



National
Farmers
Federation

Horticulture
Council

18 October 2024

Competition Policy Unit
Treasury
Langton Cres
Parkes ACT 2600

By email via: fgc@treasury.gov.au

To the Competition Policy Unit,

RE: Food and Grocery Code of Conduct – Exposure Draft

On behalf of the NFF Horticulture Council (the Council) and the wider national horticulture industry, we welcome the opportunity to submit for your consideration our views and comment on the exposure draft of the Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024.

As you will appreciate, suppliers of fresh fruits and vegetables to the major supermarkets are uniquely vulnerable relative to all other suppliers, even those of other fresh food products, given the particularly perishable nature of horticultural products and the absence of significant alternative export market opportunities.

For the Council, the Review of the Code, the current ACCC Supermarket Inquiry, and review of the Horticulture Code of Conduct scheduled for later this year, together represent a once in a generation opportunity to not just ensure consumers have access to affordable food, but rebalance trading relationships, and secure fair returns on the risk Australian farmers take every day to fill our grocery aisles.

For this reason, the Council and the wider industry has been heavily engaged and invested in the Review, making substantive submissions with considered recommendations on how the Code could best level the playing field for fresh produce suppliers.

Now, with the benefit of the exposure draft, we sharing with you drafting advice for giving effect to recommendations arising from the Emerson Review, including about grocery supply agreements including the basis for determining prices, requiring forecasts of volumes are conducted with due care, and providing that fresh produce standards and specifications be reasonable.

Otherwise, the Council has broadly welcomed both the Review recommendations and their acceptance by the Federal Government, as a vast improvement on the current Code, including importantly making it mandatory, and introducing significant penalties for non-compliance and a more accessible dispute resolution process.

As you will be aware, the leading recommendation the Council made in its initial submission as part of the Review is that perishable horticultural products and their domestic retail and wholesale markets are regulated, including through codes of conduct, in a way that is consistent and fit for purpose.

On both measures, consistency and fitness for purpose, the exposure draft unfortunately, currently, falls short of industry expectations.

The Council would quite plainly have preferred a set of recommendations relating to fresh produce that would have resulted in Code provisions that were at least as prescriptive as those in the Horticulture Code of Conduct, and in some instances more onerous for supermarkets to comply with, to address those parts of the Code most permissive of supermarkets exerting pressure on suppliers, or even distorting the market itself.

Given the likely great costs and harms flowing from these practices and this permissiveness, our firm view remains that more prescriptive and onerous provisions are not only justified, but will in time be proven to be necessary, potentially through the ongoing ACCC inquiry into supermarkets not due to report until next February and so unable to inform this process. We call on government to require that a review of provisions within the updated Code specific to fresh produce commence within two (2) years of its commencement.

As they stand, the recommendations accepted by the Federal Government concerning fresh produce rely on legalistic terms “due care” and “reasonable” that will be open to interpretation and poorly understood among retailers, suppliers and regulators. Notwithstanding greater clarity achieved through the drafting process, we strongly support the Review recommendation that investments be made in education and outreach activities to ensure that suppliers are empowered to take advantage of their rights.

Further, we would request representatives of the fresh produce industry, together with a number of supermarkets suppliers, are consulted on the design of materials relating to fresh produce provisions to be used in education and outreach activities. And that industry bodies be engaged to assist in outreach activities.

To discuss further the above and more detailed drafting advice that follows, please be in contact with Richard Shannon, Executive Officer to the Council either by email at hortcouncil@nff.org.au or phone on [REDACTED]

Yours sincerely,

[REDACTED]

