


The Grocery Code of Conduct



The following sections outline the key elements of the proposed Code.

Grocery Code of Conduct Objectives

1. Contribute to a thriving grocery industry, delivering the vital goods upon which Canadians in every community depend, recognizing the needs of all stakeholders in the grocery value chain, including the unique realities facing small and medium enterprises and the realities of the Canadian marketplace.
2. Promote reciprocal trust and collaboration amongst grocery value chain partners, based on clear standards for fair dealing.
3. Allow all parties governed by the Code to make informed business decisions in a context of commercial certainty, governed by clear agreements.
4. Provide for an effective, equitable mechanism for resolving commercial disputes.

Principle Based Model

The Code is based on the following principles, which should guide parties in their behaviour and inform dispute resolution decision-making. Compliance with the Code does not exclude any person from, or restrict the application of, the Competition Act (Canada) or any other Federal or Provincial or Territorial government law or regulation.

Transparency and Certainty: The Code aims to bring transparency and certainty to commercial dealings, with a preference for parties to avoid ambiguity through clear agreements that define conditions for communications between parties and terms for payments, fees, and other obligations.

Fair Dealing Across the Value Chain: Some provisions may be specific to certain actors, but in general it is expected that all supply chain players – retailers, suppliers, wholesalers, larger and smaller entities – are expected to act in good faith and live up to the spirit of fair and ethical dealing, including concepts around reasonable notice and providing sufficient detail and in an effective format. Nothing in the Code should be construed as limiting the ability of any party to compete in the marketplace or negotiate any agreement – so long as it is within the bounds of the Code.

Timely Dispute Resolution: The Code aims to enable the effective, equitable and timely resolution of disputes wherein all aspects of an issue are considered.

Simplicity: The Code should be easy to understand and comply with, favouring simplicity and fairness over detailed rules and unnecessary complexity.

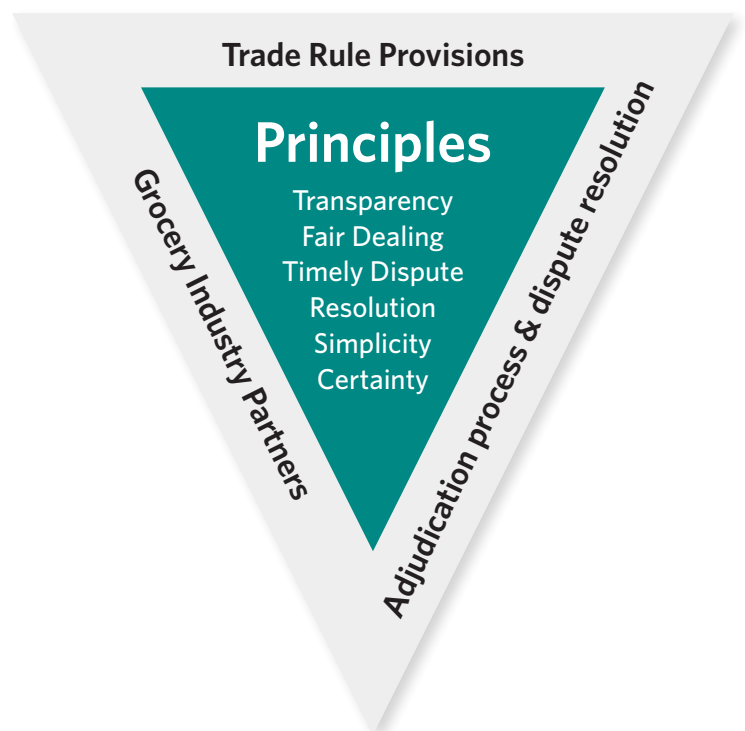


A Canadian Code

The Code of Conduct is not a singular document. It is a set of integrated measures including: (a) principles, (b) a governance, adjudication process (enforcement mechanism) and dispute resolution mechanism (mediation and arbitration models), and (c) trade rule provisions supported by clear definitions, which work together to promote fair and ethical trading and contractual certainty.

Due to the complexity of our grocery industry and the division of legislative powers across Federal, Provincial and Territorial jurisdictions, the Code should be industry led.

Distinct and separate provincial and territorial codes would, we believe, negatively impact businesses, and disproportionately affect small to medium sized businesses who buy or sell in multiple jurisdictions. Maximum participation by industry partners is strongly encouraged.



