Australian Government
The Treasury

Introducing an excessive pricing prohibition for supermarkets

Consultation paper

October 2025

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In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

Contents

Consultation Process

Request for feedback and comments

Treasury is seeking stakeholder feedback on exposure draft law for implementing a new excessive pricing prohibition applying to Australia's largest supermarkets.

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- invite you to future-related consultations.

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Closing date for submissions: 3 November 2025

Please upload your submission to the Treasury consultation website page as linked below.

Online	https://consult.treasury.gov.au/c2025-706284/consultation

Enquiries can be made to the Supermarkets Taskforce at supermarketstaskforce@treasury.gov.au.

Introduction

On 30 March 2025, the Prime Minister, Treasurer and Assistant Minister for Competition, Charities and Treasury jointly announced the Government would ban supermarket price gouging, by introducing an excessive price prohibition, as a cost-of-living relief measure to help Australian households.[1] The Prime Minister said that this legislation would be introduced by the end of the year.[2]

The announcement followed the release of the final report of the Australian Competition and Consumer Commission (ACCC) Supermarkets Inquiry 2024-25 on 21 March 2025.[3] The ACCC examined the pricing practices of the supermarkets and the relationships between wholesale and retail prices.[4] It reported that grocery prices in Australia have risen rapidly over the last five financial years. While much of this increase can be explained by higher input and other operational costs, the ACCC found that supermarkets nonetheless increased their profitability over this period, and that Woolworths, Coles and ALDI are among the most profitable supermarket businesses globally.

The ACCC reported the supermarket sector as being concentrated and protected from competition by significant barriers to entry and expansion. The sector is dominated by Woolworths and Coles, which the ACCC found closely monitor each other's pricing and strategies and have limited incentive to compete vigorously on price. Although the ACCC did not seek to determine whether prices charged by supermarkets in Australia were excessive, it highlighted the relationship between stronger competition and lower margins. The ACCC's final report states (at page 398):

If there were a greater degree of competition between supermarkets, we would expect margins to be lower, either by way of lower retail prices, or higher costs incurred to improve quality of service, or both.

The ACCC concluded that the significant barriers to entry and expansion in the sector, Woolworths' and Coles' entrenched advantages and their market position meant that their dominance of the sector and the associated outcomes of this seem set to continue for the foreseeable future.

Given the ACCC's findings, the Government decided that an additional safeguard is warranted to protect consumers from the possibility of excessive pricing by Australia's largest supermarkets. The Government considers that a prohibition carrying significant maximum penalties is needed, both to help ensure grocery prices are not excessive and to give consumers confidence that they are not being charged excessive prices for groceries.

In developing the policy, Treasury undertook targeted consultation with relevant stakeholders including supermarkets, consumer advocacy groups, international competition regulators, grocery suppliers and competition experts. Treasury also engaged with regulatory experts on the implications of introducing laws similar to those in international excessive pricing regimes to the Australian supermarket sector.

Treasury is now seeking stakeholder feedback on exposure draft legislation to prohibit supermarket excessive pricing. Feedback is sought on whether the prohibition effectively implements the Government's policy intent as set out in the explanatory statement and this paper, and whether the explanatory statement sufficiently explains the intent of the reforms. Feedback is also sought on the likely costs associated with compliance for regulated entities.

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1 Australian Labor Party, *Labor will ban supermarket price gouging in another move on cost of living* [media release], Australian Labor Party, 30 March 2025.

2 D Speers, *Interview with Prime Minister Anthony Albanese* [interview video file], ABC, 30 March 2025.

3 Australian Competition and Consumer Commission (ACCC), *Supermarkets inquiry final report*, ACCC, Australian Government, 2025.

4 ACCC, *ACCC to examine prices and competition in supermarket sector* [media release], ACCC, 25 January 2024.

Design and application of the prohibition

The prohibition has been designed to prohibit and deter Australia's largest supermarkets from charging excessive prices on grocery products. The intended effect is to require Australia's largest supermarkets to price close to the prices they would set if they faced more competition in the supply of grocery products, so that Australian consumers are safeguarded against excessive prices.

While the prohibition would sit in the Food and Grocery Code, it is intended to complement Australia's existing competition law framework in promoting good consumer outcomes in the supermarket sector. While many of Australia's existing competition laws are designed to protect the process of competition and, in doing so, indirectly enhance consumer outcomes over time, the prohibition is designed to be a direct safeguard against ineffective competition. This is intended to deliver consumers benefits on a shorter timeframe than otherwise can be expected given the risk, highlighted in the ACCC's final report, that the supermarket sector, as it currently is, likely would not see significant improvements in the level of competition for the foreseeable future.

