



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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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

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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.

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Name (first and last name)

Mark Fort

Email

Privacy of natural persons

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

Individual

Business name or organisation

Gold'n Pear

Is there any information you would like to be withheld? No

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.

I think the com com has made a very reasoned approach and suggestions. The code may cost the MGR (and suppliers) but the need for a code is paramount.

The development of the 3rd option is very helpful and comes up with good stuff.

In referring to the brokers throughout my submission (T&G, Fresh Direct and others) This document does not refer to them and are not specifically referred to as the Com Com did not include them in their study.

Where do they fit in the box 24?

They play a major part in the supply of fresh product to the MGR while the supplier pays their sales commission. They effectively work FOR the MGR's to achieve good supplies, lower prices, whatever is asked of them as they are in competition with the other marketing companies, in effect a quasi 'Purchasing office' not funded by the MGR but by the suppliers.

3 Which retailers should be bound by the

QUESTION 2: In relation to **section 3.3**, which of the three **Designation Options** do you think is best, and why?

Code?

Please type your submission below.

Option A, I did a lot of direct sales of my product to individual stores to avoid the Brokers commissions so it is important to include the possibility they might end up being part of the market mix as well as those same stores purchasing for other franchisees but below a higher annual T.O. figure.

QUESTION 3: In relation to **section 3.4**, which of the three **Options** do you think is best, and why?

Please type your submission below.

Option B, this will get the most coverage. See comment above in Q2

QUESTION 4: Do you have any comments on the preliminary assessment of the options against the criteria in **Chapter 3**?

Please type your submission below.

No

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.

Option 3. It allows supporting economic development in the grocery industry including the entry and expansion of retail grocery activity and any wholesale grocery activity and Māori economic development.

Having listened to both the UK and Au people speak on the Zoom calls during the Com Com study I believe we can adopt the best of both codes and apply what suits NZ best.

QUESTION 6: Do you see any risks if the purpose of the Code was to:

- address any impacts of the major grocery retailers' trading relationship with the supplier on other grocery retailers, or
- support any wholesale supply arrangements?

If yes, please explain the risks.

Please type your submission below.

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.

Option 3 It adds the important clauses that includes 'avoid discrimination or distinction between suppliers'

QUESTION 8: Do you have any views on how to incorporate tikanga Māori or Te Ao Māori in the Code?

Please type your submission below.

Yes, there are lots of Maori coming through the universities and other training institutions that should allow them to be a member of the codes regulatory arm and be part of decision making and arbitration.

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

Please type your submission below.

Option 3 Alternative Code

Option 2 plus allows for Māori economic development, and broader matters relating to the trading relationship.

Good faith and fair dealing obligations.

QUESTION 10: Do you have any comments on the preliminary assessment of the options against the criteria in **Chapter 4**?

Please type your submission below.

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.

Option 2 Prescriptive Code & Option 3 Alternative Code

There is no mention of influence or separation control by the current marketers 'brokers' like T&G Fresh (BayWa), Fresh Direct etc

In particular season long pricing arrangements being changed partway through without warning, This is done by the MGR negotiating with (telling) the broker and the broker telling the supplier 'accept it or lose the customer'.

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.

Option 2+3

If these limits are not applied there will be an inevitable 'watering down' of any agreement at some point

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.

The code needs to have a clear structure so it can be put into practice from the get go.

Both the UK and Au codes had to be refined and reviewed which is what we are doing without time wasting trials and evaluation but based on the best of that previous work and what should work for the New Zealand situation.

We have needed a code for a long time, the MGR's have agreed to accept and apply it.

6 Obligations in relation to product supply and placement

6.1

Option 3 (Alternative Code):

Option 2 plus prohibit a designated retailer from pressuring or requiring a supplier to use their own logistics services or a third party, unless the service is lower cost than the supplier's preferred service provider, or the supplier's preferred service provider does not meet reasonable service standards.

QUESTION 14: In relation to **6.2 Changes in supply chain processes**, which option do you think is best, and why?

Are suppliers being pressured to use a retailer's own logistics services and if so, what is the impact?

Please type your submission below.

