



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



# Request for Applications

Provision of an external dispute resolution scheme for  
the grocery industry

**10 July 2023**

# **This opportunity in a nutshell**

## **What we need**

The new grocery industry regulatory regime instituted under the Grocery Industry Competition Act 2023 (the Act) requires a dispute resolution scheme to be established. The scheme is for disputes up to a claimed amount not exceeding \$5 million:

- between grocery suppliers and regulated grocery retailers in relation to the grocery supply code made under Part 2 of the Act, and
- between wholesale customers and regulated grocery retailers in relation to the wholesale supply of groceries regime (Part 3 of the Act).

The Act provides for a single dispute resolution scheme to be approved by the Minister of Commerce and Consumer Affairs (“approved scheme”).

The scheme should be user-focused, accessible, independent, fair, accountable, efficient, and effective.

The purpose of this Request for Applications is to provide an opportunity to interested persons to apply to the Minister for approval of a scheme as the approved scheme.

The Ministry of Business, Innovation and Employment (MBIE) will use the Request for Applications process to receive applications, advise the Minister about proposed dispute resolution schemes included in applications and make a recommendation to the Minister on the preferred proposed scheme based on the process.

## **What’s important to us**

The approved scheme will need to be accessible to grocery suppliers and wholesale customers of the regulated grocery retailers nationwide and will need to be able to work with suppliers and wholesale customers to ensure that their disputes are quickly and effectively resolved. It also will need to provide for both consensual resolution of disputes in the form of binding settlement agreements and adjudication or determination of disputes in the form of binding decisions. Further, the provider of the approved scheme will need to be able to provide or access tikanga based dispute resolution services when requested.

Applications should demonstrate that the provider of the proposed dispute resolution scheme has a good record of accomplishment in the implementation, governance, management and operation of independent dispute resolution schemes, and adheres to best practice in the delivery of dispute resolution services.

Applications should also demonstrate that the provider possesses, or is able to quickly obtain, the necessary capacity, capability, infrastructure and funding to effectively and efficiently provide an approved scheme.

A further key requirement is that the application should indicate how the provider of the proposed scheme has, or how they will quickly gain, sufficient knowledge of the grocery industry to expeditiously deliver an effective and efficient approved scheme.

## **Why should you submit an application?**

This is a unique and exciting opportunity to be part of the new grocery industry regulatory regime which aims to increase competition in the retail grocery industry to benefit New Zealand consumers. The dispute resolution scheme will be an integral part of the regulatory regime, providing an accessible, flexible and user-centric alternative to the court process.

## **A bit about us**

MBIE plays a central role in shaping and delivering a strong New Zealand economy, ultimately helping to grow New Zealand for all to improve the wellbeing of New Zealanders. We are responsible for extensive policy, regulatory and service delivery functions that impact on the business environment. This includes responsibility for key legislative and regulatory frameworks, managing public services onshore and offshore and overseeing ownership interests in business-critical Crown agencies.

## SECTION 1: Key information

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### Context

This Request for Applications (RFA) is an invitation to suitably qualified providers of external dispute resolution services to apply to the Minister of Commerce and Consumer Affairs for approval of a new dispute resolution scheme under the Grocery Industry Competition Act 2023 (an “approved scheme”).

The purpose of the approved scheme will be to resolve certain disputes arising in the New Zealand grocery industry.

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### Our indicative timeline

The following table shows an indicative timeline for key process steps leading to establishing an approved scheme.

Steps	Date
<i>Request for Applications</i> released	10 July 2023
Cut-off date to indicate interest	2pm Friday 28 July 2023
All questions or requests for clarification due	2pm Friday 4 August 2023
<b>Deadline for applications</b>	<b>2pm Friday 18 August 2023</b>
Applicants advised of outcome	Expected in late September 2023
MBIE begins consultation on proposed draft rules (see Section 5.3 below)	Expected in late September 2023
<b>Consultation on proposed draft rules ends</b>	<b>Expected in late October 2023</b>

All dates and times are dates and times in New Zealand.

