



Australian Government



**FOOD AND
GROCERY CODE**
INDEPENDENT REVIEWER

Annual Report 2021–22

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Foreword

I am pleased to present the Annual Report for 2021–22, prepared in accordance with my responsibilities as the Independent Reviewer under the Food and Grocery Code of Conduct (the Code).

This Annual Report includes key findings from ‘deep dives’ that I conducted with suppliers from March to May this year, and the annual survey of suppliers, retailers, and wholesalers that I conducted in September this year. A key element of my role is to engage and consult with these parties and the Code Arbiters.

I have also consulted with the Australian Competition and Consumer Commission (ACCC), the Australian Small Business and Family Enterprises Ombudsman (ASBFEO), the Australian Food and Grocery Council (AFGC), the National Farmers’ Federation Horticulture Council, and numerous other bodies representing suppliers.

I met with all four Code Arbiters as a group, to discuss how their processes were being implemented and to encourage the sharing of good practices.

I found it useful to have an exchange of views with the Groceries Code Adjudicator in the UK, Mr Mark White, to learn from his experiences and to discuss industry-wide trends such as inflationary induced cost increases.

I worked with the Code Arbiters, Code Signatories, and supplier representatives to set up new arrangements for Code Arbiters to receive supplier complaints informally – i.e. without lodging a formal complaint under the Code.

I presented at a number of industry events, notably the AFGC’s Annual Conference, and I have published my views in a number of media articles. I have also published the voluntary undertakings that I received from the four Code Signatories.

In addition to publishing last year’s Annual Report, I provided a ‘private volume’ of data to each Code Signatory, highlighting their performance against each other – in effect, a peer ranking from a supplier perspective. I propose to produce the private volume of supplier rankings again this year.

During the year I notified the ACCC that a Code Signatory did not meet the reporting requirements of the Code. I am satisfied that this is a transition issue, and that appropriate measures have been taken by that Code Signatory.

I did not receive any supplier requests during the reporting period to review the complaints handling processes conducted by the Code Arbiters for the 12 months ended 30 June 2022. However, I received such a request a few weeks after the reporting period which related to activities during the reporting period. Therefore, I have included references to that complaint in this report.

My overall assessment is that the Code is having a strong positive impact on the dealings between suppliers and retailers/wholesaler in the food and grocery sector. However, my dealings this year with the Coles Group, and its Code Arbiter, have caused me to conclude that some important changes are required to the Code.



Finally, I would like to again record my personal thanks to the very capable members of the Market Conduct Division of Treasury who supported my work and provided expert advice over the past year.

This annual report will be provided to the ACCC and published on the Independent Reviewer's website.

If you would like to have a confidential discussion with me on matters relating to the Code, please contact me via the web form on the [Independent Reviewer's website](#).

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

Chris Leptos AO

Overview of the Code

The Code is a voluntary code that was introduced in 2015 under the *Competition and Consumer Act 2010*, to address harmful practices in the grocery sector stemming from an imbalance of bargaining power between retailers/wholesaler and suppliers.

The Code has four 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
- 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) have signed on as Signatories.

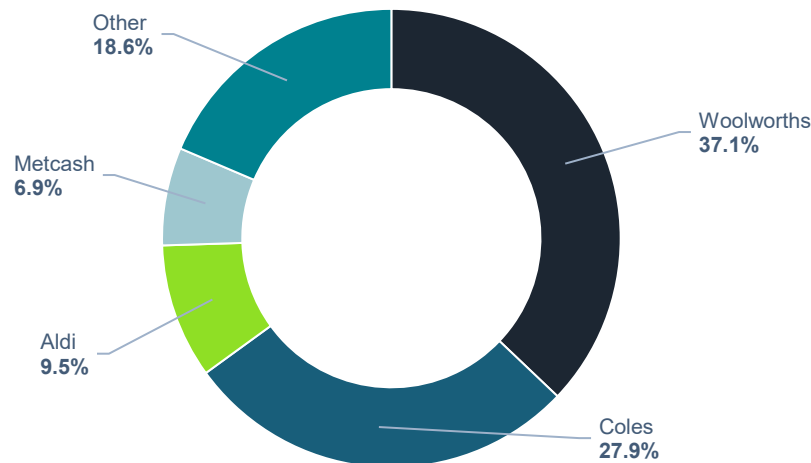
A review of the Code's dispute resolution processes contained in Part 5 of the Code is currently underway. A report is due to the Government by 30 April 2023 on the effectiveness of the dispute resolution provisions to date and, if appropriate, recommend improvements to the process.¹

1 Food and Grocery Code of Conduct Review 2022–23,
<https://treasury.gov.au/review/food-and-grocery-code-of-conduct-review-2022>.

Food and grocery sector in 2021/2022

Composition of supermarket sector

Figure 1. Food and grocery sector market share for the financial year 2021–22²



The supermarket retail and wholesale industry is made up of over 2,000 business enterprises, employing around 393,000 people, with a total revenue expected to rise at an annualised 2.5 per cent (over the five years from 2017 to 2022) to \$124.9 billion.³

The four largest food and grocery retailers and wholesalers are Woolworths, Coles, Aldi, and Metcash. Together they held around 81 per cent of market share in 2021–22, as shown in Figure 1.⁴

The food and grocery manufacturing sector (suppliers) in Australia has a turnover of \$133.6 billion and is made up of around 16,000 businesses, employing around 270,000 people.⁵

Reports of the Code Arbiters & Survey of Code Signatories

Key findings from Code Arbiters' reports

Code Arbiters must prepare a written report each year setting out the number of complaints received for investigation, the nature of the complaints, the outcomes, and a range of other

² Ibid, p 8.

³ IBISWorld, Industry Report G4111: Supermarkets and grocery stores in Australia, Stockpiling: COVID-19 outbreaks have aided industry demand and revenue growth, Mar 2022, p 7.

⁴ IBISWorld, Industry Report G4111: Supermarkets and grocery stores in Australia, Stockpiling: COVID-19 outbreaks have aided industry demand and revenue growth, Mar 2022, p 7.

