

Grocery Supply Code Webinar

Horticulture New Zealand

14 February 2024

Alice Hume – Head of Grocery

Laura Furneaux – Chief Advisor



Today's presentation

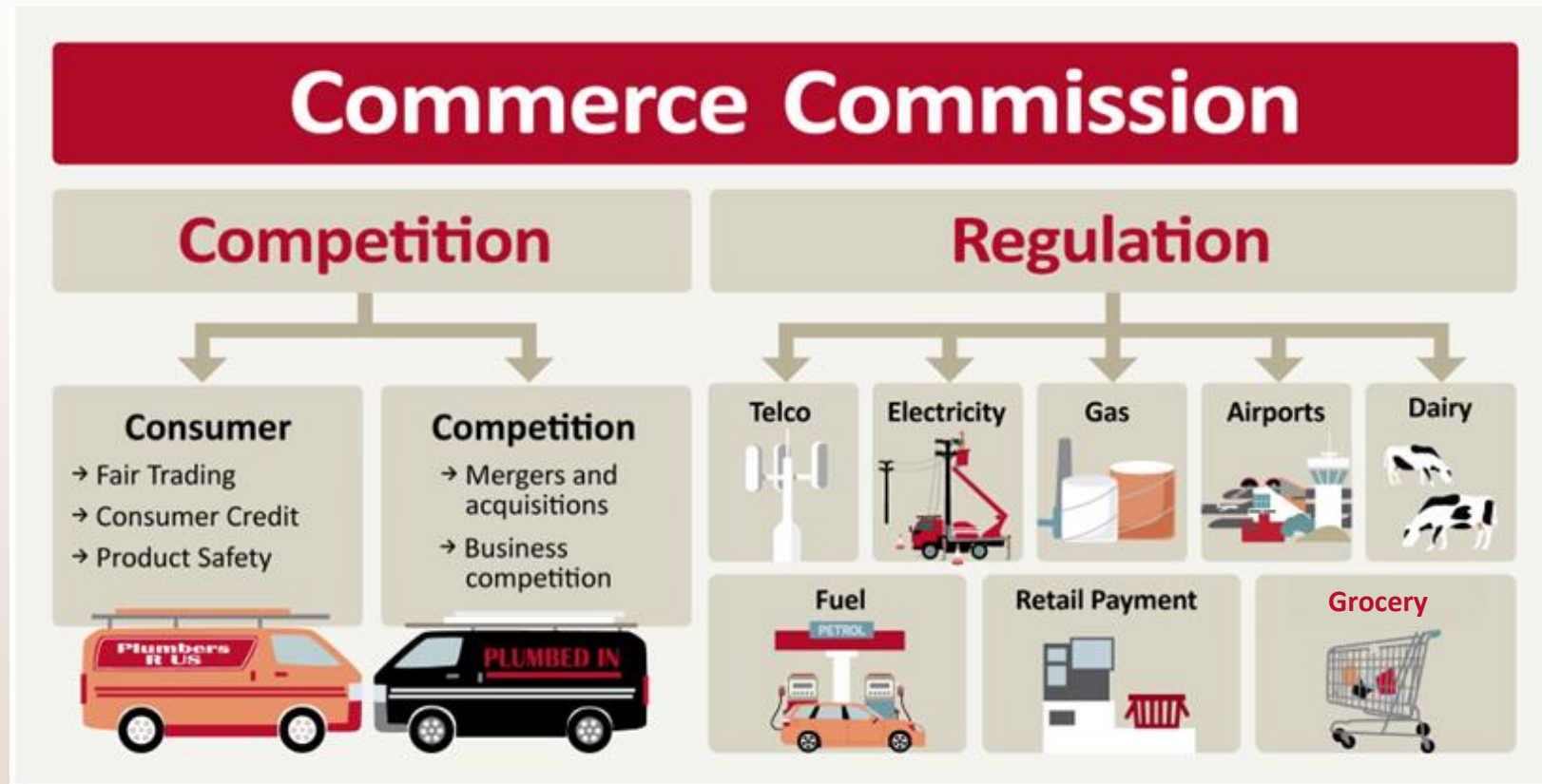
- Introduction
 - The Commerce Commission
 - Overview of grocery sector regulation, including new unit pricing requirements
 - Grocery Industry Competition Act
- Grocery Supply Code
- Anonymous reporting tool
- Ways you can contact us
- Questions/feedback

