

ARA & NRA SUBMISSION

CONSULTATION ON PROHIBITING “EXCESSIVE PRICING” BY SUPERMARKETS

NOVEMBER 2025

The Australian Retailers Association (ARA) and National Retail Association (NRA) welcome the opportunity to provide feedback on Treasury’s consultation on prohibiting “excessive pricing” by supermarkets.

The ARA and NRA, which propose to amalgamate to form the Australian Retail Council (ARC), represent a \$430 billion sector, and employs 1.4 million Australians – making retail the largest private sector employer in the country and a significant contributor to the Australian economy.

Our membership spans the full spectrum of Australian retail, from family-owned small and independent retailers that make up 95% of our membership, through to our largest national and international retailers that employ thousands of Australians and support both metropolitan and regional communities every day.

With a significant portion of every dollar spent in retail flowing back to employees, suppliers, super funds, and local communities, a thriving retail sector benefits all Australians. After a uniquely challenging five-year period, which has had significant impacts on the sector, we are united in advocating for policies, reform and collaboration that will drive growth, resilience, and prosperity for the retail sector and all Australians.

EXECUTIVE SUMMARY

The ARA strongly urges the Federal Government not to proceed with this proposal. It seeks to address a problem for which there is no evidence and which will have the opposite effect of its stated intent, putting significant upward pressure on grocery prices for Australian consumers.

Despite a more than 12-month investigation, the ACCC Supermarkets Inquiry found no evidence of supermarket excessive pricing. This proposal is not amongst the ACCC’s recommendations and comes at a time at which retail faces significant and substantive issues requiring urgent government attention, including the pronounced increase in violence and aggression against retail workers and dramatic increase in supply of illicit tobacco, which elevate shrink and loss prevention costs, raise insurance premiums and staffing requirements, and therefore exert upward pressure on consumer prices. Dr Emerson’s Code Review likewise found no evidence of consumer price gouging and recommended strengthening the Food and Grocery Code to improve transparency and dispute resolution between suppliers and retailers.

The ACCC clearly identified energy, freight, insurance, labour and supplier input costs as the major drivers of increased grocery prices in the high-inflation post-COVID economy. The lack of evidence for allegations of excessive pricing is also clearly seen in the financial statements of Coles and Woolworths, which have consistently had net profit after tax (NPAT) of less than 3%. This is not indicative of excessive or abnormal pricing behaviour.

Introducing this proposal would run directly counter to the Federal Government's priorities through the Economic Reform Roundtable and the Productivity Commission to reduce regulatory burden and make it easier to do business. Adding a subjective price-setting offence would increase operating costs, regulatory uncertainty and legal risk.

Our primary position is that the Federal Government should not proceed with the proposal. If the Federal Government nevertheless proceeds, the measure must be rebuilt around clear definitions, explicit defences, proportionate penalties, less burdensome record keeping requirements, a graduated enforcement model, published ACCC guidance prior to commencement, and a structured review after two years to assess actual consumer and market impact.

CONTEXT AND EVIDENCE

The ACCC's Supermarkets Inquiry did not find evidence of excessive pricing and did not recommend introducing an "excessive pricing" prohibition. It identified input cost pressures (energy, freight, wages, insurance), supplier pricing, and localised competitive constraints as key contributors to cost and price outcomes.

Across the sector, supermarket NPAT remains below 3 per cent, which is low by global grocery standards.

A rule that targets outcomes (prices) rather than causes (costs) would not address the drivers of pricing pressure and would instead invite after-the-fact judgement against notional "benchmark" prices that may not reflect product mix, locality, logistics, promotions, shrink, seasonality or substitution.

Successive Federal Government reviews have not established evidence of "excessive pricing". Dr Craig Emerson's independent review of the Food and Grocery Code made no finding of consumer price gouging. Australian competition law already provides tools to address misuse of market power, unconscionable conduct and misleading pricing. In sectors where government considers access or pricing so fundamental as to warrant ongoing direct regulation, it has historically relied on economy-wide instruments such as the national access regime under Part IIIA of the Competition and Consumer Act, not a bespoke sector-specific Code. If government now believes supermarkets warrant that level of intervention, it should make that case transparently and explain why existing competition mechanisms are insufficient.

INTERNATIONAL CONTEXT

Comparable jurisdictions do not apply excessive pricing prohibitions to supermarkets in normal trading conditions.

Where "excessive pricing" concepts exist in the UK and EU, they are generally applied in very specific circumstances, typically on a case-by-case basis to businesses with significant market power, such as suppliers of essential medicines or other products where customers have little or no practical alternative. They are not applied as a permanent, sector-wide price control on large grocery retailers.

In the United States, most "excessive pricing" rules are activated only during declared emergencies (for example, natural disasters), and they apply to sharp price spikes on essential goods and services in those emergency periods. There is no ongoing federal prohibition on "excessive pricing" in a competitive supermarket environment.

There is no precedent in comparable markets for a standing retail price control aimed at two or three supermarkets. Adopting such a model would make Australia an international outlier and would create uncertainty for investment, expansion and innovation in the sector.

IF GOVERNMENT PROCEEDS: LEGISLATIVE PLACEMENT, SCOPE AND SAFEGUARDS

If government proceeds despite the absence of evidence of systemic “excessive pricing”, any prohibition on “excessive pricing” should be introduced through the Competition and Consumer Act 2010 (CCA) as an economy-wide rule. If “excessive pricing” is genuinely regarded as unacceptable conduct, it should be addressed consistently across the economy and enforced through established national competition law, rather than drafted as a bespoke offence aimed at two supermarket brands. An approach that targets two companies within a single sector for a unique price control without any evidence of price gouging is difficult to defend on competition policy grounds, would undermine competitive neutrality, and would set a precedent for sector-specific price regulation.