⁵ Australian Food and Grocery Council, *Food and grocery manufacturing holds strength despite pandemic stress*, <https://www.afgc.org.au/news-and-media/2022/08/food-and-grocery-manufacturing-holds-strength-despite-pandemic-stress>, 15 August 2022, (accessed 7 November 2022).

information. Copies of the report must be given to the retailer or wholesaler for publication on their website, the ACCC, and the Independent Reviewer.

Metcash disclosed through the Metcash Code Arbiter Report 2022 that it had addressed technical issues preventing the capture of information required to comply with clause 27B. However, as Metcash implemented measures from 22 November 2021, the information provided does not include the period from 1 July to 22 November 2021.

This matter was referred to the ACCC for further consideration.

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 and the nature of the complaint is explained below.

Table 1. Number and nature of complaints

Code Signatory	Number of formal complaints	
	2020–21	2021–22
Woolworths ⁶	0 ⁷	0
Coles ⁸	3	2
Metcash ⁹	0	0
Aldi ¹⁰	0	0

Of the two complaints received by Coles Code Arbiter during the 2021–22 financial year, one was in relation to accounting practices, and the other was in relation to freight charges levied.

Price rise notifications and negotiations¹¹

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.

- Woolworths gave 2,104 notifications in response to being informed of a price rise increase from suppliers. Suppliers requested negotiations with respect to 1,627 of the 2,104 notifications. 1,176 negotiations (72 per cent) were not concluded within 30 days of the request.
- Coles gave 4,126 notifications and entered 664 negotiations, of which 552 negotiations (83 per cent) were not concluded within 30 days of the request.
- Metcash gave 739 notifications in the period 22 November 2021 to 30 June 2022 in response to being informed of a price increase by suppliers. Metcash entered negotiations for 24 notifications, with 12 negotiations (50 per cent) not concluding within 30 days.
- Aldi gave 1,140 notifications and entered negotiations for 21 notifications, with 7 negotiations (33 per cent) not concluding within the 30 days.

6 Woolworths Code Arbiter Report, <https://grocerycodereviewer.gov.au/code-arbiter/woolworths>, pp. 1-5. The report identified one matter that is not in scope for the Code.

7 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.

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

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

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

11 Notifications are per product and multiple notifications may be attributed to a single supplier.

The longest time taken to conclude negotiations was 180 days from Coles. See section below for further information on price notifications and negotiations. The full Code Arbiters reports are available at www.grocerycodereviewer.gov.au/resources.

Commentary on retailer/wholesaler survey responses

The Independent Reviewer must conduct an annual survey of the Code Signatories. In September 2022, the Independent Reviewer carried out the second survey of Code Signatories under the Code. The survey was in relation to the 2021–22 reporting period and covered topics such as ongoing relationship between Code Signatories and suppliers, new dispute resolution arrangements, 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 took steps to inform suppliers about these changes (which have been adopted outside of the Code), and the Code Arbiters have informally reported a moderate uptake of these new arrangements.

Staff training

The responses from the Code Signatories this year highlight the significant training efforts undertaken within the organisations to promote compliance with the Code.

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

- Woolworths, Coles and Metcash stated that they have mandatory training for new buying team members which must be completed within 20 days of commencing the role. Aldi provides hardcopy training material to new employees in the first 20 days.
- All the Code Signatories require training on the Code annually for relevant staff, consisting of either face-to-face or online training, or a combination of both.

Code Signatories test staff knowledge of the Code as part of their training.

- Woolworths, Coles, and Metcash's training include competency assessments.
- Aldi, Metcash, and Coles stated they provide supplementary training on specific areas of the Code, using case studies.
- Woolworths noted that additional training is sometimes provided where survey feedback from suppliers indicate further training may be beneficial.

Price increase notifications and negotiations

The Code Signatories saw an unprecedented increase in the number of price increase requests from suppliers throughout 2021–22. Each Signatory has provided additional staff and resources to help process requests in a reasonable and timely manner.

Code Signatories also reported reviewing their internal processes to ensure suppliers receive responses to price rise requests within 30 days, as required by the Code, and to improve the suppliers' experience initiating and detailing a price increase request.

Where Code Signatories took more than 30 days to conclude negotiations around price increases, the cause was attributed to:

- the supplier notifying the Signatory that it wished to enter negotiations after the initial 30-day period had passed.
- complex pricing and promotional structures, which often resulted in multiple iterations of requests being made.

Cost of compliance with the Code

The Code Signatories acknowledged the costs associated with implementing the requirements of the Code, including staff training, reporting requirements, and Code Arbiter fees; however, all noted the implementation of the Code has led to positive cultural change in the dealings between the Code Signatories and suppliers.

Complaints reviewed during the 2021–22 year

The Independent Reviewer did not receive any supplier requests to review the complaints handling processes conducted by the Code Arbiters during the reporting period. However, the Independent Reviewer received such a request a few weeks after the reporting period which related to activities during the reporting period. Therefore, that complaint is included in this report.

The Independent Reviewer received a request from a supplier to review a decision by the Coles Code Arbiter. On 21 September 2022, the Independent Reviewer notified the Coles Code Arbiter, Coles, and the supplier that he was conducting a review of the complaints handling process and requested that the Code Arbiter provide the files and documents related to the complaint as part of this independent review process. Those files were provided by the Coles Code Arbiter on 7 October 2022.

The Independent Reviewer provided his final decision to the Coles Code Arbiter on 27 October 2022, recommending that the Code Arbiter reconsider the matter on the basis that it was not clear that Coles had provided reasonable notice to the supplier of a delisting of products, nor provided genuine commercial reasons as part of that notice, as required by the Code.

On 9 November 2022, the Code Arbiter notified the Independent Reviewer that he had considered the recommendations of the Independent Reviewer and the Code Arbiter's findings remained unchanged – i.e. the Code Arbiter rejected all recommendations.

Independent Reviewer commentary:

- I am satisfied that Coles did not comply with the Code – my specific concerns were detailed in my draft and final decisions, which were provided to the Code Arbiter and to Coles.
- I am satisfied that the Code Arbiter's decision was flawed. Also, the Code Arbiter has declined to comply with the recommendations resulting from my Independent Review.
- I have written to the ACCC noting my concerns, and recommending that the ACCC take certain actions.
- Coles has also advised me that they do not agree with my decision.
- My concerns regarding Coles, and its Code Arbiter, highlight the need to strengthen the Code. I have briefly outlined my proposed changes to the Code later in this report.
- Where I agree with Coles is that greater clarity is desirable in the dispute handling provisions of the Code, and some published guidelines by the Independent Reviewer could be helpful.
- I encourage all participants in the food and grocery sector to make submissions to the current Review of the Dispute Resolution Provisions of the Code.