Recap from the Horticulture NZ Forum – About the Commission

- On Wednesday 6 December, we presented at the Horticulture NZ Forum and will provide a recap of what we covered.
- We are New Zealand’s primary competition, fair trading and consumer credit, and economic regulatory agency.
- We play a crucial role in ensuring New Zealand’s markets are competitive, consumers are well informed and protected, and sectors with little or no competition are appropriately regulated.



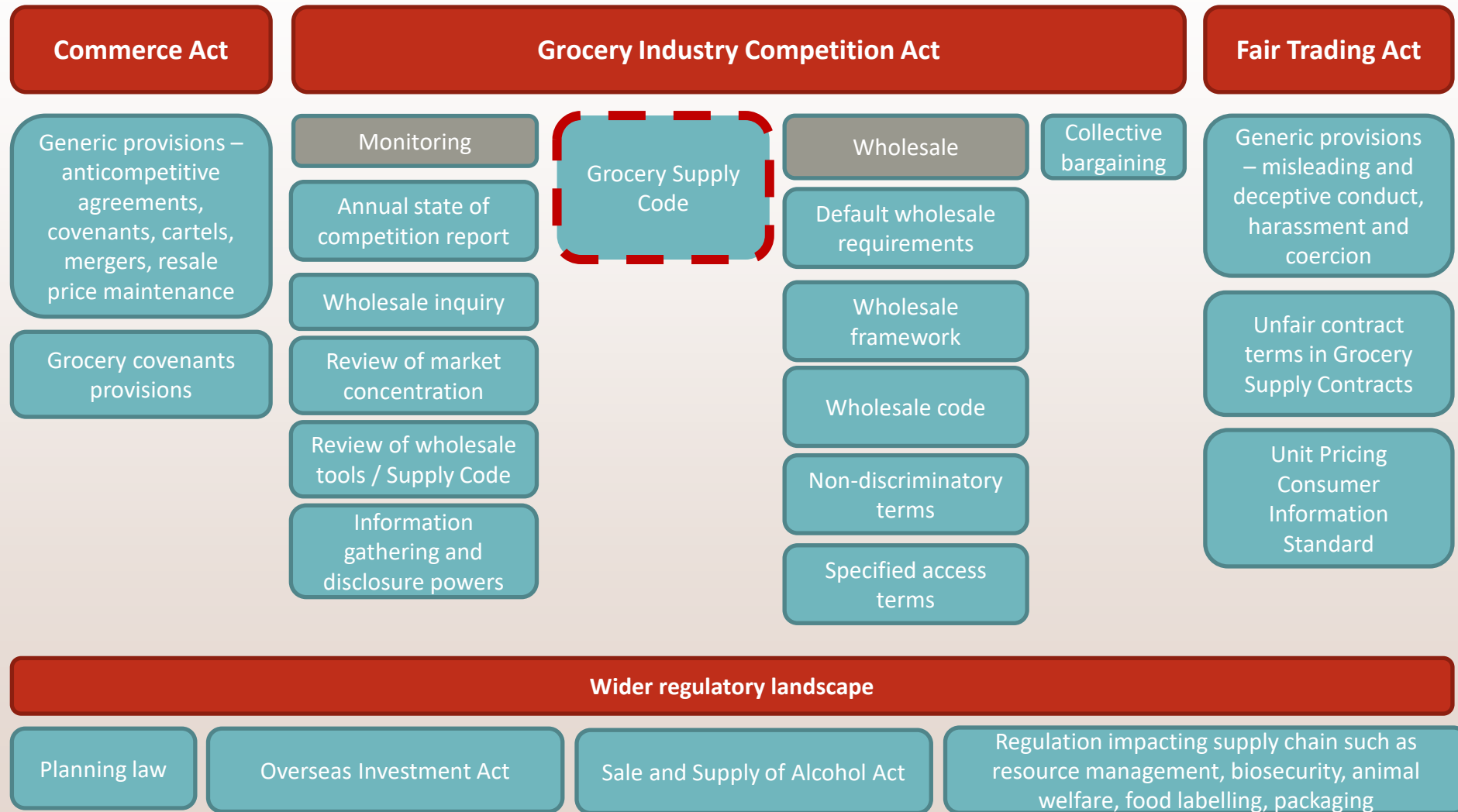
The Commerce Commission



The Grocery Regulatory Landscape



The Commission's Grocery regulatory framework



Unit Pricing

- The unit pricing regulations - *Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023* – are made under the Fair Trading Act and are intended to help shoppers to be able to compare prices.
- They apply to grocery retailers that meet a threshold of supplying a certain range of products, either online, or in store with a floor area over 1000m².
- Under the regulations the displayed price for fruit and vegetables must include a price per kilogram, unless the price is per item (e.g., per head of broccoli).
- There is a lead in time for compliance with these regulations (31 August 2024 for relevant retailers and 31 August 2025 for online sellers).

Regulated Grocery Retailers

- The Grocery Industry Competition Act 2023 provides for specific retailers to be regulated, with the initial focus on **Woolworths NZ, Foodstuffs North Island and Foodstuffs South Island** as the current major grocery retailers in New Zealand. These retailers operate multiple banners.



- We understand that a large proportion of your sales are to wholesalers who are not covered by the legislation. We are interested to understand what the issues are in this environment so we can feed back to MBIE and the Minister.

Four main features created by the Grocery Industry Competition Act 2023 (GICA)

Grocery Commissioner

Appointment of a Groceries Commissioner to oversee the changes promoted by the Act and manage the regulatory framework created.

Grocery Supply Code

