



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

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I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated

12 December 2024

Sam Mostyn AC  
Governor-General

By Her Excellency's Command

Dr Andrew Leigh  
Assistant Minister for Competition, Charities and Treasury  
Parliamentary Secretary to the Treasurer

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## Part 1—Preliminary

### Division 1—Preliminary

#### 1 Name

This instrument is the *Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024*.

#### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 April 2025.	1 April 2025

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

#### 3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

#### 4 Simplified outline of this instrument

This instrument prescribes a mandatory industry code relating to the food and grocery industry.

This Code regulates the conduct of large grocery businesses towards their suppliers, including by providing:

- (a) that they must deal with suppliers lawfully and in good faith; and
- (b) that certain things must be included in grocery supply agreements; and
- (c) how grocery supply agreements may be varied; and
- (d) when payments may be required from suppliers for certain benefits and activities; and

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- (e) how they must communicate any requirements, standards or quality specifications for grocery products; and
  - (f) protections for suppliers against retribution; and
  - (g) certain additional protections for suppliers who supply fresh produce.

This Code also provides for the resolution of disputes. Grocery supply agreements must provide for mediation to resolve disputes between large grocery businesses and suppliers and may provide for arbitration.

A large grocery business must appoint a Code Mediator to deal with complaints against the business, and to handle disputes between the business and suppliers.

The Minister must appoint a Code Supervisor to review activities undertaken by Code Mediators and to provide an overview of issues relating to this Code.

Large grocery businesses may be liable to a civil penalty for conduct that contravenes this Code.



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## Division 2—Definitions etc.

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Commission;
- (b) consumer;
- (c) corporation;
- (d) industry code.

In this instrument:

**acceptance period**, for a proposed remedy, has the meaning given by section 56.

**Act** means the *Competition and Consumer Act 2010*.

**ADR practitioner** means a mediator or arbitrator.

**ADR process** means mediation or arbitration.

**allowable contrary provision**: a provision of a grocery supply agreement is an **allowable contrary provision** if:

- (a) the provision is contrary to a protective provision of the Code mentioned in any of paragraphs 19(3)(a) to (g); and
- (b) paragraphs 19(3)(h) to (j) are complied with in relation to the provision of the agreement.

**buying team** means the persons who are employed or otherwise engaged by a large grocery business each of whom having a role that includes at least one of the following:

- (a) direct involvement in buying grocery products;
- (b) immediate management responsibility for a person whose role is covered by paragraph (a).

**category manager** means a person who is employed or otherwise engaged by a large grocery business who is responsible for a category of grocery products at the large grocery business.

**Code** means the industry code set out in Part 2.

**Code Mediator** means a Code Mediator appointed under subsection 46(1).

**Code Supervisor** means the Code Supervisor appointed under subsection 60(2).

**covered revenue**: see section 8.

**delists**: see subsection 32(3).

**evidential burden**, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

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***fresh produce*** means the following:

- (a) fresh fruit;
- (b) fresh vegetables;
- (c) fresh mushrooms.

***grocery products*** include (without limitation) the following:

- (a) food;
- (b) non-alcoholic drinks;
- (c) household products including electrical appliances, kitchenware and cleaning products;
- (d) personal care products including toiletries, cosmetics, first aid products and medicine (other than prescription medicine);
- (e) stationery products, magazines and newspapers;
- (f) tobacco and tobacco products;
- (g) pet food and pet care products;
- (h) plants, flowers and gardening equipment;

but do not include the following:

- (i) food sold for in-store consumption;
- (j) non-alcoholic drinks sold for in-store consumption;
- (k) alcoholic drinks.

***grocery supply agreement*** means any agreement between a large grocery business and a supplier that relates to the supply of grocery products to or for the purposes of a supermarket business (whether or not the agreement is the principal agreement between them relating to the supply of grocery products) and includes any document:

- (a) comprising the agreement; or
- (b) made, from time to time, under the agreement.

***incentive scheme*** means any arrangement by a large grocery business to reward a person who is employed or otherwise engaged by the large grocery business for meeting targets set by the large grocery business in relation to the supply or financial performance of:

- (a) a grocery product; or
- (b) a category or group of grocery products.

***large grocery business*** means a corporation that is a large retailer, or a large wholesaler, if:

- (a) the corporation is or has been required to notify the Commission under section 45 (about becoming or ceasing to be a large grocery business); and
- (b) the last such requirement is or was under subsection 45(1) (about becoming a large grocery business).

***large retailer***: see section 8.

***large wholesaler***: see section 8.

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**old Code** means the code set out in Schedule 1 to the *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015*, as in force immediately before 1 April 2025.

**original complaint**: see subsection 62(1).

**own brand product** means a grocery product:

- (a) produced, processed or manufactured by a large grocery business; or
- (b) produced, processed or manufactured for a large grocery business (including by a supplier); or
- (c) that carries a name or trade mark owned by, or licensed to, a large grocery business.

**promotion** means any offer for sale (whether or not accompanied by some other benefit to a consumer):

- (a) at an introductory or reduced price, or involving non-standard sales activity; and
- (b) as agreed between a large grocery business and a supplier; and
- (c) that is intended to last only for a specified period.

**proposed remedy**, for dealing with a complaint under Subdivision A of Division 5 of Part 2, has the meaning given by subsection 54(3).

**retailer** means a corporation to the extent that it carries on a supermarket business in Australia.

**retribution**: see section 7.

**review request**: see subsection 62(2).

**senior buyer**, for a supplier, means the person within a buying team of a large grocery business who manages the buyers who buy from the supplier.

**senior manager** has the same meaning as in the *Corporations Act 2001*.

**shrinkage** means a loss of grocery products that:

- (a) occurs after a large grocery business has taken possession of them; and
- (b) arises from theft, other loss or accounting error.

**supermarket business** means a business if:

- (a) the main purpose of the business is the retail sale of grocery products to consumers; and
- (b) a substantial proportion of those grocery products is food that is not for in-store consumption.

**supplier**: see section 6.

**wholesaler** means a corporation to the extent that it carries on a business of purchasing grocery products from suppliers for the purpose of resale to a person carrying on a supermarket business in Australia.

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### 6 Meaning of *supplier*

- (1) **Supplier** means a person carrying on (or actively seeking to carry on) a business of supplying grocery products for retail sale to consumers by another person (whether or not that other person is the person supplied).
- (2) A person who is a wholesaler may be a supplier. However, a large wholesaler may not be a supplier.

### 7 Meaning of *retribution*

- (1) A large grocery business engages in **retribution** if:
  - (a) the large grocery business takes an action, or threatens to take an action, against a supplier that:
    - (i) has exercised, or indicated that it will or may exercise, a right under the Code against the large grocery business; or
    - (ii) is, or may be, able to exercise a right under the Code against the large grocery business; and
  - (b) the action causes, or would cause, detriment to the supplier.
- (2) However, the action is not **retribution** if the action:
  - (a) is not taken, or threatened to be taken, as punishment or retaliation for a matter mentioned in subparagraph (1)(a)(i) or (ii); and
  - (b) is taken, or threatened to be taken, for genuine commercial reasons.
- (3) A large grocery business that wishes to rely on subsection (2) in relation to an action bears an evidential burden in relation to the matters in that subsection.
- (4) Without limiting subsection (1), an action mentioned in that subsection includes any of the following:
  - (a) delisting a grocery product of the supplier;
  - (b) requiring the supplier to make excessive contributions towards promotional or marketing costs for the supplier's grocery product;
  - (c) rejecting fresh produce from the supplier;
  - (d) changing the location of the supplier's grocery product in store or online to the detriment of the supplier;
  - (e) delaying restocking the supplier's grocery product in store or online;
  - (f) varying, terminating, or electing not to renew an agreement with the supplier for the supply of an own brand product;
  - (g) reducing the volume of stock ordered from the supplier;
  - (h) cancelling an order from the supplier;
  - (i) varying, terminating, or electing not to renew a grocery supply agreement with the supplier.

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**8 Meaning of *large retailer* and *large wholesaler***

- (1) A retailer or wholesaler is a ***large retailer*** or ***large wholesaler*** (as the case may be) for a financial year if the total covered revenue (see subsection (2)) of the following entities:

- (a) the retailer or wholesaler;
- (b) each related body corporate of the retailer or wholesaler;

as set out in the those entities' annual accounts, prepared in accordance with generally accepted accounting principles, exceeds \$5 billion for the previous financial year.

Note: For when a body corporate is related to another body corporate, see section 4A of the Act.

- (2) Revenue is ***covered revenue*** if the revenue relates to the carrying on of:
- (a) a supermarket business in Australia; or
  - (b) a business of purchasing grocery products from suppliers for the purpose of resale to a person carrying on a supermarket business in Australia.

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## Division 3—Mandatory industry code

### 9 Mandatory industry code

For the purposes of section 51AE of the Act, the industry code set out in Part 2 of this instrument:

- (a) is prescribed for the purposes of Part IVB of the Act; and
- (b) is declared to be a mandatory industry code.

### 10 Review of Code

- (1) The Minister must cause a review to be undertaken in relation to the operation of the Code.
- (2) The review must:
  - (a) assess the impact of the Code in improving commercial relations between retailers, wholesalers and suppliers; and
  - (b) start before 1 April 2027.
- (3) The Minister must cause a written report about the review to be prepared.
- (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

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## **Part 2—Food and grocery industry code**

### **Division 1—Preliminary**

#### **11 Food and grocery industry code**

This Part sets out an industry code that relates to the industry of food and grocery products.

#### **12 Purposes of Code**

The purposes of this Code are:

- (a) to regulate standards of business conduct in the grocery supply chain in order to build and sustain trust and cooperation throughout that chain; and
- (b) to ensure transparency and certainty in commercial transactions in the grocery supply chain and to minimise disputes arising from a lack of certainty in respect of the commercial terms agreed between parties; and
- (c) to provide an effective, fair and equitable dispute resolution process for raising and investigating complaints and resolving disputes arising between large grocery businesses and suppliers; and
- (d) to promote and support good faith in commercial dealings between large grocery businesses and suppliers; and
- (e) to encourage suppliers to exercise their rights under this Code, including by:
  - (i) making reasonable requests of large grocery businesses; and
  - (ii) referring legitimate complaints against large grocery businesses; and
  - (iii) seeking resolution of disputes with large grocery businesses; and
- (f) to protect suppliers from retribution from large grocery businesses; and
- (g) to provide for senior management oversight of large grocery businesses' interactions with their suppliers.

