



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



Submission form

Submission form: Consultation on New Zealand Grocery
Supply Code of Conduct

June 2023

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 **5 July 2023**.

Please send your submission form to:

- competition.policy@mbie.govt.nz with the subject line “Grocery Supply Code of Conduct Consultation 2023”
- 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)

Steve MacLean

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

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.

Transitional provisions for the Grocery Supply Code of Conduct

Questions 1 and 2 - Do you have any comments in relation to **the transitional provisions** in the Code, in particular any comments on:

- whether the transitional provisions could be improved? (see Schedule 1)
- whether there may be unintended consequences as a result of the transitional provisions?

Please type your submission below.

Part 2 - Requirement for retailers to act in good faith

QUESTION 3: Schedule 2, Part 2, clause 6 (obligation for retailers to act in good faith when dealing with suppliers).

- Are there any ways in which this clause could be improved?

Please type your submission below.

Part 3 - Content of Grocery Supply Agreements and variations to supply agreements

QUESTION 4: Schedule 2, Part 3, clause 7 (requirement for supply agreements to be in writing and to be retained) and **clause 8** (matters to be covered by supply agreements).

- Are there any ways in which clauses 7 and 8 could be improved to provide greater transparency and certainty to suppliers?

Please type your submission below.

Clause 8 (a)

The Grocery Supply Agreement should include requirements the supplier has in respect of the delivery of the groceries.

i.e. (a) any requirements the retailer **and the supplier** has in respect of the delivery of the groceries.

There are a number of requirements the supplier has that need protecting. i.e. treatment of pallets the product is delivered on (swap or transfer). Delivery disputes received within 7 days.

QUESTIONS 5 AND 6: Schedule 2, Part 3, clause 9 (unilateral variations to grocery supply agreements)

- Is this clause flexible enough to allow for reasonable unilateral variations to be made to supply agreements?
- Will this clause be effective in preventing retailers from using their negotiating power to make unreasonable unilateral variations?

Please type your submission below.

QUESTIONS 7 and 8: Schedule 2, Part 3, clause 10 (retrospective variations to grocery supply agreements).

- Will there be any unintended consequences as result of how these provisions are drafted?
- Are there any circumstances where retrospective variations should be permitted? If so, please explain these circumstances.

Please type your submission below.

Part 4 - General conduct provisions

QUESTIONS 9 and 10: In relation to **Schedule 2, Part 4, clause 11** (transport or logistics services).

- Are there any ways in which this clause could be improved to support transport and logistics arrangements which suit both parties?
- Will there be any unintended consequences as result of how these provisions are drafted?

Please type your submission below.

QUESTIONS 11, 12 and 13: Schedule 2, Part 4, clause 12 (payments to suppliers).

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

Please type your submission below.

Setting a maximum would be ideal. Supermarkets are cash businesses, there is no need for them to delay payments.

However where terms are agreed, they should not be deducting payments discounts if invoices aren't paid on time.

This could be potentially covered by setoff section.

QUESTIONS 14 and 15: Schedule 2, Part 4, clauses 13 and 14 (payments for shrinkage and wastage)

- Are there any ways in which this clause could be improved to ensure more efficient and fairer allocation of costs due to shrinkage and wastage?
- Is the six-month timeframe set out in clause 14(2)(g) appropriate? Do you consider that this timeframe should be shorter (for example, 30 days) or longer (for example, 12 months)?

Please type your submission below.

QUESTIONS 16-20: Schedule 2, Part 4, clauses 15, 16 and 17 (payments as a condition of being a supplier, payments for a retailer's business activities and funding of promotions).

- Are there any ways in which these clauses could be improved to ensure more efficient and equitable sharing of costs?
- Should payments as a condition of supply be allowed in cases other than for new products?
- Is the description of what constitutes a new product, set out in clause 15(2)(ii), appropriate?
- Should clause 17 include an additional restriction which prohibits retailers from requiring suppliers to fully fund the cost of promotions?
- Do you have any other comments on these clauses?

Please type your submission below.

QUESTIONS 21-25: Schedule 2, Part 4, clauses 18 and 19 (delisting of products and process requirements relating to delisting).

- Are there any ways in which these clauses could be improved to provide greater certainty and transparency regarding delisting decisions?
- Will requiring a range review, ahead of any delisting decisions, be an effective way of ensuring fair and transparent delisting decisions?
- Does providing six-month notice of delisting fresh fruit and vegetables provide sufficient warning for such suppliers?
- Will there be any issues in complying with the process requirements set out in clause 19?
- Are there any aspects of these clauses which may have unintended consequences?

Please type your submission below.

QUESTIONS 26-30: Schedule 2, Part 4, clause 20 (funded promotions).