Creation of a new Grocery Supply Code of Conduct setting out the rules of engagement for interactions between Regulated Grocery Retailers (RGRs) and suppliers.

Wholesale Supply

New wholesale supply regime creates obligations on RGRs to set up systems to facilitate wholesale supply to other grocery retailers.

Dispute resolution, monitoring and enforcement

Creates the framework for a new dispute resolution body that suppliers or wholesale customers can take disputes with RGRs to (separate to the Commerce Commission).

The Act also provides the Commission with a wide and flexible range of monitoring and enforcement powers to use as necessary to support regulation of the industry.

Our powers, functions and duties

Purpose of the Act:*

“To promote competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand”.

Functions of the Commission:

Monitor competition and efficiency in the grocery industry

Carry out **inquiries, reviews and studies** in relation to grocery industry

Act as a **regulator**. Including monitoring compliance and taking enforcement action.

Disseminate **information**

Co-operate with other law enforcement or regulatory agencies

Keep under **review** the law and practices that are relevant to its other functions

*There are also separate purposes specific to the Grocery Code (s16), Wholesale Supply regime (s21) and Annual Report (s175).

The Grocery Supply Code of Conduct



Background

- The need for a Code of Conduct (as in place in Aus/UK) was supported by the Market Study into the retail grocery sector, which found that competition is not working well for many suppliers who rely on business with major grocery retailers in NZ , and that there is an imbalance in bargaining power with those retailers.
- The “Grocery Supply Code 2023” is the first iteration of the Code and has been included as Schedule 2 within the Grocery Industry Competition Regulations 2023.
- While the making of the Code (led by MBIE) required an Order in Council, the Commission now takes over responsibility for the Code and future iterations will be made by the Commission.
- However, the process for extending the Code to other retailers would go back to the Minister and require a further Order in Council.

