰ Commerce Commission “Grocery updates - Correspondence between the Commission and RGRs on grocery supply agreements” (16 April 2024), <https://www.comcom.govt.nz/regulated-industries/grocery/grocery-updates/?target=documents&root=349653>.

Code to support its implementation.^{41,42,43} The Supply Code is a new regime, in a complex sector. Guidance is one way to give industry clarifications and improve understanding, but we also expect this to come about through compliance actions, parties engaging with the Code and with each other, and decisions of the courts and dispute resolution service.

44. The Grocery Supplier Survey indicated that while half of the respondents who used the information developed by the Commission to date found it very useful, approximately 40% had further questions.⁴⁴ The survey also indicated a low level of awareness of the Grocery Industry Dispute Resolution Scheme: approximately half indicated they had never heard of it.⁴⁵
45. The dispute resolution scheme is provided for by the Act and commenced in September 2024.⁴⁶ It is provided by the New Zealand Dispute Resolution Centre with costs of the scheme recovered from the RGRs.⁴⁷ The dispute resolution scheme was put in place to provide independent, affordable, timely and confidential mediation and adjudication services which are informed by specialist expertise.⁴⁸

⁴¹ New Zealand Food & Grocery Council submission "Request for views on issues and opportunities to consider within the review" (16 September 2024) at para 1.4, https://comcom.govt.nz/_data/assets/pdf_file/0019/362503/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

⁴² Woolworths New Zealand "Submission on Grocery Supply Code Request for views on issues and opportunities to consider within the review" (16 September 2024) at para 3.4, https://comcom.govt.nz/_data/assets/pdf_file/0023/362507/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

⁴³ Foodstuffs North & South Island "Submission on Grocery Supply Code Request for views on issues and opportunities to consider within the review" (16 September 2024) at para 43, https://comcom.govt.nz/_data/assets/pdf_file/0016/362500/Foodstuffs-North-26-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-16-September-2024.pdf.

⁴⁴ TRA x Commerce Commission "Grocery Supplier Survey Report" (January 2025) at p. 43, https://comcom.govt.nz/_data/assets/pdf_file/0031/366646/Commerce-Commission-x-TRA-Grocery-Supplier-Survey-Report-5-June-2025.pdf.

⁴⁵ TRA x Commerce Commission "Grocery Supplier Survey Report" (January 2025) at p. 44, https://comcom.govt.nz/_data/assets/pdf_file/0031/366646/Commerce-Commission-x-TRA-Grocery-Supplier-Survey-Report-5-June-2025.pdf.

⁴⁶ Section 151 of the Act.

⁴⁷ More information about the scheme can be found at <https://nzdrc.co.nz/expertise/grocery-industry-dispute-resolution-scheme>.

⁴⁸ Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 381, https://www.comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

Length of time the Code has been in operation

46. A key theme in the submissions of both WWNZ and Foodstuffs is that it is too early in the Code's implementation to properly evaluate its impact or contemplate significant changes.^{49,50}
47. The Act required us to complete a review within two years.⁵¹ We commenced this process in August 2024.
48. With the Code only having been in operation for two years we agree that the time that it has been in place is important context when making an assessment. Generally, given longer time in force there will be more opportunities to test the clauses of the Code, for parties to engage with each other in relation to the operation of the Code, and for the dispute resolution scheme to embed. Additional time will also allow us to gather more information, and to consider issues in greater depth. We can enforce the Code where parties make complaints, and where necessary or desirable can change the Code. We can also facilitate workshops on the Code, develop associated guidance, and undertake other activities related to its stewardship to enhance its use.
49. However, the review has identified issues with the Code's design, operation and effectiveness that support more immediate action.

Assessment of the current Code

50. In line with the Act's requirement that the Commission review the Code within two years of the Code coming into force, the remainder of this chapter provides the Commission's assessment of the operation and effectiveness of the Code to date and our final decisions on amendments to parts of the Code, as required by the Code review's purpose.⁵²

⁴⁹ Woolworths New Zealand "Submission on Grocery Supply Code Request for views on issues and opportunities to consider within the review" (16 September 2024) at para 3.2, https://comcom.govt.nz/_data/assets/pdf_file/0023/362507/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

⁵⁰ Foodstuffs North & South Island "Cross-submission on Grocery Supply Code Request for views on issues and opportunities to consider within the review" (11 October 2024) at para 8, https://comcom.govt.nz/_data/assets/pdf_file/0022/362740/Foodstuffs-North-Island-26-South-Island-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

⁵¹ Section 20(1)(a) of the Act.

⁵² Section 20 of the Act.

In this review we assessed the parts of the Code aimed at providing flexibility to negotiate

51. A key concern in relation to the effectiveness of the Code is the limited ability for suppliers to push back on retailer demands and behaviour because of a fear of damaging relationships and/or losing shelf space. Feedback suggests that, in areas where the Code allows flexibility to negotiate, the suppliers most in need of the protection of a Code may end up agreeing to whatever is asked of them, eg, small suppliers.
52. We have seen that instead of providing flexibility on fair terms, the exceptions often become the baseline for the RGRs' expectations on suppliers. In this context, we have looked carefully at the parts of the Code that allow a "carve-out" (ie, exception) from a requirement to be provided in the relevant GSA.
53. The clauses which contain carve-outs relate to unilateral variations, supplier payments that are a condition of their products being stocked or listed, and supplier payments towards the costs of RGR business activities which are undertaken by the RGRs in the ordinary course of business.⁵³ We have also looked at clause 20 ("Funded promotions") which allows for negotiation regarding excess stock purchased at a promotional price. Further, we have considered whether the requirement to act in good faith (clause 6) provides sufficient protection for suppliers wishing to negotiate on retailer-proposed terms.

Supplier payments to retailers are also a priority given the scale and complexity of payments we have observed

54. Information provided to the Commission by RGRs indicates the total annual value of rebates, discounts or payments received from suppliers across all three RGRs to be more than \$5 billion. There are a range of descriptors for these various payments. Our analysis suggests that promotional funding, in its various forms, makes up almost two-thirds of the value of the payments.

⁵³ Refer clauses 9, 15 and 16 of the Code.

55. The Grocery Supplier Survey asked respondents if they had agreed to rebates, discounts or payments in relation to a list of examples. Funding toward scheduled “specials” or price reductions was the most commonly identified from our list (approximately half of respondents). 28% of respondents identified merchandising services as something they had agreed a rebate, discount or payment for.^{54,55}

We have considered whether changes to the Code are necessary or desirable

56. We have considered whether changes to the Code are necessary or desirable to promote the purpose of the Code in connection with the supply of groceries, or whether issues could be addressed through other activities to support more effective implementation of the Code.

We are making amendments to the Code that will come into effect once penalties have been confirmed

57. The changes to the current Code include:
- 57.1. A new provision to address supplier concerns about retaliation;
 - 57.2. Changes to the clause titled “Funded promotions” to address the practice of investment buying where a retailer orders excess stock at a promotional price to sell after the promotional period ends;
 - 57.3. Changes to remove the ability for retailers to charge suppliers where groceries become unfit for sale (“wastage”) while in the effective control of the retailer (eg, where groceries are damaged or become spoilt while in a retailer’s store); and
 - 57.4. The introduction of record-keeping requirements regarding unilateral variations, funding of promotions and payments as a condition of supplying a new product.

⁵⁴ According to a definition provided by Foodstuffs North Island to the Commission, merchandising activity includes restocking shelves, setting up promotional displays, point of sale displays, fixed displays, non-fixed free-standing display units, implementation of relays are required and maintaining health and safety standards and clean aisles in stores.

⁵⁵ Commerce Commission x TRA “Grocery Supplier Survey Report” (5 June 2025) p. 27, https://comcom.govt.nz/_data/assets/pdf_file/0031/366646/Commerce-Commission-x-TRA-Grocery-Supplier-Survey-Report-5-June-2025.pdf.

58. In addition to the changes to the Code we have explained in this paper, we are taking the opportunity to make minor changes to the way the Code is drafted. These are technical changes that do not adjust rights or obligations in any substantive way. Instead, they make the Code easier to interpret because it is more internally consistent and more consistent with the style of drafting in other codes, rules and regulations relevant to stakeholders. The changes, which are not discussed further, deliver on these objectives:
- 58.1. consistent terminology;
 - 58.2. consistent punctuation;
 - 58.3. structural simplification (removal of subparts);
 - 58.4. better flow between topics;
 - 58.5. clear definitions for words or phrases covered in multiple clauses;
 - 58.6. avoidance of duplication;
 - 58.7. use of plain English.
59. The changes have resulted in some renumbering of clauses.
60. While the Commission has the power to make these code changes, the penalties that apply to breaches of code requirements must be made separately by the Governor-General via amendment to the Grocery Industry Competition Regulations 2023 (**the Regulations**). The Governor-General may do this via Order in Council on the recommendation of the Minister.⁵⁶ The Minister must first consider the Commission's recommendation on the level of pecuniary penalty before making a recommendation to the Minister on these penalty levels.⁵⁷
61. The Regulations set out the penalty levels which apply to certain provisions of the Code, with reference to the maximum penalty tiers which exist under the Act. Under the Act Tier 1, 2 or 4 penalties may apply to breaches of the Code, and these penalty tiers attract differing maximum penalty amounts, with Tier 1 penalties attracting the largest pecuniary penalties under the Act, and Tier 4 penalties attracting the smallest.⁵⁸ The Regulations currently impose Tier 2 and Tier 4 maximum pecuniary penalties for contraventions of the Code.
62. While the Commission does not have the power to make decisions about the penalty tiers that will apply to contraventions of the Code, as part of our consultation on the determination that creates a new Code, we are required to consult on the penalty levels that would apply.⁵⁹

⁵⁶ Section 196(1)(e) of the Act.

⁵⁷ Section 196(4)(b) of the Act.

⁵⁸ Section 196(1)(e) of the Act and see ss 126, 127 and 129 of the Act.

⁵⁹ Section 13(2) of the Act.

Consultation on pecuniary penalty levels

63. In our Draft Report we proposed that the current penalty levels be retained for current clauses including for wastage and funded promotions, and that Tier 2 penalties be applied to the new anti-retaliation and record-keeping requirements.⁶⁰
64. Submitters had mixed responses.
65. Anonymous B, Anonymous C and the Grocery Action Group agreed with the proposal to apply Tier 2 penalties to the new requirements.^{61,62,63} Foodstuffs agreed with a Tier 2 penalty for the anti-retaliation requirements.⁶⁴
66. In the case of the record-keeping requirements, both Foodstuffs and WWNZ considered that Tier 2 was disproportionate to the nature of the breaches and that Tier 4 should apply.^{65,66} WWNZ submitted that, regarding additional record-keeping and information gathering provisions, Tier 2 penalties are not consistent with the rest of the Code or within the scope allowed for by the Act.⁶⁷

⁶⁰ Commerce Commission “Grocery Supply Code Draft Report Decisions and Reasons” (5 June 2025) at para 3.19, https://www.comcom.govt.nz/_data/assets/pdf_file/0028/366643/Grocery-Supply-Code-Draft-Report-Decisions-and-Reasons-5-June-2025.pdf.

⁶¹ Anonymous B submission “Submission on Review of the Grocery Supply Code Draft Report” (16 June 2025) at p. 2, https://www.comcom.govt.nz/assets/pdf_file/0034/367666/Anonymous-B-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-16-June-2025.pdf.

⁶² Anonymous C submission “Submission on Review of the Grocery Supply Code Draft Report” (11 July 2025) at p. 1, https://www.comcom.govt.nz/assets/pdf_file/0035/367667/Anonymous-C-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-July-2025.pdf.

⁶³ Grocery Action Group, “Submission on Review of the Grocery Supply Code Draft Report” (17 July 2025) at p. 2, https://www.comcom.govt.nz/assets/pdf_file/0030/367671/Grocery-Action-Group-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁶⁴ Foodstuffs North Island & Foodstuffs South Island “Submission on Review of the Grocery Supply Code Draft Report” (18 July 2025) at p. 8, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁶⁵ Foodstuffs North Island & Foodstuffs South Island “Submission on Review of the Grocery Supply Code Draft Report” (18 July 2025) at p. 8, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁶⁶ Woolworths Group New Zealand “Submission on Review of the Grocery Supply Code Draft Report” (18 July 2025) at pp. 21 – 24, https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁶⁷ Woolworths New Zealand “Submission on Review of the Grocery Supply Code Draft Report” (18 July 2025) at para 8.1.1, https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

67. WWNZ also considered that the potential for personal liability could have a chilling effect on normal commercial negotiation as it could disincentivise potential employees from taking up employment with WWNZ, given this could result in penalties against individual staff members.⁶⁸ WWNZ considers that the Commission should publish circumstances in which it would (and would not) take enforcement action against individuals, similar to the Enforcement Response Guidelines.⁶⁹
68. The Grocery Action Group further suggested that Tier 1 penalties should apply to persistent or egregious breaches of any requirement.⁷⁰ Foodstuffs disagreed in its cross-submission.⁷¹ We note that each penalty tier sets out the maximum penalty available for each contravention of the Code, but that only a Court can decide the penalty amount imposed, and that this amount may be lower than the maximum in practice. If Tier 1 penalties are considered appropriate, the courts would remain the decision maker for the penalty amounts awarded for persistent or egregious conduct.
69. We note that penalties equivalent to the penalty amounts in Tier 1 apply to several provisions in the Australian Code, equivalent to the following clauses in our Code: Clause 6 (Obligation to deal in good faith), clause 7 (Grocery supply agreements), clause 8 (Matters to be covered in the agreement) and clause 30 (Retaliation).⁷²

⁶⁸ Woolworths New Zealand “Submission on Review of the Grocery Supply Code Draft Report” (18 July 2025) at para 8.2,

https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁶⁹ Commerce Commission “Enforcement Response Guidelines” (July 2024),

https://comcom.govt.nz/_data/assets/pdf_file/0016/356002/Enforcement-Response-Guidelines-July-2024.pdf.

⁷⁰ Grocery Action Group, “Submission on Review of the Grocery Supply Code Draft Report” (17 July 2025) at p. 2,

https://www.comcom.govt.nz/assets/pdf_file/0030/367671/Grocery-Action-Group-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁷¹ Foodstuffs North Island and South Island “Cross-Submission on Review of the Grocery Supply Code Draft Report” (11 August 2025) at p. 11,

<https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>

⁷² Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024

<https://www.legislation.gov.au/F2024L01651/latest/text> at s 14A(2).

Penalty recommendation to Minister

70. Our recommendation to the Minister on penalties for the purpose of s 196(4) of the Act are as follows:
- 70.1. **Clauses of the Code that have been carried over or amended:** Breaches of existing Code clauses that have been carried over into the new Code should attract the same penalties as currently apply (a mix of Tier 2 and Tier 4 penalties, depending on the requirement). This includes the amended clause 14 for wastage (Tier 2 penalty recommended for a breach), and the amended clause 18 (previously 20) for funded promotions (Tier 2 penalty for a breach). We consider that the levels remain appropriate to the types of breach.
- 70.2. **New record-keeping requirements:** Breaches of new Code requirements relating to record-keeping should attract Tier 4 penalties. This is because the requirements do not impose any new restriction on RGR conduct other than documentation of actual conduct with which existing Code requirements are concerned. The penalties for these new Code requirements would be consistent with penalties in the existing Code for non-compliance with these types of requirements.
- 70.3. **New anti-retaliation requirements:** Breaches of the new anti-retaliation requirements in the Code should attract Tier 2 penalties. This level of penalty (\$200,000 for contraventions by an individual, or \$3m by any other entity, and potentially higher depending on commercial gain and turnover) is appropriately serious for the conduct prohibited by the clause. It is also consistent with the Tier 2 penalties applicable to other substantive obligations in the Code, eg, good faith.
71. We do not consider that any Code requirements should attract a Tier 1 penalty at this time. The penalties available under Tier 2 are likely to be sufficiently severe to appropriately deal with serious Code contraventions. Further, given that there have not yet been concluded penalty proceedings for potential breaches of the Code, we do not have any new evidence that suggests that higher penalties are desirable or needed.

Decisions and Reasons

Part 1 – Preliminary

72. Table 1 summarises the feedback received in relation to Part 1 of the Code and the Commission's final decisions in relation to each clause.

Table 1: Final Decisions Part 1 of the Code

Part of Code	Description	Summary of feedback received	Draft Decisions	Final Decision	Summary of reasons
<i>Title clause 1</i>	Grocery Supply Code 2023		Amend to Grocery Supply Code 2025	Amend to Grocery Supply Code 2025	To amend the Code, the existing Code made by Order in Council would be replaced with the new “Grocery Supply Code 2025” made by determination.
<i>Interpretation clause 3</i>	Provides definitions for 13 terms within the Act	NZFGC seeks an alternative, inclusive definition of groceries.⁷³ NZFGC seeks a definition of range review to help ensure that RGRs do not avoid the Code requirements by giving these processes different names.⁷⁴	No change	No change to definition of groceries.	As the definition of groceries comes from the Act, this is a matter for primary legislation decision-makers. We discuss this further at the end of this chapter in the section “matters outside the permitted scope of the Code”.

⁷³ New Zealand Food & Grocery Council "Submission on Request for Views on the Grocery Supply Code Review" (16 September 2024) at para 4.36, https://comcom.govt.nz/_data/assets/pdf_file/0019/362503/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

⁷⁴ New Zealand Food & Grocery Council “Submission on Review of Grocery Supply Code draft report” (18 July 2025) at para 8.8, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Description	Summary of feedback received	Draft Decisions	Final Decision	Summary of reasons
When this Code applies <i>Clause 4</i>					We consider that it is unnecessary to define “range review” to prevent the RGRs avoiding requirements. First, we consider that the term is sufficiently obvious in the context of grocery retail to mean an RGR’s consideration of the range of products it may potentially supply, whether the range in question is very broad (such as ‘non-perishable food’), broad (such as ‘tinned food’) or narrow (such as ‘tinned tomatoes’). Second, the obligations will apply to that type of review by an RGR irrespective of what the RGR calls its process. The Commission is well placed in its monitoring and enforcement activities to identify conduct that falls within the scope of requirements such that the risk of this type of avoidance is low and does not warrant a pre-emptive drafting change.
	Sets out who the Code applies to	Foodstuffs believes that “On the Spot” stores – that it accepts are captured by the Code - should be excluded from the Code’s requirements.	No change	No change	We are cautious about removing requirements to comply with the Code and seek to allow more time and gather further information to determine a response to concerns. On Foodstuff’s request for clarification on the application of the Code to activities of the non-retail subsidiaries, we are unable to consider clarifying this without further evidence regarding the nature of the activities.

Part of Code	Description	Summary of feedback received	Draft Decisions	Final Decision	Summary of reasons
		It has sought clarity for non-retail subsidiaries on which Code provisions do not apply to their activities, to avoid the administrative burden in those subsidiaries needing to comply with all Code requirements. ⁷⁵			We have received little information to support the need for designation of other retailers. If suppliers do have concerns with the conduct of these non-regulated retailers, please report the concerns to the Commission.

⁷⁵ Foodstuffs North & South Island “Submission on Request for Views on the Grocery Supply code Review” (16 September 2024) at para 36, https://comcom.govt.nz/_data/assets/pdf_file/0016/362500/Foodstuffs-North-26-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-16-September-2024.pdf.

Part of Code	Description	Summary of feedback received	Draft Decisions	Final Decision	Summary of reasons
<i>Obligation to offer to vary existing agreements so that they are consistent with the Code</i> Clause 5	Provides obligations to offer to vary existing agreements to ensure consistency with the Code	Foodstuffs and Woolworths submitted on our Draft Report that a transition period of at least 12 months is required to ensure their systems and processes can be updated to reflect the Code's requirements. ⁷⁶ WWNZ disagreed with our view that they would benefit from efficiencies gained during previous GSA processes, and that a 12-month period would align with good law-making principles. ⁷⁷	Amend to: Provide a one-month period for suppliers to offer changes to existing agreements to make them consistent with any new Code requirements.	Amend to: Provide a one-month period for RGRs to offer changes to existing agreements to make them consistent with any new Code requirements.	This clause is required to ensure that retailers are proactive in reviewing the content of GSAs for consistency with the requirements in the Code and, in the case of inconsistency, offering to vary the GSAs. The timeframe of one month to make offers after the Code comes into force takes into account the decision that the Code will come into force no earlier than 1 May 2026, which allows a minimum six-month period for the sector to prepare for the new Code. We consider that one month to make offers, is sufficient in the context of this notice and the changes to the Code.

⁷⁶ Woolworths New Zealand "Submission on Grocery Supply Code Draft Report Decisions and Reasons" (18 July 2025) at para 1.2.9, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Foodstuffs North and South Island "Submission on Grocery Supply Code Draft Report Decisions and Reasons" (18 July 2025) at p. 7, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Description	Summary of feedback received	Draft Decisions	Final Decision	Summary of reasons
			Provide that RGRs will not be in breach after the one-month period if they act in accordance with the Code, they have made a reasonable offer in writing to vary the agreement, the offer would make the agreement consistent with the Code, and the supplier has not accepted the offer.	Provide that RGRs will not be in breach after the one-month period if they act in accordance with the Code, they have made a reasonable offer in writing to vary the agreement, the offer would make the agreement consistent with the Code, and the supplier has not accepted the offer.	An RGR that complies with the updated Code requirements in circumstances where their compliance is inconsistent with the GSAs/existing agreements will receive the protections under clause 1(2) of Schedule 1 to the Act. Equally, an RGR that complies in substance with the updated Code requirements will not be in breach of the Code where its agreement is inconsistent with the requirements of the Code, provided they have made a reasonable offer in writing to vary the agreement where that offer would make the agreement consistent with the requirements of the Code and the supplier has not accepted that offer.

⁷⁷ Woolworths New Zealand “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 10.6, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Clause 5 - Obligation to vary existing agreements so that they are consistent with the Code

What Clause 5 currently requires

73. Clause 5 currently requires retailers to offer to vary existing agreements, so they are consistent with the Code.

Context and draft decisions

74. In the Draft Report we proposed to provide a one-month period for suppliers to offer changes to existing agreements once the Code comes into force to make them consistent with any new Code requirements.
75. We also proposed that RGRs will not be in breach after the one-month period if they act in accordance with the Code and certain other criteria are met.
76. This assumed a proposed period of six months between finalising changes to the Code and the Code coming into force.

Submissions received

77. Both RGRs suggested 12 months as a more reasonable timeframe for updating GSAs due to the work involved in this, as well as the scale of complying with all potential changes to the Code overall.⁷⁸ They disagreed that they would benefit from efficiencies gained from previous experience in issuing GSAs to suppliers.
78. NZFGC noted that the one-month timeframe applies only to the making of offers of Code-compliant GSAs, not completion of negotiations or execution of amended GSAs. They believe this is achievable within the timeframe proposed.⁷⁹

⁷⁸ Woolworths New Zealand “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 1.2.9, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Foodstuffs North and South Island “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 7, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁷⁹ New Zealand Food and Grocery Council “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 7.1, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Final decision

79. We have maintained the draft decision to provide a one-month period after the new Code comes into force for suppliers to offer changes to existing agreements in order to make these consistent with the new Code requirements. Under this clause the RGRs will not be in breach of this requirement if, after the one-month period, they act in accordance with the Code and they have made a reasonable offer in writing to vary the agreement, that offer would make the agreement consistent with the requirements of the Code, and the supplier has not accepted that offer.
80. This one-month period will start when the Code comes into force, ie, after a minimum period of six months between the Code being made and the Code coming into force.

Reasons

81. The amendments are required to ensure that retailers are proactive in reviewing the content of GSAs/existing agreements for consistency with the requirements in the new Code and, in the case of inconsistency, offering to vary the GSAs/existing agreements.
82. The timeframe of one month to make offers after the Code comes into force takes into account that the new Code will come into force no earlier than 1 May 2026, which allows a minimum six-month period for the sector to prepare. We consider that one month to make offers, is sufficient in this context, and given the number of changes to the Code have narrowed since the draft.
83. An RGR that complies with the updated Code requirements in circumstances where their compliance is inconsistent with the GSAs/existing agreements will receive the protections under clause 1(2) of Schedule 1 to the Act. Equally, an RGR that complies in substance with the updated Code requirements will not be in breach of the Code where its agreement is inconsistent with the requirements of the Code, provided it has made a reasonable offer to vary the agreement in writing, that offer would make the agreement consistent with the requirements of the Code, and the supplier has not accepted that offer.

Part 2 – 4

84. Table 2 summarises the feedback received in relation to Part 2 to 4 of the Code and the Commission's final decisions in relation to each clause.

Table 2: Final Decisions Part 2 – 4 of the Code

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
<i>Obligation to deal with suppliers in good faith</i> clause 6	Support from Foodstuffs and NZFGC for the provision of guidance in relation to this clause. ⁸⁰ Submissions from RGRs that suppliers should also be subject to good faith obligations. ⁸¹	No change, support stakeholders by issuing guidance as the Code is tested	Minor change to clause 6(3)(d) to align this subclause with the new retaliation clause. Support stakeholders by issuing guidance as the Code is tested.	Stakeholders see the value in provision of guidance on this clause. In relation to the suggestion from the RGRs that suppliers should also be subject to good faith provisions of the Code, the Commission does not have the power to introduce obligations for suppliers under the Code, and whether the supplier has acted in good faith is already relevant to determining whether the RGR is operating in good faith (see clause 6(3)(i) of the Code). ⁸²

⁸⁰ Foodstuffs North and South Island “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 13, https://www.comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; New Zealand Food and Grocery Council “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 6.7, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁸¹ Foodstuffs North and South Island “Submissions on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 13, https://comcom.govt.nz/_data/assets/pdf_file/0035/367973/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-HoustonKemp-Review-of-proposed-amendments-to-Grocery-Supply-Code-18-July-2025.pdf; Woolworths New Zealand “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 1.2.2, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁸² New Zealand Food & Grocery Council cross-submission “Request for views on issues and opportunities to consider within the review” (11 October 2024) at para 3.1, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
<i>GSA must be in writing and retained clause 7 & Matters to be covered by agreement clause 8</i>	Agreement from Foodstuffs that no change is required to address any issues arising from pre-Code agreements currently in place. However, they do not accept that their GSAs are unfair or unreasonably complex. ⁸³	No change. Gather further information about the state of agreements currently in place.	No changes to Code. Gather further information about the state of agreements currently in place.	Where an agreement pre-dates the Code and is inconsistent with it, the Code provisions still apply. We are aware many suppliers have not signed a new agreement following the introduction of the Code, but we have limited information to assess the impact of this (eg,, how inconsistent with the Code the existing agreements are and the level of uncertainty/ risk of non-compliance with the Code this is creating).

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Foodstuffs North and South Island “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 14, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
Unilateral variation of agreement <i>clause 9</i>	Foodstuffs noted they were comfortable with the new record-keeping requirements. ⁸⁴ Hort NZ supported the changes, and so did the NZFGC. ⁸⁵ The NZFGC noted that this kind of record-keeping is standard business practice for compliance and audit purposes. ⁸⁶	Add requirements to the Code for retailers to keep records in relation to the use of this provision for at least 7 years and provide those records to the Commission on request.	Add requirements to the Code for retailers to keep records in relation to the use of this provision for at least 7 years and provide those records to the Commission on request.	The obligation to keep records in relation to each instance of a unilateral variation increases the incentives on RGRs to ensure that the conduct is fair in the circumstances and helps to promote transparency and certainty about the terms of agreements for suppliers. The requirement to provide the records to the Commission on request would also make the process of monitoring compliance with this clause more efficient. It also incentivises retailers to ensure they are acting reasonably when making unilateral variations reducing the potential for harm occurring.
Retrospective variation of agreement <i>clause 10</i>		No change	No changes to Code	Not raised during review.

⁸⁴ Foodstuffs North and South Island “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 15, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁸⁵ Horticulture New Zealand “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 10, https://comcom.govt.nz/_data/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; New Zealand Food and Grocery Council “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 5.2, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁸⁶ New Zealand Food and Grocery Council “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 5.3, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
Transport or logistics services clause 11	Hort NZ submitted that the retailers' practice of requiring suppliers to use specific crate providers for fresh produce should be prohibited under clause 11.⁸⁷ In response, Foodstuffs, Viscount FCC and WWNZ submitted that it is necessary and efficient that RGRs are able to seek standardisation of produce crates and pallets.⁸⁸	Prioritise development of guidance in relation to requirements for crates	No changes to Code. Provide guidance on scope and application of this clause.	An ordinary and natural interpretation of "logistics" and "logistics services" in the context of grocery supply to retailers includes containers used for transporting groceries. We are reluctant to amend the wording of clause 11, to avoid narrowing its meaning with potential unintended effects. The clause is intentionally non-specific as to what particular services are within the meaning of "logistics". We are aware that supply chain technologies are evolving and it is important that this requirement is drafted in a way that can capture new technologies.
Payments to suppliers clause 12(1)		No change	No change	Not a common theme in feedback received and no need for changes identified.

⁸⁷ Horticulture New Zealand "Submission on Grocery Supply Code Draft Report Decisions and Reasons" (18 July 2025) at p. 8, https://comcom.govt.nz/_data/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁸⁸ Foodstuffs North and South Island "Submission on Grocery Supply Code Draft Report Decisions and Reasons" (18 July 2025) at para 17-18, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Woolworths New Zealand "Submission on Grocery Supply Code Draft Report Decisions and Reasons" (18 July 2025) at para 7.1-7.2, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Viscount FCC "Submission on Grocery Supply Code Draft Report Decisions and Reasons" (18 July 2025) at p. 1, https://comcom.govt.nz/_data/assets/pdf_file/0034/367675/Viscount-FCC-Limited-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
Payments to suppliers clauses 12(2) to 12(4)	Our draft decision would require RGRs to provide (on request) a quarterly statement of payments and deductions made by a supplier. Feedback from the NZFGC noted that suppliers face challenges in relation to the time taken to resolve issues where payments/deductions are taken when they should not have been. NZFGC submits that this is significant for small suppliers with cash flow issues. ⁸⁹ The NZFGC agrees this change could help suppliers identify discrepancies quickly. ⁹⁰	Prioritise development of guidance for this clause and add requirements for suppliers to be able to obtain an itemised summary of payments and set-offs for the financial quarter.	Do not progress with suggested changes in Draft Report allowing suppliers to request a quarterly statement of payments.	Information received to date suggests that adding quarterly reporting of payments and deductions would not significantly increase transparency for suppliers relative to the additional work it would require from RGRs. Submitters have made us aware that RGRs are already providing itemised accounts of payments and deductions. Additionally, clause 12(4) of the current Code already enables suppliers faced with set-offs purportedly sanctioned by the relevant GSA to receive written information (on request) relating to the set-off, including how it was calculated and its reasonableness. We intend to include targeted questions on this topic in upcoming surveys of suppliers to test their ability to monitor and dispute set-offs against payments of their invoices.

⁸⁹ New Zealand Food and Grocery Council “Cross-Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (11 August 2025) at para 4.12, https://comcom.govt.nz/_data/assets/pdf_file/0034/368827/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf.

⁹⁰ New Zealand Food and Grocery Council “Cross-Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (11 August 2025) at para 4.12, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
Payments for shrinkage <i>clause 13</i>	RGRs submitted that the administrative burden of producing quarterly payment and deduction summaries is excessive and inefficient and would provide limited benefit considering this information is already made available to suppliers. ⁹¹			
		No change	No change.	Not a common theme in feedback received and no need for changes was identified.

⁹¹ Foodstuffs North and South Island “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 18 https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Woolworths New Zealand “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 1.2.10, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
Payments for wastage clause 14	The NZFGC, Foodstuffs and WWNZ considered that retaining the ability to negotiate mutually beneficial commercial agreements for wastage is important. WWNZ also noted the potential for a ban on these arrangements to have unintended consequences and raised concerns of regulatory overreach. ⁹² Other submitters supported removing the carve-out provisions, including Anon A, Anon B and Hort NZ. ⁹³	Change this provision to no longer allow for payments for wastage while groceries are in the RGRs effective control.	Change this provision to no longer allow for payments for wastage while groceries are in the RGRs effective control.	We recognise the benefit of flexibility in commercial bargaining but consider this is outweighed by the negative impact of RGRs seeking to impose standard provisions for dealing with wastage, which is disproportionately affecting smaller suppliers with less bargaining power. Removing the carve-out leaves a clear provision that can be applied equitably across all suppliers. This benefit outweighs the small amount of detriment to RGRs in not being able to recover very narrow types of damage.

⁹² Woolworths New Zealand “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 6.2, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁹³ Anonymous A “Letter on behalf of Anonymous A – Submission on Review of the Grocery Supply Code Draft report” (18 July 2025) at para 5, https://comcom.govt.nz/_data/assets/pdf_file/0032/367673/Letter-on-behalf-of-Anonymous-A-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf, Anonymous B “Submission on Review of the Grocery Supply Code Draft Report” (16 June 2025) p. 1, https://comcom.govt.nz/_data/assets/pdf_file/0034/367666/Anonymous-B-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-16-June-2025.pdf; Horticulture New Zealand “Submission on Review of the Grocery Supply Code Draft Report” (18 July 2025) p. 10, https://comcom.govt.nz/_data/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
	The NZFGC, however, noted that the current wording of clause 14 could be used unfairly. The NZFGC pointed to practices such as Minor Damage Allowances, which they submit reduce transparency and undermine fairness.⁹⁴ The NZFGC proposed amendments to clause 14 that would add additional requirements for these payments. They proposed changes requiring suppliers to notify the retailer independently in writing that it agrees to make a payment for wastage (they submitted that this could not should not be ‘simply’ through a term in a GSA that is signed and returned), a specific requirement that the payment is reasonable having regard to the costs incurred by wastage of the supplier’s groceries in the period to which the payment relates, and a requirement that the payment relates specifically to the supplier’s groceries and is not a general fund for wastage which relates to third party suppliers’ groceries.⁹⁵			

⁹⁴ New Zealand Food and Grocery Council “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 4.8, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁹⁵ New Zealand Food and Grocery Council “Submission on Grocery Supply Code Draft Report Decisions and Reasons at (18 July 2025) at para 4.9, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
<i>Payments as condition of being a supplier clause 15</i>	Limited feedback received and no submitters raised concerns with the proposed change.	Add requirements to the Code for retailers to keep records in relation to the use of this provision for at least 7 years and provide those records to the Commission on request.	Add requirements to the Code for retailers to keep records in relation to the use of this provision for at least 7 years and provide those records to the Commission on request.	The obligation to keep records in relation to any payments as a condition of being a supplier increases the incentives on RGRs to ensure that the conduct is fair in the circumstances. It also helps to promote transparency and certainty about the terms of agreements for suppliers. The requirement to provide the records to the Commission on request would also make the process of monitoring compliance with this clause more efficient and increase the RGRs' incentives to comply.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
<i>Payments for retailer's business activities (including merchandising) clause 16</i>	The NZFGC, WWNZ and Foodstuffs submitted that it is preferable for suppliers to retain some negotiating flexibility for these activities.⁹⁶ Houston Kemp submitted that the proposal risks harming efficiency and could shift these costs to less transparent and efficient mechanisms.⁹⁷ However, the NZFGC submitted that there are some agreements under clause 16 which are used unfairly, and suggested amendments to the carve-out. Additionally, Anon A, Anon B, and Hort NZ submitted that a blanket prohibition of these payments would reflect a fairer allocation of risk and cost between the parties.	Change this provision, no longer allowing for payments for the activities covered by this clause, which include: (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 staff: (f) merchandising (for example, stocking shelves and setting up displays): (g) the transport of goods within a retailer's business, which may include transport between distribution centres and retail stores.	Retain clause 16 as it appears in the current Code. Prioritise guidance on practical implementation of clause and make use of monitoring and compliance and enforcement tools.	Under the current wording of the clause the RGRs must not directly or indirectly require a supplier to make any payments towards the costs of any activity undertaken by the RGR in the ordinary course of carrying on business unless the agreement provides for the payment and the payment is reasonable in the circumstances. In determining whether a payment is reasonable the RGR must consider the likely benefits to the supplier, the likely benefits to the RGR, and the costs borne (or contributions made) by the RGR for their business activities. We have heard from a variety of stakeholders that the RGRs are relying on the carve-out provisions for clause 16 in their GSAs as the default, despite some suppliers receiving minimal or no benefit from the payments they're making, primarily with regards to merchandising.

