



Australian Government

FOOD AND GROCERY CODE INDEPENDENT REVIEWER

Annual Report 2022–23

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In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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Foreword



I am pleased to present the Annual Report for 2022–23, prepared in accordance with my responsibilities as the Independent Reviewer under the Food and Grocery Code of Conduct (the Code).

During this reporting period I met with the CEO of each Code Signatory (other than Aldi) to provide my assessment on their performance under the Code, including my view of their Code Arbiters' approach to their suppliers. I also shared feedback I have heard from their suppliers.

I am pleased to report that the Code Signatories responded constructively to my concerns, and in most cases undertook to investigate or rectify matters raised by their suppliers. Code Signatories (other than Metcash) provided me with a written undertaking after those meetings. Those statements can be found on my [website](#).

I met with the Code Arbiters to discuss how processes were being conducted. This is an important exercise to share good practice, and to promote consistency in Code Arbiters' processes.

I consulted with the UK Groceries Code Adjudicator on a range of matters to better understand emerging issues in the UK supermarket sector.

This year's annual report has been expanded to provide an interactive dashboard that will empower a broad range of stakeholders to more fully, and more easily, evaluate the feedback from the annual supplier survey. The dashboard is available on my [website](#).

- The dashboard allows users to identify issues and trends within the sector beyond what is covered in my written annual report. This is a world first for the Australian grocery sector.
- For the first time, I have published rankings of the performance of the Code Signatories based on the survey responses from their suppliers. In previous years, I provided these rankings to the Code Signatories on a confidential basis. By publishing the rankings, I am hopeful that it will be used to stimulate a competitive 'race to the top'.

I did not receive any requests to review a complaint handled by the Code Arbiters in 2022–23 reporting period. However, I continue to receive direct approaches from suppliers where they are reluctant to formalise a complaint. The lack of formal complaints may be explained by the changes adopted by the Code Signatories – specifically, authorising their Code Arbiters to play a more proactive role in listening to supplier concerns without lodging a formal complaint.

I note that the Treasury concluded its review of the dispute resolution provisions in the Code and delivered a report to Government in September 2023. I provided input and feedback to that review. I note that a further review of the remaining Code provisions is currently underway, and I look forward to providing my feedback to that review.

On 6 November 2023, the Assistant Minister for Competition, Charities and Treasury, the Hon Dr Andrew Leigh MP, reappointed me to the role of Independent Reviewer for a 3-year term.

Finally, I would like to record my personal thanks to the team in the Treasury’s Market Conduct and Digital Division that provides me with important and timely secretariat support throughout the year.

If you wish to contact me you can do so via email at fgc@treasury.gov.au or by submitting an inquiry through the [website](#).

A handwritten signature in green ink that reads "Chris Leptos". The signature is written in a cursive, slightly slanted style.

Chris Leptos AO
Independent Reviewer

Overview of the Code

The Code was introduced in 2015 as a voluntary code prescribed under the *Competition and Consumer Act 2010* and it is binding for its Signatories. Its purpose is to address harmful practices in the grocery sector stemming from an imbalance of bargaining power between retailers/wholesalers and suppliers.

The Code has 4 objectives:

- to regulate standards of business conduct in the grocery supply chain and to build and sustain trust and cooperation throughout that chain
- to ensure transparency and certainty in commercial transactions in the grocery supply chain and to minimise disputes arising from a lack of certainty in respect of the commercial terms agreed between parties
- to provide an effective, fair, and equitable dispute resolution process for raising and investigating complaints and resolving disputes arising between retailers or wholesalers and suppliers, and
- to promote and support good faith in commercial dealings between retailers, wholesalers and suppliers.

Retailers and wholesalers in the food and grocery sector may sign up as Signatories to be regulated by the Code. Woolworths Group (Woolworths), Coles Group Limited (Coles), Aldi Australia (Aldi), and Metcash Food and Grocery (Metcash or MF&G) have signed on as Signatories and are liable for conduct not in accordance with the Code for the period in which they have signed.

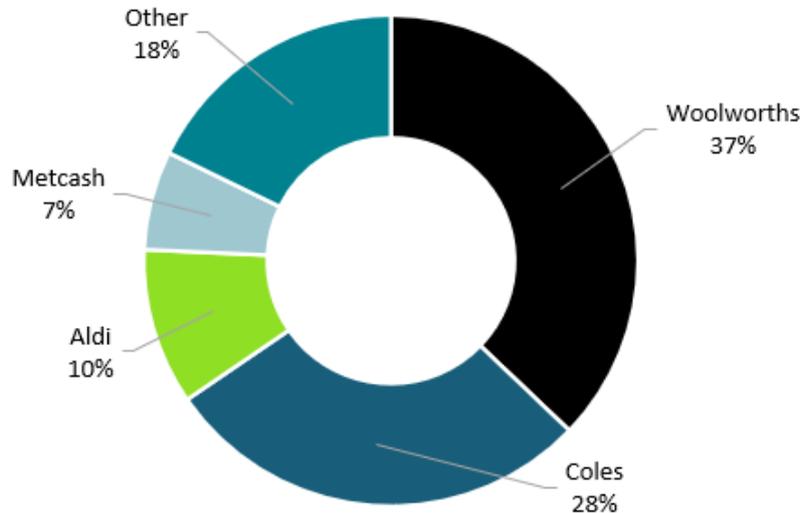
As legislated, the Code is required to undergo a review to ensure it is working in accordance with its initial intent.

A review of the dispute resolution provisions (Part 5 of the Code) commenced in October 2022. On 5 December 2022, a consultation paper was released to seek stakeholder input. The consultation period closed on 1 February 2023 and a report was delivered to the Government in September 2023 which is currently under consideration.

A review of the remaining Code provisions commenced on 3 October 2023. A final report is expected to be delivered to the Government by 30 June 2024.

Composition of supermarket sector

Figure 1. Food and grocery sector market share for the financial year 2022–23¹



The supermarket retail and wholesale industry is made up of over 2,191 business enterprises, employing around 434,000 people, with total revenue expected to rise at an annualised 1.2 per cent to \$135.1 billion over the 5 years to 2023–24.²

The 4 largest food and grocery retailers and wholesalers are Woolworths, Coles, Aldi, and Metcash. Together they held around 82 per cent of market share in 2022–23, as shown in Figure 1.

The food, beverage, and grocery manufacturing sector (suppliers) in Australia has a turnover of \$144.1 billion and is made up of around 17,436 businesses, employing around 270,661 people.³

¹ IBISWorld, Industry Report ANZSIC G4111: Supermarkets and Grocery Stores in Australia, August 2023, p 11.

² IBISWorld, Industry Report ANZSIC G4111: Supermarkets and Grocery Stores in Australia, August 2023, p 13,19–20.

³ Australian Food and Grocery Council, *State of the Industry Annual Report 2021–22*, 22 August 2023, (accessed 13 November 2022).

Reports of the Code Arbiters and Survey of Code Signatories

Key findings from Code Arbiters' reports

Code Arbiters must prepare a written report each financial year setting out the number of complaints received for investigation, the nature of the complaints, the outcomes, and a range of other information. Copies of the report must be given to the retailer or wholesaler (for publication on their website), the ACCC, and the Independent Reviewer.

Some of the reports reflected on the operation of the Code, particularly the new voluntary expansion of Code Arbiter roles, to enable these individuals to receive and act on reports or concerns raised directly by suppliers without the need for a formal or written notification. Where this was noted, there was general consensus that this change has had a positive impact, and specifically enabled Signatories to address issues whilst ensuring supplier anonymity. No further observations on the operation of other aspects of the Code were made in these Code Arbiter reports.

