

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Competition and Consumer Act 2010

Competition and Consumer (Industry Codes—Food and Grocery) Amendment (Supermarkets Excessive Pricing Prohibition) Regulations 2025

The *Competition and Consumer Act 2010* (the Act) enhances the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. Subsection 172(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Part IVB of the Act provides for industry codes, which regulate conduct among participants in an industry. Subsection 51AE(1) of the Act provides that the regulations may prescribe an industry code, or specified provisions of an industry code, for the purposes of Part IVB, and declare the code to be a mandatory industry code or a voluntary industry code. The Food and Grocery Code of Conduct is one such mandatory industry code, prescribed in the *Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024* (the Code).

The purpose of the *Competition and Consumer (Industry Codes—Food and Grocery) Amendment (Supermarkets Excessive Pricing Prohibition) Regulations 2025* (the Regulations) is to amend the Code to promote workably competitive outcomes in grocery product markets and enhance the welfare of consumers by prohibiting excessive pricing for grocery products by very large retailers. Specifically, the Regulations:

- require corporations to notify the Australian Competition and Consumer Commission (ACCC) when they become, or cease to be, a very large retailer;
- prohibit very large retailers from supplying or offering to supply a kind of grocery product to consumers at an excessive price, and
- require very large retailers to keep certain information or documents relating to the excessive pricing prohibition.

The Regulations implement the Government's election commitment of 30 March 2025 to ban supermarket price gouging and protect consumers from supermarkets taking advantage of ineffective competition to inflate prices and profits.

On 1 February 2024, the Government directed the ACCC to inquire into the prices of groceries and competition in the supermarket sector, with a view to ensuring better prices and fairer deals for Australians. The ACCC examined a range of issues in this inquiry, including the structure of the market for the supply of groceries by retailers and the approach of retailers to setting prices for groceries. The Government released the ACCC's *Supermarkets Inquiry Final Report* (Final Report) on 21 March 2025. The ACCC relevantly found:

- grocery prices in Australia have risen rapidly over the last five financial years;
- despite facing higher input costs, Australian supermarkets, including Woolworths and Coles, increased their profitability over this period;
- the supermarket industry is an oligopoly dominated by Woolworths and Coles, whose market positions are entrenched and shielded from competition by significant barriers to entry and expansion;
- Woolworths and Coles closely monitor each other's pricing and strategies and have limited incentive to compete vigorously with each other on price;
- if there was a greater degree of competition between supermarkets, margins could be expected to be lower, either by way of lower retail prices, or higher costs incurred to improve quality of service, or both; and
- Woolworths' and Coles' dominance of the supermarket sector, and the associated outcomes of this, are likely to continue for the foreseeable future.

The Regulations are intended to complement Australia's existing competition and consumer law framework under the Act, while addressing the above findings in the ACCC Final Report by targeting very large retailers that are expected to have the greatest capacity for influence on price competition and prohibiting such retailers from supplying or offering to supply a kind of grocery product at an excessive price.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations are subject to disallowance under the *Legislation Act 2003* but sunseting does not apply pursuant to subsection 50(3) of that Act, as the Regulations are subject to automatic repeal under section 48A of that Act.

Details of the Regulations are set out in Attachment A.

Details of the Competition and Consumer (Industry Codes—Food and Grocery) Amendment (Supermarkets Excessive Pricing Prohibition) Regulations 2025

Section 1 – Name

Section 1 provides that the name of the regulations is the *Competition and Consumer (Industry Codes—Food and Grocery) Amendment (Supermarkets Excessive Pricing Prohibition) Regulations 2025* (the Regulations).

Section 2 – Commencement

Section 2 will prescribe the commencement date for the Regulations.

Section 3 – Authority

Section 3 provides that the Regulations are made under the *Competition and Consumer Act 2010* (the Act).