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 was very similar to the survey conducted last year, with some changes to make it easier for suppliers to complete. There were also changes to some survey questions to better align with the Code, so that the analysis could more effectively inform the Code Signatories on how to improve their performance against the Code's requirements.

The survey was accessible from 5 September 2022 until 3 October 2022. The survey was completed with the cooperation of the Code Signatories who sent the survey link to suppliers. This year, where possible, the aim was for the signatories to send 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 suppliers' feedback on the effectiveness of the Code, and how the retailer/wholesaler had conducted themselves throughout the 2021–22 reporting period. Questions were on 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 407 suppliers responded to the survey – compared to 458 last year. Many suppliers provided responses for more than one retailer/wholesaler, taking the total number of unique responses to 999 compared to 1,082 last year. The decrease in the response rate for this year's survey may be explained by changes to the distribution list to reduce the number of supplier contacts in receipt of the survey to one contact per supplier. 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	267	1,654 ¹²	16%	3,200 ¹³
Coles	274	1,811	15%	1,925
Metcash	241	3998	6%	2140
Aldi	217	1,440	15%	1,675

12 Woolworths noted that 37 of these were duplicate emails sent to more than one individual within the same organisation, either because the most appropriate contact could not be identified or where separate emails were sent to independently operated divisions of large suppliers.

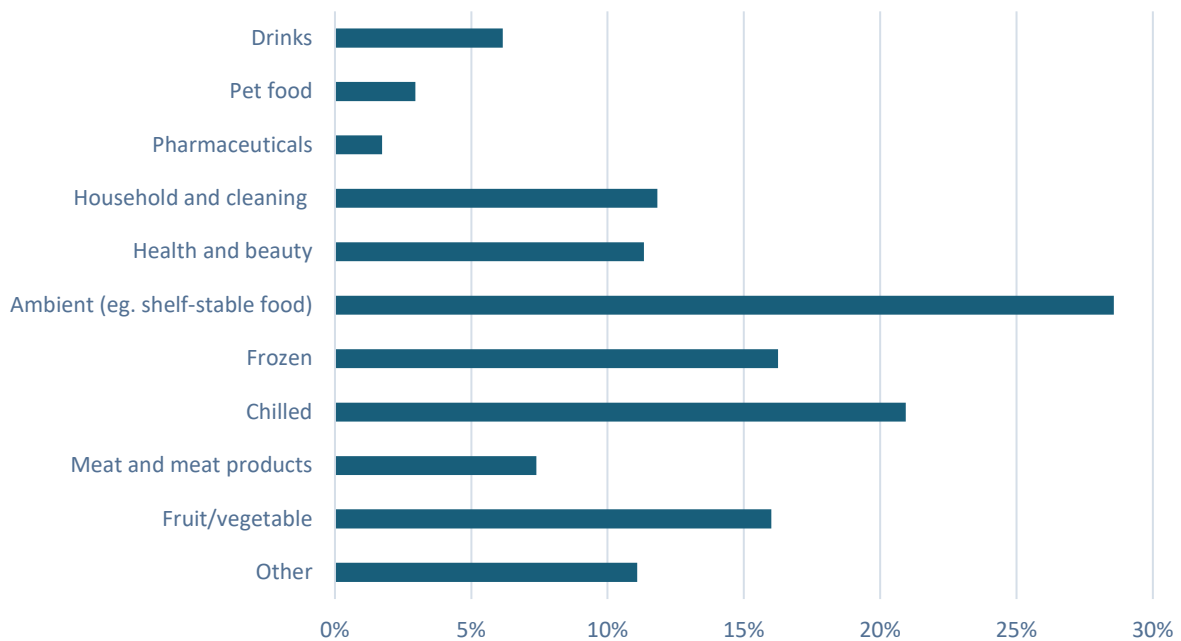
13 Woolworths was unable to provide the precise total number of suppliers, however the approximate count is 3,200.

Characteristics of respondents

Responses were received from suppliers that had a turnover below \$1 million, all the way up to suppliers with a turnover over \$1 billion. The largest proportion of respondents indicated their turnover was between \$10 million and \$50 million.

Respondents were also asked which product/s they supply, with many respondents reporting more than one product type supplied. As seen in Figure 2, a large proportion of respondents supplied ambient (e.g. shelf-stable foods) or chilled products, while pharmaceutical suppliers made up the lowest proportion of responses. The make-up of respondents for the 2021–22 survey is consistent with the 2020–21 survey.

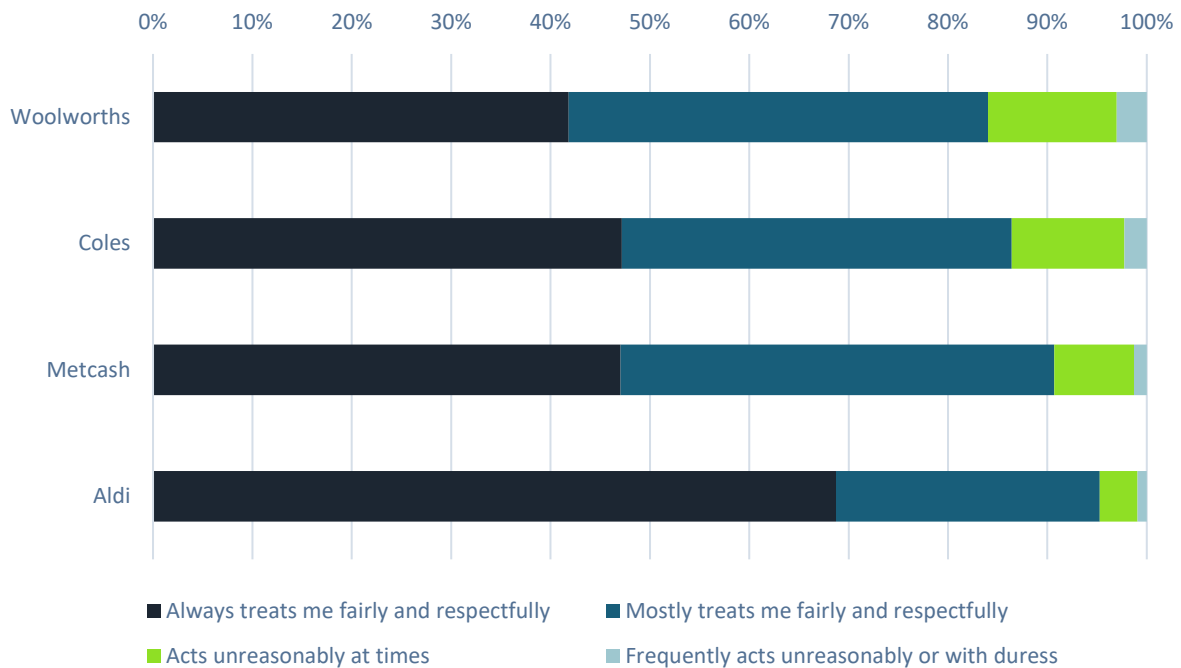
Figure 2. Food and groceries supplier by respondents