#### **13 Interaction with other industry codes**

This Code does not apply to the extent that it conflicts with the industry code set out in:

- (a) Division 2 of Part 2 of the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019*; or
- (b) Chapter 2 of the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024*; or
- (c) Schedule 1 to the *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017*.

#### **14 Civil penalty provisions of this Code**

A provision of this Part that is of one of the following kinds and sets out at its foot a pecuniary penalty indicated by the words “civil penalty” is a civil penalty

**Part 2** Food and grocery industry code

**Division 1** Preliminary

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provision of the industry code set out in this Part for the purposes of Part IVB and section 76 of the Act:

- (a) a subsection;
- (b) a section that is not divided into subsections.

**15 Function of Australian Small Business and Family Enterprise Ombudsman**

The functions of the Australian Small Business and Family Enterprise Ombudsman include keeping lists of ADR practitioners who can provide services of mediation or arbitration for the purposes of this Code (including for a grocery supply agreement).



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## Division 2—Good faith

### 16 Obligation to deal with suppliers lawfully and in good faith

- (1) A large grocery business must at all times deal with suppliers:
  - (a) lawfully; and
  - (b) in good faith within the meaning of the unwritten law as in force from time to time.

Civil penalty: 600 penalty units.

- (2) However, paragraph (1)(b) does not apply to a large grocery business at a particular time, in relation to a supplier and a matter, if:
  - (a) at that time, the supplier is a large supplier; and
  - (b) the supplier has not dealt with the large grocery business in good faith in relation to that matter or a matter of that kind.
- (3) In determining whether the large grocery business has acted in good faith in dealing with a supplier, the following may be taken into account:
  - (a) whether the large grocery business has acted honestly;
  - (b) whether the large grocery business has cooperated to achieve the purposes of the relevant grocery supply agreement;
  - (c) whether the large grocery business has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;
  - (d) whether the large grocery business has not engaged in retribution against the supplier;
  - (e) whether the large grocery business has conducted its trading relationship with the supplier without duress;
  - (f) whether the trading relationship of the large grocery business with the supplier has been conducted in recognition of the need for certainty regarding the risks and costs of trading, particularly in relation to production, delivery and payment;
  - (g) whether the large grocery business has observed any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving a complaint or dispute with the supplier;
  - (h) whether, in dealing with the large grocery business, the supplier has acted in good faith.
- (4) Subsection (3) does not limit paragraph (1)(b).

#### *Meaning of large supplier*

- (5) In this section, a supplier is a **large supplier** if the total revenue:
  - (a) of the supplier and each related body corporate (if any) of the supplier; and
  - (b) relating to the carrying on of a business of supplying grocery products for retail sale to consumers in Australia by another person;

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as set out in the supplier's and any related body corporate's annual accounts, prepared in accordance with generally accepted accounting principles, exceeds \$1 billion for the previous financial year.

Note: For when a body corporate is related to another body corporate, see section 4A of the Act.

**17 Obligation to act in good faith must not be excluded**

A large grocery business must not be a party to a grocery supply agreement that contains a provision that limits or excludes the obligation to act in good faith.

Civil penalty: 600 penalty units.

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## **Division 3—Grocery supply agreements**

### **18 Grocery supply agreements must be in writing**

A large grocery business must not be a party to a grocery supply agreement unless it is in writing.

Note: Large grocery businesses must keep the original or a copy of each grocery supply agreement to which they are a party: see subsection 78(1).

Civil penalty: 600 penalty units.

### **19 Matters to be covered by agreements**

- (1) A large grocery business must not be a party to a grocery supply agreement that relates to the supply of grocery products unless the agreement includes the following:
- (a) any requirements the large grocery business has in respect of the delivery of the grocery products;
  - (b) for grocery supply agreements that do not relate to the supply of fresh produce—any circumstances in which the large grocery business may reject the grocery products;
  - (c) the period within which the large grocery business must pay a supplier for the grocery products and the circumstances in which any payment, or part of a payment, may be withheld or delayed;
  - (d) if the agreement is intended to operate for a limited time only—the term of the agreement;
  - (e) in clear terms, any quantity and quality requirements relating to the grocery products;
  - (f) if the agreement provides for its termination—the circumstances in which it may be terminated.

Note: A large grocery business must accept fresh produce delivered in accordance with a grocery supply agreement unless certain conditions are met: see section 34.

Civil penalty: 600 penalty units.

- (2) Paragraph (1)(e) does not prevent the parties to the grocery supply agreement from later agreeing, in writing and in clear terms, to additional or different quantity and quality requirements relating to the grocery products.

#### *Reasonable exceptions to Code protections*

- (3) A large grocery business must not be a party to a grocery supply agreement that includes a provision contrary to any of the following protective provisions of this Code:
- (a) subsection 20(1) (unilateral variations);
  - (b) subsection 22(2) (set-offs);
  - (c) subsection 24(1) (payments to cover wastage);

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- (d) subsection 25(1) (payments for stocking or listing);
- (e) subsection 26(1) (payments for better positioning etc.);
- (f) subsection 27(1) (payments for ordinary business activities);
- (g) subsection 28(1) (payments for funding promotions);

unless the agreement:

- (h) identifies the contrary provision of the agreement and the protective provision of this Code; and
- (i) includes a clear statement to the effect that the contrary provision is an exception to, and removes the protection of, the protective provision; and
- (j) explains why the contrary provision is reasonable.

Civil penalty: 600 penalty units.

*Additional requirements for agreements that relate to fresh produce*

- (4) A large grocery business must not be a party to a grocery supply agreement relating to the supply of fresh produce unless the agreement specifies the price, or the method or formula to be used to determine the price, of the fresh produce.

Civil penalty: 600 penalty units.

- (5) Subsection (4) does not prevent a grocery supply agreement from specifying a reasonable mechanism to regularly negotiate the price of fresh produce supplied under the agreement.

- (6) A large grocery business must exercise due care in forecasting the amount of fresh produce to be supplied under a grocery supply agreement.

Civil penalty: 600 penalty units.

- (7) For the avoidance of doubt, subsection (6) does not require a forecast to be included in an agreement that relates to the supply of fresh produce.

## **20 Unilateral variation of agreements**

- (1) A large grocery business must not vary a grocery supply agreement without the written consent of the supplier concerned.

Civil penalty: 600 penalty units.

- (2) Subsection (1) does not apply if:
  - (a) the agreement includes a provision that:
    - (i) provides expressly for the large grocery business to make the variation; and
    - (ii) sets out clearly the changed circumstances in which the variation can be made; and
    - (iii) if the variation involves a quantitative adjustment to the terms of supply—sets out the basis or methodology for calculating the adjustment; and
  - (b) that provision of the agreement is an allowable contrary provision; and

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- (c) the variation is made in accordance with the agreement; and
  - (d) the variation is reasonable in the circumstances; and
  - (e) the supplier is given reasonable notice, in writing, of:
    - (i) the variation; and
    - (ii) the terms of the variation; and
    - (iii) the large grocery business's reasons for making the variation.
- (3) For the purposes of (but without limiting) paragraph (2)(d), in determining whether the variation is reasonable in the circumstances, regard must be had to:
- (a) the benefits, costs and risks (if any) for the supplier and for the large grocery business; and
  - (b) whether the variation is for a purpose that benefits both the supplier and the large grocery business.
- (4) A large grocery business that wishes to rely on subsection (2) must prove the matters in that subsection on the balance of probabilities (except in relation to whether the variation causes detriment to a supplier for the purposes of paragraph (2)(d)).

## **21 Retrospective variation of agreements**

A large grocery business must not vary a grocery supply agreement with retrospective effect.

Civil penalty:           600 penalty units.

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## Division 4—Conduct generally

### Subdivision A—Paying suppliers

#### 22 Payments to suppliers

- (1) A large grocery business must pay a supplier for all grocery products delivered and accepted in accordance with a grocery supply agreement:
  - (a) within the time frame set out in the agreement; and
  - (b) in any case—within a reasonable time after receiving the supplier’s invoice for the products.

Civil penalty: 600 penalty units.

- (2) The large grocery business must not:
  - (a) set off any amount against a supplier’s invoice or remittance unless the supplier has consented in writing to the set-off of the amount; or
  - (b) require a supplier to consent to set off such an amount.

Civil penalty: 600 penalty units.

- (3) Subsection (2) does not apply if:
  - (a) the grocery supply agreement includes a provision that provides for the amount to be set off; and
  - (b) that provision of the agreement is an allowable contrary provision; and
  - (c) the set-off is made in accordance with the agreement; and
  - (d) the set-off is reasonable in the circumstances.
- (4) For the purposes of (but without limiting) paragraph (3)(d), in determining whether the set-off is reasonable in the circumstances, regard must be had to:
  - (a) the benefits, costs and risks (if any) for the supplier and for the large grocery business; and
  - (b) whether the set-off is for a purpose that benefits both the supplier and the large grocery business.

- (5) A large grocery business that wishes to rely on subsection (3) must prove the matters in that subsection on the balance of probabilities (except in relation to whether the set-off causes detriment to a supplier for the purposes of paragraph (3)(d)).

### Subdivision B—Requiring payments from suppliers

#### 23 Payments for shrinkage

- (1) A large grocery business must not:
  - (a) be a party to a grocery supply agreement that directly or indirectly requires a supplier to make payments as compensation for shrinkage; or
  - (b) otherwise directly or indirectly require such payments.

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Civil penalty: 600 penalty units.

- (2) Subsection (1) does not prevent the large grocery business from raising, discussing or agreeing with a supplier proposals and procedures to mitigate the risk and occurrence of shrinkage.

## **24 Payments for wastage**

- (1) A large grocery business must not directly or indirectly require a supplier to make any payment to cover any grocery product that becomes unfit for sale at the premises of:
- (a) the large grocery business; or
  - (b) a contractor or agent of the large grocery business; or
  - (c) any other entity that is a retailer or wholesaler.

