



OUT18/18459

Food and Grocery Code of Conduct Review
Commonwealth Treasury
By email: FGCreview@treasury.gov.au

Dear Sir or Madam

REPORT TO THE INDEPENDENT REVIEW OF THE FOOD AND GROCERY CODE OF CONDUCT

The Office of the NSW Small Business Commissioner (OSBC) is focused on supporting and improving the operating environment for small businesses throughout NSW. The OSBC advocates on behalf of small businesses, provides mediation and dispute resolution services, speaks up for small business in government, and makes it easier to do business through policy harmonisation and reform.

The OSBC is grateful to the review of the Food and Grocery Code of Conduct ('the Code') for the open and responsive approach to stakeholder engagement it has taken throughout the process. We are pleased to provide comment on the review's final report, in addition to [the submission](#) we provided to the draft report, and [that which we provided](#) during the initial consultation. We consent to this submission being made public.

We approach the final report from the same overarching perspective as that which has informed our contributions throughout the review. That is, most of the thousands of small operators across the supplier industry face a substantial power imbalance in their dealings with major retailers and wholesalers,¹ and are therefore highly vulnerable to unfair and unconscionable conduct.² This is the case despite the increasing diversity of the supermarket industry: Increased competition has driven pressure for suppliers to offer lower prices, even in the face of higher production costs.³ Suppliers therefore depend on the Code - given, its purpose of supporting fair and cooperative dealings in the sector,⁴ and its status as the only regulation directly concerned with these issues. But if the Code is to meet those objectives, it must be genuinely robust in its protections, as well as accessible, for small suppliers. We are pleased that this outlook is broadly reflected in the final report.

The OSBC also broadly concurs with the final report's position on the efficacy of the Code in its present form. That is, while it has driven more positive outcomes for suppliers in some respects, it has not delivered on its intended outcomes in others. Many recommendations supported in the final report are entirely appropriate as a means of addressing the relevant issue.

However, there is room for improvement in other respects. Measures to ensure the Code applies to all operators with the market power to exploit small suppliers are a particular imperative. While the review continues to advance a convoluted dual code system, a single,

targeted mandatory code is plainly the most effective and efficient means of achieving this end. Ensuring a more accessible dispute resolution regime is also vital. The proposed Arbiters system, while suitable in many respects, remains fatally compromised by conflicts of interest around remuneration and appointment of Arbiters by signatories themselves. The final report therefore fails to adequately address key issues.

Accordingly, we urge the Commonwealth to consider this submission's recommendations in its response to the report - as a means of addressing these and other shortcomings, to ultimately deliver an amended Code that fulfills its remit in full.

Summary of OSBC positions on recommendations

Recommendation 1: The Code should be amended to provide that it is mandatory for all retailers and wholesalers with an annual turnover above a prescribed amount, such that all major retailers and wholesalers are bound by the Code. It should procure expert advice concerning the constitutionality of the Code's current arbitration provisions under the proposed mandatory model. In the alternative, the Commonwealth should engage with Metcash to the extent necessary to ensure it signs up to the Code in its voluntary form.

Recommendation 2: The Commonwealth should adopt the recommendation without amendment.

Recommendation 4: The Commonwealth should adopt the recommendation. In addition, it:

- Should prescribe that all of the 'fair dealing' principles proposed in the draft report are indicators of good faith.
- Should define 'fair dealing' as including all indicators of 'good faith', as well as an indicator concerning fairness in the substantive outcome for the affected supplier.
- Should require the ACCC to develop materials designed to improve awareness of the Code among suppliers.

Recommendations 5 and 6: The Commonwealth should implement a Code Arbiter system with the operational capacities and responsibilities proposed in recommendation 5. However, rather than appoint the Independent Reviewer proposed in Recommendation 6, it should provide that Arbiters and any support staff must be appointed and remunerated by the Commonwealth - with appointments made in consultation with the relevant signatory.

Recommendation 7: Supported by OSBC.

