

# SUBMISSION ON

## Draft Grocery Supply Code

18 July 2025

**To:** Commerce Commission

**Name of Submitter:** Horticulture New Zealand

**Supported by:** Pukekohe Vegetables Growers Association, NZ Apples and Pears, Vegetables NZ, Dominion Federation of NZ Chinese Commercial Growers Incorporated, Tomatoes New Zealand

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## Our submission

Horticulture New Zealand (HortNZ) thanks the Commerce Commission for the opportunity to submit on the Draft Supply Code and welcomes any opportunity to continue to work with the Commission to discuss our submission.

HortNZ could not gain an advantage in trade competition through this submission.

HortNZ wishes to be heard in support of our submission and would be prepared to consider presenting our submission in a joint case with others making a similar submission at any hearing.

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

# HortNZ's Role

## Background to HortNZ

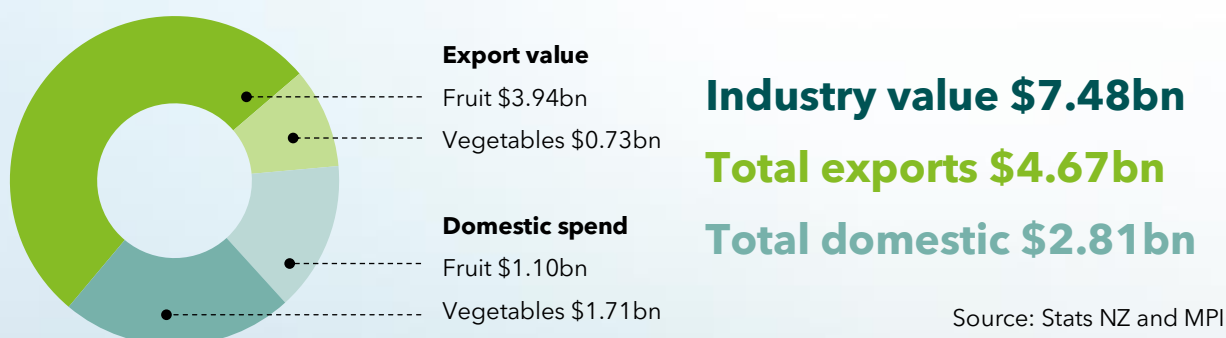
HortNZ represents the interests of approximately 4,500 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

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.



# Executive Summary

HortNZ supports the intent and direction of the Draft Grocery Supply Code and commends the Commerce Commission for addressing long-standing imbalances in the supplier-retailer relationship. We particularly support the strengthened obligations around transparency, good faith, and the prohibition of unfair payment practices. These changes will provide improved clarity and protection for fresh produce suppliers.

Good relationships often exist between suppliers and retailers, built on mutual respect, open communication and shared commitment to delivering high-quality products to consumers. Many growers value these partnerships and appreciate efforts by retailers to engage constructively. Strengthening the Code will help reinforce these positive relationships by providing greater clarity, consistency and fairness across all supplier interactions.

However, a critical issue for the horticulture sector remains unresolved: the **mandated use of specific crates and pallets** for fresh produce by retailers. This requirement imposes significant and often unreasonable logistical and financial burdens on growers who have no practical choice but to comply with crate and pallet systems dictated by supply agreements.

Crates and pallets are a core part of the logistics system that enables the transport and delivery of perishable produce. Yet growers are contractually required to enter into arrangements with designated crate and pallet providers without any ability to choose cost-effective or locally available alternatives.

HortNZ submits that these retailer-imposed requirements breach the intent and substance of **Clause 11** of the Act (supported by a legal opinion), which prohibits the mandatory use of specific logistics services unless doing so is reasonable and in the supplier's interests. Moreover, they are inconsistent with:

- **Clause 6** (Duty to deal in good faith) - by imposing unilateral requirements with no consultation or flexibility
- **Clause 10** (Fair dealing) - by enforcing unnecessary and non-negotiable logistics terms
- **Clause 16** (Prohibition on passing on costs for retailer business activities) - by shifting crate and pallet related costs to the supplier to serve retailer driven preferences.

To address this issue, HortNZ recommends that the Commission:

- Confirm that **Clause 11 includes crate and pallets** as part of logistics
- Introduce a **definition of "logistics"** into the Code to include transport, warehousing and packaging systems (such as crates).