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### How to contact us

All enquiries, indications of interest, and questions or requests for clarification must be directed to our Point of Contact: [competition.policy@mbie.govt.nz](mailto:competition.policy@mbie.govt.nz).

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### Indications of interest & questions or requests for clarification

Please indicate your interest in providing an application by Friday 28 July.

Questions or requests for clarification must be provided before Friday 4 August, responses may be written or discussed at a virtual meeting. Any information that MBIE provides in response to a question or request for clarification will be shared with all parties that indicated an interest.

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## Developing and submitting your application

This is a closed, competitive process. The RFA sets out the step-by-step process and conditions that apply.

Please take time to read and understand the RFA. In particular:

- a. Develop a strong understanding of our requirements detailed in Section 3.
- b. In structuring your application consider how it will be evaluated. Section 4 describes our evaluation approach.
- c. If anything is unclear or you have a question, ask us to explain by emailing the Point of Contact.
- d. Check that you have provided all the information requested.
- e. Ensure you get your application to us before the deadline for receiving it.



## Address for submitting your application

Applications must be submitted electronically to the Point of Contact [competition.policy@mbie.govt.nz](mailto:competition.policy@mbie.govt.nz).

Any application submitted electronically before the deadline of 2pm Friday 18 August 2023 will be considered, regardless of whether an indication of interest was provided.

Applications sent by post or fax, or hard copy delivered to our office, will not be accepted.



## Our RFA process, terms and conditions

The Minister of Commerce and Consumer Affairs will decide which proposed dispute resolution scheme, if any, to approve for the grocery industry. This means that the final decision does not sit with MBIE. However, MBIE will advise the Minister about applications received and make a recommendation to the Minister on the preferred proposed scheme based on this RFA process.



## Later changes to the RFA or RFA process

If, after publishing this RFA, we need to change anything about the RFA, or RFA process, or want to give providers additional information we will let all applicants that have indicated interest know by emailing them.

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## SECTION 2: Background information

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### 2.1 Market study into New Zealand’s retail grocery sector

1. In November 2020, the Minister of Commerce and Consumer Affairs directed the New Zealand Commerce Commission (the Commission) to undertake a study into any factors that may affect competition for the supply or acquisition of groceries by retailers in New Zealand (the market study).
2. On 8 March 2022, the Commission released its final report on the market study<sup>1</sup>. The Commission’s overall finding is that competition is not working well for consumers in the retail grocery sector, and if competition was more effective, retailers would face stronger pressures to deliver the right prices, quality and range to satisfy a diverse range of consumer preferences.
3. The Commission noted that competition in the retail grocery sector is muted because the sector is dominated by two major operators of nationwide supermarket chains – Woolworths New Zealand Limited (Woolworth NZ) and Foodstuffs (together referred to by the Commission as the “major grocery retailers”) – which operate as a duopoly.
4. Groceries are an essential purchase as well as a major expense for most households. In the year to March 2023, nearly \$25 billion was spent at supermarkets and grocery stores.<sup>2</sup> In the year to 2019, food was the second largest expenditure item for New Zealand households, with households spending an average of \$234 a week on it.<sup>3</sup>
5. The Commission identified several issues in the grocery industry related to why competition is not working well in the industry. It made 14 recommendations to improve competition and produce better long-term markets outcomes for consumers in terms of grocery prices, quality, range and services. Two of the recommendations are to:
  - require the major grocery retailers to consider requests for wholesale supply in good faith, and meet associated disclosure obligations
  - introduce a mandatory grocery code of conduct to govern relationships between the major grocery retailers and their suppliers.

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<sup>1</sup> New Zealand Commerce Commission, *Market study into the retail grocery sector: Final report*, 8 March 2022, available at: <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-retail-grocery-sector>. Two further documents complementing the final report are available at the same location: the *Executive Summary* and the *Summary of Findings*.

<sup>2</sup> Statistics NZ, *Retail trade survey: March 2023 quarter*, at Table 1, excludes GST, available at: [retail-trade-survey-march-2023-quarter.xlsx \(live.com\)](https://www.stats.govt.nz/assets/Uploads/Retail-trade-survey-march-2023-quarter.xlsx).