The Code Arbiter reports are available on the Grocery Code Reviewer [website](#). This is in addition to the reports being made available on each of the Signatory websites as required by the Code.

Handling of complaints

The Code Arbiters must publicly report the number and nature of complaints they have received. Table 1 shows the number of complaints received by each Code Arbiter – there were no formal complaints made to each of the respective Code Arbiters for the 2022/23 Financial Year (FY).

Table 1. Number and nature of complaints

Code Signatory	Number of formal complaints		
	2020–21	2021–22	2022–23
Woolworths ⁴	0 ⁵	0	0
Coles ⁶	3	2	0
Metcash ⁷	0	0	0
Aldi ⁸	0	0	0

4 Woolworths Code Arbiter Report, <https://grocerycodereviewer.gov.au/code-arbiter/woolworths>, pp. 1–5.

5 Note: there was one complaint reported in Woolworths Code Arbiter's 2020–21 annual report; however, there was some doubt as to whether this should be counted given the conduct occurred prior to the Code Arbiter's appointment and commencement.

6 Coles Code Arbiter Report, <https://grocerycodereviewer.gov.au/code-arbiter/coles>, pp. 1–3.

7 Metcash Code Arbiter Report, <https://grocerycodereviewer.gov.au/code-arbiter/metcash>, pp. 1–4.

8 Aldi Code Arbiter Report, <https://grocerycodereviewer.gov.au/code-arbiter/aldi>, pp. 1–2.

Price rise notifications and negotiations

The retailer or wholesaler must provide the Code Arbiter with information around price increases, including the number of price rise notifications received from suppliers, the number of negotiations entered, and the time it took to conclude negotiations.⁹

As noted in last year's report, the Code Signatories saw an unprecedented increase in the number of price increase requests from suppliers throughout 2021–22. Price increase requests remained at high levels in 2022–23, reflecting continued cost pressure on suppliers. Of course, this also impacts on the cost of living for consumers when retailers and wholesalers pass on these increased costs.

- Woolworths gave 2,049 notifications (down from 2,104 in the 2021/22 FY) in response to being informed of a price rise increase from suppliers. Of these, 3 were not given within the 30-day period required by subclause 27A(2) of the Code. Suppliers requested negotiations with respect to 1,535 of the 2,049 notifications. 1,076 negotiations (70 per cent, down from 72 per cent in the 2021/22 FY) were not concluded within 30 days of the request.
- Coles gave 3,804 notifications (down from 4,126 in the 2021/22 FY), of which 2 were not given within the 30-day period required by subclause 27A(2) of the Code. Coles entered 667 negotiations, of which 580 negotiations (87 per cent, up from 83 per cent in the 2021/22 FY) were not concluded within 30 days of the request. Coles noted 57 negotiations had yet to be concluded by 30 June 2023.
- Metcash gave 1,062 notifications (up from 739 in the 2021/22 FY) in response to being informed of a price increase by suppliers, of which 4 were not given within the 30-day period required by subclause 27A(2) of the Code. Metcash entered negotiations for 23 notifications, with 21 negotiations (91 per cent, up from 50 per cent in the 2021/22 FY) not concluding within 30 days.
- Aldi gave 1,396 notifications (up from 1,140 in the 2021/22 FY), of which 5 were not given within the 30-day period required by subclause 27A(2) of the Code. Aldi entered negotiations for 34 notifications, and reported 0 negotiations (0 per cent, down from 33 per cent in the 2021/22 FY) not concluding within the 30 days.

The longest time taken to conclude negotiations was 224 days from Coles, excluding the 57 negotiations ongoing at the time of publishing the Coles Code Arbiter report. While Woolworths reported that its longest negotiation took 145 days, and Metcash 98 days, Aldi reported it did not exceed the 30-day threshold for a single price notification negotiation.

The full Code Arbiter reports are available at <https://grocerycodereviewer.gov.au/reports/code-arbiter-reports>.

⁹ Note: notifications are per product and multiple notifications may be attributed to a single supplier.

Commentary on retailer/wholesaler survey responses

In October 2023, the Independent Reviewer carried out the third annual survey of Code Signatories under the Code. The survey was in relation to the 2022–23 reporting period and covered topics such as the ongoing relationships between Code Signatories and suppliers, new dispute resolution arrangements, the training of buying teams, and price increases.

Changes to dispute resolution arrangements

In July 2022, the Code Signatories voluntarily amended their dispute resolution arrangements to allow their Code Arbiters to receive and respond to informal complaints or reports of bad behaviour by the Code Signatories' buying teams. The Code Signatories have taken multiple steps to inform suppliers about these changes (which have been adopted outside of the Code). This year past has been the first full year of operation with this expanded Code Arbiter remit.

Woolworths' Code Arbiter, Helen McKenzie, commented that this has had a positive effect on supplier engagement, and enabled Woolworths to implement changes to improve supplier experience whilst assuring confidentiality. Specifically, this expanded role has promoted faster, practical resolutions and improved supplier perceptions of the ease and effectiveness of raising issues with the Woolworths Code Arbiter.

It should be acknowledged that *"fear of retribution or adverse consequences"* remains the consistent *"reason why they [suppliers] will not make a formal complaint or permit an informal complaint to be raised with Woolworths"* and that this *"remains the biggest obstacle to the effective operation of the dispute resolution processes"*.¹⁰ I expect that this barrier is experienced by suppliers to all wholesalers/retailers – this is particularly reflected in the results from this year's survey of suppliers to Code Signatories.

Staff training and compliance

In line with last year's responses, the Code Signatories have continued to ensure formal training arrangements and assessment of staff understanding of the Code are in place to promote ongoing compliance.

Each signatory has formal training arrangements in place for their buying teams.

- All Code Signatories have stated that they have mandatory training for new buying team members which must be completed within 20 days of commencement.
- All the Code Signatories require relevant staff to complete annual training on the Code, consisting of either face-to-face or online training, or both.
- Each Code Signatory has each indicated that competency assessments, testing staff understanding of the Code, are embedded in their online training modules.

¹⁰ Woolworths Code Arbiter Report, <https://grocerycodereviewer.gov.au/code-arbiter/woolworths>, p. 2

In addition to this, Signatories have taken the following additional measures to ensure ongoing compliance, for example:

- Aldi conducts Code specific compliance audits including, product delisting and timeliness in response to a supplier’s request for price increase.
- Woolworths commissions independent supplier surveys. The feedback from these shapes the content of its training and identifies areas where further targeted training or support may be required.
- Coles conducts an audit on Code compliance in the relevant financial year and commissioned pulse surveys with its suppliers to gain insights into supplier experiences.

Price increase notifications and negotiations

Under clause 27A(2) of the Code, Signatories should adhere to keeping to a 30-day time limit for assessing a price change proposal.

Each of the Code’s Signatories have indicated they have undertaken significant investment in improving their respective systems for processing price increase notifications and negotiations. These systems appear to embed automatic alerts notifying the respective buying teams of when a price change proposal is approaching the end of 30-day timeline. Further to this, Signatories have committed additional resources, staff or other, to processing price increase notifications and progressing negotiations.

Possible reasons for price negotiations to exceed 30 days include:

- requests from larger suppliers with complex trading arrangements require a longer period for commercial consideration
- suppliers may prefer, alongside the wholesaler/retailer to continue negotiating the price increase request in good faith as opposed to rejecting the price proposal to meet the 30-day time period, and
- suppliers take time to provide additional information to assist with validating their request.

For those Signatories which have had price negotiations significantly exceed 30 days, further review of the current internal systems and processes in place should be undertaken.