JOLYON BURNETT
Chair
NFF Horticulture Council

Drafting advice

Reference	Draft text	Issue	Advice
<p>Part 1 Division 1 Section 11 Review of Code</p>	<p>(1) The Minister must cause a review to be undertaken in relation to the operation of the Code.</p> <p>(2) The review must:</p> <p style="padding-left: 40px;">(a) assess the impact of the Code in improving commercial relations between retailers, wholesalers and suppliers; and</p> <p style="padding-left: 40px;">(b) start before the end of the period of 5 years starting at the commencement of this section.</p>	<p>Provisions applying specifically to fresh produce, including at Section 34, do not provide sufficient protections to suppliers or in ways consistent with the Horticulture Code of Conduct. A period of five years is too long in the likely event these protections do not substantially improve trading relations for fresh produce suppliers.</p> <p>The Code should be more specific about those factors or measurements used in a review to assess its impact.</p>	<p>Insert an additional clause requiring the Minister to cause a review of provisions within the Code specific to fresh produce commence within two (2) years of its commencement.</p> <p>Amend subsection 2(a) to include more specific measures of impact, including:</p> <ul style="list-style-type: none"> • Supplier satisfaction, confidence and trust in context of relationships with large grocery businesses, Code mediators, Code supervisor and the Commission. • Supplier financial sustainability. • Frequency, nature, and outcomes of disputes and complaints under the Code. • Frequency, nature, and outcomes of

			<p>compliance and enforcement activity.</p> <ul style="list-style-type: none"> • Frequency and nature of variations to Code protections or allowable contrary provisions.
Part 1 Division 2 Section 6 Definitions	<p><i>promotion</i> means any offer for sale (whether or not accompanied by some other benefit to a consumer):</p> <p>(a) at an introductory or reduced price, or involving non-standard sales activity; and</p> <p>(b) as agreed between a large grocery business and a supplier; and</p> <p>(c) that is intended to last only for a specified period.</p>	The term “non-standard sales activity” is not well understood or clearly defined here. It’s use risks inadvertently excluding sales and removing protections for suppliers where a supermarket might argue it is part of standard sales activity.	Remove “or involving non-standard sales activity”.
Part 1 Division 2 Section 7 Meaning of supplier	<p>(1) A 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).</p> <p>(2) A person who is a wholesaler may be a supplier. However, a large wholesaler may not be a supplier.</p>	A number of different forms of legal entity are used by suppliers. Person does not appear to be defined in the Code or in the Act as inclusive of all legal entity types. Entity is however defined broadly in the Act.	Replace “person” with “entity”.
Part 2 Division 3 Section 17 Obligation to deal with suppliers lawfully and in good faith	<p>(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:</p> <p>(a) whether the large grocery business has acted honestly;</p> <p>(b) whether the large grocery business has cooperated to achieve the</p>	<p>A significant proportion of fresh produce supplied to supermarkets has not been grown by direct suppliers.</p> <p>The same act by a supermarket may not be deemed arbitrary, capricious, unreasonable or reckless</p>	<p>Insert clause into subsection (3):</p> <p>(X) whether the trading relationship of the large grocery business with a fresh produce supplier has been conducted in recognition of the need for certainty along the</p>

	<p>purposes of the relevant grocery supply agreement;</p> <p>(c) whether the large grocery business has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;</p> <p>(d) whether the large grocery business has not acted in a way that constitutes retribution against the supplier;</p> <p>(e) whether the large grocery business has conducted its trading relationship with the supplier without duress;</p> <p>(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;</p> <p>(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;</p> <p>(h) whether, in dealing with the large grocery business, the supplier has acted in good faith.</p>	<p>relating to a direct supplier, but depending on contractual arrangements further down the supply chain, may be deemed as such given impacts on their suppliers.</p> <p>Similarly, a supermarket may engage in ways that may have regard for the risks and costs of trading, particularly in relation to production, delivery and payment with a direct supplier, but not those supplying the direct supplier.</p> <p>Determining whether a large grocery business has acted in good faith with a supplier should also include consideration of impacts not just on direct fresh produce suppliers, but also on those growers supplying direct suppliers.</p>	<p>supply chain regarding the risks and costs of trading, particularly in relation to production, delivery and payment;</p>
<p>Part 2 Division 3 Section 19 Matters to be covered by agreement</p>	<p><i>Additional requirements for agreements that relate to fresh produce</i></p> <p>(5) If a grocery supply agreement relates to the supply of fresh produce, a large grocery business must not enter into the agreement unless the agreement also specifies the price, or the method or</p>	<p>Use of the word “determine” infers a unilateral ability of supermarkets to set prices and undermines the intent of the Code to create more instances of bargaining.</p> <p>If the intent is to create greater transparency, then it</p>	<p>Replace the word determine with a more suitable alternative.</p> <p>Redraft current clause (5) to ensure the method or formula used to by large grocery businesses to inform their</p>

