

SUBMISSION ON

NZ Grocery Industry Competition Bill

20 December 2022

To: Economic Development, Science and Innovation
Committee

Name of Submitter: Horticulture New Zealand

Supported by: Tomatoes NZ, NZ Asparagus Council, Vegetables NZ, Strawberry
Growers NZ, Summerfruit NZ, Persimmon Industry Council, NZ Feijoa Growers
Association, NZ Boysenberry Council

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OVERVIEW

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Our submission

Horticulture New Zealand (HortNZ) thanks the Economic Development, Science and Innovation Committee for the opportunity to submit on the NZ Grocery Industry Competition Bill and welcomes any opportunity to speak to the Committee.

HortNZ welcomes the development of the Grocery Industry Competition bill. This is a step in the right direction towards creating a fairer business environment for our growers.

Given the timing to make submissions on this Bill is over the busy summer period HortNZ has struggled to get grower feedback as they are currently harvesting crops. Had more time been given HortNZ submission would have contained more information from a wider range of growers.

The details of HortNZ's submission and decisions we are seeking are set out in our submission below.

HortNZ's Role

Background to HortNZ

HortNZ represents the interests of approximately 5,500 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruit and vegetables. The horticultural sector provides over 40,000 jobs. The industry is valued at 7 billion dollars.

There is approximately 80,000 hectares of land in Aotearoa New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain; and plays a key role in helping to achieve our countries climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting, and advocating for growers in Aotearoa New Zealand.

Executive Summary

Two main tools highlighted in HortNZ's original submission have been addressed which can help growers have better protections and support when negotiating with Grocery retailers. These are:

- Grocery code of conduct
- Supply agreements

HortNZ believes the code of conduct needs to be **mandatory** and should apply to **all** those involved in the supply of retail products to consumers. This will ensure a fair-trading environment for growers and suppliers to all retailers.

HortNZ notes that many growers first point of sale is not to a grocery retailer but is through a third-party wholesale market. The code of conduct put forward in this Bill would not apply to third-party wholesalers or markets that are not designated as regulated grocery retailers. This still leaves growers vulnerable and unable to address the power imbalance that comes with selling through markets.

HortNZ notes there is very little information about supply agreements in the Bill, yet the original discussion documents which our submissions were based do cover supply agreements. HortNZ's submissions covered extensively the need for supply agreements and their role as foundation documents for formal agreements between growers and retailers. HortNZ believes supply agreements will form the basis for the business relationship between a grower and retailer and as such need to have considerable guidance and oversight to ensure growers are able to confidently and fairly enter into business agreements with retailers.

1. Key points

HortNZ request inclusion of extra clauses as outlined below.

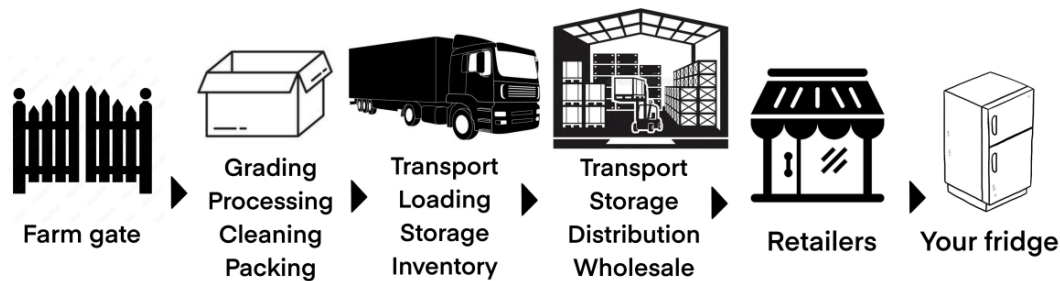
- Growers will be relying on a code of conduct and supply agreements as the main documents and processes that facilitate fair dealings with retailers
- Template supply agreements should be developed for consistency
- Supply agreements and the code of conduct should include prohibition of financial penalties for non-supply. Growers assume all the risk when planting. It is then unfair to penalise growers for non-supply when weather events are out of their control. The retailer needs to accept this is a normal risk and not further penalise growers
- Growers face the most problems at first point of sale and this is not covered by the Bill so many of these problems will not be resolved.
- HortNZ welcomes the opening of wholesale supply of groceries but notes that growers first point of sale is often to an aggregate market then to retail wholesale centre.
- This legislation must have a robust independent dispute resolution process.
- HortNZ are pleased to see enforcement options and penalties included. This is because there is no point having dispute resolution if there is no provision for enforcement.

