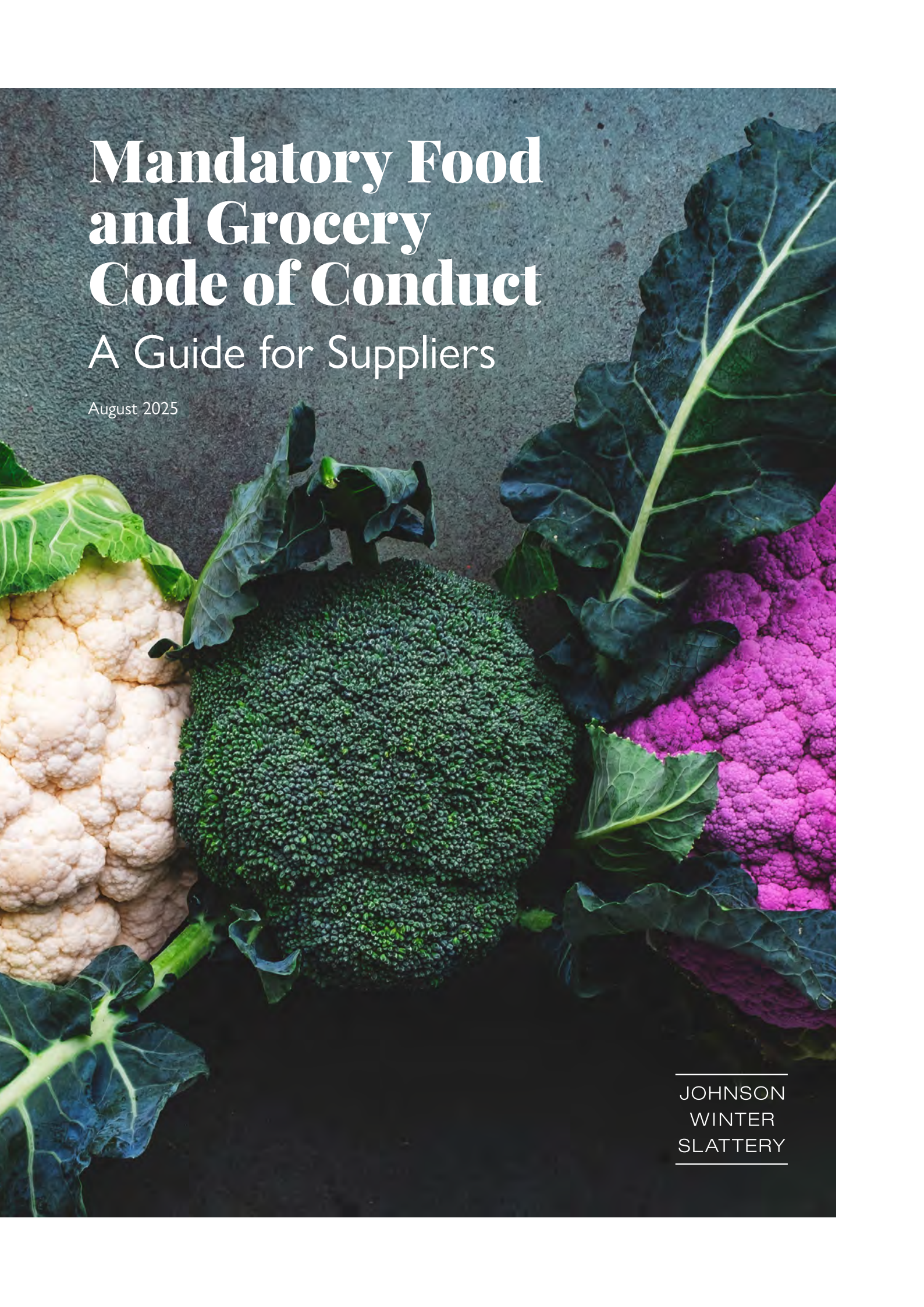


A photograph of various vegetables including cauliflower, broccoli, and leafy greens on a dark background. The cauliflower is on the left, the broccoli is in the center, and the leafy greens are on the right and bottom. The background is a dark, textured surface.

