

Balmain House

**Report by Hon J. Kennett AC as Code Arbiter for Coles Supermarkets Pty Ltd.
23rd July 2021**

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In compliance with section 36D of the Grocery Code, I submit my Annual Report for the Financial Year ended June 2021.

I commenced working as the Arbiter of disputes between Coles Supermarkets Pty Ltd and their suppliers in 2014.

That role changed in 2018 because of changes under the Food and Grocery Code of Conduct established pursuant to the Competition and Consumer (Industry Codes-Food and Grocery) Regulation 2015.

I was therefore appointed as Code Arbiter for Coles Group Limited on the 18th November 2020 to comply with the new regulations.

Background

Over the last seven years working with Coles and their suppliers, I have been involved in over 300 arbitrations. With the passage of time, most of those matters were in the early years of my appointment.

As a result of my experiences, adjudications, and recommendations to Coles on various matters concerning their relationship with suppliers, many practices at and by Coles have changed.

The effect of this has seen a dramatic reduction in the number of complaints brought to my attention, as noted in my report below, that is required under the changes to the Regulation referred to above, as the Code Arbiter to Coles Group Limited.

Annual Report of Code Arbiter to Coles Group Limited for the Financial year ended 30th June 2021.

Coles Supermarkets deal with approximately 4,000 suppliers a year, from very large to very small suppliers. The smallest being family operated, with single or very few SKUs supplied to Coles.

The Honourable
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In the preceding 12 months, I have only had three (3) complaints brought to my attention.

1. A supplier refused to undertake an Ethical Sourcing audit and Coles had issued a notice requiring compliance with the audit requirement, failing which the contract would be terminated. The supplier complained that the request was not reasonable, and that any termination would be an unlawful delisting.

I found that the request by Coles was reasonable and was required under the contractual terms between the supplier and Coles. The supplier ultimately undertook the Ethical Sourcing audit and the termination notice issued by Coles was withdrawn.

I understand both parties were satisfied with this outcome.

This matter was determined within 26 business days.

2. A supplier who supplied two SKUs to Coles complained that there had been unreasonable delisting of its products, with insufficient time to sell through its remaining stock.

This matter was determined within six business days.

I found that the fundamental issue was while the supplier was a long-term supplier to Coles, it had ordered from overseas an inordinate amount of stock, while the sales of its products were declining. There was also an issue with a failure by the supplier to adhere to the specifications agreed by Coles for one product and a failure to have to product manufactured at a site which had been approved by Coles. I determined that the delisting and the timeframe given was reasonable. I understand both parties were satisfied with this outcome.

3. A supplier who supplied a small number of SKUs to Coles complained that there had been unreasonable delisting of its products, and asked that their product be reinstated in the range.

I found that reasons for the delisting by Coles were reasonable in light of all the circumstances. This decision has only recently been made and I am uncertain whether this has been resolved to the satisfaction of the supplier.

This matter was determined within 14 business days.

At all times, my requests of access to Cole's personnel and/or files has been granted. As was previously the case any recommendations I have made to Coles have been accepted in full.

There were no complaints where I made a recommendation for payment of compensation under clause 36(4).

I consider the substantial reduction in cases brought to my attention to be a direct reflection of the way Coles has been improving its working relationships with suppliers.

What is clear to me, it is normally the smaller suppliers, often family run, who do not keep sufficient records who make up many complaints.

This issue is also being addressed by Coles.

It is my view that there will always be a few complaints when dealing with so many suppliers, but I have no evidence among Coles's suppliers that a tsunami of complaints is building.

This reflects the work being done by Coles, the ACCC and the Food and Grocery Code itself.

Clause 27B Requirements

Clause 27B requires me to attach information from Coles regarding price increase requests received by Coles and Coles treatment of those requests.

That information is attached.

May I add that not one case I have dealt with this year in my role of Code Arbiter for Coles has price been an issue, and very few of the 300 cases I have previously been involved in as the Coles appointed Arbiter dealing with disputes between Coles and their suppliers.

Should the reader of this report require further information, I am happy to discuss.

