

FURTHER
SUBMISSION

Cross Submission Review of the Grocery Supply Code

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To: Commerce Commission

Name of Submitter: Horticulture New Zealand

Contact for Service:

Sarah Cameron
Senior Policy Advisor
Horticulture New Zealand
PO Box 10-232 WELLINGTON
Ph: 021 446 281
Email: sarah.cameron@hortnz.co.nz

OVERVIEW

Submission structure

- 1 Part 1: HortNZ's Role
- 2 Part 2: Further submissions on behalf of HortNZ

Our submission

Horticulture New Zealand (HortNZ) made a submission on the Review of the Grocery Supply Code and welcomes any opportunity to continue to work with the Commission to discuss our submission.

The details of HortNZ's cross submission are set out below.

HortNZ's Role

Background to HortNZ

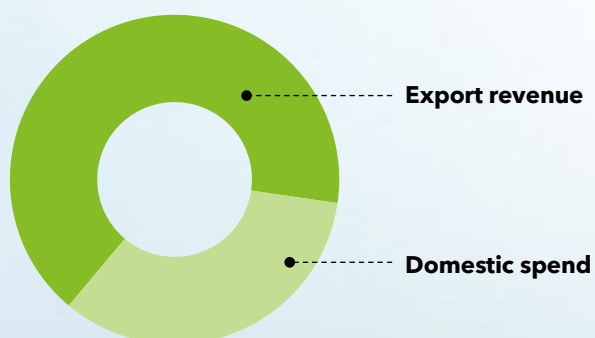
HortNZ represents the interests of approximately 4,300 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

There are approximately 80,000 hectares of land in 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 New Zealand's 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 New Zealand.



Industry value \$7.54bn

Farmgate value \$4.89bn

Export revenue \$4.99bn

Domestic spend \$2.55bn

Source: HortNZ Annual Report 2025

Cross Submission

1. HortNZ's Position (Summary of Key Points)

- **Issue:** Retailers mandate the use of specific crates and pallets limiting grower choice and creating costs.
- **Breach:** HortNZ argues this breaches Clause 11 of the Grocery Supply Code, which prohibits mandating logistics services unless reasonable and in the supplier's interests.
- **Impacts:**
 - Shortages during peak harvests
 - Inability to choose cheaper or local crate providers
 - Fees for unused crates due to inaccurate retailer forecasting
- **Recommendation:** Define 'logistics' to include crates and pallets and clarify that Clause 11 covers these mandates.

2. Other Submission Commentary

2.1. Woolworths New Zealand

2.1.1. CRATES

While Woolworths frames crate standardisation as mutually beneficial, in practice, the claimed benefits largely are to the retailer while the costs and operational burdens fall disproportionately on suppliers. From a supplier perspective:

- **Efficiency and product protection** may improve logistics *for the retailer*, but suppliers bear the **cost** without compensation or choice of provider
- **Food safety and hygiene standards** are essential, but growers are already subject to stringent regulatory compliance. Requiring use of a specific crate provider for these purposes imposes redundant and costly duplication rather than delivering new value to the supplier.
- **In-store presentation and reduced return logistics costs** are entirely *retailer-side* benefits. Suppliers are paying for systems or infrastructure (like crates, pallets, or delivery requirements) that make things more efficient for retailers – such as how products are arranged in stores or how goods are grouped together for delivery – even though suppliers have no say or control over how those things are done.

- **Fewer supply disruptions and waste** are desirable, but again, forecasting errors and over-ordering by retailers often lead to underutilised crates, for which growers still pay. These costs are not shared.

In short, the benefits cited are of benefit to the retailer while suppliers are expected to fund the entire crate system without negotiation, flexibility or recourse – a clear imbalance in power.

Woolworths explicitly describes crate systems as integral to:

- Storage
- Handling
- Transport

These are textbook components of a **logistics service** – directly supporting HortNZ’s legal view that Clause 11 should apply to crate and pallet systems.

For example, Woolworths notes that “WWNZ uses crates in its retail fixtures” (7.1.7) and that “having various crate providers would make return logistics more difficult” (7.1.8). These are clearly internal business preferences that serve the retailer’s interests – not the supplier’s, yet Woolworths fails to acknowledge that the financial and logistical burdens of implementing this system fall entirely on suppliers.

Retailers cannot reasonably claim operational efficiency while externalising the associated costs and risks onto suppliers – particularly when those suppliers have no choice in the matter.

2.1.2. RETALIATION

HortNZ supports the inclusion of a standalone prohibition on retaliation in the Grocery Supply Code, as proposed by the Commission. While Woolworths asserts that Clause 6 provides sufficient protection through the general obligation of good faith, we disagree.

Under the current Code, retaliation is only implicitly covered as an example of a breach of Clause 6 (good faith). The proposed Clause 30 makes retaliation a standalone, specific prohibition, which:

- Signals that retaliation is a serious and distinct form of misconduct
- Enables the Commerce Commission to take enforcement action specifically for retaliatory conduct, without having to first establish a broader pattern of bad faith.

Suppliers may experience retaliation without clear evidence of a general lack of good faith. Clause 30 provides a more direct and effective avenue for addressing these situations.