Mandatory Food and Grocery Code of Conduct

A Guide for Suppliers

August 2025

JOHNSON
WINTER
SLATTERY



The mandatory Food and Grocery Code of Conduct (**Code**) came into effect on **1 April 2025**.

This guide seeks to assist you in understanding your rights as a supplier under the Code in your conduct with Coles, Woolworths, Metcash and Aldi (**Major Retailers**).

Metcash is a wholesaler captured by the Code and references in this guide to 'Major Retailers' include Metcash unless otherwise stated.

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Is your Grocery Supply Agreement caught by the Code?

The Code applies to all grocery supply agreements (**GSAs**) from **1 April 2025**, regardless of whether your GSA was entered into before, on or after this day – unless a transitional provision applies.

Transitional provisions

Some obligations under the Code are subject to transitional provisions. These include:

a. Reasonable exceptions to Code protections

Refer to the “What protections can Major Retailers “exclude?”” section for the list of relevant protections Major Retailers can contract out of that are subject to the transitional provisions.

b. Additional requirements for GSAs concerning fresh produce

These include Major Retailers specifying the price, method or formula used to determine the price of fresh produce, and exercising due care in forecasting the amount of fresh produce to be supplied.

Refer to subsection 1 in the “What additional protections are there for fresh produce suppliers?” section for details on these requirements.

If your GSA was entered into **before 1 April 2025**, the obligations subject to the transitional provisions will not apply until **1 April 2026**, unless your GSA is varied sooner to address them, in which case the transitional provisions will apply to your GSA from the variation date.

All other provisions of the Code will otherwise apply to your GSA from 1 April 2025.

TIP: Major Retailers are likely to start rolling out new GSAs that seek to comply with the Code. Consider whether to accept, reject or negotiate these terms and obtain legal advice if you are concerned about your legal position and how your decision impacts the application of the Code.

What are the key protections for suppliers?

1. GSAs must be in writing and must contain certain provisions

A GSA must be in writing and contain certain provisions, including:

- any delivery requirements;
- the circumstances in which the Major Retailer can reject groceries;
- when you will be paid and circumstances in which payment may be withheld or delayed;
- the duration of the agreement, if the agreement is intended to operate for a limited time;
- any quantity and quality rules; and
- the circumstances in which the agreement may be terminated.

TIP: If there is any conduct by Major Retailers that you would like recorded in the GSA, you should negotiate for its inclusion. Consider obtaining legal advice to ensure you are appropriately protected.

2. Major Retailers must deal with you in good faith

Major Retailers must engage with you in good faith in respect of all their dealings with you.

Good faith means acting honestly, cooperating with you to achieve the purposes of the GSA, conducting the trading relationship without duress and providing certainty to you about trading risks and costs.

Not acting in good faith includes:

- acting arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;
- engaging in retributive action; or
- breaching confidentiality requirements.

A Major Retailer is not required to do the following to act in good faith:

- act in your interests;
- stop acting in its own commercial interests;
- agree to make changes to prices or GSAs requested by you; or
- buy products from you forever.

If a GSA contains a provision that limits or excludes a Major Retailer from acting in good faith, this is in breach of the Code.

If you are a supplier with an annual turnover of at least **\$1 billion** (you will be considered as a 'Large Supplier' under the Code) and have not acted in good faith towards a Major Retailer on a particular matter, the Major Retailer is not required to act in good faith to you for that particular matter.

TIP: Be mindful of any heavy-handed conduct by the Major Retailers including if they are applying pressure on you in relation to one issue to obtain a favourable outcome in relation to an unrelated issue. Consider obtaining legal advice if you are concerned about any such conduct.

3. Major Retailers must not engage in retribution

Major Retailers must not engage in retribution against you.

Retribution refers to any action or threatened action taken against you in response to exercising your rights under the Code where such action causes, or would cause, detriment to you (unless for genuine commercial reasons and not punishment).