Our submission also provides detailed responses to other clauses in the Code. We support the proposed changes to Clauses 9, 12, 14, 15, 16, 17, and 22, and suggest further clarification or minor amendments to Clauses 20, 21, and 23 to improve fairness and transparency.

# Submission

## 1. Draft Supply Code

We commend the Commission for its work in addressing long standing imbalances in the retailer/supplier relationship. In particular, we support the strengthened protections around transparency, fair dealing, and supplier rights. However, we are concerned that a critical issue for horticulture suppliers has not been adequately addressed in the draft decisions: the mandatory use of specific crate and pallet providers for the packaging and logistics of fresh produce.

## 2. Crates and Pallets

Growers use crates to harvest, store, and transport produce from the field to packhouses, wholesalers, or supermarkets. Crates are necessary to protect perishable produce and maintain hygiene standards. Once packed, crates are stacked onto pallets for bulk transport, enabling efficient movement and delivery.

Crates and pallets are an essential logistical component in the fresh produce supply chain; however crate and pallet use in the horticulture sector is commonly mandated by retailers or wholesalers.

Growers supplying supermarkets are routinely required through supply contracts to use specified crate and pallet providers. These arrangements:

- Remove growers' ability to choose alternative suppliers based on cost, availability, or locality
- Create significant logistical and cost pressures, particularly during peak harvest periods
- Lead to operational disruption when crates are in short supply
- Contracts often include no flexibility for growers to choose alternative packaging solutions, even when local or more cost-effective options are available.

### 2.1. Documented Issues Arising from Crate and Pallet Mandates

HortNZ has received repeated feedback from growers regarding the operational impact of crate and pallet systems. These include:

- **Crate and pallet shortages:** During the 2023/24 summer season, growers reported receiving only 40% to 80% of their crate and pallet orders. Some received no crates at all during peak harvesting periods, resulting in delayed or missed deliveries to supermarkets
- **Lack of competitive choice:** Growers are contractually bound to a single crate and pallet supplier and cannot explore lower cost or better performing alternatives

- **Administrative burden:** Tracking crate and pallet movements, managing return deadlines, and disputing late return penalties add to the already substantial compliance burden faced by growers
- **No compensation or input:** Retailers impose crate and pallet requirements unilaterally, often without consultation and with no mechanism for growers to recover crate and pallet related costs in supply negotiations
- **Crate and pallet usage fees:** Suppliers are forced to incur logistics costs for systems they cannot control or choose, due to retailer-imposed crate and pallet mandates.

### 2.1.1. SEASONAL CRATE AND PALLET SHORTAGES AND USAGE CHARGES

Seasonal crate/pallet shortages and usage charges can have significant operational, financial, and supply chain impacts on growers, particularly during peak harvest periods.

If crates are not delivered on time or in sufficient quantities, growers face delayed harvests resulting in spoiled crops, rescheduling of labour crews which incur extra costs and supermarket orders cancelled due to missed dispatch windows.

Growers are typically charged daily hire fees for crates – including for periods when crates are delayed, under-supplied or left unused due to supermarket forecasting discrepancies. For example, if a supermarket forecasts a requirement of 500 crates, the grower will hire that number in preparation. However, if the actual order is only for 300 crates, the grower remains liable for the hire costs of all 500 crates, including the 200 that are not used. These forecasting shortfalls result in growers bearing unnecessary costs for logistics services they did not ultimately need or benefit from.

The lack of standardisation between major retailers and wholesalers means that product often needs to be repacked or redirected depending on the recipient. For example:

- Woolworths mandates the exclusive use of CHEP black folding crates and CHEP pallets, while also prohibiting the use of those same crates in the wholesale market
- Foodstuffs North Island accepts only Loscam pallets and Viscount or Loscam crates and rejects CHEP pallets and green CHEP crates
- Foodstuffs South Island requires CHEP red pallets, Loscam crates, and the green CHEP crate – but not the black CHEP crate
- Wholesale markets similarly do not accept the black CHEP crate but will accept Loscam, Viscount, and the green CHEP crate.