⁹⁶ New Zealand Food and Grocery Council "Submission on Review of the Grocery Supply Code Draft Report (18 July 2025) at para 4.10, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Woolworths New Zealand "Cross-Submission on Review of the Grocery Supply Code Draft Report (11 August 2025) at para 1.3.1, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Woolworths-New-Zealand-Ltd-Cross-submission-on-the-Review-of-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>; Foodstuffs "Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper" (18 July 2025) at p. 21 https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
				However, we also heard through submissions that there are suppliers who receive value from these payments and have negotiated specific benefits through clause 16 who wish to retain these, and that a complete prohibition on payments for retailers' business activities risks unintended consequences. Our proposal to prohibit retaliation (clause 30) may also support suppliers' confidence to participate in, and represent, their interests in discussions on merchandising payments and mitigate concerns that failure to make such payments may affect RGRs' ranging decisions. We consider that not proceeding with a prohibition on these payments, but providing guidance strikes the right balance between increasing certainty and prohibiting unfair conduct, while we seek to understand more about the payments that are being made. In the immediate term we consider providing guidance and carrying out targeted monitoring and compliance assessments of RGR conduct may be sufficient to promote fair conduct, transparency, and certainty in relation to these payments. The outcomes of this work will inform the need for future Code changes.

⁹⁷

HoustonKemp on behalf of Foodstuffs North and South Island "Review of proposed amendments to Grocery Supply Code" (18 July 2025) at p. 9, https://comcom.govt.nz/_data/assets/pdf_file/0035/367973/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-HoustonKemp-Review-of-proposed-amendments-to-Grocery-Supply-Code-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
				We will also be actively considering whether to make further amendments to the Code so payments which cannot be linked to specific activities should be refunded to suppliers in instances where the RGRs cannot show they have completed the relevant activity, as was recommended by MBIE during the Code's initial development.
Funding promotions clause 17	Foodstuffs submitted that the cost of implementing such record-keeping practices was administratively unattainable, onerous and a significant departure from the status quo. ⁹⁸ We accept that record-keeping may be a departure for some retailers from the status quo but, like the NZFGC, we consider that recording this type of business dealing is reasonable. ⁹⁹	Add requirements to the Code for retailers to keep records in relation to the use of this provision for at least 7 years and provide those records to the Commission on request. Prioritise development of guidance for this clause.	Add requirements to the Code for retailers to keep records in relation to the use of this provision for at least 7 years and provide those records to the Commission on request.	Record-keeping will promote fair conduct by requiring RGRs to pay close and case-specific heed to requirements of the carve-out and therefore only apply it in the limited circumstances to which it was intended, rather than to require promotional funding through default provisions in GSAs. The requirement to provide the records to the Commission on request would also make the process of monitoring compliance with this clause more efficient and increase the RGRs' incentives to comply.

⁹⁸ Foodstuffs North and South Island "Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper" (18 July 2025) p. 22, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Woolworths New Zealand "Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper" (18 July 2025), https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

⁹⁹ New Zealand Food and Grocery Council "Cross-Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper" (11 August 2025) at para 4.9-4.12, https://comcom.govt.nz/_data/assets/pdf_file/0034/368827/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
			Prioritise development of guidance for this clause.	While we appreciate that there will be some increased administration associated with this provision, we also expect that the retailers would have some existing systems in place to ensure compliance with the Code so the increased administration should not be significantly more burdensome. However, even if the additional burden and compliance cost is substantial, we still consider this requirement warranted.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
<i>Delisting products clause 18 & Process relating to delisting 19 (these clauses have been renumbered to clause 19 and 20 in Grocery Supply Code 2025)</i> <i>Product ranging, shelf space allocation, and range reviews clause 26</i>	NZFGC submitted that further guidance and criteria needs to be included in the Code relating to range to ensure range reviews are undertaken fairly and transparently. ¹⁰⁰ They noted concerns about the RGRs use of data in the process that suppliers must pay for, the fact that RGRs use margin as a key metric for ranging decisions, and that RGRs use different metrics across different categories when undertaking range reviews. ¹⁰¹ Amongst other suggestions, they submitted clause 26 should include a requirement that all information used by retailers to make a ranging decision should be available to affected suppliers. ¹⁰²	No change, focus on compliance and enforcement with development of guidance as needed. We are proposing new provisions explicitly prohibiting retaliation (discussed at the end of this table).	No change, focus on compliance and enforcement with development of guidance in regard to points raised by submitters as needed. We have decided to include a new provision explicitly prohibiting retaliation (discussed at the end of this table).	The potential for delisting is a substantial concern for suppliers, who often rely on supermarkets as their route to market. Accordingly, we have undertaken an initial monitoring project on the range review process and will continue work in this area. We consider that the requirements relating to delisting are capable of being applied in a transparent manner that is fair to both RGRs and suppliers and additional requirements are not necessary. We strongly encourage suppliers to report conduct they consider does not meet the Code requirements on delisting either directly or through the Anonymous Reporting Tool (ART) to enable us to consider follow-up action. We will also consider the need for guidance. The new retaliation clause will help deter delisting done as retaliation for suppliers exercising rights under the Code or their GSA.

¹⁰⁰ New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at para 8.5, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁰¹ New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at para 8.6, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁰² New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at para 8.8, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
	Foodstuffs submitted that the application of the delisting provision as it relates to fresh produce needs to be clarified, as fresh produce is not listed or ranged in the manner currently contemplated by the Code. ¹⁰³			Where RGRs determine not to supply a type of fresh produce from its retail or wholesale offering, the requirements on delisting in clauses 18 and 19 apply based on the clause 18(2) definition of “delists” even if the decision is not referred to as ‘delisting’ and the process used to arrive at that decision is different to that used for other groceries.
Funded promotions clause 20 (renumbered to clause 18 in Grocery Supply Code 2025)	WWNZ submitted in support of the proposal, arguing that investment buying creates supply chain inefficiencies and uncertainty for suppliers, for example by creating bloating in the supply chain; WWNZ submitted they do not engage in investment buying. ¹⁰⁴ Foodstuffs submitted that the administrative demand of implementing the proposal through tracking products purchased on promotion and the price at which they are sold, would be burdensome. ¹⁰⁵	Clause to be amended to require retailers to pay suppliers the difference in price between the normal and promotional price for any products bought from suppliers at a promotional price but not sold to consumers at a promotional price.	Clause amended to require a retailer that sells groceries that are part of a funded promotion at a non-promotional price to repay the supplier the portion of the promotional funding relating to those groceries.	We consider that investment buying undermines transparency and certainty for suppliers about the terms of promotional arrangements with retailers. Additionally, we do not consider that investment buying is a necessary practice from a practical perspective nor one that generally delivers benefit to both parties or consumers. We understand WWNZ’s use of scan-back technology to track product bought and sold at promotional prices demonstrates that administrative burdens are surmountable.

¹⁰³ Foodstuffs North and South Island “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at p. 24, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁰⁴ Woolworths New Zealand “Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at para 1.2.5, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁰⁵ Foodstuffs North and South Island “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at p. 5, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
				Foodstuffs argues that it is “fundamentally” important that RGRs retain the ability to negotiate and agree on supplier-funded promotional activity, and that this promotes competition in the retail market and lower prices for consumers.¹⁰⁶ We agree that RGRs and suppliers should be able to negotiate fairly and to agree on supplier-funded promotions. We consider that extending the duration of promotional periods should not be a unilateral decision for retailers without consideration of the impact on suppliers - rather it should be negotiated between retailers and suppliers applying the requirements of clause 17. The proposed change would primarily affect Foodstuffs although it would also prevent WWNZ from jettisoning scan-back or an equivalent tool in the future. The proposal does not mandate Foodstuffs’ adoption of scan-back, rather that it adopt a mechanism for reimbursing suppliers for goods bought on promotion but not sold on promotion.

¹⁰⁶ Foodstuffs North and South Island “Submission on Grocery Supply Code Draft Decisions and Reasons paper” (18 July 2025) at para 14, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
<i>Fresh produce standards and quality specifications clause 21</i>	Foodstuffs submitted that defects in fresh produce may not be reasonably discovered within the current 24 hour period, offering 48 hours as a “more realistic” timeframe. They also submitted that stores should receive their own independent window to reject fresh produce, as defects may not be reasonably discoverable until the goods are unpacked in stores. ¹⁰⁷	No change, further work is needed to consider the Code’s rules generally as they apply to fresh produce.	No change, further work is needed to consider the Code’s rules generally as they apply to fresh produce.	Fresh produce suppliers face specific challenges in their supply relationships. This was a significant focus of the Independent Review of the Australian Code and the Australian Supermarket Inquiry. Further work is required to understand the New Zealand context and assess whether there are issues that could be better addressed by the Code.
<i>Unduly hindering or obstructing supply to competitors clause 22</i>	Hort NZ submitted in support of our proposed change to remove “to competitors” from the title of this clause.¹⁰⁸ Foodstuffs submitted that the intention of the clause is to ensure that the supply of products to competitors of an RGR was not unduly influenced by the RGR.¹⁰⁹	Remove “to competitors” from the title of this clause.	Remove “to competitors” from the title of this clause.	The clause was introduced to ensure that suppliers are free to make decisions that are in their commercial interest and to ensure that RGRs do not use their market power to hinder or obstruct a supplier. The existing text of the clause refers to “unduly hindering or obstructing a supplier from supplying to any other party”. We consider the words “to competitors” in the title of the clause should be removed to avoid confusion.

¹⁰⁷ Foodstuffs North and South Island “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at p. 24, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁰⁸ Horticulture New Zealand “Submission on Review of the Grocery Supply code Draft Report Decisions and Reasons paper” (18 July 2025) at p. 25, https://comcom.govt.nz/_data/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁰⁹ Foodstuffs North and South Island “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons Paper” (18 July 2025) at p. 25, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
Business disruption <i>clause 23</i>	-	No change	No change	No need for changes identified.
Intellectual property rights <i>clause 24</i>	-	No change	No change	Not a common theme in feedback and no need for changes identified.
Confidential information <i>clause 25</i>	-	No change	No change	Not a common theme in feedback received and no need for changes identified.
Transfer of intellectual property rights <i>clause 27</i>	-	No change	No change	Not a common theme in feedback received and no need for changes identified.
Price increases <i>clause 28</i>	-	No change, gather further information	No change, gather further information	The processes surrounding price increases are a concern for suppliers. We will continue to gather information to support monitoring of conduct in this area.
Freedom of association <i>clause 29</i>	-	No change	No change	Not a common theme in feedback and no need for changes identified.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
New provision – Retaliation <i>Clause 30</i>	Foodstuffs and WWNZ submitted that protections in the good faith (clause 6) and delisting provisions (clause 19) already provide necessary protections against retaliatory conduct.¹¹⁰ Additionally, WWNZ submitted that the reverse evidentiary burden in the provision would require staff to develop burdensome systems of record-keeping to protect themselves against retaliation claims.¹¹¹ WWNZ submitted that liability for a retaliation claim where a supplier could assert Code rights but had not done so could have a chilling effect on normal commercial relations.¹¹²	Add new clause explicitly prohibiting retaliation in response to suppliers exercising rights under the Code. Include an evidential burden on retailers to establish that actions weren't retaliation.	Add new clause explicitly prohibiting retaliation in response to suppliers exercising rights under the Code, a GSA, engaging with the Commerce Commission, or with the dispute resolution scheme referred to in section 151(2) of the Act.	While clause 6 (good faith) refers to retaliation as something that may be taken into account when determining whether RGR conduct amounts to a lack of good faith, it is not conclusive of a breach of the Code. The power imbalance between the RGRs and suppliers and the importance of recognising and upholding rights warrants treatment of conduct that deters rights being asserted as a Code breach in itself. The evidential burden has been placed on RGRs to produce evidence that an action is not retaliatory because of the power imbalance and the fact that the RGRs are in the best position to explain and evidence the basis of their own actions. In many cases this evidence should already exist through records kept as part of good business practice.

¹¹⁰ Foodstuffs North and South Island “Cross-submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at p. 7, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>; Woolworths New Zealand Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at para 1.2.8, https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹¹¹ Woolworths New Zealand “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at para 9.4.9, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹¹² Woolworths New Zealand “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at para 9.5, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
	Anonymous A and NZFGC were supportive of the clause and made suggestions to widen its scope. ¹¹³ Hort NZ, ART submitter 3 and Anonymous B also supported the standalone provision. ¹¹⁴		Include an evidential burden on retailers to establish that actions weren't retaliation.	

¹¹³ Anonymous A “Letter on behalf of Anonymous A – Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 5, https://comcom.govt.nz/_data/assets/pdf_file/0032/367673/Letter-on-behalf-of-Anonymous-A-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹¹⁴ Horticulture New Zealand “Submission on Review of the Grocery Supply code Draft Report Decisions and Reasons” (18 July 2025) at p. 12, https://comcom.govt.nz/_data/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf, “ART Summary Submissions on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) - Submitter 3 at para 4, https://comcom.govt.nz/_data/assets/pdf_file/0036/367668/ART-summary-Submissions-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf, Anonymous B “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (16 June 2025) at p. 1, https://comcom.govt.nz/_data/assets/pdf_file/0034/367666/Anonymous-B-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-16-June-2025.pdf.

Part of Code	Summary of feedback received	Draft decision	Final decision	Summary of reasons
<i>Suggested new provision – Anti-avoidance</i>	The NZFGC submitted that the Code does not adequately prevent the RGRs from seeking to avoid the Code’s protection through complex GSAs or deliberately vague legal drafting.¹¹⁵ The NZFGC submitted that an anti-avoidance clause, similar to the Australian Code’s section 19(3), could protect suppliers from inadvertently agreeing to contract out of the Code’s protections.¹¹⁶ Foodstuffs cross-submitted that clause 19(3) in the Australian Code is not an anti-avoidance protection, but is designed to enhance clarity on where the Australian Code allows parties to reach mutual agreement.¹¹⁷	-	No change	We agree that vague or complex GSAs can lead to suppliers misunderstanding their rights and lead to unfair outcomes. During development of the GSAs we worked closely with RGRs to encourage the use of plain language and clarity. We do not agree that a specific anti-avoidance clause would provide suppliers with additional protection from inadvertently agreeing to contract out of the Code’s protections. The intention behind clause 19 of the Australian Code was to allow for parties to contract out of certain provisions of the Code provided specific conditions are met.¹¹⁸

¹¹⁵ New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 8.1, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹¹⁶ New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 8.1, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹¹⁷ Foodstuffs North and South Island “Cross-submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (11 August 2025) at p. 9, https://comcom.govt.nz/_data/assets/pdf_file/0032/368825/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf.

¹¹⁸ The Treasury (Australian Government) “Competition and Consumer Act 2010/Competition and Consumer (Industry Codes - Food and Grocery) Regulations 2024 - Exposure draft explanatory statement” at p. 13, <https://treasury.gov.au/sites/default/files/2024-09/c2024-581786-em.pdf>.

Clause 6 - Obligation to deal with suppliers in good faith

What the clauses currently require

85. Retailers are required to deal with suppliers in good faith at all times.

Context and draft decisions

86. Following the Request for Views paper, the key issues raised in relation to good faith were the need for more guidance (ART submitter two).¹¹⁹ This was echoed by WWNZ, (and supported by Foodstuffs) who submitted that this is an area where the development and testing of guidance for stakeholders is required.¹²⁰ WWNZ also submitted that suppliers should also be subject to good faith obligations under the Code.¹²¹
87. In our Draft Report we considered the good faith provision to be a key part of the Code and a priority area for additional guidance.¹²²

Submissions received

88. Foodstuffs submitted that suppliers should be subject to good faith obligations under the Code.¹²³

¹¹⁹ Anonymous Reporting Tool submissions, "Request for views on issues and opportunities to consider within the review" (17 August 2024) at para 2.1, https://www.comcom.govt.nz/assets/pdf_file/0032/362498/Anonymous-Reporting-Tool-summary-Submissions-on-the-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-17-August-2024.pdf.

¹²⁰ Woolworths New Zealand submission "Request for views on issues and opportunities to consider within the review" (16 September 2024) at para 4.4(a), https://www.comcom.govt.nz/assets/pdf_file/0023/362507/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf; Foodstuffs North & South Island cross-submission "Request for views on issues and opportunities to consider within the review" (11 October 2024) at p.7, https://www.comcom.govt.nz/assets/pdf_file/0016/362500/Foodstuffs-North-26-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-16-September-2024.pdf.

