



## COVERSHEET

<b>Minister</b>	Hon Nicola Willis	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Penalties for the Grocery Supply Code 2025 Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2026 – authorisation for submission to Executive Council	<b>Date to be published</b>	13 May 2026

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
December 2025	Penalties for the Grocery Supply Code 2025	Office of the Acting Minister for Commerce and Consumer Affairs (Grocery Sector)
3 December 2025	Penalties for the Grocery Supply Code 2025 ECO-25-MIN-0201 Minute	Cabinet Office
March 2026	Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2026 – authorisation for submission to Executive Council	Office of the Acting Minister for Commerce and Consumer Affairs (Grocery Sector)
26 March 2026	Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2026 – authorisation for submission to Executive Council LEG-26-MIN-0047 Minute	Cabinet Office

### Information redacted

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

## In Confidence

Office of the Acting Minister of Commerce and Consumer Affairs (Grocery Sector)  
Cabinet Economic Policy Committee

## Penalties for the Grocery Supply Code 2025

### Proposal

- 1 This paper seeks approval to amend the Grocery Industry Competition Regulations 2023 to prescribe penalties for contraventions of the Grocery Supply Code 2025.

### Relation to government priorities

- 2 The Grocery Supply Code 2025 supports grocery competition by addressing the power imbalance between New Zealand's largest grocery retailers and their suppliers. This is intended to prevent retailers from obstructing supply to other parties as well as ensuring retailers are not putting costs on suppliers that are better placed with the retailer.
- 3 Improving grocery sector competition is an action in the Government's Going for Growth agenda. Exploring options to improve grocery sector competition is also a coalition agreement commitment between the New Zealand National Party and New Zealand First.

### Executive Summary

- 4 The Commerce Commission (the **Commission**) recently reviewed the Grocery Supply Code 2023 (the **2023 Code**) and has found it largely remains fit for its intended purpose of promoting fair conduct, transparency and competition in the grocery sector.
- 5 The Commission has made a new Grocery Supply Code 2025 (the **2025 Code**) by determination. The 2025 Code carries over the 2023 Code's provisions with amendments to:
  - 5.1 prevent regulated grocery retailers (**retailers**) from buying excess stock at promotional prices to sell later at a higher price; and
  - 5.2 prevent retailers from charging suppliers for wastage that occurs while products are in their control.
- 6 The 2025 Code also includes new provisions to:
  - 6.1 prevent retailers from retaliating against suppliers if they exercise their rights under the Code or grocery supply agreement, or if they engage with the Commission or dispute resolution service; and

- 6.2 require retailers to keep certain written records for seven years and make these available to the Commission on request.
- 7 The Grocery Industry Competition Regulations 2023 (the **Regulations**) set out the penalties under the Grocery Industry Competition Act (the **Act**) that apply to each provision in the 2023 Code.
- 8 The Regulations need to be amended to prescribe penalties for the 2025 Code, including penalties for its new provisions. The Commission has recommended the following penalty levels for the new provisions following its consultation on the 2025 Code:
- 8.1 retaliating against suppliers will attract **Tier 2** penalties under the Act, of up to \$200,000 for an individual or in any other case the greater of:
- 8.1.1 \$3 million; and
- 8.1.2 either the value of any commercial gain resulting from the contravention; or
- 8.1.3 3% of the turnover of the person and all its interconnected bodies corporate in each accounting period the contravention occurred.
- 8.2 breaching new record keeping requirements will attract **Tier 4** penalties of up to \$30,000 for an individual, or \$300,000 in any other case.
- 9 The Grocery Action Group, Foodstuffs North Island, Foodstuffs South Island, and two anonymous submitters supported Tier 2 penalties for the retaliation prohibition, while Woolworths opposed introducing this new provision. Woolworths and Foodstuffs both supported Tier 4 penalties for the new record keeping requirements.
- 10 The penalties I propose for these new provisions will align with the current penalties for similar breaches of the 2023 Code. The 2023 Code provisions carried over to the 2025 Code will continue to attract their existing Tier 2 and Tier 4 penalties.
- 11 The 2025 Code will come into force on 1 May 2026 or when the penalties for this Code are set, whichever date is later.

## Background

### *The Grocery Supply Code*

- 12 The Act enables the Commission to set a grocery supply code with duties that regulated grocery retailers – Foodstuffs North Island, Foodstuffs South Island and Woolworths New Zealand – must follow when dealing with their suppliers.
- 13 The purpose of the grocery supply code is to promote fair conduct between retailers and suppliers, promote transparency about terms of supply agreements, and to contribute to an environment in which businesses compete effectively and that includes a diverse range of suppliers. The code

helps to address the imbalance in negotiating power between large retailers and their suppliers, which can result in retailers obstructing supply to other parties or placing costs on suppliers that better sit with retailers.

- 14 The 2023 Code includes requirements for retailers to act in good faith when dealing with suppliers, requirements for grocery supply agreements, and conduct rules for matters like funding of promotions, shrinkage, wastage, transport, and payment.

#### *Review of the Grocery Supply Code 2023*

- 15 Under the Act, the Commission must review the Code within two years of it coming into force and can make a determination to amend or set a new Code following its review. The Commission completed its review of the 2023 Code on 29 September 2025.

- 16 The Commission noted that there is general support for the 2023 Code and has made a new 2025 Code by determination. The 2025 Code:

16.1 **carries over the 2023 Code's provisions** with amendments to prevent retailers from buying excess stock at promotional prices to sell later at a higher price and to prevent retailers from charging suppliers for wastage that occurs while products are in their control;

16.2 **includes a new retaliation prohibition** to stop retailers from retaliating against suppliers for exercising their rights under the Code or their grocery supply agreements, or for engaging with the Commission or a dispute resolution service; and

16.3 **includes new requirements for retailers to keep records** for at least seven years, and to make these available to the Commission on request, if the retailer requires payment as a condition of supply, makes unilateral variations to supply agreements or requires suppliers to fund promotions.

- 17 The 2025 Code is in **Annex 1**. The 2025 Code will come into force on 1 May 2026 or when penalties for this Code are set, whichever date is later.

#### **Setting penalties for the Grocery Supply Code 2025**

- 18 Under the Act, there are three tiers of pecuniary penalties available for contraventions of the grocery supply code<sup>1</sup>:

18.1 **Tier 1** maximum penalties of \$500,000 for an individual, or in any other case the greater of:

18.1.1 \$10 million; and

18.1.2 either 3 times the value of any commercial gain resulting from the contravention; or

---

<sup>1</sup> There are four penalty tiers in the Act but only Tiers 1, 2 and 4 are available for contraventions of the Grocery Supply Code. Tier 3 penalties are only for contraventions of disclosure standards.

- 18.1.3 10% of the turnover of the person and all its interconnected bodies corporate in each accounting period the contravention occurred.
- 18.2 **Tier 2** maximum penalties of \$200,000 for an individual, or in any other case the greater of:
  - 18.2.1 \$3 million; and
  - 18.2.2 either the value of any commercial gain resulting from the contravention; or
  - 18.2.3 3% of the turnover of the person and all its interconnected bodies corporate in each accounting period the contravention occurred.
- 18.3 **Tier 4** maximum penalties of \$30,000 for an individual, or \$300,000 in any other case.
- 19 Penalties for breaching the 2023 Code were set at Tier 2 for serious conduct, like not dealing with suppliers in good faith, and at Tier 4 for administrative or procedural requirements like failing to provide written explanation of actions taken under the Code. Breaches of 2023 Code provisions carried over to the 2025 Code will continue to attract the same Tier 2 and Tier 4 penalties.
- 20 The Regulations also need amending to prescribe penalties for the new retaliation prohibition and record keeping requirements. The Commission consulted on possible penalty levels as part of its review of the 2023 Code. The Grocery Action Group, Foodstuffs North Island, Foodstuffs South Island, and two anonymous submitters supported Tier 2 penalties for the retaliation prohibition, while Woolworths opposed introducing this new provision. Woolworths and Foodstuffs both supported Tier 4 penalties for the new record keeping requirements.
- 21 Following consultation, the Commission recommended prescribing Tier 2 penalties for the new retaliation prohibition and Tier 4 penalties for new record-keeping requirements. I agree with the Commission’s recommendation and propose amending the Regulations to prescribe the following penalties for the new provisions:

*Table 1 – Penalties for breaches of new provisions in the Grocery Supply Code 2025*

Penalty	New provisions in the 2025 Code
<p><b>Tier 2 maximum penalties</b>                      \$200,000 for an individual; or                      in any other case the greater of:</p> <ul style="list-style-type: none"> <li>i. \$3 million; and</li> <li>ii. either the value of any commercial gain resulting from the contravention; or</li> </ul>	<p><b><u>Retaliation prohibition:</u></b>                      A retailer must not retaliate against a supplier who exercises a right, or has indicated it will exercise a right, under the Code or their grocery supply agreement, or who engages with the Commission or a dispute resolution service.</p>

Penalty	New provisions in the 2025 Code
iii. 3% of the turnover of the person and all its interconnected bodies corporate in each accounting period the contravention occurred.	
<b>Tier 4 maximum penalties</b> \$30,000 for an individual; or \$300,000 in any other case.	<b><i>New record keeping requirements:</i></b> Retailers must keep written records for seven years, and make these available to the Commission on request, if they unilaterally vary a supply agreement, seek payment as a condition of supply, or require a supplier to fund a promotion.

22 A list of the 2025 Code’s provisions and proposed penalties is in **Annex 2**.

**Next steps**

23 Subject to Cabinet approval, I propose the following next steps:

Milestone	Timeframe
Drafting instructions provided to PCO	9 December 2025
PCO drafting amendment regulations	9 December 2025 – early February 2026
Cabinet Legislation Committee approves regulations	Late February 2026
Executive Council approval to regulations	Early March 2026
2025 Code comes into force	1 May 2026

**Cost-of-living Implications**

24 Reducing the power imbalance between regulated grocery retailers and their suppliers helps to support competition between retailers on price and range, which supports lower grocery prices for consumers over the long term.

**Financial Implications**

25 The proposals in this paper do not have any direct financial implications to the Crown. The costs of progressing this work will be met within baselines.

26 The penalties proposed in this paper will have a direct financial impact on retailers that breach the Code. However, courts will retain discretion to set penalties within maximum amounts, based on the nature of the conduct and other relevant factors.

## **Legislative Implications**

- 27 The Grocery Industry Competition Regulations 2023 will be amended to reflect the 2025 Code and prescribe penalties for contraventions of the 2025 Code. These Regulations are made under the Grocery Industry Competition Act 2023.

## **Impact Analysis**

### **Regulatory Impact Statement**

- 28 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor economic, social, or environmental impacts.

### **Climate Implications of Policy Assessment**

- 29 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

## **Population Implications**

- 30 There are no population implications arising from the proposals in this paper.

## **Human Rights**

- 31 There are no human rights implications arising from this paper.

## **Use of External Resources**

- 32 One contractor engaged by MBIE has helped to help prepare this Cabinet paper to supplement permanent resources due to workload pressures.

## **Consultation**

- 33 The Treasury, Ministry for Regulation, Ministry of Justice, Parliamentary Counsel Office, and the Commerce Commission were consulted on this paper. The Department of Prime Minister and Cabinet have been informed.
- 34 The Commerce Commission consulted publicly on proposed penalty levels as part of its review of the Grocery Supply Code. The Grocery Action Group, Foodstuffs North Island, Foodstuffs South Island, and two anonymous submitters supported Tier 2 penalties for retaliation, while Woolworths opposed introducing this new provision. Woolworths and Foodstuffs both supported Tier 4 penalties for the new record keeping requirements.

## **Communications**

- 35 Information on the 2025 Code, and the penalties for breaching the Code, will be set out on the Commerce Commission's website.

## Proactive Release

- 36 This paper will be proactively released within 30 business days with appropriate redactions, if needed.

## Recommendations

The Acting Minister of Commerce and Consumer Affairs (Grocery Sector) recommends that the Committee:

- 1 note that the Commerce Commission has reviewed the Grocery Supply Code 2023 and has made a new Grocery Supply Code 2025 by determination;
- 2 note that the Grocery Supply Code 2025:
  - 2.1 carries over provisions from the Grocery Supply Code 2023 with amendments;
  - 2.2 introduces a new retaliation prohibition;
  - 2.3 introduces new record keeping requirements for regulated grocery retailers;
- 3 agree to amend the Grocery Industry Competition Regulations 2023 to reflect the policy set out in recommendations 1 and 2 above;
- 4 agree to amend the Grocery Industry Competition Regulations 2023 to:
  - 4.1 maintain existing Tier 2 and Tier 4 penalties under the Grocery Industry Competition Act 2023 (the Act) for clauses carried over from the Grocery Supply Code 2023 to the Grocery Supply Code 2025;
  - 4.2 prescribe Tier 2 penalties under the Act for breaches of the new retaliation prohibition in the Grocery Supply Code 2025;
  - 4.3 prescribe Tier 4 penalties under the Act for breaches of the new record keeping requirements in the Grocery Supply Code 2025;
- 5 authorise the Acting Minister of Commerce and Consumer Affairs (Grocery Sector) to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations;
- 6 authorise the Acting Minister of Commerce and Consumer Affairs (Grocery Sector) to make additional policy decisions consistent with the policy intent of this paper, including on issues that arise as part of amending the Grocery Industry Competition Regulations 2023.

Authorised for lodgement

Hon Nicola Willis

Acting Minister of Commerce and Consumer Affairs (Grocery Sector)

**Annex 1: Grocery Supply Code 2025**

Attached separately.

**Annex 2: Grocery Supply Code 2025 Provisions and Penalties**

Attached separately.

Annex 2: Grocery Supply Code 2025 Provisions and Penalties

Penalty tier under the Grocery Industry Competition Act 2023	Provisions in the Grocery Supply Code 2025 that attract penalties (Note: the wording of each provision below has been summarised)
<p><b>Tier 2 maximum pecuniary penalties</b> \$200,000 for an individual; or in any other case the greater of:</p> <ul style="list-style-type: none"> <li>i. \$3 million; and</li> <li>ii. either the value of any commercial gain resulting from the contravention; or</li> <li>iii. 3% of the turnover of the person and all its interconnected bodies corporate in each accounting period the contravention occurred.</li> </ul>	<p><b><u>Obligation to offer to vary existing agreements so they are consistent with the Code:</u></b> Clause 5(2): Obligation to offer to vary existing agreements so they are consistent with the Code, within one month of the Code coming into force.</p> <p><b><u>Good faith requirement:</u></b> Clause 6(1) and 6(2): Obligation to deal with suppliers in good faith and that grocery supply agreements do not contain a provision that limits or excludes the obligation to act in good faith.</p> <p><b><u>Requirements for grocery supply agreements:</u></b> Clauses 7(1) and 7(2): Retailers must ensure grocery supply agreements are in writing and plain language, a copy is provided to supplier, and a copy kept by the retailer during the term of the agreement and for 7 years after the agreement ends. Clause 8: Matters that must be covered by the agreement (including the term of the agreement, quantity and quality requirements, requirements for delivery and rejection of goods etc.). Clause 9(1): Retailer must not unilaterally vary an agreement without supplier’s consent. Clause 10: Retailer must not vary agreement with retrospective effect.</p> <p><b><u>Conduct generally:</u></b> Clause 11(1): Retailer must not require particular a transport or logistics service or impose unreasonable transport standards. Clause 12(1) and 12(2): Retailer must pay suppliers for all products delivered and accepted and must not set-off any payment amount without supplier’s consent. Clause 13(1): Retailer must not require payments from suppliers as compensation for shrinkage. Clause 14(1): Retailer must not require payment from supplier to cover wastage while goods were in the control of the retailer, its contractor or agent, or any other entity that is a retailer. Clause 15(1): Retailer must not require payment from suppliers as a condition or stocking or listing products. Clause 16(1): Retailer must not require suppliers to make payments towards the costs of a retailer’s business activity. Clause 17(1): Retailer must not require suppliers to fund all or part of the costs of a promotion. Clause 18(1): If a supplier agrees to make a payment in support of the promotion of a product (the funded promotion), the retailer must give the supplier reasonable written notice before holding the promotion. Clause 18(2): Retailer must ensure the basis of any orders connected with funded promotions are calculated transparently, and if the retailer sells groceries that are part of a funded promotion at a non-promotional price, they must repay the supplier the portion of the funded promotion relating to those groceries. Clause 18(3): Retailer orders for groceries in connection with a funded promotion must not be cancelled or have their volumes reduced by more than 10% without supplier consent. Clause 19(1): Retailer may only delist a supplier’s groceries in accordance with the terms of the grocery supply agreement and for genuine commercial reasons. Clause 20(1): Retailer must provide written notice about decisions to delist a supplier’s product, the commercial reasons, and the supplier’s right to have the decision reviewed by the retailer. Clauses 21(2) to 21(8): Fresh produce standards and quality specifications. Clause 22: Retailer must not unduly hinder suppliers from supplying another party. Clause 23: Retailer must not threaten suppliers with business disruption or termination of a grocery supply agreement without reasonable grounds. Clause 24(1) and 24(3): Retailer must respect suppliers’ intellectual property rights and must not infringe intellectual property rights in developing or producing private label products.</p>