Section 4 – Schedules

Section 4 provides that each instrument that is specified in the Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Schedule 1 amends the *Competition and Consumer (Industry Codes – Food and Grocery) Regulations 2024* (the Code) to prohibit very large retailers from supplying or offering to supply a kind of grocery product to consumers at an excessive price, and to establish related record keeping and notification requirements. Legislative references in this document are to the Regulations unless otherwise stated.

Items 1 to 4

Items 1 to 4 amend the simplified outline in section 4 of the Code to:

- insert a reference to the new excessive pricing prohibition, and
- clarify where the outline relates to the ‘supplier provisions of the Code’ (that is, the provisions of the Code other than those under new Division 4A of Part 2 which deal with matters relating to the excessive pricing prohibition). For example, the statement ‘large grocery businesses may be liable to a civil penalty for conduct that contravenes this Code’ becomes ‘large grocery businesses may be liable to a civil penalty for conduct that contravenes the supplier provisions of this Code.’ See below for further detail on the supplier provisions of the Code.

Item 5

Item 5 inserts definitions for *pricing information*, *supplier provisions of this Code* and *very large retailer* into section 5 of the Code.

Meaning of pricing information

‘Pricing information’ in relation to a retailer, means information on the following:

- a price at which a retailer supplies or offers to supply a kind of grocery product;
- a cost of the retailer to supply or offer to supply a kind of grocery product (this is intended to include direct and indirect costs);
- a payment, discount, rebate, allowance or any other benefit given to the retailer by a supplier in exchange for providing relevant services to a supplier. The relevant services are freight, advertising, data analytics, and any other services in connection with the retail sale of grocery products to consumers;
- a payment, discount, rebate, allowance or any other benefit given to the retailer by a supplier in connection with the retail sale of grocery products to consumers

The definition of pricing information is relevant to the record keeping requirements. Very large retailers must keep pricing information, or a document that contains any pricing information, in accordance with new section 45B of the Code, inserted under item 19.

Meaning of supplier provisions

The definition of ‘supplier provisions of this Code’ means the provisions of the Code *other* than Division 4A of Part 2.

New Division 4A of Part 2 of the Code only deals with matters relating to the new excessive pricing prohibition. The term ‘supplier provisions of this Code’ is used in a number of consequential amendments to distinguish between the provisions of the Code that primarily deal with the relationship between large grocery businesses and suppliers, and the provisions dealing with the new excessive pricing prohibition.

For example, Division 5 of Part 2 of the Code sets out the complaint and dispute resolution framework relevant to the relationship between large grocery businesses and their suppliers. Prior to these amendments, paragraph 48(1)(b) of the Code provided that a function of the Code Mediator was ‘to assist suppliers of the large grocery business in relation to matters covered by this Code, including by providing information about this Code generally’. Item 21 replaced the reference to ‘this Code’ with ‘the supplier provisions of this Code’, to ensure the Code Mediator does not have a role in relation to the new excessive pricing prohibition.

Meaning of very large retailer

The definition of ‘very large retailer’ refers to section 8 of the Code, which is amended under item 7. Only very large retailers are subject to obligations under new Division 4A of Part 2 of the Code, including the excessive pricing prohibition under new section 45B.

Items 6 and 7

Item 7 inserts the meaning of **very large retailer** into section 8 of the Code. A retailer is a very large retailer for a financial year if the total covered revenue of the retailer and each related body corporate of the retailer, as set out in the entities’ annual accounts, exceeds \$30 billion for the previous financial year. Annual accounts are those prepared in

accordance with generally accepted accounting principles. Section 4A of the Act sets out when a body corporate is deemed to be related to another body corporate.

This provision draws on the existing meaning of ‘retailer’, ‘supermarket business’ and ‘covered revenue’ in section 5 of the Code, which are as follows:

- a retailer means a corporation to the extent it carried on a supermarket business in Australia;
- a supermarket business means a business if the main purpose of the business is the retail sale of grocery products to consumers, and a substantial proportion of those grocery products is food which is not for in-store consumption;
- revenue is covered revenue if the revenue relates to the carrying on of a supermarket business in Australia; or a business of purchasing grocery products from suppliers for the purpose of resale to a person carrying on a supermarket business in Australia.