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QUESTION 15: In relation to **6.3 fresh produce standards and quality specifications**, do you think the Code should include specific provisions about fresh produce and if yes, please explain what you think it should include?

Please type your submission below.

I prefer option 2 with the requirement that if a grower supplier group has an industry quality standard in place it should be adopted by the MGR or act as the basis for the quality standard.

In the case of fresh produce purchased through a broker the discussion needs to take place directly between the MGR and the supplier other wise the MGR can use it as an opportunity to stop/ slow supply/ alter the price agreed to or otherwise change the sales agreement.

The MGR or broker can and must notify the supplier within 24 hours if produce is declined as it is checked on sending and receipt all occurring within several hours.

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.

Prefer option 3 it is more effective for a number of reasons to assist the supplier.

Comment

Product ranging May also be used to alter suppliers ability to sell therefore consumer availability in selected regions / stores and restrict the ability for suppliers to develop their business.

Shelf allocation Should not be used to influence home brand purchase.

Delisting should only be able to be applied after the MGR is able to show good reason as in sales or demand being uneconomic for the supplier.

Consider adding a clause in this section that covers climate change effects such as extreme weather events.

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.

Option 3 (Alternative Code):

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, insert standard clause from MGR own terms.

intellectual property, prohibit any current or subsequent use of product naming , packaging or specialised product differentiation

business disruption, entering into negotiations for supply / purchase without an end time or date

freedom of association, MGR's Allow and support product associations to foster and discuss marketing plans.

whistle-blower protections, yes of course it is necessary.

pressure to opt out of wholesale supply arrangements, see previous comments as these apply to this comment.

QUESTION 18: Do you have any other comments about issues relating to product supply and placement?

Please type your submission below.

The supplier must be allowed access to a store or sales outlet during and after delivery to audit the MGR commitment to storing and displaying for retail sale to meet a reasonable standard of storage and display to avoid later claims of poor quality / wastage.

When in store free sample promotions take place at the cost of the supplier or his agent the samples can be supplied by that supplier or producer organisation without costs or charges for doing so providing those samples are sourced from an GAP approved supplier.

QUESTION 19: Do you have any comments on the preliminary assessment of the options against the criteria in Chapter 6?

Please type your submission below.

7 Obligations in relation to payment, price increases, and promotions

QUESTION 20: In relation to 7.2 Payment terms and set-offs, which option do you think is best, and why?

Please type your submission below.

Option 3 Alternative Code Most important for fresh product as it will generally be all sold within a set period of 3-5 days so a payment could and should be made within a 10-14 working day period.
This can be determined by the MGR demonstrating to suppliers based on computer generated season long sales sheets.

OR This period could be based on the MGR evidence shown to a supplier or grower organisation.

QUESTION 21: In relation to **7.3 Responses to price increases**, which option do you think is best, and why?

Please type your submission below.

Option 3

note Shorter time span requests for price increases should be required for some lines of fresh produce due to weather events which with climate change are occurring more frequently.

QUESTION 22: In relation to **7.4 Payments for shrinkage and wastage**, which option do you think is best, and why?

Please type your submission below.

Option 3 (Alternative Code) Option 2 plus

A Sunset clause which prohibits designated retailers requesting payments for wastage older than six months suggests that the retailer is unable to carry out the normal audit and claim functions within a reasonable time.

Note for fresh produce that sunset clause should be set at 30 days to give the supplier reasonable time to check his own details of the delivery.

QUESTION 23: In relation to **7.5 Payments for retailer's business activities, product placement, and as a condition of being a supplier**, which option do you think is best, and why?

Please type your submission below.

Option 2 plus Prohibit payments that are not linked to specific activities.

Require refunds by retailers where they have not completed the relevant activity that payment was provided for.

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.

I prefer option 3

A risk for suppliers of some grocery and fresh produce lines is that a 'promotional price' is forced on them by brokers perhaps with the influence of MGR that then becomes the standard price perhaps for the fresh product harvest season with suppliers made to accept that or risk losing sales.