Key findings from the survey of suppliers

Fair dealings with retailers and wholesaler

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



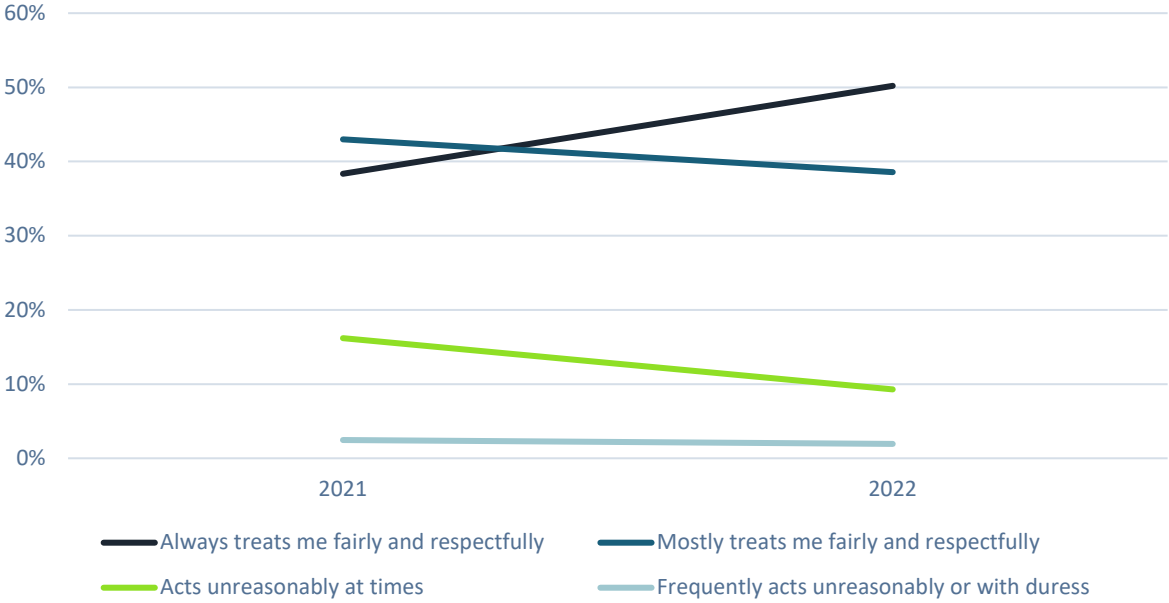
Overall responses to the question indicate that most suppliers have fair dealings with their retailer/wholesaler:

- 50 per cent indicated that they were always treated fairly and respectfully by their retailer/wholesaler.
- 38 per cent identified that their retailer/wholesaler mostly treated them fairly and respectfully.
- 9 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 Woolworths, a higher proportion of suppliers indicated that they were mostly treated fairly and respectfully rather than always treated fairly and respectfully. For all other Code Signatories, “always treats me fairly and respectfully” received the highest number of responses.

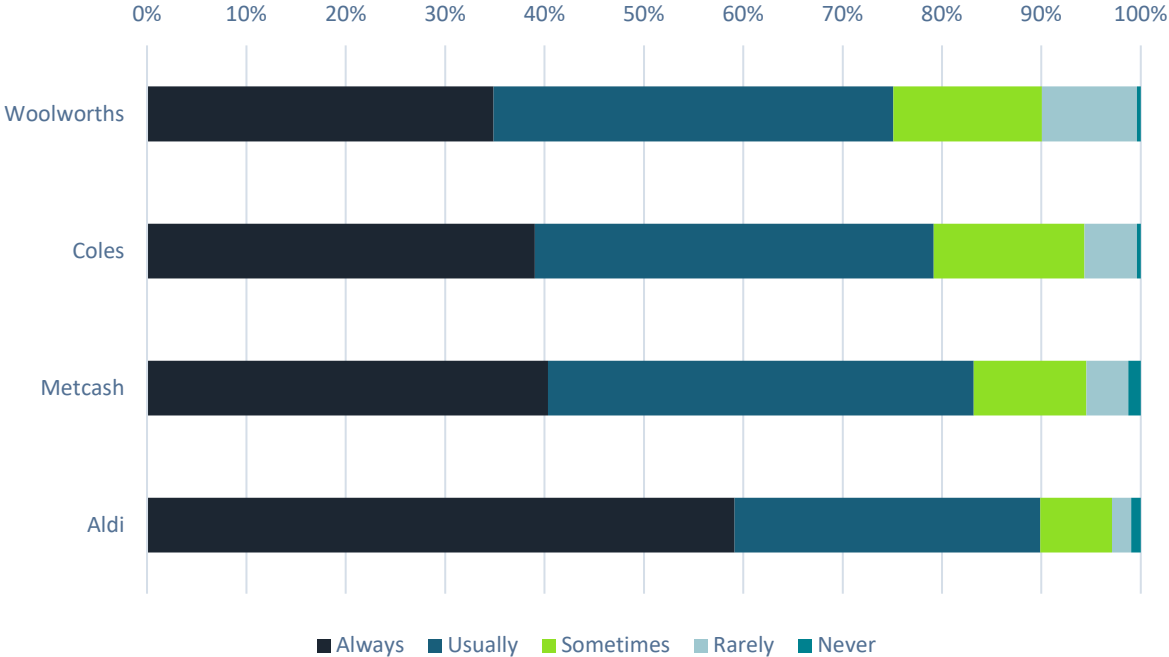
Like last year’s results, Aldi had the highest proportion of its suppliers indicate that they were always treated fairly and respectfully. Figure 4 shows the proportion of suppliers indicating they are always treated fairly and respectfully by the Code Signatories has increased compared to last year.