Only very large retailers are subject to obligations under new Division 4A of Part 2 of the Code, including the new excessive pricing prohibition under section 45B.

The new excessive pricing prohibition is intended to target very large retailers to address excessive grocery prices that arise due to insufficient competition in grocery product markets in Australia. Relevantly, the Australian Competition and Consumer Commission’s (ACCC) *Supermarkets Inquiry Final Report* (Final Report) found that the supermarket industry is an oligopoly that is dominated by Woolworths and Coles, whose market positions were entrenched and shielded from competition by significant barriers to entry and expansion. The significant market share, geographic scope, product range and scale economies of very large retailers mean that they have the greatest capacity and incentive to influence price competition. Smaller retailers are not subject to the prohibition as they do not have the same capacity to influence price competition and would be disproportionately burdened by compliance costs if it applied to them.

Item 6 omits “**and large wholesaler**” from the heading to section 8 of the Code, and substitutes it with “, **large wholesaler** and **very large retailer**”. This is consequential to the amendments under item 7, detailed above.

Items 8 and 9

Section 10 of the Code sets out requirements for an upcoming review of the Code. Items 8 and 9 amend section 10 of the Code to exclude new Division 4A of Part 2 of the Code, which deals with matters relating to the new excessive pricing prohibition, from the upcoming review.

This is appropriate as the Minister must cause the review to start before 1 April 2027. New Division 4A of Part 2 of the Code will not have been in force for a sufficient period of time by 1 April 2027 for the impact of the excessive pricing prohibition to be properly assessed.

Item 10

Item 10 amends section 12 of the Code to insert a new purpose into the Code relating to the excessive pricing prohibition. That is, to promote workably competitive outcomes in grocery product markets and enhance the welfare of consumers by prohibiting excessive

pricing for grocery products by very large retailers. The new purpose is intended to assist in the interpretation of new Division 4A of Part 2 of the Code, particularly the excessive pricing prohibition under section 45B.

Items 11 and 12

Items 11 and 12 amend section 13 of the Code, which deals with the interactions between the Code and other industry codes that regulate industries that may overlap with the food and grocery industry.

Prior to these amendments, the Code did not apply to the extent it conflicted with the industry codes set out in Chapter 2 of the *Competition and Consumer (Industry Code—Franchising) Regulations 2024* (the Franchising Code), Schedule 1 to the *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017* (the Horticulture Code), and Division 2 of Part 2 of the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019* (the Dairy Code). Items 11 and 12 will exclude new Division 4A of Part 2 of the Code, dealing with matters relating to the excessive pricing prohibition, from the application of this provision.

Items 11 and 12 will ensure that:

- in the event there is an inconsistency between the Franchising Code, Horticulture Code, and Dairy Code and a provision of the Code that is *not* contained in new Division 4A of Part 2 of the Code—those industry codes will prevail over the Code, and
- in the event there is an inconsistency between the Franchising Code, Horticulture Code, or Dairy Code and new Division 4A of Part 2 of the Code—new Division 4A of Part 2 of the Code will prevail over those industry codes to the extent of that inconsistency.

This reflects the importance of the excessive pricing prohibition in promoting workably competitive outcomes in grocery product markets and enhancing the welfare of consumers.

Item 13

Section 14 of the Code provides that a provision in the Code that states it is a ‘civil penalty’, is a civil penalty provision for the purposes of Part IVB and section 76 of the Act.

Subsection 76(1A) and subsection 51AE(2A) of Part IVB of the Act set the maximum civil penalty that may be prescribed in an industry code that relates to the industry of food and groceries. Subsection 51AE(2A) establishes a two-tier civil penalty system for an industry code that relates to the industry of food and groceries, whereby the higher tier maximum penalty may be prescribed, or a penalty up to the lower tier maximum penalty may be prescribed.