	<p>formula to be used to determine the price, of the fresh produce.</p> <p>Subsection (5) does not prevent a grocery supply agreement from specifying a mechanism to negotiate on a regular basis the price of fresh produce supplied under the agreement. Such a mechanism must be reasonable.</p>	<p>is equally important that supermarkets confirm the method or formula used, whether a price is specified or not.</p> <p>The Code should provide all parties greater clarity and confidence by specifying those methods or formulas that are permissible and establish simple standards or limitations on their use, to ensure transparency and equity.</p>	<p>pricing position is always specified.</p> <p>Insert subclauses defining two (2) types of pricing method permissible:</p> <p>(a) “market benchmark” where an offer price from a supermarket is established to start a negotiation using both a reference price for the exact same product from a central or wholesale market and the known total cost to serve the supermarket, including holding relevant certifications.</p> <p>(b) “closed tender” where suppliers with a GSA are invited to submit their own price to start a negotiation.</p> <p>Insert further subclauses concerning the “market benchmark” method requiring a reference price be:</p> <p>(a) From an impartial source, at arm’s length to both supermarket and supplier.</p> <p>(b) Shared with or freely discoverable by suppliers.</p> <p>(c) Based on exactly the same product, including market location, time, variety,</p>
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<p>Part 2 Division 3 Section 19 Matters to be covered by agreement</p>	<p><i>Additional requirements for agreements that relate to fresh produce</i></p> <p>(7) A large grocery business must exercise due care in forecasting the amount of fresh produce to be supplied under a grocery supply agreement.</p> <p>(8) For the avoidance of doubt, subsection (7) does not require a forecast to be included in an agreement that relates to the supply of fresh produce.</p>	<p>Confusion about the exact nature of a volume forecast and lack of consistency in approach taken by supermarkets.</p> <p>Due care is a legalistic term open to interpretation, favouring supermarkets with greater resources and bargaining power.</p>	<p>Insert a clause mandating a reasonable error tolerance to which all supermarket volume forecasts must adhere, relevant to the commodity or product concerned and giving consideration to the costs incurred and risks assumed by suppliers.</p> <p>Insert a clause requiring:</p>

		<p>As with prices, require supermarkets to be transparent about the model and parameters applied in developing a volume forecast.</p>	<p>(a) All volume forecasts be accompanied by an explanation of the model, error tolerance, the risk each party assumes in simple language, and evidence supporting underlying assumptions about consumer demand.</p> <p>(b) Requiring large grocery businesses to report publicly on the error tolerance in their forecast models against a common metric.</p>
<p>Part 2 Division 3 Section 20 Unilateral variation of agreement Subsection 3</p>	<p>(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:</p> <p>(a) the benefits, costs and risks (if any) for the supplier and for the large grocery business; and</p> <p>(b) whether the variation is for a purpose that benefits both the supplier and the large grocery business.</p>	<p>Code protections (subsections 20, 22, 24, 25, 26, 27, 28) exist for good reason, are essential to assure suppliers are not exploited, and should be difficult for large grocery businesses to avoid.</p> <p>Determining whether a variation is reasonable should not have regard, if only in part, to the benefits arising for the large grocery business, when it is likely, given their significant bargaining power, that much else of the agreement is to their advantage.</p> <p>To be clear, it would run counter to the intent of these protections that benefits accruing to large</p>	<p>Redraft subclause (a) and (b) to make clear determining whether a variation is reasonable should have regard exclusively to the benefits, costs, risks (if any), and purpose for the supplier.</p>

		grocery business could be used to justify a variation that, based on impacts on suppliers alone, would be considered unreasonable.	
Part 2 Division 3 Section 22 Payments to suppliers Subsection 4	(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.	As above.	As above.
Part 2 Division 3 Section 24 Payments for wastage Subsection 3	(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.	As above.	As above.
Part 2 Division 3 Section 25 Payments as a condition of being a supplier Subsection 5	(5) For the purposes of (but without limiting) subparagraph (3)(c)(iii) or (4)(c)(iii), in determining whether the payment is reasonable in the circumstances, regard must be had to:	As above.	As above.

	<p>(a) the benefits, costs and risks (if any) for the supplier and for the large grocery business; and</p> <p>(b) whether the payment is for a purpose that benefits both the supplier and the large grocery business.</p>		
<p>Part 2 Division 3 Section 26 Payments for better positioning of grocery products—retailers Subsection 3</p>	<p>(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:</p> <p>(a) the benefits, costs and risks (if any) for the supplier and for the large grocery business; and</p> <p>(b) whether the payment is for a purpose that benefits both the supplier and the large grocery business.</p>	As above.	As above.
<p>Part 2 Division 3 Section 27 Payments for ordinary business activities Subsection 4</p>	<p>(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:</p> <p>(a) the likely and actual benefits, costs and risks (if any) for the supplier and for the large grocery business; and</p> <p>(b) whether the payment is for a purpose that benefits both the supplier and the large grocery business.</p>	As above.	As above.
<p>Part 2 Division 3 Section 28 Funding promotions</p>	<p>(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:</p>	As above.	As above.

Subsection 3	<p>(a) the likely and actual benefits, costs and risks (if any) for the supplier and for the large grocery business for the promotion;</p> <p>(b) whether the funding is for a purpose that benefits both the supplier and the large grocery business.</p>		
Part 2 Division 4 Section 30 Retribution	<p>A large grocery business must have written policies and procedures to:</p> <p>(a) review the commercial decisions made by a buying team or category manager in relation to a supplier that:</p> <ul style="list-style-type: none"> (i) exercised, or indicated that it will or may exercise; or (ii) was, or may have been, able to exercise; <p>a right under this Code against the large grocery business; and</p> <p>(b) ensure that those decisions are not retribution against the supplier.</p>	<p>The Code should also provide that where there is proven retribution, that the supplier is compensated for any loss resulting from the retributive conduct.</p> <p>For example, where a Grocery Supply Agreement (GSA) is varied to the detriment of the supplier, payment equivalent to the commercial value of the variation and the option to restore the GSA under the length of its term under the supervision of the independent Code Supervisor.</p>	<p>Insert an additional penalty that large grocery businesses must (a) compensate a supplier an amount equivalent to any commercial losses arising from the retribution, (b) restore any trading arrangements existing prior to the retribution.</p>
Part 2 Division 4 Subdivision B— Requiring payments from suppliers Multiple sections	<p><i>Multiple sections</i></p> <p>The standard provision within this subdivision that allowable payments from suppliers are reasonable in the circumstances, with reference to:</p>	<p>It is unreasonable that supermarkets should make an assessment about the reasonableness of an otherwise prohibited payment without at least being transparent about the nature and outcomes of the assessment.</p>	<p>Insert into each relevant section a new subsection requiring large grocery businesses to share with suppliers a report both before the activity on the estimated benefit, costs and risks associated with the payment, and afterwards on the actual</p>

	<p>(a) the benefits, costs and risks (if any) for the supplier and for the large grocery business; and</p> <p>(b) whether the payment is for a purpose that benefits both the supplier and the large grocery business.</p>	<p>Further, the supermarket should be subject to scrutiny as to whether their assessments before the fact, about benefits, costs and risk, are accurate.</p>	<p>performance of the activity against the previously reported estimates of benefit, costs, and risk.</p>
<p>Part 2 Division 4 Section 33 Funded promotions</p>	<p>(1) If a supplier agrees 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.</p>	<p>There is increasing practice of supermarkets requesting or strongly suggesting that suppliers purchase advertising, through supermarket owned marketing platforms, in conjunction with funded promotions.</p> <p>These purchases should be captured as part of the defined funded promotion.</p>	<p>Amend subsection (1) to read:</p> <p>If a supplier agrees to make a payment to a large grocery business in support of the promotion of a product, including the purchase of related advertising directly with the large grocery business, (the funded promotion), the large grocery business must not hold the funded promotion unless the supplier has been given reasonable written notice.</p>
<p>Part 2 Division 4 Section 34 Fresh produce standards and quality specifications</p>	<p><i>Standards or quality specifications</i></p> <p>(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.</p> <p>(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</p>	<p>Quality specifications should, in the first instance and where available, be sourced from industry representative bodies.</p> <p>Supermarkets purchasing produce that doesn't meet their own standards at cheaper prices where they have volumes available under Grocery Supply Agreements.</p> <p>The reasonableness of quality standards and</p>	<p>Amend subsection (2) to read:</p> <p>(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 at that same seasonal time period.</p>

