



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI



Submission form

New Zealand Grocery Code of Conduct

June 2023

1 Submissions process

The Ministry of Business, Innovation and Employment (**MBIE**) seeks written submissions on the New Zealand Grocery Code of Conduct consultation paper by 5pm on **[10 August 2022]**.

Please send your submission form to:

- competition.policy@mbie.govt.nz with the subject line “Grocery Code of Conduct Consultation 2022”
- Competition Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Release of information

MBIE intends to upload copies of submissions received to MBIE’s website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please send a separate version of this form excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or email accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

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Name (first and last name)

Tric Malcolm

Email

Privacy of natural persons

Is this an individual submission, or is it on behalf of a group or organisation?

Organisation

Business name or organisation

Kore Hiakai Zero Hunger Collective

Is there any information you would like to be withheld? Please state which question/information you would like to be withheld? If applicable, please also provide a separate version of this form without the sensitive information.

No

2 The approach to developing a Code of Conduct

QUESTION 1: Do you have any comments in relation to **Chapter 1**, in particular any comments on:

- the objectives (**section 2.2**)?
- evaluation criteria for the Code (**section 2.3**)?

Please type your submission below.

We recommend that further evaluation criteria be added, being '*Will this bring long-term benefit to consumers?*'. This is listed as the main purpose of the code of conduct. At the end of this paper, it is stated only that the proposed policy changes should result in long-term benefits to consumers. Assessing all policy options against this additional evaluation criteria would enable a more robust assessment of whether the policy option will result in benefit for consumers.

4 Including a purpose statement within the Code and overarching obligations

QUESTION 5: In relation to 4.2 purpose of the Code, which of the three options do you agree with, and why?

Please type your submission below.

Our strong preference is for Option 3 (Alternative Code), thus adding the following provisions to the code:

- supporting economic development in the grocery industry including the entry and expansion of retail grocery activity and any wholesale grocery activity
- Māori economic development / tikanga Māori provisions

We believe that economic development in (d) should be expanded to specifically reference local economic development.

The recommendations of the Commerce Commission spoke to the role of alternative, fringe or new participants in the grocery industry, both at wholesale and retail levels. A weighting in the purpose of the code towards this shows both the intent and the creating of pathways to enable this.

We believe that a focus on local economic development and Māori economic development will help to strengthen local food systems, and specifically Māori food systems, which will provide opportunities to advance Māori food sovereignty, and a more food secure Aotearoa. Tikanga Māori provisions provide an opportunity to further strengthen Māori food systems.

In addition to this the provision for actively seek Māori economic development and tikanga Maori provisions not only shows the intent of pathways for new participants but a clear path for Māori, particularly iwi and hapū groups to begin to participate in this space. Historically Maori were the growers and distributors of food through-out Aotearoa. This hospitality and economic aspect was taken away, largely through land confiscation, this intent in the purpose of the code of conduct is part of creating a pathway to restore this.

Both these aspects of Māori economic development in grocery retail and smaller and new retailers will strengthen local economies and enable greater control and local benefits for communities such as jobs, eating from the local landscape and lower cost of food and food production costs. There is clear international evidence that shows the less elements between production and consumption the more food secure a community is.

QUESTION 7: In relation to **4.3 overarching obligations**, which of the three options do you agree with, and why?

Please type your submission below.

Our strong preference is for Option 3 Alternative Code, which allows for Māori economic development, and support the inclusion of the following as detailed in paragraphs 83 and 84.

- *Para 83: A Code could include economic development-focused requirements to demonstrate support for indigenous food and grocery businesses as part of Treaty of Waitangi commitments, or it could require major grocery retailers to have targets and aspirations to lift capacity and capability of Māori suppliers.*
- *Para 84: Alternatively, a Code could provide adequate recognition of tikanga Māori or Te Ao Māori where appropriate – for example in any overarching obligation (good faith or fair dealing), or in dispute resolution processes.*

In addition to lifting up specific Māori retailers, this invites Te Tiriti o Waitangi into the practice of all retailers, including existing retailers. It offers capacity around valuing, upholding and developing our indigenous food frame.

QUESTION 9: How can the Code best incorporate economic development objectives, including those of Māori

Please type your submission below.

