



COVERSHEET

Minister	Hon Dr Duncan Webb	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Policy Approvals for Grocery Supply Code of Conduct Requirements and Approval to Consult on an Exposure Draft	Date to be published	16 June 2023

List of documents that have been proactively released		
Date	Title	Author
March 2023	Policy Approvals for Grocery Supply Code of Conduct Requirements and Approval to Consult on an Exposure Draft	Office of the Minister of Commerce and Consumer Affairs
5 April 2023	Grocery Supply Code of Conduct Requirements: Policy Approvals and Approval to Consult on an Exposure Draft DEV-23-MIN-0054 Minute	Cabinet Office
29 March 2023	Regulatory Impact Statement: Grocery Supply Code of Conduct	MBIE

Information redacted

YES / NO (please select)

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Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Grocery Supply Code of Conduct Requirements: Policy Approvals and Approval to Consult on an Exposure Draft

Portfolio Commerce and Consumer Affairs

On 5 April 2023, the Cabinet Economic Development Committee:

Background

- 1 **noted** that the Commerce Commission's final report into the retail grocery sector in New Zealand found that competition was not working well for consumers, and made several recommendations;
- 2 **noted** that on 23 May 2022, Cabinet agreed to implement 12 out of 14 of the Commerce Commission's recommendations, including implementing a mandatory Grocery Supply Code of Conduct (the Code) [CAB-22-MIN-0186];
- 3 **noted** that the Code will be implemented under the Grocery Industry Competition Bill;
- 4 **noted** that:
 - 4.1 on 29 June 2022, the Cabinet Economic Development Committee agreed to the release of a consultation paper on options for a possible Code, and invited the Minister to report back seeking policy decisions following the consultation [DEV-22-MIN-0149];
 - 4.2 20 submissions were received;
- 5 **noted** that several submitters requested that they be consulted on an exposure draft of the Code;

Draft Grocery Supply Code of Conduct

- 6 **agreed** that the draft Code should:
 - 6.1 require retailers to act in good faith when dealing with suppliers;
 - 6.2 elaborate on factors that should be taken into consideration when determining whether a grocery retailer has acted in good faith, drawing from the provisions of the Australian Food and Grocery Code;

- 6.3 require grocery supply agreements to be provided to the supplier, written in plain English, and retained by the grocery retailer for seven years after the agreement expires;
- 6.4 require supply agreements to contain mandatory, minimum content, in line with the Commerce Commission's recommendations;
- 6.5 prohibit unilateral variations to supply agreements, except where the unilateral variation is for a valid reason, is provided for in the supply agreement, is reasonable in the circumstances, and reasonable notice of the unilateral variation is given;
- 6.6 prohibit retrospective variations to supply agreements in all circumstances;
- 6.7 prohibit regulated grocery retailers from requiring suppliers to use a particular logistics or transport service (noting that this does not prevent a retailer from imposing its own transport and logistics service standards);
- 6.8 require grocery retailers to make payments to suppliers in accordance with the grocery supply agreement, and at a minimum, within a reasonable time, including an option for consultation that sets a minimum time period or the payment to be made;
- 6.9 only allow set-offs against payments to suppliers where the supplier has given their written approval to the set-off, and where the set-off is provided for in the supply agreement and is reasonable in the circumstances;
- 6.10 prohibit grocery retailers from seeking payments from suppliers for shrinkage (the loss of grocery products due to theft or accounting error);
- 6.11 prohibit grocery retailers from seeking payments from suppliers for wastage (the loss of grocery products due to spoilage), except where the wastage is the responsibility of the supplier, the retailer has taken reasonable steps to mitigate the wastage, and the payment is provided for in the supply agreement and is reasonable in the circumstances;
- 6.12 require retailers to lodge any claim for wastage within six months of receiving goods from the supplier;
- 6.13 prohibit grocery retailers from requiring payments from suppliers for promotions, marketing and merchandising, or as a condition of supply, except where the payment is provided for in the supply agreements and is reasonable in the circumstances;
- 6.14 prohibit grocery retailers from requiring provisions in supply agreements that require suppliers to fully fund the cost of promotional activities;
- 6.15 require grocery retailers to have established principles for product ranging and shelf allocation, and to treat suppliers consistently against the principles;
- 6.16 require that grocery retailers may only delist a supplier's produce in accordance with the supply agreement, for genuine commercial reasons, and must undertake a range review prior to delisting produce;
- 6.17 require suppliers to provide written notice of a range review or decision to delist, as well as provide enough time for the supplier to engage in dispute resolution;

- 6.18 require grocery retailers to have specific standards for accepting or rejecting fresh produce, in line with the Australian Food and Grocery Code;
- 6.19 require grocery retailers to accept or reject fresh produce within 24 hours of receiving it from suppliers, and to notify the supplier within 48 hours of receiving the produce if produce is rejected;
- 6.20 require grocery retailers to give six months' notice before delisting fresh produce;
- 6.21 require retailers to respond to price increase requests from suppliers within 30 days, except where a product has been subject to the same request within the last 6 months, or where the retailer requires further information from the supplier, and where such requests are made in good faith;
- 6.22 adopt provisions that protect suppliers' confidential information and intellectual property, and recognise that for some Māori suppliers, the knowledge of production processes is a taonga or cultural treasure;
- 6.23 prevent grocery retailers from threatening suppliers with business disruption or hindering any lawful association of suppliers, and prohibiting any conduct by grocery retailers with the purpose of encouraging suppliers to opt out of any wholesale access regime or to desist from supplying any other party;
- 7 **noted** that the Grocery Industry Competition Bill sets three tiers of maximum civil penalty levels which may apply to breaches of the Code;
- 8 **agreed** that Tier 2 penalties apply to breaches of the Code, and that this be included in the exposure draft of the Code;
- 9 **authorised** the Minister of Commerce and Consumer Affairs to release an exposure draft of the Code for consultation;
- 10 **noted** that there may be amendments to the Grocery Industry Competition Bill (which empowers the Code) as it progresses through the legislative process, and that these amendments may require revisions to the draft Code;
- 11 **noted** that the Minister of Commerce and Consumer Affairs will seek final Cabinet confirmation on the content of the Code after consultation on the exposure draft of the Code;

Legislative implications

- 12 **invited** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs, including any necessary transitional provisions;
- 13 **authorised** the Minister of Commerce and Consumer Affairs to make further decisions, consistent with those in the paper under DEV-23-SUB-0054, on issues that arise during drafting of the Code and after consultation on the exposure draft, or as a result of any changes made to the Grocery Industry Competition Bill which affect the Code.

Jenny Vickers
Committee Secretary

Attendance: (see over)

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Michael Wood
Hon Dr Ayesha Verrall
Hon Willie Jackson
Hon Damien O'Connor
Hon David Parker
Hon Peeni Henare
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Hon Dr Duncan Webb
Hon Rino Tirikatene
Hon Dr Deborah Russell
Jo Luxton MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV