



Australian Grocery Code of Conduct Review


RESPONSE TO FINAL REPORT AND
RECOMMENDATIONS

Food South Australia Inc.
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Contact information

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Response to the recommendations

Recommendation 1

The Grocery Code should remain as a prescribed voluntary code.

The Government should consider introducing a targeted mandatory code to apply to major participants that refuse to become signatories to the voluntary Grocery Code.

Food South Australia Inc. is concerned about the possibility of this recommendation effectively resulting in two codes – one voluntary and another mandatory. This approach risks signatories opting to become signatories to the voluntary code and reduces the efficacy of the code overall.

As noted in the Final Report, fear of retribution means suppliers are tending at present not to challenge the major retailers or escalate complaints. Offering a voluntary option enables retailers to choose not to participate.

It is important that wholesalers are also included in the code.

Food South Australia Inc. supports the introduction of a single mandatory code, to which all major supermarkets and wholesalers should be signatories.

Recommendation 2

The Grocery Code should be amended so that wholesalers are subject to the same Grocery Code obligations as retailers (including the general conduct provisions in Part 3), except for customer facing provisions that are only relevant to retailers.

Food South Australia Inc. agrees with this recommendation, however we believe the implementation of this recommendation must include review of potential issues for small businesses who may get caught up in the process. The process should not impact unduly on smaller operators.

Recommendation 3

That the current coverage of products under the Grocery Code remains unchanged.

Food South Australia Inc. strongly supports this recommendation.

Recommendation 4

Enhance the current obligation to act in good faith (clause 28), including the addition of indicators of acting in good faith that are easy to understand and apply; and to introduce the concept of 'fair dealings' as guiding principles for the Code Arbiters.

The ACCC should be tasked with enhancing its guidance materials to include detailed examples of how the Grocery Code provisions may be interpreted and applied in practice.

Food South Australia Inc. strongly supports this recommendation.

Recommendation 5

The Code Compliance Manager should be replaced with an independent Code Arbiter, which would be governed by specific new provisions added to the Grocery Code that set criteria including independence from the signatory, confidentiality requirements, ability to make binding decisions and annual reporting and surveying requirements.

Food South Australia Inc. supports this recommendation. It is critical that the Code Arbiter is independent, and is seen to be independent, and that suppliers can be confident there is no risk of reprisal, or that the Code Arbiter will get caught up in the administrative processes of the signatories.

Recommendation 6

The Government should appoint an independent reviewer to:

- *Review the Code Arbiters' determinations for consistency with the requirements of the Grocery Code (at the request of a supplier); and*
- *Work collaboratively with Code Arbiters, signatories and the ACCC, meeting regularly to discuss issues under the Grocery Code.*

Food South Australia Inc. supports this recommendation. As the peak body for the industry in South Australia, Food South Australia regularly engages with the ACCC and consults with industry, both to gather input to processes such as this review, and to facilitate referrals and connections to training and guidance on topics such as this code. We will continue to do so, and are willing to actively assist and participate in disseminating information about the code and supporting future reviews.

Recommendation 7

The ACCC should also consider adopting a collaborative approach with signatories, code Arbiters and the Independent Reviewer to encourage more active compliance with the Grocery Code.

Food South Australia Inc. supports this recommendation. It is important that the process allows the ACCC and Code Arbiters to work constructively with industry, rather than focusing on bureaucratic process.

Recommendation 8

The Grocery Code should be amended to give suppliers the right to request further details on the reasons for delisting decisions, following the initial receipt of a signatory's reasons.

Food South Australia Inc. strongly supports this recommendation. There must be clarity on all expectations including space and range information when a product is first listed, and it is essential that, should a product be delisted, signatories be required to provide full and detailed reasons for the delisting decision.

In addition, we note that private label on shelves is increasing and when a branded product is delisted and it is replaced by private label, we understand that the expectations for sales and volume are not the same as the branded product. This disadvantages brands.

Recommendation 9

It should be clarified that the term Grocery Supply Agreement, as defined in clause 3, applies to all agreements between a supplier and signatory, including freight and promotional agreements, which relate to the supply of groceries.

Food South Australia Inc. supports this recommendation.

Recommendation 10

Clause 10 of the Grocery Code should be amended to so that there is a ban on variations to Grocery Supply Agreements that have retrospective effect.

Food South Australia Inc. supports this recommendation.

Recommendation 11

Clause 14 should be amended to protect a supplier's right to negotiate a lower wastage charge (if they have reduced their actual wastage) without it jeopardising other terms and conditions in their agreement.

Food South Australia Inc. supports this recommendation.

Recommendation 12

To amend clause 21 relating to fresh produce standards and quality specifications to make it clear that the requirements apply to only to fruit and vegetables.

Food South Australia Inc. supports this recommendation.

Recommendation 13

A new provision relating to price rise processes should be introduced to:

- 1. prevent signatories from requiring a supplier to disclose commercially sensitive information;*
- 2. require that signatories take no longer than 30 days to consider a price rise request made by a supplier, unless circumstances exist that justify a reasonable extension that is negotiated with and agreed to by the supplier; and*
- 3. require that signatories report on the times taken to make a price rise decision, to be published in the Code Arbiters' annual reports*

Food South Australia Inc. strongly supports item 1 and supports items 2 and 3 of this recommendation. There is a need to clarify what constitutes a 'request' to increase prices.

Recommendation 14

There should be a review of the Grocery Code within three to five years of implementation of any changes as a result of this Review.

Food South Australia Inc. supports this recommendation, with a preference for review within three years.

Further comments

Coverage of the Food and Grocery Code of Conduct

Paragraph 5 on page 20 makes reference to the Code not regulating the relationship between a wholesaler and its retailer customer and concludes that, should Metcash become a signatory, there would be no significant adverse consequences for their independent retailers.

This raises the issue of how this could actually be effectively monitored and Food South Australia Inc. would recommend consideration be given to establishing a monitoring mechanism to support an evidence-based review of this assumption at a later stage.

Problematic behaviours and dispute resolution

On pages 28-29, a range of problematic behaviours identified through the consultation are described. Based on feedback from our members and the wider industry, Food South Australia Inc. strongly supports the conclusion of the Final Report that fear of retribution is a significant driver behind the low numbers of complaints elevated to a dispute noted on page 36.

On page 33 of the Final Report, the section on the role of the Code Compliance Manager (CCM) assumes suppliers will complain directly. This is frequently not the case, for the same

reason. Therefore Food South Australia Inc. supports the recommendation to establish independent Arbiter and to facilitate changes to the process that will remove the fear that currently exists and improve the efficacy of the Code of Conduct.

Support

Food South Australia is the peak body for the food and beverage industry in South Australia, and our mission is to support and sustain the South Australian food and beverage industry. We work actively with all stakeholders to facilitate growth in markets, business capacity and capability, and connections. As noted above, we are happy to discuss how we may assist with the dissemination of information and to support training and resource development to improve industry understanding of the revised Code of Conduct through our communication channels and activities.