Food Supply Chain

The horticulture supply chain and flows of produce are described below. These processes have a bearing on the relationship between the grower and the ultimate consumer and the risks of losses along the supply chain

The Horticulture Supply Chain

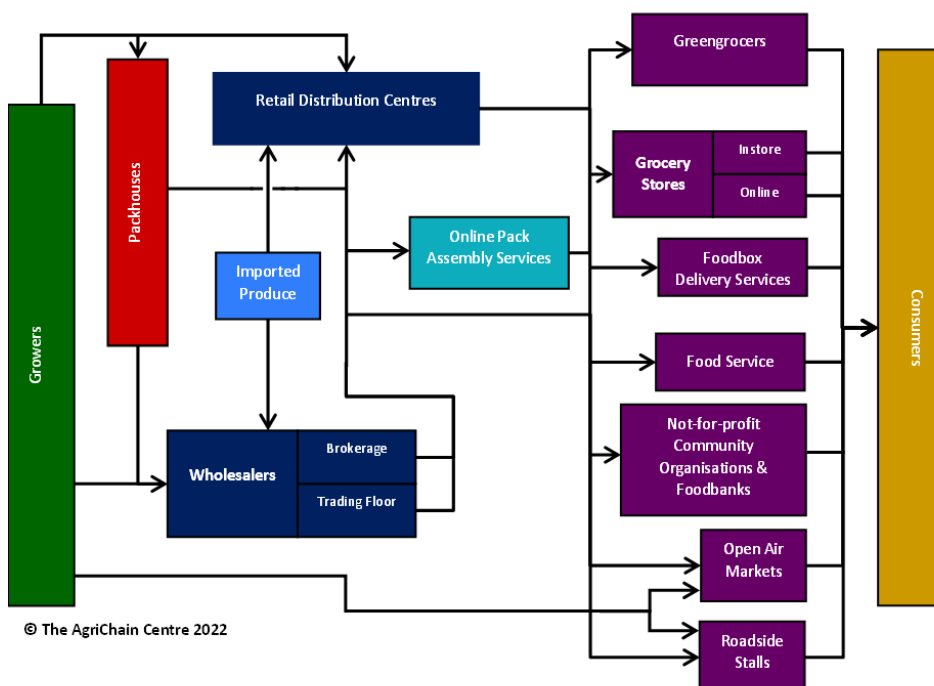
The horticulture supply chain has multiple steps, from farm gate, to processing to transport, to storage and distribution, to retail before reaching the consumer. Different growers sell their product at different stages along this supply chain.



Flows of Fresh Produce in NZ

The graph illustrates the flows of produce. The proposal is focused on the retailer, but there is a significant flow of produce from growers via the wholesale market. There are also direct relations between growers and small retailers and food service markets.

New Zealand Fresh Produce Supply Chain



Submission

2. Part 2 - Grocery supply code

HortNZ notes in 15 (1) that regulated grocery retailers must comply with the grocery supply code. Specified regulated grocery retailers are Foodstuffs North Island, Foodstuffs South Island and Woolworths NZ¹ and all associated groups under these groups.

HortNZ believe the code should apply to all grocery retailers to ensure consistent treatment of suppliers across the entirety of the retail sector. This will also mean any retailer likely to grow, or new ones that could enter will be clear about expectations on conduct with suppliers and remove any confusion about when the code does or does not apply.

Section 16 outlines review periods and reports for the code. HortNZ believes a regular review period should be stipulated, for example:

The review period for the code will occur no less frequently than three years from last review to ensure the code is fit for purpose

2.1. Supply agreements

In the original submission, HortNZ submitted strongly in favour of supply agreements being used as a tool to help provide growers and suppliers with their individual negotiations. Supply agreements can be used to set terms and conditions that may be relevant to a particular product and make clear expectations from both the producer and retailer from the outset of how their business-to-business relationships will work.

HortNZ recommends there be a template or list of minimum set things to be included in a supply agreement and work done with growers and suppliers so they can understand how supply agreements can be used to manage a fair business-to-business relationship.

While there is mention of the content of the code containing provisions that may relate to supply agreements, HortNZ believes there needs to be work done with growers and suppliers to develop appropriate templates for supply agreements.

HortNZ sees the code of conduct providing guidance and framework at an industry level, where supply agreements are used to facilitate the individual relationship between suppliers and retailers.