Code Governance & Grocery Code Adjudicator Office

The Code is more than just a framework for dispute resolution between parties. It is a system, defined by a set of principles, the trade rules and Code provisions, and by a governance system including a responsible adjudication office that will oversee the Grocery industry's performance against the letter and spirit of the Code.

The Grocery Code Adjudicator Office (GCAO) will be a membership-based organization incorporated under the Canada not for Profit Act.

1. Governance

1.1 Interim Board to Establish the Office

The Canada Not for Profit Act allows an association to have an interim board and membership structure for up to 18 months following its incorporation. It is proposed that the interim board of the GCAO be composed of the current Steering Committee members, which will be tasked with setting up the office (governance, structure, by-laws, operating principles, and initial budget). The interim board would also be tasked with establishing an industry selection committee to hire the adjudicator (i.e., the President & CEO of the GCAO).

1.2 Membership Categories and Board Composition

Figure 1 illustrates the proposed membership categories and board composition of the GCAO.

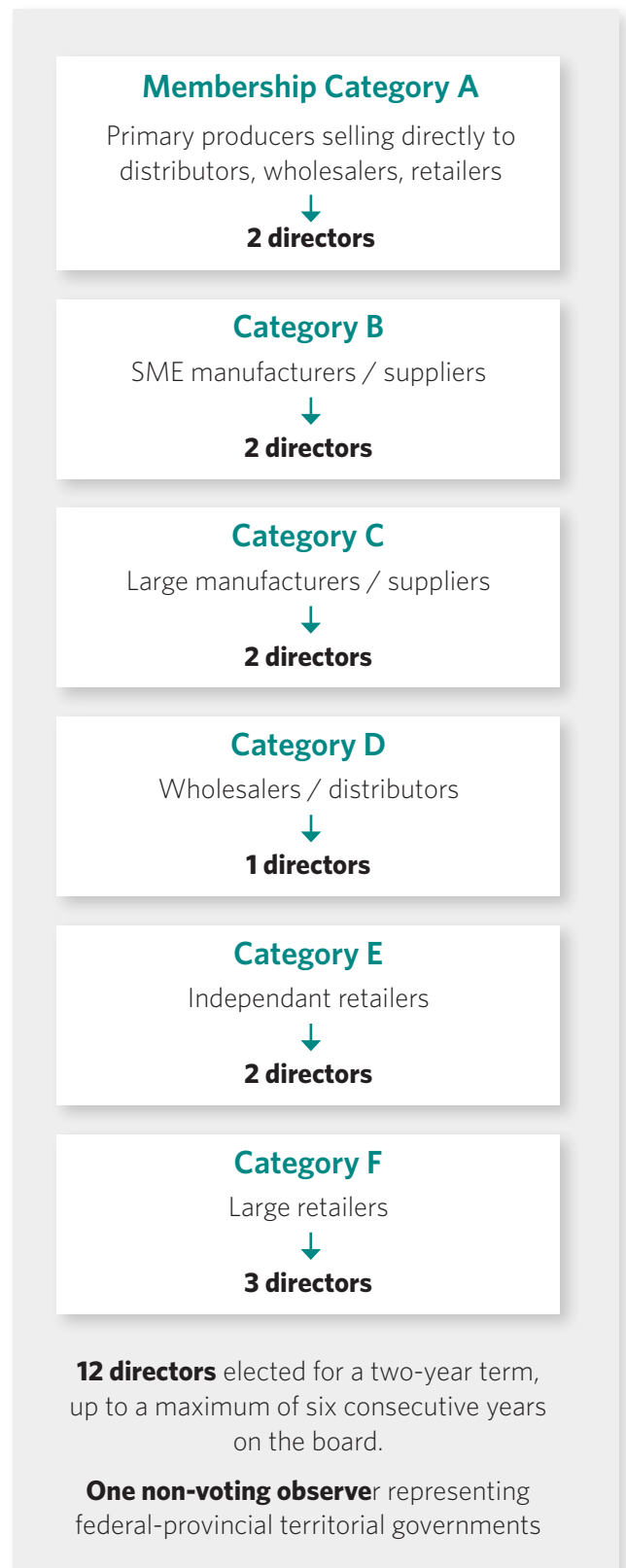
1.3 Process to Change the Grocery Code of Conduct

The Grocery Code will be included in the operating rules of the GCAO (as opposed to the by-laws) so that it can be changed by the GCAO Board of Directors. A majority of 75% of voting directors will be needed to change the Grocery Code, and those modifications come into effect at a date so chosen by the Board.