Figure 4. Industry-wide results for fair and reasonable dealings in 2020–21 and 2021–22



Supplier issues resolved promptly

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 with 90 per cent of Aldi respondents indicating it always or usually took action to resolve issues. Between 75 and 84 per cent of suppliers to Woolworths, Coles, and Metcash who answered the question reported the same. This represents a substantial improvement across all Code Signatories, with the most significant improvement by Metcash from 83 per cent of Metcash suppliers indicating that Metcash always or usually took prompt, constructive action to resolve issues, compared to 66 per cent last year.

Conduct experienced from the retailers and wholesaler

Suppliers were asked to identify any issues with their retailers/wholesaler, covered by the Code, that they faced during the 2021–22 reporting period. Figure 6 shows supplier responses in relation to each issue.

Last year's survey did not require suppliers to respond to this question if they did not experience any of the listed issues, it also did not provide a specific option for suppliers to identify that none of the issues were experienced. Suppliers were provided this option in the 2021–22 survey.

The majority of respondents to the survey identified that no issues were experienced with the retailer/wholesaler they supplied – 60 per cent of Woolworths' suppliers; 65 per cent of Coles' suppliers; 71 per cent of Metcash's suppliers; and 74 per cent of Aldi's suppliers indicated they had experienced no issues with that retailer/wholesaler.

Of the suppliers that chose to select from one or more of 20 issues, suppliers identified the most common issues experienced were payments later than the agreed payment terms and deductions off invoice or remittance without consent.

A higher proportion of Woolworths suppliers reported issues across the categories compared to the other Code Signatories. The two most prominent issues cited by Woolworths' suppliers were deductions off invoice or remittance without consent and suppliers being required to fund promotions despite it being unreasonable in the circumstances.

The key issue reported by Coles' suppliers was delisting without genuine commercial reason. Metcash suppliers reported the wholesaler overordering at a promotional cost and selling at full price more than the other retailers. Aldi suppliers were the most likely to identify payments occurring later than the agreed payment terms.