<sup>3</sup> Statistics NZ, *Household expenditure statistics: Year ended June 2019*, includes GST, available at: [Household expenditure statistics: Year ended June 2019 | Stats NZ](https://www.stats.govt.nz/indicators/household-expenditure-statistics-year-ended-june-2019). Note this includes spend on restaurant and ready-to-eat food, and excludes alcoholic beverages and tobacco. Due to disruption caused by COVID-19, this is the latest available information collected on New Zealand households’ expenditure.

6. In relation to both these recommendations, the Commission recommended that a dispute resolution scheme be established.

### **Wholesale access and dispute resolution**

7. The Commission considered that competition would be enhanced by one or more of the major grocery retailers offering wholesale supply of groceries to other retailers via a voluntary wholesale access regime. Facilitated wholesale supply at prices that promote competition should enable potential rival grocery retailers to enter the retail grocery sector or other grocery retailers to expand their existing operations.
8. The Commission recommended that a dispute resolution mechanism should be provided in relation to the wholesale access regime to deal with disputes between major grocery retailers and other grocery retailers receiving wholesale supply, or seeking wholesale supply, from major grocery retailers.

### **Mandatory grocery code of conduct and dispute resolution**

9. The Commission also considered that a mandatory grocery code of conduct is needed to address imbalances in bargaining power between the major grocery retailers and their suppliers.
10. The imbalances in bargaining power have arisen because most suppliers have few options to sell their goods outside of the major grocery retailers. The impact is that the major grocery retailers can use their buying power to shift costs and risks onto suppliers, and create uncertainty around the terms of supply. This includes the threat of suppliers having their products removed from supermarket shelves if they do not agree with the major grocery retailer, for example, on contract terms, margins or pricing.
11. To support the grocery code of conduct, the Commission recommended that suppliers should be able to access a dispute resolution process (which is independent, affordable, timely, confidential and informed by specialist expertise) if they have a dispute with a major grocery retailer in relation to the code requirements.

## **2.2 Grocery industry overview**

12. As noted above, the major grocery retailers, operating nationwide supermarket chains, act as a duopoly with little competitive constraint provided by other grocery retailers.
13. Woolworths NZ operates and supplies more than 180 Countdown stores throughout New Zealand. It also owns Wholesale Distributors Limited, the franchisor to 71 locally-owned and operated SuperValue and FreshChoice stores, which mainly operate in smaller centres.
14. Foodstuffs operates as two separate co-operatives independent of each other: Foodstuffs North Island Limited and Foodstuffs South Island Limited. The two co-operatives do not compete in each others geographic market, thus creating a supermarket duopoly with Woolworths NZ in each of the North Island and the South Island. There are more than 400 Foodstuffs retail stores nationwide operating under the New World, PAK'nSAVE, and Four Square banners, as well as Raeward Fresh and On the Spot stores in the South Island.

15. Woolworths NZ, Foodstuffs North Island and Foodstuffs South Island have integrated buying and distribution functions to supply their retail stores and franchisees.

16. Suppliers to the retail grocery sector include farmers, growers, manufacturers, and processors of grocery products.

## 2.3 Grocery Industry Competition Act

17. In preparing applications, the most important parts of the Grocery Industry Competition Act 2023 (the Act)<sup>4</sup> to understand are:

- In relation to the grocery supply code, **Part 2**.
- In relation to the wholesale supply of groceries regime, **Part 3**.
  - Subpart 2 of Part 3 imposes requirements for facilitating commercial agreements for wholesale supply of groceries.
  - Subparts 4 to 8 provide for a backstop wholesale supply regime, in case additional regulation is needed.
- In relation to the dispute resolution scheme, **Subpart 5 of Part 4** and **Schedule 2**.
  - Subpart 5 of Part 4 sets out the general framework for dispute resolution
  - Schedule 2 contains provisions in relation to a dispute resolution scheme, including the process for establishing a scheme.

