

Food and Grocery Code of Conduct – 2015 to 2020 comparison



2015 Code	Clause		2020 Code
	1	Name	
	2	Commencement	
	3	Authority	
	4	Code of conduct	Expectation that retailers and wholesalers with an annual revenue of \$5bn or 5% market share should be bound by the code.
Review of the operation of the Code after 3 years with elements the review must cover	5	Reviews	<ul style="list-style-type: none"> Review of Part 5 of Code after 2 years Review the operation of the Code after 3 years
Schedule 1 – Food and Grocery Code of Conduct			
Part 1 – Preliminary			
	1	Name	
	2	Purpose of code	
	3	Definitions	New or revised definitions: <i>Code Arbiter</i> <i>Code compliance manager</i> <i>delist</i> <i>grocery supply agreement</i> <i>Independent Reviewer</i> <i>independent review request</i> <i>original complaint</i> <i>proposed remedy</i> <i>own brand product</i> <i>promotion</i> <i>shrinkage</i> <i>supplier</i>
	4	When this code applies	Removes 4(1) Note 1

Legend:

No change to the provision

Minor change

Code provision added

Code provision removed

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2015 Code	Clause	2020 Code
	5 Transitional application – retailers	5(4) removes reference to Part 5
6(2) within 18 months of being bound, the wholesaler must offer to vary the agreement so it conforms	6 Transitional application - wholesalers	6(2) within 6 months of being bound, the wholesaler must offer to vary the agreement so it conforms
6(4)(b) application of Parts 2, 3 and 6 being 24 months after the wholesaler is bound by the code.		6(4) removes reference to Part 5
		6(4)(b) application of Parts 2, 3 and 6 being 12 months after the wholesaler is bound by the code.
	6A Transitional application – Part 5 of this code	Retailers or wholesale must appoint a Code Arbiter within 2 months
Part 1A – Good faith		
<i>Previous clause 28</i> Retailer or wholesaler must at all times deal with suppliers lawfully and in good faith within the meaning of the unwritten law	6B Obligation to deal with suppliers lawfully and in good faith	Retailer or wholesaler must at all times deal with suppliers lawfully and in good faith within the meaning of the unwritten law
		6B(3) guiding principles for determining whether a retailer or wholesaler has acted in good faith
Part 2 – Grocery supply agreements		
	7 Grocery supply agreement must be in writing and retained	
	8 Matters to be covered by agreement	
	9 Unilateral variation of agreement	
	10 Retrospective variation of agreement	No ability to opt out of ban on retrospective variations 10(2), (3), (4), (5) and (6) removed
Part 3 – Conduct generally		
This Part does not apply to a corporation that is bound by this code as a wholesaler.	11 Application of this Part	This Part does not apply in relation to supplies to a retailer by a wholesaler.

Legend:

No change to the provision

Minor change

Code provision added

Code provision removed

2015 Code	Clause	2020 Code
	12 Payments to suppliers	Extension to wholesalers
	13 Payments for shrinkage	Extension to wholesalers
	14 Payments for wastage	Extension to wholesalers 14(4) introduced to enable suppliers to open negotiations around wastage payments without being required to enter into negotiations on other matters.
	15 Payments as a condition of being a supplier	Extension to wholesalers
	16 Payments for better positioning of groceries	Title changed to Payments for better positioning of groceries – retailers
	17 Payments for retailer’s or wholesaler’s business activities	Extension to wholesalers Clause (1) redrafted to (1) and (1A) to expand the application to <i>any activity that is undertaken by the retailer or wholesaler in the ordinary course of carrying on a business as a retailer or wholesaler.</i>
	18 Funding promotions	Extension to wholesalers
	19 Delisting	Extension to wholesalers 19(1A) introduced to define delists to include a reduction in distribution that has a material effect on the supplier. 19(5) and (6A) redrafted to allow suppliers to ask for additional information explaining a delisting
	20 Funded promotions	Extension to wholesalers 20(3)(b) an order related to a funded promotion cannot be reduced by more than 10% by retailers (<i>existing</i>) and 20% by wholesalers (<i>new</i>) without written consent by the supplier.

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2015 Code	Clause	2020 Code
	21 Fresh produce standards and quality specifications	Extension to wholesalers 21(1A) clearly limits clause 21 to fresh fruit and vegetables.
	22 Changes to supply chain procedures	Extension to wholesalers
	23 Business disruption	Extension to wholesalers
	24 Intellectual property rights	Extension to wholesalers
	25 Confidential information	Extension to wholesalers
Allocation of shelf space	26 Product ranging, shelf space allocation and range reviews	Change of title Extension to and clarification for wholesalers
	27 Transfer of intellectual property rights	Extension to wholesalers
	27A Price increases	Price increases should be concluded within 30 days. If a negotiation goes beyond 30 days, the retailer or wholesaler must conclude the negotiation without delay. The retailer or wholesaler cannot require a supplier to disclose commercial sensitive information.
	27B Information about price increases	The retailer or wholesaler must report on the number of price increases received and the negotiations that took longer than 30 days.
Moved to clause 6A	28 Obligation to deal lawfully and in good faith	
Part 4		
	29 Freedom of association	
	30 Provision of contact details	Reference to code compliance manager changed to Code Arbiter
Part 5 – Dispute resolution		
Information and documents	31	Retailer or wholesaler must appoint a Code Arbiter
Code compliance manager	32	Who can be appointed Code Arbiter

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Referral of complaints	33	Function of the Code Arbiter
Immediate elevation of complaint	34	Referral of complaints to Code Arbiter
Investigation by code compliance manager	35	Investigation by Code Arbiter
Action following investigation	36	Determination by Code Arbiter of proposed remedy
	36A	Acceptance by supplier of proposed remedy
	36B	Reconsideration by Code Arbiter
	36C	Records to be kept by Code Arbiter
	36D	Report by Code Arbiter
Internal review	37	Minister to appoint an Independent Reviewer
	37A	Functions of the Independent Reviewer
	37B	Supplier may request an independent review of Code Arbiter's process
	37C	Independent Reviewer's discretion to conduct an independent review
	37D	The independent review
	37E	Annual report
	37F	Annual survey
	38	Supplier may seek mediation or arbitration
	39	Conduct of mediation and arbitration
Part 6 – Compliance		
	40	Duty to train staff with respect to this code
Removed	41	Reports by code compliance managers
	42	Keeping records
Part 7 – Application, saving and transitional provisions		

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2015 Code	Clause	2020 Code
	43 Definitions	
	44 Application – clause 6 of new code	
	45 Application – clause 6A of new code	
	46 Application – wholesalers bound by old code	
	47 Application – retailers bound by old code	
	48 Application – retrospective variation of grocery supply agreements	
	49 Application – payments for wastage	
	50 Appointment of Code Arbiter (no code compliance manager)	
	51 Transition from code compliance manager to Code Arbiter	
	52 Code compliance managers' obligations	
	53 Retailer's or wholesaler's obligations	
	54 Code Arbiter's report	
	55 Independent Reviewer's annual report	
	56 Independent Reviewer's annual survey	

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