

Privacy of natural persons

3 July 2023

Grocery Code of Conduct Consultation 2023

Market Performance Building

Resources and Markets

Ministry of Business, Innovation & Employment

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Re: Submission Regarding the Grocery Code of Conduct Draft Code – June 2023

Overview:

A lot of submissions have been submitted from big organisations which in part represent the growers and have addressed many points well. However, as growers we can give a good insight into the negative effects retailers are placing on us (we speak for multiple growers as we all have a similar story). We have been producing fruit for approx. 15 years and have a number of varieties, mainly citrus. We have not had an increase in our fruit prices for nearly 15 years, yet labour, fertilisers, fuel, cartage and all other productions cost have consistently been increasing since but more so in the last 2-3 years.

There are a lot of pitfalls within the industry and very strict regulations with spray applications, fruit size and cosmetics. If fruit is too big, too small, slight blemishes etc fruit can be downgraded and it's not worth the cost of even picking the fruit. Yet the fruit still looks good and is still very tasty. Retailers need to have more reasonable standards and increased pricing.

I'll leave the majority of the clauses in the draft to the big companies but the section of the consultation paper that we (the growers) really want to see change in, is about fair-trade regarding increased prices to growers, and the negotiating power that retailers have over suppliers/growers.

Response:

[Schedule 2 – Grocery Supply Code \(Clause 5 – Application to Existing Agreements\)](#)

[Notably Part 2 – Good Faith](#)

32. The intent of including an overarching good faith obligation in the Code is to ensure that retailers engage in fair processes when dealing with suppliers, and do not leverage their negotiating power to coerce suppliers into accepting unfavourable terms. The obligation directs fairness of processes, for clarity and objectiveness. It does not include any specific requirements for fairness of outcomes.

3. Are there any ways that clause 6 could be improved to be more effective in supporting fair conduct between suppliers and retailers?

32. Our concern is that the 'Good Faith' clause is too vague and needs to be clearer as good faith has not worked well for growers in the past and if anything, we feel there has been a divide and conquer attitude. Good faith is a promise that can be broken. There should be certainty and transparency. There should be fair-trade to ensure that retailers can't buy produce undervalue for them to then profit off a grower's loss because they aren't being fair on what they are paying the grower/supplier. I.e the original FAIRTRADE Mark which always stood for fairly produced and fairly traded products has been widely received worldwide so why are our domestic retailers not acknowledging this by paying the grower a fair price for their hard work and risk?

So far retailers have had a divide and conquer approach by effectively forcing growers, fresh produce wholesalers and fresh produce marketers to lower prices as they play them off against each other. Communication between marketers, wholesalers and other growers should be allowed to ensure prices are not being sold below an undervalued price and set a minimum threshold. *This is across all grades so the average grower return is lifted to a sustainable price.* Varietal grower advocates i.e citrus/persimmon/kiwifruit/apple/vegetable growers should be appointed to set the minimum price threshold for fresh produce.

Growers' profitability is an absolute must for the long-term sustainable supply of fresh fruit and vegetables in New Zealand. If not, the country could primarily become an importer of fresh produce. If retailers do not start accepting increased prices from growers, it will not only jeopardise the sustainability of all fruit and vegetable growers in the industry and will hinder any innovation and productivity improvements.

Note: Growers need to make money too. Retailers can't take all the profits and be unfair to those who grow the food. Growing is hard work and high risk with continuing bad weather events added to the mix, it makes growing a challenge and is stressful. It shouldn't be that only certain businesses are entitled to make a profit, every business should be able to make a profit for their hard work and that is also good for the people, workers, and the economy. Growers shouldn't be faced with year-on-year losses whilst supermarkets reap in million-dollar profits.

Clause 21 - Fresh Produce Standards and Quality Specifications

61. The Commission heard that suppliers of fresh fruit and vegetables are particularly vulnerable to retailers misusing their bargaining power. Aside from export markets, many suppliers have few alternative buyers for their produce on the scale of the major grocery retailers. Fresh produce is also highly perishable, and growers cannot pause production because demand is low. As a result, suppliers of fruit and vegetables have limited ability to delay supply while seeking to negotiate better terms.

62. Clause 21 seeks to provide additional transparency and certainty for suppliers of fruit and vegetables by requiring retailers to have specific standards for fresh produce. These standards must include any quality standards, and retailers would be required to accept any produce that meets these

standards within 24 hours of receiving the produce. Where a retailer rejects fresh produce, it must notify the supplier in writing within 48 hours of receiving the produce. Clause 21 closely mirrors the Australian Code.

31. Does clause 21 effectively address issues faced by suppliers of fresh fruit and vegetables?
32. Is the 24-hour cut off proposed for accepting fresh produce appropriate? If not, why not?
33. Is the 48-hour cut off for notifying suppliers of the rejection of fresh produce appropriate? If not, why not?
34. Should similar protections apply to suppliers of other perishable produce, such as seafood and meat?

62. The concern is what standards will retailers be imposing? Will their standards be difficult to achieve *for example*: when the weather has been difficult i.e strong stormy winds can mark fruit by too much rubbing together and at time of an abundant supply when stock needs to be moved will retailers reject produce that is still suitable for the market because of a few blemishes? There needs to be transparency on the standards and the standards need to be reasonable as it can be pretty difficult to grow perfect looking fruit. Growers/marketers have few alternatives and so again this leaves growers/marketers vulnerable as retailers use their strong bargaining power, which is another reason why pre-season minimum thresholds with a grower advocate per kg should be set.

33. The 48-hour cut off for notifying suppliers of the rejection of fresh produce is not appropriate as the fruit arrives in good condition as it has been washed, graded, and sorted prior and can be checked off once inspected on arrival. After 48 hours if not stored correctly decay could start and this shouldn't be the seller's problem. A number of things could happen i.e. fruit sitting too long, and the bottom ones get squashed, temperatures too humid etc and this is beyond the control of the person/company selling the produce. Once inspected on arrival then that is it. Growers bear the loss of hundreds of kgs in reject fruit and retailers should expect there will always be a small percentage of waste with fresh produce. The grower can't keep bearing the brunt of it all and the retailers get all the jam on the doughnut. If they insist on a cut-off then at the most 12 hours.

Final Questions

57. Do you have any further feedback on the consultation draft of the Code, in addition to the points you have already raised?

57. Feedback: I mentioned in our 2022 submission there is a drop in fruit prices and has been declining for some time, yet growers' production costs are up 30%. Despite concerns to our marketers since, we are still not seeing an increase in prices another year on that will accommodate the increasing costs growers are enduring. On top of that, contractor labour has gone up again this year. The response I get is that the supermarkets are beating them down on price because there is an oversupply, and other marketers/wholesalers are dropping their prices to push volume, so it is a price race to the bottom. The only people who suffer here is yet again the growers. They are not getting enough for their produce despite all the hard work gone in to grow the produce and to keep their head above water. When supermarkets are making millions in profits why are they haggling

the marketers/growers so hard knowing they are hurting the growers who aren't making any money? Surely, they can afford to pay another 40-50 c per kg more, they will still make millions!

I saw on the news that fresh fruit and vegetables are up 12.1% as we certainly aren't getting paid any extra and yet our costs are still rising.

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