Financial penalties for non-supply need to be prohibited, especially around horticultural supply as often growers can have events outside of their control, such as flooding, storms, and other adverse weather events, impact on whether a crop ends up being suitable for harvest and sale. It is unfair to financially penalise growers and retailers need to accept that there is an inherent level of risk associated with the production of fresh

¹ Including the following:

8 (d) a person that is designated as a regulated grocery retailer under section 9

8 (e) (i) a person that is an interconnected body corporate of A

(ii) a person that is a successor to A

(iii) a person that is a franchisee of A

(iv) a person that is a transacting shareholder of A

produce. Growers already carry the financial risk of purchasing seed and growing inputs, it is only fair that retailers accept that non-supply will happen from time to time.

HortNZ and believe this needs to be addressed in the bill in Part 2. HortNZ suggest the following addition:

Part 2. s14 (b) (iii) prohibit the use of financial non-supply penalties in supply agreements

3. Part 3 - wholesale supply groceries

This section refers to the opening up of a wholesale market for other retailers to access from Foodstuffs NI, Foodstuffs SI and Woolworths NZ.

HortNZ is concerned that many issues occur at the first point of sale for a grower - this is often to a wholesale aggregate market which produce is sold to, then on-sold to, or purchased, by a retailer's distribution centre.

HortNZ welcomes the opening-up of markets to other retailers but does have concerns that this does not address the fundamental issue of growers not receiving fair price and terms for their produce at the first point of sale. This is a major gap in the proposed Bill that leaves growers very vulnerable. This does not address the issues with structure, mark-up, and price disparity between the first point-of-sale to the grower and the consumer.

4. Part 4 - Enforcement and dispute resolution

HortNZ supports the disputes resolution process including the ability to issue settlement agreements and the inclusion of penalties and enforcement provisions. HortNZ notes for growers and suppliers court processes can be lengthy and cost prohibitive.

HortNZ suggests an approach, similar to that in the UK code, where there is a stepped escalation as part of the dispute resolution process which ultimately leads to arbitration and formal mediation. HortNZ suggests inclusion of a step where the independent adjudicator has scope to resolve the complaint before escalation.

4.1. Subpart 5 - Dispute resolution

HortNZ is supportive of an independent third-party organisation or Ministry being the organisation to manage disputes. Independence is important to ensure all parties can have confidence in a non-biased resolution process.

HortNZ supports the disputes resolution process including the ability to issue settlement agreements and the inclusion of penalties and enforcement provisions. HortNZ notes for growers and suppliers court processes can be lengthy and cost prohibitive.

HortNZ agrees with 147 (4) that only a supplier or wholesale customer (non a regulated grocery retailer) may refer a dispute to the scheme. Growers have expressed discomfort with being able to raise concerns direct with retailers and HortNZ believes the purpose of a dispute's resolution service is to provide a neutral forum for suppliers and wholesale customers to safely raise concerns about breaches in the code in a non-prejudiced environment, this can only be achieved through use of a third party. HortNZ would like to see anonymity given to complainants if requested.

Growers are in business relationships with a much larger organisations and it has been raised through HortNZs original submission the treatment growers have had when they have been identified after making a complaint or comment. Unethical practices such as

'blacklisting'² arise after a grower has made a complaint or challenged a large retailer or wholesale buyer. Without anonymity or another protection there is a risk these practices will continue which will discourage growers and suppliers from referring disputes and undermining the intent of the Bill.

5. Part 5 - miscellaneous

HortNZ supports appointment of a Grocery Commissioner. An **independent** appointment is critical for an unbiased and fair approach that growers, suppliers and retailers can all trust.

² This refers to the practice of a large retailer or buyer within a retailer no longer purchasing products from a grower for non-commercial reasons

Appendix A Submission on NZ Grocery Industry Competition Bill

Without limiting the generality of the above, HortNZ seeks the following amendment to the NZ Grocery Industry Competition Bill provisions, as set out below, or alternative amendments to address the substance of the concerns raised in this submission and any consequential amendments required to address the concerns raised in this submission.

Additions are indicated by bolded underline, and deletions by strikethrough text.

Interpretation	Reason	Amendment sought
Part 2. s14 (b) (iii)	Growers already carry the financial risk of purchasing seed and growing inputs, it is only fair that retailers accept that non-supply will happen from time to time. HortNZ and believe this needs to be addressed in the bill in Part 2.	<u>Part 2. s14 (b) (iii) prohibit the use of financial non-supply penalties in supply agreements</u>
Section 16	Section 16 outlines review periods and reports for the code. HortNZ believes a regular review period should be stipulated, for example:	2 (a) must review the grocery supply code <u>no less frequently than 3 yearly</u> and give the Minister a report on that review at any subsequent time required by the Minister; and