Figure 6. Issues experienced by suppliers with their retailer/wholesaler

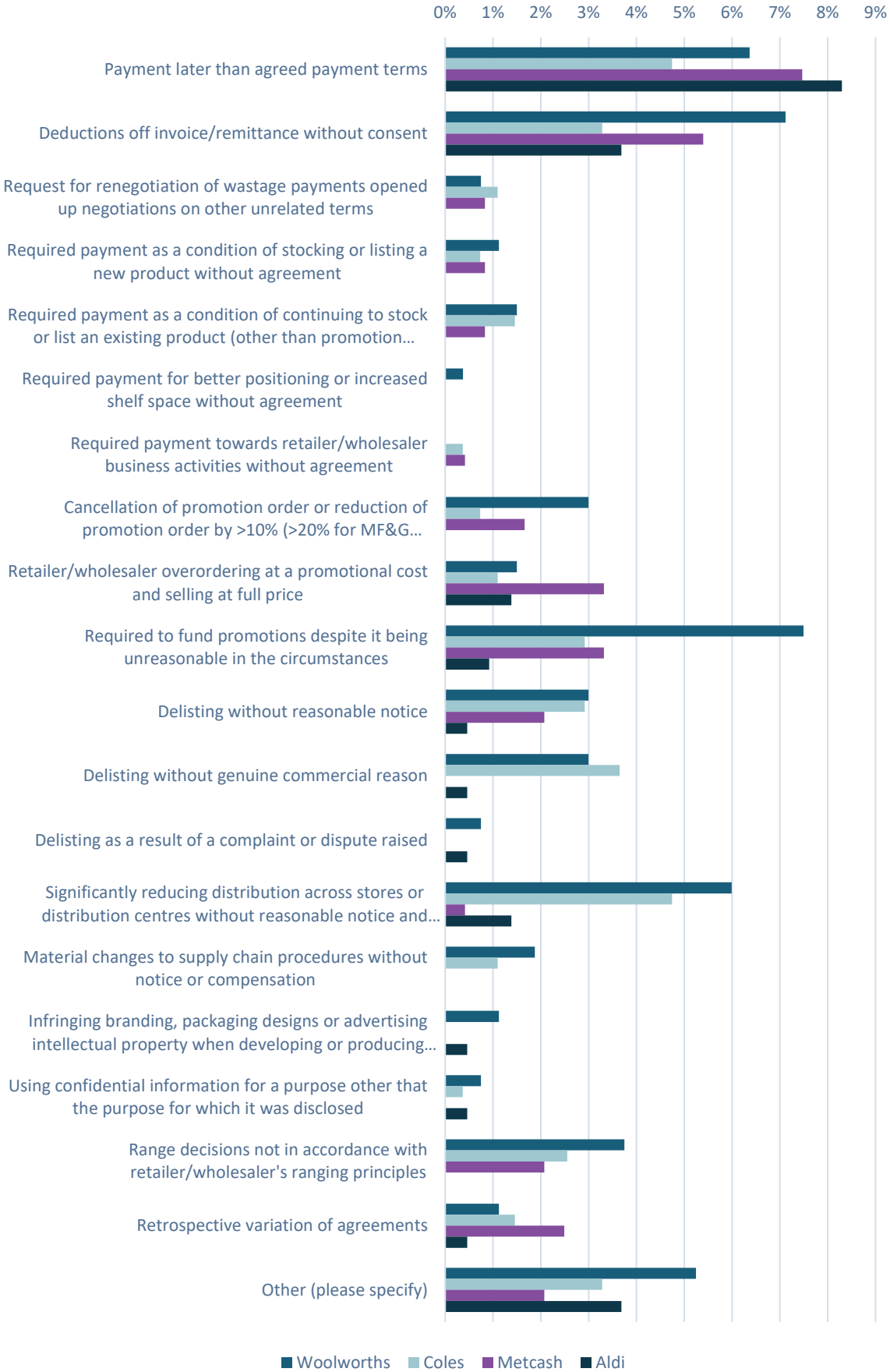


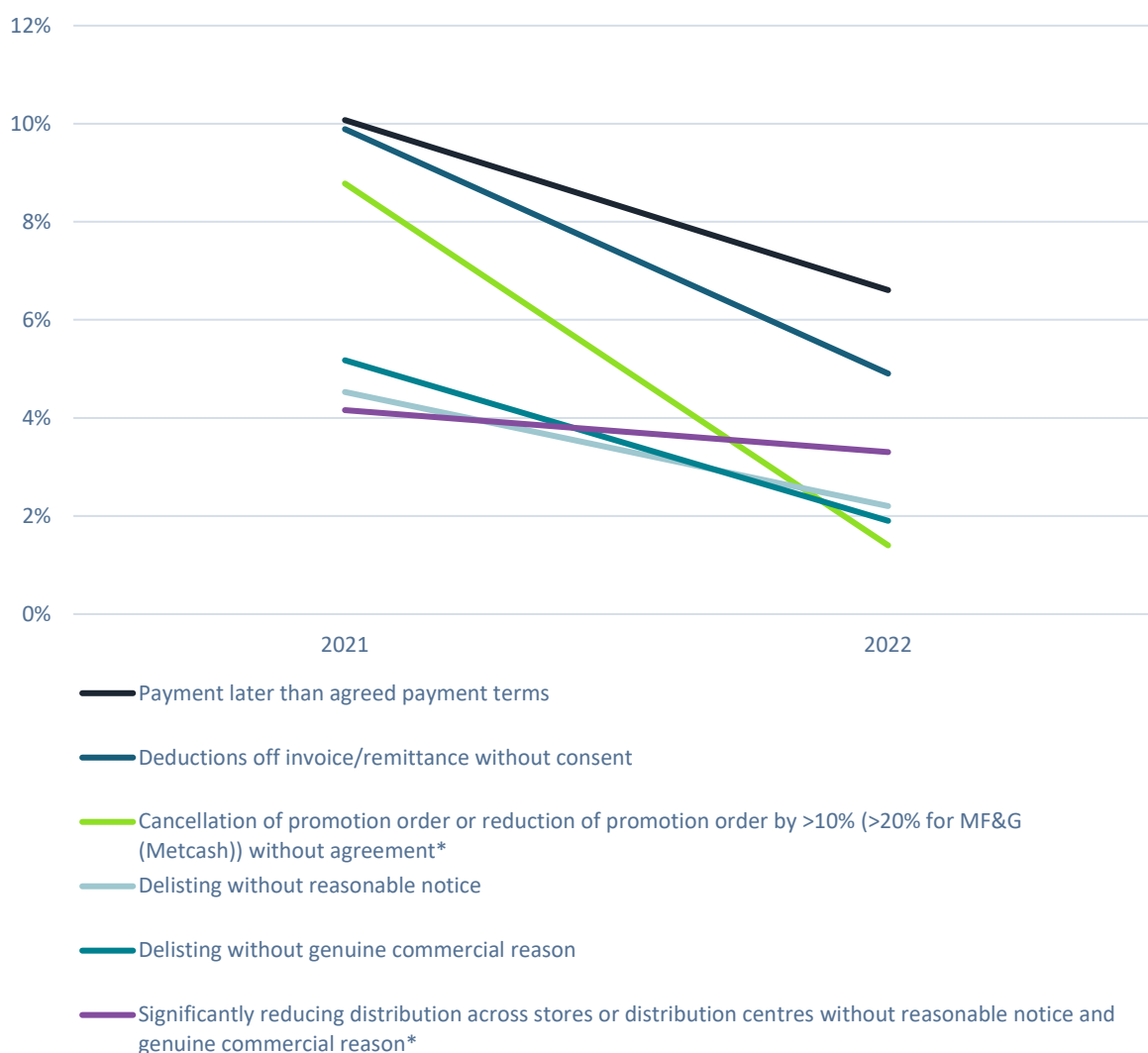
Figure 7 shows selected issues experienced as reported in the 2020–21 and 2021–22 surveys. At an industry-wide level, the main issues identified have shown a decrease since last year.

The survey results show an overall reduction in late payments made without the supplier’s agreement in 2021–22 compared with the previous year.

The results also show a reduction in the proportion of suppliers reporting deductions off invoice or remittance without consent. This overall improvement can be attributed to a significantly lower proportion of Coles’ and Metcash’s suppliers reporting this as an issue in 2021–22, while the issue persisted for Woolworths’ and Aldi’s suppliers.

The largest year to year reduction amongst the categories was for cancellation of a promotion order or reduction of a promotion order by more than 10 per cent (or more than 20 per cent for Metcash) without agreement. This decreased from 9 per cent of suppliers reporting experiencing this issue in 2020–21 to only 1 per cent in 2021–22. However, this may be explained by amendments made to the description of the issue in the 2021–22 survey to identify occurrences without supplier agreement.

