

FOOD & GROCERY CODE OF CONDUCT

AN OVERVIEW OF FGCC 2025: KEY FEATURES AND SIGNIFICANT CHANGES

OVERVIEW

This guidance document provides an overview of the updated Food and Grocery Code (2024) and explains the key features and the significant changes.

The FGCC is a mandatory code - Competition and Consumer (Industry Codes - Food and Grocery) Regulation 2024 - it applies to large grocery business (LGBs) - retailers and wholesalers - with an annual turnover greater than \$5 billion. Currently Aldi, Coles, Metcash and Woolworths are directed to comply.

The updated FGCC comes into effect **1 April 2025**.

FGCC PURPOSE

The FGCC is intended to:

- » Regulate the standards of business conduct in the grocery supply chain to build trust and cooperation
- » Ensure transparency and certainty in commercial transactions to minimise disputes
- » Provide effective, fair and equitable dispute resolution processes
- » Promote and support good faith in commercial dealings
- » Encourage suppliers to exercise their rights, including by
 - » Making reasonable requests of LGB
 - » Referring legitimate complaints against LGB
 - » Seeking resolution to complaints with LGB
- » Protect suppliers from retribution
- » Provide senior management oversight into interactions with suppliers

WHO IS COVERED

The FGCC covers LGB's dealings with anyone supplying them with groceries or actively seeking to supply them. Grocery products are defined in the regulation as goods in any of these product categories:

- » Fresh produce (fruit, vegetables and mushrooms)
- » Food
- » Non-alcoholic drinks
- » Household products including electrical appliances, kitchenware and cleaning products
- » Personal care products including toiletries, cosmetics, first aid product and medicine (other than prescriptions medicines)
- » Stationary products, magazines and newspapers
- » Tobacco and tobacco products
- » Pet food and pet care products
- » Plants, flowers and gardening products

Does not include:

- » Food and non-alcoholic drinks sold for consumption in-store
- » Alcoholic drinks



WHAT IS COVERED

| The Code requires the following behaviours by LGBs: | |
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| Act in good faith Clause 16 | LGBs are required to act in good faith when dealing with suppliers. |
| Grocery Supply Agreements Clause 18 | A grocery supply agreement (GSA) must be in writing, it must include delivery requirements, circumstances in which product can be rejected, payment period, any agreement on payment 'set off', term of the agreement (if there is one), quality and quantity requirements, termination circumstances. Fresh produce agreements must include the method for calculating price and provide for due care in forecasting. GSAs must be kept by LGB for six years. GSA refers to ANY agreement between the supplier and LGB. |
| Paying suppliers Clause 22 | Payments to be made within the timeframes set out in the agreement. |
| Supplier payments Clause 23- 27 | Payments for shrinkage are not permitted. Unless the GSA provides for it the following payments are not permitted: <ul style="list-style-type: none"> » Wastage » Stocking or listing products » Better positioning of products » LGB's costs and activities e.g. buying team site visits » Promotions |
| Incentive schemes Clause 29 | LGB incentive schemes must be consistent with the Codes purpose and obligation |
| Retribution Clause 30-31 | LGBs must not engage in retribution and must have appropriate policies and procedures to protect suppliers. |
| Delisting Clause 32 | A LGBs can only delist a product under the terms agreed in GSA and for genuine commercial reasons. They must provide reasonable notice and inform the supplier of their rights to review. |
| Supply chain Clause 35 | No material change to supply chain procedures without reasonable written notice. |
| Intellectual property rights Clause 36 | LGBs must respect their suppliers' intellectual property rights and not infringe on these in developing private label products |
| Confidential information Clause 38 | LGBs should only use suppliers' confidential information (e.g. product development, proposed promotions, pricing) for the purpose that it is provided, and have systems in place to manage access to that information. |
| Product ranging, shelf space allocation and range reviews Clause 39 | LGBs must make their product ranging and shelf space allocation principles available to suppliers (e.g. by publishing them) and follow those principles. LGBs cannot discriminate in favour of their private labels when applying their product ranging and shelf space allocation principles. Prior to a range review LGBs must provide details to the supplier, following they must provide an opportunity to discuss any impacted product. |
| Price increases Clause 40 | LGBs must respond to being informed of price increase requests from suppliers within 30 days, they must not require the supplier to provide commercially sensitive information. Must enter into negotiations in good faith. Special rules apply in relation to fresh produce |
| Oversight by senior managers Clause 43 | Must appoint a senior manager to oversee supplier interactions. |