	supply that kind of produce to the large grocery business.	specifications must also be assessed relative to what produce is available at a time in a season.	<p>Insert a clause requiring large grocery businesses defer to defer to industry quality specifications wherever they exist.</p> <p>Insert clauses prohibiting large grocery businesses from:</p> <p>(a) Setting different requirements in Grocery Supply Agreements for fresh produce suppliers within the same category.</p> <p>(b) Purchasing product that is not compliant with their own specifications or requirements where they have volumes available to them from suppliers with whom they have a current Grocery Supply Agreement.</p>
<p>Part 2 Division 4 Section 34 Fresh produce standards and quality specifications</p>	<p><i>Fresh produce to be accepted</i></p> <p>(3) A large grocery business must accept fresh produce delivered in accordance with a grocery supply agreement.</p> <p>(4) Subsection (3) does not apply in relation to a delivery of fresh produce if:</p> <p>(a) the produce fails to meet relevant fresh produce standards or quality specifications; and</p> <p>(b) the large grocery business rejects the produce within 24 hours after the produce is delivered to the large grocery business; and</p>	<p>Suppliers have no timely, accessible and impartial recourse should they dispute a knockout or rejection by a supermarket on quality specification.</p>	<p>Insert clauses providing for the equivalent of horticulture produce assessors under the Horticulture Code, to make more timely determinations on disputes concerning product quality and rejections on specification.</p>

	<p>(c) the large grocery business does not reject the produce after the large grocery business has accepted the produce.</p> <p>(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.</p>		
<p>Part 2 Division 4 Section 34 Fresh produce standards and quality specifications</p>	<p><i>Labelling, packaging and preparation requirements</i></p> <p>(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.</p> <p>(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.</p> <p>(8) A large grocery business must make any claim for damaged fresh produce or shortfalls, or any similar claims, in relation to fresh produce, within a reasonable time of, and in any event no later than 30 days</p>	<p>The absence of opportunities to brand fresh produce prohibits suppliers from interacting directly with consumers, to receive feedback and ideas for product improvement and leaves consumers to assume products in the same category are interchangeable. It also does not drive investment in quality for the consumer as they are unable to differentiate between products.</p> <p>A 30-day time period is too long for perishable supply chains. Notice should be given within 48 hours as per rejection notices and claims raised within 14 days.</p>	<p>Insert a clause requiring, where suppliers are required by large grocery businesses to use particular packaging, that a certain proportion of all useable space on the packaging be reserve for the unincumbered use of the supplier.</p> <p>Amend subsection (8) to read:</p> <p>(8) A large grocery business must give notice of an intention to make any claim for damaged fresh produce or shortfalls, or any similar claims, in relation to fresh produce, within 48 hours after delivery, and make the claim no later than 14 days after delivery of the fresh produce to the large grocery business or a nominee of the large grocery business.</p>

	after, delivery of the fresh produce to the large grocery business or a nominee of the large grocery business.		
Part 2 Division 4 Section 38 Confidential information	<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(4) To avoid doubt, information is not confidential information for the purposes of this section if the information:</p> <p style="padding-left: 40px;">(a) is publicly available; or</p> <p style="padding-left: 40px;">(b) comes into the possession or knowledge of the large grocery business:</p>	<p>Retailers are known to request commercially sensitive information from their suppliers such as production costs, detailed supplier information and production systems.</p> <p>It is believed this information is used by buying teams to further strengthen their bargaining position.</p> <p>Buying teams should be prohibited from requesting from suppliers or accessing from another part of the large grocery business, any sensitive commercial information not necessary as part of a bargaining process.</p>	<p>Insert subsection:</p> <p>The buying team within a large grocery business must not request from suppliers or accessing from another part of the large grocery business, any sensitive commercial information not necessary as part of a bargaining process, including information concerning production costs and production systems.</p>