The higher tier maximum penalty for a contravention of a civil penalty provision by a body corporate is the greater of the following:

- \$10 million;

- if the Court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is attributable to the act or omission—3 times the value of that benefit; and
- if the Court cannot determine the value of that benefit—10 percent of the body corporate’s adjusted turnover during the 12-month period ending at the end of the month in which the act or omission occurred or started to occur.

The higher tier maximum penalty for a contravention of a civil penalty provision by a person who is not a body corporate is \$500,000.

The lower tier maximum pecuniary penalty for contravention of a civil penalty provision is 3,200 penalty units if the person is a body corporate and 640 penalty units if the person is not a body corporate.

While the Code prescribes maximum civil penalties in relation to a person that is not a body corporate, the civil penalty provisions in new Division 4A of Part 2 of the Code target very large retailers, and such retailers *must* be corporations. Civil penalties for a person that is not a body corporate would only apply in the context of the accessorial liability (such as aiding and abetting a contravention) under paragraphs 76(1)(b) to (f) of the Act.

Subsection 14A(1) of the Code prescribes the provisions of the Code that are subject to the higher tier maximum civil penalty. Item 13 updates paragraph 14A(1)(h) of the Code to ensure contraventions of the new excessive pricing prohibition outlined in new subsection 45B(1) of the Code and record keeping requirements under new section 45C of the Code are subject to the higher tier maximum civil penalty.

These penalties were informed by the Attorney-General’s Department’s *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, and reflect the potential seriousness of a contravention of the relevant provision, and to operate as a strong deterrence.

It is necessary for new subsection 45B(1) and section 45C of the Code to be subject to the higher tier civil penalty to provide a strong deterrent against contravention, noting these provisions only apply to very large retailers (with covered revenue exceeding \$30 billion for the previous financial year), and to ensure that consumers retain a robust level of protection against excessive pricing by very large retailers on grocery products.

Item 14

Section 15 of the Code sets out the functions of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO). Item 14 amends section 15 of the Code to ensure the functions of the ASBFEO only apply to the supplier provisions of the Code. ASBFEO have no functions in relation to the new excessive pricing prohibition (or related provisions) under Division 4A of Part 2 of the Code.

Items 15 to 17

Section 29 of the Code requires a large grocery business to ensure that any incentive schemes the business has in place are consistent with the purposes of the Code and any obligations of the business under the Code. Items 15 to 17 make consequential

amendments to section 29 of the Code to exclude matters relating to the excessive pricing regime from references to the Code. This means that an incentive scheme does not need to be consistent with the purpose of the Code under new paragraph 12(h) of the Code (inserted by item 10) relating to the excessive pricing regime or any obligations of the large grocery business (noting a large grocery business will include a very large retailer) under the Code that relate to the excessive pricing prohibition.

Item 18

Item 18 makes a consequential amendment to the heading to section 45 of the Code to clarify that section 45 applies to notification requirements that relate to large retailers and large wholesalers, separating it from notification requirements that relate to very large retailers, which are set out in new section 45A of the Code.

Item 19

Item 19 inserts new Division 4A—Prohibition on excessive pricing into Part 2 of the Code. Part 2 of the Code prescribes the Food and Grocery Industry Code. Under new Division 4A of Part 2 of the Code:

- corporations are required to notify the ACCC when the corporation becomes, or ceases to be, a very large retailer;
- very large retailers are prohibited from supplying or offering to supply a kind of grocery product to consumers at an excessive price, and
- very large retailers are required to keep certain information or documents relating to the excessive pricing prohibition.

Notifications to ACCC

New section 45A of the Code requires a corporation to notify the ACCC in writing when the corporation becomes, or ceases to be, a very large retailer. This approach ensures the ACCC has oversight over which corporations are very large retailers and subject to the excessive pricing prohibition and related record keeping requirements.

Specifically, if a corporation is a very large retailer for a financial year but was not a very large retailer for the previous financial year, the corporation must notify the ACCC in writing that the corporation is a very large retailer.