Examples of retribution could be:

- Delisting your product
- Requiring you to make excessive payments for promotions or marketing of your product
- Rejecting your fresh produce
- Changing the shelf placement of your product in store or online to your detriment
- Delaying restocking your product in store or online
- Reducing or cancelling your orders
- Varying, terminating or not renewing your GSA (including for the supply of an "own brand" product)

TIP: Be mindful of any heavy-handed conduct by the Major Retailers in response to complaints about their conduct or raising concern about compliance with the Code.

If you believe there may be retribution, consider whether to ask for the Major Retailer's internal policy to confirm that staff of the Major Retailer are complying with internal requirements not to engage in retribution.

4. Major Retailers must not retrospectively vary a GSA

A Major Retailer must not vary a GSA retrospectively under any circumstances.

What protections can Major Retailers “exclude”?

The Code includes the following *other protections* for suppliers:

- Unilateral variations
- Set-offs without supplier consent
- Payments to cover wastage
- Payments for listing/stocking
- Payments for better positioning or increased shelf space of grocery products
- Payments for ordinary business activities
- Payments for funding promotions

Major Retailers can contract out of, or exclude, these protections in certain circumstances.

TIP: Consider whether the Major Retailer has met all the conditions to be able to contract out of, or exclude, the various protections below. If you do not want the Major Retailer to be able to contract out of or exclude a protection, you may wish to negotiate those provisions of the GSA.

1. Unilateral variations

A Major Retailer must not vary a GSA without your written consent unless:

- a. the GSA clearly states the Major Retailer is seeking to exclude this protection;
- b. the GSA itself explains why the exclusion is reasonable;
- c. the GSA explains the changed circumstances in which the variation can be made;
- d. if the variation involves a quantitative adjustment to the terms of supply, the GSA sets out the basis or methodology for calculating the adjustment;
- e. the variation is made in accordance with the GSA;
- f. the variation is reasonable in the circumstances; and
- g. you are given reasonable notice, in writing, of the variation, the variation terms and the Major Retailer's reasons for making the variation.



2. Payments without set-offs

A Major Retailer must pay you for all grocery products delivered and accepted in accordance with a GSA, either within the timeframes set out in the GSA or in any case, within a reasonable time after the Major Retailer receives your invoice for the products.

A Major Retailer must not set off any amount against your invoice (unless you have consented in writing to the set-off) or require you to consent to set off such an amount unless:

- a. the GSA clearly states the Major Retailer is seeking to exclude this protection;
- b. the GSA itself explains why the exclusion is reasonable;
- c. the GSA includes a provision that provides for the amount to be set off;
- d. the set-off is made in accordance with the GSA; and
- e. the set-off is reasonable in the circumstances.

3. Payments for shrinkage

A Major Retailer must not require you to make payments as compensation for shrinkage.

A Major Retailer can raise, discuss or agree with you on proposals and procedures to mitigate the risks and occurrence of shrinkage.

4. Payments for wastage

A Major Retailer must not require you to make any payment to cover any wastage of groceries incurred at:

- a. the premises of the Major Retailer (or that of their contractor or agent); or
- b. the premises of any retailer or wholesaler, unless
 - i. the GSA clearly states the Major Retailer is seeking to exclude this protection;
 - ii. the GSA itself explains why the exclusion is reasonable;
 - iii. the GSA contains an express and unambiguous provision that outlines the circumstances where you will be required to make payment (i.e. due to your negligence) to compensate the Major Retailer for grocery products that become unfit for sale and how the payment will be calculated;

- iv. the grocery product becomes unfit for sale in such circumstances;
- v. the payments are made in accordance with the GSA and each payment is reasonable in the circumstances; and
- vi. the Major Retailer takes reasonable steps to reduce those costs.

5. Payments for stocking / listing

A Major Retailer must not require you to make any payment (other than a payment in relation to a promotion) as a condition of stocking or listing grocery products unless:

- a. the GSA clearly states the Major Retailer is seeking to exclude this protection;
- b. the GSA itself explains why the exclusion is reasonable;
- c. the GSA has a provision that provides expressly for the payment to be made;
- d. the payment is made in accordance with the GSA;
- e. the payment is made in respect of grocery products that have not been stocked or listed by the Major Retailer during the preceding 365 days in 25% or more of the Major Retailer's stores; and
- f. the payment is reasonable in the circumstances.