18. More generally, the Act responds to some of the recommendations from the market study. It aims to improve competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand, and to contribute to a trading environment in which businesses can participate confidently.

19. The Act provides for:

- The Commerce Commission, including the appointment of a **Grocery Commissioner** within the Commission, as the grocery industry regulator. The range of the Commission's functions, duties and powers under the Act is broad to enable the Commission to monitor and investigate the grocery industry and enforce the regulatory provisions in the Act. For instance:
  - monitoring, and reporting on, competition and efficiency in the grocery industry, including for the purposes of understanding and reporting on current and future trends in the grocery industry and improving transparency in the industry

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<sup>4</sup> The Grocery Industry Competition Act 2023 was passed by Parliament on 21 June 2023 and received Royal assent on 26 June 2023. It comes into force on 10 July 2023. The Act is available on the *New Zealand Legislation* website at: [Grocery Industry Competition Act 2023 No 31, Public Act Contents – New Zealand Legislation](#).



- monitoring compliance with and enforcing the Act, including taking appropriate action in respect of persons that have contravened the Act (this includes compliance with and contraventions of the grocery supply code and the wholesale access regime requirements)
  - reporting on a variety of things, including the grocery supply code, wholesale access framework, and annual state of competition in the grocery industry.
- A **wholesale supply of groceries regime**. This means that access to wholesale “groceries” (as defined in the Act) supplied by a “regulated grocery retailer”<sup>5</sup> will be available to more grocery retailers (“wholesale customers”, as defined in the Act) on competitive terms to encourage entry and expansion in the retail grocery sector and offer a wider selection of products to consumers at competitive prices. The Act creates a two-part wholesale supply regulatory regime:
    - The first part imposes requirements on regulated grocery retailers to facilitate commercial supply of groceries to wholesale customers.
    - The second part establishes the wholesale regulatory backstop, which creates a range of additional wholesale supply obligations that may be imposed on regulated grocery retailers if the regulated grocery retailers’ facilitated commercial offerings are not what would be expected in a workably competitive market and additional regulation is likely to benefit consumers in the long term.
  - A **grocery supply code**<sup>6</sup> to regulate the relationship between a regulated grocery retailer and its suppliers.
    - Regulated grocery retailers will be required to comply with the grocery supply code (as secondary legislation) to constrain their ability to use their bargaining power advantage to force suppliers to accept unfavourable terms of supply that may involve them taking on costs and risks that are better addressed by the regulated grocery retailers.
  - A **dispute resolution scheme** to provide independent, prompt, and cost-effective resolution of any dispute that a grocery supplier (in relation to requirements under the grocery supply code) or a wholesale customer (in relation to requirements under the wholesale supply of groceries regime) may have with a regulated grocery retailer.

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<sup>5</sup> The term “regulated grocery retailer” in the Act currently comprises three grocery retailers: Foodstuffs North Island Limited, Foodstuffs South Island Limited and Woolworths New Zealand Limited (and their interconnected bodies corporate, successors, franchisees, and transacting shareholders). The Act provides for an Order in Council to designate other persons as a regulated grocery retailer.

<sup>6</sup> An exposure draft of the grocery supply code (the Grocery Industry Competition (Grocery Supply Code) Regulations 2023) consulted on by MBIE is available at: [Draft Grocery Supply Code of Conduct | Ministry of Business, Innovation & Employment \(mbie.govt.nz\)](https://www.mbie.govt.nz/draft-grocery-supply-code-of-conduct).

- The Act provides for the Minister of Commerce and Consumer Affairs to approve a dispute resolution scheme (“approved scheme”, as defined in Schedule 2 of the Act) and the scheme’s rules.
- The dispute resolution scheme will only cover disputes up to a claimed amount not exceeding \$5 million.
- Every regulated grocery retailer must comply with the outcome of the dispute resolution process, and only a supplier or wholesale customer (not a regulated grocery retailer) may refer a dispute to the scheme.