Recommendation 8: The Commonwealth should adopt the recommendation. It should further amend the Code to prohibit the practice of providing 'blanket' notifications of possible delisting prior to or during a range review.

Recommendation 9: The Commonwealth should adopt the recommendation without amendment.

Recommendation 11: The Commonwealth should adopt the recommendation without amendment.

Recommendation 13: The Commonwealth should adopt the recommendation. However, it should further amend the Code to prohibit a signatory from charging a fee for undertaking a cost verification assessment in relation to a price rise request, beyond that reflecting its costs for undertaking the assessment.

Recommendation 14: The Commonwealth should amend the Code to require that it be reviewed every three years.

Recommendation 1: The Grocery Code should remain as a prescribed voluntary code. The Government should consider introducing a targeted mandatory code for industry participants with significant market power that refuse to become signatories.

Throughout the review, the OSBC's has consistently advocated for a targeted mandatory Code. This would represent the most effective and efficient means of ensuring that all wholesalers and retailers with significant market power are bound by the Code's provisions.

Metcash's failure to sign up to the Code is the most pressing issue arising from its voluntary status. As the wholesaler holds significant market power,⁵ it is undeniably empowered to engage in unfair and unconscionable practices in dealing with small suppliers. Indeed the final report notes its "*systemic egregious behaviour*" in this regard.⁶ This is particularly concerning given the review has also identified Metcash as an important 'access point' to the wider market.⁷ In addition, given all large retailers are signatories, and so bound by the Code in dealing with suppliers, Metcash's status amounts to an unfair advantage over its principal competitors.

Accordingly, while we welcome the review's commitment to having Metcash sign up to the Code,⁸ we maintain that this would not represent the optimal solution. Simply bringing Metcash under a voluntary regime does not address the broader need to ensure the Code captures all operators with sufficient market power. In particular, the current system cannot account for the clear risk that the very same issues the review seeks to address will reemerge after one or more new operators attain significant market power. In this respect, the review should pay particular regard to the "*imminent*"⁹ emergence of well-resourced, potentially disruptive retailers Amazon, Kaufland, and Lidl in the Australian groceries market.¹⁰ A voluntary code also carries the obvious risk that an existing signatory will simply elect to withdraw, so as to trade without reference to its provisions. Under an opt-in, opt-out system, Government will only ever be able to respond to these issues well after the fact; likely in the wake of infrequent reviews such as this.

The suggestion that the Commonwealth might also consider a separate mandatory Code, applying to any "*recalcitrant*" operators that refuse to sign up to the voluntary scheme,¹¹ appears to reflect an acknowledgement of these issues. But a dual code system has numerous shortcomings. It is likely to engender significant confusion from suppliers - given the lack of any precedent, the likelihood the codes would evolve to include distinct terms,¹² and the uncertainty around when an operator would be deemed sufficiently 'recalcitrant' as to be captured by the secondary code. This issue of confusion especially applies to small suppliers, which typically lack easy access to professional advice. The need for oversight and maintenance of two Codes on the part of the regulator is also clearly inefficient.

For these reasons, our preferred approach remains a single, targeted mandatory Code, capturing all major operators. This would address or avoid all of the abovementioned issues, without imposing a disproportionate or unnecessary burden on small retailers and wholesalers.

A turnover threshold, above which a retailer or wholesaler would be bound by the Code, is the most appropriate mechanism for providing that the Code is mandatory only to operators with substantial market power. The OSBC accepts the final report's position that there is no universally agreed means of determining market power, quantitative or otherwise.¹³ Given the practical impossibility of directly monitoring one business' power to impose terms on another in what are in private dealings, this is necessarily so. However, a turnover threshold is an effective, practical means of ensuring powerful, major operators are captured. A mechanism based on turnover is also simple for all stakeholders to understand and apply.

Regard should be had to the £1 billion threshold in the equivalent UK code¹⁴ for the larger British market in determining the appropriate threshold.