This explicit protection is essential to encourage supplier engagement, support fairness and align New Zealand’s framework with international standards such as the updated

Australian Food and Grocery Code¹ which was introduced in response to concerns that general good faith obligations were insufficient.

We also note Woolworths' concern about administrative burden and everyday actions being caught by Clause 30. The intent of the clause is not to penalise ordinary category management or store-level decisions made in good faith for commercial reasons, but rather to protect suppliers from targeted or systemic punitive conduct.

A retailer acting fairly, transparently and reasonably should have no difficulty evidencing a genuine commercial rationale for its actions. Shifting the evidential burden to the retailer in these specific cases is proportionate and justified given the imbalance of power in the supplier-retailer relationship. The existence of a standalone retaliation clause also provides suppliers with confidence to raise concerns without fear of informal reprisal – an essential ingredient in a truly fair and functional Code.

2.2. Viscount

2.2.1. CRATES

Viscount FCC's submission explicitly acknowledges that crate systems are used to reduce "transport inefficiencies and improve handling" across the supply chain. These are textbook logistics functions directly supporting HortNZ's legal view that Clause 11 should apply to crate and pallet systems.

Viscount FCC asserts that crate specifications arise from "mutual agreement" between suppliers and retailers. However, Viscount's framing ignores the imbalance of bargaining power and fails to account for standard contracts where crate providers are specified by the retailer.

Viscount FCC emphasises the benefits of standard crate systems but:

- Does not acknowledge that during peak seasons, routine crate shortages force growers to pay hire fees or repackage produce
- Makes no mention of forecasting inaccuracy and the associated financial risks (unused crates, delays) that growers must absorb.

Viscount FCC fails to account for the operational and financial burdens experienced by growers—particularly hire costs, repacking and shortages during peak seasons.

Historically, the costs associated with crate systems were shared between retailers and suppliers, recognising that both parties benefited from the safe and efficient transport of fresh produce. This cost-sharing approach reflected a more balanced commercial relationship and acknowledged that crate systems served mutual interests across the supply chain. However, in recent years, this balance has shifted. Retailers now unilaterally impose crate and pallet requirements, while expecting suppliers to bear the full financial and logistical burden.

¹ <https://www.legislation.gov.au/F2024L01651/latest/text>

2.3. New Zealand Food and Grocery Council

2.3.1. WASTEAGE PAYMENTS

While the New Zealand Food and Grocery Council (NZFGC) highlights concerns around retailer risk, these arguments do not reflect the realities and power imbalances faced by suppliers, particularly small growers supplying perishable goods.

HortNZ submits that Clause 14 should not allow for any payment for wastage unless the supplier has demonstrably caused the loss and that suppliers should not be liable for wastage while products are under the retailer's control.

2.3.2. PAYMENTS FOR RETAILER'S BUSINESS ACTIVITIES

NZFGC proposes retaining supplier flexibility to opt into payments for certain retailer services – such as merchandising or shelf-filling.

This is particularly problematic in the context of fresh produce. Unlike packaged grocery products, fresh fruit and vegetables are typically delivered in bulk or loose and must be shelved, rotated, and merchandised exclusively by the retailer due to in-store food safety requirements. Retailers do not permit suppliers or third-party merchandisers to handle fresh produce on site, meaning suppliers have no ability to self-supply these services. In this context, stocking shelves and maintaining display quality are clearly retailer responsibilities, not optional services that suppliers can choose to perform or pay for.

HortNZ supports the Commission's proposed changes to Clause 16, which prohibit retailers from requiring suppliers to make payments for business activities that are part of the retailer's ordinary cost of doing business.

2.4. Foodstuffs

2.4.1. PAYMENTS FOR RETAILER'S BUSINESS ACTIVITIES

Foodstuffs' submission suggests that mutually agreed arrangements should be allowed, framing them as optional and value-adding. However, as outlined in our submission, the reality for many suppliers is that these charges are imposed as a condition of supply, often without meaningful negotiation. These are not supplier driven choices, but operational requirements dictated by the retailer – a clear breach of the intent behind Clause 16.

While Foodstuffs points to freedom of contract and international precedent, such arguments ignore the power imbalance in New Zealand's grocery sector and the lack of genuine choice faced by small and medium-sized suppliers. The Commission's proposed amendments are essential to restoring fairness, transparency, and balance in these commercial relationships.

2.4.2. CRATES

HortNZ disagrees with Foodstuffs' assertion that produce crate suppliers fall outside the definition of transport or logistics services under Clause 11. Crates are a core logistical component, essential to the movement, storage and presentation of fresh produce throughout the supply chain.

Retailer mandates that growers use one of a limited number of crate providers – selected and contracted by the retailer – are, in effect, a requirement to use a particular logistics service. These mandates constrain supplier choice and transfer costs and operational risks to suppliers all without meaningful negotiation or compensation.

While Foodstuffs describes the benefits of its contracted model, such as efficiency and innovation, these advantages accrue primarily to the retailer and not to suppliers who bear the cost. Clause 11 is intended to prevent exactly this kind of coercive arrangement. HortNZ maintains that retailer-specified crate and pallet systems fall squarely within the scope of logistics services.