Civil penalty: 600 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the relevant grocery supply agreement includes a provision that sets out expressly and unambiguously:
    - (i) the circumstances, which could include negligence of the supplier, in which the supplier will be required to make payments to compensate the large grocery business for grocery products supplied by the supplier that become unfit for sale at the premises of a person or entity referred to in subsection (1); and
    - (ii) the basis of the payments; and
  - (b) that provision of the agreement is an allowable contrary provision; and
  - (c) the grocery products become unfit for sale in such circumstances; and
  - (d) each such payment is made in accordance with the agreement; and
  - (e) each such payment is reasonable in the circumstances; and
  - (f) the large grocery business takes reasonable steps to mitigate those costs.
- (3) For the purposes of (but without limiting) paragraph (2)(e), in determining whether a payment is reasonable in the circumstances, regard must be had to:
- (a) the benefits, costs and risks (if any) for the supplier and for the large grocery business; and
  - (b) whether the payment is for a purpose that benefits both the supplier and the large grocery business.
- (4) A large grocery business that wishes to rely on subsection (2) must prove the matters in that subsection on the balance of probabilities (except in relation to whether the payment causes detriment to a supplier for the purposes of paragraph (2)(e)).
- (5) If:
- (a) the relevant grocery supply agreement provides for the supplier to make payments to cover grocery products that become unfit for sale at the premises of a person or entity referred to in subsection (1); and

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- (b) the supplier seeks to negotiate a variation of the agreement relating to payments of that kind;

the large grocery business must not, in the course of the negotiations or as a precondition to entering into the negotiations, seek to negotiate other variations of the agreement unrelated to payments of that kind.

Civil penalty: 600 penalty units.

## 25 Payments as a condition of being a supplier

- (1) A large grocery business must not directly or indirectly require a supplier to make any payment (other than a payment in relation to a promotion) as a condition of stocking or listing grocery products.

Note: For payments made in relation to promotions, see section 28.

Civil penalty: 600 penalty units.

- (2) Subsection (1) does not apply in relation to a large grocery business that is a retailer if:
  - (a) the relevant grocery supply agreement includes a provision that provides expressly for the payment to be made; and
  - (b) that provision of the agreement is an allowable contrary provision; and
  - (c) the payment:
    - (i) is made in accordance with the agreement; and
    - (ii) is made in respect of grocery products that have not been stocked or listed by the retailer during the preceding 365 days in 25% or more of its stores; and
    - (iii) is reasonable in the circumstances.
- (3) Subsection (1) does not apply in relation to a large grocery business that is a wholesaler if:
  - (a) the relevant grocery supply agreement includes a provision that provides expressly for the payment to be made; and
  - (b) that provision of the agreement is an allowable contrary provision; and
  - (c) the payment:
    - (i) is made in accordance with the agreement; and
    - (ii) is made in respect of grocery products that have not been stocked or listed by the large grocery business during the preceding 365 days in 25% or more of its distribution centres; and
    - (iii) is reasonable in the circumstances.
- (4) For the purposes of (but without limiting) subparagraph (2)(c)(iii) or (3)(c)(iii), in determining whether the payment is reasonable in the circumstances, regard must be had to:
  - (a) the benefits, costs and risks (if any) for the supplier and for the large grocery business; and
  - (b) whether the payment is for a purpose that benefits both the supplier and the large grocery business.



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- (5) A large grocery business that wishes to rely on subsection (2) or (3) must prove the matters in that subsection on the balance of probabilities (except in relation to whether the payment causes detriment to a supplier for the purposes of subparagraph (2)(c)(iii) or (3)(c)(iii)).

## **26 Payments for better positioning of grocery products—retailers**

- (1) A large retailer must not directly or indirectly require a supplier to make any payment to secure either of the following for a grocery product:
- (a) better positioning;
  - (b) an increase in allocation of shelf space.
- Civil penalty: 600 penalty units.
- (2) Subsection (1) does not apply if:
- (a) a provision of the relevant grocery supply agreement expressly sets out the particular circumstances in which the payment may be required; and
  - (b) that provision of the agreement is an allowable contrary provision; and
  - (c) the payment is made in accordance with the agreement; and
  - (d) the payment is reasonable in the circumstances.
- (3) For the purposes of (but without limiting) paragraph (2)(d), in determining whether the payment is reasonable in the circumstances, regard must be had to:
- (a) the benefits, costs and risks (if any) for the supplier and for the large grocery business; and
  - (b) whether the payment is for a purpose that benefits both the supplier and the large grocery business.
- (4) A large grocery business that wishes to rely on subsection (2) must prove the matters in that subsection on the balance of probabilities (except in relation to whether the payment causes detriment to a supplier for the purposes of paragraph (2)(d)).
- (5) This section does not apply to a corporation to the extent that it is a wholesaler.

## **27 Payments for ordinary business activities**

- (1) A large grocery business must not directly or indirectly require a supplier to make any payment towards the costs of any activity (an **ordinary business activity**) that is undertaken by the large grocery business in the ordinary course of carrying on a large grocery business.
- Civil penalty: 600 penalty units.
- (2) Without limiting subsection (1), an ordinary business activity includes each of the following:
- (a) a member of a buying team's visit to the supplier;
  - (b) artwork or packaging design;

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- (c) consumer or market research;
  - (d) the opening or refurbishing of a store;
  - (e) hospitality for the staff of the large grocery business.
- (3) Subsection (1) does not apply if:
- (a) a provision of the relevant grocery supply agreement expressly provides for the payment; and
  - (b) that provision of the agreement is an allowable contrary provision; and
  - (c) the payment is made in accordance with the agreement; and
  - (d) the payment is reasonable in the circumstances.
- (4) For the purposes of (but without limiting) paragraph (3)(d), in determining whether the payment is reasonable in the circumstances, regard must be had to:
- (a) the likely and actual benefits, costs and risks (if any) for the supplier and for the large grocery business; and
  - (b) whether the payment is for a purpose that benefits both the supplier and the large grocery business.
- (5) A large grocery business that wishes to rely on subsection (3) must prove the matters in that subsection on the balance of probabilities (except in relation to whether the payment causes detriment to a supplier for the purposes of paragraph (3)(d)).

## **28 Funding promotions**

- (1) A large grocery business must not directly or indirectly require a supplier to fund part or all of the costs of a promotion.

Civil penalty:           600 penalty units.

- (2) Subsection (1) does not apply if:
- (a) a provision of the relevant grocery supply agreement expressly provides for the funding; and
  - (b) that provision of the agreement is an allowable contrary provision; and
  - (c) the funding is required in accordance with the agreement; and
  - (d) the funding is reasonable in the circumstances.
- (3) For the purposes of (but without limiting) paragraph (2)(d), in determining whether the funding is reasonable in the circumstances, regard must be had to:
- (a) the likely and actual benefits, costs and risks (if any) for the supplier and for the large grocery business for the promotion; and
  - (b) whether the funding is for a purpose that benefits both the supplier and the large grocery business.
- (4) A large grocery business that wishes to rely on subsection (2) must prove the matters in that subsection on the balance of probabilities (except in relation to whether the funding causes detriment to a supplier for the purposes of paragraph (2)(d)).

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## **Subdivision C—Other conduct**

### **29 Incentive schemes**

- (1) If a large grocery business has an incentive scheme which applies to any member of a buying team or a category manager of the large grocery business, the large grocery business must ensure the incentive scheme is consistent with:
  - (a) the purposes of this Code; and
  - (b) any obligations of the large grocery business under this Code.

Note: For example, the scheme must be consistent with:

- (a) the purpose of protecting suppliers from retribution; and
- (b) the obligation to act in good faith in dealing with suppliers.

Civil penalty: 600 penalty units.

- (2) An incentive scheme is not consistent with a purpose of, or obligation under, this Code if the scheme:
  - (a) requires; or
  - (b) directly or indirectly incentivises;a buying team or category manager to act in a way which is contrary to the purpose or obligation.

### **30 Retribution**

A large grocery business must not engage in retribution against a supplier.

Civil penalty: 600 penalty units.

### **31 Policies and procedures to protect against retribution**

A large grocery business must have written policies and procedures to:

- (a) review the commercial decisions made by a buying team or category manager in relation to a supplier that:
  - (i) exercised, or indicated that it will or may exercise; or
  - (ii) was, or may have been, able to exercise;a right under this Code against the large grocery business; and
- (b) ensure that those decisions are not retribution against the supplier.

Civil penalty: 600 penalty units.

### **32 Delisting products**

- (1) A large grocery business must not delist a supplier's grocery product.

Civil penalty: 600 penalty units.

- (2) Subsection (1) does not apply if the delisting is:
  - (a) in accordance with the terms of the relevant grocery supply agreement; and

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- (b) for genuine commercial reasons.
- (3) A large grocery business *delists* a supplier's grocery product if:
- (a) the product is removed from the range of grocery products of the large grocery business; or
  - (b) the large grocery business reduces the distribution of the product across the stores or distribution centres of the large grocery business (as the case may be), and that reduction has or is likely to have a material effect on the supplier.
- (4) For the purposes of (but without limiting) paragraph (2)(b), genuine commercial reasons for delisting a product include the following:
- (a) failure of the supplier to meet agreed quality or quantity requirements with respect to the product;
  - (b) failure of the supplier's product to meet the commercial sales or profitability targets of the large grocery business as notified to the supplier in, or in accordance with, the grocery supply agreement;
  - (c) persistent failure to meet the delivery requirements of the large grocery business as notified to the supplier from time to time in accordance with the grocery supply agreement.
- (5) To avoid doubt, delisting as a punishment for a complaint, concern or dispute raised by a supplier is not a genuine commercial reason.
- (6) Before delisting a supplier's grocery product, the large grocery business must provide reasonable written notice to the supplier of the decision to delist the product. The notice must:
- (a) include the genuine commercial reasons for delisting the product; and
  - (b) inform the supplier of the supplier's right to have the decision to delist the product reviewed by the senior buyer for the supplier; and
  - (c) inform the supplier of the supplier's right to refer a complaint relating to the decision to delist the product to the Code Mediator for the large grocery business (see Subdivision A of Division 5); and
  - (d) include the contact details of the Code Mediator for the large grocery business.
- Civil penalty:           600 penalty units.
- (7) Subsection (6) does not apply if:
- (a) time is of the essence (including for product recalls, withdrawals or safety issues); or
  - (b) there are persistent issues with supply that have resulted in the large grocery business being out of stock or stocked at significantly reduced levels.
- (8) A large grocery business must ensure the senior buyer for a supplier promptly complies, in writing, with any written request from the supplier for:
- (a) a statement of the genuine commercial reasons for a delisting; or
  - (b) information (or additional information) relating to a delisting.
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This subsection applies whether or not the large grocery business complied (or was required to comply) with subsection (6).

Civil penalty: 600 penalty units.

- (9) A large grocery business must ensure the senior buyer for a supplier, after receiving a written request from the supplier, promptly reviews any decisions regarding delisting made by the large grocery business and provides the supplier with written notice of the outcome of that review including the basis for the decision of the large grocery business.