Furthermore, it is unclear why a move to a mandatory Code should affect industry involvement in the Code's '*design, implementation, promotion, and level of industry engagement*', as the final report suggests.¹⁵ Under either a mandatory or prescribed voluntary system, it ultimately falls to government to determine the Code's provisions. Stakeholder buy-in is, in our submission, achieved through a consultative and responsive approach to this duty, which should be preserved under either a voluntary or mandatory system.

Finally, the doubts raised in the final report around the constitutionality of a mandatory code including the Code's current arbitration provisions appear open to question at the least. A supplier is entitled to bring an action for damages against a signatory to the Code, in relation to any purported breach of the Code's provisions.¹⁶ The Code does not purport to exclude judicial scrutiny of any such action, on the basis that it relates to a matter that has also been subject to its arbitration processes.¹⁷ It is also unclear why judicial determination of any such matter should be otherwise restricted. Indeed, compulsory alternative dispute resolution, preceding and not precluding recourse to the judiciary, is a common feature of many regulations¹⁸ without seeming to offend the constitution. It is therefore arguable that the Code's arbitration provisions, under a mandatory model, would not allow arbitrators to exercise 'judicial power', and so would not offend the Constitution. The Commonwealth should seek suitably expert advice in relation to this matter in assessing the merits of a shift to a mandatory code.

OSBC position: The Code should be amended to provide that it is mandatory for all retailers and wholesalers with an annual turnover above a prescribed amount, such that all major retailers and wholesalers are bound by the Code. The Commonwealth should procure expert advice concerning the constitutionality of the Code's current arbitration provisions under the proposed mandatory model.

In the alternative, the Commonwealth should engage with Metcash to the extent necessary to ensure it signs up to the Code in its voluntary form.

Recommendation 2: The grocery code should be amended so that wholesalers are subject to the same Grocery Code obligations as retailers, except for customer facing provisions that are only relevant to retailers.

The OSBC unreservedly supported recommendation 2 when it was initially proposed in the draft report.¹⁹ We concur that there is "*no clear policy rationale*" for restricting the operation of the Code to retailers only, except in relation to matters that are irrelevant to wholesalers.²⁰ We therefore encourage the Commonwealth to adopt this recommendation.

OSBC position: The Commonwealth should adopt recommendation 2 without amendment.

Recommendation 4 (i): Enhance the current obligation to act in good faith, including the addition of indicators of acting in good faith that are easy to understand and apply...

In relation to the Code's overarching 'good faith' provision, the OSBC's focus throughout the review has been on advancing reforms that address issues of uncertainty around the meaning and application of this term.²¹ 'Good faith' must be clear enough as to be

understood and applied by all stakeholders in a reasonably consistent manner. Without such reform, it is of only limited use - to small suppliers in particular. We are pleased that these concerns are reflected in the final report.²²

We suggested the draft report's proposal to replace 'good faith' with a 'fair dealing' provision, including detailed guidance on that term, was an appropriate means of achieving these ends. We supported this proposal largely because the draft report's model 'fair dealing' provision encapsulated the settled and recurring themes in jurisprudential construction of 'good faith'²³ – thereby delivering certainty - and did so in a mostly accessible, plain English manner.

Nonetheless, the alternate proposal brought forward in the final report – to include plain English indicators of good faith in the Code – also speaks to our concerns regarding the current 'good faith' provision. Indeed, the proposal appears similar in substance if not form to the 'fair dealing' proposal. We also support some arguments advanced by other stakeholders that there may be utility in retaining use of the term 'good faith' itself – particularly that ACCC litigation on foot may confer additional clarity on the doctrine.²⁴

The OSBC is further supportive of the final report's proposals regarding what the proposed indicators of good faith might include. The principles of honest, cooperative, not arbitrary, and not retributive conduct on the part of signatories reflect the 'fair dealing' principles proposed in the draft report²⁵ - as well as the OSBC's initial proposal as to how to clarify the meaning of 'good faith'.²⁶ We encourage the Commonwealth to adopt the remaining 'fair dealing' principles, as an accessible summation of the settled principles of good faith, in prescribing additional indicators.