Table one: Retailer and Wholesaler crate and pallet fresh produce requirements

	CHEP black crates	CHEP green crates	CHEP pallets	Loscam crates	Loscam pallets	Viscount crates	Viscount pallets
Woolworths	X		X				
Foodstuffs North Island				X	X	X	X

	CHEP black crates	CHEP green crates	CHEP pallets	Loscam crates	Loscam pallets	Viscount crates	Viscount pallets
Foodstuffs South Island		X	X	X			
Wholesale markets		X		X		X	X

These confusing inconsistent and restrictive requirements mean that growers must manage multiple crate and pallet inventories, often splitting or reworking consignments to satisfy different retailer specifications. The administrative burden this puts on the grower is significant.

## 2.2. Grocery Industry Competition (Grocery Supply Code) Amendment Regulations 2023

Clause 11 of the Grocery Industry Competition Act 2023<sup>1</sup> prohibits retailers from requiring suppliers to use specific transport or logistics services, unless doing so is reasonable and in the supplier’s interests.

### Subpart 1—Transport or logistics services

#### 11 Transport or logistics services

- (1) The retailer must not directly or indirectly—
  - (a) require a supplier to use a particular transport or logistics service; or
  - (b) impose unreasonable service standards in respect of transport or logistics.
- (2) Subclause (1) does not prevent a retailer imposing reasonable service standards in respect of transport or logistics.

Crates are an integral component of the logistics system that supports fresh produce distribution. As such, they fall squarely within the intended scope of “logistics services” under Clause 11.

HortNZ submits that certain retailer practices currently in use appear to breach Clause 11 of the Code due to mandating the use of particular crate and pallet providers. These requirements are typically imposed unilaterally through supplier agreements and leave suppliers with no meaningful ability to choose alternative crate and pallet providers – even when those alternatives are more cost-effective, locally available or operationally preferable.

By requiring suppliers to use one specific crate and pallet provider, retailers are:

- Unreasonably restricting supplier choice, and

<sup>1</sup> <https://www.legislation.govt.nz/regulation/public/2023/0220/latest/LMS881111.html#LMS881074>

- Imposing costs and logistical burdens that do not benefit the supplier and are not reasonably necessary to comply with food safety standards.

In addition to breaching Clause 11, HortNZ submits that the retailer mandated use of specific crates may also be inconsistent with Clauses 6, 10, and 16 of the Act. These practices undermine supplier choice, impose unjustified costs and shift the burden of retailer preferred logistics onto growers.

### **Clause 6 - Obligation to Deal in Good Faith**

Clause 6 requires retailers to act reasonably, transparently, and cooperatively and prohibits dishonest or retaliatory conduct.

Mandating a specific crate and pallet provider without consultation or regard for operational impact on the supplier fails the test of reasonable and cooperative conduct.

Growers may feel unable to challenge crate and pallet terms for fear of retaliation, which undermines the principles of good faith and openness.

### **Clause 10 - Fair Dealing**

Clause 10 requires that retailers deal fairly with suppliers, including not imposing unnecessary or unreasonable requirements or terms. Retailers impose crate and pallet requirements through supply agreements even when:

- The crate and pallet provider is experiencing shortages
- Costs to the supplier are excessive
- The system is inefficient or not suited to the supplier's scale or location.

These are unreasonable and non-negotiable requirements that do not account for the supplier's operational reality or provide flexibility – failing the fairness test under Clause 10.

### **Clause 16 - Prohibition on Charging for Retailer's Business Costs**

Clause 16 prohibits retailers from requiring suppliers to pay for costs associated with the retailer's own operations, unless the supplier gains a genuine benefit.

- Suppliers are charged for crate and pallet rental, freight costs to satisfy retailer preferences - not something the supplier would otherwise choose
- These costs benefit the retailer, not the supplier, and are imposed without negotiation or compensation, which breaches the intent of Clause 16.

## **2.3. Improving the Code: Defining Logistics to Address Crate and Pallets Mandates**

To support its position, HortNZ has obtained legal advice confirming that retailer mandated crate and pallet requirements breach Clause 11 of the Code. While the draft report proposes providing guidance on crate and pallet use, HortNZ considers that guidance alone will be insufficient to address the issue.

To ensure that crate and pallet systems are fairly governed under the Grocery Supply Code, HortNZ recommends the following:

### **Clarify that Clause 11 covers crate and pallet mandates**

The Commission should explicitly state that crates are captured by the Clause 11.

