



THE COMMERCIAL  
ACADEMY

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# The Australian Food and Grocery Code of Conduct

## **PART 5**

Enhancing Conflict  
Resolution in the Grocery  
Supply Chain: Mediation  
& Arbitration



# EMBRACING ALTERNATIVE DISPUTE RESOLUTION

Division 3 offers mediation and arbitration as resolution methods for supplier disputes.

Suppliers can choose either mediation or arbitration, but not both simultaneously.

Retailers or wholesalers are obligated to participate in good faith in either process.

## NOTE

A supplier cannot seek mediation or arbitration while a review is being conducted by either:

- The Code Arbiter.
- The Independent Reviewer.

The supplier must wait until the complaint or dispute process:

- Is completed.
- Should have been completed by the relevant party.

# PRINCIPLES GOVERNING MEDIATION & ARBITRATION

Mediation or arbitration must adhere to  
the Resolution Institute Arbitration Rules  
2016.

Mediators or arbitrators are appointed  
within 10 business days if parties can't  
agree.

Retailers or wholesalers engaged in  
mediation are assumed to be participating  
and attempting resolution in good faith.



# MEDIATION & ARBITRATION PROCESS INSIGHTS

Mediation and arbitration follow the Resolution Institute Arbitration Rules, ensuring fairness.

The role of appointed mediators or arbitrators is to help maintain a neutral dispute resolution environment.

Costs associated with mediation or arbitration are determined under the established rules.

# NAVIGATING MEDIATION & ARBITRATION RESPONSIBILITIES

Retailers or wholesalers must act in good faith during mediation or arbitration.

Attending meetings, defining goals, and respecting confidentiality are key aspects.

Not applying pressure tactics during the process to promote resolution in good faith.



# BALANCING THE POWER DYNAMICS IN DISPUTE RESOLUTION

The purpose of the mediation or arbitration is to:

- Allow suppliers to seek resolution without bias.

Empower suppliers to address concerns related to:

- Clause 9: Unilateral Variation of Agreement.
- Clause 10: Retrospective Variation of Agreement.
- Offers a balanced approach where onus is on retailers or wholesalers to establish their claims.



# ADDRESSING EXCEPTIONAL CASES

Retailers or wholesalers are exempt from mediation or arbitration if supplier's good faith is absent.

Acceptance of a proposed remedy and specific actions can halt the resolution process.

Complaints regarding unilateral or retrospective changes are treated seriously, regardless of grounds.

# APPLICABILITY OF DIVISION 3

Division 3 doesn't cover complaints directed to a Code Arbiter.

Provides suppliers with effective tools for addressing disputes outside the Arbiter's scope.

Encourages collaborative and equitable dispute resolution practices.

# EXEMPTIONS IN MEDIATION & ARBITRATION

## Key Points for Suppliers:

- Retailer/wholesaler participation not always required.
- Mediator/arbitrator's decision determines exemption.

## Exemptions apply when:

- Complaint lacks merit (i.e. they are vexatious, trivial, misconceived).
- Supplier lacks good faith.
- Supplier accepted proposed remedy and retailer acted accordingly.



# CONCLUSION

Compliance with the Australian Food and Grocery Code of Conduct is critical for suppliers and retailers in the food and grocery industry to ensure fair and transparent trading relationships.

**For more information on the Code and its requirements, visit the Australian Government's official website:**

<https://www.legislation.gov.au/Details/F2021C00201>







# DISCLAIMER

Based on content from the Federal Register  
of Legislation at 5th March 2021. For the  
latest information on Australian Government  
law please go to:

**<https://www.legislation.gov.au>**

# WHEN THIS CODE APPLIES

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