After their introduction, the new laws and explanatory statement will be supplemented by procedural guidance from the ACCC setting out how it intends to enforce the prohibition and monitor supermarkets' compliance with it. This guidance will help set expectations and improve regulatory certainty for industry. Ultimately, the Courts will be the arbiter of how the new laws will be interpreted and applied.

The prohibition draws on international approaches

In developing the policy underlying the prohibition, the Government had close regard to overseas approaches to excessive pricing regulation and particularly drew from the abuse of dominance laws in the United Kingdom and the European Union. Similar to the intent of the supermarket excessive pricing prohibition, these laws target regulatory intervention to circumstances of market failure, in which ineffective competition has enabled the charging of excessive prices, resulting in consumer detriment and economic inefficiency. Over time, courts and tribunals in the United Kingdom and European Union have developed a useful body of jurisprudence on how excessive pricing is understood that may illustrate how the prohibition would be applied in Australia.

Common to the case law on excessive pricing in the United Kingdom and European Union is an understanding that prices are excessive if they have no reasonable relation to the economic value of the product or service supplied. The case law accepts two approaches to determining economic value: by reference to prices in comparable markets that are workably competitive, and by reference to the attributable costs of supplying the product or service plus a reasonable return. In understanding what level of return is reasonable, regard can be had to the market dynamics, attributable risks, investment expenditure and capital costs for the firm to supply the product or service over the long term. Under recent United Kingdom case law, firms that have charged prices significantly and persistently above the competitive price of the product or service are taken to have engaged in excessive pricing.

The Government considers these interpretations to be appropriate for addressing excessive pricing in the supermarket sector but acknowledges that other approaches may yet emerge or be more applicable in the circumstances. To accommodate for this intended flexibility, the prohibition has been framed at a high level, like the laws in the United Kingdom and European Union, supported by a purpose provision referring to concepts understood in the competition law and an explanatory statement that refers to how aspects of overseas approaches have guided legislative development.

While the legislative design reflects the competition policy foundations of the prohibition, it also contains specific differences to laws in the United Kingdom and European Union, which apply economy wide. This is because the application of the prohibition is limited to the supermarket sector, which allows for adaptations to address sector-specific characteristics and harms, as explained below.

The prohibition is not limited to firms with substantial market power

Abuse of dominance laws in the United Kingdom and the European Union apply to businesses with a dominant position. A 'dominant position' is typically understood as being equivalent to having a substantial degree of power in a market under Australian law. By comparison, the prohibition applies to 'very large retailers', meaning supermarkets with over $30 billion for the previous financial year, regardless of whether they have a substantial degree of power in a market. Currently, only Woolworths and Coles likely meet the definition of 'very large retailer'.

This adaptation is suitable for the Australian supermarket sector because, as outlined above, the ACCC found it to be dominated by Woolworths and Coles who each have 'limited incentive to compete vigorously with each other on price'. These findings highlight that there remain concerns that Woolworths' and Coles' entrenched positions and advantages mean they can impose excessive prices without fear of vigorous competition from the other. The ACCC also raised, that should Woolworths and Coles continue to grow their market share, their margins as a percentage of grocery price could be expected to continue to grow.

Woolworths' and Coles' apparent ability to increase retail margins for packaged grocery products by more than is necessary to accommodate a wholesale price increase indicates they have – and sometimes exercise – a level of market power in retail markets.

The prohibition does not require assessment of unfairness

The abuse of dominance laws against excessive pricing in the United Kingdom and the European Union prohibit 'unfair' prices, which have been interpreted in the context of sales prices to mean prices that are both excessive and unfair. However, as case law has developed, unfairness has increasingly been interpreted to incorporate considerations that overlap with those relevant to establishing excessiveness.

As an adaptation to improve the prohibition's simplicity and strengthen its focus on the economic basis for intervention against excessive pricing, the prohibition does not carry the more subjective concept of unfairness. Instead, it is intended for the efficiency, investment and other potential justifications for seemingly excessive prices, that are at times considered as part of establishing unfairness in overseas case law, into the objective assessment of excessiveness itself in the Australian context. Namely, the full range of relevant costs, risks and market dynamics impacting long-term incentives to supply the grocery product should be considered in determining whether a price is excessive.

Industry code compliance monitoring powers

It is proposed for the prohibition to be situated in the Food and Grocery Code and supplemented with record-keeping obligations for very large retailers to keep information on their prices, costs and other factors relevant to their sale of groceries. This is designed to ensure that information relevant to establishing whether prices are excessive will be retained, and to enliven specific powers available under the legislative framework for industry codes to enable the ACCC to obtain this information as part of routine compliance monitoring activity.