The Adjudicator will receive requests for changes to the code and filters them based on experience, and alignment with objectives and principles of the Code. After this initial filter, the proposed changes will be channeled to the Board.

Every year (e.g., at the AGM), members will have the opportunity to approve or reject the modifications to the Code promulgated

Proposed Membership Structure and Board Composition



2. Roles of the GCAO

2.1 Operating Principles

The operational principles of the GCAO will be:

1. **Objectivity:** Objectivity and procedural fairness will guide the GCAO in all its actions. The GCAO will start from the assumption that no one wants or intends to work in contravention of the Code and possibly face sanctions and/or end up in arbitration.
2. **Efficiency:** The Code exists to support business and to increase the efficiency and effectiveness of the grocery sector. The industry is fast-moving, so speed in achieving Code compliance and issue resolution is essential.
3. **Pro-active:** Pro-actively identifying thematic issues and clarifying their status under the Code for the benefit of the entire industry will be key in limiting the number of formal disputes between members.
4. **Light touch:** Retailers and suppliers are readily capable of solving issues themselves if the Code is clear and they understand it. By highlighting and encouraging good practices whilst shining a light on and discouraging poor practices, the adjudicator will drive positive behaviour change.

2.2 Roles of the GCAO

The GCAO will have five main roles:

1. Training & education of members;
2. Reporting & accountability to members;
3. Managing the dispute resolution process between two members.
4. Review of issues and ensuring compliance through various tools (including members' discipline via corrective measures);
5. Maintaining a Code that is responsive and relevant to current industry trends.

The following paragraphs provide a description of each of the four main roles of the GCAO.

2.2.1. Training & Education

Training and education of members would include the provision of education materials, preventive measures/tools and coaching/consultation to help members cooperatively resolve a problem. This role is critically important as it could reduce both the probability of problematic behaviours and the risk of escalation should a dispute arise between two members. It would include the following measures:

- **Preventive measures:** Education, training and information dissemination through webinars and presentations, newsletters, position papers, guidance documents, templates and direct engagement with individual members by the GCAO staff. Preventive measures would make extensive use of position or interpretive material to showcase which behaviours are considered compliant under the Code, and which behaviours are considered non-compliant.
- **Coaching and consultation measures:** Members could seek advice and consultation with GCAO staff to identify any potential challenges and help them cooperatively resolve a problem.

2.2.2. Reporting & Accountability

This would include the publication of an annual report which would provide key metrics to track progress on behaviours covered by the Code in order to illustrate the difference (if any) the Code has made in the supplier - retailer relationship in Canada and promote enhanced compliance with the Code provisions.¹ The annual report would also report how the organization is tracking relative to its strategic objectives and provide financial information to members

¹ It is also possible to benchmark progress relative to other jurisdictions.



2.2.3. Manage the Dispute Resolution Process

Stage 1 - Resolution between parties with no GCAO involvement

Parties to the code have a duty to work together to resolve Code related issues, as they arise, in a timely fashion and without immediately escalating them to the Adjudicator. There are a number of steps that can be followed which may potentially differ according to individual members' organizational structures and resources but, broadly, the following guidance should be considered in the first (self-directed) stage of dispute resolution:

- Issues must be raised, discussed and resolved between the parties at supplier/buyer level
- Issues can be escalated to an internal representative empowered to make decisions²

There will be a specific timeframe for completion of the self-directed internal escalation process.³

Stage 2 - Resolution between parties with assistance/supervision of GCAO

In the absence of a resolution between the parties at the self-directed phase, an issue can be escalated to the Adjudicator. This then triggers a further process also with a specific time frame. The office of the adjudicator is informed of the issue and lack of resolution. The office of the adjudicator will then assess the issue to determine its validity, and provide advice, education, guidance or mediation services to resolve the issue.