6. Payments for better positioning or increased shelf space

A Major Retailer must not require you to make any payment to secure better positioning or increased shelf space unless:

- a. the GSA clearly states the Major Retailer is seeking to exclude this protection;
- b. the GSA itself explains why the exclusion is reasonable;
- c. the GSA expressly sets out the particular circumstances in which the payment may be required from you;
- d. the payment is made in accordance with the GSA; and
- e. the payment is reasonable in the circumstances.

7. Payments for ordinary business activities

A Major Retailer must not require you to make any payment for any of the Major Retailer's ordinary business activities unless:

- a. the GSA clearly states the Major Retailer is seeking to exclude this protection;
- b. the GSA itself explains why the exclusion is reasonable;
- c. the GSA contains a provision that expressly provides for the payment;
- d. the payment is made in accordance with the GSA; and
- e. the payment is reasonable in the circumstances.

Examples of ordinary business activities include:

- A member of the Major Retailer's buying team visiting you
- Artwork or packaging design
- Consumer or market research
- Opening or refurbishing a store
- Hospitality for the Major Retailer's staff

8. Funding promotions

A Major Retailer must not require you to fund part or all of the costs of a promotion unless:

- a. the GSA clearly states the Major Retailer is seeking to exclude this protection;
- b. the GSA itself explains why the exclusion is reasonable;
- c. the GSA contains a provision that expressly provides for the funding;
- d. the funding is required in accordance with the GSA; and
- e. the funding is reasonable in the circumstances.

If you are required to fund a promotion, the Major Retailer must not hold that promotion without giving you reasonable written notice.

If a Major Retailer orders a product from you in connection with the funded promotion at a promotional price, it must:

- a. ensure that the basis on which the quantity of the order is calculated is transparent; and
- b. not over-order.

If the Major Retailer sells any over-ordered products above the promotional resale price, the Major Retailer must pay you the difference between your promotional price and your full price for the product.

Subject to the two exceptions set out below, if a Major Retailer has placed an order for a product with you in connection with the funded promotion, the Major Retailer cannot do either of the following without your written consent:

- a. cancel the order; or
- b. reduce the volume of the order by more than 10% (for Coles, Woolworths and Aldi) or 20% (for Metcash).

Exceptions

However, a Major Retailer can engage in the above conduct without your written consent if the Major Retailer:

- a. gives you reasonable written notice of the cancellation or reduction; or
- b. compensates you for any net resulting costs, losses or expenses you incurred or suffered as a direct result of the Major Retailer failing to provide reasonable notice to you of the cancellation or reduction.



What additional protections are there for fresh produce suppliers?

If you supply fresh produce, Major Retailers must disclose certain price, labelling and quality information to you, as detailed below.

Please also refer to subsection 2 in “What other obligations do Major Retailers have?” section for additional protections for fresh produce suppliers where a price increase negotiation is not concluded within 5 business days after you have informed the Major Retailer of the price increase.

1. Prices, methods or formulas

GSAs for fresh produce must include the price of the fresh produce, or the method or formula for determining the price.

Major Retailers can specify a reasonable mechanism in the GSA to regularly negotiate the price of fresh produce supplied under the GSA.

Major Retailers must exercise due care in forecasting the amount of fresh produce to be supplied under a GSA (but a forecast is not required to be included in the GSA).

2. Labelling, packaging and preparation requirements

Major Retailers must disclose any labelling, packaging or preparation requirements for fresh produce.

Major Retailers must provide reasonable written notice of any required changes (unless the change is required immediately by law), taking into account any existing stock you have (where known) and any agreements about stock coverage in the GSA.

3. Standards or quality specifications

Major Retailers must give you all standards or quality specifications in writing and in terms that are clear, unambiguous and concise. The specifications must also be reasonable, having regard to industry practice.

Subject to the qualifications set out below, Major Retailers must accept all fresh produce delivered that meets those standards or specification.