## SECTION 3: Our requirements

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### 3.1 Service required

20. The Minister of Commerce and Consumer Affairs wishes to approve an external dispute resolution scheme as the approved scheme as part of the new grocery industry regulatory regime established under the Act.
21. The approved scheme will provide an accessible, efficient, flexible and relatively informal alternative to the court process. It also will need to provide for both consensual resolution of disputes in the form of settlement agreements and adjudication or determination of disputes in the form of binding decisions.
22. To suit the needs of the users, the approved scheme will need to provide timely resolution of disputes. In particular, applicants should demonstrate their confidence in being able to provide a scheme that is generally or routinely able to resolve disputes within 25 working days after a dispute is referred to the scheme (refer to the requirement in clause 14(2)(i) of Schedule 2 of the Act).
23. The provider of the approved scheme will need to be able to work with grocery suppliers and wholesale customers nationwide to ensure that their disputes with regulated grocery retailers are quickly and effectively resolved.
24. The provider will be able to provide, or access, tikanga based dispute resolution services when requested.
25. The approved scheme must work well alongside the Commerce Commission (and Grocery Commissioner), which is the grocery industry regulator. In particular, this is expected to involve:
  - appropriate sharing of information, either about specific disputes or disputes generally, that will better enable the Commission to best perform its functions, and vice versa
  - processes to appropriately refer disputes or concerns received by the Commission to the approved scheme for consideration, and vice versa.

### 3.2 Application requirements

26. In preparing an application, the applicant should:
  - demonstrate their understanding of, and ability to meet, the requirements for providing an approved scheme, as set out in Subpart 5 of Part 4 and Schedule 2 of the the Act
  - demonstrate their understanding of, and commitment and approach to achieving, best practice in providing dispute resolution services and meeting the purpose of the dispute resolution scheme stated in clause 1 of Schedule 2 of the Act. Best

practice should be informed, and clearly demonstrated for the proposed dispute resolution scheme, by referencing the New Zealand Government Centre for Dispute Resolution's *Aotearoa best practice dispute resolution framework* (the Framework)<sup>7</sup>, in particular each of the Framework's:

- 5 best practice dispute resolution **principles**<sup>8</sup>, and
  - 9 best practice dispute resolution **standards**.
- indicate how they would evaluate the approved scheme on an ongoing basis to ensure it is providing a best practice dispute resolution service over time
  - demonstrate their capability to quickly implement and deliver an approved scheme that will provide an effective and efficient dispute resolution service to grocery suppliers and wholesale operators spread across the country, including by:
    - describing their experience in providing dispute resolution services, and demonstrating a good record of accomplishment in the implementation, operation and management of external dispute resolution schemes
    - indicating that they have, or how they would quickly gain, sufficient knowledge of the grocery industry to deliver an approved scheme
    - demonstrating that they are able to provide, or access, tikanga based dispute resolution services, and understand the principles/articles of Te Tiriti o Waitangi and how they apply to dispute resolution
    - demonstrating that they have, or are able to quickly obtain, the necessary funding, infrastructure and personnel to provide the capability and capacity to quickly establish, implement and operate an approved scheme that will provide grocery suppliers and wholesale customers spread across the country with an effective and efficient dispute resolution service
    - indicating how long it would take to establish and implement an approved scheme capable of providing a nationwide dispute resolution service to grocery suppliers and wholesale customers
  - describe the proposed governance and management structures for an approved scheme, and provide biographical information on persons that would be involved in the governance and senior management of the scheme, indicating their experience and skills in establishing, implementing and operating dispute resolution services

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<sup>7</sup> The Framework is available at: <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/dispute-resolution-tools-and-resources/aotearoa-best-practice-dispute-resolution-framework/>.

<sup>8</sup> These are the same principles referred to in the purpose statement in clause 1 of Schedule 2 of the Act.