Cost of compliance with the Code

The Code Signatories have each acknowledged the ongoing cost of compliance with the Code, including staff training, reporting requirements, and Code Arbiter fees. Code Signatories accept that the benefits of the Code outweigh these costs, with the exception of Coles which considers that aspects of the Code, such as the level of reporting, do not provide additional benefits to either suppliers or retailers that are commensurate with the costs.

Complaints reviewed in 2022–23

The Independent Reviewer did not receive any supplier requests to review the complaints handling processes conducted by the Code Arbiters during the reporting period.

The lack of complaints may be explained, in part, by the changes adopted by the Signatories in allowing their Code Arbiters to play a more proactive role in listening to supplier concerns without the need for a formal complaint being lodged. It should be noted that Code Arbiters, during meetings with the Independent Reviewer, have reported a significant increase in the volume of enquiries and supplier complaints raised with them.

Survey of suppliers to Code Signatories

Process for conducting the survey

The survey was developed and delivered by Treasury in its role as the Secretariat for the Independent Reviewer, in consultation with key stakeholders.

This year's survey featured the same questions as the last year. The survey was accessible from 22 August 2023 until 3 October 2023. The survey was completed with the cooperation of the Code Signatories who sent the survey link to suppliers. Signatories sent the survey to the most appropriate contact for each supplier, to ensure that one response was provided per supplier in respect to each of the Code Signatories.

The survey asked for supplier feedback on the effectiveness of the Code, and how the retailer/wholesaler had conducted themselves throughout the 2022–23 reporting period during their commercial dealings. The questions covered topics such as suppliers' dealings with their retailer/wholesaler when an issue arose, the types of issues encountered, and suppliers' experiences with internal and external dispute resolution processes.

A total of 279 suppliers responded to the survey – compared with 407 last year. Many suppliers provided responses for more than one retailer/wholesaler, taking the total number of unique responses to 651 compared with 999 last year.

There was a marked decrease in engagement with the annual supplier survey. This could be a result of less promotion of the survey to suppliers through the Code Signatories, food and grocery industry bodies and the Independent Reviewer. I intend to rectify this next year and promote the survey more widely to ensure increased engagement.

Response rates as a proportion of the Code Signatories' supplier contacts is provided in Table 2.

Table 2. Responses as a proportion of Code Signatories' contacts

Signatory	Survey responses per retailer / wholesaler	Number of supplier contacts that were sent the survey	Survey responses as a proportion of supplier contacts sent the survey (%)	Number of suppliers per retailer / wholesaler
Woolworths	197	1,945	10.1%	3,300
Coles	182	1,851	9.8%	2,034
Metcash	122	892	13.7%	2,429
Aldi	150	1,377	10.9%	1,593

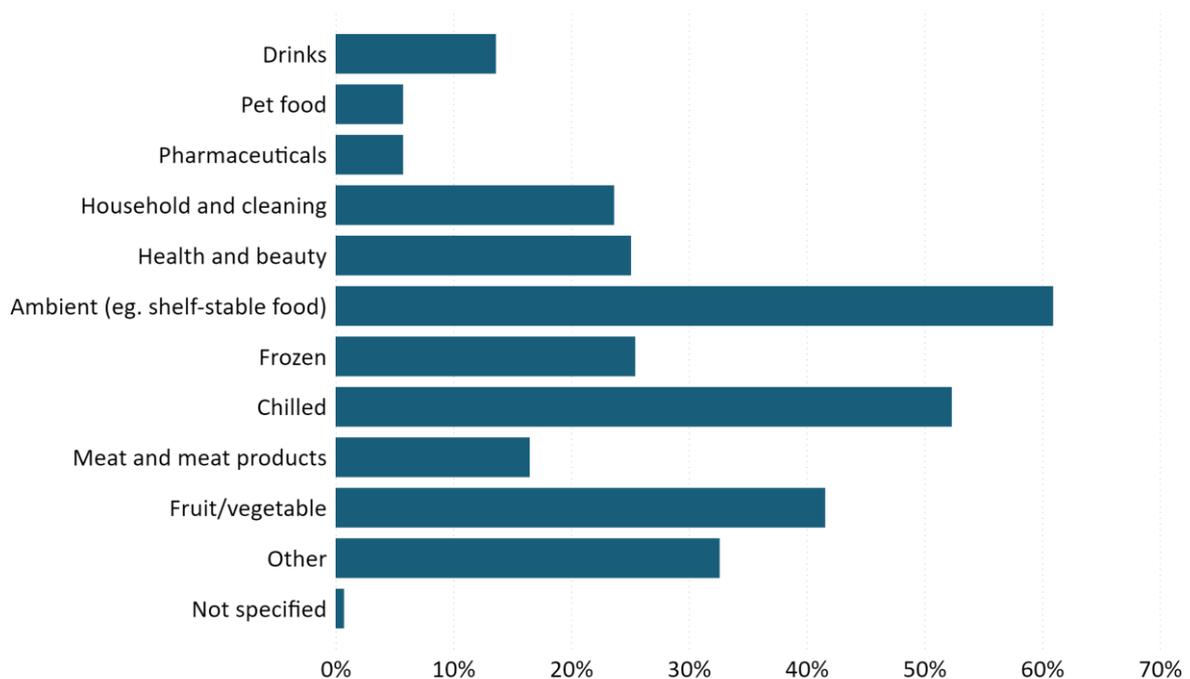
This year, the data from these responses has been collated and transformed into a publicly available, Power BI dashboard, available at <https://grocerycodereviewer.gov.au/reports/annual-reports/2022-23-annual-report>. The aim of this is to allow the public the option to interrogate the results of the annual survey, beyond the findings that are captured in this report. This development supports my belief in a transparent government, and the corresponding publication of how Signatories ranked for each of the respective questions is intended to foster further competition in the sector.

Characteristics of respondents

Responses were received from suppliers that had a turnover which ranged from less than \$1 million to more than \$1 billion, where the largest proportion of respondents had a turnover between \$50 million and \$250 million. Respondents with a value less than \$10 million, or more than \$250 million have been aggregated in the business size categories shown on the survey dashboard.

When asked what product(s) they supplied, respondents often reported dealings in more than one product type. As seen in Figure 2, a large proportion of respondents supplied ambient (e.g. shelf-stable foods) followed by chilled products, while pharmaceutical and pet food suppliers equally made up the lowest proportion of responses (aggregated into the count of “other” in the survey dashboard).

Figure 2. Food and groceries suppliers by product



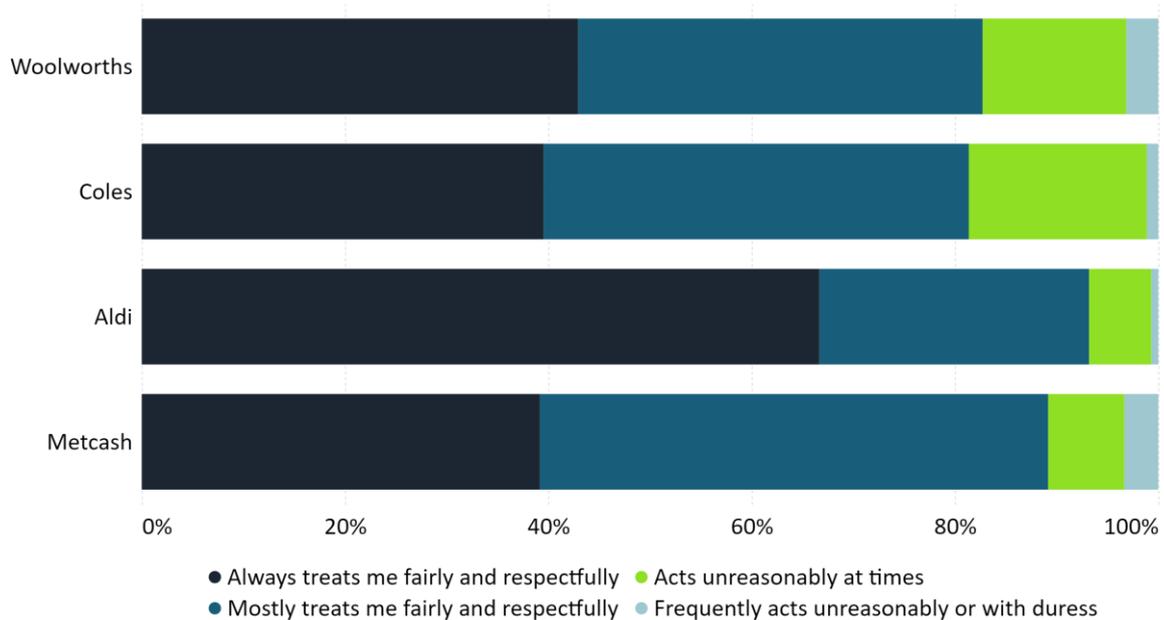
The make-up of respondents for the 2022/23 survey is consistent with respondents to the 2020/21 and 2021/22 surveys.