Civil penalty: 600 penalty units.

- (10) To avoid doubt, a decision by a large grocery business not to extend a fixed term grocery supply agreement, or enter into a new grocery supply agreement, following the expiry of an agreement is not a decision to delist a product.
- (11) A large grocery business that wishes to rely on subsection (2) or (7) must prove the matters in that subsection on the balance of probabilities.

### 33 Funded promotions

- (1) If a supplier agrees, or is required, to make a payment to a large grocery business in support of the promotion of a product (the ***funded promotion***), the large grocery business must not hold the funded promotion unless the supplier has been given reasonable written notice.

Note: A large grocery business must not require a supplier to fund all or part of the costs of a promotion unless certain conditions are met: see section 28.

Civil penalty: 600 penalty units.

- (2) If the large grocery business orders a grocery product from a supplier in connection with the funded promotion at a promotional price (whether calculated by way of discount, rebate, credit, allowance or otherwise), the large grocery business must:
- (a) ensure that the basis on which the quantity of the order is calculated is transparent; and
  - (b) not over-order; and
  - (c) if the large grocery business sells any over-ordered product above the promotional resale price—pay the supplier the difference between the supplier's promotional price and the supplier's full price for the product.

Civil penalty: 600 penalty units.

- (3) If the large grocery business has placed an order for a grocery product with the supplier in connection with the funded promotion, the large grocery business must not do either of the following without the supplier's written consent:
- (a) cancel the order;
  - (b) reduce the volume of the order by more than:
    - (i) if the large grocery business is a retailer—10%; or

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(ii) if the large grocery business is a wholesaler—20%.

Civil penalty: 600 penalty units.

- (4) Subsection (3) does not apply if:
- (a) the large grocery business gives the supplier reasonable written notice of the cancellation or reduction; or
  - (b) the large grocery business compensates the supplier for any net resulting costs, losses or expenses incurred or suffered by the supplier as a direct result of the large grocery business failing to give reasonable notice of the cancellation or reduction.

### 34 Fresh produce

#### *Standards or quality specifications*

- (1) A large grocery business must provide any fresh produce standards or quality specifications to a supplier in clear, unambiguous and concise written terms. Such standards or quality specifications must be reasonable.

Civil penalty: 600 penalty units.

- (2) Without limiting subsection (1), in determining the reasonableness of standards or specifications for a kind of produce, regard must be had to whether the same standards or quality specifications apply to all suppliers who supply that kind of produce to the large grocery business.

#### *Fresh produce to be accepted*

- (3) A large grocery business must accept fresh produce delivered in accordance with a grocery supply agreement.

Civil penalty: 600 penalty units.

- (4) Subsection (3) does not apply in relation to a delivery of fresh produce if:
- (a) the produce fails to meet relevant fresh produce standards or quality specifications; and
  - (b) the large grocery business rejects the produce within 24 hours after the produce is delivered to the large grocery business; and
  - (c) the large grocery business does not reject the produce after the large grocery business has accepted the produce.
- (5) If a large grocery business rejects fresh produce because it does not meet relevant fresh produce standards or quality specifications, the large grocery business must provide written reasons for the rejection to the supplier within 48 hours.

Civil penalty: 600 penalty units.

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*Labelling, packaging and preparation requirements*

- (6) A large grocery business must communicate any labelling, packaging or preparation requirements for fresh produce to a supplier in clear, unambiguous and concise written terms.

Civil penalty: 600 penalty units.

- (7) A large grocery business must provide a supplier with reasonable written notice of any required changes to packaging, labelling or preparation standards for fresh produce (unless the change is required immediately by law) taking into consideration existing stock held by suppliers (where known) and any agreement as to stock coverage in the relevant grocery supply agreement.

Civil penalty: 600 penalty units.

- (8) A large grocery business must make any claim for damaged fresh produce or shortfalls in relation to fresh produce within a reasonable time of, and in any event no later than 30 days after, delivery of the fresh produce to the large grocery business or a nominee of the large grocery business.

Civil penalty: 600 penalty units.

### **35 Changes to supply chain procedures**

- (1) A large grocery business must not directly or indirectly require a supplier to make any material change to supply chain procedures during the period of a grocery supply agreement with the supplier.

Civil penalty: 600 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the large grocery business gives the supplier reasonable written notice of the change; or
  - (b) the large grocery business compensates the supplier for any net resulting costs, losses or expenses incurred or suffered by the supplier as a direct result of the large grocery business failing to give reasonable notice of the change; or
  - (c) the supplier voluntarily waives the supplier's right to compensation for such costs, losses or expenses.

### **36 Intellectual property rights**

- (1) A large grocery business must not infringe the intellectual property rights held by suppliers in relation to grocery products, including intellectual property rights in branding, packaging and advertising.

Civil penalty: 600 penalty units.

- (2) To avoid doubt, subsection (1) does not create, confer or extend any intellectual property rights in or of the supplier.

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- (3) In developing or producing own brand products, a large grocery business must not infringe the intellectual property rights held by a supplier in relation to grocery products, including rights relating to branding, packaging designs or advertising.

Civil penalty: 600 penalty units.

### 37 Transfer of intellectual property rights

- (1) A large grocery business must not directly or indirectly require a supplier to transfer or exclusively license any intellectual property right held by the supplier in relation to a grocery product as a condition or term of supply of an equivalent own brand product of the large grocery business (as the case may be).

Civil penalty: 600 penalty units.

- (2) Subsection (1) does not prevent the large grocery business from:
- (a) holding an intellectual property right in an own brand product of the large grocery business; or
  - (b) having an exclusive right to the retail sale of an own brand product of the large grocery business; or
  - (c) making the holding of a right covered by paragraph (a) or (b) by the large grocery business a condition or term of supply by the supplier of an own brand product of the large grocery business, to the extent the product, recipe or formulation of the product:
    - (i) was developed or formulated by or for the large grocery business; or
    - (ii) is customised by or for the large grocery business.

### 38 Confidential information

- (1) This section applies if a supplier discloses confidential information to a large grocery business in connection with the supply of grocery products, including confidential information relating to product development, proposed promotions or pricing.
- (2) The large grocery business must not use that information other than for a purpose for which it was disclosed and may only disclose it or make it available or accessible to employees or agents of the large grocery business (as the case may be) who need to have that information in connection with that purpose.

Civil penalty: 600 penalty units.

- (3) The large grocery business must establish and monitor systems to ensure compliance with subsection (2). The large grocery business must create a written summary of such systems.

Civil penalty: 600 penalty units.

- (4) To avoid doubt, information is not confidential information for the purposes of this section if the information:



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- (a) is publicly available; or
  - (b) comes into the possession or knowledge of the large grocery business:
    - (i) independently of the supplier; and
    - (ii) without any breach of subsection (2) on the part of the large grocery business.

### **39 Product ranging, shelf space allocation and range reviews**

#### *Product ranging and shelf space allocation principles*

- (1) A large grocery business must publish or provide to all suppliers with whom it has a grocery supply agreement:
  - (a) its product ranging principles; and
  - (b) if the large grocery business is a retailer—its shelf space allocation principles.

Civil penalty: 600 penalty units.

- (2) The large grocery business must act in accordance with the principles and keep them up to date.

Civil penalty: 600 penalty units.

- (3) The large grocery business must apply the principles without discrimination (including without discrimination in favour of its own brand products).

Civil penalty: 600 penalty units.

#### *Range reviews*

- (4) Within a reasonable time before conducting a range review, the large grocery business must provide suppliers who might be adversely affected by any outcome of the review with clearly expressed written notice of:
  - (a) the purpose of the range review; and
  - (b) the key criteria governing ranging decisions to be made by the review.

Civil penalty: 600 penalty units.

- (5) Following the range review and before making a final decision relating to the range review that may adversely affect a supplier, the large grocery business must provide the supplier with a reasonable opportunity to discuss the decision with the large grocery business, including the basis on which the large grocery business will make the final decision.

Civil penalty: 600 penalty units.

#### *Interaction with section 32*

- (6) This section does not limit section 32 (delisting products).

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## 40 Price increases

- (1) This section applies if:
- (a) a large grocery business has a grocery supply agreement with a supplier for the supply of grocery products; and
  - (b) the supplier notifies the large grocery business, in writing, of an increase in the price (the *price increase*) of grocery products supplied under the agreement; and
  - (c) if the price increase is in respect of fresh produce that is supplied under the agreement and the agreement includes a mechanism to regularly negotiate the price of that fresh produce—any negotiations about the price increase are not concluded within 5 business days after the supplier informs the large grocery business of the price increase.

Note: Nothing in this section affects the rights of a supplier to determine the price of grocery products that the supplier supplies.

- (2) Within 30 days of being informed by the supplier of the price increase, the large grocery business must notify the supplier, in writing, whether the large grocery business:
- (a) accepts the price increase; or
  - (b) accepts an increase in the price of the grocery products supplied under the agreement but does not accept the amount of the price increase; or
  - (c) does not accept the price increase.

Civil penalty: 600 penalty units.

Note: If the price increase is in respect of fresh produce, the 5-business-day period mentioned in paragraph (1)(c) would be within this 30-day period.

- (3) If the supplier is notified of a matter referred to in paragraph (2)(b) or (c), the supplier may request the large grocery business to enter into negotiations about an increase in the price for the grocery products.
- (4) A large grocery business that enters into such negotiations must engage in the negotiations in good faith and take all reasonable steps to conclude its position on the negotiations without delay.

Civil penalty: 600 penalty units.

- (5) The large grocery business must not require the supplier to disclose commercially sensitive information in relation to the following:
- (a) the price increase;
  - (b) negotiations about an increase in the price for the grocery products.

Civil penalty: 600 penalty units.

## 41 Information about price increases

A large grocery business must give to its Code Mediator, in sufficient time for the information to be included in the Code Mediator's report for a financial year under section 59, the following information:

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- (a) the total number of notifications given under subsection 40(2) by the large grocery business to any supplier during the financial year;
  - (b) the number of those notifications that were not given within the 30-day period required by that subsection;
  - (c) the total number of negotiations entered into during the financial year following requests made under subsection 40(3);
  - (d) the number of those negotiations in which the large grocery business did not conclude its position on the negotiations within the period of 30 days starting on the day (the **notification day**) the large grocery business was notified of the relevant proposed price increase by the supplier;
  - (e) for each of the negotiations to which paragraph (d) applies, the number of days the large grocery business took to conclude its position on the negotiations starting from the notification day for the relevant proposed price increase.

Civil penalty: 600 penalty units.