- indicate how they would monitor, measure and report on the approved scheme’s performance, including reporting on thematic and systemic issues identified
- indicate how they would promote knowledge of, and accessibility to, the approved scheme
- indicate a commitment to closely liaise with the Commerce Commission and Grocery Commissioner to establish a good working relationship that is mutually beneficial
- describe the proposed funding model (including assumptions) that would be used for recovering the costs (including no more than a reasonable profit for the provider of the scheme) for an approved scheme and whether the funding model (and any changes to it) would be consulted on with stakeholders (and if so, how) to ensure it is fair and appropriate relative to the cost of delivering dispute resolution services
- ensure that the application addresses each of the mandatory considerations in clause 5 of Schedule 2 of the Act which the Minister must have regard to when considering an application for approval (excluding the considerations in clause 5(b), (h) and (i))
- include their proposed draft rules and show how they comply with each of the requirements in clause 14 of Schedule 2 of the Act. Refer to section 3.3, below.

### **3.3 Application should include proposed draft rules**

27. The applicant must submit with their application the proposed draft rules that the provider of the approved scheme intends to issue if the proposed dispute resolution scheme is approved.
28. The proposed draft rules must comply with clause 14 of Schedule 2 of the Act, and the applicant should show in their application how the rules comply.
29. Please ensure that the application contains the contact details for a person who can answer any follow-up questions we may have.

## SECTION 4: Our evaluation approach

30. MBIE will use the evaluation process described in this section to evaluate applications and inform a recommendation to the Minister about the preferred proposed dispute resolution scheme. The Minister will then decide the approved scheme following the process laid out in Schedule 2 of the Act.
31. Applications should ensure they clearly demonstrate the necessary experience, organisational structure, capability, capacity, and commitment to best practice for operating an approved scheme, in accordance with requirements for the approved scheme set out in Subpart 5 of Part 4 and Schedule 2 of the Act.

### 4.1 Evaluation model

32. The evaluation model that will be used is weighted attribute (weighted criteria).

### 4.2 Evaluation criteria

33. Proposals will be evaluated on their merits according to the following criteria and weightings.

Criterion	Weighting	Sub-weighting
<b>Understanding of requirements</b>	<b>10%</b>	
Demonstrates understanding of the requirements for providing an approved scheme, as set out in the Act		10%
<b>Approach to delivering dispute resolution services</b>	<b>30%</b>	
Has clear understanding of the New Zealand Government Centre for Dispute Resolution's best practice guidance on dispute resolution and shows a commitment to applying best practice in accordance with the guidance  Explains how they achieve best practice and how it is continually evaluated to ensure best practice is maintained over time  Explains how the purpose of the dispute resolution scheme in clause 1 of Schedule 2 of the Act would be met by the proposed scheme		5%
Clearly shows how the proposed scheme would comply with the New Zealand Government Centre for Dispute Resolution's best practice dispute resolution principles and standards		5%
Clearly shows how the proposed draft rules comply with clause 14 of Schedule 2 of the Act		10%
Satisfactorily addresses each of the mandatory considerations in clause 5 of Schedule 2 of the Act (excluding the considerations in		10%

Criterion	Weighting	Sub-weighting
clause 5(b), (h) and (i))		
<b>Capability to deliver an approved scheme</b>	<b>20%</b>	
<p>Demonstrates having a good record of accomplishment in the implementation, operation and management of external dispute resolution schemes</p> <p>Has or is able to quickly develop knowledge of the grocery industry, or access expertise in matters specific to the grocery industry, to enable the expeditious delivery of an approved scheme nationwide</p> <p>Be able to provide, or access, tikanga based dispute resolution services</p> <p>Understands the principles/articles of Te Tiriti o Waitangi and how they apply to dispute resolution</p> <p>Able to quickly establish, implement and operationalise an approved scheme nationwide</p>		20%
<b>Capacity to deliver an approved scheme</b>	<b>20%</b>	
<p>Has, or is able to obtain, the necessary funding, infrastructure and personnel to quickly establish, implement and deliver an effective and efficient approved scheme nationwide</p>		20%
<b>Management of an approved scheme</b>	<b>20%</b>	
<p>Has robust governance and management structures for an approved scheme, or will establish these, and persons involved in governance and senior management have the necessary experience and skills</p> <p>Has an appropriate management information system for monitoring, measuring and reporting an approved scheme's performance, including report on thematic and systemic issues</p> <p>Has a robust system for promoting knowledge of, and accessibility to, the approved scheme</p> <p>Has a funding model for recovering the costs of providing an approved scheme and a consultation process for engaging with stakeholders to ensure the funding model is appropriate for the dispute resolution services provided relative to costs incurred (including no more than a reasonable profit for the provider of the scheme)</p> <p>Commits to forming a good working relationship with the Commerce Commission and Grocery Commissioner for the mutual benefit of the parties</p>		20%
Total weightings	<b>100%</b>	

## 4.3 Scoring

34. The following scoring scale will be used in evaluating applications. Scores by individual evaluation panel members may be modified through a moderation process across the whole panel.