Key findings from the survey of suppliers

This year, Signatories were ranked against their counterparts to assess who performed the best in each of the assessable questions asked of suppliers. Aldi ranked best across the board against other Signatories, particularly outperforming in questions on “supplier experience”. To see how each of the Signatories ranked in each of the measurable categories, explore the dashboard presenting the survey results at <https://grocerycodereviewer.gov.au/reports/annual-reports/2022-23-annual-report>.

Fair dealings with retailers and wholesalers

Figure 3. Fair and reasonable dealings of retailer/wholesaler towards suppliers



Overall responses to the question indicate that most suppliers have had fair dealings with their respective retailer/wholesaler. Specifically, Figure 3 shows:

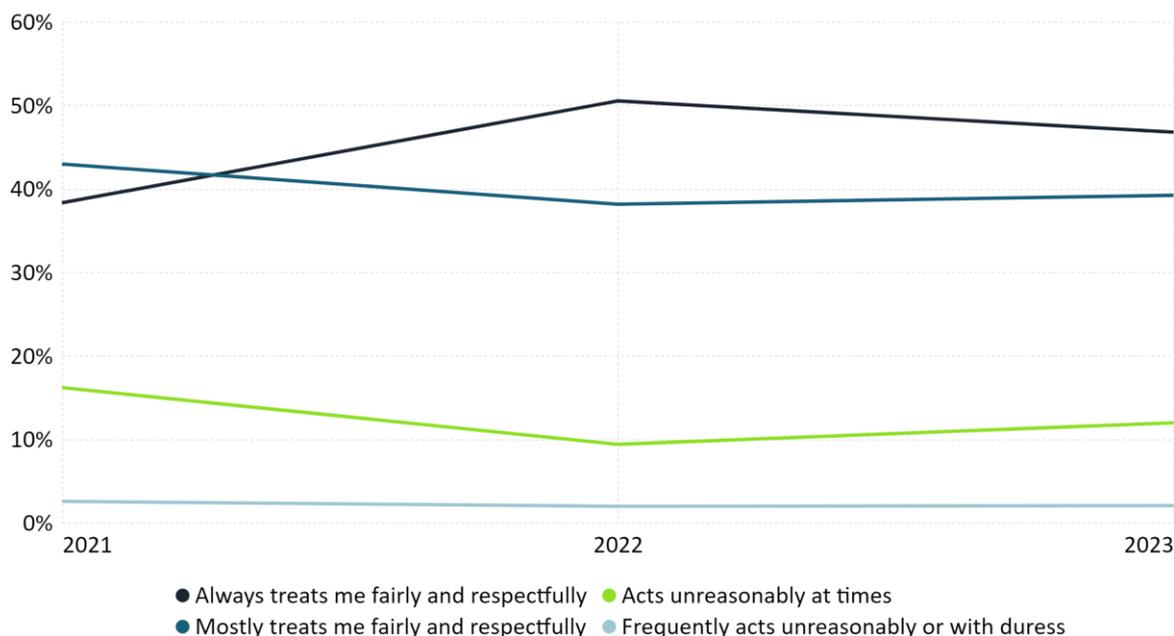
- 47 per cent indicated that they were always treated fairly and respectfully by their retailer/wholesaler.
- 39 per cent identified that their retailer/wholesaler mostly treated them fairly and respectfully.
- 12 per cent identified that their retailer/wholesaler acted unreasonably at times.
- 2 per cent identified that their retailer/wholesaler frequently acts unreasonable or with duress.

For Coles and Metcash, a higher proportion of suppliers indicated that they were “mostly” rather than “always” treated fairly and respectfully. For Aldi and Woolworths, “always treats me fairly and respectfully” received the highest share of responses.

Consistent with results from the past two years, Aldi has the highest proportion of suppliers reporting they are “always treated fairly and respectfully”.

Figure 4 shows how suppliers' perception of their treatment by retailers and wholesalers has varied over time. While the proportion of suppliers indicating they are always treated fairly and respectfully by the Code Signatories has increased compared with the first year of the survey, for 2022–23, there has been a slight decrease in the share reporting they are always treated fairly and respectfully.

Figure 4. Industry-wide results for fair and reasonable dealings across the last 3 years



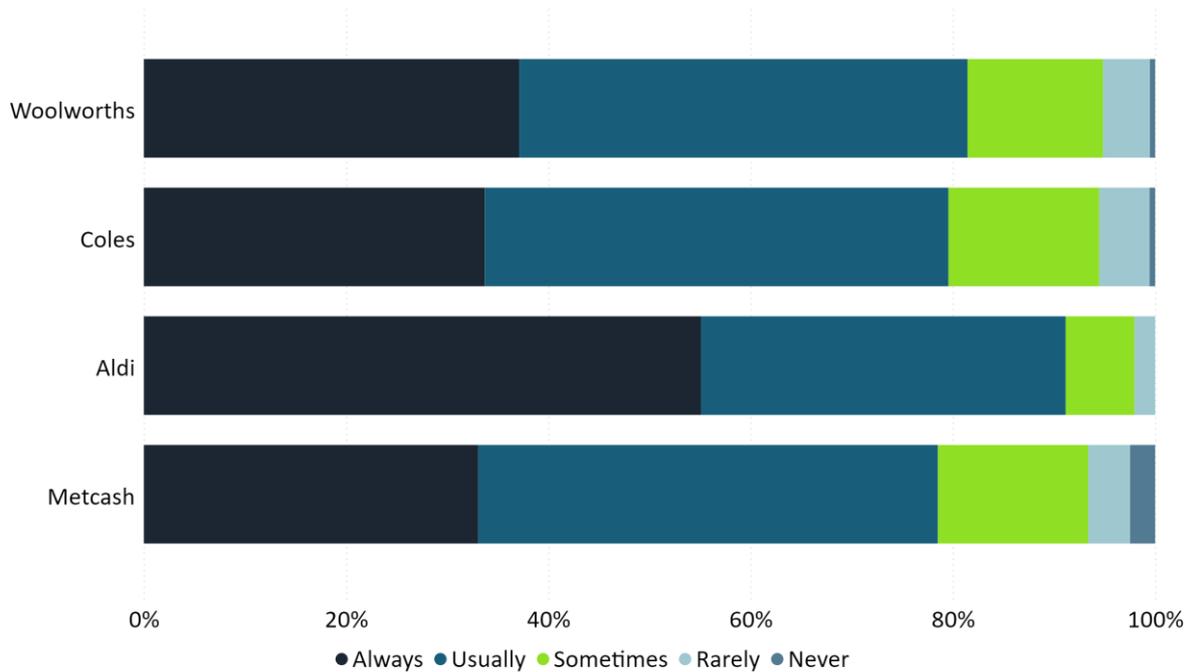
* The methodology has been updated from previous years

Notably, only 2 per cent of businesses with a turnover greater than \$250 million experienced being frequently treated unreasonably or with duress. The proportion of respondents in this category reporting they are always treated fairly and respectfully has increased by ~10 per cent each year since the beginning of the survey. For businesses with a turnover less than \$250 million, the proportion identifying they are always treated fairly and respectfully has decreased since last year. This perhaps reflects that larger suppliers may have greater bargaining power.

