



3 November 2025

The Treasury
Submitted via online portal

To the Department
RE: Making supermarket price gouging illegal

Thank you for the opportunity to comment on the draft regulations released by the Government on 20 October 2025. CHOICE is glad to be able to make a short submission on the proposal and the issues surrounding it.

Summary of CHOICE's recommendations

For the reasons outlined below, we recommend that the Government:

1. Prohibit price gouging across the whole economy, not just supermarkets, for example through a new provision in section 46 of the Australian Competition and Consumer Act which makes it an offence for businesses to use their market power to charge excessive prices;
2. Reconsider the proposed threshold for 'very large retailers', to ensure that the excessive pricing prohibition applies to all the major supermarket chains, and applies to regional and remote areas;
3. Introduce a separate new provision prohibiting excessive or unreasonable price increases during a period when Commonwealth, State or Territory emergency protocols are in operation; and
4. Urgently progress the recommendations of the ACCC's Supermarkets Inquiry, especially those relating to unit pricing, shrinkflation, the publication of price information, and minimum information requirements for discounts and promotions.

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We should be trying to stamp out price gouging wherever it happens

CHOICE supports an excessive pricing regime in principle, but we consider this proposal a missed opportunity.

In the final report of their supermarkets inquiry, the ACCC made clear that Australia has a highly concentrated supermarket sector, and one of the most profitable in the world.¹ CHOICE has spent years highlighting the challenges facing supermarket shoppers, and the paucity of competition in the sector is undoubtedly one of them.

Supermarkets, however, are not the only industry for which this is true.

We do not oppose this proposal, but it is our view that the Government should be looking to address price gouging in a much more comprehensive way.

There are plenty of industries in Australia that have only a small number of big players with a huge amount of market power. There is no obvious reason to prohibit price gouging by the supermarkets, but not, for example, by the airlines, or the major telcos, or the big petrol station chains.

It is not clear why the Government has decided that price gouging is only wrong if a supermarket does it.

Further, the Government risks complicating and disjointing our competition and consumer law by having various other misuses of market power outlawed across the economy, but only banning price gouging by two participants in a single industry. The proposed approach would also make it far harder for a future Government to expand the excessive pricing prohibition to other highly-concentrated industries where it would be a useful tool for regulators.

Market power is at the heart of the problem and should be at the heart of the solution

Australia's consumer laws have an unusual quirk that would surprise most shoppers. At present, section 46 of the Australian Competition and Consumer Act makes it illegal for a business to misuse their market power to keep prices *low*, but does not prohibit them using that same power to keep prices *high*.

The law rightly prohibits a big retail chain from using their power to slash prices to drive their smaller competitors out of town, or to drive down the costs they pay to suppliers. But it has

¹ www.accc.gov.au/system/files/supermarkets-inquiry_1.pdf

nothing much to say if the same retail chain uses its dominant position to jack prices up and squeeze consumers whose options are limited.

The principle behind the market power law - that at a certain point businesses can reach a level of power that allows them to set prices with relatively impunity - is just as true on the upside as on the downside.

Just as a supplier has little choice but to accept a low price from a supermarket when they are the only major buyer in the local area, consumers have little choice but to pay higher prices for their groceries when that supermarket is the only seller in the local area, or one of a small number.

There is no logical basis for the law to prohibit some prices being too low, while having nothing to say about prices that are too high.

The market power framework already exists, and the ACCC already has a methodology to research and assess market power and its use. In this sense, this option would require the least new regulatory infrastructure.

This approach already has the support of prominent voices such as former ACCC Chair Allan Fels, who recommended it in his 2024 report into price gouging and unfair pricing practices², and there is also international precedent, with the EU and the UK having had similar regimes in place for some time.

The Government's proposal will not capture smaller supermarkets with big market power in particular regions

The Government's proposal appears to point in the direction of market power by targeting 'very large retailers', which are defined as those with total revenue of \$30 billion over the preceding year. In practice, this would likely mean that, for the foreseeable future, only Coles and Woolworths would be covered by the regulations, while Aldi, IGA and others would not.

This is despite the ACCC making clear, after setting out Coles and Woolworths' high profitability relative to their peers, that *"this also applies to ALDI and Metcash, each of which have obtained margins that are among the most profitable globally, for some metrics."*³

²https://pricegouginginquiry.actu.org.au/wp-content/uploads/2024/02/InquiryIntoPriceGouging_Report_web.pdf

³ www.accc.gov.au/system/files/supermarkets-inquiry_1.pdf

We are glad to see the concept of market power forming part of the basis for the law, and there is clearly some valuable simplicity in setting an objective test of revenue rather than a subjective test of market power.