¹²¹ Woolworths New Zealand submission "Request for views on issues and opportunities to consider within the review" (16 September 2024) at para 4.4(a), https://www.comcom.govt.nz/assets/pdf_file/0023/362507/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

¹²² Commerce Commission "Grocery Supply Code Draft Report Decisions and Reasons" (5 June 2025) at p. 40, https://comcom.govt.nz/_data/assets/pdf_file/0028/366643/Grocery-Supply-Code-Draft-Report-Decisions-and-Reasons-5-June-2025.pdf.

¹²³ Foodstuffs North and South island "Submission on Grocery Supply Code review Draft Report" (18 July 2025) at p. 13, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

89. Foodstuffs and the NZFGC supported our Draft Report’s decision to prioritise guidance regarding the interpretation of good faith obligations under the Code.¹²⁴
90. WWNZ submitted that for the Code to operate effectively it should contain a reciprocal obligation of good faith applicable to suppliers.¹²⁵ Woolworths also submitted that the Commission is empowered to amend the Code to require suppliers to act in good faith towards RGRs by section 17 of the Act.¹²⁶ We address this further at paragraphs 241-244 of this report. Further to this, they submitted that the Commission could amend the Code to impose good faith obligations on “large” suppliers –using the meaning of “large” in the Financial Reporting Act 2013 (an entity with assets in excess of \$66 million, or revenue in excess of \$33 million).¹²⁷ In cross-submissions, the NZFGC submitted that this definition of “large” would include suppliers who represent a fraction of WWNZ’s annual revenues.¹²⁸

Final decision

91. No material change to the Code as per the draft decision. We will support stakeholders by issuing guidance as the Code is tested. We have made a minor change to subclause 6(3)(d) by deleting the words “for past complaints and disputes” in order to better align it with the definition of retaliation in the new retaliation clause.

¹²⁴ Foodstuffs North and South Island “Submission on Grocery Supply Code review Draft Report” (18 July 2025) at p. 13 https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; New Zealand Food and Grocery Council “Submission on Grocery Supply Code review Draft Report” (18 July 2025) at para 6.7,

https://www.comcom.govt.nz/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹²⁵ Woolworths New Zealand “Submission on Review of the Grocery Supply Code review Draft Report” (18 July 2025) at para 3.6,

https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹²⁶ Woolworths New Zealand “Submission on Review of the Grocery Supply Code review Draft Report” (18 July 2025) at para 3.7,

https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹²⁷ Woolworths New Zealand “Submission on Review of the Grocery Supply Code review Draft Report” (18 July 2025) at para 3.8,

https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹²⁸ New Zealand Food and Grocery Council “Cross-submission on Review of the Grocery Supply Code review Draft Report” (11 August 2025) at para 2.6,

<https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

Reasons

92. As discussed further at paragraphs 239-244, notwithstanding WWNZ’s submission, the Commission does not have the power to introduce obligations for suppliers under the Code. Furthermore, the actions of suppliers are already considered in determining whether the RGR is operating in good faith under clause 6(3)(i) of the Code.

Clause 7 and 8 - Grocery Supply Agreements

What the clauses currently require

93. A GSA must be in writing, in plain language, provided to the supplier and kept by the RGR for seven years after the agreement ends. There is mandatory content that a GSA should cover, such as the payment period, term of the agreement and any quantity or quality requirements.

Context and draft decisions

94. The requirement to document GSAs is a key feature of the Code and has required substantial changes in industry practices.¹²⁹
95. While the requirements of the Code became effective immediately when the Code came into force on 28 September 2023, a six-month grace period was provided to address any inconsistencies between the thousands of existing agreements with suppliers and the provisions of the new Code.¹³⁰
96. To support the introduction of the Code, the Commission released a factsheet and later released a checklist for suppliers.¹³¹ The Commission also presented at webinars hosted by NZFGC and Hort NZ and engaged with each of the RGRs to understand their approach to the new obligations. The Commission reviewed the RGR’s new GSA templates and provided feedback which we published, and the RGRs took steps to address some of this feedback.¹³²
97. Commission engagement with suppliers sought to encourage suppliers to carefully consider the new GSAs issued by the RGRs before agreeing to terms.

¹²⁹ Refer cl 2 of Schedule 1 of the Grocery Industry Competition Regulations 2023.

¹³⁰ Refer Part 2 of Schedule 1 of the Grocery Industry Competition Regulations 2023.

¹³¹ Commerce Commission “Fact Sheet: The Grocery Supply Code” (28 September 2024), https://www.comcom.govt.nz/_data/assets/pdf_file/0022/329710/Commerce-Commission-Grocery-supply-code-factsheet-28-September-2023.pdf; Commerce Commission “Grocery Supply Code Checklist for Suppliers” (29 February 2024), https://comcom.govt.nz/_data/assets/pdf_file/0025/344950/Grocery-Supply-Code-Checklist-for-Suppliers-29-Feb-2024.pdf.

¹³² Our letters to the RGRs about their Grocery Supply Agreements, along with their responses were published on our website on 16 April 2025: <https://www.comcom.govt.nz/regulated-industries/grocery/grocery-updates/>.

98. Prior to publishing our Draft Report, we received submissions from the NZFGC that it is unclear how Code protections apply where a supplier has not agreed the GSA.¹³³ Foodstuffs cross-submitted that the existing Code adequately makes clear that the protections apply to all suppliers.¹³⁴ It was Foodstuffs' view that suppliers should be entitled to rely on agreements entered into prior to the Code to the extent they remain consistent with the Code.¹³⁵

Submissions received

99. In response to our Draft Report Foodstuffs agreed that no change is required to address any issues arising from pre-Code agreements currently in place. However, they do not accept that their GSAs are unfair or unreasonably complex.¹³⁶

Final decision

100. No changes to Code as per the draft decision. Gather further information about the state of agreements currently in place.

Reasons

101. Where an agreement pre-dates the Code and is inconsistent with it, the Code provisions still apply. We are aware many suppliers have not signed a new agreement following the introduction of the Code, but we have limited information to assess the impact of this (eg, how inconsistent with the Code the existing agreements are and the level of uncertainty/ risk of non-compliance with the Code this is creating).

¹³³ New Zealand Food & Grocery Council cross-submission "Request for views on issues and opportunities to consider within the review" (11 October 2024) at para 4.25, https://comcom.govt.nz/_data/assets/pdf_file/0023/362741/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

¹³⁴ Foodstuffs North & South Island cross-submission "Cross-submission on Request for views on issues and opportunities to consider within the review" (11 October 2024) at p.10, https://www.comcom.govt.nz/assets/pdf_file/0022/362740/Foodstuffs-North-Island-26-South-Island-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

¹³⁵ Foodstuffs North & South Island "Cross-Submission Request for views on issues and opportunities to consider within the review" (11 October 2024) at p.11, https://www.comcom.govt.nz/assets/pdf_file/0022/362740/Foodstuffs-North-Island-26-South-Island-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

¹³⁶ Foodstuffs North and South Island "Submission on Grocery Supply Code Draft Report Decisions and Reasons" (18 July 2025) at p. 14, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Clause 9 - Unilateral variation of agreement

What the clauses currently require

102. Clause 9 sets out the circumstances when an RGR can make a variation to a GSA without specific consent of the supplier in specific circumstances. The parameters include that the GSA provides for unilateral variations, sets out the methodology to be used for quantitative adjustments and that the variation is reasonable in the circumstances.

Context and draft decisions

103. Our Draft Report proposed to retain the existing content of the clause and to add a requirement for the RGR to keep records of its unilateral variations for a period of seven years and for the RGR to provide the records to the Commission on request.

Submissions received

104. Foodstuffs noted they were comfortable with the new record-keeping requirements.¹³⁷ Hort NZ supported the changes, and so did the NZFGC.¹³⁸ The NZFGC noted that this kind of record-keeping is standard business practice for compliance and audit purposes.¹³⁹

Final decision

105. Amend the Code by adding a requirement for the RGR to keep records of its unilateral variations for a period of seven years and for the RGR to provide these records to the Commission on request.

¹³⁷ Foodstuffs North and South Island “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 15, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹³⁸ Horticulture New Zealand “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 10, https://comcom.govt.nz/_data/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; New Zealand Food and Grocery Council “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 5.2, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹³⁹ New Zealand Food and Grocery Council “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 5.3, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Reasons

106. We consider that there will be circumstances where it will be reasonable and efficient for an RGR to unilaterally vary an agreement as provided for in the current clause and that if every variation needed to be agreed in writing this would impose significant time and administrative burdens on both RGRs and suppliers. However, we also recognise the potential for such variations to occur in a way that is unfair to suppliers.
107. The addition of the obligation to keep records in relation to each instance of a unilateral variation increases the incentives on RGRs to ensure that the conduct is fair in the circumstances and helps to promote transparency and certainty about the terms of agreements for suppliers.
108. The requirement to provide the records to the Commission on request would also make the process of monitoring compliance with this clause more efficient. It also incentivises retailers to ensure they are acting reasonably when making unilateral variations reducing the potential for harm.

Clause 11 - Transport or logistics services

What Clause 11 currently requires

109. Under the current clause 11, RGRs cannot require suppliers to use specific transport or logistics services, nor impose unreasonable service standards for transport or logistics.

Context and draft decisions

110. Our Draft Report proposed to prioritise the development of guidance in relation to requirements for crates.
111. Hort NZ raised issues in the Request for Views with supermarket and wholesale markets requiring growers to use specified support service companies, such as crate suppliers.¹⁴⁰

¹⁴⁰ Horticulture New Zealand “Submission on Review of the Grocery Supply Code Request for Views paper” (16 September 2024) at p. 4, https://comcom.govt.nz/_data/assets/pdf_file/0018/362502/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

Submissions received

112. In submissions, Hort NZ reiterated that the current situation in which retailers name accepted crate providers imposes logistical and financial burdens on growers who must use those crate and pallet systems to supply the retailers.¹⁴¹
113. WWNZ defended the ability to set crate standardisation requirements, stating that this was necessary for efficiency, safety, hygiene, and minimising product damage.¹⁴² Foodstuffs argued that it offers growers a choice of two crate suppliers, which puts its crate requirements outside of the scope of clause 11.¹⁴³
114. Hort NZ submitted that guidance alone will not address the issue, and that a definition of ‘logistics’ should be included in the Code, and that the Commission should explicitly state that crates are captured by clause 11.¹⁴⁴
115. We also received a submission from crate supplier Viscount FCC, who argued that specific guidelines are not required.¹⁴⁵ Viscount FCC also encouraged the Commission to consider the benefit of long-term arrangements for supply and management of returnable plastic crates, pallets and bins in the New Zealand grocery supply chain when developing guidance.¹⁴⁶

Final decision

116. No changes to this clause. We will support stakeholders by issuing guidance.

¹⁴¹ Horticulture New Zealand “Submission on Review of the Grocery Supply Code Request for Views paper” (16 September 2024) at p. 8, https://comcom.govt.nz/_data/assets/pdf_file/0018/362502/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

¹⁴² Woolworths New Zealand “Submission on Review of the Grocery Supply Code Request for Views paper” (18 July 2025) at para 1.2.6, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁴³ Foodstuffs New Zealand “Submission on Review of the Grocery Supply Code Request for Views paper” (18 July 2025) at p. 15, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁴⁴ Horticulture NZ “Submission on the Grocery Supply Code Draft Report and Decisions paper” (18 July 2025) at p. 9, https://comcom.govt.nz/_data/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁴⁵ Viscount FCC “Submission on the Grocery Supply Code Draft Report and Decisions paper” (18 July 2025) at p. 3, https://comcom.govt.nz/_data/assets/pdf_file/0034/367675/Viscount-FCC-Limited-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁴⁶ Viscount FCC “Submission on the Grocery Supply Code Draft Report and Decisions paper” (18 July 2025) at p. 3, https://comcom.govt.nz/_data/assets/pdf_file/0034/367675/Viscount-FCC-Limited-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Reasons

- 117. An ordinary and natural interpretation of “logistics” and “logistics services” in the context of grocery retail would include systems used for transporting groceries, such as pallets and crates. We do not consider arguments that pallets and crates are obviously excluded or that they need to be specifically included to have merit.
- 118. We are reluctant to amend the wording of clause 11 as this may narrow its meaning causing unintended effects. The clause is intentionally non-specific about which particular services are captured within the meaning of “logistics” to recognise that equipment, and the activities involved in supply chain systems, evolve over time.
- 119. Mandating the use of any named supplier of logistics service is prohibited under the Code, given the Legislation Act’s presumption that wording in the singular includes the plural. We have written to the RGRs to remind them of this prohibition.
- 120. However, the RGRs may impose reasonable service requirements to enable them to maintain efficient, safe and hygienic practices. We intend to issue guidance on the reasonableness aspect of RGR service standards covering grocery transport and logistics.

Clauses 12(2) to 12(4) - Payments to suppliers

What Clause 12(2) to 12(4) currently requires

- 121. Set-offs (deductions against payments to a supplier) are prohibited unless the supplier has consented to the set-off in writing, or the set-off has been provided for in the supply agreement and is reasonable in the circumstances.
- 122. A written explanation of why the set-off is reasonable in the circumstances and how it was calculated must be provided by the RGR if requested by the supplier.

Context and draft decisions

- 123. Clauses 12(2) to 12(4) are one of the areas in the Code that allow for exceptions or “carve-outs” to the Code’s protections. Our draft decision was to prioritise development of guidance to support the fair use of set-offs, and to introduce requirements that allow for the supplier to be able to request an itemised account of all payments and deductions, and reasons for those payments and deductions for the financial quarter.
- 124. We considered that while the Code currently provides for a supplier to make a request for a written explanation for any set-off, the ability to request a summary for the financial quarter or year would increase certainty and transparency for suppliers.

125. We also noted NZFGC’s submission on our Request for Views paper that the RGRs’ template GSAs allow them to set off charges or other amounts against any amount they owe to suppliers.¹⁴⁷ The NZFGC submitted that this defeats the purpose of requiring RGRs to demonstrate the reasonableness of a set-off as it places the burden on suppliers to demonstrate why a set-off is unreasonable after it has already been applied.¹⁴⁸ This informed our draft decision to prioritise guidance on the reasonableness condition for set-offs.¹⁴⁹

Submissions received

126. On the requirement to be able to provide quarterly itemised accounts, WWNZ questioned whether the benefits to suppliers would justify the administrative burden and time taken to produce further reporting.¹⁵⁰
127. The NZFGC supported the proposed change, noting that time taken to resolve incorrect payments will likely continue to be an issue, especially for smaller suppliers with cashflow constraints.¹⁵¹ Anonymous B noted that record-keeping and disclosure requirements for set-offs and deductions are essential for suppliers visibility of what is being charged.¹⁵² Hort NZ also supported the new requirement.¹⁵³

¹⁴⁷ New Zealand Food and Grocery Council “Submission on Grocery Supply Code Request for Views paper” (16 September 2024) at para 4.18, https://www.comcom.govt.nz/_data/assets/pdf_file/0019/362503/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

¹⁴⁸ New Zealand Food & Grocery Council submission “Submission on Grocery Supply Code Request for views on issues and opportunities to consider within the review” (16 September 2024) at para 4.18, https://www.comcom.govt.nz/_data/assets/pdf_file/0019/362503/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

¹⁴⁹ New Zealand Commerce Commission “Grocery Supply Code Draft Report Decisions and Reasons” (5 June 2025) at para 3.91, https://comcom.govt.nz/_data/assets/pdf_file/0028/366643/Grocery-Supply-Code-Draft-Report-Decisions-and-Reasons-5-June-2025.pdf.

¹⁵⁰ Woolworths New Zealand “Submission on the Grocery Supply Code Review Draft Decisions and Reasons Paper” (18 July 2025) at para 1.2.10, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁵¹ New Zealand Food and Grocery Council “Cross-submission on the Grocery Supply Code Review Draft Decisions and Reasons Paper” (11 August 2025) at para 4.12, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

¹⁵² Anonymous B “Submission on the Grocery Supply Code Review Draft Decisions and Reasons Paper” (16 June 2025) at p. 1, https://comcom.govt.nz/_data/assets/pdf_file/0034/367666/Anonymous-B-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-16-June-2025.pdf.

¹⁵³ Horticulture New Zealand “Submission on the Grocery Supply Code Review Draft Decisions and Reasons Paper” (18 July 2025) at p. 10, https://comcom.govt.nz/_data/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

128. However, both the RGRs and NZFGC noted that RGRs are already providing itemised accounts of payments and deductions.¹⁵⁴

Final decision

129. No change to the Code - do not add requirements for suppliers to be able to obtain an itemised summary of payments and set-offs for the financial quarter. Develop guidance on the reasonableness condition for set-offs that may be agreed between the parties, as signaled in the draft decision.

Reasons

130. Information received suggests that adding quarterly reporting would not significantly increase transparency for suppliers compared to what is already available and would impose additional work by RGRs.
131. Submitters have made us aware that RGRs are already providing itemised accounts of payments and deductions.¹⁵⁵ Additionally, clause 12(4) of the current Code already enables suppliers faced with set-offs purportedly sanctioned by the relevant GSA to receive written information (on request) relating to the set-off, including its reasonableness.

¹⁵⁴ New Zealand Food and Grocery Council “Submission on the Grocery Supply Code Review Draft Decisions and Reasons Paper” (18 July 2025) at para 5.10, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Woolworths New Zealand “Submission on the Grocery Supply Code Review Draft Decisions and Reasons Paper” (18 July 2025) at para 11.2, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Foodstuffs New Zealand “Submissions on the Grocery Supply Code Review Draft Decisions and Reasons Paper (18 July 2025) at p. 18, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁵⁵ New Zealand Food and Grocery Council “Submission on the Grocery Supply Code Review Draft Decisions and Reasons Paper” (18 July 2025) at para 5.10, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Woolworths New Zealand “Submission on the Grocery Supply Code Review Draft Decisions and Reasons Paper” (18 July 2025) at para 11.2, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Foodstuffs North and South Island “Submissions on the Grocery Supply Code Review Draft Decisions and Reasons Paper” (18 July 2025) at p. 18, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

132. We see benefit in issuing guidance on what amounts to satisfaction of the “reasonableness” test for set-offs, where these are agreed to between the parties, to give both parties confidence that set-offs they are contemplating do not undermine the purpose of the Code. We also note that for example, the Australian Code includes matters to have regard to when determining reasonableness.¹⁵⁶
133. We will gather further feedback from suppliers in our next supplier survey regarding the information they receive on set-offs to inform our further consideration of this clause.

Clause 14 - Payments for wastage

What clause 14 currently requires

134. Under clause 14 of the current Code, the RGRs must not directly or indirectly require suppliers to make any payment for wastage (groceries unfit for sale) that occurs while the groceries are in the RGRs’ effective control unless it is:
- 134.1. expressly provided for in a supply agreement; and
 - 134.2. the supply agreement is unambiguous about the circumstances where a supplier will be required to make payments to cover wastage of a supplier's groceries while they are under the effective control of the RGR (including, for example, negligence by the supplier); and
 - 134.3. the wastage occurs in such circumstances;
 - 134.4. the wastage was mainly caused by the supplier;
 - 134.5. the payment is reasonable regarding the retailer’s costs incurred;
 - 134.6. the retailer has tried to mitigate the loss;
 - 134.7. the claim is made within six months of receiving the goods; and
 - 134.8. the RGR has provided a clear written statement explaining why the amount is reasonable.
135. Clause 14(5) also stipulates that when renegotiating current wastage agreements, the retailer cannot seek to renegotiate unrelated payments under the agreement.

Context and draft decisions

136. This clause protects suppliers from being charged due to grocery defects occurring while groceries are under the RGRs’ control. The carve-out enables retailers to charge suppliers in the very limited circumstances where groceries become defective under the RGR’s control, but these defects are mainly caused by the supplier.

¹⁵⁶ Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024 at Clause 22 <https://www.legislation.gov.au/F2024L01651/latest/text>.

137. Our draft decision was to change this provision, to no longer allow for payments from suppliers for wastage which occurs while groceries are in the RGR's effective control. We were concerned that the carve-out was being used unfairly given the inherent pressure on suppliers to agree to terms to obtain and maintain ranging with retailers. We refer to this as the "power imbalance" argument. We also considered that RGRs are best placed to manage the risks related to wastage while groceries are in their effective control. We refer to this as the "risk balancing" argument.

Submissions received

138. This clause attracted considerable comment from submitters. We discuss below the major points made by submitters. We acknowledge that other points were made but, after giving them consideration, we do not consider that they were of sufficient significance to alter our reasoning.

Support for proposed change

139. HortNZ, Anonymous A and Anonymous B supported the draft decision.¹⁵⁷
140. In particular, Anonymous B agreed with our power imbalance argument. It submitted that the proposed change reflects a fairer allocation of risk and cost between parties.¹⁵⁸
141. Anonymous A also agreed with our risk balancing argument. It submitted that bearing the costs of groceries becoming unfit for sale under their control is an operational cost falling on the RGRs.¹⁵⁹

¹⁵⁷ Horticulture New Zealand "Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper" (18 July 2025) at p. 10, https://www.comcom.govt.nz/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Anonymous A "Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper" (18 July 2025) at para 6, https://www.comcom.govt.nz/assets/pdf_file/0032/367673/Letter-on-behalf-of-Anonymous-A-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Anonymous B "Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper" (16 June 2025) at p. 1, https://www.comcom.govt.nz/assets/pdf_file/0034/367666/Anonymous-B-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-16-June-2025.pdf.

¹⁵⁸ Anonymous B "Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper" (16 June 2025) at p. 1, https://www.comcom.govt.nz/assets/pdf_file/0034/367666/Anonymous-B-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-16-June-2025.pdf.

¹⁵⁹ Anonymous A "Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper" (18 July 2025) at para 5, https://www.comcom.govt.nz/_data/assets/pdf_file/0032/367673/Letter-on-behalf-of-Anonymous-A-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

Qualified support for proposed change

142. However, Anonymous A is concerned that under the proposal there is no express mechanism to prevent retailers from re-characterising or reallocating payments that would no longer be permitted after removal of the carve-out. It states that a reduction in the number of supplier payments does not result in any real change to the financial burden on suppliers, undermining the intent of the proposed reform.¹⁶⁰ Houston Kemp made a similar point.¹⁶¹ We refer to this as the “hidden reallocation” argument. The NZFGC cross-submission suggested that retaining the carve-out but making the payments subject to regular review would mitigate this risk.¹⁶²

Support for retaining the status quo

143. NZFGC, WWNZ, Foodstuffs and Houston Kemp (on behalf of Foodstuffs) submitted significant concerns about the impact of the proposal.¹⁶³

¹⁶⁰ Anonymous A “Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at para 5, https://comcom.govt.nz/_data/assets/pdf_file/0032/367673/Letter-on-behalf-of-Anonymous-A-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁶¹ Houston Kemp on behalf of Foodstuffs North and South Island “HoustonKemp Review of proposed amendments to Grocery Supply Code” (18 July 2025) at p 1, https://www.comcom.govt.nz/assets/pdf_file/0035/367973/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-HoustonKemp-Review-of-proposed-amendments-to-Grocery-Supply-Code-18-July-2025.pdf.

¹⁶² New Zealand Food and Grocery Council “Cross Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper” (11 August 2025) at para 4.6, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.
New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code Draft report” (18 July 2025) at para 4.1, https://www.comcom.govt.nz/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf;
Woolworths New Zealand “Submission on Review of the Grocery Supply Code Draft Report” (18 July 2025) at para 5.1, https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Houston Kemp on behalf of Foodstuffs North and South Island “HoustonKemp Review of proposed amendments to Grocery Supply Code” (18 July 2025) at p 5, https://www.comcom.govt.nz/assets/pdf_file/0035/367973/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-HoustonKemp-Review-of-proposed-amendments-to-Grocery-Supply-Code-18-July-2025.pdf.

144. The Foodstuffs, WWNZ and Houston Kemp submissions all emphasised the importance of retaining flexibility in the Code to allow for commercial negotiations.¹⁶⁴ In particular, NZFGC submitted that the risks and costs for the RGRs resulting from wastage differ across categories of products and it is important that there is flexibility for suppliers and the RGRs to negotiate commercial terms relating to how these risks and costs may be managed in each case.¹⁶⁵ Foodstuffs made a similar submission.¹⁶⁶ The NZFGC cross-submission noted that in some cases these are lengthy negotiations.¹⁶⁷ We refer to this as the “flexibility” argument.
145. In cross-submissions on the flexibility argument, WWNZ stated a “blanket” ban is inconsistent with the Act in that the Act only allows provisions that promote fair conduct, transparency, certainty, effective competition, and supplier diversity.¹⁶⁸

¹⁶⁴ Foodstuffs North and South Island “Submission on Review of the Grocery Supply Code Draft report” (18 July 2025) at para 5, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Woolworths New Zealand “Submission on Review of the Grocery Supply Code Draft Report” (18 July 2025) at para 1.2.4, https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Houston Kemp on Behalf of Foodstuffs North and South Island “HoustonKemp Review of proposed amendments to Grocery Supply Code” (18 July 2025) at p. 1, https://www.comcom.govt.nz/assets/pdf_file/0035/367973/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-HoustonKemp-Review-of-proposed-amendments-to-Grocery-Supply-Code-18-July-2025.pdf.

¹⁶⁵ New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code Draft report” (18 July 2025) at para 4.4, https://www.comcom.govt.nz/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁶⁶ Foodstuffs North and South Island “Submission on Review of the Grocery Supply Code Draft report” (18 July 2025) at para 29, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁶⁷ New Zealand Food and Grocery Council “Cross Submission on Review of the Grocery Supply Code Draft report” (11 August 2025) at para 4.5, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

¹⁶⁸ Woolworths New Zealand “Cross submission on Review of the Grocery Supply Code Draft report” (11 August 2025) at para 1.3.1, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Woolworths-New-Zealand-Ltd-Cross-submission-on-the-Review-of-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

146. Hort NZ cross-submitted, however, that the flexibility argument does not reflect the realities and power imbalances faced by suppliers, particularly small growers supplying perishable goods.¹⁶⁹
147. To preserve flexibility and address our power imbalance argument NZFGC suggested making code drafting changes concerned with the negotiation process.¹⁷⁰ Foodstuffs raised concerns in its cross-submission that these proposed drafting changes would create uncertainty and unduly restrict an RGR's ability to agree efficient agreements that benefit RGRs, suppliers, and consumers.¹⁷¹
148. NZFGC, WWNZ and Foodstuffs submitted that removing the carve-out would limit innovation and the breadth of product ranging (including of short-dated stock) to the disadvantage of some suppliers and to consumers, who would receive a reduced choice of groceries.¹⁷² We refer to this as the "range and innovation limiting" argument.

¹⁶⁹ Horticulture New Zealand "Cross submission on Review of the Grocery Supply Code Draft report" (8 August 2025) at para 2.3.1, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Horticulture-New-Zealand-Cross-submission-on-Review-of-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

¹⁷⁰ New Zealand Food and Grocery Council "Submission on Review of the Grocery Supply Code Draft report" (18 July 2025) at para 4.9, https://www.comcom.govt.nz/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁷¹ Foodstuffs North and South Island "Cross Submission on Review of Grocery Supply Code Draft report" (11 August 2025) at para 13, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

¹⁷² New Zealand Food and Grocery Council "Submission on Review of Grocery Supply Code Draft report" (18 July 2025) at para 4.5, https://www.comcom.govt.nz/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Woolworths New Zealand "Submission on Review of Grocery Supply Code Draft report" (18 July 2025) at para 5.5.1.1-5.5.1.3, https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Foodstuffs North and South Island "Submission on Review of Grocery Supply Code Draft report" (18 July 2025) at para 29, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

149. On the risk balancing argument, Foodstuffs submitted that a one-size-fits-all approach does not incentivise suppliers to undertake activities in-store (eg, merchandising) in a way that minimises the risk of wastage occurring, and forces suppliers that take such steps to subsidise those who do not.¹⁷³
150. Foodstuffs also submitted that a prohibition on claims for wastage caused by a supplier (for example, during merchandising undertaken by the supplier) cuts across an RGR's fundamental legal right to redress for third party damage to their property and that it is irrelevant that this circumstance – and hence the impact of the lack of remedy - would be relatively limited.¹⁷⁴ We refer to this as the “legal remedy” argument.
151. In a cross-submission, Foodstuffs argued that its FSNI minor damage allowance was a reasonable and mutually agreed arrangement that was principled, efficient and of low administrative burden to the benefit of all parties, including consumers.¹⁷⁵ Under this arrangement, minor damage below a threshold is recovered at a low flat rate from all agreeable suppliers rather than by FSNI seeking credits for that wastage on a case-by-case basis with high transaction costs. We call this the ‘administrative efficiency’ argument.

¹⁷³ Foodstuffs North and South Island “Submission on Review of Grocery Supply Code Draft Decisions and Reasons paper” (18 July 2025) para 29, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁷⁴ Foodstuffs North and South Island “Submission on Review of Grocery Supply Code Draft Decisions and Reasons paper” (18 July 2025) para 30, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁷⁵ Foodstuffs North and South Island “Cross submission on Review of Grocery Supply Code Draft Decisions and Reasons paper” (11 August 2025) at p 7, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

152. On the power imbalance argument, Foodstuffs refuted its significance, submitting that supplier agreement to wastage-related terms is not a criteria in Foodstuffs' centrally-run category reviews.¹⁷⁶ WWNZ and Houston Kemp both considered that existing "good faith" and "reasonableness" protections adequately address power imbalance concerns.¹⁷⁷

Final Decision

153. Proceed with changes in the draft decision to clause 14, prohibiting payments for wastage incurred while groceries are in the RGRs' effective control.

Reasons

154. Even though the total industry value of payments for defective stock is estimated at only 1% of all supplier rebates, discounts and payments, arrangements for dealing with "wastage" continue to be a source of supplier confusion and concern.¹⁷⁸ We consider that the power imbalance between suppliers and RGRs prevents many suppliers from participating effectively in negotiations on these arrangements, and that the ensuing arrangements do not fairly balance risks between the parties.
155. The scope of the original carve-out is severely limited because most cases of a product becoming defective in the retailers' custody will occur through activity the retailer is able to control, therefore the risk of defects properly lies with the retailer. However, there are two main problems with the current application of the carve-out:

¹⁷⁶ Foodstuffs North and South Island "Submission on Review of Grocery Supply Code Draft Decisions and Reasons paper" (18 July 2025) at p. 20, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁷⁷ Woolworths New Zealand "Submission on Review of Grocery Supply Code Draft Decisions and Reasons paper" (18 July 2025) para 1.2.4, https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Houston Kemp on behalf of Foodstuffs North and South Island "HoustonKemp Review of proposed amendments to Grocery Supply Code" (18 July 2025) at p 1, https://www.comcom.govt.nz/assets/pdf_file/0035/367973/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-HoustonKemp-Review-of-proposed-amendments-to-Grocery-Supply-Code-18-July-2025.pdf.

¹⁷⁸ Commerce Commission analysis of industry information.

- 155.1. its scope is being interpreted more widely than it should by Foodstuffs, for instance, to cover short-dated stock that the retailer agrees to sell (this being product that the supplier did not specifically ‘cause’ to become unfit for sale by any action (or omission) taken (or omitted) after the RGR assumed control); and
- 155.2. that Foodstuffs North Island are effectively imposing payments for defective groceries under a particular loss threshold on all suppliers at the same rate despite variability between suppliers, sometimes referred to as a ‘minor damage allowance’.¹⁷⁹
156. The consequence of these problems is that many suppliers are bearing more risk than they should. Agreements on flat rate payments¹⁸⁰, which charge a percentage of the retail value of a product regardless of whether actual damage has occurred, offer little incentive for the supplier to reduce wastage once the agreement is reached. Rather, the RGRs are disincentivised to minimise wastage they are able to control, with value being lost in the supply chain. Losses from defects caused by this ineffective risk allocation will indirectly be borne by consumers through higher prices. We consider that imposing an absolute prohibition on RGRs recovering payments for groceries becoming unfit for sale while in the RGRs’ control will appropriately rebalance risks between the parties and remove these inefficiencies.
157. We note that the prohibition on wastage payments does not cover situations where groceries are discovered to be defective after falling under the retailers’ control but which became defective prior, eg., where a supplier discovers, after grocery delivery, a food safety issue and notifies the RGR. For these situations, the Code does not prevent separate contractual arrangements being struck – and implemented - that place liability onto the supplier.
158. We note that supplier payments referred to as “minor damage allowances” will not be absolutely prohibited by the code change; rather, only aspects of minor damage allowances that cover defects arising after the groceries fall under the retailers’ control would not be recoverable.

¹⁷⁹ Foodstuffs North Island “Minor Damages Allowance (MDA) Policy” (accessed 29 September 2025), <https://www.foodstuffs-exchange.co.nz/assets/documents/FSNI-docs/Minor-Damage-Allowance-Supplier-Overview.pdf>.
Such as FSNI’s “minor damage allowance”, FSSI’s “vendor ullage” and WWNZ’s “ullage allowance”.

159. Our responses to the submitters' other specific arguments are as follows:

159.1. On the range and innovation limiting argument:

159.1.1. For products that are innovative and carry with them additional risks we note that clause 15(2) of the Code enables a payment to be required as a condition of being a supplier, where this is reasonable having regard to the risks to the retailer in stocking, displaying or listing a grocery product. If there is a genuine risk to the RGR in stocking an innovative new product, then this provision provides a risk allocation mechanism.

159.1.2. In relation to short-dated stock, we consider that this is no different in principle to normal dated stock other than in the timeframe under which it may become defective (and not through a specific action or omission taken by the supplier after it falls under the RGR's control).

160. On the legal remedy argument, we acknowledge that the prohibition removes a contractual right to damages from the supplier, but we consider this removal is justified on the basis that the volume of product becoming damaged while under the RGRs' control through supplier action or omission is likely extremely limited. In our view the loss to the RGRs is sufficiently small to warrant absorption by the RGRs when balanced against the benefits of the prohibition in terms of preventing unfair conduct and promoting certainty. We disagree that the lack of legal remedy would disincentivise suppliers from supplying products that are less likely to become defective: suppliers are keenly aware that product quality is important for consumer and RGR palatability and will remain liable for damaged products that were defective before they were under an RGRs' control.

161. We are not persuaded by the administrative efficiency argument for retention of the carve-out. We consider that the circumstances in which the carve-out apply are so limited that, if the carve-out were being properly applied, the costs involved in recovery would have been administratively straightforward to recover only from the suppliers causing the defects. Further, administrative efficiency would be improved through removal of the carve-out in that it would promote certainty – and reduce disagreements - as to terms between RGRs and suppliers or whether their implementation was correct in the circumstances.

162. Submitters placed considerable weight on the flexibility argument for retention of the carve-out.

162.1. As a general proposition, we agree that enabling freedom to contract on appropriate terms tends to support the confident business participation purpose of the Code (particularly for the RGRs). However, we understand that contrary to the intent of the carve-out, some RGRs are seeking to impose wastage payments covering defective product more widely than permitted by using the carve-out as a default GSA term, and that the suppliers' fear of being delisted prevents them attempting to negotiate. We

do not consider this to be fair conduct, and it undermines certainty about the terms of agreements between RGRs and suppliers.