Analysing the response results by product shows that fruit and vegetable suppliers have reported less favourable treatment compared with other product suppliers. This was particularly the case for measuring “deals in good faith” and “fair and reasonable dealings”, where for each of these categories, a greater proportion of fruit/vegetable suppliers appeared worse off. The proportion of suppliers with ambient, chilled, frozen, fruit/vegetable, health and beauty, or meat products all had a marginal decrease in the number reporting they are always treated fairly and respectfully.

Supplier issues – resolutions

Figure 5. Prompt, constructive action taken by the retailer/wholesaler to resolve issues raised



Suppliers that responded to the question on whether their retailer/wholesaler takes prompt, constructive action to resolve issues raised, reported that Aldi was the retailer most likely to take action. As shown in Figure 5, 91 per cent of Aldi respondents indicated this retailer always or usually took action to resolve issues, between 78–81 per cent of suppliers to Woolworths, Coles, and Metcash reported the same. These results are largely consistent with last year.

Businesses with a turnover of less than \$50 million reported higher responses of “sometimes”, “rarely” or “never” to retailers and/or wholesalers taking prompt, constructive action to resolve issues raised. This again reflects the less favourable treatment to those with small and medium-sized businesses potentially due to relatively lower bargaining power. Fruit and vegetable suppliers again had the highest proportion of responses in the negative on this question.

Retailer and wholesaler conduct

Suppliers were asked to identify any issues with their retailers/wholesaler, covered by the Code, that they faced during the 2022–23 reporting period.

As shown in Figure 6, most respondents did not identify an issue with the retailer/wholesaler they supplied. Woolworths reported the lowest share of suppliers (65 per cent); followed by Coles (69 per cent); Metcash (71 per cent); while Aldi had the highest share of suppliers (at 83 per cent) who indicated they had not experienced any issues with their retailer/wholesaler.

Figure 6. Number of suppliers which experienced no issues with their respective retailer/wholesaler

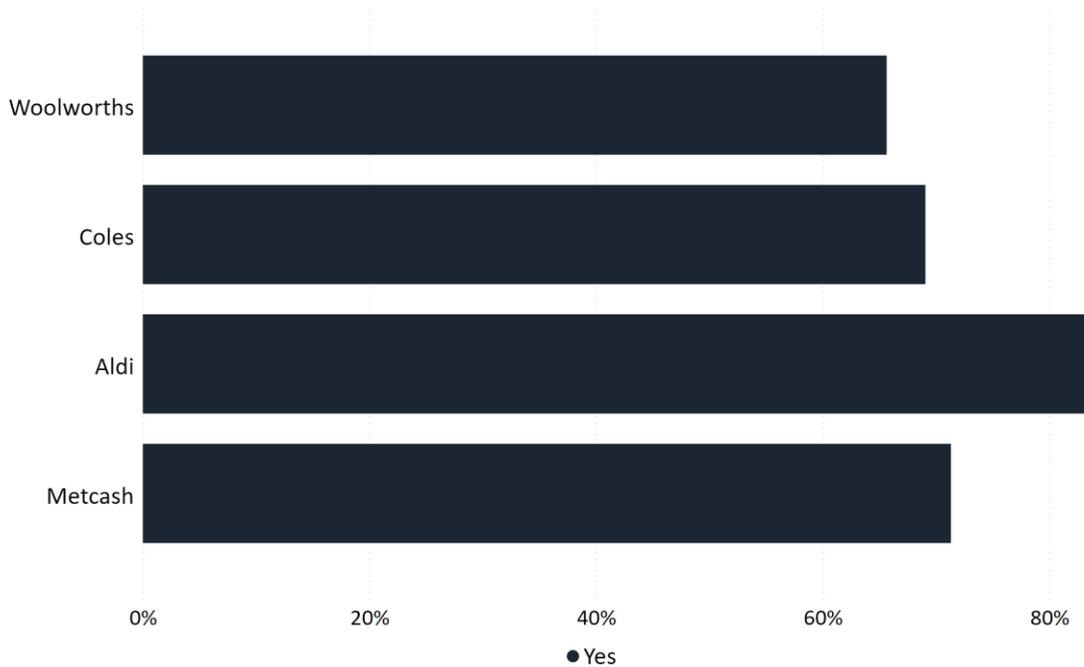


Figure 7 shows supplier responses in relation to each issue. While the first rollout of this survey did not require suppliers to respond to this question, suppliers have since been required to respond on each of the issues and identify instances where they have experienced no issues.

Of the suppliers that chose to select from one or more of the 20 issues, the most common issues suppliers experienced were “payment later than the agreed payment terms” and “deductions off invoice or remittance without consent”. This is consistent with last year’s report.

Suppliers to Coles and Woolworths held a higher proportion of reported issues across the categories compared with their counterparts. The key issue reported by Woolworths suppliers (in proportion to other Code Signatories) was being “required to fund promotions despite it being unreasonable in the circumstances”. Meanwhile, the number of Coles suppliers citing “delisting without genuine commercial reason” was an issue experienced to a greater degree than other Signatory suppliers.

Compared with other Signatories, a higher proportion of Aldi suppliers cited the most prominent issue as being “deductions off invoice/remittance without consent”. While Metcash suppliers cited “cancellation of promotion order or reduction of a promotion order by >20% (for Metcash) without agreement” as being the greatest issue compared with Metcash’s counterparts.

Figure 7. Issues experienced by suppliers with their retailer/wholesaler.