### **Define 'logistics' in the Code**

Include a definition of 'logistics' that includes crates. This would reduce ambiguity and ensure consistent interpretation.

### **Alignment with the Code's Objectives**

These recommendations align with the purpose of the Code: to promote fair and transparent dealings and to ensure suppliers are not subjected to unreasonable demands or hidden costs. Clarity on crate and pallet use will reduce disputes, improve supply chain resilience, and help level the playing field for smaller growers.

## **2.4. Consultation Questions**

<b>Clause</b>	<b>HortNZ response</b>
Clause 6 - Duty to Deal in Good Faith	HortNZ supports no change to Clause 6
Clause 7 Grocery supply agreement must be in writing and retained and Clause 8 Matters to be covered by agreement	HortNZ supports no change to Clause 7 and 8
Unilateral variation of agreement clause 9	HortNZ supports changes to Clause 9 to require retailers to keep records in relation to each instance of a unilateral variation
Transport or logistics services clause 11	See section 2 of the submission
Payments to suppliers clauses 12(2) to 12(4)	HortNZ supports the changes to Clause 12(2) to 12(4) for suppliers to be able to obtain an itemised summary of payments and setoffs for the financial quarter. Prioritised guidance to promote the fair use of setoffs is also supported.
Payments for wastage clause 14	HortNZ supports changes to Clause 14 - no longer allowing for payments for wastage while groceries are in the retailers effective control.
Payments as condition of being a supplier clause 15	HortNZ supports changes to the Code for retailers to keep records in relation to the use of this provision and provide those records to the Commission on request.
Payments for retailer's business activities (including	HortNZ supports the changes to Clause 16 by no longer allowing for payments for the activities covered by this clause, which include:

merchandising) clause 16	(a) a buyer's visit to the supplier (b) artwork or packaging design (c) consumer or market research (d) the opening or refurbishing of a store (e) hospitality for the retailer's staff (f) merchandising (for example, stocking shelves and setting up displays) (g) the transport of goods within a retailer's business, which may include transport between distribution centres and retail stores.
Funding promotions clause 17	HortNZ supports the changes to Clause 17 for retailers to keep records in relation to the use of this provision and provide those records to the Commission on request and to prioritise development of guidance for this clause.
Funded promotions clause 20(1)	HortNZ supports no changes to Clause 20(1)
Funded promotions clauses 20(2) to (3)	While HortNZ supports changes to Clause 20(2) to (3) which require retailers to pay suppliers the difference in price between the normal and promotional price for any products bought from suppliers at a promotional price but not sold to consumers at a promotional price - how will the price difference be proven as not all produce is barcoded. There needs to be a requirement to inform the supplier how much produce is sold.
Fresh produce standards and quality specifications clause 21	While there is no change proposed for Clause 21, HortNZ suggests (7) 'reasonable written notice' be clarified at least 30 days' written notice before any new or amended specifications come into effect—unless related to urgent food safety matters. This provides growers time to adjust and avoids unnecessary product rejection or waste.
Unduly hindering or obstructing supply to competitors clause 22	HortNZ supports the changes to Clause 22 to remove 'competitors' from the title of this clause.
Clause 23 Business disruption	While HortNZ supports no changes to Clause 23, we seek clarification to what would constitute 'reasonable grounds'.
Clause 24 Intellectual property rights	HortNZ supports no changes to Clause 24
Confidential information clause 25	HortNZ supports no changes to Clause 25

Transfer of intellectual property rights clause 27	HortNZ supports no changes to Clause 27
Price increases clause 28	HortNZ supports no changes to clause 28
Freedom of association clause 29	HortNZ supports no changes to Clause 29
New provision - Retaliation (clause 30)	HortNZ supports a new Clause similar to those included in the recently made Australian code explicitly prohibiting retaliation in response to suppliers exercising rights under the Code.

## Conclusion

The reviewed Grocery Supply Code is a step forward in addressing long standing imbalances between suppliers and retailers. HortNZ acknowledges the Commission's commitment to promoting transparency, good faith and fair dealing across the grocery supply chain.

However, to fully realise the Code's intent, further action is needed to address the retailer-imposed crate and pallet mandates that disproportionately affect growers. These requirements remain a structural imbalance in the fresh produce supply chain – limiting supplier autonomy, increasing costs, and distorting logistics arrangements in a way that disadvantages those least able to absorb the impact.