#### **42 Freedom of association**

- (1) A large grocery business must not provide an inducement to prevent a supplier from:
  - (a) forming an association of suppliers; or
  - (b) associating or joining with other suppliers for a lawful purpose.

Civil penalty: 600 penalty units.

- (2) A large grocery business must not discriminate, or take any other action, against a supplier for:
  - (a) forming an association of suppliers; or
  - (b) associating or joining with other suppliers for a lawful purpose.

Civil penalty: 600 penalty units.

#### **43 Senior managers are to oversee interactions with suppliers**

- (1) A large grocery business must:
  - (a) appoint one or more of its senior managers to oversee its interactions with its suppliers; and
  - (b) take all reasonable steps to ensure that such a senior manager oversees such interactions at all times.

Civil penalty: 600 penalty units.

- (2) For each such appointment of a senior manager for interactions with one or more suppliers, the large grocery business must notify the Commission and each of those suppliers, in writing, of:
  - (a) the appointment; and
  - (b) the senior manager's contact details;

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before the tenth business day after the day of the appointment.

Civil penalty: 600 penalty units.

- (3) If such an appointment ceases, the large grocery business must notify the Commission and each of those suppliers, in writing, of the cessation before the tenth business day after the day of the cessation.

Civil penalty: 600 penalty units.

- (4) Without limiting subsection (1), an interaction with a supplier includes an interaction by another person for or on behalf of the large grocery business such as an interaction involving a buyer, member of a buying team, senior buyer or category manager.

Note: A senior manager appointed for the purposes of subsection (1) could also perform one of these roles, such as a senior buyer.

#### **44 Provision of contact details**

- (1) A large grocery business must make available to its suppliers, and keep updated, contact details (including position titles and telephone numbers) of:
- (a) the senior buyer for the supplier; and
  - (b) at least one other member of the buying team whose role includes buying grocery products from the supplier, or supervising such a person; and
  - (c) the Code Mediator of the large grocery business.

Civil penalty: 600 penalty units.

- (2) A large grocery business must publish on its website, and keep updated, contact details (including position title and telephone number) of the Code Mediator.

Civil penalty: 600 penalty units.

#### **45 Requirement to notify Commission**

- (1) If a corporation:
- (a) is a large retailer, or a large wholesaler, for a financial year; but
  - (b) was not for the previous financial year;

the corporation must notify the Commission, in writing and within 5 business days after the day applying under subsection (3), that the corporation is a large grocery business.

Civil penalty: 600 penalty units.

- (2) If a corporation:
- (a) is not a large retailer, or a large wholesaler, for a financial year; but
  - (b) was for the previous financial year;

the corporation must notify the Commission, in writing and within 5 business days after the day applying under subsection (3), that the corporation is no longer a large grocery business.

Civil penalty: 600 penalty units.

- (3) The day applying to the corporation under this subsection is the latest day that the corporation, or any related body corporate of the corporation, is required to lodge a report for the previous financial year under section 319 of the *Corporations Act 2001*.

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## Division 5—Dispute resolution

### Subdivision A—Investigations by a Code Mediator

#### 46 Each large grocery business must appoint a Code Mediator

- (1) Each large grocery business must:
  - (a) appoint a person with appropriate qualifications, knowledge and experience to fulfil the Code Mediator’s functions, to be the Code Mediator in relation to this Code; and
  - (b) do so by written agreement with the person; and
  - (c) take all reasonable steps to ensure that there is such a Code Mediator at all times.

Note: The agreement will contain conditions (see subsection 48(4)).

Civil penalty: 600 penalty units.

- (2) Subject to subsection (3), the large grocery business must:
  - (a) not engage the person in any other capacity; and
  - (b) ensure that no related body corporate of the large grocery business engages the person in any other capacity;while the person is the Code Mediator.

Note: For when a body corporate is related to another body corporate, see section 4A of the Act.

Civil penalty: 600 penalty units.

- (3) The person may be engaged in another capacity during a financial year if:
  - (a) the large grocery business’ market share:
    - (i) is less than 15% in that financial year; or
    - (ii) was less than 15% in either of the previous 2 financial years; or
  - (b) the other capacity is as an ADR practitioner appointed under Subdivision C to mediate or arbitrate a dispute.

#### 47 Notifying details of the Code Mediator’s appointment

- (1) The large grocery business must notify the Commission and the Code Supervisor, in writing, of:
  - (a) the Code Mediator’s appointment; and
  - (b) the Code Mediator’s contact details for use by suppliers in making any complaints against the large grocery business;before the tenth business day after the day of the appointment.

Civil penalty: 600 penalty units.

- (2) If the Code Mediator’s appointment ceases, the large grocery business must notify the Commission and the Code Supervisor, in writing, of the cessation before the tenth business day after the day of the cessation.

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Civil penalty: 600 penalty units.

- (3) The large grocery business must:
- (a) pay the Code Mediator's costs; and
  - (b) ensure the Code Mediator is sufficiently resourced to perform the Code Mediator's functions.

Civil penalty: 600 penalty units.

## 48 Code Mediator's functions

### *Functions*

- (1) The Code Mediator's functions are as follows:
- (a) the functions set out in section 49 relating to a procedure for handling complaints against the large grocery business;
  - (b) to assist suppliers of the large grocery business in relation to matters covered by this Code, including by providing information about:
    - (i) this Code generally; and
    - (ii) the complaint and dispute resolution processes available under this Division;
  - (c) to investigate complaints against the large grocery business relating to matters covered by this Code (including a grocery supply agreement);
  - (d) to make recommendations from such investigations, including to propose remedies where appropriate;
  - (e) to facilitate consideration of, and agreement to, such recommendations;
  - (f) to assist suppliers of the large grocery business to informally resolve issues relating to matters covered by this Code (including a grocery supply agreement);
  - (g) to mediate disputes between suppliers of the large grocery business and the large grocery business if:
    - (i) the disputes relate to matters covered by this Code (including a grocery supply agreement); and
    - (ii) the mediation is not under Subdivision C;
  - (h) to keep records, and to report, about such complaints or disputes.
- (2) The large grocery business must ensure that the Code Mediator has access to:
- (a) all documentation held by the large grocery business in relation to any complaint or dispute with a supplier relating to the large grocery business' obligations under this Code; and
  - (b) the large grocery business' buying team for the purposes of discussing issues relating to the large grocery business' obligations under this Code.

Civil penalty: 600 penalty units.

- (3) The large grocery business may authorise the Code Mediator to enter into an agreement on behalf of the large grocery business to resolve a complaint relating

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to the large grocery business' obligations under this Code (including a grocery supply agreement).

*Code Mediator's performance of its functions*

- (4) The large grocery business must:
- (a) ensure that the agreement appointing the Code Mediator includes a condition requiring the Code Mediator to comply with the Code Mediator's obligations under this Division; and
  - (b) take reasonably appropriate action under that appointment agreement if the Code Mediator breaches such a condition; and
  - (c) terminate that agreement if such a breach is serious or if such breaches are persistent.

Civil penalty: 600 penalty units.

- (5) The large grocery business must not unduly influence, or attempt to unduly influence, the Code Mediator in the performance of the Code Mediator's functions.

Civil penalty: 600 penalty units.

#### **49 Complaints handling procedures**

- (1) The large grocery business must ensure that the Code Mediator:
- (a) develops a written complaints handling procedure that is consistent with this Code; and
  - (b) acts in accordance with the complaints handling procedure.

Civil penalty: 600 penalty units.

- (2) The large grocery business must ensure that the Code Mediator:
- (a) provides a copy of the procedure to the large grocery business and the Code Supervisor; and
  - (b) reviews the procedure annually and updates it as necessary; and
  - (c) if the procedure is updated—provides a copy of the updated procedure to the large grocery business and the Code Supervisor.

Civil penalty: 600 penalty units.

- (3) The large grocery business must publish a copy of the procedure on the large grocery business' website.

Civil penalty: 600 penalty units.

- (4) The large grocery business must ensure that the copy of the procedure on its website is kept up to date.

Civil penalty: 600 penalty units.



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## 50 Referring complaints to the Code Mediator

- (1) If:
- (a) a supplier has a complaint against the large grocery business about a matter covered by this Code (including a grocery supply agreement); and
  - (b) an ADR practitioner has not been appointed under Subdivision C to conduct an ADR process to resolve a dispute that is the same as the complaint;
- the supplier may refer the complaint to the Code Mediator.
- (2) The complaint must be in writing and include the following:
- (a) the supplier's identification details, including business or trading name;
  - (b) either:
    - (i) contact details for the supplier; or
    - (ii) the name and contact details of a person authorised to deal with the complaint on behalf of the supplier;
  - (c) details of the conduct giving rise to the complaint, including any documents or other information that would assist the investigation of the complaint;
  - (d) the provisions of this Code that the supplier considers are relevant to the complaint.

## 51 Investigations by the Code Mediator—timing

The large grocery business must ensure that the Code Mediator takes all reasonable steps to:

- (a) investigate the complaint; and
- (b) conclude the investigation within:
  - (i) the 20-business day period beginning on the day the Code Mediator is referred the complaint; or
  - (ii) such longer period as is agreed in writing between the supplier and the Code Mediator.

Civil penalty: 600 penalty units.

## 52 Investigations by the Code Mediator—vexatious complaints etc.

- (1) If, after investigating the complaint, the Code Mediator decides that the complaint is vexatious, trivial, misconceived or lacking in substance, the Code Mediator must give the supplier written notice setting out:
- (a) a statement to that effect; and
  - (b) the Code Mediator's reasons for making that decision; and
  - (c) that the supplier may take further action in relation to the matter under:
    - (i) Subdivision B (independent review by the Code Supervisor); or
    - (ii) Subdivision C (mediation or arbitration).

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- (2) However, the Code Mediator must not decide that a complaint relating to:
  - (a) section 20 (unilateral variation of agreement); or
  - (b) section 21 (retrospective variation of agreement);is vexatious, trivial, misconceived or lacking in substance only because the supplier's only ground in relation to the complaint is detriment to the supplier.
- (3) The Code Mediator must give the large grocery business a copy of the notice. However, the Code Mediator must first redact from the copy any information that is reasonably capable of being used to identify the supplier, unless the supplier has expressly consented to their identity being disclosed to the large grocery business.