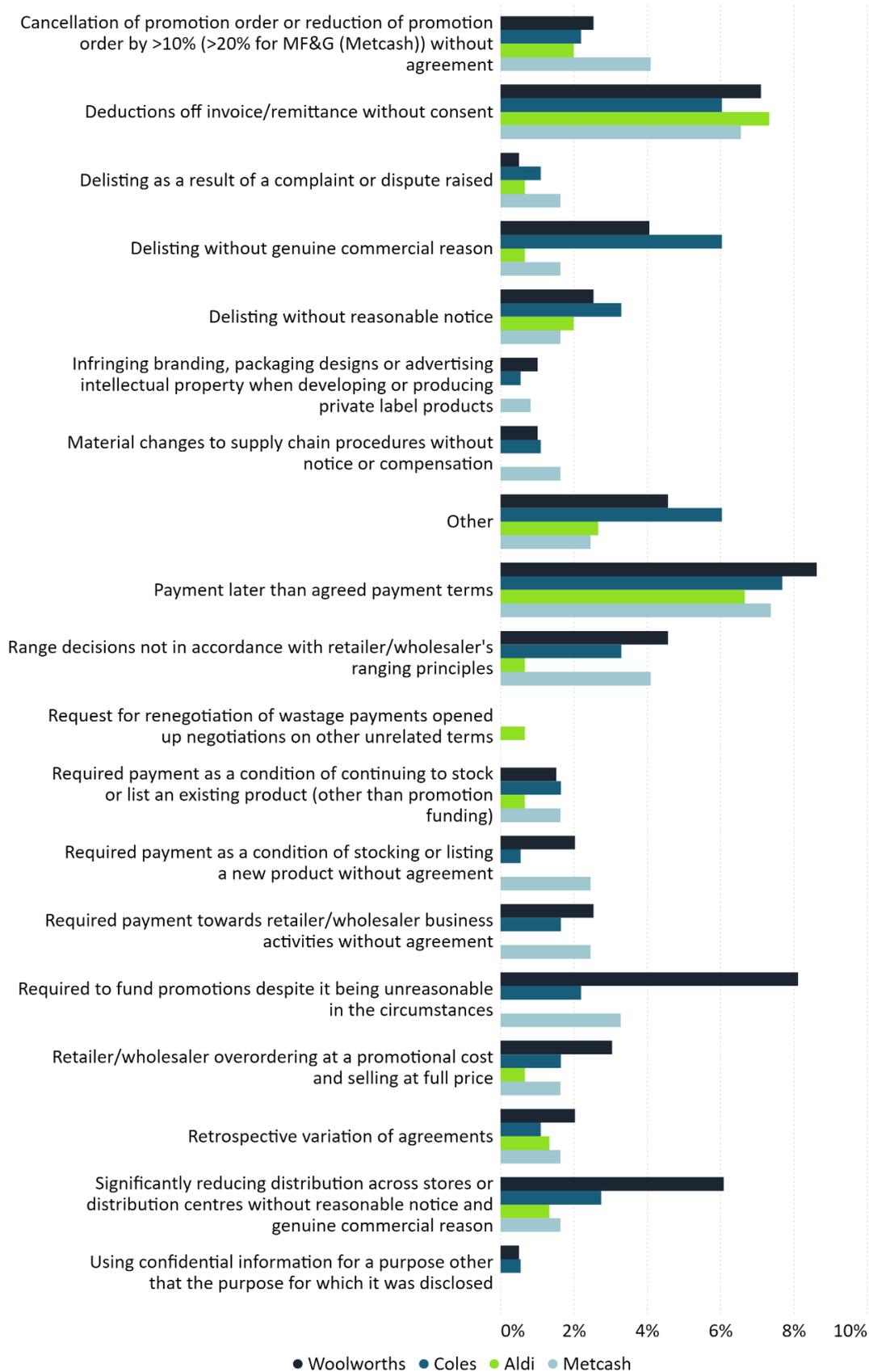
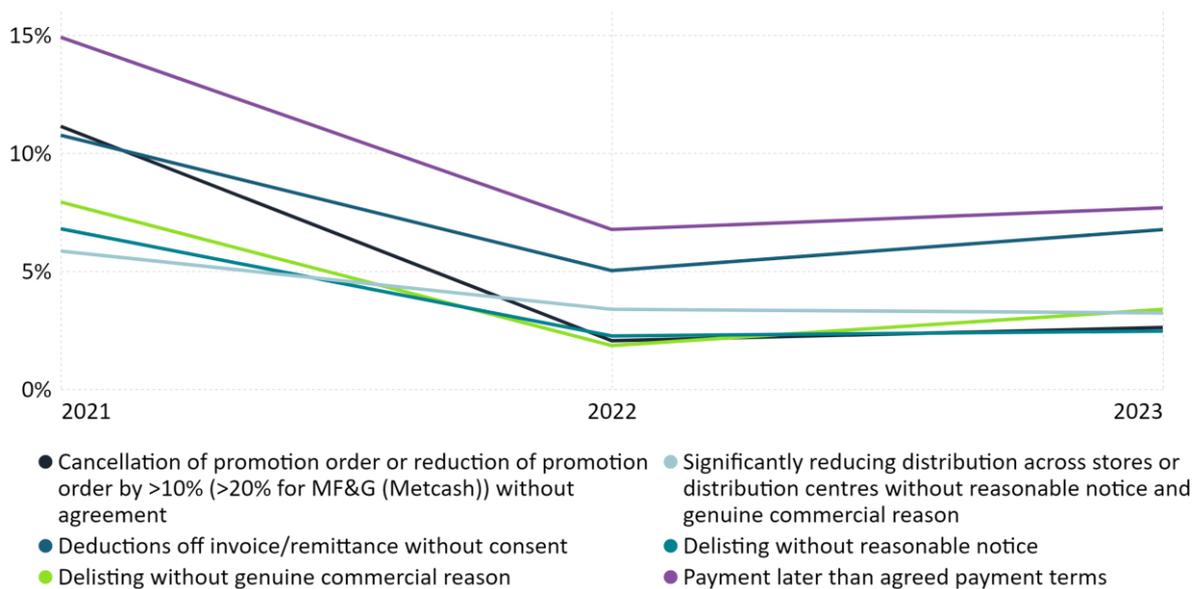


Figure 8 tracks how supplier experience with the key issues identified in Figure 7 have changed over the last 3 years. These issues being:

1. Payment later than agreed terms
2. Deductions off invoice/remittance without consent
3. Delisting without genuine commercial reason
4. Delisting without reasonable notice
5. Required to fund promotions despite it being unreasonable in the circumstances, and
6. Significantly reducing distribution across stores or distribution centres without reasonable notice and genuine commercial reason.

Figure 8. Industry-wide results for issues experienced across the past 3 years



* The issue descriptions were altered following the first survey to better align with the Code’s provisions

** The methodology has been updated from previous years

At an industry-wide level, the main issues identified had a marked decrease since the start of the survey. However, it is concerning that most of the issues have marginally increased or remained stable since last year’s report.

The increase in the proportion of suppliers reporting “deductions off invoice/remittance without consent” from 5 per cent to 7 per cent since last year’s survey aligns with the Independent Reviewer’s experience over the past financial year. Specifically, multiple suppliers came forward informally noting their respective Signatories had engaged in this behaviour. Aldi and Coles had an increasing share of suppliers, while Woolworths and Metcash had a decreasing share of suppliers reporting this behaviour.

Reports of “payment later than agreed terms” and “delisting without genuine commercial reason” also increased by 1 percentage point compared with last year’s survey results. This is concerning, and Signatories should strive to continuously better their behaviour by addressing these issues.

The largest positive year on year reduction among categories was the decline in reports of “required payment for better positioning or increased shelf space without agreement”. Impressively this year there have been no reports of this occurring.