- Are there any ways in which this clause could be improved?
- Do you have any other concerns regarding investment buying which are not addressed by this draft section of the Code?
- What effect will clause 20 have on current practice regarding investment buying and funded promotions? Will there be flow-on impacts for retail prices?
- Instead of the requirements set out in clause 20(2)(c) – would it be better to require retailers to sell any over-ordered product, bought at the supplier’s reduced price, at the price listed during the promotional period?
- Do you have any other comments on this clause or the practice of investment buying generally?

Please type your submission below.

Selling over-ordered product after promotion ended could cause issues clashing with other suppliers promotions.
Better to pay supplier the difference.

QUESTIONS 31-34: Schedule 2, Part 4, clause 21 (fresh produce standards and quality specifications).

- Does this clause effectively address issues faced by suppliers of fresh fruit and vegetables?
- Is the 24-hour cut off proposed for accepting or rejecting fresh produce appropriate?
- Is the 48-hour cut off for notifying suppliers when fresh produce has been rejected appropriate?
- Should the Code extend similar protections to suppliers of other perishable produce, such as seafood and meat?

Please type your submission below.

QUESTIONS 35 and 36: Schedule 2, Part 4, clause 22 (no duress about supplying to competitors), clause 23 (business disruption) and **clause 28** (freedom of association)

- Will clause 22 will be effective in preventing retailers from pressuring suppliers to desist from supplying other parties?
- Will these clauses have any unintended consequences?

Please type your submission below.

QUESTIONS 37 - 38: Schedule 2, Part 4, clause 22 (intellectual property rights and confidential information).

- Could clauses 24 and 25 be improved to adequately address issues relating to suppliers' intellectual property?
- Will clauses 24 and 25 support greater investment in product development?

Please type your submission below.

QUESTION 39 (taonga and mātauranga Māori) : If you are a supplier, is there any part of your product or the production of your product which holds special cultural significance for you?

- If yes, are you aware of any issues with respect to the supply of your product which might require protection over or above those provided in clauses 24 and 25?
- Do you have any advice, feedback or recommendations about how the Code could provide these protections?

Please type your submission below.

QUESTIONS 40 and 41: Schedule 2, Part 4, clause 26 (product ranging, shelf space allocation and range reviews).

- Are there any ways in which this clause could be improved, to help ensure greater transparency and consistency of decisions relating to range reviews and shelf allocation?
- Do you have any other comments on this clause?

Please type your submission below.

QUESTIONS 42-44: Schedule 2, Part 4, clause 27 (responses to price increase requests from suppliers).

- Will this clause help improve the process for seeking price increases?
- Is the timeframe for responding to a price increase appropriate?
- Are there classes of produce that may justify shorter time periods for response?
- Do you have any other comments on these clauses?

Please type your submission below.

Other general questions

QUESTIONS 45-48: (penalty levels).

- Do you think the maximum penalty is set at a level which will sufficiently deter non-compliance?
- Do you think the maximum penalty level is proportionate to the level of harm which may be caused by non-compliance?
- Are there any parts of the Code which should attract higher or lower tiers of penalty levels? If so, which parts, and why?
- Do you have any other comment on the maximum penalty levels which will apply to breaches of the Code?

Please type your submission below.

QUESTIONS 49 and 50: requirements to provide written statements when relying on the 'reasonableness' exemptions in the Code.

- Will requirements to provide written statements when relying on exceptions improve compliance and transparency in relation to the use of such exceptions?
- Will there will be significant costs or issues involved with complying with these requirements?

Please type your submission below.

Other proposals we are consulting on

QUESTIONS 51 and 52: payments for better positioning of groceries.

- Do you agree with the decision not to include restrictions from the Australian Code relating to payments for shelf allocation?
- Are you aware of any issues relating to payments for shelf positioning, or allocation, which may require specific protections in the Code, over and above those provided at clause 26?

Please type your submission below.

QUESTIONS 53 and 54: Changes to supply chain procedures.

- Do you agree with the decision not to include protections from the Australian Code relating to changes in supply chain procedures?
- Are you aware of any issues relating to changes to supply chain procedures which may require specific protections in the Code, beyond those included at clauses 8 and 9?

Please type your submission below.

QUESTIONS 55 and 56: Transfer of intellectual property rights.

- Do you agree with the decisions not to include protections from the Australian Code relating to the transfer of intellectual property rights?
- Are you aware of any issues relating to the transfer of intellectual property, beyond those dealt with at clauses 24 and 25?

Please type your submission below.

Final Questions

QUESTIONS 57 to 59: Final questions.

- Do you have any further feedback on the consultation draft of the Code, in addition to the points you have already raised?
- Are there any other provisions which are included in the Australian Code which may be beneficial in New Zealand?
- Are there any issues connected with supply of groceries to major retailers which are not addressed by the Code? If so, do you have any suggestions for how they should be addressed?

Please type your submission below.