This adaptation will support the enforceability of the prohibition by mitigating the evidentiary challenge of establishing excessive pricing in the Australian supermarket sector. Importantly, the record-keeping obligations do not require supermarkets to generate new information or documents and do not impose requirements on suppliers. This is intended to limit regulatory burden on industry.

How the prohibition will improve consumer outcomes

As set out in the election commitment, the Government's intent for introducing the prohibition is to safeguard consumers from excessive pricing caused by insufficient competition in the supermarket sector, and in doing so, fix a key gap in Australia's competition and consumer protection framework. In other words, the Government's intent is to deter supermarkets from charging consumers excessive prices in the absence of workable competition, rather than impacting their ability to be efficient, responsive or resilient, or to pursue and benefit from normal profits.

In line with this intention, the prohibition has been designed to penalise and deter conduct that results or is likely to result in significant consumer detriment, rather than as a regime that imposes significant compliance costs on industry and risks these costs being passed on to consumers. The prohibition is expected to apply flexibly to allow supermarkets to compete and innovate as they would if the sector was workably competitive, including to pursue cost efficiency and quality improvements and respond to changes in consumer demand (such as for new and niche products) and external shocks. The prohibition is intended to allow supermarkets to reasonably benefit from increased efficiencies arising out of any new investments or innovations they have made.

It is acknowledged that excessive pricing laws have not been used by regulators in the United Kingdom and European Union to bring formal proceedings against supermarkets for grocery prices. As the ACCC found, supermarket sectors overseas are typically more competitive than in Australia, with a greater number of market participants and lower profit margins generally. Nonetheless, excessive pricing case law from the United Kingdom and European Union reveals that establishing excessive pricing is evidentiarily challenging and requires significant expert economic and industry analysis, and this can impose significant burden on industry and the regulator. In practice, regulatory enforcement of excessive pricing laws has been significant but occasional, limited to circumstances where the alleged conduct is particularly concerning or harmful to consumers. This is consistent with the way in which regulators typically enforce competition laws, including abuse of dominance.

It is expected that, similar to the experience in the United Kingdom and European Union, regulatory intervention to enforce the prohibition in Australia will be significant but occasional. However, the adaptations outlined above will help promote more competitive grocery prices in Australia. The new record-keeping obligations will put Australia's largest supermarkets on notice that their pricing conduct is being scrutinised, which will help constrain them from excessive pricing even in the absence of workable competition. Should compliance checks reveal supermarkets have charged prices above the workably competitive level, the potential for ACCC investigation and legal action will help bring this conduct to light and possibly lead to significant penalties. This framework supports credible deterrence and so incentivises supermarkets to set prices on grocery products closer to workably competitive levels and compete more vigorously with each other on price, without imposing disproportionate burden on industry.

While it is a significant reform, the prohibition is just one of the Government's suite of measures targeting the supermarket sector, which also include the remaking and strengthening of the Food and Grocery Code, ongoing work to strengthen the Unit Pricing Code and the Government's commitment to implement the ACCC's recommendations to improve transparency of price, price trends, promotions and loyalty programs. Collectively and individually, these measures are aimed to protect and improve consumer and supplier outcomes in the supermarket sector, now and into the future.

Proposed amendments

The prohibition will be implemented through the Food and Grocery Code

The prohibition will be implemented through amendments to the *Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024* (the Food and Grocery Code), which is prescribed by regulations made under Part IVB of the *Competition and Consumer Act 2010* (CCA).

Part IVB provides for industry codes to be prescribed where a code regulates the conduct of participants in an industry towards other participants or consumers in the industry. The Food and Grocery Code is a mandatory industry code relating to the industry of food and grocery products. To date it has regulated the conduct of large grocery retailers and wholesalers towards their suppliers.

These amendments will broaden the Code's purpose to protect consumers from excessive prices on grocery products enabled by ineffective competition in the supermarket sector, and an amendment to the Code's purpose clause is proposed accordingly.

Implementing the prohibition through the Food and Grocery Code is preferred to implementation in the CCA as the prohibition will apply to a single sector rather than economy-wide.

The prohibition will apply to Australia's largest supermarkets

It is proposed that 'very large retailers' that meet a revenue threshold of $30 billion will be automatically subject to the prohibition. Very large retailers will be required to self-assess whether they meet the threshold and if they do, they will need notify the ACCC within 5 business days.

Supermarkets with annual revenue below the $30 billion threshold will not be subject to the prohibition, nor will 'large wholesalers' that meet the revenue threshold, noting wholesalers do not have a direct relationship with consumers or set retail prices.