### 53 Investigations by the Code Mediator—all other complaints

- (1) This section applies to a complaint that is not dealt with under section 52.
- (2) The Code Mediator's investigation of the complaint:
  - (a) must include consideration of the large grocery business' obligation to deal lawfully and in good faith (see section 16); and
  - (b) may include consideration of whether the large grocery business has acted fairly in dealing with the supplier.
- (3) For the purposes of paragraph (2)(b), the Code Mediator may take the following into account:
  - (a) whether the large grocery business has acted in a way that denied the supplier the benefits of the relevant grocery supply agreement, or undermined those benefits for the supplier;
  - (b) whether the large grocery business has acted in accordance with the legitimate and reasonable expectations of the supplier;
  - (c) whether the large grocery business has had due regard to:
    - (i) the nature of the relationship between the large grocery business and the supplier; and
    - (ii) the individual characteristics of the supplier that were known, or ought to have been known, by the large grocery business.

### 54 Investigations by the Code Mediator—recommendations (including proposed remedies)

- (1) After:
    - (a) investigating a complaint to which section 53 applies; or
    - (b) reconsidering a complaint under subsection 57(2);the Code Mediator may decide to make one or more recommendations for dealing with the complaint if satisfied that it is appropriate to do so having regard to the matters in subsection (2).

Note: Under section 57, the Code Supervisor may recommend that the Code Mediator reconsider a complaint.
  - (2) The matters are the following:
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- (a) the purposes of this Code;
    - (b) the facts of the complaint;
    - (c) any findings of the Code Mediator’s investigation of the complaint;
    - (d) any other matter the Code Mediator considers relevant.
  - (3) Without limiting subsection (1), the Code Mediator may propose a remedy (a ***proposed remedy***) involving the large grocery business taking an action such as:
    - (a) paying a specified amount of compensation to the supplier; or
    - (b) varying, subject to section 20 (unilateral variation of agreement), a grocery supply agreement with the supplier.
  - (4) Before recommending that a large grocery business should vary a grocery supply agreement, the Code Mediator may consult with the large grocery business, the supplier, or both.
  - (5) Within 5 business days after concluding the investigation, the Code Mediator must give the supplier a written notice setting out:
    - (a) whether the Code Mediator has decided to make any recommendations under subsection (1) and, if so, the content of the recommendations (including the details of any proposed remedy); and
    - (b) the Code Mediator’s reasons for making that decision; and
    - (c) that the supplier may take further action in relation to the matter under:
      - (i) Subdivision B (independent review by the Code Supervisor); or
      - (ii) Subdivision C (mediation or arbitration); and
    - (d) for each proposed remedy (if any)—that the supplier and the large grocery business may agree to the proposed remedy by:
      - (i) each providing a written notice to that effect to the Code Mediator before the end of the acceptance period for the remedy; and
      - (ii) entering into an agreement with each other to that effect.
  - (6) The Code Mediator must give the large grocery business a copy of the notice within 5 business days after concluding the investigation. However, the Code Mediator must first redact from the copy any information that is reasonably capable of being used to identify the supplier, unless the supplier has expressly consented to their identity being disclosed to the large grocery business.

## **55 Agreeing to a proposed remedy**

- (1) This section applies if the supplier and the large grocery business each notifies the Code Mediator in accordance with subparagraph 54(5)(d)(i) that they agree to a proposed remedy for dealing with a complaint.
- (2) The large grocery business must enter into a written agreement with the supplier under which the large grocery business agrees to perform the proposed remedy.

Civil penalty:           600 penalty units.
- (3) The large grocery business must comply with the agreement.

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Civil penalty: 600 penalty units.

**56 Acceptance period for a proposed remedy**

- (1) The **acceptance period**, for a proposed remedy for dealing with a complaint, is:
  - (a) unless paragraph (b) applies—the 20-business-day period beginning on the day the supplier is given the notice under subsection 54(5) setting out the details of the proposed remedy; or
  - (b) if the notice under subsection 54(5) setting out the details of the proposed remedy is the result of a reconsideration of the complaint under subsection 57(2)—the 10-business day period beginning on the day the supplier is given that notice.
- (2) However, if paragraph (1)(a) applies and within that period the supplier:
  - (a) requests under Subdivision B the Code Supervisor to independently review the Code Mediator’s process in dealing with the complaint; and
  - (b) notifies the Code Mediator that the supplier has done so;the **acceptance period** for the proposed remedy ends 10 business days after:
  - (c) if on a later day the supplier is notified of the Code Supervisor’s decision not to conduct the independent review (see subsection 63(3))—that later day; or
  - (d) if on a later day the supplier is notified of the completion of the independent review (see subsection 64(6)), and the review did not recommend that the Code Mediator reconsider the complaint—that later day; or
  - (e) if the independent review recommended that the Code Mediator reconsider the complaint—the day the supplier is notified under subsection 54(5) of the outcome of that reconsideration.

**57 Reconsideration by the Code Mediator if recommended to do so by the Code Supervisor**

- (1) This section applies if:
  - (a) the supplier requests under Subdivision B the Code Supervisor to independently review the Code Mediator’s process in dealing with the complaint; and
  - (b) the Code Supervisor:
    - (i) conducts the independent review; and
    - (ii) recommends under subsection 64(5) that the Code Mediator reconsider the complaint.
- (2) The Code Mediator must, within 10 business days of the recommendation:
  - (a) reconsider the complaint; and
  - (b) decide under subsection 54(1) whether to make one or more recommendations for dealing with the complaint (including any proposed remedies); and

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- (c) notify the supplier under subsection 54(5), and the large grocery business under subsection 54(6), accordingly.

### **58 Records to be kept by the Code Mediator**

The Code Mediator must keep each of the following for at least 6 years:

- (a) a record of each complaint referred to it under this Subdivision for investigation;
- (b) a record of each of those investigations;
- (c) a copy of each notice given under subsection 52(1) or 54(5) about each such complaint;
- (d) a summary of any actions taken by the large grocery business and the supplier in relation to each such complaint.

### **59 Reports by the Code Mediator**

- (1) The Code Mediator must prepare a written report for each financial year.
- (2) The report must include the following:
  - (a) a description of the ways it has assisted suppliers of the large grocery business during the financial year in relation to the matters described in paragraphs 48(1)(b), (f) and (g);
  - (b) the number of complaints referred to it under this Subdivision during the financial year;
  - (c) in general terms and without identifying a complainant—the nature of each of those complaints;
  - (d) the time taken to investigate each of those complaints;
  - (e) the outcome of each of those investigations;
  - (f) whether or not each of those complaints was resolved to the satisfaction of the relevant supplier;
  - (g) the number of those complaints for which the Code Mediator recommended payment of compensation;
  - (h) any information given to the Code Mediator by the large grocery business under section 41 (information about price increases) during the financial year.
- (3) The Code Mediator must give a copy of the report to each of the following within 30 business days after the end of the financial year:
  - (a) the large grocery business;
  - (b) the Commission;
  - (c) the Code Supervisor.
- (4) Within 1 business day of being given a copy of the report, the large grocery business must publish a copy of the report on the large grocery business' website.

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## Subdivision B—Independent reviews by the Code Supervisor

### 60 Code Supervisor

- (1) There is to be a Code Supervisor.
- (2) The Code Supervisor is to be appointed by the Minister by notifiable instrument.
- (3) A person must not be appointed as the Code Supervisor unless the Minister is satisfied that the person:
  - (a) has appropriate qualifications, knowledge or experience in procedural fairness; and
  - (b) has experience working in Australian industry.

### 61 Code Supervisor's functions

- (1) The functions of the Code Supervisor are as follows:
  - (a) to consider requests to review Code Mediators' processes (including complaints handling procedures) in dealing with complaints;
  - (b) to identify emerging and systemic issues in the grocery supply chain relating to the operation of this Code;
  - (c) to conduct annual surveys of suppliers and large grocery businesses relating to the operation of this Code;
  - (d) to report on the matters in the above paragraphs.
- (2) In performing functions under paragraph (1)(b) the Code Supervisor must act collaboratively with the Commission and with stakeholders in the grocery supply chain, including the following:
  - (a) suppliers;
  - (b) large grocery businesses;
  - (c) Code Mediators;
  - (d) relevant industry representative bodies.

### 62 Supplier may request an independent review of Code Mediator's process

- (1) A supplier may request the Code Supervisor to independently review a Code Mediator's process (including its complaints handling procedure) for dealing with a complaint (the *original complaint*) made by the supplier against a large grocery business if:
  - (a) the supplier has received a notice from the Code Mediator under subsection 52(1) or 54(5); or
  - (b) the Code Mediator has not concluded investigating the complaint within:
    - (i) the 20-business-day period beginning on the day the Code Mediator is referred the complaint; or
    - (ii) such longer period as is agreed in writing between the supplier and the Code Mediator.
- (2) The request (the *review request*) must be in writing and include the following:

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- (a) the supplier's identification details, including business or trading name;
  - (b) either:
    - (i) contact details for the supplier; or
    - (ii) the name and contact details of a person authorised to deal with the review request on behalf of the supplier;
  - (c) details of the process giving rise to the review request, including any documents or other information that would assist the Code Supervisor to review the Code Mediator's process.

### **63 Code Supervisor's discretion to conduct an independent review**

- (1) The Code Supervisor must consider the review request and decide within 10 business days of receiving the review request:
  - (a) to conduct an independent review of the Code Mediator's process (including its complaints handling procedure) for dealing with the original complaint; or
  - (b) not to conduct such a review.

Note: Such a review is of a Code Mediator's process for dealing with a complaint. It is not a review of the complaint itself or the merits of a proposed remedy, but could result in a recommendation for the Code Mediator to reconsider the complaint (see subsection 64(5)).

#### *Deciding not to conduct an independent review*

- (2) Without limiting the Code Supervisor's discretion under subsection (1), circumstances in which the Code Supervisor might decide not to conduct such an independent review include the following:
  - (a) if the supplier agreed to a proposed remedy for dealing with the original complaint;
  - (b) if the Code Supervisor is satisfied that the review request is vexatious, trivial, misconceived or lacking in substance;
  - (c) if the Code Supervisor considers that the review request does not relate to the Code Mediator's process for dealing with the original complaint.
- (3) If the Code Supervisor decides not to conduct the independent review, the Code Supervisor must notify the supplier and the Code Mediator. The notice must:
  - (a) be in writing; and
  - (b) set out the Code Supervisor's reasons for deciding not to conduct the independent review.