<b>Penalty tier under the Grocery Industry Competition Act 2023</b>	<b>Provisions in the Grocery Supply Code 2025 that attract penalties</b> (Note: the wording of each provision below has been summarised)
	<p>Clause 25(1): Retailer must not directly or indirectly require a supplier to transfer or exclusively license any intellectual property right held by the supplier in relation to groceries as a condition or term of supply of an equivalent private label product.</p> <p>Clause 26(2) and 26(3): Retailer must not use confidential supplier information for any other purpose than for which it is provided, may only make this information accessible to employees who need to have access to it, and must monitor compliance with this requirement.</p> <p>Clause 27(1) to 27(5): Retailer must meet certain rules for product ranging, shelf space and range reviews.</p> <p>Clause 28(2), 28(3b), 28(5) and 28(6): Retailer must meet certain rules for implementing price increases.</p> <p>Clause 29(1) and 29(2): Retailer must not prevent suppliers from forming associations or associating with other suppliers.</p> <p><b><u>Retaliation:</u></b></p> <p>Clause 30 (NEW): Retailer must not retaliate against a supplier who exercises a right, or has indicated it will exercise a right, under the Code or its grocery supply agreement or who engages with the Commerce Commission on any matter or engages with the dispute resolution scheme.</p>
<p><b>Tier 4 maximum pecuniary penalties</b>                      \$30,000 for an individual; or                      \$300,000 in any other case.</p>	<p><b><u>Notice of unilateral variation to grocery supply agreements:</u></b></p> <p>Clause 9(5): Where a retailer relies on a clause to unilaterally vary a supply agreement, it must provide clear and full written explanation to the supplier that the variation is reasonable in the circumstances and that requirements that allow a unilateral variation have been met.</p> <p>New Clause 9(6) (NEW): Retailers must keep records of variations and how Code requirements are satisfied, keep these records for at least 7 years, and make them available to the Commission on request.</p> <p><b><u>Requirements for relying on exclusion clauses:</u></b></p> <p>Clause 12(4): Where a retailer relies on the reasons in clause 12(3) to set off payments to a supplier, it must provide written explanation to the supplier about how the set off was calculated, that the payment is reasonable and that requirements in clause 12(3) have been met.</p> <p>Clause 15(4) (NEW): Where a retailer relies on the reasons in clause 15(2) to seek payment as a condition of being a supplier, it must provide written explanation to the supplier that the requirements in this clause have been met, keep the records for at least 7 years, and make them available to the Commission on request.</p> <p>Clause 16(5): Where a retailer relies on clause 16(2) to require payment for a retailer’s business activities, it must provide written explanation to the supplier that the payment is reasonable in the circumstances and that the requirements in clause 16(2) have been met.</p> <p>Clause 17(5) (NEW): Where a retailer relies on clause 17(2) to require a supplier to fund a promotion, it must provide written explanation to the supplier that the payment is reasonable and that the requirements in this clause have been met, keep the records for at least 7 years, and make them available to the Commission on request.</p> <p>Clause 20(3), 20(4) and 20(5): Retailer must promptly comply in writing with any supplier request for a statement of the genuine commercial reasons for delisting and information relating to the delisting and must promptly review any delisting decisions after receiving a written request from a supplier.</p>