162.2. We have considered the NZFGC's drafting suggestions regarding inserting additional steps into the carve-out negotiation process to protect suppliers, but our view is that the complexity they would add would detract from certainty and transparency without sufficiently addressing the prospect of unfair wastage claims.

162.3. We consider a clear prohibition on payments for wastage will enable *all* businesses to participate more confidently. Our earlier point that some of the categories of loss treated as wastage permitted by the carve-out are not in fact prohibited (such as defects arising prior to the groceries falling under the RGR's control), and should be dealt with under separate, transparent arrangements, also applies.

163. On the hidden reallocation argument, we acknowledge this risk but draw the industry participants' attention to the Code requirement on RGRs to act in good faith (clause 6), which in our view would prohibit the arbitrary reallocation of wastage payments to some other category of payment. We will exercise our monitoring and investigation powers to determine if wastage that the Code prevents RGRs recovering from suppliers is being transferred to other supplier payments and use our enforcement powers in the event of suspected breaches.

Clause 15 - Payments as a condition of being a supplier

What clause 15 currently requires

164. This clause prohibits an RGR from requiring a supplier to make any payment as a condition of stocking or listing groceries, other than as specifically provided for in the relevant GSA. The circumstances in which an RGR can require payment from a supplier as a condition of stocking or listing groceries are limited to payments made in relation to a promotion (subject to clause 17) and new products (those not stocked in the previous year in more than 25% of the RGRs' stores) (with limitations). The payments must also be reasonable having regard to the costs and risks to the retailer in stocking, displaying or listing the groceries. Finally, if the carve-out is relied on by an RGR then they must give the supplier a clear and full written explanation explaining why it considers these matters are satisfied.

Context and draft decisions

165. Limited feedback was received about this clause. In response to our Request for Views paper Foodstuffs submitted that the ‘carve-out’ in clause 15 is narrow, and that it appears to strike an appropriate balance between certainty for suppliers and fostering competition and innovation.¹⁸¹ In our Draft Report we proposed to amend the Code to include record-keeping requirements for the RGRs, and for the RGR to provide the records to the Commission on request.¹⁸²

Submissions received

166. Foodstuffs North and South Island and Hort NZ indicated they support the proposed change.¹⁸³

Final decision

167. Proceed with the draft decision to add requirements to the Code for retailers to keep records in relation to the use of this provision for seven years and to provide those records to the Commission on request.

Reasons

168. Record-keeping on how the clause is used will provide RGRs with a further incentive to use the provision fairly and better enable the Commission to monitor conduct. This will minimise the risk that suppliers are subject to payments that are unfair. It will also help to promote transparency and certainty about the terms of agreements for suppliers.

Clause 16 - Payments for retailers’ business activities

What Clause 16 currently requires

169. Clause 16 of the current Code prohibits payments for retailers’ business activities which includes:
- 169.1. A buyer’s visit to the supplier;

¹⁸¹ Foodstuffs North and South Island “Submission on Review of Grocery Supply Code Request for Views paper” (16 September 2024) at p. 11, https://www.comcom.govt.nz/assets/pdf_file/0016/362500/Foodstuffs-North-26-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-16-September-2024.pdf.

¹⁸² Commerce Commission “Grocery Supply Code Draft Report Decisions and Reasons” (5 June 2025) at para 3.106, https://www.comcom.govt.nz/assets/pdf_file/0028/366643/Grocery-Supply-Code-Draft-Report-Decisions-and-Reasons-5-June-2025.pdf.

¹⁸³ Foodstuffs North and South Island “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 20, https://www.comcom.govt.nz/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Horticulture New Zealand “Submission on Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at p. 10, https://www.comcom.govt.nz/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

- 169.2. Artwork or packaging design;
 - 169.3. Consumer or market research;
 - 169.4. The opening or refurbishing of a store;
 - 169.5. Hospitality for the retailer's staff;
 - 169.6. Merchandising (for example stock shelves and setting up displays); and
 - 169.7. The transporting of goods between distribution centres and retail stores.
170. Unless:
- 170.1. provided for in a supply agreement;
 - 170.2. the payment is reasonable in the circumstances; and
 - 170.3. the RGR has provided a clear written statement identifying that the GSA provides for the payment and explaining why the RGR considers the payment is reasonable in the circumstances.
 - 170.4. Clause 16(4) states that in determining whether the payment is reasonable, regard must be given to:
 - 170.4.1. The likely benefits to the supplier from the retailer's business activity;
 - 170.4.2. The likely benefits to the retailer of the retailer's business activity; and
 - 170.4.3. The costs borne or contributions made by the retailer for the retailer's business activity.

Context and draft decisions

- 171. Our draft decision was to change this provision, no longer allowing for payments for the activities covered by this clause.
- 172. Based on feedback we had received from a range of stakeholders, we considered that this provision may be being used unfairly given the inherent pressure on suppliers to agree to terms to obtain/maintain ranging.

Submissions received

173. As with clause 14, RGRs and NZFGC submitted their preference to maintain flexibility to agree to these payments where it is mutually beneficial to do so.¹⁸⁴ NZFGC highlighted that some suppliers have negotiated favourable deals which they wish to retain, while others currently are not receiving value for payments made under these clauses.¹⁸⁵
174. Fundamentally, NZFGC believes the flexibility to negotiate should be maintained, and the Code should ensure that RGRs' market power is not used unfairly in reaching these agreements.¹⁸⁶ However, the NZFGC also provided an amended version of clause 16 which would, in their view prevent the RGRs from unfairly requiring suppliers to pay for business activities which are ordinary activities that any retailer must undertake, while allowing flexibility for suppliers to structure their arrangements.¹⁸⁷ The key changes suggested by the NZFGC were¹⁸⁸:
- 174.1. Consider whether additional nuance and definition is needed in the list of retailer business activities in clause 16(2):

¹⁸⁴ New Zealand Food and Grocery Council "Submission on the Grocery Supply Code Review Draft Decisions and Reasons paper" (18 July 2025) at para 4.10, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Foodstuffs "Submission on the Grocery Supply Code Review Draft Decisions and Reasons paper" (18 July 2025) at p. 21, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf;

Woolworths New Zealand "Submission on the Grocery Supply Code Review Draft Decisions and Reasons paper" (18 July 2025) at para 1.2.4, https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁸⁵ New Zealand Food and Grocery Council "Submission on the Grocery Supply Code Review Draft Decisions and Reasons paper" (18 July 2025) at para 4.8, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁸⁶ New Zealand Food and Grocery Council "Submission on the Grocery Supply Code Review Draft Decisions and Reasons paper" (18 July 2025) at para 4.10, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁸⁷ New Zealand Food and Grocery Council "Submission on the Grocery Supply Code Review Draft Decisions and Reasons paper" (18 July 2025) at para 4.22, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁸⁸ The wording of their proposed clause is available at: New Zealand Food and Grocery Council "Submission on the Grocery Supply Code Review Draft Decisions and Reasons paper" (18 July 2025) at para 4.22, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

- 174.1.1. Add a subclause which requires RGRs to not directly or indirectly “require a supplier to undertake or use a particular service, or unreasonably prevent a supplier from undertaking or using a particular service, which, if undertaken by the retailer, would be a retailer’s business activity.
- 174.1.2. Add a subclause which requires the RGRs to not directly or indirectly impose unreasonable standards in respect of services that the supplier may choose to self-supply or outsource.
- 174.1.3. Add a subclause which requires that the supplier notifies the retailer from time to time that it wishes to opt in to the specific activity, and the relevant supply agreement subsequently provides for the payment.
- 174.1.4. Add a subclause which prohibits payments for “base-level” retailer business activities. Including clarification that this does not prevent a retailer imposing reasonable service standards in respect of such services.
- 174.1.5. Add a subclause requiring relevant agreements to outline expressly and unambiguously what the payment is for and the services or benefits that the supplier will receive from the retailer in exchange for the payment.
- 174.1.6. Add a subclause stating that a supplier will not be taken to have notified the retailer that it wishes to opt in to the specific service if the notification is by way of notice provisions or acknowledgements contained in a GSA offered to the supplier and the supplier simply signs and returns the agreement.
- 174.2. Under clause 16(4), add the following (which must be had regard to when considering if the payment is reasonable in the circumstance):
 - 174.2.1. The nature of the supplier’s grocery products.
 - 174.2.2. Whether the activity is one that the supplier could do themselves or engage a third party to do on their behalf, and the supplier has elected not to take that opportunity.
 - 174.2.3. Add a subclause which clarifies that a payment will not be reasonable if it is not linked to a specific activity or service provided to the supplier by the retailer.

175. Hort NZ submitted that there is a lack of genuine choice faced by small and medium-sized suppliers, and the proposed prohibition is essential to restoring fairness, transparency and balance in the supplier-retailer relationship.¹⁸⁹
176. Foodstuffs agrees with NZFGC’s submission that an outright ban on specific types of payments is too blunt an instrument, and that it could increase costs and/or reduce the transparency of supplier payments and investments, remove flexibility for suppliers to reach mutually beneficially arrangements and is unprecedented in other countries.¹⁹⁰
177. Additionally, Foodstuffs’ earlier cross-submission on the Request for Views highlighted Foodstuffs’ view that their merchandising systems are efficient.¹⁹¹ They note that where suppliers feel that Foodstuffs may not have acted in line with the Code regarding payments under clause 16, suppliers are entitled to access the dispute resolution scheme.¹⁹²

Final decision

178. No change to the current Code.

¹⁸⁹ Horticulture New Zealand “Submission on the Grocery Supply Code Review Draft Decisions and Reasons paper” (18 July 2025) at p. 10, https://comcom.govt.nz/_data/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁹⁰ Foodstuffs North and South Island “Cross-submission on the Grocery Supply Code Review Draft Decisions and Reasons paper” (11 August 2025) at p. 2, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

¹⁹¹ Foodstuffs North and South Island “Cross-submission on Grocery Supply Code Request for Views” (11 October 2024) at p. 15, https://comcom.govt.nz/_data/assets/pdf_file/0022/362740/Foodstuffs-North-Island-26-South-Island-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

¹⁹² Foodstuffs North and South Island “Cross-submission on Grocery Supply Code Request for Views” (11 October 2024) at p. 8, https://comcom.govt.nz/_data/assets/pdf_file/0022/362740/Foodstuffs-North-Island-26-South-Island-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

Reasons

179. We heard from a variety of stakeholders that the RGRs are using the carve-out in clause 16 to pressure some suppliers into accepting GSA terms for which they are receiving minimal to no benefit from, primarily with regards to merchandising.¹⁹³
180. However, the NZFGC submits that there are suppliers who receive value from these payments as they have negotiated specific benefits through clause 16, that these suppliers wish to retain these benefits, and that a complete prohibition on payments for retailers' business activities risks unintended consequences.¹⁹⁴ It is not clear to us whether the suppliers NZFGC is referring to include smaller suppliers or whether it is primarily the larger suppliers that see the benefits.
181. We have decided for now not to prohibit these payments, but we will provide guidance, increased compliance monitoring, and enforcement where necessary. This strikes the right balance between increasing certainty and prohibiting unfair conduct at this time, particularly in relation to merchandising payments.
182. We note that WWNZ welcomed the proposal to provide further guidance when consulted on our Draft Report, and that Foodstuffs has highlighted some terms which may need further clarity in clause 16.¹⁹⁵ Our proposal to prohibit retaliation (clause 30) may support suppliers' confidence to participate in and represent their interests in discussions on merchandising payments and mitigate concerns that failure to make such payments may affect ranging decisions.

¹⁹³ Anonymous A "Submission on the Grocery Supply Code Request for Views paper" (5 August 2025) at para 8, https://comcom.govt.nz/_data/assets/pdf_file/0028/362494/Anonymous-A-Submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-5-August-2024.pdf; Anonymous B "Submission on the Grocery Supply Code Request for Views" (12 September 2025) at para 9, https://comcom.govt.nz/_data/assets/pdf_file/0029/362495/Anonymous-B-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-12-September-2024.pdf; Anonymous C "Submission on Grocery Supply Code Request for Views paper" (16 August 2024) at para 6, https://comcom.govt.nz/_data/assets/pdf_file/0030/362496/Anonymous-C-Submission-on-the-Review-of-the-Grocery-Review-Code-Request-for-Views-paper-16-August-2024.pdf.

¹⁹⁴ New Zealand Food and Grocery Council "Submission on Grocery Supply Code Draft Reasons and Decisions paper" (18 July 2025) at para 4.11, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

¹⁹⁵ Woolworths New Zealand "Submission on Grocery Supply Code Draft Reasons and Decisions paper" (18 July 2025) at p. 1, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Foodstuffs North and South Island "Submissions on Grocery Supply Code Draft Reasons and Decisions paper" (18 July 2025) at p. 7, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

183. We will also be actively monitoring the impact of our guidance, compliance and enforcement activities in this area, to continue to assess whether amendments to clause 16 are required. In particular, we will keep under review whether to amend clause 16 to prohibit payments that are not linked to specific activities and require retailers to refund suppliers where they have not completed the relevant activity, as was initially proposed by MBIE during the development of the Code.¹⁹⁶

Clause 17 - Funding promotions

What clause 17 currently requires

184. Clause 17 currently prohibits a retailer from requiring a supplier to fund (including funding by payment in kind) part or all of the costs of a promotion, unless the funding is provided for in the supply agreement and reasonable in the circumstances. An RGR must provide a clear and full written explanation of why it considers the funding reasonable in the circumstances if requested by the supplier.

Context and draft decisions

185. Our draft decision was to add requirements to the Code for retailers to keep records in relation to the use of this clause and provide those records to the Commission on request, and for the Commission to prioritise development of guidance for this clause.
186. We considered that requirements for RGRs to hold records about their use of the ‘carve-out’ clauses, such as clause 17, would provide an additional mechanism to incentivise fair conduct by ensuring the RGRs have properly considered whether they have a reasonable basis for using the carve-outs to the Code’s protections.

Ministry of Business, Innovation and Employment “Regulatory Impact Statement – Grocery Supply Code” (March 2023) at para 102, <https://www.regulation.govt.nz/assets/RIS-Documents/ris-mbie-gscc-mar23.pdf>.

Submissions received

187. Submitters generally agreed that supplier-funded promotional activity had benefits for a competitive grocery market and that it was important that the Code does not outright ban it. For example, Foodstuffs submitted that negotiation and agreement of promotional funding promotes competition in the retail markets for groceries, which leads to lower prices for consumers.¹⁹⁷ NZFGC agreed with the thrust of this submission, stating that if all supplier-funded promotional activity was prohibited under the Code, this would have significant negative implications for suppliers and consumers by removing a key element of the competitive process.¹⁹⁸
188. The main difference in the submissions was over the addition of the record-keeping requirements to the Code. The RGRs did not support the draft decision to add these record-keeping requirements and submitted that this proposal would be costly, unnecessary and administratively burdensome.¹⁹⁹

¹⁹⁷ Foodstuffs North and South Island “Foodstuffs’ Submission in Response to Request for Views” (16 September 2024) at pg. 12 (Schedule 1), https://comcom.govt.nz/_data/assets/pdf_file/0016/362500/Foodstuffs-North-26-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-16-September-2024.pdf.

¹⁹⁸ New Zealand Food and Grocery Council cross-submission “Review of the Grocery Supply Code” (11 October 2024) at para 7.2, https://comcom.govt.nz/_data/assets/pdf_file/0023/362741/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

¹⁹⁹ Woolworths New Zealand cross-submission “Review of Grocery Supply Code draft report” (11 August 2025) at para 14.1–14.2, https://comcom.govt.nz/_data/assets/pdf_file/0035/368828/Woolworths-New-Zealand-Ltd-Cross-submission-on-the-Review-of-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf; Foodstuffs North Island and South Island cross-submission “Review of the Grocery Supply Code draft report” (11 August 2025) at para 16, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

189. By contrast, NZFGC supported the proposed change but considered improvements could be made to ensure consumers and suppliers receive value for their promotional investment.²⁰⁰ NZFGC also said that the Code’s wording should be improved to ensure a direct link between promotional funding and the promotional activity.²⁰¹ NZFGC also submitted that suppliers needing to request a written explanation as to why an RGR’s actions are reasonable in the circumstances was inefficient and likely to lead to suppliers not questioning an RGR’s actions.²⁰² Instead, NZFGC said that RGRs should be required to provide an explanation without the suppliers needing to request it.²⁰³
190. NZFGC also said that the Code’s wording should be improved to ensure a direct link between promotional funding and the promotional activity.²⁰⁴
191. NZFGC reported that retailers have been taking more promotional funding into their net cost arrangements, leading to promotional funding being moved into loyalty card promotions or multibuy, thereby reducing the amount of promotional investment passed directly to all shoppers of their products.²⁰⁵
192. Foodstuffs disagreed with the proposal in its cross-submission, contending that the direct link would constrain the RGRs from providing value to consumers.²⁰⁶

²⁰⁰ New Zealand Food and Grocery Council submission “Review of the Grocery Supply Code draft report” (18 July 2025) at para 4.24–4.25, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²⁰¹ New Zealand Food and Grocery Council “Submission on Grocery Supply Code Review Draft Report Decisions and Reasons paper” (18 July 2026) at para 4.26, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²⁰² New Zealand Food and Grocery Council “Submission on Review of Grocery Supply Code Request for Views paper” (16 September 2024) at para 4.17, https://comcom.govt.nz/_data/assets/pdf_file/0019/362503/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

²⁰³ New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at para 4.26, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²⁰⁴ New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at para 4.26, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²⁰⁵ New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code draft report” (18 July 2025) at para 4.25, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²⁰⁶ Foodstuffs North and South Island “Cross Submission on Review of Grocery Supply Code draft report” (18 July 2025) at p. 8, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

193. Another divergence in views was over the purpose of supplier promotional funding. Woolworths submitted that the practice of supplier promotional funding involves suppliers charging higher upfront invoice prices to retailers, with discounts to achieve an overall lower “net price” provided to retailers through promotional funding.²⁰⁷ Woolworths added that it was not a matter of the RGRs requiring suppliers to provide promotional funding, but rather that it is a practice that benefits and is primarily driven by suppliers. This is because it allows suppliers to control the timing of a retailer’s promotional programme in relation to the supplier’s products.²⁰⁸
194. NZFGC disagreed and said this was not an accurate reflection of the purpose of promotions or how prices are negotiated.²⁰⁹ Instead, NZFGC said, there are many different types of promotional activities, and they are used from time to time for a range of reasons, including encouraging consumers to trial a product, increasing product awareness, and increasing volume during a lower demand period etc.²¹⁰ NZFGC said the issue the Commission should be focusing on in its review is not whether supplier-funded promotional activity should be banned outright, but how best to redress the imbalance of bargaining power that exists between suppliers and the RGRs in negotiations about such promotional activity.²¹¹

Final decision

195. Our final decision is to proceed with the draft decision to require retailers to keep records in relation to the use of this provision and provide those records to the Commission on request.

