

MEMBER BRIEF

The Food and Grocery Code of Conduct: What Happens on 1 July?

Background

On 1 July 2015, both Woolworths and Coles notified the Australian Competition and Consumer Commission (ACCC)

of their agreement to be bound by the Food and Grocery Code of Conduct (FGCC). The FGCC provides a 12 month transition period for retailers who agree to be bound by the Code, which for these two retailers will come to an end on 1 July 2016. About Life (a Sydney-based retailer) and Aldi both signed up to the Code earlier, so the 12 month implementation timeframe has already passed for these retailers. Clause 5 of the Code deals with the transition period.

It provides –

- Within 6 months of agreeing to be bound by the FGCC, a retailer must offer in writing to vary grocery supply agreements (GSAs) so that they comply with the Code – both Woolworths and Coles made such offers in the second half of 2015 and so met this obligation.
- Where a supplier accepts the offered variation (including an amended offer after negotiation), the GSA must be amended within 6 months of the date of acceptance.
- Parts 2, 3 and 5 of the FGCC only apply to a retailer – supplier relationship once the GSA is varied, or after 12 months from the retailer agreeing to be bound by the Code.

Must I have a new GSA in place by 1 July?

No. There is some confusion that a GSA refers only to the new ‘Code compliant’ arrangement contemplated in clause 5, but in fact the term refers to any agreement for the supply of food or groceries for the purposes of a supermarket business. All existing supply agreements are GSA’s and there is nothing in clause 5 that requires a new ‘Code compliant’ GSA to be in place by 1 July.

There is also some confusion about the second of the 6 month transition periods mentioned in clause 5. The provision does not require a new agreement to be in place within 6 months of being **offered**, it requires it to be in place no later than 6 months after being **accepted**. The FGCC does not place any time limit on the negotiation period between offer and acceptance.

So what changes from 1 July?

In short, Woolworths and Coles are fully bound by the Code even if a new 'Code compliant' GSA has not been agreed between a supplier and the retailer. This means that from 1 July, –

- Unilateral and retrospective changes can only be made in the circumstances set out in clauses 9 and 10 of the Code respectively;
- Payments to suppliers must be made in accordance with clause 12, including the prohibition against set-off without consent;
- Payments for shrinkage are prohibited, and payments for wastage, being a supplier, better shelf positioning, retailer activities and promotions are all constrained as set out in clauses 14-18 of the Code;
- Products may only be de-listed in the circumstances specified in clause 19, and unjustified threats of business disruption are prohibited (see clause 23);
- Funded promotions must be conducted as specified in clause 20;
- Changes to supply chain procedures and shelf space allocation are constrained as specified in clauses 22 and 26 respectively;
- Confidential information and IP are protected as set out in clauses 24, 25 and 27;
- Standards and specifications for fresh products must be specified, and time limits are specified for the rejection of fresh products (see clause 21); and
- The dispute resolution procedures in Part 5 of the Code (escalation, reference to Code Compliance Manager, mediation and arbitration) come into full effect.

Again, these protections apply from 1 July even if you do not have a new 'Code compliant' GSA in place.

So do I keep on working on my new GSA?

Absolutely. The protections that come into effect on 1 July are important, but they do not deal with the specifics of your supply deal with a retailer. This can only be done through a GSA. The introduction of the Code and the offer of new, negotiable Code compliant GSAs is an opportunity to negotiate changes to terms. A new GSA, for example, may include product specific annexes that detail how the supply agreements apply in particular cases, or include specific details on payments and rebates for particular products. The point is that, on signing the new GSA, you know what the deal is for the term of the contract and that you and the retailer will abide by that deal.

What about Aldi and About Life?

The 12 month transition period has already expired, and so the list of protections above are already in place in relation to these two suppliers.

Where can I go for more information?




The ACCC has a web page on the Code [here](#). Remember you will need to log in to access the member only materials.

The AFGC offers member support on Code issues, if you wish to raise an issue or provide information to the AFGC in relation to a potential Code infringement, you can:

- Email to code@afgc.org.au
- Post to AFGC, Level 2, 2-4 Brisbane Ave, Barton ACT 2600
- Fax on 02 6273 1477
- Or contact AFGC on 02 6273 1466

Training on the Code is available from the AFGC's training partner NextGen. Details are [here](#).

Retailers have Code Compliance Managers if you wish to raise concerns.

	<p>Marnee Nugent Grocery Code Compliance Manager 03 9829 3843 grocerycodecompliance@coles.com.au</p>
	<p>Alan Fagerland Code Compliance Manager 02 8885 2781 codecompliance@woolworths.com.au</p>
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