If a corporation is not a very large retailer for a financial year but was a very large retailer for the previous financial year, the corporation must notify the ACCC in writing that the corporation is no longer a very large retailer.

In both circumstances, the corporation must notify the ACCC within five business days after the latest day that the corporation, or any related body corporate of the corporation, is required to lodge a report for the previous financial year under section 319 of the *Corporations Act 2001*.

The application of new section 45A of the Code to corporations at commencement is dealt with in new section 89 of the Code, inserted by item 37.

A body corporate is subject to a civil penalty of up to 3,200 penalty units, and a person that is not a body corporate is subject to a civil penalty of up to 640 penalty units for contravention of the requirement to notify the ACCC in accordance with section 45A of the Code. This represents the lower tier maximum civil penalty available under the Code (also see item 13). The penalty aligns with the penalties that apply to existing notification requirements relating to large retailers and large wholesalers under section 45 of the Code.

Prohibition on Excessive Pricing

New subsection 45B(1) prohibits a very large retailer from supplying or offering to supply a kind of grocery product to consumers at an excessive price. The overarching purpose of the prohibition is to promote workably competitive outcomes in grocery product markets and enhance the welfare of consumers.

As noted above, the ACCC's Final Report relevantly found that the supermarket industry is an oligopoly that is dominated by Woolworths and Coles, whose market positions were entrenched and shielded from competition by significant barriers to entry and expansion. The prohibition is intended to complement Australia's existing competition and consumer law framework under the Act whilst operating as a specific safeguard against excessive grocery prices enabled by insufficient competition in grocery product markets.

As a purpose of the prohibition is to promote workably competitive outcomes, a price is not intended to be treated as excessive unless it is significantly and persistently above the price a very large retailer would be able to charge if it was faced with workable competition in the relevant grocery product market.

Detail on different elements of the excessive pricing prohibition are set out below.

Very large retailers

The excessive pricing prohibition only applies to very large retailers, defined under the amendments to section 5 and 8 of the Code in items 5 and 7 respectively. Very large retailers are retailers that exceed \$30 billion in covered revenue in the previous financial year. The significant market share, geographic scope, product range and scale economies of very large retailers mean that they have the greatest capacity and incentive to influence price competition (see item 7 for further details).

Supply and offer to supply

The excessive pricing prohibition targets the supply (as defined by subsection 4(1) of the Act) and offer to supply of a kind of grocery product to a consumer. This is intended to ensure that a very large retailer is prohibited from advertising, marketing or publishing an excessive price in addition to the actual purchase and supply of a kind of grocery product.

Subsection 51ACA(1) of the Act relevantly provides that a 'consumer' in relation to an industry, means a person to whom goods or services are or may be supplied by participants in the industry.

Grocery products

The term 'grocery products' is defined in section 5 of the Code. The definition includes food, such as fresh produce, meat, seafood, eggs, bakery products, dairy products, pantry

goods and packaged food (including chilled and frozen food), and non-alcoholic drinks. It also includes household goods (including electrical appliances, kitchenware, and cleaning products), personal care products (including toiletries, cosmetics, first aid and non-prescription pharmaceutical products), and stationery products (such as greeting cards), magazines and newspapers. Other products typically sold by very large retailers are also covered, including tobacco, pet related products, plants, clothing and toys.

The reference to a kind of grocery product has a flexible application and is intended to be able to be construed narrowly or broadly depending on the kinds of grocery products that belong in the same market on a competition analysis. Typically, that would be grocery products that are sufficiently substitutable with each other.

Further, the prohibition is not intended to be limited to specific categories of grocery products such as all ‘non-alcoholic drinks’ or all ‘food’. For example, section 5 of the Code includes ‘non-alcoholic drinks’ excluding ‘non-alcoholic drinks sold for in-store consumption’. A relevant kind of grocery product may be soft drinks of the same type and brand in narrow sense, or all soft drinks in a broad sense, depending on the circumstances. A note to new subsection 45B(1) provides a further example of the application of the prohibition to any kind of grocery product. That is:

- rice with the same brand, packaging and quantity; or
- white long grain rice, regardless of brand, packaging or quantity; or
- all rice.