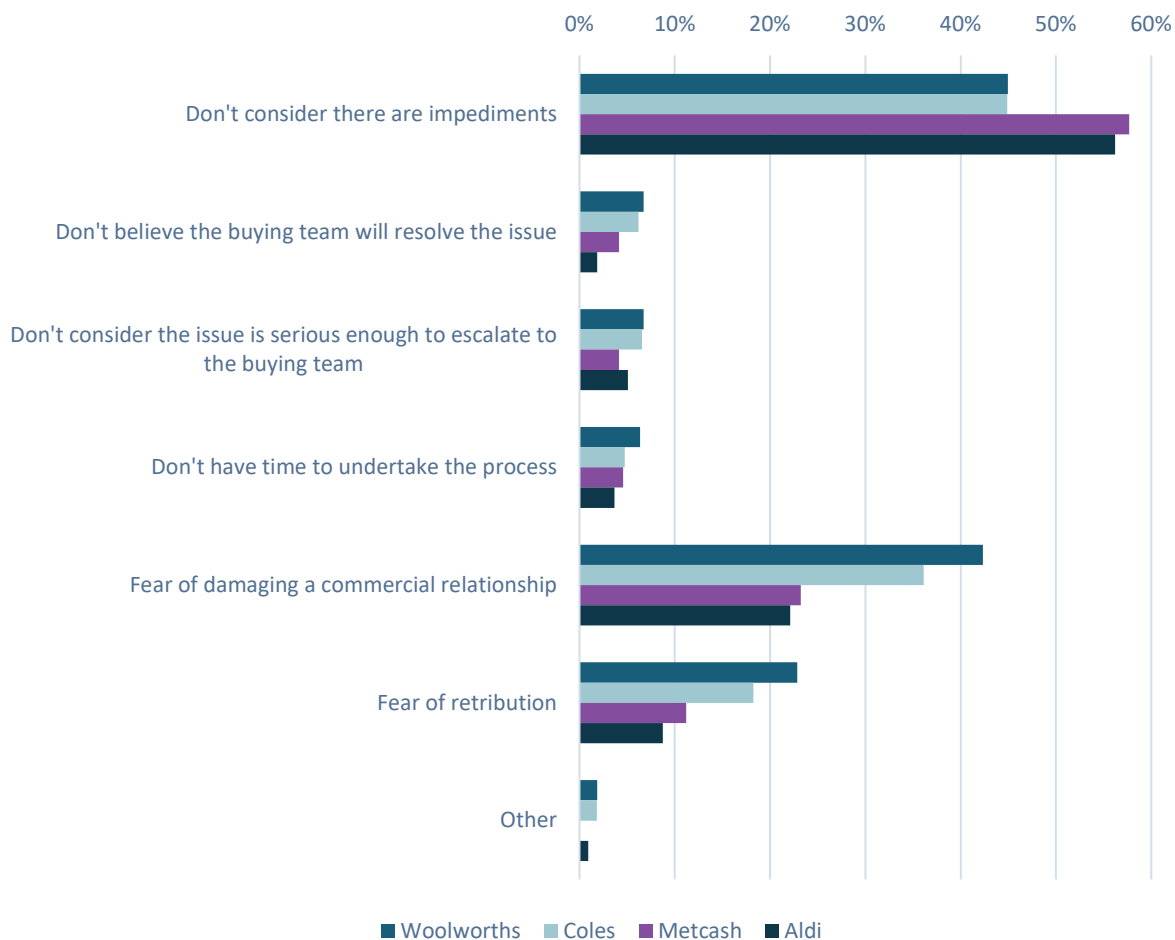
Figure 7. Industry-wide results for issues experienced in 2020–21 and 2021–22



*Note: the description of these issues was altered for the 2021–22 survey to better align with the provisions in the Code.

Raising supplier complaints

Figure 8. Impediments to raising an issue with the buying team



Over 45 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 represents a notable increase from an average of 24 per cent of last year’s respondents considering that there were no impediments.

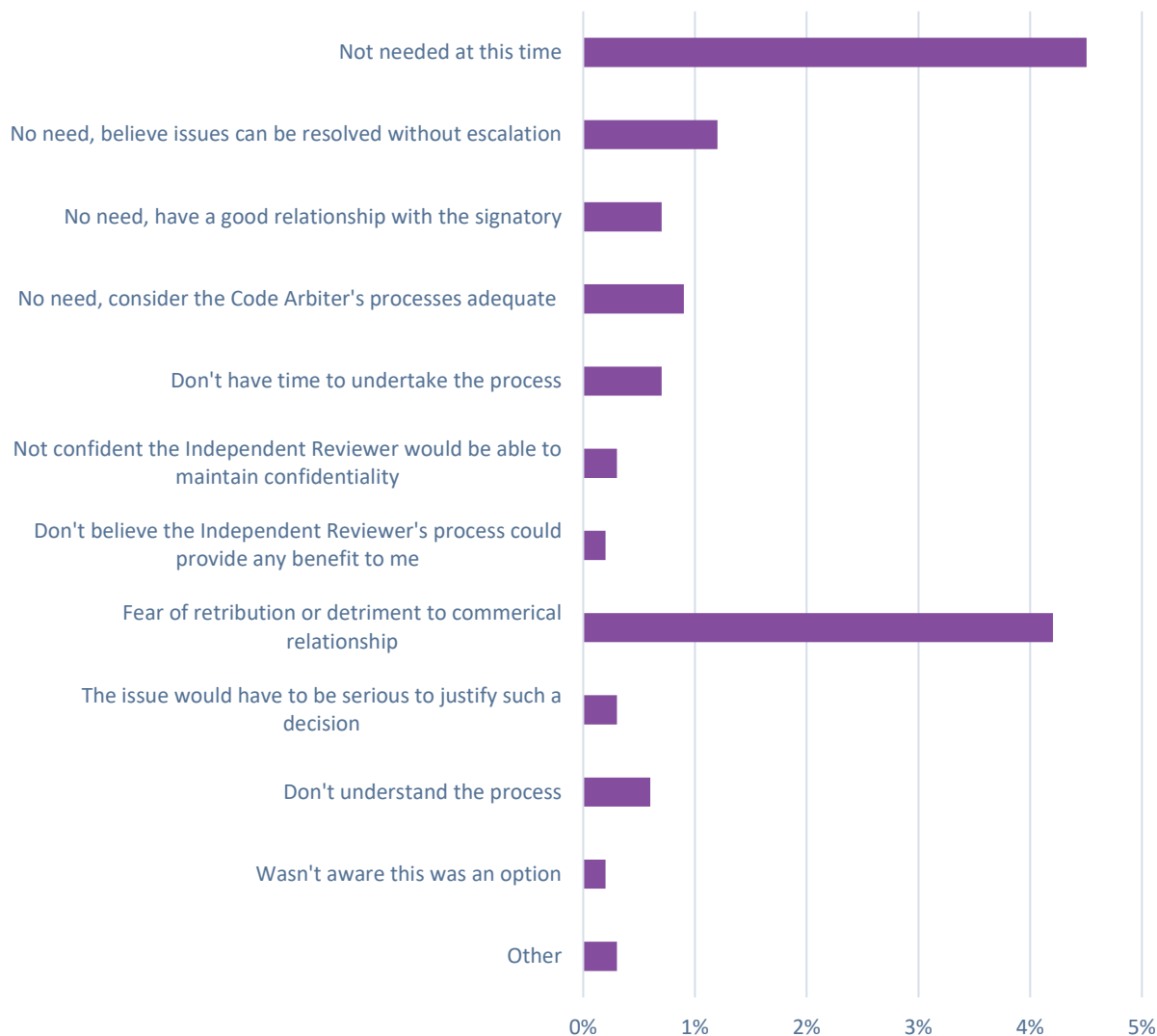
Of the suppliers that identified impediments to raising an issue with the buying team, fear of damaging a commercial relationship and fear of retribution were the most common reasons.