4. When can Major Retailers reject fresh produce?

Major Retailers can only reject fresh produce if:

- a. you do not meet their standards or quality specifications;
- b. the produce is rejected within 24 hours after being delivered; and
- c. the Major Retailer has not already accepted the produce.

If a Major Retailer rejects your fresh produce because it does not meet the relevant standards or quality specifications, they must give you written reasons for their rejection within 48 hours of the rejection.

If a Major Retailer wants to make a claim for damages for fresh produce or shortfalls, it must do so within a reasonable time (no later than 30 days after delivery).

What other obligations do Major Retailers have?

1. Delisting

Delisting is prohibited under the Code unless there are genuine commercial reasons for the delisting and it complies with any procedures set out in the GSA.

Delisting includes:

- removal of your product from the Major Retailer's grocery product range; or
- reduction of the distribution of your products across stores or distribution centres, and this reduction has, or is likely to have, a material effect on you.

Examples of genuine commercial reasons include where:

- you have not met the agreed quality or quantity requirements for the product;
- you have not met the Major Retailer's commercial sales or profitability targets as notified to you in, or in accordance with, the GSA; or
- you have persistently failed to meet delivery requirements, as notified to you from time to time, in accordance with the GSA.

If a Major Retailer decides not to extend a fixed term GSA or enter into a new GSA following its expiry, this is not taken to be a decision to delist the product.

TIP: If you raise a complaint, concern or dispute with a Major Retailer and they delist your product as a result, this may be retribution which is prohibited under the Code.

Obligation to notify you before delisting a product

Major Retailers must give reasonable written notice to you before delisting a product.

The notice must:

- a. include the genuine commercial reasons for delisting your product;
- b. inform you of your right to have the decision reviewed by the Major Retailer's senior buyer; and
- c. inform you of your right to make a complaint to the Code Mediator and include the Code Mediator's contact details.

A Major Retailer's obligation to notify you before delisting a product 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 Major Retailer being out of stock or stocked at significantly reduced levels.

You can make a written request for the Major Retailer to provide you with a statement of its genuine commercial reasons for a delisting or any information or additional information relating to its delisting decision. The Major Retailer's senior buyer must promptly comply with your written request.

If you make a written request to a Major Retailer for a review of its delisting decision, the Major Retailer must promptly review its decision and provide you with written notice of the outcome of the review, including the basis for its decision.

TIP: If you are unhappy with a delisting decision and the Major Retailer provides its reasoning, request for the underlying data that supports the Major Retailer's reasoning.

2. Price increases

There is a new process for notifying price increases to Major Retailers under the Code.

If your price increase relates to products:

- a. that are supplied under a GSA; and
- b. you notify the Major Retailer, in writing, of your price increase request,

the Major Retailer must, within 30 days of receiving your written notice, notify you, in writing, whether it:

- accepts the price increase;
- accepts an increase in price but does not accept the amount of price increase; or
- does not accept the price increase.

Once notified, you can request the Major Retailer to enter into negotiations about the price increase.

Major Retailers must negotiate with you in good faith and take all reasonable steps to resolve negotiations without delay.

Additional conditions for fresh produce suppliers

If you are a fresh produce supplier, you need to satisfy additional conditions before you can exercise the above rights regarding notifying price increases to a Major Retailer.

In addition to satisfying conditions (a) and (b) above, you also need the following:

- i. a mechanism in the GSA to allow you to regularly negotiate the price of the fresh produce; and

- ii. any negotiations about the price increase are not concluded within 5 business days after you have informed the Major Retailer of the price increase.

Timing of negotiations

- The negotiation period begins when you notify the Major Retailer in writing of the price increase.
- Negotiations should be settled within 30 days as set out above (with the 5 business days for fresh produce price increase requests being within this 30 day period), but complex negotiations may take longer.
- The Major Retailer must actively engage in the negotiation in good faith and should not limit or delay discussions until the negotiation period has almost finished.
- The Major Retailer cannot demand that you disclose commercially sensitive information relating to the price increase.

TIP: If you are unhappy with a pricing decision and the Major Retailer provides its reasoning, request the underlying data that supports the Major Retailer's reasoning.