Excessive price

The Code does not prescribe how an excessive price is determined. However, it is intended it would involve two steps, as follows.

The first step would involve the identification of a point of comparison to the price at which a kind of grocery product was supplied or offered for supply (the benchmark price).

In the development of the policy underlying the prohibition, overseas approaches to excessive pricing regulation were considered, particularly the abuse of dominance approaches applied in the European Union, the United Kingdom and South Africa.

Guided by jurisprudence in these jurisdictions, it is intended that the benchmark price could be determined by:

- reference to prices in comparable markets (for example, a market for the relevant kind of grocery product in a different location or time period) that are workably competitive, or
- reference to the attributable costs of supplying the relevant kind of grocery product plus a reasonable return. In understanding what level of return is reasonable, regard may be had to the market dynamics, attributable risks, investment expenditure and capital costs for the very large retailer to supply or offer to supply the kind of grocery product over the long term.

While other approaches could develop over time, it is intended that the two approaches outlined above would be appropriate to determine the benchmark price as they would establish the price a very large retailer may be able to supply or offer to supply a kind of grocery product if it was faced with workable competition in the relevant grocery product market.

The second step would involve a comparison between the benchmark price, and the relevant price at which the relevant kind of grocery product was supplied or offered for supply. It is intended that a price would be excessive if that price is significantly and persistently above the benchmark price. That is, where there is a significant difference between the relevant price and the benchmark price over a sufficient period to imply that the relevant grocery product market is not workably competitive, and intervention is needed to enhance consumer welfare. However, it is intended that there would not need to be a constant significant difference between the relevant price and benchmark price over a period for the relevant price to be excessive. This is because competition in the relevant grocery product market may not be workable even if the difference between the relevant price and benchmark price varies; that is, where it is occasionally not significant over a period.

A price is *not* intended to be excessive if it is not significantly and persistently above the benchmark price, as this would not promote workably competitive outcomes in grocery product markets and could lead to supply shortages and undermine industry incentives to invest and innovate and, in doing so, cause harm to consumer welfare.

Exception

New subsection 45B(2) provides that the excessive pricing prohibition under subsection 45B(1) does not apply in relation to a supply, or an offer to supply, a kind of grocery product if a law of the Commonwealth, or State or Territory regulates the price for the supply or offer to supply. This is intended to avoid inconsistency between the excessive pricing prohibition and other laws of the Commonwealth, States or Territories.

Penalty

The excessive pricing prohibition under subsection 45B(1) is subject to the higher tier maximum civil penalty (see item 13) to provide a strong deterrent against contravention, noting the prohibition only applies to very large retailers with covered revenue exceeding \$30 billion for the previous financial year. This penalty is necessary to promote workably competitive outcomes in grocery product markets and ensure that consumers retain a robust level of protection against excessive pricing by very large retailers on grocery products.

Record Keeping

New section 45C of the Code requires very large retailers to keep pricing information or a document that contains any pricing information, for at least three years after the information or document is created or given. This is intended to support the enforceability of the excessive pricing prohibition by ensuring that the ACCC can obtain records needed to effectively assess whether a very large retailer has supplied, or offered to supply, a kind of grocery product at an excessive price.

The definition of pricing information is inserted into section 5 of the Code under item 5. It includes, for example, information on a price at which a retailer supplies or offers to supply a kind of grocery product and a cost of the retailer to supply or offer to supply a kind of grocery product.

A very large retailer is only required to keep pricing information, or documents that contain pricing information, not both. For example, if a very large retailer has the price of a kind of grocery product in a database, and recorded on a document, the retailer would only be required to keep one or the other. Further, very large retailers are not required to create new information or documents. Rather, they are only required to keep relevant information or documents that they create or are given as part of their normal business operations. This is intended to limit regulatory burden on very large retailers.