Stage 3 - Resolution by a 3rd party, external to the GCAO

If there is no resolution through the efforts of the adjudication office, the issue is then moved to a 3rd party, external to the GCAO for resolution. The diagram illustrated to the right represents graphically the three stages of dispute resolution i.e:

- Review of Issues and Ensuring Compliance through Various Tools
- Process to Address Systemic Code Issues by the GCAO
- Maintaining a Code that is Responsive and Relevant to Current Industry Trends

Issues resolved between parties without involvement of GCAO

In the vast majority of cases, issues are raised and resolved between parties

Mediation with GCAO Support

In cases where parties cannot resolve the issues on their own, the GCAO provides support in the form of coaching and mediation services

External third party

As last resort, where issues cannot be resolved within GCAO, cases are referred to external, 3rd party for resolution

Dispute
Settlement Process

2.2.4. Review of Issues and Ensuring Compliance through Various Tools

Where credible evidence of a breach of the Code is provided, the GCAO would conduct its own research on the alleged breach which could lead to corrective measures, such as sanctions. Sanctions would be imposed as a last resort only.

2.2.5. Maintaining a Code that is Responsive and Relevant to Current Industry Trends

Based on analysis of trends, industry performance, and relevant information gathered from the four previous pillars, the Adjudicator will recommend annually any changes to the Board of Directors in order to maintain a Code that is relevant to the needs of its members and in keeping with its mandate.

2: Excerpt from draft Grocery Code: 5.1 All parties shall provide, when required, a representative empowered to make decisions on relevant matters, for all issues pertaining to the Code and its administration. This includes points of contact for informal discussion, dispute resolution, and overall communication. **3:** Involvement of the 'representative empowered to make decisions' runs in parallel with the start of stage1 if an issue is deemed serious enough to call it a code related issue.



Code Provisions (Trade Rules)

1. Fair and Ethical Dealing & No Punitive/Vexatious Acts

- 1.1.** Parties to the Code have an obligation to negotiate with one another in good faith and conduct business in the spirit of fair and ethical dealing.
- 1.2.** Parties to the Code have an obligation to negotiate and conclude agreements by mutual consent.
- 1.3.** Parties to the Code may not alter contracts unilaterally.
- 1.4.** Parties to the Code may prospectively or retroactively alter an agreement, provided that the agreement provides for doing so.
- 1.5.** Parties to the Code shall not undertake punitive or vexatious acts (or threaten same) against parties for exercising rights provided for under this Code.

2. Commercial Agreements

2.1. The Code strongly endorses written agreements (including amendments) – defining the broad commercial terms agreed to by parties – as the chief vehicle for ensuring certainty, clarity, and transparency in commercial relationships. That said, the Code does not obligate parties to conclude written agreements as a condition for entering into a commercial relationship; for some sectors written agreements may be too time-consuming or otherwise burdensome, and in some cases, parties may wish to operate without an overarching agreement at first, before clarifying terms in writing. Parties engaging in complex or nuanced trading agreements without defining the terms in writing do so at some risk.

2.2. Agreements between parties should cover all terms and conditions of their business dealings and take into account the contracting provisions prescribed by the Code.

2.3. In the case of a conflict between this Code and existing provisions/default rules of the DRC, the conflicting provisions of the DRC Rules will apply unless the parties have specifically chosen to adopt the Code. Where the agreement is silent, or parties can't reach agreement, the Code will apply.

2.4. No party shall purposely avoid or refuse entering into a commercial agreement (particularly a written agreement).

2.5. For the purposes of the Code, an agreement is anything that defines the material elements of a relationship between commercial parties. This can include contracts, invoices, purchase orders, bills of lading, emails and other forms of mutually agreed material that memorializes an understanding between parties. The Code does not dictate the form of what a valid written agreement must be. Parties to a written agreement must ensure that that agreement is written in a clear and unambiguous manner, in English and/or French at the request of either party.

2.6. No party shall design an agreement to explicitly work around or willfully disregard the provisions of the Code, and no party may waive any of its rights or obligations under the Code.

2.7. The following are non-exhaustive examples of critical program elements that should be clearly spelled out and defined in an agreement:

- Programs for stocking, listing, positioning and promotions
 - Duration
 - Scope
 - Distribution
 - Key performance indicators
- Programs for unsellables and shrinkage
 - Product specifications
 - Transfer of responsibility and accountability
 - Disposal and/or reclamation process

3. Payments

Payments - timing

3.1. Payment for goods delivered in accordance with the specification set out in an agreement shall be made in accordance with the agreed payment terms.

3.2. In the absence of a written agreement, payment will be made within a reasonable time frame after the date of the invoice, (with any disputed invoice to be subject to the dispute resolution process).