Over 35 per cent of respondents to Woolworths and Coles identified fear of damaging a commercial relationship as a key impediment, compared to 23 per cent for Metcash, and 22 per cent for Aldi.

Between 9 and 23 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 of the four Code Signatories. Last year between 11 per cent (Aldi) and 31 per cent (Woolworths) of respondents considered fear of retribution to be an impediment to bringing a complaint to their retailer/wholesaler’s buying team.

Bringing a complaint to the Independent Reviewer

Figure 9. Key impediments to 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.

26 per cent of respondents to this question reported that they would not 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. Figure 9 shows the most common reasons given by suppliers.

The two most common reasons provided by suppliers were that they did not consider they needed to bring a complaint at the current time, or that they were concerned about retribution or causing damage to their commercial relationship with retailer/wholesaler.

Overall observations

This annual survey is the second to be conducted by the Independent Reviewer, with results becoming more telling as comparisons can be drawn to last year's results to consider whether the work of the Code Signatories, Code Arbiters, and the Independent Reviewer has made a positive impact, or not, on the industry.

The results indicate that suppliers generally have constructive dealings with their retailer/wholesaler. At an industry-wide level, the proportion of suppliers who indicated that they were always treated fairly and respectfully by the Code Signatories has increased compared to last year. For three of the four Code Signatories, this category received the highest proportion of responses from suppliers. The survey also highlighted that compared to last year's results, all Code Signatories have improved their performance in "always taking prompt, constructive action to resolve issues raised".

The results also indicate that the proportion of suppliers who experienced issues is small in comparison to those that experienced no issues. Overall, 67 per cent of the total 999 respondents to the survey indicated that they did not experience any issues with their retailer or wholesaler during the 2021–22 financial year.

The remainder of suppliers were able to identify one or multiple issues experienced, based on a list of 20 issues. However, each issue suppliers reported having experienced made up less than 8 per cent of suppliers for each retailer/wholesaler. Additionally, at an industry-wide level, several issues experienced by suppliers decreased in the 2021–22 financial year compared to 2020–21, for example, there has been an overall improvement in terms of Code Signatories making late payments without supplier agreement in 2021–22 compared to the previous year. The survey results also show a reduction in the proportion of suppliers reporting deductions off invoice or remittance without consent.

Although the proportion of suppliers experiencing issues is small, it remains concerning to receive reports that suppliers are experiencing late payments, deductions, and being required to fund promotions despite it being unreasonable in the circumstances. The current high inflation environment makes these issues more challenging for suppliers, especially for small businesses that may find it difficult to maintain adequate cash flow. These supplier concerns warrant ongoing attention.

Additionally, fear of damaging a commercial relationship and fear of retribution were reported by suppliers to be the primary impediments to bringing a complaint to their retailer/wholesaler's buying team. However, fear of retribution has decreased as an impediment since last year. In the 2021–22 financial year, between 9 and 23 per cent of respondents considered fear of retribution to be an impediment to bringing a complaint to their retailer/wholesaler, compared with between 14 and 31 per cent in the 2020–21 financial year.

Overall, the results this year show healthy commercial relationships between the signatories and suppliers and improvements in performance compared to last year. However, there remain key areas for improvement that can directly impact suppliers' cash flow and sustainability.

The Code Signatories will receive individual reports to enable them to see areas where they have improved from last year and other areas where there is room for further improvement relative to their peers.

Changes to the Code recommended by the Independent Reviewer

Key observations and suggestions

Dealing with the Code over these past two years has provided me with a close-up view of what is working as envisaged, and what is not. Overall, the Code is working well and it is making a very significant contribution to a more respectful relationship between suppliers and Code Signatories. Importantly, it appears to me that the costs of implementing the Code (training; assessment; compliance; etc) do not appear to be unreasonably onerous on the Code Signatories.

However, this year I was confronted with several deficiencies in the Code.

Earlier this year I requested Coles to provide me access to the five closed complaint files held by its Code Arbiter. Both Coles and its Code Arbiter declined access to those files on the grounds of supplier confidentiality, even though I agreed to have the confidential information redacted before my review. I believe this is a deficiency in the Code that should be rectified.

Furthermore, during the year I conducted an independent review into a complaint against Coles and its Code Arbiter – as noted earlier in this report. I concluded that Coles had not complied with the Code, and the Code Arbiter's process was flawed. My recommendations were forcefully rejected by the Coles Code Arbiter.

My conclusion, regrettably, is that Coles and its Code Arbiter are not acting in accordance with the spirit of a voluntary code. I believe this highlights the weakness at the core of the current Code – specifically, that it is a voluntary undertaking with zero compliance penalties. My observations of Coles and its Code Arbiter have caused me to conclude that changes to the Code are necessary.

I have outlined below four suggested key changes to strengthen the Code, and to ensure that suppliers have confidence that the Code is meaningful:

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

Activities planned for 2023

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'Deep Dives' with suppliers will continue to be a feature of my work to ensure suppliers have a confidential forum for providing candid feedback to the Independent Reviewer.

I will be providing peer-rankings to the CEO of each Code Signatory, and sharing with them (on a de-identified basis) the views expressed to me by their suppliers.

A group meeting with the Code Arbiters will be scheduled in 2023.

Raising the awareness, among suppliers, of the Code Arbiters and Independent Reviewer will continue to be a priority.

I will continue to look for opportunities to engage with stakeholders at industry events.

I will continue to monitor for potentially systemic issues in the food and grocery sector that are relevant to the Code.

I will be making a submission to the review of Part 5 of the Code, which is due to report early next year, and I will use the feedback provided to me through my consultations with suppliers, Code Signatories and Code Arbiters to inform my submission.

There will be a third annual survey of suppliers and Code Signatories.