Purpose of the Code

The Code supports the purpose of the GICA by:

- Promoting fair conduct and prohibiting unfair conduct
- Promoting transparency and certainty about the terms of agreements; and
- Contributing to a trading environment in the grocery industry:
 - in which businesses compete effectively and consumers and businesses participate confidently; and
 - that includes a diverse range of suppliers



Who does the Code apply to?

- The Code puts obligations on RGRs and associated parties (e.g. franchisees, subsidiaries)
- Applies to RGRs' dealings with anyone supplying them with groceries, or actively seeking to supply them with groceries.
- Groceries are defined in the GICA:

Fresh produce

Meat, Seafood

Dairy products

Bakery products

Chilled or frozen food

Pantry or dry goods

Packaged food

Non-alcoholic drinks

Personal care products

Household consumables

Pet care products



What rules are in the Code?

- The Code is largely based on the Australian Grocery Code of Conduct and:
 - Requires certain behaviours from RGRs including obligation to act in good faith
 - Prohibits certain types of conduct completely
 - Prohibits certain conduct, unless it's provided for in the supply agreement and reasonable in the circumstances.
You don't have to agree to 'contract out' of anything.

Clause 21 – Fresh Produce Standards and Specifications

- Fresh produce standards and specifications must be reasonable and provided to the supplier in clear, unambiguous, and concise written terms.
- The retailer must accept all fresh produce delivered in accordance with relevant fresh produce standards and quality specifications.
- Fresh produce can only be rejected if
 - Standards and specifications are not met AND
 - the retailer rejects the produce within 24 hours after the produce is delivered to the retailer.
- Written reasons for the rejection must be provided within 48 hours.

Clause 21 – continued.....

- The retailer must also communicate any labelling, packaging, or preparation requirements in clear, unambiguous, and concise written terms, and provide reasonable written notice of any changes (unless the change is required immediately by law).
- The retailer must make any claim for damaged grocery products or shortfalls, or any similar claims, within a reasonable time of, and in any event no later than 30 days after, delivery of the groceries to the retailer (or the retailer's nominee).

Transition period and further guidance

- The Supply Code came into force from **28 September 2023**
- **Requirements for supermarkets to act in good faith are in place now**
- If you have an agreement made prior to 28 September that's inconsistent with the Code, the relevant RGR has until **28 March 2024** to offer you variations to make it consistent.
- We will soon be making available a “Checklist” which provides a series of questions that will help to determine whether RGRs are behaving consistently with the Code.

Don't 'contract out' of protections



- You should seek legal advice on your rights under the Code.
- **Don't 'contract out' of protections provided by the Code unless it's of benefit to you.**
- There are requirements for the RGR to provide a full and clear written explanation as to why requests for payment from suppliers are reasonable in the circumstances, in most cases this should be provided with the request (for promotions you will need to ask).

Delisting

- We know that some suppliers are concerned about delisting if they don't agree to opt out of protections.
- The Code creates a process around delisting. Delisting can only occur in line with an agreement or for genuine commercial reasons.
- The retailer must provide reasonable written notice including reasons
- You can seek a review of the decision.



Review of the Code

- The Supply Code is in its first iteration. The Commission is required to review and report on the supply code within two years of it coming into force, and at least every five years after that. The reviews will include:
 - Assessing operation and effectiveness
 - Recommending whether the Code should be amended, revoked or replaced
- We can change the Code at any time, with consultation.
- **We are most interested in knowing how the Code is working so that this can be considered.**
- We will also be looking at issues that emerge through the **Anonymous Reporting Tool** and the **Dispute Resolution** process and review the Code accordingly.

Breaches

- Pecuniary penalties
 - RGRs have an obligation to comply, and contravention of the Code attracts civil liability remedies.
 - for an individual, a maximum of \$200,000.
 - In any other case, the greater of
 - \$3 million, or
 - the commercial gain, or if this cannot be easily established, 3% of turnover.
- Private enforcement
 - Other parties, not just the Commission, can seek relief (compensation, variation/cancellation of contract, injunction).