3. Changes to supply chain procedures

A Major Retailer must not require you to make any material changes to your supply chain procedures for the duration of the GSA unless one of the following applies:

- a. the Major Retailer gives you reasonable written notice of the change;
- b. the Major Retailer compensates you for any net costs, losses or expenses you incurred as a result of the Major Retailer's failure to give reasonable notice; or
- c. you voluntarily waive your right to compensation for such costs, losses or expenses.

4. Product ranging, shelf space allocation and range reviews

A Major Retailer must publish or provide you with their product ranging and shelf allocation principles. Major Retailers must comply with these principles and keep them up to date.

A Major Retailer must not discriminate when applying these principles, such as favouring their "own brand" products over yours.

Product range reviews

- If you are likely to be adversely affected by a range review, a Major Retailer must give you written notice within a reasonable time before starting a range review, outlining the purpose of the review and the criteria governing its ranging decisions.

- If you may be adversely affected by the outcome of a range review, the Major Retailer must give you a reasonable opportunity to discuss the outcome, including the basis on which it will make its final decision.

TIP: There is nothing preventing you from having ongoing discussions with a Major Retailer about ranging decisions prior to a range review to maximise your prospects of optimal ranging and shelf allocation.

5. Intellectual property (IP) and confidential information

Your IP rights include the grocery product's branding, packaging and advertising.

A Major Retailer must not:

- a. infringe your IP rights when developing or producing their "own brand" products; or
- b. require you to transfer or exclusively license your IP rights as a condition or term of supplying an equivalent "own brand" product of the Major Retailer (if applicable).

A Major Retailer can:

- a. hold an IP right in an "own brand" product;
- b. have an exclusive right to the retail sale of its "own brand" product; and
- c. make the holding of one of these rights a condition or term of supply by you of an "own brand" product of the Major Retailer, to the extent the product, recipe or formulation of the product:
 - was developed or formulated by or for the Major Retailer; or
 - is customised by or for the Major Retailer.

You may disclose confidential information to a Major Retailer for the supply of grocery products, such as information about product development, proposed promotions or pricing.

The Major Retailer can only:

- a. use that information for the disclosed purpose; and
- b. share it with employees or agents who need the information for the disclosed purpose.

Information is not confidential information if it is publicly available or the Major Retailer became aware of it independently of the supplier and without any breach of this section.

TIP: Ensure your contractual terms with the Major Retailer includes appropriate protection for your IP.

What are the penalties for breaches of the Code by Major Retailers?

There are various penalties that apply to breaches of the Code by Major Retailers.

The maximum penalty is **10% of annual turnover** for a breach. Senior executives could also be personally liable for **\$500,000** per breach.

There are other smaller penalties that can also be applied to the Major Retailers for less serious breaches of the Code.





What can you do if you have a complaint about conduct governed by the Code?

- Raise the issue directly with the Major Retailer and seek a commercial resolution
- Make a complaint to the ACCC
- Make a complaint to the Major Retailer's Code Mediator (CM) (with the option to have the decision reviewed by the Code Supervisor (CS))
- Resolve the dispute through mediation or arbitration

Any of these options can be pursued. If you are unhappy with the outcome of one option, you can seek out the alternatives available.

You can pursue mediation or arbitration without making a complaint to the CM (and vice versa). If you raise a complaint with the CM or the CS, you have to wait until that process is finished before pursuing mediation or arbitration (and vice versa).

The process for each option is set out on the next page.

TIP: Obtain legal advice on which dispute resolution process to utilise.

Dispute Resolution Processes under the Code

Complain to the Code Mediator (CM) and/or Code Supervisor (CS)

Each Major Retailer appoints their own CM.

You can make a complaint about an issue covered by the Code directly to the CM.

The CM can investigate the complaint and propose remedies (i.e. compensation or varying the GSA). The CM usually has authority from the Major Retailer to enter into an agreement on the Major Retailer's behalf to settle a dispute.

Anonymity and confidentiality in CM process

During the investigation, the CM cannot disclose to the Major Retailer your identity (and must redact any information that can be reasonably used to identify you in any information they provide to the Major Retailer about the complaint), unless they have your clear consent.