### **64 The independent review**

- (1) If the Code Supervisor decides under subsection 63(1) to conduct the independent review, the Code Supervisor must:
  - (a) give the supplier and the Code Mediator a written notice of the decision; and

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- (b) give the large grocery business a written notice of the decision that has redacted any information that is reasonably capable of being used to identify the supplier, unless the supplier has expressly consented to their identity being disclosed to the large grocery business; and
- (c) take reasonable steps to consider the review request, and complete the independent review, within the 20-business-day period starting on the day that notice is given to the supplier.

Note: This period may be paused while the Code Supervisor is waiting for information (see subsection (4)).

*Code Supervisor may request further information*

- (2) Without limiting paragraph (1)(c), the steps the Code Supervisor may take include requesting information relating to the original complaint from one or more of the following:
  - (a) the Code Mediator;
  - (b) the supplier;
  - (c) the large grocery business.
- (3) A large grocery business or Code Mediator who receives a reasonable request from the Code Supervisor to provide information relating to the original complaint must comply with the request within 10 business days of receiving it.

Civil penalty: 600 penalty units.

- (4) The 20-business-day period referred to in paragraph (1)(c) is paused while the Code Supervisor is waiting to receive any information it has requested under subsection (2).

*Recommendations arising from the independent review*

- (5) After considering the review request, the Code Supervisor may make one or more recommendations to the Code Mediator. Unless the supplier has accepted a proposed remedy for dealing with the original complaint, this includes a recommendation that the Code Mediator reconsider the original complaint.
- (6) Within 5 business days of completing the independent review, the Code Supervisor must give the supplier and the Code Mediator a written notice:
  - (a) stating that the independent review is complete; and
  - (b) setting out any recommendations made under subsection (5); and
  - (c) setting out the Code Supervisor's reasons for making those recommendations.
- (7) The Code Supervisor must give the large grocery business a copy of the notice. However, the Code Supervisor must first redact from the copy any information that is reasonably capable of being used to identify the supplier, unless the supplier has expressly consented to their identity being disclosed to the large grocery business.



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- (8) If the Code Supervisor becomes aware, in connection with the review request, that a breach of this Code may have occurred, the Code Supervisor must give:
- (a) particulars of the breach to the Commission; and
  - (b) a copy of the particulars to the large grocery business.

## **65 Reports by the Code Supervisor**

- (1) The Code Supervisor must prepare a written report for each financial year that includes information on the following:
- (a) the number of review requests under section 62 during the financial year;
  - (b) the number of independent reviews under section 64 during the financial year;
  - (c) the number of recommendations under subsection 64(5) for each of those independent reviews;
  - (d) any emerging and systemic issues identified in the grocery supply chain relating to the operation of this Code;
  - (e) the results of the survey conducted under section 66 for the financial year;
  - (f) the number of ADR processes under Subdivision C for which an ADR practitioner was appointed during the financial year;
  - (g) the number of ADR processes that were terminated under section 72 during the financial year;
  - (h) the Code Supervisor's other activities during the financial year.
- (2) The report must be prepared by the first 30 November after the end of the financial year.
- (3) The Code Supervisor must:
- (a) give a copy of the report to the Commission; and
  - (b) publish the report on the Code Supervisor's website.

## **66 Annual survey**

- (1) The Code Supervisor must conduct a survey of suppliers and large grocery businesses for each financial year for the purpose of:
- (a) identifying if any suppliers feared retribution from large grocery businesses during the financial year; and
  - (b) identifying suppliers' experiences during the financial year with agreeing to grocery supply agreements containing allowable contrary provisions of a kind mentioned in section 20, 22, 24, 25, 26, 27 or 28; and
  - (c) identifying emerging and systemic issues in the grocery supply chain relating to the operation of this Code during the financial year; and
  - (d) any other matter identified by the Code Supervisor that relates to the operation of this Code during the financial year.
- (2) Each large grocery business must:
- (a) distribute the survey to their suppliers; and

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- (b) inform each supplier that:
  - (i) their response to the survey will not be given to the large grocery business; and
  - (ii) the results of the survey will not be reasonably capable of being used to identify them.

Civil penalty: 600 penalty units.

## Subdivision C—ADR processes

### 67 Initiating an ADR process

- (1) A party (the *initiating party*) to a grocery supply agreement may initiate an ADR process by notifying the other party (the *responding party*) in writing that the initiating party wishes to have a dispute relating to this Code (including the agreement) resolved by an ADR process under this Subdivision.

#### *Mediation initiated by a supplier*

- (2) If:
  - (a) the initiating party is a supplier; and
  - (b) the ADR process is mediation; and
  - (c) an ADR practitioner is appointed under section 68 for the mediation;each party must attend the mediation of the dispute under this Subdivision.

Civil penalty: 600 penalty units.

- (3) However, subsection (2) does not apply if:
  - (a) taking part in the mediation would mean taking part in 2 ADR processes at the same time in relation to the same dispute; or
  - (b) a process brought by the supplier:
    - (i) under Subdivision A (about the Code Mediator) or B (about the Code Supervisor); and
    - (ii) in relation to a complaint that is the same as the dispute; is still ongoing and a reasonable period for completing that process is still to end.

#### *Arbitration initiated by a supplier*

- (4) If the initiating party is a supplier and the ADR process is arbitration, the responding party must notify the initiating party:
  - (a) in writing; and
  - (b) within 10 business days of receiving the notification under subsection (1);whether the responding party agrees to attend, and accept the outcome of, an arbitration in accordance with a written agreement between the parties that is consistent with this Subdivision.

Note: The responding party need not agree to arbitration, but must choose whether to agree to arbitration.

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Civil penalty: 600 penalty units.

*ADR process initiated by a large grocery business*

- (5) If the initiating party is a large grocery business, the responding party must notify the initiating party:
- (a) in writing; and
  - (b) within 10 business days of receiving the notification under subsection (1); whether the responding party agrees:
  - (c) to attend the ADR process under this Subdivision; and
  - (d) if the ADR process is arbitration—to do so, and to accept the outcome of an arbitration, in accordance with a written agreement between the parties that is consistent with this Subdivision.

Note: The responding party need not agree to the ADR process, but must choose whether to agree to the ADR process.

Civil penalty: 600 penalty units.

*Parties to attend ADR process that has commenced*

- (6) If:
- (a) the responding party notifies the initiating party, under subsection (4) or (5), that it agrees to attend the ADR process of the dispute under this Subdivision; and
  - (b) an ADR practitioner is appointed under section 68 for the ADR process; each party must attend the ADR process.

Civil penalty: 600 penalty units.

## **68 Appointing an ADR practitioner to conduct an ADR process**

- (1) This section applies if:
- (a) a party to a grocery supply agreement has initiated an ADR process under subsection 67(1); and
  - (b) if the ADR process is arbitration or the initiating party is a large grocery business—the responding party has agreed to attend the ADR process of the dispute.

*Appointment of ADR practitioner*

- (2) The parties may, in writing, agree to appoint an ADR practitioner from a list kept by the Australian Small Business and Family Enterprise Ombudsman under section 15. The parties must ensure the Code Supervisor is notified of the appointment.
- (3) However, if the parties cannot so agree within 14 days after:

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- (a) if the ADR process is arbitration or the initiating party is a large grocery business—the responding party has agreed to attend the ADR process of the dispute; or
- (b) otherwise—the day the initiating party gave the responding party notice under subsection 67(1);

the supplier may appoint an ADR practitioner from that list. The supplier must notify the large grocery business and the Code Supervisor, in writing, of the appointment.

### 69 Conduct of an ADR process

- (1) Subject to subsection (2), an ADR practitioner appointed for a dispute may decide the time and place for the ADR process for the dispute.
- (2) The ADR process must be conducted in Australia and may be conducted by means of virtual attendance technology.
- (3) The parties must try to resolve the dispute.

Note: For when a party is taken to be trying to resolve a dispute, see section 71.

Civil penalty: 600 penalty units.

- (4) If the ADR process is arbitration, the arbitration is to be conducted in accordance with the written agreement between the parties that is consistent with this Subdivision.

*Whether the dispute is vexatious, trivial, misconceived or lacking in substance*

- (5) The ADR practitioner must not decide that a dispute relating to:
  - (a) section 20 (unilateral variation of agreement); or
  - (b) section 21 (retrospective variation of agreement);is vexatious, trivial, misconceived or lacking in substance only because the supplier's only ground in relation to the dispute is detriment to the supplier.

### 70 When a party is taken to attend an ADR process

A party to a dispute is taken to attend an ADR process of the dispute if the party is represented in the ADR process by an authorised representative.

### 71 When a party is taken to be trying to resolve a dispute

- (1) A party will be taken to be trying to resolve a dispute if the party approaches the resolution of the dispute in a reconciliatory manner, including doing any of the following:
  - (a) attending and participating in meetings at reasonable times;
  - (b) both:
    - (i) making the party's intention clear, at the beginning of the process, as to what the party is trying to achieve through the process; and

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- (ii) observing any obligations relating to confidentiality that apply during or after the process;
  - (c) not taking or refusing to take action during the period of the dispute, including refusing to accept goods or to make payments, that has the purpose or effect of applying pressure to resolve the dispute.
- (2) To avoid doubt, a party may cease acting as required under subsection (1) if the ADR practitioner appointed for the dispute finds that:
- (a) the dispute is vexatious, trivial, misconceived or lacking in substance; or
  - (b) the other party to the dispute is not acting in good faith; or
  - (c) under subsection 55(2), the large grocery business has entered into a written agreement with the supplier under which the large grocery business agrees to perform one or more proposed remedies for dealing with a complaint that is the same as the dispute.

## **72 Termination of an ADR process by an ADR practitioner**

- (1) This section applies to an ADR process for a dispute if:
- (a) at least 30 days have elapsed after the day the ADR practitioner for the ADR process was appointed; and
  - (b) the dispute has not been resolved.
- (2) The ADR practitioner may terminate the ADR process at any time unless satisfied that a resolution of the dispute is imminent.
- (3) However, if:
- (a) the ADR process is mediation; and
  - (b) a party asks the ADR practitioner to terminate the ADR process for the dispute; and
  - (c) the party gives written reasons for the request;
- the ADR practitioner must terminate the ADR process.
- (4) If the ADR practitioner terminates the ADR process for a dispute under this section, the ADR practitioner must issue a certificate stating:
- (a) the names of the parties; and
  - (b) the nature of the dispute; and
  - (c) that the ADR process for the dispute has finished; and
  - (d) that the dispute has not been resolved; and
  - (e) the reason for terminating the ADR process for the dispute.
- (5) The ADR practitioner must give a copy of the certificate to:
- (a) the Australian Small Business and Family Enterprise Ombudsman; and
  - (b) each of the parties to the dispute; and
  - (c) the Code Supervisor.

