

# *Balmain House*

## **Report by Hon J. Kennett AC as Code Arbiter for Coles Supermarkets Pty Ltd 30<sup>th</sup> June 2022**

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Mr Chris Leptos AM  
Independent Reviewer  
Food and Grocery Code  
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**In compliance with section 36D of the Grocery Code, I submit my Annual Report for the Financial Year ended June 30<sup>th</sup>, 2022.**

### **History**

Having commenced working as the Arbiter of disputes between Coles Supermarkets Pty Ltd and their suppliers in 2014, that role changed to Code Arbiter for the Coles Group Limited in November 2020 to comply with changes to the Federal Regulations.

### **Activity in the financial Year to June 30<sup>th</sup> 2022.**

1. Over the last 12 months I have only had two matters brought to my attention. Both were from small suppliers to Coles.

One was a small West Australian supplier, the other Victorian.

The first querying some accounting practices, the latter freight charges levied.

As is so often the case with small suppliers, there was a lack of knowledge by the supplier, or confusion over the terminology used in a contract. Both once explained, and an act of generosity by Coles, both issues were resolved satisfactorily.

For both matters, I was able to complete my investigations within the 20 business day's required by the Code.

Knowing the suppliers circumstances I did not push to accelerate the arbitration.

2. I have had both a personal meeting and phone discussions with the Independent Reviewer Mr Chris Leptos, to discuss the deliverables of our work and in particular to discuss the findings of the Reviewer's first survey of the supermarket sector for which the Code was established.

The Honourable  
J E F F R E Y G . K E N N E T T A C

Without going into details here those discussions were constructive, and I am sure will lead to more meaningful outcomes as a result of the second survey to be conducted towards the end of this year.

3. As a result of discussions between Mr Leptos, Ms Leah Weckert, Chief Executive - Commercial and Express at Coles, and myself, Coles and I have updated my role as their Code Arbiter on the Coles website to ensure the suppliers to Coles are fully aware of my existence and role.
4. Ms Weckert and I have addressed Coles' Category Managers, and will be addressing shortly Coles Suppliers on the processes both expected of the former in dealing with Suppliers, and the latter of what is available to them in the event of concerns or disputes.
5. There were no complaints received in relation to which I made a recommendation that Coles pay compensation in excess of \$5 million.

**Clause 27B Requirements.**

Please find attached the relevant information required of me regarding price increases received by Coles in the last year and their treatment of those requests.

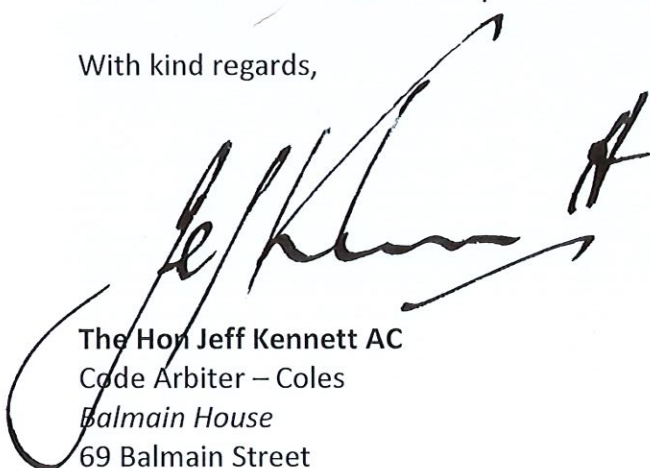
May I make an observation, that in a time of higher inflation, supply chain interruptions, the impact of floods, this requirement is particularly bureaucratic and time consuming and therefore costly to Coles and all supermarkets.

I am not sure the inclusion of this clause ever envisaged the events described above coming into play as they have together over the last six months. Sadly, I expect these issues to continue throughout 2023.

That said I have not received one complaint on the issue of price increases in the last year, nor since the beginning of this financial year.

I am available to discuss this report should anyone wish to do so.