Rating	Definition	Rating
<b>EXCELLENT</b> significantly exceeds the criterion	Exceeds the criterion. Exceptional demonstration by the applicant of the relevant ability, understanding, experience, skills, resource and quality measures required (as applicable) to meet the criterion. Application identifies factors that will offer potential added value, with supporting evidence.	<b>9-10</b>
<b>GOOD</b> exceeds the criterion in some aspects	Satisfies the criterion with minor additional benefits. Above average demonstration by the applicant of the relevant ability, understanding, experience, skills, resource and quality measures required (as applicable) to meet the criterion. Application identifies factors that will offer potential added value, with supporting evidence.	<b>7-8</b>
<b>ACCEPTABLE</b> meets the criterion in full, but at a minimal level	Satisfies the criterion. Demonstration by the applicant of the relevant ability, understanding, experience, skills, resource, and quality measures required (as applicable) to meet the criterion, with supporting evidence.	<b>5-6</b>
<b>MINOR RESERVATIONS</b> marginally deficient	Some minor reservations of the applicant's relevant ability, understanding, experience, skills, resource and quality measures required (as applicable) to meet the criterion, with little or no supporting evidence.	<b>3-4</b>
<b>SERIOUS RESERVATIONS</b> significant issues that need to be addressed	Considerable reservations of the applicant's relevant ability, understanding, experience, skills, resource and quality measures required (as applicable) to meet the criterion, with little or no supporting evidence.	<b>1-2</b>
<b>UNACCEPTABLE</b> significant issues not capable of being resolved	Does not meet the criterion. Does not comply and/or insufficient information provided to demonstrate that the applicant has the ability, understanding, experience, skills, resource and quality measures required (as applicable) to meet the criterion, with little or no supporting evidence.	<b>0</b>



#### **4.4 Evaluation process and due diligence**

35. In addition to the above evaluation of applications, MBIE may undertake the following process and due diligence, with information obtained taken into account in the evaluation process.

- reference check the provider of dispute resolution services named in the application
- require the provider of dispute resolution services to make a presentation
- any other checks MBIE considers are appropriate.

## **SECTION 5: Next steps**

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### **5.1 Minister will decide application for approval**

36. On completion of the evaluation process, MBIE will make a recommendation to the Minister of Commerce and Consumer Affairs as to who we consider is best placed to provide an approved scheme. The applicant that scores the highest in this RFA process will likely be selected as the applicant who MBIE will recommend to the Minister as being the preferred provider.
37. Under clauses 4 and 6(1) of Schedule 2 of the Act, the Minister must decide an application by approving it or by rejecting it. The Minister will consult with the Commerce Commission and need to be satisfied that the persons, or the representatives of the persons, that the Minister considers will be substantially affected by the scheme will be consulted before the scheme rules are issued (see clause 5(b) and 6(2)(b)) – see section 5.2 below.

### **5.2 Applicants will be advised of outcome**

38. Applicants will be advised of the outcome as soon as practically possible after the Minister's decision.
39. It is expected this will be in late September 2023.

### **5.3 Consultation on proposed draft rules required**

40. After an approved scheme has been selected, MBIE will initiate consultation on that scheme's proposed draft rules. This consultation will include the persons, or the representatives of the persons, that the Minister considers will be substantially affected by the scheme.
41. After MBIE's consultation, the Minister of Commerce and Consumer Affairs will, in accordance with clauses 9, 6(1) and 6(2)(b), approve the scheme rules.