



# Hexis Quadrant

New Zealand Food & Grocery Council

SME Forum Discussion

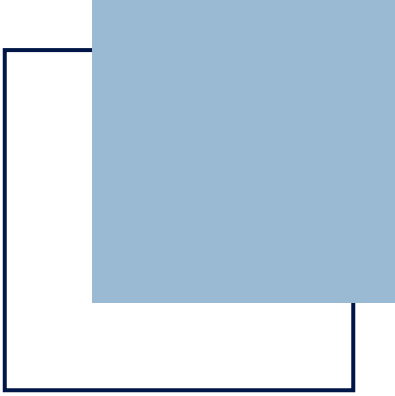
Grocery Code of Conduct

Wednesday 26<sup>th</sup> October 2022


# Agenda



- ⊕ Overview of the framework proposed to MBIE
- ⊕ Current market challenges that a Code would address
- ⊕ Why a Code of Conduct is not going to solve poor customer management
- ⊕ How the UK and Australian Codes fair presently
- ⊕ Q&A



## Overview of the Framework proposed to the MBIE



# Overview of the Framework proposed to the MBIE



The New Zealand Grocery Code of Conducts objective is to improve:

- ⊕ Dealings between major grocery retailers and suppliers
- ⊕ Competition in the market for the acquisition of groceries by New Zealand retailers and consumers
- ⊕ Balance of Power between major grocery retailers and suppliers
- ⊕ Supplier innovation and investment in new products
- ⊕ Conditions for suppliers being forced to exit the market due to the conduct of grocery retailers

Effective

Efficient

Durable

The three options being considered by the MBIE are:

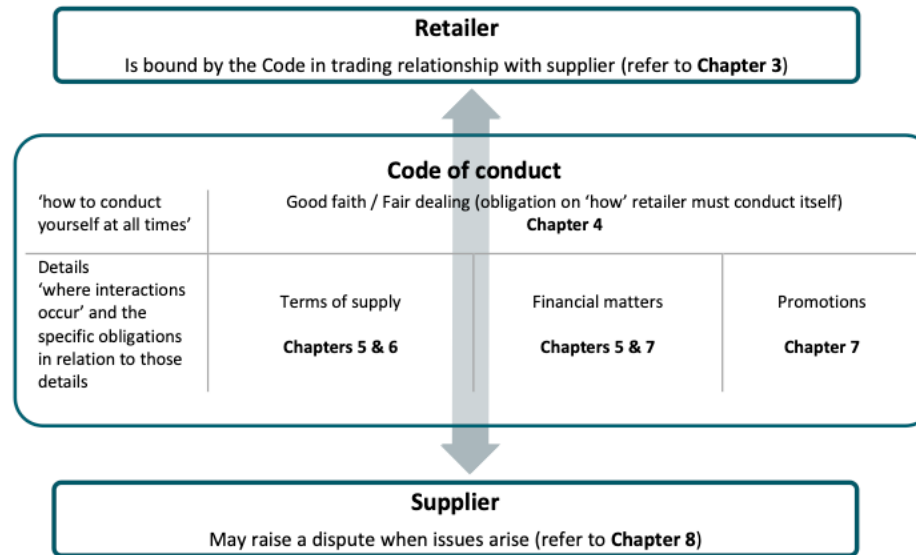
1. Principle-based Code: High level, reflective of the UK Code
2. Prescriptive Code: Per the ComCom recommendation, more reflective of Australian Code
3. Alternative Code: Stronger protection for suppliers, removes sections deemed not fit for NZ

# Overview of the Framework proposed to the MBIE



The proposed Code structure has three core elements being:

1. Major Grocery Retailers: Who is bound by the Code
2. Code of Conduct: The principles of conduct between retailers and suppliers
3. Suppliers: Dispute resolution processes



SOURCE: <https://www.mbie.govt.nz/dmsdocument/22647-new-zealand-grocery-code-of-conduct-consultation-paper>

The MBIE has taken under advisement from the ComCom that the major retailers (l.e. Foodstuffs and Woolworths) be mandated to adhere to the code, while further discussion surrounds fringe retailers