Regulated supermarkets cannot sell groceries at an excessive price

Very large retailers will be prohibited from supplying or offering to supply a grocery product at an excessive price. It will be for the parties to put forward, and the court to establish, whether a price is excessive. In excessive pricing case law in the United Kingdom and European Union, two main ways have been accepted to establish whether a price is excessive:

- the cost of supplying the product plus a reasonable return; and
- reference to prices in comparable markets that are workably competitive.

Courts have considered a range of factors in whether the price is excessive, including the difference in the price charged and the cost of production, whether the price reflects the economic value of the product considering factors such as innovation and research and development, and the degree of competition and substitutable products available to consumers.

Supplier protections will not be affected

The amendments will not affect supplier protections under the Food and Grocery Code. The prohibition will be contained in a separate division of the Code, and consequential amendments will be made to various provisions to ensure that the supplier protections under the Code are unaffected.

Enforcement will be supported by industry code compliance monitoring powers and new record-keeping obligations

Supermarkets subject to the prohibition will be required to keep information or documents containing information on their prices, costs and other factors relevant to their sale of groceries for at least 3 years. This will help ensure the ACCC can obtain the information needed to analyse whether a regulated supermarket has charged an excessive price, using its industry code compliance monitoring powers under section 51ADD of the CCA or, subject to meeting statutory requirements, its investigative powers under section 155 of the CCA.

The new record-keeping provision does not require supermarkets to create new records. Rather, it will only require certain information or documents produced as part of normal business operations to be retained.

Breaches of the prohibition are subject to significant penalties

Breaches of the new laws, including the record-keeping obligations, are subject to the highest maximum civil penalties available for penalty provisions in industry codes falling within Part IVB of the CCA (for body corporates, the greater of $10 million, 3 times the value of benefit gained by the breach, or 10% of turnover during the 12 months leading up to the breach).

The ACCC will be able to issue an infringement notice carrying the highest penalty available for penalty provisions in industry codes falling within Part IVB of the CCA (for body corporates, currently $198,000) if it has reasonable grounds to believe that the new laws have been breached.

Feedback on the exposure draft

Treasury invites stakeholders to present their views on the exposure draft legislation and explanatory statement.

Without limiting the aspects stakeholders might want to make comments on, Treasury is most interested in feedback on whether the exposure draft amendments achieve the legislative and policy intents as outlined in the draft explanatory statement and in this consultation paper, including whether the draft provisions can be understood with sufficient clarity and certainty.

Treasury is also interested in feedback on whether the draft provisions achieve an appropriate balance between protecting consumers from excessive prices and avoiding undue burden on supermarkets or diminishing their incentives to invest and innovate in the sale of groceries in Australia.

Clarity of intent and certainty of interpretation

- Does the framing of the prohibition enable supermarkets to understand the type of conduct prohibited and whether they are complying with the draft law? Would putting in specific details in the prohibition better achieve the legislative and policy intent?
  - Would express reference to the significance and/or persistence of excess above the competitive price appropriately clarify the meaning of excessive pricing?
    - Would express reference to factors that may be relevant to understand the competitive price, such as the cost of supply plus a reasonable return, or prices in similar markets that are more competitive, provide appropriate clarity on the operation of the prohibition?
  - Should there be express provision for specific defences? For example, should there be a defence to enable geographically consistent pricing, which effectively cross-subsidises lower grocery prices in locations that are more expensive to supply with higher relative margins in locations that are comparatively less expensive to supply?
  - Is there anything else that should be included to help the draft law achieve its policy intent?

Compliance costs

To support the development of a policy impact analysis, Treasury is seeking feedback from affected supermarkets on the compliance costs they expect to incur because of the introduction of the excessive pricing prohibition, including any material changes in business practices that may be required. For example:

- Do changes need to be made to record-keeping practices? If so, what would be your costs for additional record-keeping and/or record-retention, considering one-off costs and/or ongoing costs?
- What are your legal costs to interpret the prohibition once the final amendments are released?
- Would there be any other one-off costs at the start?
- Would there be any other ongoing costs?

Australian Government policy impact analysis[5] requires compliance cost estimates in dollar terms – including a breakdown of hours required by different staff, such as senior executive staff, working-level staff, and in-house senior or junior legal staff (or any external legal costs) – over the first 10 years. Treasury welcomes cost estimates from the major supermarkets to support this policy impact analysis, so that cost estimates reflect industry practices. If Treasury does not receive cost estimates from the supermarkets, Treasury will have to estimate these based on the best available public information.

Enforcement costs related to non-compliance, such as fines or legal fees incurred in court processes, are generally excluded under the Australian Government policy impact analysis Regulatory Burden Measurement Framework.[6]

5 Office of Impact Analysis (OIA), *Regulatory Burden Measurement Framework*, OIA, Australian Government, 2024.

6 Ibid.