Making a report/sharing information



- Anyone can make a report to the Commission about a party in the grocery sector at any time. This could be about a breach of the new rules introduced by the Act (including the Grocery Supply Code) or the Fair Trading or Commerce Acts.
- Reports can be made via the following channels:
 - Completing the online form on the Commission website at <https://comcom.govt.nz/make-a-complaint>;
 - Calling us on 0800 943 600; or
 - Emailing contact@comcom.govt.nz.
- Alternatively, you can use our anonymous reporting tool if you are concerned about revealing your identity.

Anonymous reporting tool



- The anonymous reporting tool provides a secure channel to report information without revealing identity.
 - It uses encryption methods to allow you to submit a report securely.
 - Allows you to communicate with Commission staff via an anonymous mailbox.
- Has been used successfully by the Competition Branch of the Commerce Commission for five years

How secure is the tool?

- The Anonymous Reporting Tool uses the WhistleB system provided by NAVEX who are a global provider in this space. The tool is designed to ensure the highest possible data security and privacy settings and it encrypts any data and information provided. It is regularly tested by external security experts.
- Read more information about the security of the WhistleB Anonymous Reporting Tool (<http://whistleb.com/trustcentre/>).

Why the tool has been introduced?

- We recognise that there are situations where someone has specific knowledge about conduct within the sector and might be reluctant to report it for fear of negative consequences.
- Gathering evidence and hearing from the sector is paramount to ensuring we can effectively implement and respond. This will help us ensure the intended outcomes of the grocery regulation are met.

Different ways to report to the Commerce Commission

Complaint channel	Level of confidentiality	Benefits	Potential risk(s)
Anonymous reporting tool	Very high	The tool provides guaranteed anonymity (unless information provided is revealing).	We may not get enough specific detail about a situation through the tool.
Make a complaint	Some level of confidentiality	Direct contact facilitates evidence and directly applicable information for an investigation.	Anonymity not guaranteed.

How to use the anonymous reporting tool

- The tool can be found on the [Make a Complaint](#) page hosted on the Commerce Commission website.
- You will be taken to another webpage with information about the tool
- Instructions are provided on how to submit an anonymous report.

How to report grocery industry conduct

The Commission has new responsibilities to monitor and regulate the grocery sector under the Grocery Industry Competition Act 2016. This is in addition to our ongoing work in the grocery sector enforcing the Fair Trading Act and the Commerce Act.

The GICA creates obligations for specified Regulated Grocery Retailers (RGRs) (Woolworths, Foodstuffs North Island and Foodstuffs South Island) to provide wholesale supply to businesses who wish to re-sell grocery products. In addition, the Grocery Supply Code creates obligations around the agreements between suppliers and RGRs to promote fair conduct.

To help us perform our role, we are interested in receiving relevant information in relation to:

- Wholesale supply issues
- Supply agreement issues
- Trends and issues in the grocery industry more generally

This information may be provided by:

- Wholesale customers
- Suppliers
- Employees of RGRs or other industry participants

There are two ways you can report information:

- Making a general report
- Using our Anonymous Reporting Tool (if you do not want to provide your personal details)

[See more about our anonymous reporting tool](#)

Tips for maintaining anonymity

When you submit a report, we recommend that you:

- Use a personal device and not a work device, in a trusted location
- Clear your browser history after submitting a report
- Ensure that you do not include any information that may identify you – for example, your name and contact details, your role in the company, your gender, your work experience or qualifications, or how you learned about the misconduct
- Do not share your login details with anyone else
- Make sure that the internet connection is secure (your browser should display a lock symbol next to the URL).

Contact us



Call: 0800 943 600

Write: Contact Centre, PO Box 2351, Wellington 6140

Email: grocery.regulation@comcom.govt.nz

Website: comcom.govt.nz/



Questions/ feedback?