One option could be an advisory group to the Groceries Commissioner consisting of major retailers and Māori suppliers that develops a programme that includes:

- working with retailers to build their cultural competency and reduce roadblocks for Māori suppliers
- building Māori supplier capability to address problems and opportunities such as those identified through the Commission's market study
- other provisions to strengthen Māori economic development as deemed appropriate.

This could include regular reporting on progress in achieving better outcomes for Māori suppliers and for Māori economic development.

5 Requirements for supply agreements

QUESTION 11: In relation to **5.2 Requirements for supply agreements to be written and contain minimum content**, which of the options do you agree with, and why?

Is there any content that you think should be required in grocery supply agreements but is not mentioned?

Please type your submission below.

We understand from our sector that an efficient and healthy food supply system helps to contribute to stronger food security networks. The health of the agreements between retailers and supplier is essential to creating an environment where all can access healthy affordable kai, especially those on lower incomes. A robust supply agreement that ensures consistent, quality and adequate supply is essential for retailers, as is one that gives power to the supplier to self-determine that agreement. We are aware that is not always the case in the current environment.

We would prefer option 2 as it consistently grounds the supply agreements in the language and intent of the code and provides less scope for interpretation. Hopefully this would make the code and the agreements more meaningful. Could there be provisions for allowing adaption over time?

QUESTION 12: In relation to **5.3 limiting unilateral and retrospective variations**, which of the options do you agree with, and why?

Please type your submission below.

We strongly agree that this should be part of the code and would prefer option two as it favours the supplier who are usually taking the highest risk.

QUESTION 13: Do you have any comments on the preliminary assessment of the options against the criteria in **Chapter 5**?

Please type your submission below.

We overall prefer option 2 as it favours the supplier in the agreements. The Commerce Commission's recommendations identified the power imbalance in the supply agreements and the behaviour towards supplier from retailers. Option 2 seems to be more robust in its tools for addressing this power imbalance and therefore providing the consumer with better access to affordable good quality goods.

QUESTION 16: In relation to **6.4 Obligations in relation to ranging, shelf allocation, and delisting**, which option do you think is best, and why?

Please type your submission below.

We are very grateful that this has been included in the code. The placement favouring and rolling specials on 'own brand' products within retail shapes the behaviour of the shopper to prefer the 'own brand' items. We have been watching closely how this has been happening with butter and certain canned goods. This has been taking away the power of the supplier to market their own goods within the retail environment. The increased transparency in this aspect of the code is commendable.

We would be comfortable with either option 2 or 3 but lean towards options 3 as they help to express the 'genuine commercial reasons' for shelf allocation and delisting and therefore more conversation with the supplier. This brings a rebalance of power in that relationship. Option 3 also has the additional limitations to stop the retailer acting without consultation.

QUESTION 17: In relation to **6.5 Other obligations**, which option do you think is best, and why? Please comment on the range of different areas – confidential information, intellectual property, business disruption, freedom of association, whistle-blower protections, pressure to opt out of wholesale supply arrangements, exclusive supply clauses and 'most favoured nation' price clauses.

Please type your submission below.

We would prefer Option 3 as we see it is important for whistleblowers to have adequate protection. This has been an important part of bringing to light the unfair of current practice and needs to be maintained.

It is essential for provide recognition of the taonga held within some products. This upholds an understanding of the indigeneity of the food system in Aotearoa and a carefulness not to exploit and to seek to understand and be guided.

Option 3 seems to provide some level of protection and line of sight for suppliers within the wholesale space. This ensure a competitive nature to the wholesale space.

QUESTION 24: In relation to **7.6 Payments for promotions and promotional buying**, which option do you think is best, and why?

What are your views on promotional buying and investment buying?

Please type your submission below.

Option 3 is preferred, as paragraph 198 a. notes that Options 1 and 2 may have the effect of prohibiting investment buying, which may impact on prices for consumers. This is therefore, not for the long-term benefit of consumers and detrimental to the purpose of the Code. We would like to see the fair continuation of promotions in a way that is beneficial to consumers.

QUESTION 28: Do you have any comments about the current state of dispute resolution (for example, the processes that are used or the nature of disputes)?

Please type your submission below.

We support and uphold the ideas articulated in para 218 and encourage developing Tikanga Māori and Te Tiriti obligations to guide the disputes process. This helps to embed Te Tiriti in the foundations of this Code.