With kind regards,



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Attachment – Clause 27B Requirement

Information about price increases: financial year ending 30 June 2021

The following data relates to price increase requests received by Coles between 2 January 2021 and 30 June 2021.

(a) The total number of notifications given under subclause 27A(2) of the Grocery Code by Coles to any supplier during the financial year:	1101 (Includes 724 fresh fruit and vegetable price negotiations not concluded within 5 business days)
(b) The number of those 1101 notifications that were not responded to within the 30-day period required by subclause 27A(2) of the Grocery Code:	5 (Representing less than 0.5% of the price increase requests received by Coles)
(c) The total number of negotiations entered into during the financial year following requests made under subclause 27A(3) of the Grocery Code:	35
(d) The number of those 35 negotiations in which Coles did not conclude its position within the period of 30 days starting on the day that Coles was first notified of the relevant proposed price increase by the supplier:	32
(e) For each of the 32 negotiations to which paragraph (d) above applies, the number of days that Coles took to conclude its position on the negotiations starting from the day that Coles was first notified of the relevant proposed price increase by the supplier:	<p>Negotiations concluded by 30 June 2021:</p> <ol style="list-style-type: none"> 1. 42 days 2. 42 days 3. 43 days 4. 49 days 5. 52 days 6. 52 days 7. 59 days 8. 76 days 9. 77 days 10. 83 days 11. 83 days 12. 84 days 13. 89 days 14. 107 days <p>18 negotiations had not yet concluded by 30 June 2021.</p>

You will note that Coles is reporting 5 responses that were not given within the 30-day period required by subclause 27A(2) of the Grocery Code. This represents less than 0.5% of the total number of price increase requests received by Coles during the relevant period. Below is an explanation of the cause of each failure to respond within the 30 days and the actions taken to prevent reoccurrence.

Request received	Time to respond	Primary cause	Corrective actions
12/01/21	56 days	Fresh Produce supplier submitted quote too early (many weeks in advance). Coles team member did not see the quote until reviewing quotes for the relevant supply period weeks later.	Implemented IT fix in fresh produce quoting system to prevent quotes being submitted more than 30 days in advance.
14/01/21	116 days	Supplier submitted two requests around the same time relating to the same product. Responsible team member responded to one request but missed the other.	Team member re-trained on Code requirements.
16/02/21	33 days	Responsible team member mistakenly missed deadline.	Team member re-trained on Code requirements. Improved internal follow up process, including by adding auto reminders to emails.
10/03/21	43 days	Supplier sent request to incorrect email address (did not follow process on Coles Supplier Portal).	Implemented an automated email scrape to try to capture requests sent to an incorrect email address.
17/05/21	44 days	Responsible team member mistakenly missed deadline.	Team member re-trained on Code requirements.

Further information regarding time taken to conclude negotiations

We note that the negotiation periods outlined in paragraph (d) of the report include the 30-day period within which Coles must provide its initial response under the Code.

We also note that while Coles takes all reasonable steps to conclude its position on negotiations without delay, occasionally delays occur as a result of factors outside our control, including:

- where there is a significant gap between our initial response and a supplier's request to negotiate. For example, we may provide our initial response on day 30 and the supplier may not request a negotiation until day 40 – this additional 10 days is counted in the reported negotiation period,
- where there is considerable 'back and forth' between Coles and a supplier, and
- where a supplier introduces additional information during a negotiation which Coles may take some time to consider before concluding its position.

As you know, Coles takes its obligations under the Code very seriously. We have taken a number of actions to minimise our risk of non-compliance with the Code's new price increase provisions, including:

- adding resources to the central team that assesses supplier price increase requests and makes recommendations to Category Managers (this team now has 11 people who are actively involved in these assessments). This team is also responsible for tracking price increase requests and sending reminders to Category Managers as the 30-day deadline to respond to a supplier approaches.
- conducting extensive training of Category Managers and other relevant team members (both face-to-face and online) around the time the Code's new price increase provisions came into effect. Relevant new starters are also trained on the requirements.
- implementing an automated email scrape to try to detect price increase requests that suppliers have sent to the incorrect email address.
- implementing an IT fix in our fresh produce quoting system to prevent suppliers submitting quotes more than 30 days in advance.