Current market challenges that a  
Code would address



# Current market challenges that a Code would address



- ⊕ Principles of Good Faith and/or Fair Dealings
- ⊕ Incentives on Suppliers
- ⊕ Treaty of Waitangi and/or the Maori economy
- ⊕ Requirement for Supply Agreements (written and consented to)
- ⊕ Limiting unilateral variation and retrospective variation to grocery supply agreements
- ⊕ Obligation in relation to product supply and placement (E.g. Changing supply chain processes and logistics)
- ⊕ Obligations in relation to product ranging, shelf allocation, and delisting
- ⊕ Obligations in relation to payment, price increases, and promotions
- ⊕ Other such as confidentiality, intellectual property, business disruption and freedom of association, whistleblower protections, pressure to opt out of wholesale supply arrangements, exclusivity clauses
- ⊕ Dispute resolution
- ⊕ Etc.

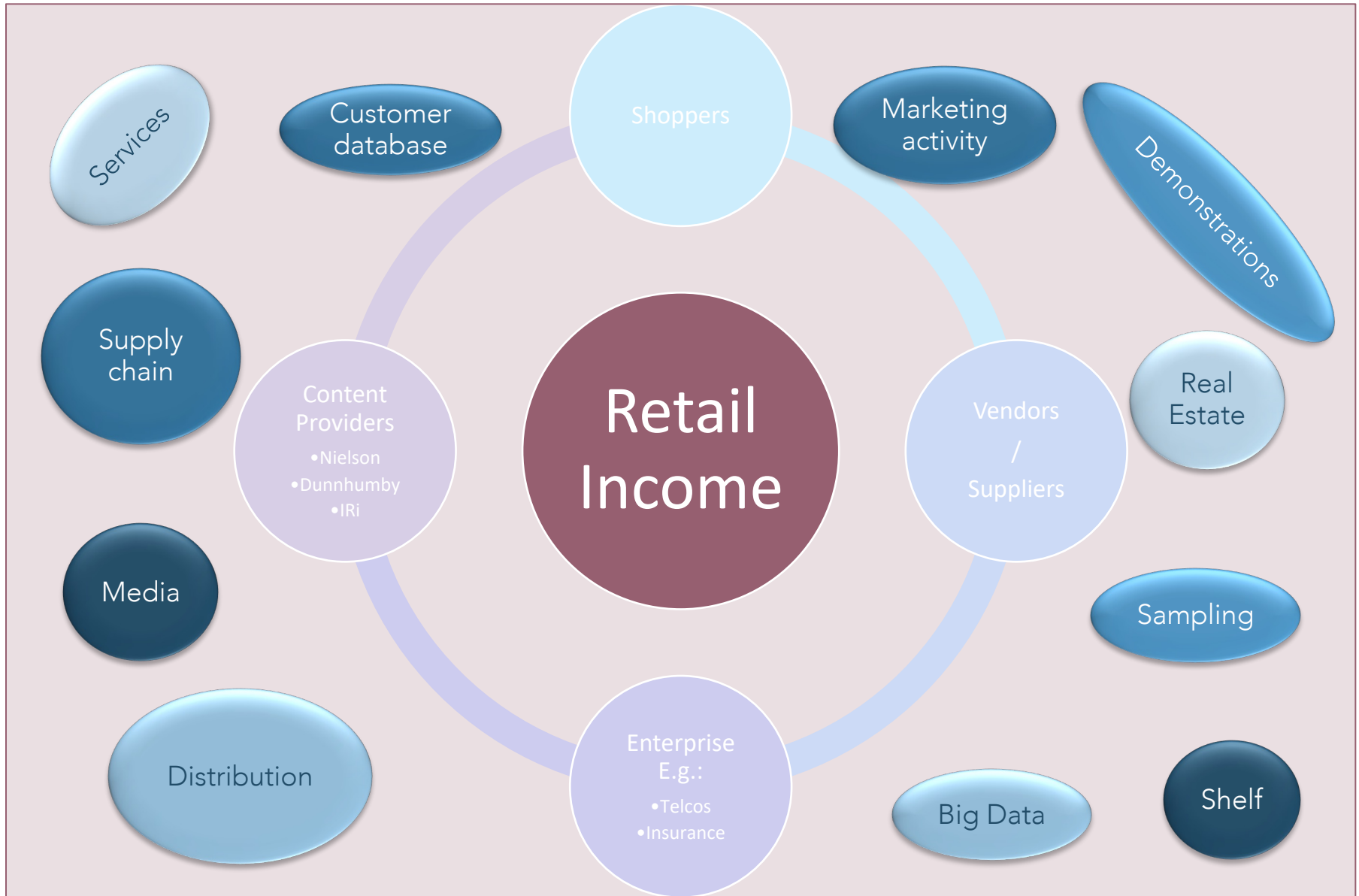


Why a Code of Conduct is not  
going to solve poor customer  
management





# Modern retailers operate in a modern way



# Why a Code won't solve poor customer management



A Grocery Code of Conduct is not a defence strategy for suppliers, and this strategy does not work in markets with existing Codes in place.

It is the suppliers responsibility to manage their business responsibly including:

1. Conduct: A Code isn't a "Silver Bullet" when things don't go your way
2. Finance: Your P&L is your responsibility not theirs
3. Legal: Contracts must be reviewed by both parties, if you agree, you agree!
4. Day to Day: Not managing the day to day processes won't avoid repercussions

A Grocery Code of Conduct must not be able to be 'threatened' to a retailer as a recourse path to avoid the natural outcomes of commercial discussions and the day-to-day aspects of doing business in a modern marketplace.

# Why a Code wont solve poor customer management



So what can you do to prepare yourself for today and post a Code of Conduct being implemented?:

- ⌚ Understand your businesses commercial skills today and the gaps you have
- ⌚ Focus on a higher standard of commercial engagement with your customers
- ⌚ Have a plan!

“In the absence of a strategy, one will be given to you... and you may not like it!”

With a Grocery Code still some time away:

- ⌚ Understand your customers strategy, identify how to work within this environment, and when to walk away
- ⌚ Broaden your customer base by seeking new channels to reduce dependency on the major grocery retailers
- ⌚ Network and knowledge share with your (non-competing) peers to broaden understanding and perspective
- ⌚ Foodstuffs and Woolworths are very good at informing you of the business changes that will affect you so plan today. **Don't wait until its too late.**



How the UK and Australian Codes  
fair presently



# How the UK and Australian Codes fair presently



## UK Grocery Supply Code of Conduct (GSCOP)

- ⊕ The UK Code is “arbitrated” and has lost its efficacy over the past decade
- ⊕ Recent examples of retailer behaviour in relation to inflation based price increases has served to undermine the Code and illustrate the diminished influence of the Code
- ⊕ The Code has not had a meaningful review and subsequent amendments for the past decade leading to a somewhat out-dated framework in our opinion

## Australian Grocery Code of Conduct

- ⊕ The AGCC is presently an “Opt-In” Code for participating retailers and has (in our opinion) been diluted by retailer interventions during the development and review processes
- ⊕ Variation to agreements is widespread across the code with retailers able to negotiate out of many clauses, however, the suppliers are also agreeing to these amendments
- ⊕ Based on feedback from clients the perceived ineffectiveness of the Code has led to a weakened role in the Australian market



So what can we do now?

# What can you do today:



## Support the FGC:

- ⊕ In its pursuit to implement a robust Code of Conduct for all suppliers
- ⊕ Hold the board to account on developing the Code to reflect real market conditions
- ⊕ Give timely feedback to ensure the board is working for members of all sizes and scale

## What else:

- ⊕ Don't wait for the Code to be implemented, it will be too late and its not your silver bullet
- ⊕ If you don't have a plan, develop one
- ⊕ Recognise your weaknesses and how you address these to "fill in the blanks"
- ⊕ Leverage those who lobby for you by providing timely and accurate information so they can act



## Questions





[www.hexisquadrant.com](http://www.hexisquadrant.com)