I have organised and run in store sales promotions and know that it is important that the suppliers need to have a tight budgetary control as the money may be from their audited industry organisation

Note Refer promotional buying

The custom exists of product purchased at a reduced promotional cost for sale in Pak'n Save stores also being available to and sold in New World stores at the full non reduced price.

This has the effect of losses to both the supplier and the consumer.

This presumably occurs as the goods are purchased by the MGR buying office from the broker, stored at the MGR Distribution Centre and then made available on their stock system to the New World branded stores.

In discussions this week with a supplier confirming this had occurred earlier this year for his supplies.

QUESTION 25: Do you think requests from retailers for payments for data services is an issue and if so, why?

Please type your submission below.

They are determined to extract as much profit and cover the cost of each and every transaction they undertake so it is important to prohibit this action.

QUESTION 26: Are there any other instances where requests for payments should be limited? If so, what are the issues and how should they be addressed in a Code?

Please type your submission below.

There are some permanent payment requirements built into supply arrangements charged by the MGR to brokers who then may claim this from a supplier and then paid to the MGR.

These appear to be a cost charged by the MGR to the broker as a cost of doing business with them.

Any payment of this type should be prohibited.

Charges or requirements for special packaging or their hire or cleaning or disposal pre or post delivery should be prohibited as these are for the benefit of the MGR and to increase their profit margins.

QUESTION 27: Do you have any comments on the preliminary assessment of the options against the criteria in **Chapter 7**?

Please type your submission below.

Further comments and questions

Does the requirement for a supplier of fresh produce to supply a 'marketer' for them, the MGR, to then decide who and how much they will purchase constitute an unreasonable cost to the supplier and also inevitably the consumer.

Brokers like T&G were once very important as there were lots of smaller companies in every suburb buying fresh produce, many suppliers sold directly to these stores reducing the costs to suppliers and inevitably consumers.

Now most, 80-90%, is purchased and sold by the duopoly MGR's.

Should the code require the MGR to make it easier for suppliers to sell directly to stores reducing both shipping / transport costs and Co2 emissions, removing brokers commissions and therefore reducing costs to consumers?

This may be workable if the Govt introduces a law to enable collective bargaining, a recommendation of the Com Com, so I suggest this code could include a section to allow that to be implemented easily.

8 Dispute Resolution

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.

The separation caused by the MGR's use of brokers for smaller suppliers of fresh product means that there is little you can do but accept their decisions.

QUESTION 29: Do you have any comments on the particular criteria in **Chapter 8.5** used to undertake the preliminary assessment of options for dispute resolution?

Please type your submission below.

I think the com com has made a very reasoned approach and suggestions.

QUESTION 30: In relation to **Chapter 8.6 The options for New Zealand**, which of the three options do you think will work best, and why?

Please type your submission below.

Option3 because it has been based on the existing codes but improved for NZ use and likely the most effective.

Having listened to both the UK and Au people speak on the Zoom calls during the Com Com study I believe we can adopt the best of both codes and apply what suits NZ best.

QUESTION 31: Do you have any comments on the preliminary assessment of the options against the criteria in **Chapter 8**?

Please type your submission below.

9 Monitoring, compliance and enforcement

QUESTION 32: Do you have any views on the Australian and UK approaches to monitoring, compliance obligations, and enforcement, and which might be most effective for New Zealand?

Please type your submission below.

I think because the Au grocery market is more similar and has been developed and tested against the UK model the Au model is the one we should follow.

QUESTION 33: Do you have any comments on the potential compliance costs (for suppliers and designated retailers) from the proposed content of the Code of Conduct?

Please type your submission below.

Using the Early self-resolution followed by adjudication to resolve disputes with clear timeframes will allow for early resolution and should lead to lower costs

QUESTION 34: Do you have any views on how the Code should be implemented?

Please type your submission below.

This draft code has been based on a thorough examination of all facts and so should proceed quickly to implementation.

If there is to be a further final draft of the code it should only have a 20 working day period for any further submissions and those should only be required to be on points of law.

If there are any changes found to be necessary that can occur in the reviews.

QUESTION 35: Do you have any other comments on the matters discussed in **Chapter 9**?

Please type your submission below.

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