These requirements are consistent with section 51ADD of the Act, which allows the ACCC to require a corporation to provide information or produce a document ‘if a corporation is required to keep, to generate or to publish information or a document under an applicable industry code.’

Timing

The record keeping requirements apply from commencement. That is, very large retailers must keep any pricing information or document that includes pricing information for at least three years after the information or document is created by or given to the retailer from commencement. However, the application of new section 45C of the Code at commencement is dealt with in new section 90 of the Code, inserted by item 37. New section 90 of the Code will require a very large retailer to keep any pricing information or a document that contains pricing information created by or given to the retailer within three years before commencement, but held at commencement, for at least three years after the commencement of new section 45C of the Code.

Penalty

The record keeping requirements under new section 45C of the Code are subject to the higher tier maximum civil penalty (see item 13) to provide a strong deterrent against contravention, noting these provisions only apply to very large retailers with covered revenue exceeding \$30 billion for the previous financial year. This penalty is required to ensure that the ACCC have access to the information and documents necessary to monitor compliance with and enforce the excessive pricing prohibition.

Items 20 to 35

Items 20 to 35 makes consequential amendments to Division 5 of Part 2 of the Code, which prescribe the complaint and dispute resolution framework relating to the supplier provisions of the Code, to ensure existing references to the Code or the purpose of the Code remain separate to the new excessive pricing prohibition regime.

Items 36 and 37

Items 36 and 37 amend Part 3 of the Code to provide for application, saving and transitional provisions relating to the Regulations.

Item 36 inserts the new heading ‘Division 1—Application, saving and transitional provisions’ into Part 3 of the Code, so that the application, saving and transitional

provisions relating to the supplier provisions of the Code are separated from those relating to the new excessive pricing regime.

Item 37 inserts new Division 2–Application, saving and transitional provisions relating to the Competition and Consumer (Industry Codes–Food and Grocery) Amendment (Supermarkets Excessive Pricing Prohibition) Regulations 2025 ' into Part 3 of the Code to provide for the application provisions detailed below.

Application–very large retailers

New subsection 8(1A) of the Code, inserted under item 7, sets out when a retailer is a very large retailer for a financial year. New section 89 of the Code provides that subsection 8(1A) of the Code applies in relation to financial years ending on or after the commencement of that subsection, whether the previous financial year mentioned in that subsection ends before, on, or after commencement.

New section 45A of the Code, inserted under item 19, requires a corporation to notify the ACCC when the corporation becomes a very large retailer under the Code. New section 89 modifies the notification requirement for a corporation that is a retailer and that has total covered revenue exceeding \$30 billion for the most recent financial year at the time the Code commences. Such a corporation is treated as having complied with the requirement under section 45A of the Code if the corporation notifies the ACCC in writing that it is a very large retailer within five business days after the day the Code commenced.

Applications–existing records

New section 45C of the Code, inserted by item 19, prescribes record keeping requirements for very large retailers. Relevantly, very large retailers are required to keep all pricing information, or a document that contains pricing information for at least three years after the information or document is created by or given to the retailer.

New section 90 of the Code provides that new section 45C of the Code applies in relation to any pricing information, or any document that contains pricing information that is:

- created by or given to a retailer within three years before that commencement of section 45C; and
- held by the retailer immediately before the commencement of section 45C;

as if the information or document had been created by or given to the retailer immediately after commencement.

This deems pricing information or a document that contains any pricing information created by or given to a retailer within three years before commencement; and held by the retailer immediately before the commencement to have been created or given to the retailer immediately after commencement. Therefore, very large retailers are required to keep pricing information or a document that contains any pricing information created by or given to the retailer within three years before commencement, but held by the retailer at commencement, for at least three years after the commencement of new section 45C of the Code.

Application–ADR processes

Item 30 amends section 67 of the Code ensure that ADR processes only apply to the supplier provisions of the Code. New section 91 of the Code ensure that these amendments only apply in relation to a notification made on or after the commencement of section 91.