3.3. It is highly recommended that payment terms be defined by written agreement.

Payments for Programs as Defined in an Agreement

3.4 Charges for programs such as stocking, listing, positioning, promotions, marketing costs, unsellables and shrinkage shall be made in accordance with the agreed upon payment terms and:

- a.** Provide reasonable substantiation in sufficient detail and in an effective format for verification of the deduction or invoice.
- b.** Allow the other party the ability to dispute the charge within the applicable period set out in the agreement (or if the agreement is silent, then within the limitation period applicable in the relevant jurisdiction), and such dispute shall be resolved as soon as practically possible.
- c.** Provide the other party with the right to go through an internal escalation dispute resolution process and provide a contact for such process.

Ad-Hoc Payments for Non-compliance with the Terms of an Agreement

3.5. A party may charge non-compliance fees if an agreement provides that party with the right to do so and sets out the specific framework for such charge, or, if not specified in an agreement, then in order for a party to levy a charge it must first:

- a.** Provide the other party with Reasonable Notice prior to taking steps to execute the non-compliance charge.
- b.** Provide reasonable substantiation in sufficient detail and in an effective format for the deduction or invoice.
- c.** Allow the other party the ability to dispute the charge within the applicable period set out in the agreement (or if the agreement is silent, then within the limitation period applicable in the relevant jurisdiction), and such dispute shall be resolved as soon as practically possible.
- d.** Where a Supplier challenges a proposed charge, the Retailer shall not deduct the disputed sum from the Supplier's trading account or otherwise from money owed to the Supplier for goods supplied until the challenge is resolved, unless the Retailer demonstrates, acting reasonably, that the challenge is vexatious or wholly without merit.
- e.** Provide the other party with the right to go through an internal escalation dispute resolution process and provide a contact for such process.

3.6. Subject to Section 3.4 and 3.5, for payments outside of the scope of an agreement, the parties must negotiate and agree on the item prior to taking any charge through deduction or invoicing.



Payments as a Result of Audits

3.7. The parties should negotiate the time period within which they are entitled to seek payments under audit rights and should specify the level of detail to be provided before any such action is initiated, which in any event should not exceed 24 months unless the basis for the action is fraud or intentional misrepresentation on the part of either party.

In cases of material post audit charges, parties will work collaboratively and in good faith to agree on acceptable payment terms.

Payment for Price Matching

3.8. Provisions under which a supplier makes payment or allowance to a retailer as compensation for a retailer's price matching program are discouraged.

Payments for Consumer Complaints

3.9. A Retailer may charge a Supplier a fee for resolving consumer complaints where this is provided for in an agreement that sets out the specific framework for such charge. If not specified in an agreement, for a Retailer to levy a charge for resolving consumer complaints, the following conditions must be met:

- that Retailer believes on reasonable grounds that the consumer complaint is justifiable and attributable to negligence, breach of an agreement or violation of law on the part of that Supplier,
- the Retailer has provided the Supplier with adequate evidence of the fact that the consumer complaint is justifiable and attributable to negligence, breach of an agreement or violation of law on the part of the Supplier, and
- the payment is reasonably related to that Retailer's costs and expenses arising from that complaint.

4. Other Items

Changes to Supply Chain Procedures

4.1. Parties to an agreement may affect a change to a partner's supply chain procedures, provided that, in the case of a material change, taking into account the circumstances of the partner:

- The change is reasonable,
- Reasonable Notice of such change is provided in writing, and
- Parties come to agreement on mitigating and/or offsetting the financial implications (if any) of the change.

Tying of Third-Party Goods or Services

4.2. When the parties agree on an activity requiring the use of third-party goods or services, a party can directly or indirectly require a partner to obtain any goods, services, or property from a third party, provided that the partner's source for those goods, services, or property:

- meets reasonably objective standards relating to quality, timing and/or efficiency defined for the provision of such goods, services, or

property or (b) is unique, specialized, exclusive or cannot be comparably offered by any other party; and

- is provided at a cost that is competitive and reasonable, taking into account the circumstances of the partner.