OSBC position: The Commonwealth should adopt the recommendation. The Commonwealth should further prescribe that all of the 'fair dealing' principles proposed in the draft report are indicators of good faith.

Recommendation 4 (ii): Introduce the concept of 'fair dealings' as guiding principles for the Code Arbiters.

The OSBC is broadly supportive of the proposed introduction of a concept of 'fair dealing' to guide Code Arbiters, provided its underlying principles include all indicators of 'good faith' - as indicated in the body of the final report, but not the recommendation itself.²⁷ These principles, in conjunction with the proposed focus on the substantive outcome for the affected supplier,²⁸ would represent an appropriate if high level framework to guide the conduct of Arbiters.

While there may be potential for confusion on the part of suppliers regarding the intersection between 'good faith' and 'fair dealing', as separate yet substantially related principles, the 'fair dealing' principles appear intended to directly impact Code Arbiters alone. Any such person should possess expertise in interpreting and applying the Code, such that this should not represent an issue.

OSBC position: The Commonwealth should adopt the recommendation. 'Fair dealing' should be defined as including all indicators of 'good faith', as well as an indicator concerning fairness in the substantive outcome for the affected supplier.

Recommendation 4 (iii): 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.

In our initial submission concerning the draft report, the OSBC recommended the ACCC develop guidance materials to support small suppliers on the application of the Code.²⁹ We therefore remain wholly supportive of the recommendation that the ACCC develop such materials, and encourage its adoption by the Commonwealth.

But we also continue to advocate that the ACCC should develop additional materials designed to enhance awareness of the Code. It is well-established that many suppliers, prominently including small suppliers, are not aware of the Code at all.³⁰ These operators will not derive a benefit from materials addressing the finer points of its interpretation and application.

Collectively, simpler awareness-raising materials, in conjunction with the materials proposed in the final report, would represent a more pervasive and effective means of driving enhanced engagement with the Code by small suppliers.

<p>OSBC position: The Commonwealth should adopt the recommendation. The Commonwealth should further require the ACCC to develop materials designed to improve awareness of the Code among suppliers.</p>

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.

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)...

Throughout the review process, the OSBC's has advocated for expansion of the Code's dispute resolution provisions. We have supported new mechanisms that address the disinclination of small suppliers to engage with the current dispute resolution regime, largely due to fear of signatory retribution.³¹ These mechanisms should afford suppliers confidentiality to the full extent possible.³² The final report unequivocally reflects these priorities; the failure of the review to uncover a single dispute to have gone to mediation or arbitration under the Code is particularly telling.³³

In turn, we supported the proposed Code Adjudicator model, now retitled but otherwise maintained as Code Arbiters, as a mostly well-designed mechanism to address these concerns.³⁴ We particularly approve of the proposal that the Arbiters be empowered to maintain confidentiality where possible, operate without regard to signatories' buying teams, and bind signatories to their decisions.³⁵ We also support the proposed reporting and surveying functions of the Arbiters³⁶ - a potentially valuable resource to enhance understanding of the Code on the part of both suppliers and the regulator.

However, our support for this model was predicated on two essential conditions – independent remuneration and appointment of the Arbiters.³⁷ Arbiters engaged and paid by signatories are the de facto employees of those organisations, and so burdened by a clear and pervasive conflict of interest. Suppliers will therefore be unable to engage an Arbiter with confidence, and are likely to view their actions through a lens of apprehended bias at the very least. That such a person will not be seen to act impartially toward his or her employer is acknowledged in the final report itself – both in relation to the Compliance Managers the Arbiters would supplant, and regarding the 'Kennett model' which the Arbiter

proposal is based on.³⁸ Moreover, Signatories empowered to appoint their own Arbiter may appoint a related party, such as a former director, to the role.

The final report's recommendations that the Arbiters be appointed and paid by the signatories³⁹ are therefore patently inadequate.