²⁰⁷ Woolworths New Zealand “Submission on Review of Grocery Supply Code Request for Views paper” (16 September 2024) at para 3.6, https://www.comcom.govt.nz/assets/pdf_file/0023/362507/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

²⁰⁸ Woolworths New Zealand “Submission on Review of Grocery Supply Code Request for Views paper” (16 September 2024) at para 3.6, https://www.comcom.govt.nz/assets/pdf_file/0023/362507/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

²⁰⁹ New Zealand Food and Grocery Council “Cross-Submission on Review of the Grocery Supply Code Request for Views paper” (11 October 2024) at para 7.2, https://comcom.govt.nz/_data/assets/pdf_file/0023/362741/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

²¹⁰ New Zealand Food and Grocery Council “Cross-Submission on Review of the Grocery Supply Code Request for Views paper” (11 October 2024) at para 7.2, https://comcom.govt.nz/_data/assets/pdf_file/0023/362741/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

²¹¹ New Zealand Food and Grocery Council “Cross-Submission on Review of the Grocery Supply Code Request for Views paper” (11 October 2024) at para 7.2, https://comcom.govt.nz/_data/assets/pdf_file/0023/362741/New-Zealand-Food-and-Grocery-Council-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

Reasons

196. While some suppliers may opt for funding agreements within GSAs, we are aware that not all parties may do so.
197. Record-keeping will require RGRs to pay close and case-specific heed to requirements of the carve-out and therefore only apply it in the limited circumstances to which it was intended, rather than to require promotional funding as a default provision in GSAs where the benefits to suppliers are not always clear. The requirement to provide the records to the Commission on request would also make the process of monitoring compliance with this clause more efficient and increase the RGRs' incentives to comply.
198. We support suppliers' contributions towards promotions being applied only where there is direct benefit to the supplier and note that the reasonableness of the clause 17 carve-out requires regard to be had to the likely benefits to the supplier. We have considered the proposed drafting from NZFGC. At this stage there is insufficient evidence to conclude that promotional funding needs be wholly channeled into direct benefit to the supplier or that a particular benefit threshold should be met to meet the purposes of the Code. We nevertheless disagree with Foodstuffs that tightening the scope of the carve-out would prevent retailers offering value to customers, given that retailers can provide value to customers by adjusting their own margin.
199. While we appreciate that there will be some increased administration associated with this provision, we also expect that the retailers would have some existing systems in place to ensure compliance with the Code so the increased administration should not be significantly more burdensome. However, even if the additional burden and compliance cost is substantial, we still consider this requirement warranted.

Clause 18 - Delisting products, clause 19 - Process related to delisting and clause 26 - Product ranging, shelf space allocation, and range reviews

What these clauses currently require

200. A retailer can only delist a product under the terms agreed in the relevant GSA. They must also provide reasonable written notice and genuine commercial reasons for delisting a supplier's product. Delisting as a punishment for a complaint, concern or dispute is prohibited.

Context and draft decisions

201. No change; focus on compliance and enforcement with development of guidance as needed. We are proposing new provisions explicitly prohibiting retaliation.

Submissions received

202. NZFGC submitted that further guidance and criteria needs to be included in the Code relating to range to ensure range reviews are undertaken fairly and transparently.²¹² They noted concerns about the RGRs' use of data in the process that suppliers must pay for, that RGRs use margin as a key metric for ranging decisions, and that RGRs use different metrics across different categories when undertaking range reviews. Amongst other suggestions, they submitted clause 26 should include a requirement that all information used by retailers to make a ranging decision should be available to affected suppliers.²¹³
203. Foodstuffs submitted that the application of the delisting provision as it relates to fresh produce needs to be clarified, as fresh produce is not listed or ranged in the manner currently contemplated by the Code.²¹⁴

Final decision

204. No change: focus on compliance and enforcement and consider the need for guidance on the issues raised by submitters as needed.
205. We are introducing a new provision explicitly prohibiting retaliation.

Reasons

206. The potential for delisting is a substantial concern for suppliers, who often rely on supermarkets as their route to market. We have undertaken an initial monitoring project on the range review process and consider that the current provisions are sufficiently clear and capable of implementation.
207. We disagree that the Code's process requirements for delisting and range reviews are unsuited to fresh produce and that the application to fresh produce needs be clarified. We consider that the requirements can readily be applied to any type of grocery without a need for drafting changes.

²¹² New Zealand Food and Grocery Council "Submission on Grocery Supply Code Draft Report Decisions and Reasons paper" (18 July 2025) at para 8.5, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²¹³ New Zealand Food and Grocery Council "Submission on Grocery Supply Code Review Draft Report Decisions and Reasons paper" (18 July 2025) at para 5.11, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²¹⁴ Foodstuffs North and South Island "Submission on Review of the Grocery Supply Code Draft Report" (18 July 2025) at p. 24, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

- 208. We do not think it is necessary or desirable to require that RGRs use the same metrics for range reviews across different grocery categories. There may be category-specific criteria that are reasonable to apply. We consider that criteria for delisting and range reviews are commercial matters that are currently outside the expertise of the Commission to specify.
- 209. We consider that an RGR's consideration of margin in a range review is a commercial factor which it can appropriately take into account in its ranging decisions. Therefore it would be inappropriate to prohibit reference to this factor in range reviews.
- 210. The use of data to support delisting and range review decisions that is unavailable – or only available at a price – to suppliers is more contentious since it affects a supplier's ability to make the best case for ongoing ranging of its product. However, we have insufficient evidence at this point to determine the extent of this practice, the impact on suppliers and the impact on commercial confidentiality in the RGRs' data.
- 211. Therefore, we will continue work in this area as well as consider the need for guidance on acceptable and unacceptable conduct. We strongly encourage suppliers to report conduct of concern either directly or through the ART.
- 212. We are also imposing new provisions explicitly prohibiting retaliation, which may further protect suppliers against any delisting in retaliation to them exercising rights under the Code.

Clause 20 - Funded promotions (investment buying)

What clause 20 currently requires

- 213. Currently, when ordering stock from a supplier under a funded promotion, a retailer must be transparent about how they calculated the amount of stock to order and agree with the supplier in writing on what happens to unsold stock at the end of the promotion.
- 214. These types of orders can only be cancelled or reduced by more than 10% with a supplier's written consent or reasonable notice or compensation for losses or expenses incurred by the supplier.

Context and draft decisions

- 215. We are aware (subject to Clause 17) that suppliers sometimes contribute funding to a pricing promotion where the product is offered to the consumer at an introductory or reduced price, or another deal such as a "multi-buy", for a specified period of time.
- 216. We are also aware that the agreement can operate in different ways. For example:

- 216.1. Promotions can be run based on scanned volumes, where the supplier compensates the retailer for the cost of the promotion based on the actual volume of sales scanned through the checkout during the promotional period; or
- 216.2. There can be a buy-in period in advance of a promotion, where the retailer purchases stock at a reduced price from the supplier. The retailer then drops its retail price during the promotional period.²¹⁵
217. In the case of a buy-in period, our draft decisions highlighted concerns about the situation that an RGR buys more stock at a promotional price than they are likely to sell during the promotional period and then sell the surplus stock at the non-promotional price after the promotional period ends. This is known as “investment buying” and under the current Code can only occur in agreement with the supplier.
218. We have amended clause 20 to provide that where a retailer buys groceries that are part of a funded promotion at a promotional price and resells any of these groceries at a non-promotional price, it must repay the supplier the portion of the promotional funding relating to those groceries. This largely aligns with the equivalent clause in the Australian Code.²¹⁶

²¹⁵ Commerce Commission, “Market Study into the retail grocery sector” (8 March 2022) at para 8.108, https://www.comcom.govt.nz/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

²¹⁶ Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024, Clause 33(2)(c), <https://www.legislation.gov.au/F2024L01651/latest/text>.

Submissions received

219. Foodstuffs and Woolworths had differing opinions on the draft decision and the benefits of investment buying. Foodstuffs submitted that investment buying enables grocery purchase at the best cost price and ultimately the best retail price for consumers, while Woolworths submitted that they do not engage in investment buying and believe the practice to be inefficient and not in the long-term interests of consumers.²¹⁷ Specifically, Woolworths submitted that investment buying results in unproductive industry overheads because it reduces commercial certainty for suppliers.²¹⁸ Woolworths also submitted that investment buying results in suppliers funding retailers beyond the agreed specific promotional investment, in “lumpy” purchasing patterns and bloated supply chain pipelines, which are harder for suppliers to plan for and bloated supply chains resulting from other RGRs storing excess inventory in their network.²¹⁹ In response, Foodstuffs cross-submitted that existing Code requirements guarantee commercial certainty for suppliers, as under current settings the terms of promotions are agreed in good faith, and retailers agree with suppliers what happens to unsold stock at the conclusion of the promotion.²²⁰ Additionally, Foodstuffs cross-submitted that they do not create “lumpy” purchasing patterns, that promotional activity is commonly driven by suppliers, and that the cost of holding inventory means there is no incentive to hold excess inventory.²²¹

²¹⁷ Woolworths New Zealand “Submission on Review of Grocery Supply Code Draft Decisions and Reasons paper” (18 July 2025) at para 6.1.2, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Foodstuffs North and South Island “Submission on Review of Grocery Supply Code Draft Decisions and Reasons paper” (18 July 2025) at para 21, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²¹⁸ Woolworths New Zealand “Submission on Review of Grocery Supply Code Draft Decisions and Reasons paper” (18 July 2025) at para 6.1.2, https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²¹⁹ Woolworths New Zealand “Submission on Review of Grocery Supply Code Draft Decisions and Reasons paper” (18 July 2025) at para 6.1.2.1-6.1.2.3, https://www.comcom.govt.nz/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²²⁰ Foodstuffs North and South Island “Cross-Submission on Review of Grocery Supply Code Draft Decisions and Reasons paper” (11 August 2025) at para 18, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

²²¹ Foodstuffs North and South Island “Cross-Submission on Review of Grocery Supply Code Draft Decisions and Reasons paper” (11 August 2025) at para 18, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

220. NZFGC supported the intent of the draft decision but raised concerns about how it would work in practice, raising the need for clear definitions and noting that some suppliers benefit from investment buying in some situations, and would like the flexibility to allow for that.²²²

Final decision

221. Amend the clause to require a retailer that sells groceries that are part of a funded promotion at a non-promotional price, to repay the supplier the portion of the promotional funding relating to those groceries.

Reasons

222. We consider that the current approach of providing absolute flexibility to negotiate in advance of a promotion what happens to additional stock not sold during a promotional period is likely to result in benefits for the retailer rather than the supplier and the consumer.
223. We also consider it to likely lead to arrangements which do not provide transparency or certainty to suppliers.
224. During our Market Study into the retail grocery sector, the NZFGC submitted that the level of ‘pass through’ of promotional spend to consumers is “sub-optimal” due to practices such as investment buying.²²³ We note that the only type of promotional investment that our decision would prohibit is when discounts are not passed on to customers.

²²² New Zealand Food and Grocery Council “Submission on Review of the Grocery Supply Code Draft Decisions and Reasons paper” (18 July 2025) at para 5.9, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²²³ New Zealand Food and Grocery Council “Submission on Market Study into Grocery Sector draft report” (26 August 2021) at para 5.10, https://comcom.govt.nz/_data/assets/pdf_file/0022/265801/NZ-Food-and-Grocery-Council-Submission-on-Market-study-into-grocery-sector-draft-report-26-August-2021.pdf.

225. Foodstuffs has claimed that investment buying enables member stores to offer value to customers over a longer period than the specific promotional period.²²⁴ Foodstuffs argues that it is “fundamentally” important that RGRs retain the ability to negotiate and agree on supplier-funded promotional activity, and that this promotes competition in the retail market and lower prices for consumers.²²⁵ Our decision does not prevent promotional activity. We agree that RGRs and suppliers should be able to negotiate fairly and to agree on supplier-funded promotions. However, we consider that extending the duration of promotional periods should not be a unilateral decision for retailers without consideration of the impact on suppliers; rather it should be negotiated between retailers and suppliers applying the requirements of clause 17.²²⁶
226. The current clause was designed to provide suppliers with transparency, clarity and input into the practice of supplier-funded promotions. We are concerned about feedback we have received that FSNi uses standardised commercial agreements to enable investment buying.²²⁷ Examples of FSSI’s template commercial terms also reveal a standardised clause that gives it “sole discretion” over products not sold during the promotional period.²²⁸ Due to the use of standardised clauses to enable investment buying, we do not consider that the current Code has increased transparency, certainty, clarity or input for suppliers on what happens to their product after the promotional term ends, as it was designed to do.²²⁹ The wording of these standardised terms also makes it difficult for suppliers to have transparency and clarity over what happens to their products not sold during the promotional period.

224 Foodstuffs North and South Island “Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons paper” (18 July 2025) at p. 23, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

225 Foodstuffs North and South Island “Submission on Grocery Supply Code Draft Decisions and Reasons paper” (18 July 2025) at para 14, https://comcom.govt.nz/_data/assets/pdf_file/0029/367670/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

226 For example, we note the existence of ‘net cost’ discounts as noted by NZFGC’s submission, and by information provided to the Commission by the RGRs; New Zealand Food and Grocery Council “Submission on Grocery Supply code Draft Decisions and Reasons paper” (18 July 2025) at 2.2((b)(iii), https://www.comcom.govt.nz/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Commerce Commission analysis of industry information.

227 ART submitter one “ART summary submissions on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 4, https://comcom.govt.nz/_data/assets/pdf_file/0036/367668/ART-summary-Submissions-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

228 Information provided to the Commerce Commission by FSSI.

229 Ministry for Business Innovation, and Employment “Grocery Supply Code of Conduct update on consultation and agreement on regulations” (24 August 2023) p. 7, <https://www.mbieg.ovt.nz/dmsdocument/27496-grocery-supply-code-of-conduct-update-on-consultation-and-agreement-on-regulations-proactiverelasee-pdf>.

227. We also note feedback from suppliers on our Wholesale Supply Inquiry regarding the importance of ensuring promotional funding is passed on to consumers. For example, the NZFGC submitted on the Wholesale Supply Inquiry Preliminary Issues Paper that “If the promotional discount provided from the supplier to the retailer is not passed on to consumers, the supplier does not receive the benefits of the promotion and it results in a margin transfer from the supplier to the retailer which discourages such investments and innovation by suppliers.”²³⁰
228. We also note WWNZ’s comment that investment and forward buying results in unproductive industry overheads.²³¹ Foodstuff cross-submitted that RGRs have no incentive to hold excess inventory due to the cost of doing so.²³² We accept that RGRs will generally be incentivised to move inventory and note that the change we are making will not lead to larger inventories than the current level.
229. Furthermore, WWNZ’s use of scan-back technology to track products bought and sold at promotional prices demonstrates that administrative burdens are surmountable.²³³
230. Our decision is also consistent with other key jurisdictions. The practice of investment buying does not occur in Australia and the UK: these jurisdictions require that if a retailer sells any over-ordered promotional product above the promotional resale price, it must pay the supplier the difference between the supplier’s promotional price and the supplier’s full price.²³⁴
231. The change would primarily affect Foodstuffs although it would also prevent WWNZ from jettisoning scan-back or an equivalent tool in the future. The proposal does not mandate Foodstuffs’ adoption of scan-back. Foodstuffs will have the discretion to adopt its own mechanism for reimbursing suppliers for goods bought on promotion but not sold on promotion.

²³⁰ New Zealand Food and Grocery Council “Submission on Wholesale Supply Inquiry Preliminary Issues Paper” (8 November 2024) at para 4.6e, https://comcom.govt.nz/_data/assets/pdf_file/0025/363328/New-Zealand-Food-and-Grocery-Council-Submission-on-Wholesale-Supply-Inquiry-Preliminary-Issues-Paper-8-November-2024.pdf.

²³¹ Woolworths New Zealand “Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 6.1, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²³² Foodstuffs North and South Island “Cross-submission on Grocery Supply Code Draft Report Decisions and Reasons” (11 August 2025) at p. 3, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

²³³ Information provided to the Commission by WWNZ.

²³⁴ Competition and Consumer (Industry Codes – Food and Grocery) Regulations 2024 (Australia), clause 33(2)(c); Groceries Supply Code of Practice 2009 (United Kingdom) s13(2).

232. The NZFGC submitted that some suppliers benefit from investment buying in some circumstances.²³⁵ The nature of this benefit has not been described to us in sufficient particularity to warrant a departure from our position. We note that the change does not restrict suppliers from negotiating promotional funding terms that otherwise meet the requirements of clause 17.