Our primary concern with this approach is that it does not leave room for circumstances where a particular supermarket chain may have a high degree of market power in a specific region, for example by being the only supermarket for many miles, even if they don't have great power nationally. This is a particular risk in some regional and remote communities, where a single supermarket may operate without any effective competition.

We encourage the Government to lower the proposed threshold to ensure that all the major supermarket chains are included, and to ensure that price gouging in regional and remote supermarkets is expressly prohibited.

The prohibition as designed leaves a lot up to the ACCC and the courts

In framing the prohibition at such a high level, the Government has left the ACCC and the courts with significant scope to determine its parameters. The prohibition as drafted in the regulations appears set to operate as a kind of shell, with the regulator, potential future litigants, and eventually the courts left with the task of filling in the details.

The approach to determining an 'excessive price' set out in the Explanatory Memorandum should be included in the regulations to increase regulatory certainty for supermarkets and consumers who may wish to report examples of price gouging to the ACCC. We see no reason why this couldn't be included in a list of possible considerations, while making clear that this list is non-exhaustive. This would be preferable to leaving the ACCC to supplement the law with regulatory guidance.

The other type of price gouging: emergencies, natural disasters, supply chain disruptions etc

Just as price gouging is not unique to supermarkets, price gouging is not a unique product of the recent cost of living crisis. During the COVID period, there were widespread reports of overcharging for products like masks, hand sanitiser, toilet paper, and rapid antigen tests. Examples are also seen during natural disasters, or other sudden events which lead to a surge in demand, a shortage of supply, or most often, both.

A majority of States of the US have laws which address this type of conduct. Some cap price rises at a certain point (eg 10%, once a State of Emergency has been declared), others completely ban any price rises following a State of Emergency being declared, and others

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more generally outlaw ‘unconscionable’ or ‘unreasonable’ price rises during periods of market disruption, without the need for any formal declaration.⁴

A bespoke prohibition on price gouging, made through a determination under the Biosecurity Act, was introduced in March 2020, during the very early stages of the COVID pandemic.⁵ It is not clear if it was ever used to take enforcement action, but given how many complaints there were about price gouging during the pandemic, it does not appear to have been hugely successful as a deterrent, and of course could only be used in a disease outbreak.

This issue is unlikely to go away, and so, in addition to the ‘market power’ price gouging prohibition, we would also support a new law prohibiting unreasonable or excessive price rises during a specific period that has been designated by the Government. The new provision could contain a list of events which may be designated, such as natural disasters and pandemics, or could be tied to existing State and Federal Government State of Emergency protocols. It would ideally be flexible enough to apply to a particular part of the country (e.g. the areas where the natural disaster is taking place), or the country as a whole.

The processes for declaring a State of Emergency already exist, and already set in motion certain protocols and legal consequences. In that sense, tying a new price gouging prohibition to those processes could limit the amount of new regulatory infrastructure that is necessary.

Because the event period would have a set starting point, for example the day a State of Emergency is declared, it would be far easier to measure and observe dramatic price increases, particularly by reference to the trend for prices before the beginning of the designated period.

If the Government wishes to eradicate price gouging from the Australian economy, then they need to go after the unscrupulous businesses who try to exploit shortages of supply and surges in demand, and who want to profit off times of public fear.

The ACCC recommendations should take priority

CHOICE’s campaign on supermarkets has primarily been focused on practical changes that can arm consumers with the information they need to save on groceries, and prevent practices that distort or manipulate consumers’ economic decision making. Even with our

⁴ <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2021/11/Issue-444-Giancaspro.pdf>

⁵ <https://minister.homeaffairs.gov.au/peterdutton/Pages/Measures-to-prevent-essential-goods-being-exported-and-price-gouged-during-the-fight-against-COVID-19.aspx>

heavily-concentrated supermarket sector, there are several things the Government could do right now that would give shoppers a fairer shake at the checkout.

We support strong penalties for confusing or misleading unit pricing, and clarity for shoppers when a product has shrunk but the price has remained the same, as per recommendations 5 and 6 of the final report of the ACCC's supermarkets Inquiry. We are glad to see the Government taking steps on both these issues.

We are also eager to see the Government progress recommendations 2 and 4 of the ACCC's report, regarding the publication of price information and minimum information requirements for discounts and promotions. It is our strong view that historical pricing data should be published alongside current data, and should be subject to a strong compliance regime.

These proposals would make an immediate, tangible difference for shoppers, by addressing some of the tactics the supermarkets use to trick consumers out of the best possible deal.

Thank you again for the opportunity to comment on these proposals.

For further information, please contact CHOICE at mcampbell@choice.com.au

Yours sincerely,

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