Moreover, the proposal that the Minister appoint a reviewer to assess an Arbiters' decision at the relevant supplier's request does not properly address the question of independence. A reviewer would not be entitled to amend an Arbiter's decision - merely to refer it back through the same systemically compromised model.⁴⁰ Further, the model could only directly address compromised decision-making after the fact, rather than provide a framework under which such decisions would not be made at all. In our submission, a preventative approach to this issue is clearly preferable for suppliers. Thirdly, the reviewer's functions add a considerable layer of complexity to the model, reminiscent of judicial review in administrative law. But one of the principal benefits of alternative dispute resolution, from the perspective of small suppliers, should be its simplicity and efficiency.⁴¹ Indeed a notable benefit of an arbiter or adjudicator-based system in particular should be that it is non-legalistic – as the final report itself notes.⁴²

We therefore repeat the call made by us, our fellow small business advocates,⁴³ and the regulator⁴⁴ for an adjudicator model that is independent in substance rather than name only.

A modification of the final report's proposed model, under which Arbiters were remunerated and appointed by the Commonwealth, is the optimal solution. So as to ensure the suitability of an appointed Arbiter, the process of appointment should require consultation with the relevant signatory. Our preferred process would ensure independence, while still delivering the many identified benefits of the proposed model.

OSBC position: The Commonwealth should implement a Code Arbiter system with the operational capacities and responsibilities proposed in recommendation 5.

However, rather than appoint the Independent Reviewer proposed in Recommendation 6, the Commonwealth should provide that Arbiters and any support staff must be appointed and remunerated by the Commonwealth - with appointments made in consultation with the relevant signatory.

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.

The final report's suggestion that the ACCC meet regularly with the Code Arbiters could serve as a useful means of enhancing the regulator's visibility of the industry landscape, given its minimal direct contact with industry stakeholders.⁴⁵

However, the proposal that the ACCC rely principally on Code Arbiters' annual reports to guide its compliance activities may be problematic. The proposed Arbiter model would render the role of arbiters compromised (see our comments concerning **Recommendations 5 and 6**), and the ACCC reports its existing approach to compliance is successful in improving adherence to the Code.⁴⁶ In addition, this approach may inhibit the ACCC's capacity to respond to compliance issues in a timely manner, given Arbiters' annual reports would likely be issued up to 15 months after the events they describe have transpired.

Equally, the recommendation does not actually suggest that the ACCC or any other party be required to take action. We therefore trust that the regulator will act on the proposal purely at its own volition.

OSBC position: Supportive of recommendation 7.

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. The protection and notification requirements for the delisting of a product should be extended to a significant limiting of distribution resulting from range reviews.

The OSBC's supplier engagement has suggested that egregious signatory conduct around delisting practices have persisted following the introduction of the Code.⁴⁷ We therefore welcome the review's ongoing focus on this issue.

In relation to the issue of signatories providing rudimentary reasons for a delisting decision, our submission to the draft review recommended the Code be amended, *"to provide a supplier with the right to require additional or more detailed reasons for a delisting decision, following initial receipt of a signatory's reasons."*⁴⁸ We also endorsed an extension of delisting protection and notification requirements to decisions to significantly limit distribution of a product. Significantly limiting distribution will have much the same impact on a supplier as a decision to delist entirely. We are therefore entirely supportive of this recommendation.

However, the final report does not recommend further amendments to address the practice of 'blanket' notifications of delisting - suggesting the general 'good faith' provision will afford suppliers adequate protection from such misconduct.⁴⁹ Certainly, it is difficult to conceive that a blanket delisting notification, issued prior to an actual range review, could ever constitute an act of good faith. But this overarching protection does not offer an obvious or direct means of protection and remedy to vulnerable suppliers. The OSBC's preference remains that the Code should be amended to simply prohibit blanket notifications of delisting. This would not prevent any decision by a signatory to delist a supplier's entire range in light of a completed range review. Nor would it impart any unreasonable or disproportionate obligation on signatories.

OSBC position: The Commonwealth should adopt recommendation 8. The Commonwealth should further amend the Code to prohibit the practice of providing 'blanket' notifications of possible delisting prior to or during a range review.

Recommendation 9: It should be clarified that the term 'Grocery Supply Agreement' applies to all agreements between a supplier and signatory, including freight and promotional agreements, which relate to the supply of groceries.