WHAT IS PROHIBITED / EXCEPTIONS

| Prohibited behaviours | | Prohibited behaviours with exceptions Referred to as allowable contrary provisions | |
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| <i>The FGCC prohibits some behaviours completely</i> | | <i>Some behaviours are allowable contrary provisions.</i> | |
| Retrospective variation to agreements Clause 21 | LGBs cannot vary supplier agreements with retrospective effect. | Unilateral variations Clause 20 | They must be: <ul style="list-style-type: none"> » In accordance with the GSA » Reasonable in the circumstances » Give regard to the benefits, costs and risks for the supplier and LGB. » Supplier is given reasonable notice, in writing, of the variation, the circumstances and the reason. » Give regard to the benefits, costs and risks for the supplier and LGB. |
| Payments for shrinkage Clause 23 | LGBs cannot require suppliers to pay for shrinkage (the loss of grocery products due to theft or accounting error) | Payments to suppliers Clause 22 | |
| Retribution Clause 30 | LGBs must not engage in retribution. | Payments for waste Clause 24 | |
| Transfer of intellectual property rights Clause 37 | LGBs must not require suppliers to transfer or exclusively license intellectual property as a condition of supplying an equivalent private label product | Payments as a condition of being a supplier Clause 25 | |
| Freedom of Association Clause 42 | LGBs cannot discriminate, or take any action, against suppliers for forming an association or lawfully associating. | Payments for better positioning of grocery products Clause 26 | |
| | | Payments for ordinary business activities. Clause 27 | |
| | | Funding promotions Clause 28 | |

DISPUTE RESOLUTION PROCESSES

The dispute resolution processes have been updated, providing you with multiple pathways to raising and resolving issues. Raise an issue with:

- » LGB directly, escalating within the commercial arm of the business or using their complaints processes.
- » Retail Code Mediator (previously Code Arbiter) either formally or informally.
- » Alternate dispute resolution for mediation or arbitration, utilising the ASBEFEO list of accredited practitioners.
- » ACCC
- » Legal avenues

The AFGC encourages ALL members to contact us directly via our confidential advice line to discuss ALL FGCC related issues.



BREACHING THE FGCC

There are significant penalties for breaches of the FGCC, impacting both LGB's corporates and individuals. It is a two-tiered approach, with each penalty reflecting the potential seriousness of the contravention:

- » The greater of \$10M, or 3 times the benefit gained, or 10% of turnover for a body corporate OR \$500,000 for an individual. This applies to:
 - » Good faith
 - » GSAs
 - » Incentive schemes
 - » Retribution
 - » Training
 - » Industry associations

- » Penalty units for other Code provisions, 3200 units (approximately \$1M) for a body corporate or 640 units (approximately \$200,000) for an individual.
 - » As stipulated in the FGCC

NB: The Australian Competition and Consumer Commission can issue infringement notices where it has reasonable grounds to believe a LGB's has breached the FGCC. These are 600 penalty units (currently \$187,800)

NB: There are no penalties applied to suppliers.

If you think someone has breached the FGCC get in touch with the Australian Competition and Consumer Commission.

HOTLINE DETAILS

CODES@AFGC.ORG.AU

(02) 6273 1466

STAY IN TOUCH WITH US

We encourage you to get in touch to share your experiences with the FGCC. You can contact the AFGC team at email or via telephone. The AFGC can provide support, knowledge and insights, please note we always maintain strict privacy and confidentiality protocols.



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