The CM must also follow confidentiality rules about information they receive and release when dealing with or resolving a complaint.

However, your identity will be disclosed to the Major Retailer if you accept a solution from the CM for the complaint.

Complaint process to the CM

1. The complaint must be in writing and must contain certain information, including your identification and contact details and details/evidence supporting the Major Retailer's alleged breach of the Code.
2. The CM must take all reasonable steps to investigate the complaint and must close the investigation within 20 business days, unless you agree in writing to extend this period.
3. The CM must give you a written notice within 5 business days of concluding their investigation which includes their recommendations and reasons.
4. You can choose to accept or reject any proposed recommendation put forward by the CM.
 - If both the Major Retailer and you accept the proposed solution, the Major Retailer and you must write to the CM respectively within 20 business days after the CM's notice proposing the solution (otherwise it will lapse). You will then enter into a written agreement with the Major Retailer

regarding the remedy. While you can still refer a complaint to the CS if you accept the proposed solution, the CS will only be able to monitor systemic issues and will not take any further action regarding the CM's process or complaint.

- If you do not want to accept the proposed solution, you may either:
 - a. take no further action;
 - b. escalate to the CS for an independent review; or
 - c. pursue mediation or arbitration.

Escalation to the CS for an independent review

The CS is appointed by the Minister. The key functions of the CS are to consider requests to review CM processes and identify emerging and systemic issues in the grocery supply chain.

You can seek an independent review of the CM's process of dealing with the complaint where:

1. the CM has taken too long to investigate the complaint (including exceeding any statutory or agreed timeframes); or
2. you are dissatisfied with the outcome of the CM process.

Complaint process to the CS

1. You must make a request for review to the CS in writing. The written request must contain certain information, including your identification and contact details and details of your dissatisfaction with the CM's process (including any supporting evidence).
2. The CS will consider and decide within 10 business days of receiving your review request whether they will conduct an independent review of the CM's process or not. The CS does not consider whether the CM's proposed solution is reasonable or adequate.
3. If the CS decides to:
 - **Not conduct an independent review** – you will be notified and the CM's original proposed solution will lapse 10 business days after you receive this notice.
 - **Conduct an independent review** – the CS will give you and the Major Retailer a written notice of the decision. The CS will take reasonable steps to consider and complete the review within



20 business days following the CS giving notice confirming it will conduct an independent review.

4. The CS will provide you and the CM a written notice of any recommendations made and reasons for the recommendations within 5 business days of completing their review. If the CS finds that a breach of the Code may have occurred, they will give details of the breach to the ACCC.
5. The CS may, but does not have to, refer the complaint back to the CM for their consideration and make recommendations to the CM about the process they undertook. Any revised solution proposed by the CM through this process will lapse 10 business days after the CM reconsiders the complaint and notifies you of their proposed recommendation / remedy.

Anonymity and confidentiality in CS process

The CS will not include any information that could be reasonably used to identify you in their communication to the Major Retailer (including in the notice setting out their recommendations), unless you provide clear consent. The CS must also observe any confidentiality requirements for information that you supply to them.

Mediation or Arbitration

If you pursue mediation, the Major Retailer is usually obliged to take part.

If you choose arbitration, the Major Retailer can decide whether to take part or agree to be bound by the arbitrator's decision. The Major Retailer must notify you of its decision in writing within 10 business days.

If the Major Retailer chooses to seek mediation or arbitration, you can decide whether to take part. You must inform the Major Retailer of your decision in writing within 10 business days.

Both parties are equally liable for the costs of the mediation or arbitration (unless you reach an agreement with the Major Retailer) as well as for their own costs (i.e. legal costs).

About us

We are the leading FMCG practice in Australia. We assist FMCG clients in all aspects of their business, from product development through to sales and consumer issues. Aside from advising companies on the Franchising Code of Conduct, Food and Grocery Code and the Dairy Code, we also advise on joint ventures, M&A, brand development and manufacturing and distribution agreements.

Contacts for Code issues or other competition/consumer issues.



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