In its submission to the draft report, the OSBC submitted that the clear intent of the Code is that a 'Grocery Supply Agreement' is made up of the entire agreement between signatory and supplier, particularly in light of the definition of a supply agreement that it prescribes.⁵⁰ We also share the concern of some stakeholders that any contrary interpretation may engender confusion amongst suppliers as to whether the protections of the Code extend to a particular facet of their supplier agreements.⁵¹ Accordingly, we remain supportive of the proposal to make it explicit that a 'Grocery Supply Agreement' includes all agreements between a signatory and supplier.

OSBC position: The Commonwealth should adopt recommendation 9 without amendment.

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.

Recommendation 11 is consistent with the position taken by the OSBC in its submission to the draft report regarding wastage charges. That is, it is patently fair that if a supplier has reduced the costs its processes impart on a signatory, including wastage costs, it should be entitled to renegotiate terms with the signatory to reflect this. Moreover, the Code already appears to provide as much.⁵² Therefore, the OSBC supports amendments to the Code to make this right explicit, in light of apparent signatory confusion.

OSBC position: The Commonwealth should adopt recommendation 11 without amendment.

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 agreed to by the supplier.
3. Require that signatories report on the times taken to make a price rise decision, to be published in the Code Arbiters’ annual reports.

The OSBC remains supportive of the review’s efforts to safeguard suppliers against being required to provide commercially sensitive information to a signatory in relation to a price rise request.⁵³ The possibility that such information may be used improperly is clear. We note that the final report proposes that this right apply generally, rather than to situations where a signatory offers a competing own-brand product only. The amendment is also appropriate in light of the concerns raised by suppliers that a retailer may elect to develop a competing product at any time,⁵⁴ and extended protection in this space can only represent a positive for small suppliers.

The proposal that a signatory consider a price rise request within 30 days also remains appropriate to ensure small suppliers are not exposed to extended periods of uncertainty. In turn, the proposal that signatories report on this matter is also suitable, to allow the regulator oversight of signatory compliance.

However, we continue to advocate the need for reform to prevent signatories from improperly extracting monies from suppliers in return for undertaking a cost verification. The purpose of this process should be to inform the negotiation process, by providing credible evidence informing the negotiation around the contractual terms through which the parties seek to profit. It is not supposed to benefit the signatory directly. Given suppliers are practically compelled to agree to the process,⁵⁵ excessive charging to plainly represents an abuse of signatories’ power over most suppliers. Such fees may also disincentivise suppliers from seeking a price rise at all.. Accordingly, it should not be permissible for a signatory to charge excessively to undertake a cost verification. The Code should restrict a signatory from charging fees above the actual costs incurred by undertaking the verification process.

OSBC position: The Commonwealth should adopt recommendation 13.

However, the Commonwealth should further amend the Code to prohibit a signatory from charging a fee for undertaking a cost verification assessment in relation to a price rise request, beyond that reflecting its costs for undertaking the assessment.

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.

In the commentary the OSBC has provided to the review to date, the OSBC has supported ongoing reviews to the Code every three years, due to the imminent and ongoing prospect of major disruption to the Australian food and grocery market and its dominant business models.⁵⁶ Providing for a single review within three to five years would give rise to a risk that the Code does not keep pace with shifting industry practices. Thus, while recommendation 14 does not exclude the possibility of triannual reviews, an amendment to the Code to provide for this explicitly remains our preference.

OSBC position: The Commonwealth should amend the Code to require that it be reviewed every three years.

To discuss this submission, please contact Thomas Mortimer, Senior Advisor, Advocacy and Strategic Projects, on [REDACTED] or [REDACTED].

Kind regards

A handwritten signature in black ink that reads "Robyn A Hobbs". The signature is written in a cursive style with a large, looping initial 'R'.