	<p>(i) independently of the supplier; and</p> <p>(ii) without any breach of subsection (2) on the part of the large grocery business.</p>		
<p>Part 2 Division 5 Section 45 Each large grocery business must appoint a Code Mediator</p> <p>Section 46 Notifying details of the Code Mediator's appointment</p>	<p>(1) Each large grocery business must appoint a person to be the Code Mediator in relation to this Code. The appointment must be by written agreement with the person.</p> <p>(2) Subject to subsection (3), the large grocery business must:</p> <p>(a) not engage the person in any other capacity; and</p> <p>(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.</p> <p>(3) The person may be engaged in another capacity during a financial year if the large grocery business' market share:</p> <p>(a) is less than 15% in that financial year; or</p> <p>(b) was less than 15% in either of the previous 2 financial years.</p>	<p>Providing that large grocery business must appoint their own Code Mediator significantly undermines their independence, critically, as perceived by suppliers. This perception will not be ameliorated by any of the qualifying provisions at subsection (2).</p> <p>A Code Mediator whose performance and remuneration are managed and adjudicated by the very retailers whose behaviour they are meant to monitor cannot be considered independent.</p> <p>It would be more appropriate for large retailers to pay an amount to the office of the Code Supervisor, which can be used to resource Code Mediators under their direction and assigned to each retailer to carry out their functions.</p>	<p>Remove sections 45 and 46, and redraft to provide a requirement for large grocery businesses to fund the office of the Code Supervisor to cover the reasonable operating costs of engaging and resourcing a Code Mediator.</p> <p>This section should provide an ability for large grocery businesses to veto a proposed appointment on the grounds the person is either insufficiently qualified or independent.</p> <p>It should also require the Code Supervisor to include the terms of engagement and performance of Code Mediators in their annual report.</p>

	<p>(1) The large grocery business must notify the Commission and the Code Supervisor of:</p> <ul style="list-style-type: none"> (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. <p>(2) The large grocery business must:</p> <ul style="list-style-type: none"> (a) pay the Code Mediator’s costs; and (b) ensure the Code Mediator is sufficiently resourced to perform the Code Mediator’s functions. 		
<p>Part 2 Division 5 Section 47 Code Mediator’s functions</p>	<p><i>Functions</i></p> <p>(1) The Code Mediator’s functions are as follows:</p> <ul style="list-style-type: none"> (a) the functions set out in section 48 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: 	<p>This and subsequent sections concerning investigations by a Code Mediator do not extend the function and responsibilities of Code Mediators, to reflect those of the Code Supervisor, to identify emerging and systemic issues in the grocery supply chain relating to the operation of the Code.</p> <p>Code Mediators, given their unique insights as recipients of complaints from individual</p>	<p>Insert a clause within this section providing a function of the Code Mediator to identify emerging and systemic issues in the grocery supply chain relating to the operation of the Code and insert clauses within subsequent sections enabling their investigation and reporting of these issues.</p>

	<ul style="list-style-type: none"> (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 mediate disputes between suppliers, and the large grocery business, relating to matters covered by this Code (including a grocery supply agreement); (g) to keep records, and to report, about such complaints or disputes. 	<p>suppliers, should also have consideration of how these complaints may form an emerging or systemic issue.</p> <p>Should a Code Mediator have cause to consider an issue is emerging or systemic, they should be enabled to undertake investigations in order to substantiate this view.</p> <p>Should a Code Mediator substantiate an issue, they should be obliged to report it to both the large grocery business, Code Supervisor and the Commission.</p>	
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