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### 73 Costs of an ADR process

- (1) The parties to a dispute are equally liable for the costs of an ADR process under this Subdivision for the dispute (including the cost of the ADR practitioner, the cost of room hire and the cost of any additional input (including expert reports) agreed by the parties to be necessary to conduct the ADR process), unless they agree otherwise.

Note: If a single ADR process is conducted under this Subdivision for multiple disputes, this section applies separately to each of the disputes, and the costs of the ADR process for each dispute will be the part of the overall cost of the ADR process that is attributable to that dispute.

- (2) The parties must pay for their own costs of attending the ADR process.

### Subdivision D—Confidentiality requirements

#### 74 Confidentiality—Code Mediators

- (1) A Code Mediator must not disclose to a large grocery business any information that is reasonably capable of being used to identify a supplier in connection with the performance of any of the Code Mediator's functions, unless:
  - (a) the supplier has expressly consented to the disclosure; or
  - (b) if the disclosure relates to a complaint the supplier has against the large grocery business—the supplier and the large grocery business have each notified the Code Mediator in accordance with subparagraph 54(5)(d)(i) that they agree to a proposed remedy for dealing with the complaint.
- (2) A Code Mediator must observe any confidentiality requirements relating to information disclosed or obtained in connection with the performance of any of the Code Mediator's functions.

#### 75 Confidentiality—Code Supervisor

- (1) The Code Supervisor must not disclose to a large grocery business any information that is reasonably capable of being used to identify a supplier in connection with the performance of any of the Code Supervisor's functions, except with the express consent of the supplier.
- (2) The Code Supervisor must observe any confidentiality requirements relating to information disclosed or obtained in connection with the performance of any of the Code Supervisor's functions.
- (3) The Code Supervisor must ensure that the written report published on the Code Supervisor's website under subsection 65(3) does not contain any information that:
  - (a) identifies a supplier; or
  - (b) is reasonably capable of being used to identify a supplier; or
  - (c) the Code Supervisor is satisfied is confidential commercial information of a supplier or large grocery business.

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**76 Confidentiality—parties to an ADR process**

A party to an ADR process conducted under Subdivision C must observe any confidentiality requirements relating to information disclosed or obtained in connection with the ADR process.

Civil penalty:           600 penalty units.

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## Division 6—Compliance

### 77 Duty to train staff with respect to this Code

- (1) A large grocery business must, within 6 months of the later of:

- (a) the day it becomes a large grocery business; and
- (b) 1 April 2025;

provide its buying team with:

- (c) a copy of this Code; and
- (d) training on the requirements of this Code.

Civil penalty: 600 penalty units.

- (2) The large grocery business must provide any person who becomes part of its buying team after the 6-month period that applies to it under subsection (1):

- (a) a copy of this Code; and
- (b) training on the requirements of this Code;

within 20 business days after the person becomes part of the buying team.

Civil penalty: 600 penalty units.

- (3) The large grocery business must provide annual retraining to its buying team on the requirements of this Code.

Civil penalty: 600 penalty units.

- (4) The large grocery business must keep a written record of training provided under this section.

### 78 Keeping records

- (1) A retailer or wholesaler must keep the original or a copy of each grocery supply agreement to which the retailer or wholesaler becomes a party while the retailer or wholesaler is a large grocery business:

- (a) during the term of the agreement; and
- (b) for 6 years after the agreement ends.

Note: This includes any document comprising the agreement or made, from time to time, under the agreement (see the definition of *grocery supply agreement* in section 5).

Civil penalty: 600 penalty units.

- (2) A retailer or wholesaler must keep the original or a copy of each of the following documents for at least 6 years after the document is made or given (the *relevant time*), if the retailer or wholesaler was a large grocery business at the relevant time:

- (a) any additional or different quantity and quality requirements agreed under subsection 19(2);
- (b) notice of variation of a grocery supply agreement given under paragraph 20(2)(e);



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- (c) written consent from a supplier to the set-off of an amount against the supplier's invoice or remittance under paragraph 22(2)(a);
  - (d) notice of a decision to delist a product given under subsection 32(6);
  - (e) a request of a kind mentioned in subsection 32(8), and any statement or information given as a result of such a request;
  - (f) notice of the outcome of the review of a decision to delist a product given under subsection 32(9);
  - (g) reasons for rejection of fresh produce given under subsection 34(5);
  - (h) notice of required changes to packaging, labelling or preparation standards given under subsection 34(7);
  - (i) notice of a material change to supply chain procedures given under paragraph 35(2)(a);
  - (j) a written summary of systems relating to confidential information created under subsection 38(3);
  - (k) product ranging principles or shelf space allocation principles published or provided to a supplier under subsection 39(1);
  - (l) notice of a range review given under subsection 39(4);
  - (m) a proposed price increase notified by a supplier under subsection 40(1);
  - (n) a notification given under subsection 40(2);
  - (o) a request to enter into negotiations about a price increase made in writing by a supplier under subsection 40(3);
  - (p) a notice that a complaint is vexatious, trivial, misconceived or lacking in substance given under subsection 52(1);
  - (q) a copy of a Code Mediator's report given to the large grocery business under section 59;
  - (r) a written record of training provided under section 77;
  - (s) any other document provided to a large grocery business by a supplier that shows, or purports to show, that the large grocery business has complied, or not complied, with a provision of this Code.

Civil penalty: 600 penalty units.

Section 79

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**Division 7—Miscellaneous**

**79 Acquisition of property**

A provision of this instrument has no effect to the extent (if any) to which the provision's operation would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) otherwise than on just terms (within the meaning of that paragraph).

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## Part 3—Application, saving and transitional provisions

### 80 Application—initial large grocery businesses

- (1) Treat a corporation as being required to comply with subsection 45(1) if:
  - (a) on 1 April 2025, it is a retailer or wholesaler; and
  - (b) its total covered revenue, worked out under section 8, exceeds \$5 billion for the 2023-2024 financial year.
- (2) Treat the corporation as having complied with that requirement if it notifies the Commission, in writing and within 5 business days after 1 April 2025, that the corporation is a large grocery business.

### 81 Application—agreements entered into before 1 April 2025

- (1) An obligation under the Code that relates to a grocery supply agreement applies, on and after 1 April 2025, in relation to a grocery supply agreement entered into before, on or after that day.

*Exceptions—reasonable exceptions to Code protections and additional requirements relating to fresh produce*

- (2) Despite subsection (1), if:
  - (a) a grocery supply agreement is entered into before 1 April 2025; and
  - (b) during the 12 months starting on 1 April 2025, the agreement is not varied to deal with a matter mentioned in subsection 19(3), (4) or (6);that subsection does not start to apply in relation to the agreement until 1 April 2026.
- (3) Despite subsection (1), if:
  - (a) a grocery supply agreement is entered into before 1 April 2025; and
  - (b) on a day (the **variation day**) during the 12 months starting on 1 April 2025, the agreement is varied to deal with a matter mentioned in subsection 19(3), (4) or (6);that subsection does not start to apply in relation to the agreement until the variation day.

### 82 Transitional—transition from Code Arbiter to Code Mediator

- (1) This section applies to a large grocery business who, on 31 March 2025:
  - (a) was bound by the old Code as a retailer or wholesaler; and
  - (b) had a Code Arbiter under the old Code.
- (2) The large grocery business must ensure that, after 31 March 2025, the Code Arbiter gives to the large grocery business' Code Mediator:
  - (a) records and summaries retained by the Code Arbiter under clause 36C of the old Code; and

## Section 83

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- (b) any documents or information held by or on behalf of the Code Arbiter that the Code Mediator reasonably requires to prepare the Code Mediator's first report under section 59 of this instrument.

### **83 Transitional—Code Mediator's first annual report**

- (1) For a person who is a Code Mediator on 30 June 2025, the first report to be prepared by the Code Mediator under section 59 must be for the 2024-2025 financial year.
- (2) In addition to the matters listed in subsection 59(2), the first report must include, to the extent known by the Code Mediator, the matters listed in subclause 36D(2) of the old Code for the financial year.

### **84 Transitional—Code Supervisor's first annual report**

- (1) The first report to be prepared by the Code Supervisor under subsection 65(1) must be prepared for the 2024-2025 financial year.
- (2) In addition to the matters listed in that subsection, the first report must also include, to the extent known by the Code Supervisor:
  - (a) the number of review requests made under the old Code to the Independent Reviewer during the financial year; and
  - (b) the number of independent reviews conducted by the Independent Reviewer under clause 37D of the old Code during the financial year; and
  - (c) the results of the survey conducted under section 85 of this instrument for the financial year.

#### *Records*

- (3) The person who was the Independent Reviewer under the old Code on 31 March 2025 must, after that day, give to the Code Supervisor:
  - (a) any information in the Independent Reviewer's possession or control; and
  - (b) any other assistance;the Code Supervisor reasonably requires for the purposes of preparing the Code Supervisor's first report under subsection 65(1) of this instrument.

### **85 Application—Code Supervisor's annual survey**

- (1) The first survey to be conducted by the Code Supervisor under section 66 must be conducted for the 2024-2025 financial year.
- (2) In addition to the matters listed in subsection 66(1), the first survey must also address the matters listed in subclause 37F(1) of the old Code in relation to the financial year.

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**86 Saving—record-keeping obligations under the old Code**

Despite the repeal of clause 42 of the old Code on 1 April 2025, that clause, as in force immediately before that day, continues to apply in relation to a document required to be kept under that clause, as if that repeal had not happened.

**87 Saving—appointment of the Independent Reviewer under the old Code**

- (1) An instrument of appointment under subclause 37(1) of the old Code that was in force immediately before 1 April 2025 continues in force (and may be dealt with) as if:
  - (a) that instrument had been made under subsection 60(2) of this instrument; and
  - (b) the references in that instrument to the Independent Reviewer were references to the Code Supervisor.
- (2) Subsection (1) does not prevent the person who was the Independent Reviewer on 31 March 2025 from continuing to perform that role after that day:
  - (a) for the purposes of section 84 of this instrument; or
  - (b) under Part 5 of the old Code as that Part continues to apply because of section 88 of this instrument.

**88 Saving—pending dispute resolution processes under the old Code**

Despite the repeal of Part 5 of the old Code on 1 April 2025, that Part continues to apply on and after that day in relation to a complaint:

- (a) directed to a Code Arbiter under that Part before that day; and
- (b) that had not been finally dealt with under that Part before that day.