



Submission by

**The Employers and Manufacturers Association
(EMA)**

to the

Ministry of Business, Innovation & Employment

on the

Draft Grocery Supply Code of Conduct

July 2023



About the EMA

The EMA has a membership of more than 7500 businesses, from Taupo north to Kaitaia, employing around 350,000 New Zealanders.

The EMA provides its members with employment relations advice and legal services from industry specialists, HR, ER, Health and Safety consulting services, Collective Bargaining negotiation, a People Experience Practice and Advocacy at both Central and Local Government levels to help their businesses and people grow.

The EMA advocates on behalf of its members to bring changes in areas that can make a real difference to our members' day-to-day operations, including RMA reform, infrastructure development, employment law, skills and education, health and safety and export growth.

The EMA is part of the BusinessNZ network.

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Introduction

The Employers and Manufacturers Association (EMA) welcomes the chance to submit on the Draft Grocery Supply Code of Conduct.

We support the overall objectives of promoting competition and efficiency in industry for the long-term benefit of consumers in New Zealand by promoting fair conduct, transparency and certainty.

We do have some concerns about the proposed change to the current grocery industry draft legislation to set a maximum payment period of 20 calendar days for retailers to pay suppliers.

Questions 11, 12 and 13: Schedule 2, Part 4, clause 12 (payment to suppliers)

Are there any ways in which this clause could be improved to help ensure timely payments and give appropriate clarity over payment terms for suppliers?

Do you think a maximum payment period should be set by the Code?

If a maximum payment time is set, do you think 20 calendar days from receipt of invoice is appropriate?

The EMA does support Clause 12 of the Code of Conduct and acknowledges that delayed payment can cause cash flow issues for suppliers and force them to spend time chasing payments.

Addressing this issue by requiring retailers to pay a supplier's invoice within the time set out in the supply agreement, and this time being 'reasonable', is a sufficiently fair and transparent standard. Many organisations already have existing procedures with suppliers that are fair and changes to these procedures would carry a large cost. This could be applied across multiple trading relationships to achieve the objectives of the Code.

This approach is consistent with the grocery codes in Australia and the UK.

The EMA does not think a maximum payment period should be set by the Code (whether this is for 20 calendar days, or otherwise).

We are concerned about the proposal to set a maximum payment period for the below reasons:

- It is unclear if payments are a widespread problem for grocery suppliers.
- There is no similar requirement in the Australian or UK grocery codes.
- Fixing a maximum payment period is inconsistent with the Government's approach in the Business Payment Practices Bill, which sets a precedent for other sectors. Rules should be consistent across all businesses and sectors.
- It does not make sense to require the same payment terms for products with a shelf life of a single day, for others that take 20 days to be delivered, before they can reach the store and be available to be sold.

The Grocery Supply Code of Conduct should retain its current Clause 12 to allow time to assess the principle-based approach in the Code. It also allows time to assess the impacts of the disclosure regime under the Business Payment Practices Bill on payment practices.

The Commission will have multiple avenues to consider this issue in the future such as information-gathering powers under section 182 of the Grocery Industry Competition Act, inclusion in the first

annual report under sections 175 - 178 of the Act, and the review of the Code under section 20 of the Act within 2 years after the Code comes into force.

Conclusion

The EMA supports the objectives of the Draft Grocery Supply Code of Conduct to promote competition, efficiency, fair conduct, and certainty for the benefit of New Zealand consumers. While the EMA recognises the importance of addressing delayed payment issues, we do not support setting a maximum payment period of 20 calendar days for retailers to pay suppliers.

Instead, the EMA suggests retaining the current Clause 12 of the Code, which requires retailers to pay invoices within a "reasonable" timeframe agreed upon in the supply agreement. This principle-based approach is fair and transparent, aligns with grocery codes in Australia and the UK, and can be applied across various trading relationships.

In conclusion, the EMA urges a balanced and pragmatic approach that considers the concerns raised to ensure fair and efficient practices in the grocery industry without unintended consequences.