Raising supplier complaints

Figure 9. Impediments to raising an issue with the buying team

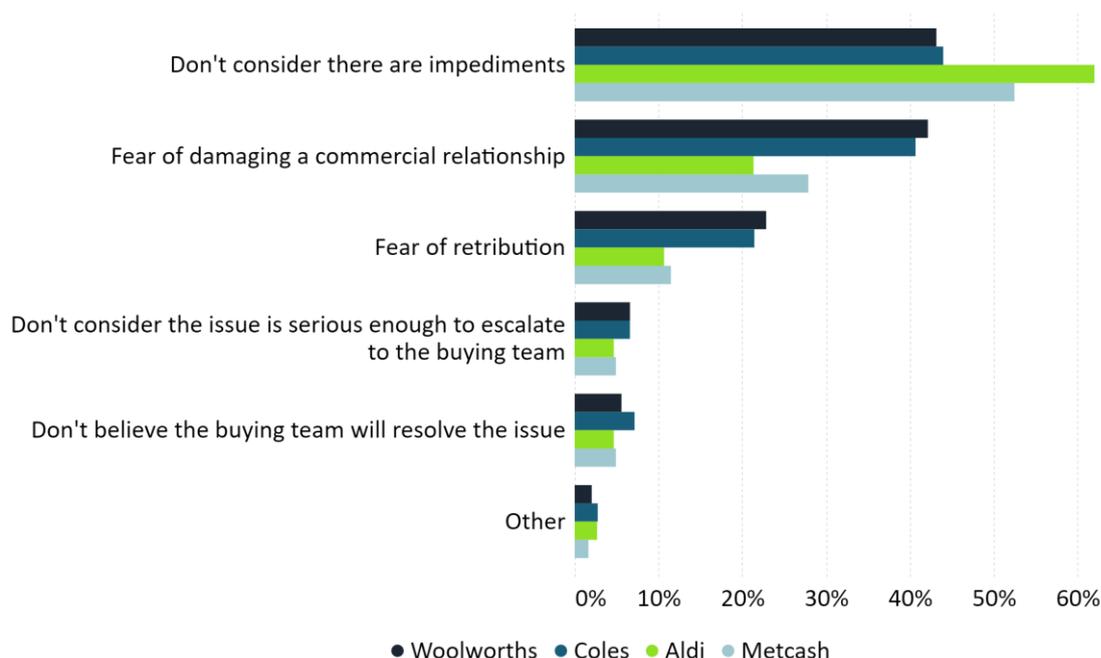


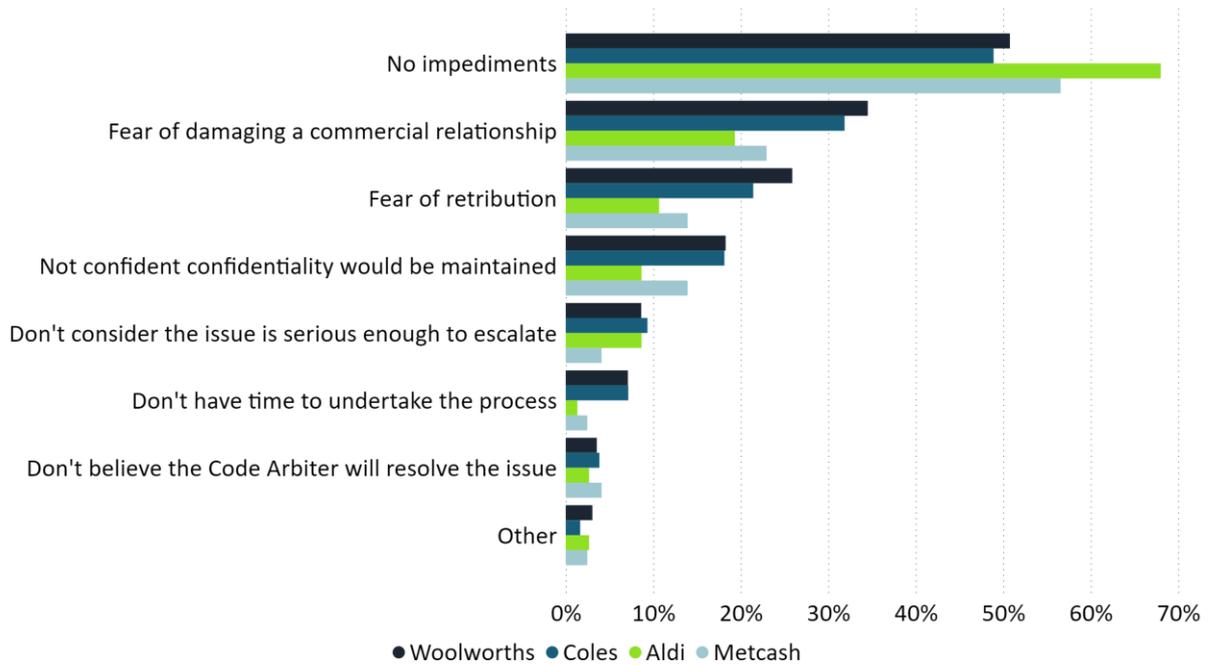
Figure 9 shows over 43 per cent of respondents for each of the Code Signatories said there were no impediments to raising an issue or concern with their retailer/wholesaler’s buying team. This result is a slight decrease from the previous year (45 per cent).

Of the suppliers that identified impediments to raising an issue with the buying team, fear of damaging a commercial relationship and fear of retribution were the most common reasons. Over 41 per cent of respondents to Woolworths and Coles identified fear of damaging a commercial relationship as a key impediment, compared with 28 per cent for Metcash, and 21 per cent for Aldi.

Overall, 17 per cent of respondents considered fear of retribution to be an impediment to bringing a complaint to their retailer/wholesaler’s buying team, with Woolworths’ suppliers being the most concerned about retribution and Aldi’s suppliers being the least concerned.

Bringing a complaint to the Code Arbiter

Figure 10. Impediments to raising an issue with the Code Arbiter



55 per cent of respondents said there were no impediments to raising an issue or concern with their retailer/wholesaler’s Code Arbiter. Of the suppliers that identified impediments to raising an issue with the Code Arbiter, fear of damaging a commercial relationship and fear of retribution were the most common reasons.

Over 32 per cent of respondents to Woolworths and Coles identified fear of damaging a commercial relationship as a key impediment, compared with 23 per cent for Metcash, and 19 per cent for Aldi.

Between 11 and 26 per cent of respondents considered fear of retribution to be an impediment to bringing a complaint to their retailer/wholesaler’s Code Arbiter, with Woolworths’ suppliers being the most concerned about retribution and Aldi’s suppliers being the least concerned.

Bringing a complaint to the Independent Reviewer

Suppliers were asked whether they would consider bringing a decision made by their retailer/wholesaler’s Code Arbiter to the Independent Reviewer for review. 73 per cent of respondents reported that they would consider bringing a decision made by a Code Arbiter to the Independent Reviewer.

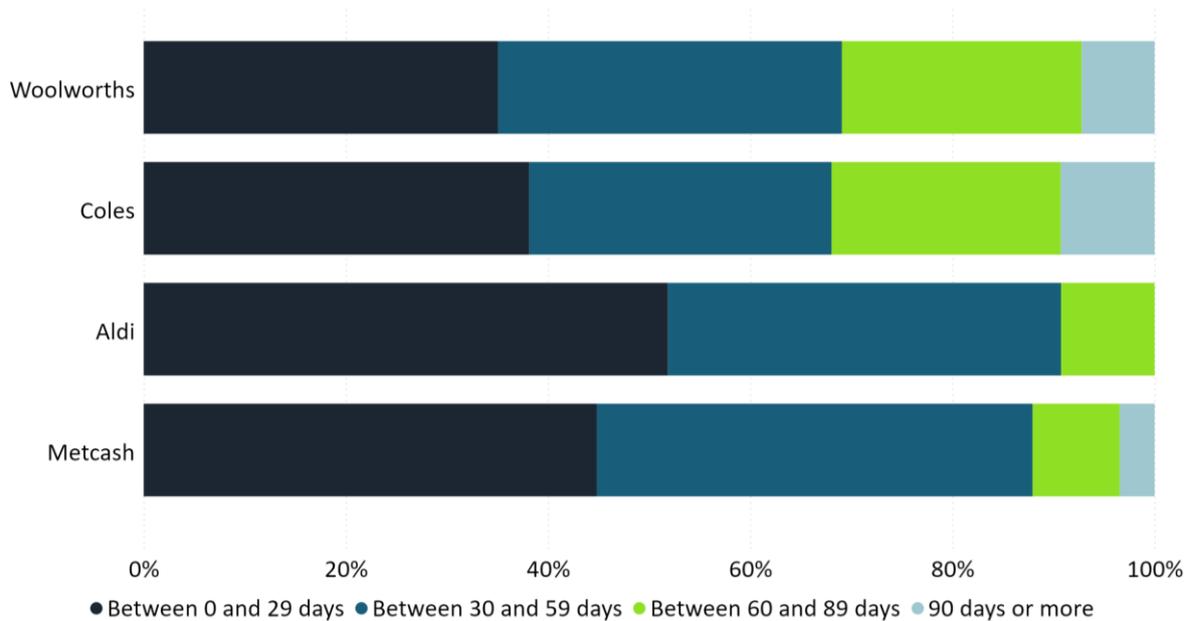
Suppliers that answered that they would not consider bringing a complaint to the Independent Reviewer were asked to explain why. Free text answers ranged from negative reflections on supplier/Signatory relationships, to showing positive faith in the system. Specifically, the negative being fear of retribution, risk of damaging the commercial relationship and it being a time-consuming process. The positive was that suppliers did not see a need to engage the Independent Reviewer,

given they feel they have sufficient trust in the respective Signatories and associated Code Arbiters to assess any complaints.