Clause 30 (Retaliation)

What clause 30 currently requires

233. Clause 30 is a proposed new addition to the Grocery Supply Code. The current Code does not include a retaliation clause, although there is some overlap with clause 6 (obligation to deal with suppliers in good faith) which includes as a relevant factor “whether the retailer has not acted in a way that constitutes retaliation against the supplier for past complaints and disputes”.

Context and draft decisions

234. The Australian Code recently added a specific anti-retribution clause to explicitly prohibit retribution against a supplier who has, or has indicated an intention to, exercise a right under the Code.²³⁶
235. Our draft decision was to add anti-retaliation provisions similar to those included in the Australian Code, including placing an evidential burden on the retailers like that in s 7(3) of the Australian Code.

²³⁵ New Zealand Food and Grocery Council “Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 5.9, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²³⁶ Competition and Consumer (Industry Codes – Food and Grocery) Regulations 2024 (Australia), s 7.

Submissions received

236. RGRs argued that the existing provisions relating to good faith and delisting were adequate to protect suppliers against retaliatory conduct.²³⁷ WWNZ submitted a concern that the drafted provision will capture a range of legitimate commercial decisions, and that WWNZ staff would need to develop an “internal industry of record-keeping”, and that the clause would require WWNZ staff documenting “every single supplier interaction.”²³⁸ WWNZ also expressed concern about the reverse evidentiary burden and the clause’s effect on commercial negotiations, including that it may risk unintended consequences, such as suppliers threatening to allege retaliation in response to decisions made for valid commercial reasons.²³⁹ NZFGC submitted on our Request for Views paper stating indirect protection against retaliation (through the Code’s existing good faith obligations) is insufficient.²⁴⁰ In response to WWNZ’s concerns about the administrative burden of the new clause, Hort NZ submitted that a retailer acting fairly, transparently and reasonably should not have difficulty evidencing a genuine commercial rationale for its actions.²⁴¹

²³⁷ Woolworths New Zealand “Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 9.1.2, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Foodstuffs North and South Island “Cross-submission on Review of Grocery Supply Code Draft Report Decisions and Reasons” (11 August 2025) at p. 7, <https://www.comcom.govt.nz/assets/Documents/review-of-the-grocery-supply-code/Foodstuffs-North-Island-and-Foodstuffs-South-Island-Cross-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-11-August-2025.pdf>.

²³⁸ Woolworths New Zealand “Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 9.4.9, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²³⁹ WWNZ “Submission on Grocery Supply Code Review Draft Report Decisions and Reasons paper” (18 July 2025) at para 9.2 & 9.5, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²⁴⁰ New Zealand Food and Grocery Council “Submission on Grocery Supply Code Review Draft Report Request for Views paper” (16 September 2024) at para 4.42, https://www.comcom.govt.nz/assets/pdf_file/0016/362500/Foodstuffs-North-26-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-16-September-2024.pdf.

²⁴¹ Hort NZ “Cross-Submission on Grocery Supply Code Review Draft Report Decisions and Reasons paper” (18 July 2025) p. 5, https://comcom.govt.nz/_data/assets/pdf_file/0031/367672/Horticulture-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

237. WWNZ also submitted that the draft proposed clause captures behaviour that is not ‘truly’ retaliatory, stating the provision should only target RGR behaviour where the RGR actively punishes a supplier for raising a complaint with the RGR or the Commission.²⁴²
238. Anonymous A submitted that the clause should not only protect suppliers looking to exercise rights under the Code, but rights under their GSAs as well, and NZFGC suggested that the scope of the clause should also include retaliation against suppliers who have engaged in the Commission’s regulatory processes more generally.²⁴³
239. We also received submissions in support of the standalone clause from ART submission 3, and Anonymous B.²⁴⁴

Final decision

240. Proceed with the draft decision and extend to actions (or threatened actions) where a supplier has exercised a right under the Code, a GSA, engaged in the Commission’s regulatory processes more generally, or under the dispute resolution scheme referred to in section 151(2) of the Act. We have also amended subclause 6(3)(d) of the Code (“Good faith”) by deleting the words “for past complaints and disputes” to better align it with the definition of “retaliation” in the new retaliation clause.

Reasons

241. Retaliation is unfair conduct and restricts confident participation of businesses in the grocery industry. Due to the serious consequences on suppliers of retaliatory conduct and the imbalance of power between RGRs and suppliers, we consider a prohibition on retaliatory behaviour which places an evidential burden on the retailer to be necessary and desirable.

²⁴² Woolworths New Zealand “Submission on Grocery Supply Code Review Draft Report Decisions and Reasons paper” (18 July 2025) at para 9.3.3, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²⁴³ New Zealand Food and Grocery Council “Submission on Grocery Supply Code Review Draft Report Decisions and Reasons paper” (18 July 2025) at para 5.11, https://comcom.govt.nz/_data/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²⁴⁴ Art submission 3 “ART Summary - Submissions on Review of the Grocery Supply Code Draft Report” (18 July 2025) at p. 4 https://comcom.govt.nz/_data/assets/pdf_file/0036/367668/ART-summary-Submissions-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Anonymous B “Submissions on Review of the Grocery Supply Code Draft Report” (18 July 2025) at p. 1, https://www.comcom.govt.nz/assets/pdf_file/0034/367666/Anonymous-B-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-16-June-2025.pdf.

242. While retaliation is most likely to occur where a supplier exercises rights under the Code it can also occur in response to other rights exercised by suppliers. It is therefore reasonable and desirable to expand the scope of the prohibition to cover more triggers for retaliation, including assertions of rights under GSAs, or engaging with the Commission in the performance of its regulatory functions or under the dispute resolution scheme) and additional types of retaliatory conduct (principally, adding detrimental inaction).
243. We consider that the evidential burden where the RGR must establish that a specific action or inaction was not taken or threatened as a punishment but was for genuine commercial reasons, is also reasonable and desirable in the circumstances. The RGR is in a much better position than a supplier or the Commission to demonstrate the basis for its behaviour where retaliation is alleged. We also do not consider that this evidentiary burden would generally require RGRs to keep more additional information than they should keep for usual business purposes. This evidential burden is also consistent with the position in the Australian Code.
244. We further note that the evidential burden will only arise where the criteria for retaliation are already established, ie, the supplier must have exercised, or indicated that it will or may exercise, a right against the retailer, and the retailer's action must have caused, or would cause, detriment to the supplier.

Issues outside our current powers

Alcohol

245. The Request for Views and submissions process both yielded submissions suggesting that protections under the Code be extended to suppliers of alcohol.²⁴⁵
246. Submissions claimed that alcohol suppliers are subject to the same power imbalances when supplying RGRs as other suppliers, but have less protection under the Code, leaving them more vulnerable to harm.²⁴⁶

²⁴⁵ Brewers Association of New Zealand submission, "Request for views on issues and opportunities to consider within the review" (16 September 2024) at p. 2, https://www.comcom.govt.nz/assets/pdf_file/0033/362499/Brewers-Association-of-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf; New Zealand Winegrowers submission, "Request for views on issues and opportunities to consider within the review" (16 September 2024) at p. 2, https://www.comcom.govt.nz/assets/pdf_file/0021/362505/New-Zealand-Winegrowers-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

²⁴⁶ New Zealand Winegrowers "Submission on Review of the Grocery Supply Code Request for Views paper" (16 September 2024) at p. 2, https://comcom.govt.nz/_data/assets/pdf_file/0021/362505/New-Zealand-Winegrowers-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

247. However, the definition of “groceries” under the Act does not currently include alcohol therefore inclusion of alcohol would require legislative change and is a matter for Parliament.²⁴⁷

Supplier obligations

248. Issues were raised by WWNZ, Foodstuffs and Anonymous D (submitting on the Request for Views paper) and Edgecumbe supermarket regarding the conduct of large suppliers.²⁴⁸ Although the Commission does not have the power to introduce obligations for suppliers under the Code, actions of the supplier are relevant under clause 6(3)(i), when determining whether the RGR is operating in good faith.
249. WWNZ has submitted its disagreement with the Commission’s position that we do not have the power to amend the Code to impose obligations on suppliers, and that we should amend the Code to impose good faith obligations on large suppliers.²⁴⁹
250. WWNZ asserts that the Commission is empowered to amend the Code to require suppliers to act in good faith towards RGRs by section 17 of the Act, which states that the Code “may contain any provisions that are necessary or desirable to promote the purpose”, with section 17(a)(iii) specifically stating that can include regulating or prohibiting “any conduct in connection with a regulated grocery retailer...otherwise dealing with a supplier (or vice versa)”.²⁵⁰

²⁴⁷ Groceries is defined in s5 of The Act.

²⁴⁸ Woolworths New Zealand “Submission on Grocery Supply Code Review Request for Views paper” (18 July 2025) at para 3.7, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf; Foodstuffs North and South Island “Submission on Grocery Supply Code Review Request for Views paper” (18 July 2025) p. 13 https://comcom.govt.nz/_data/assets/pdf_file/0035/367973/Foodstuffs-North-Island-26-Foodstuffs-South-Island-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-HoustonKemp-Review-of-proposed-amendments-to-Grocery-Supply-Code-18-July-2025.pdf; Anonymous D “Submission on Review of the Grocery Supply Code Request for Views paper” (9 September 2024) at p. 1, https://comcom.govt.nz/_data/assets/pdf_file/0031/362497/Anonymous-D-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-9-September-2024.pdf; Edgecumbe Supermarket Ltd “Cross-submission on Review of Grocery Supply Code Request for Views” (11 October 2024) p. 1, https://comcom.govt.nz/_data/assets/pdf_file/0030/362739/Edgecumbe-Supermarket-Ltd-Cross-submission-on-Review-of-Grocery-Supply-Code-Request-for-Views-paper-11-October-2024.pdf.

²⁴⁹ Woolworths New Zealand “Submission on Review of the Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 3.7, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²⁵⁰ Woolworths New Zealand “Submission on Review of Grocery Supply Code Draft Report Decisions and Reasons” (18 July 2025) at para 3.7, https://comcom.govt.nz/_data/assets/pdf_file/0035/367676/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

251. We disagree with WWNZ’s submission that section 17 allows the Commission to impose a good faith obligation on suppliers. As NZFGC has identified in its submission, section 12(1)(a) of the Act only empowers the Commission to impose duties on RGRs and/or their related parties.²⁵¹
252. The RGRs’ suggestion that suppliers should be required to act in good faith was made during the development of the Code but this was not a recommendation put forward by MBIE.²⁵² If it had been intended that the Commission be able to impose duties on suppliers under the Code, as is suggested by WWNZ, then this would be explicitly reflected in the Act as it is in relation to the Wholesale Code, which requires wholesale customers to comply with a Wholesale Code if one is put in place.²⁵³ Adjusting the Commission’s powers to include supplier obligations within the scope of the Code is a matter for Parliament.

²⁵¹ New Zealand Food and Grocery Council “Cross-submission on Review of Grocery Supply Code Draft Decisions and Reasons paper” (11 August 2025) at para 2.3,

https://www.comcom.govt.nz/assets/pdf_file/0033/367674/New-Zealand-Food-26-Grocery-Council-Submission-on-Review-of-the-Grocery-Supply-Code-Draft-Report-18-July-2025.pdf.

²⁵² Ministry of Business, Innovation and Employment “Regulatory Impact Statement: Grocery Supply Code of Conduct Requirements” (29 March 2023) at para 53,

<https://www.regulation.govt.nz/assets/RIS-Documents/ris-mbie-gscc-mar23.pdf>.

²⁵³ Section 77 of the Act.

Attachment A - Legal framework for the Grocery Supply Code review and determination

Purpose of this Attachment

- A1. The current version of the Grocery Supply Code (**Code**) was introduced by the Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2023 and came into force on 28 September 2023.
- A2. The Commission is currently reviewing has reviewed the Code and has made a determination to amend it.
- A3. Attachment A sets out the framework under the Grocery Industry Competition Act 2023 (the Act) that we have applied when carrying out the review and making the final determination that proposes amendments to the Code.

The Grocery Supply Code Review

- A4. Section 20(1) provides that the Commission must:
 - A4.1. complete a first review of the Code within two years after the date on which it came into force; and
 - A4.2. give the Minister a report on that review as soon as practicable after completing it.
- A5. The Commission must therefore complete the first Code review by 28 September 2025.
- A6. Section 20(4) sets out the purpose of the review which is to:
 - A6.1. assess the operation and effectiveness of the Code; and
 - A6.2. assess whether the Code should be amended, revoked, or replaced.

Making a determination to amend, revoke, or replace the Grocery Supply Code

Power to make a determination

- A7. Section 12(1)(a) empowers the Commission to make a determination setting out a Code, which may apply to and impose duties on either:

- A7.1. all regulated grocery retailers (RGRs)²⁵⁴ or related parties²⁵⁵ referred to in section 18; or
- A7.2. a class of RGRs or related parties.
- A8. Section 12(1)(b) also empowers the Commission to provide for disapplication (in certain circumstances and on terms and conditions (if any) that the Commission thinks fit)²⁵⁶ of any Code set out in a determination under section 12(1)(a) by:
 - A8.1. exempting a specified RGR or related party, or class of RGRs or related parties, from any provision or provisions of the Code; and/or
 - A8.2. providing that the trading relationships of a specified supplier or class of suppliers are not covered (in whole or in part) by any provision or provisions of the Code.
- A9. We are not providing for any disapplications in our final determination.
- A10. The first Code was made by the Governor-General, by Order in Council made on the recommendation of the Minister, in accordance with clause 4 of Schedule 1 of the Act. Under clause 5 of Schedule 1, the first Code made under clause 4 is revoked as soon as a determination made by the Commission under section 12(1)(a) comes into force.
- A11. It follows that our determination this will involves a revocation of the first Code.

Process to make a determination

- A12. Section 13 provides that the Commission may use any process that it considers appropriate to develop a determination under section 12.
- A13. However, we must:
 - A13.1. publish a final determination;
 - A13.2. publish a statement of our reasons for proposing to make a determination; and
 - A13.3. consult persons, or representatives of the persons that will be substantially affected by the determination.

²⁵⁴ Defined in section 8 of the Act and clause 6 of the Grocery Industry Competition Regulations 2023.

²⁵⁵ Defined in section 18 of the Act.

²⁵⁶ Section 15.

- A14. The consultation about a determination that sets out a Code must include consultation about a final code and the matters referred to in section 196(1)(e) (which relates to the level of pecuniary penalty for contraventions of the Grocery Supply Code).
- A15. These requirements apply to any determination made by the Commission under Part 2, including any amendments to the Code, other than in limited circumstances.²⁵⁷

Mandatory considerations for the review and the determination

- A16. We must take into account the purpose of the Code in section 16 and the purpose of the Act when carrying out the review and making our determination.
- A17. The overall purpose of the Act in section 3 is to promote competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand.
- A18. Section 16 of the Act provides that the purpose of the Code is to promote the overall purpose of the Act by:
- A18.1. promoting fair conduct, and prohibiting unfair conduct, between RGRs, the related parties referred to in section 18, and suppliers;
 - A18.2. promoting transparency and certainty about the terms of agreements between RGRs, the related parties referred to in section 18, and suppliers; and
 - A18.3. contributing to a trading environment in the grocery industry:
 - A18.3.1. in which businesses compete effectively, and consumers and businesses participate confidently; and
 - A18.3.2. that includes a diverse range of suppliers.
- A19. The Act implicitly recognises that the overall purpose of the Act will be promoted where the section 16 purposes are promoted. Accordingly, provided our decisions are consistent with and promote the section 16 purpose, the overall purpose of the Act will be promoted.

Content of the Grocery Supply Code

- A20. Section 17 sets out the matters that may be included in a Code.
- A21. The Code may contain any provisions that are necessary or desirable to promote the purpose of the Code in connection with the supply of groceries.

²⁵⁷ Section 14 lists a number of exceptions to the requirements in paragraphs A13 and A14, but they do not apply in the circumstances of this determination.

- A22. That may include, but is not limited to, provisions to:
- A22.1. regulate or prohibit any conduct in connection with a regulated grocery retailer:
 - A22.1.1. entering into or arriving at an agreement with a supplier;
 - A22.1.2. exercising a right or power, or complying with an obligation, under a supply agreement (whether the right, power, or obligation is exercised or complied with by a regulated grocery retailer or a supplier); or
 - A22.1.3. otherwise dealing with a supplier (or vice versa);
 - A22.2. specify any requirements about the content or form of a supply agreement, including:
 - A22.2.1. what terms or conditions must be included in the agreement, what terms or conditions must not be included and what terms or conditions may only be included if certain requirements are met; and
 - A22.2.2. how the terms or conditions of the agreement are expressed;
 - A22.3. regulate or prohibit any conduct in connection with a regulated grocery retailer supplying groceries acquired under a supply agreement to a consumer (for example, in connection with shelf space allocation or in connection with marketing or otherwise promoting the groceries supplied under that agreement to consumers);
 - A22.4. regulate or prohibit any other conduct, or specify any other requirements, in connection with the supply of groceries under a supply agreement; and
 - A22.5. prescribe modifications or other matters for the purposes of clause 1 of Schedule 1 (which relates to the application of the Code (and other secondary legislation) to existing agreements).
- A23. The Code may also contain any provisions that are necessary or desirable to promote the purpose of the Act in connection with the conduct, agreements, and relationships of a related party of an RGR in relation to suppliers and the supply of groceries to the RGR.²⁵⁸
- A24. Therefore the Commission has broad power to impose duties on RGRs and related parties in a Code, provided doing so is either necessary or desirable to promote the Code's purpose in connection with the supply of groceries and the purpose of the Act, and the Commission has complied with the procedural requirements in the Act.

²⁵⁸

Section 18(2) and (3).