With kind regards,



The Hon Jeff Kennett AC  
Code Arbiter – Coles  
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5<sup>th</sup> August 2022

cc Ms L Weckert  
[leah.weckert@coles.com.au](mailto:leah.weckert@coles.com.au)

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|--|--|
| <i>(a) the total number of notifications given under section 27A(2) by Coles to any supplier during the financial year:</i>  | 4126   |
| <i>(b) the number of those 4126 notifications that were not given within the 30-day period required by 27A(2):</i>   | 6<br><i>The root cause of the breaches generally arose from multiple requests being submitted from the same supplier around the same time (and it was not clear that there was more than one request).</i>               |
| <i>(c) the total number of negotiations entered into during the financial year following requests made under subclause 27A(3):</i>   | 664  |
| <i>(d) the number of those 664 negotiations in which Coles did not conclude its position within the period of 30 days starting on the day (the notification day) that Coles was notified of the relevant proposed price increase by the supplier:</i>                          | 552<br><i>Noting that section 27A(4) does not require Coles to conclude its position within 30 days, but does require Coles to take all reasonable steps to conclude its position on the negotiations without delay.</i> |
| <i>(e) For each of the 552 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:</i> | Refer below<br><i>(65 negotiations had yet to be concluded by 30 June 2022)</i>  |

|                              |                              |                              |                              |
|------------------------------|------------------------------|------------------------------|------------------------------|
| 2 negotiations took 31 days  | 4 negotiations took 57 days  | 10 negotiations took 83 days | 6 negotiations took 109 days |
| 7 negotiations took 32 days  | 5 negotiations took 58 days  | 20 negotiations took 84 days | 3 negotiations took 110 days |
| 4 negotiations took 33 days  | 2 negotiations took 60 days  | 6 negotiations took 85 days  | 3 negotiations took 111 days |
| 7 negotiations took 34 days  | 3 negotiations took 61 days  | 4 negotiations took 86 days  | 2 negotiations took 112 days |
| 8 negotiations took 35 days  | 6 negotiations took 62 days  | 13 negotiations took 87 days | 2 negotiations took 113 days |
| 7 negotiations took 36 days  | 10 negotiations took 63 days | 10 negotiations took 88 days | 3 negotiations took 116 days |
| 7 negotiations took 37 days  | 4 negotiations took 64 days  | 6 negotiations took 89 days  | 5 negotiations took 117 days |
| 7 negotiations took 39 days  | 2 negotiations took 65 days  | 4 negotiations took 90 days  | 1 negotiation took 118 days  |
| 4 negotiations took 40 days  | 6 negotiations took 66 days  | 8 negotiations took 91 days  | 3 negotiations took 119 days |
| 9 negotiations took 41 days  | 8 negotiations took 67 days  | 5 negotiations took 92 days  | 3 negotiations took 120 days |
| 4 negotiations took 42 days  | 5 negotiations took 68 days  | 5 negotiations took 93 days  | 1 negotiation took 121 days  |
| 2 negotiations took 43 days  | 7 negotiations took 69 days  | 6 negotiations took 94 days  | 2 negotiations took 123 days |
| 6 negotiations took 44 days  | 12 negotiations took 70 days | 5 negotiations took 95 days  | 1 negotiation took 125 days  |
| 2 negotiations took 45 days  | 7 negotiations took 71 days  | 4 negotiations took 96 days  | 1 negotiation took 126 days  |
| 3 negotiations took 46 days  | 2 negotiations took 72 days  | 1 negotiation took 97 days   | 1 negotiation took 127 days  |
| 5 negotiations took 47 days  | 1 negotiation took 73 days   | 4 negotiations took 98 days  | 1 negotiation took 130 days  |
| 2 negotiations took 48 days  | 5 negotiations took 74 days  | 2 negotiations took 99 days  | 1 negotiation took 131 days  |
| 5 negotiations took 49 days  | 7 negotiations took 75 days  | 4 negotiations took 100 days | 2 negotiations took 132 days |
| 6 negotiations took 50 days  | 11 negotiations took 76 days | 2 negotiations took 101 days | 1 negotiation took 136 days  |
| 5 negotiations took 51 days  | 10 negotiations took 77 days | 2 negotiations took 102 days | 2 negotiations took 137 days |
| 11 negotiations took 52 days | 8 negotiations took 78 days  | 7 negotiations took 104 days | 1 negotiation took 138 days  |
| 12 negotiations took 53 days | 5 negotiations took 79 days  | 8 negotiations took 105 days | 2 negotiations took 143 days |
| 3 negotiations took 54 days  | 3 negotiations took 80 days  | 4 negotiations took 106 days | 2 negotiations took 147 days |
| 5 negotiations took 55 days  | 8 negotiations took 81 days  | 2 negotiations took 107 days | 1 negotiation took 149 days  |
| 8 negotiations took 56 days  | 8 negotiations took 82 days  | 3 negotiations took 108 days | 1 negotiation took 159 days  |
|                              |                              |                              | 1 negotiation took 180 days  |