Layering a new “excessive pricing” prohibition on top of the existing CCA and a strengthened, mandatory Food and Grocery Code would create regulatory duplication, expose retailers to multiple penalties for the same underlying conduct, and impose ongoing compliance cost. Faced with that level of legal and financial risk, retailers would be forced to act more conservatively on pricing and promotions. That in turn drives higher checkout prices, not lower.

If government continues to proceed through the Food and Grocery Code, it must:

- **Scope:** Any regulation must apply on the same basis as the entirety of the Code.
- **Avoiding Unintended Consequences (Explicit Defences):** The law must not operate in a way that makes groceries more expensive for households or removes discounts shoppers rely on. In practice, that means it should not treat the following pro-consumer practices as “excessive pricing”:
 - **National Pricing in Higher-Cost Regions:** Large retailers often hold regional/remote prices close to metro levels despite materially higher freight, insurance, labour and logistics costs. If that approach is exposed to selective product and/or geography-specific “excessive pricing” allegations, the safer commercial response would be to raise regional/remote prices. The law should avoid producing that outcome for rural and remote customers.
 - **Portfolio pricing and convenience.** Supermarkets price at a portfolio level, making little-to-no margin on high-demand staples to offer attractive prices on everyday items, balanced by higher-margin, lower-volume or specialty products for customers who value broader choice. A narrow, product-by-product benchmarking of “excessive” pricing risks undermining this model and lifting the price of staples, reducing range, and eroding the convenience of buying fresh and ambient needs in one shop.
- **Implementation:** ACCC guidance should be published before commencement so businesses understand how compliance will be assessed in practice, with a sensible lead time for systems and reporting changes. Commencement should be no earlier than 1 October 2026 to allow for guidance, systems build, training and data readiness. Enforcement should align with existing Code settings and avoid layering additional CCA turnover-style penalties onto the same conduct.

FOCUS ON REAL FACTORS

If the objective is to meaningfully reduce grocery prices for Australian households, Government attention should be directed to the real cost pressures in the supply chain rather than creating a new “excessive pricing” law.

The ACCC's Supermarkets Inquiry identified energy, freight, insurance, labour and supplier input costs as the key drivers of recent price increases. Those are economy-wide cost and productivity pressures, not evidence of supermarket price gouging. Addressing those pressures is materially more relevant to household budgets than introducing a subjective pricing prohibition that adds red tape and legal risk.

First, the cost to move goods through the network is substantially higher than it was pre-COVID. Freight, warehousing, last-mile delivery, insurance and transport compliance costs have all increased. Heavy-vehicle access constraints, fragmented state permit systems and infrastructure bottlenecks continue to add avoidable cost to getting product onto shelves, particularly in regional and remote areas. Policy effort is better directed at freight and supply-chain efficiency, including streamlined heavy-vehicle access, improved intermodal capacity and practical last-mile settings, than at creating a new "excessive pricing" rule for supermarkets.

Second, energy costs and the cost of transitioning store operations and cold-chain infrastructure to lower-emissions technologies are still rising. Refrigeration, lighting, HVAC and backup systems are significant, ongoing operating costs in food retail. Practical support for an orderly energy transition in stores and distribution, rather than new layers of compliance and reporting, would directly relieve cost pressure in those parts of the supply chain.

Third, retailers are carrying increasing regulatory and compliance burden across jurisdictions, including overlapping and inconsistent state obligations that do not always deliver a direct benefit to consumers. National harmonisation and genuine reduction of duplicative approvals and reporting requirements are squarely in line with the Federal Government's stated priorities through the Economic Reform Roundtable and the Productivity Commission to lift productivity and reduce the cost of doing business. That is where reform efforts should be focused.

Finally, there are immediate operational pressures that require urgent government attention: the pronounced increase in violence and aggression against retail workers, and the growth of the illicit tobacco market. Both drive security, insurance and staffing costs into stores. Responding to those issues would deliver more direct benefit to frontline staff and customers than introducing a supermarket-specific "excessive pricing" prohibition.

In short, the main drivers of higher grocery prices have been input costs, supply-chain cost, energy and compliance burden. Those are real economy issues. A new price-setting offence aimed at two large retailers does not address any of them, and instead adds additional cost and legal risk that will ultimately feed back into the price paid at the checkout.

CONCLUSION

If the Federal Government is serious about addressing cost-of-living pressures facing Australian households, its focus should be on the real cost drivers in the grocery supply chain, rising input costs, energy, freight, insurance, labour and compliance burden, and on practical transparency that helps shoppers compare value.

An "excessive pricing" prohibition is not justified by the evidence and will put upward pressure on grocery prices, not downward. It would add significant regulatory burden and undermine the Federal Government's own commitments to cut red tape and address the productivity crisis facing the Australian economy.

We therefore urge the Federal Government to withdraw the proposal and redirect effort toward the drivers that are actually putting pressure on grocery prices: freight and logistics costs, energy and cold-chain costs,

insurance and security costs (including the impact of retail crime and illicit tobacco), and the growing compliance and regulatory burden across jurisdictions. These are the issues identified by the ACCC as feeding directly into shelf prices.

If government nevertheless proceeds, the law must be rebuilt around proportionate and targeted enforcement, and published ACCC guidance prior to commencement, so that retailers can understand their obligations and consumers are not unintentionally made worse off, particularly in regional and remote areas.

Thank you for the opportunity to comment on Treasury's consultation on prohibiting "excessive pricing" by supermarkets. Any queries regarding this submission can be directed to our policy team at policy@retail.org.au