Good Faith Forecasting, Ordering and Allocation of Supply

4.3. A Retailer shall prepare forecasts in good faith, taking into consideration lead time for the Supplier, and with due care in consultation with the Supplier (provided that is permitted by applicable law). A Retailer shall then prepare its orders in good faith with consideration of applicable forecasts. Parties are encouraged to document their order/acceptance policies for greater certainty around items such as lead times, minimum order quantities, and increased or decreased demand, as well as communication protocols and how orders are to be partially or fully accepted or rejected.

4.4. A Supplier is under no obligation to accept an order. Where the Supplier does not accept a Retailer

order setting out the quantity of products it wishes to order from the Supplier, the Retailer shall not impose fines or penalties on a Supplier solely as a result of the Supplier failing to deliver the quantities in the non-accepted order.

4.5. Where a Retailer orders materially less than planned forecasts, resulting in financial implication for the Supplier, then Retailer must reasonably work with the Supplier on mitigation.

4.6. Where total demand for a product exceeds available supply, suppliers will take into consideration all existing and requested orders from all retailers.

Guidelines Relating to Cost Changes

4.7. Parties retain full discretion to negotiate costs and accept or decline proposals with respect to costs. Parties should set out in an agreement the level of notice and information required in order to properly negotiate and decide upon cost change proposals including cut-off times for acceptance/rejection and effectiveness.

Duties in Relation to De-listing / Supplying

4.8. Where a Retailer seeks to de-list product(s) or a Supplier seeks to discontinue supplying product(s) it shall:

- provide Reasonable Notice of the intention, including reasons for the decision;
- offer the other party an opportunity to discuss the reasons for the decision with a representative empowered to make decisions on the matter; and
- work in good faith with the other party to manage depletion, supply and related issues fairly.

Protection of Confidential Information and Respecting Intellectual Property

4.9. Except as required by law and/or subject to any agreement between the parties, no party to an agreement shall require the disclosure of confidential information (including commercially sensitive information), nor oblige the transfer of intellectual property rights, in connection with the supply or sale of grocery products.

4.10. Except as required by law and/or subject to any agreement between the parties, where a party chooses to disclose confidential information, the receiving party shall not use that information other than for a purpose for which it was disclosed and may only disclose such information or make it available or accessible to its employees or agents who need to have that information in connection with that purpose.

Exceptional Circumstances and Force Majeure

4.11. Parties are strongly encouraged to negotiate their own clear provisions for how they will define and respond to instances of exceptional circumstances (including Force Majeure) that materially affect either party's ability to conform to the terms of a commercial agreement. Without advance discussion and definitional clarity, the ability of the dispute resolution process to deal with such cases may be limited.

4.12. Where circumstances reasonably beyond the control of a party create a materially significant situation where such party cannot fulfill its responsibilities, it must promptly notify its affected partner(s).



5. Duty to Participate and Inform Staff

5.1. All parties shall provide, when required, a representative empowered to make decisions on relevant matters, for all issues pertaining to the Code and its administration. This includes points of contact for informal discussion, dispute resolution, and overall communication.

5.2. All parties governed by the Code have a duty to inform senior staff of, train commercial teams on, and be aware of the Code and its provisions.

6. Dispute Resolution

6.1. In any case where a party reasonably believes that there is a failure to live up to the provisions of the Code, and following good faith attempts to resolve any dispute through direct interaction with the other party, it may initiate dispute resolution using the mechanisms provided for by the Code and its administrative system. Any dispute resolution mechanism shall take into account any agreement, preferably written, between the parties.

Consultation questions

Questions: It is important for the Steering Committee to understand those areas of the Code

- Where you require more information or clarity,
- That are of greatest value to you, and
- If there are is anything substantive we have missed.

In responding to the questions, please provide as much specificity as possible.

1. Please identify those elements of the Code where you need more information or clarification.
2. Please identify those elements of the Code that are most important or of greatest value to you.
3. It is the intention to conduct a full review of the Code 18 months from its implementation. Is there anything substantive and fundamental in nature that we should consider prior to implementation, recognizing that the Code will be subject to review 18 months from implementation? If so, please specify below.

Next steps

- **Input received will be collated and summarized by an independent third party.**
- **Input will be reviewed by the Steering Committee and Code Sub-Working Group and the Code will be adjusted if/as necessary. Note all comments may not be addressed in light of the planned 18 month review.**
- **The FPT Ministers have a clear expectation that the Code will be completed and ready for implementation by the end of 2023 and industry stakeholders involved in the development of the Code are confident this timeframe can be realized.**