Robyn Hobbs OAM
NSW Small Business Commissioner
28 November 2018

- ¹ Beaton-Wells, C. & Paul-Taylor, J. (2017), [‘Codifying supermarket-supplier relations: A report on Australia’s Food and Grocery Code of Conduct’](#), University of Melbourne Law School, p. 204; Office of the Australian Small Business Commissioner (2014), [‘Improving commercial relationships in the food and grocery sector’](#), p. 2; Australian Food & Grocery Council (2014), [‘Competitiveness and Sustainable Growth’](#), p. 15; Beaton-Wells, C. & Paul-Taylor, J. (2018), [‘A code of conduct for supermarket-supplier relations: Has it worked?’](#), Australian Business Law Review, vol 46, no 1, pp. 22, 29
- ² Burch, D, Lawrence, G. & Hattersley, L. (2013), [‘Watchdogs and ombudsmen: monitoring the abuse of supermarket power’](#), Agriculture and Human Values, vol 30, no 2, p. 263
- ³ Final report, p. 12
- ⁴ [Competition and Consumer \(Industry Codes – Food and Grocery\) Regulation 2015 \(Cth\)](#), Cl 2
- ⁵ IBISWorld (2018), [‘Industry report - Supermarkets and grocery stores in Australia’](#), p. 26
- ⁶ Final report, p. 22
- ⁷ Final report, p. 20
- ⁸ Final report, p. 20
- ⁹ Final report, p. 11
- ¹⁰ Deloitte (2017), [‘Global powers of retailing 2017’](#), p. 14; The Australian (2018), [‘Don’t underestimate Kaufland, analysts warn’](#); The Shout (2018), [‘Report predicts Kaufland’s Australian growth’](#)
- ¹¹ Final report, p. 24
- ¹² Final report, p. 23
- ¹³ Final report, p. 22
- ¹⁴ United Kingdom Competition Commission, [‘The Groceries \(Supply Chain Practices\) Market Investigation Order’](#), cl 4(1)(b)
- ¹⁵ Final report, p. 23
- ¹⁶ [Competition and Consumer Act 2010 \(Cth\)](#), s82
- ¹⁷ [Competition and Consumer \(Industry Codes – Food and Grocery\) Regulation 2015 \(Cth\)](#), Division 3
- ¹⁸ For example, the [Family Law Act 1975 \(Cth\)](#)
- ¹⁹ Office of the NSW Small Business Commissioner (2018), [‘Submission to the draft report to the independent review of the Food and Grocery Code of Conduct’](#), p. 5
- ²⁰ Final report, p. 24
- ²¹ Terry, A. & Di Lernia, C. (2009), [‘Franchising and the quest for the Holy Grail: Good faith or good intentions?’](#), Melbourne University Law Review, vol 33, pp. 575-577; Beaton-Wells, C. & Paul-Taylor, J. (2018), [‘A code of conduct for supermarket-supplier relations: Has it worked?’](#), Australian Business Law Review, vol 46, no 1, pp. 22-23
- ²² Final report, p. 27-28
- ²³ Draft report, p. 28; Beaton-Wells, C. & Paul, J. (2018), [‘Food and Grocery Code of Conduct review – submission to Treasury’](#), p. 4
- ²⁴ Australian Competition & Consumer Commission (2018), [‘Food and Grocery Code of Conduct Review – ACCC submission to draft report’](#), p. 10
- ²⁵ Draft report, p. 28
- ²⁶ Office of the NSW Small Business Commissioner (2018), [‘Submission to the Food and Grocery Code of Conduct review’](#), p. 10
- ²⁷ Final report, pp. 30-31
- ²⁸ Final report, p. 30
- ²⁹ Office of the NSW Small Business Commissioner (2018), [‘Submission to the Food and Grocery Code of Conduct review’](#), p. 9
- ³⁰ Beaton-Wells, C. & Paul-Taylor, J. (2017), [‘Codifying supermarket-supplier relations: A report on Australia’s Food and Grocery Code of Conduct’](#), University of Melbourne Law School, pp. 150-151; Office of the NSW Small Business Commissioner (2018), [‘Submission to the Food and Grocery Code of Conduct review’](#), p. 6; Australian Competition and Consumer Commission (2018), [‘Food and Grocery Code of Conduct Review – ACCC Submission’](#), p. 7; Mediation & Arbitration Centre (2018), [‘Submissions on the Food and Grocery Code of Conduct review’](#), p. 3
- ³¹ Beaton-Wells, C. & Paul-Taylor, J. (2017), [‘Codifying supermarket-supplier relations: A report on Australia’s Food and Grocery Code of Conduct’](#), University of Melbourne Law School, p. 131; Office of the NSW Small Business Commissioner (2018), [‘Submission to the Food and Grocery Code of Conduct review’](#), p. 8
- ³² Office of the NSW Small Business Commissioner (2018), [‘Submission to the Food and Grocery Code of Conduct review’](#), pp. 7-9
- ³³ Final report, pp. 36-37
- ³⁴ Office of the NSW Small Business Commissioner (2018), [‘Submission to the draft report to the independent review of the Food and Grocery Code of Conduct’](#), p. 7
- ³⁵ Final report, pp. 42, 44
- ³⁶ Final report, p. 43
- ³⁷ Office of the NSW Small Business Commissioner (2018), [‘Submission to the draft report to the independent review of the Food and Grocery Code of Conduct’](#), p. 7
- ³⁸ Final report, pp. 36-37
- ³⁹ Final report, p. 44