The fact that some respondents noted they had sufficient trust in the Code Arbiters to not see a need to engage the Independent Reviewer reflects positively on the Code and its operation.

Other observations

Figure 11. Average length of price rise negotiations



The development of a Power BI dashboard has enabled me to interrogate the survey results further than prior years. One discrepancy I have noted is the difference between the time reported by Code Arbiters to negotiate price requests and responses to my survey. Namely, while Aldi’s Code Arbiter has reported none of the negotiations exceeded 30-days, 48 per cent of respondents that entered a price rise negotiation with Aldi reported that the length of these negotiations exceeded 30 days (see Figure 11).

Several reasons could explain this divergence, firstly that the survey of suppliers is anonymous, and with that there is a level of ambiguity in the validity of responses. This discrepancy could also be explained by differences or a misunderstanding between Aldi and its suppliers on how negotiation timeframes are measured. However, 48 per cent still constitutes a significant difference from what has been reported. Therefore, it may be valuable for Aldi to consider reviewing their technical systems to confirm the reliability of their reporting system.

Nonetheless, I still acknowledge and commend Aldi for outperforming its counterparts on the timeliness of negotiations. This instance highlights the benefit of the supplier surveys, in that they are a tool to sense check the Signatories’ reports. I encourage more suppliers to engage in the survey next year so that there continues to be this level of accountability.

Overall findings

The 2022–23 Annual Survey is the third to be conducted by the Independent Reviewer. Overall, the results indicate that suppliers have generally had positive dealings with their respective retailer/wholesaler. The results reflect a large improvement from the first year of the survey, however since last year, response results have generally plateaued with only marginal changes.

Most responses regarding supplier experience have tended towards the positive, where 84 per cent of respondents stated that their retailer/wholesaler usually or always communicates clearly and promptly, 86 per cent consider their retailer usually or always deals in good faith, and 83 per cent of suppliers consider their retailer/wholesaler always or usually takes prompt, constructive action to resolve issues raised. While these responses regarding supplier experience have weighted towards the positive, year-on-year comparisons of supplier treatment shows that the proportion of suppliers identifying that they are always or usually treated fairly and respectfully has declined slightly (to 86 per cent from 89 per cent last year).

At an industry wide level, the survey results have reflected well on the Code's operation in reducing the number of issues faced by suppliers. Specifically, the proportion of suppliers stating they have not had any issues has increased from 67 to 71 per cent. On the other side of this, the proportion of suppliers who have experienced issues is small in comparison. Specifically, the proportion of respondents identifying with a single issue did not exceed 8 per cent of the total number of supplier responses.

For the identified issues, it is concerning that there has been little to no improvement in the results from last year. Overall, the proportion of respondents identifying they receive payment later than agreed remains just under 8 per cent, which is a marginal increase when compared with the previous year. Meanwhile, the number of respondents reporting deductions off invoice or remittance without consent has increased to 7 per cent. Although these increases on last year's results is marginal, the industry should continuously be striving to improve. Overall, any reports of issues such as late payments, deductions, and being required to fund promotions despite it being unreasonable warrant ongoing attention.

Furthermore, suppliers continue to report that fear of damaging a commercial relationship and fear of retribution as the primary obstacles to alerting the respective buying teams of any issues or concerns in their commercial dealings. When compared with the past year, the proportion of respondents who perceive these impediments has remained constant. Overall, this plateau still represents a large decrease in impediments to raising issues from the first year's survey results.

Over 55 per cent of respondents report they see no impediments to raising an issue with their Code Arbiter. General interactions with suppliers have indicated that these positive dealings have been enhanced by the implementation of each of the retailer/wholesaler commitments to expand the remit of their Code Arbiters to enable them to receive and act on informal complaints. This expanded remit has empowered Code Arbiters to play a more active role and has improved supplier confidence in the confidentiality of their complaints (albeit it is still acknowledged that fear of retribution is still a deterrent from engaging with the Signatories and their Code Arbiters).

As acknowledged in the foreword, this is the first year the rankings have been publicly released. This decision has been made in the interest of transparency and enhancing competition in the sector. Readers interested in the metrics of specific categories can investigate the performance of each Signatory against its counterparts in the survey dashboard.

Overall, survey results have shown that Aldi has performed the best, followed by Metcash, Coles and then Woolworths. It is worth acknowledging that since the implementation of the Code, conduct in this industry has significantly improved as reflected by the positive change in responses since the initial survey in 2020/21.

Observations on the Code

Key observations and suggestions

In my previous annual report, I noted that I had conducted an independent review into a complaint against Coles and its Code Arbitrator. Following my investigation of that supplier complaint, I concluded that Coles had not complied with the Code and the Code Arbitrator's process was flawed. My recommendations to address these concerns were rejected by the Coles Code Arbitrator.

Under the subclause 37D(9) of the Code, if during my review I become aware of a potential breach of the Code I may give particulars of the breach to the Australian Competition and Consumer Commission (ACCC). In December 2022, I wrote to the Chair of the ACCC, Ms Gina Cass-Gottlieb, to refer the matter to the ACCC for further consideration. I provided the ACCC with the particulars and further information on the matter.

I am disappointed that following my referral, the ACCC has not (in my view) progressed the review in any material way, and I have not been advised of a satisfactory response to my referral. While I appreciate that the ACCC applies the principles and priorities set out in its Compliance and Enforcement Policy when deciding to investigate potential breaches of the law, I find that this mechanism in the Code is not effective in addressing or deterring potential breaches of the Code by the Signatories. The success of the Code is reliant on Signatories understanding that breaches of the Code's provisions will be investigated and sufficiently enforced. It is also important that suppliers have the confidence that the Code is meaningful and lawfully upheld and enforced.

This further supports my previous calls to introduce the following key changes to strengthen the Code:

- a. change the Code to permit supplier concerns to be raised with Code Arbitrators informally (i.e. not required to be in writing)
- b. authorise the Independent Reviewer to access the Code Arbitrators' complaint files to evaluate the adequacy and consistency of the Code Arbitrators' processes
- c. require the ACCC to conduct an investigation when requested by the Independent Reviewer, and
- d. introduce financial penalties for material non-compliance with the Code.

Next steps 2023–24

Key activities for 2023–24 include the following:

- Confidential and candid feedback will be provided to the CEO of each Code Signatory.
- ‘Deep Dives’ with suppliers will continue to be a feature of my work to ensure suppliers have a confidential forum for raising concerns that might presage systemic problems.
- A group meeting with the Code Arbiters will be scheduled to share good practices.
- More widely promoting the supplier survey via industry associations will be a priority, to increase the survey response rate.
- Raising supplier awareness of the Code, the Code Arbiters, and the Independent Reviewer will continue through speaking engagements at industry events and through media commentary.
- Seeking feedback from stakeholders on the Power BI dashboard, including potential improvements.
- I will be making a submission to the review of the Code, and I will use the feedback provided to me through my consultations with suppliers, Code Signatories, Code Arbiters, and industry associations to inform my submission.