PUBLIC VERSION

ISBN 978-1-991414-16-8
25.04/PRJ0047511

Review of the Grocery Supply Code

Final Report, Decisions and Reasons

Executive summary

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

Implementation dates for new Code		
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.
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.