⁴⁰ Final report, p. 45

⁴¹ Stinanowich, T. (2004), '[ADR and the "Vanishing Trial": The growth and impact of "Alternative Dispute Resolution"](#)' *Journal of Empirical Legal Studies*, Vol 1, no. 3, pp. 5-7; Beaton-Wells, C. & Paul-Taylor, J. (2017), '[Codifying supermarket-supplier relations: A report on Australia's Food and Grocery Code of Conduct](#)', University of Melbourne Law School, p. XVIII

⁴² Final report, p. 40

⁴³ Western Australia Small Business Development Corporation (2018), '[Submission to the Review of the Food and Grocery Code of Conduct](#)', p. 3

⁴⁴ Australian Competition & Consumer Commission (2018), '[Food and Grocery Code of Conduct Review – ACCC submission to draft report](#)', pp. 5-6

⁴⁵ Australian Competition and Consumer Commission (2018), '[Food and Grocery Code of Conduct Review – ACCC Submission](#)', pp. 6-7

⁴⁶ Australian Competition and Consumer Commission (2018), '[Food and Grocery Code of Conduct Review – ACCC Submission](#)', p. 9

⁴⁷ Office of the NSW Small Business Commissioner (2018), '[Submission to the Food and Grocery Code of Conduct review](#)', p. 5

⁴⁸ Office of the NSW Small Business Commissioner (2018), '[Submission to the draft report to the independent review of the Food and Grocery Code of Conduct](#)', p. 10

⁴⁹ Final report, p. 52

⁵⁰ Office of the NSW Small Business Commissioner (2018), '[Submission to the draft report to the independent review of the Food and Grocery Code of Conduct](#)', pp. 10-11; *Competition and Consumer (Industry Codes – Food and Grocery) Regulation 2015* (Cth), CI 3

⁵¹ Final report, p. 53

⁵² Office of the NSW Small Business Commissioner (2018), '[Submission to the draft report to the independent review of the Food and Grocery Code of Conduct](#)', p. 11; *Competition and Consumer (Industry Codes – Food and Grocery) Regulation 2015* (Cth) CI 14(2)(d)

⁵³ Office of the NSW Small Business Commissioner (2018), '[Submission to the draft report to the independent review of the Food and Grocery Code of Conduct](#)', pp. 12-13

⁵⁴ Final report, p. 57

⁵⁵ Final report, p. 57

⁵⁶ Office of the NSW Small Business Commissioner (2018), '[Submission to the Food and Grocery Code of Conduct review](#)', p. 11; Office of the NSW Small Business Commissioner (2018), '[Submission to the draft report to the independent review of the Food and Grocery Code of Conduct](#)', p. 13