The Senate

Select Committee on Supermarket Prices

Supermarket Prices: Final report

Competition and Consumer Amendment (Divestiture Powers) Bill 2024

May 2024

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Abbreviations and acronyms

ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACTU	Australian Council of Trade Unions
AMIC	Australian Meat Industry Council
APAL	Apple and Pear Australia Ltd
ARA	Australian Retailers Association
ASIC	Australian Securities and Investments Commission
BCA	Business Council of Australia
CEQ	Community Enterprise Queensland
Coles	Coles Group; Coles Supermarkets Australia Pty Ltd
Committee	Select Committee on Supermarket Prices
Competition Act	*Competition and Consumer Act 2010*
Consumer Law	Australian Consumer Law
CPI	consumer price index
CPSA	Combined Pensioners and Superannuants Association of NSW
DC	Distribution Centre
Divestiture Powers Bill	Competition and Consumer Amendment (Divestiture Powers) Bill 2024
EBIT	earnings before interest and tax
EM	Explanatory Memorandum
Fels Inquiry	Professor Allan Fels reporting to the ACTU, Inquiry into price gouging and unfair pricing practices (2024)
GLOBE	Global Centre for Preventive Health and Nutrition, Deakin University
GRANT	Grassroots Action Network Tasmania
Greenlife	Greenlife Industry Australia
Grocery Code	Food and Grocery Code of Conduct
Grocery Code Review	Food and Grocery Code of Conduct review (2024), by Dr Craig Emerson
GST	Goods and Services Tax
NFF	National Farmers Federation
OECD	Organisation for Economic Co-operation and Development
RAFFWU	Retail and Fast Food Workers Union
RRP	recommended retail price/s
SDA	Shop, Distributive and Allied Employees Association
UPC	Unit Pricing Code
WACOSS	WA Council of Social Service
Woolworths	Woolworths Group; Woolworths Ltd

List of recommendations

Recommendation 1

9.24 The committee recommends the Australian Government amend the Competition and Consumer Act 2010 to create divestiture powers specific to the supermarket sector, where a supermarket has been found to have misused their market power under section 46 of the Act, or engaged in unconscionable conduct.

Recommendation 2

9.30 The committee recommends that the Australian Government progress legislative amendments to section 46 of the Competition and Consumer Act 2010 to prohibit the charging of excess prices (otherwise known as price gouging).

Recommendation 3

9.38 The committee recommends that, as a matter of priority, the Australian Government establish a Commission on Prices and Competition to examine prices and price setting practices of industries across the economy, and review government and other restrictions on effective competition which are leading to high prices. In relation to supermarkets, the commission should be provided with the authority to:

- **monitor and investigate supermarket prices and price setting practices, including prices along the supply chain (including the farmgate, wholesale and retail price), mark-ups and profits;**
- **conduct market studies to review restrictions on competition in the supermarket sector;**
- **require supermarkets to publish historical pricing data that is transparent and accessible to both suppliers and consumers;**
- **access any data and information required to undertake its work, including supermarket pricing, mark-ups and profits data and price setting policies (both historical and current);**
- **make referrals to the Australian Competition and Consumer Commission for enforcement; and**
- **publish reports as required and at least on an annual basis.**

Recommendation 4

9.49 The committee recommends the Australian Government progress legislative amendments to allow the Australian Competition and Consumer Commission (ACCC) the authority to investigate and prosecute unfair trading practices.

Recommendation 5

9.50 The committee recommends that The Treasury take immediate steps to make the Food and Grocery Code of Conduct mandatory, with an appropriate regime of financial and other penalties for breaches and protections against supplier retribution. The code should be made mandatory as soon as possible and no later than 30 September 2024.

9.51 To ensure complete supply chain protection, the mandatory Food and Grocery Code of Conduct must include the Dairy Code of Conduct and the Horticulture Code of Conduct as schedules.

9.52 The Food and Grocery Code of Conduct should:

- **be fully mandatory for retailers with enforceable rules;**
- **be enforceable with substantial penalties for breaches;**
- **include mandatory minimum standards that cannot be 'opted out' of;**
- **be overseen by Code arbiters who are fully independent of supermarkets, who should proactively conduct random audits so suppliers have anonymity in the process;**
- **create provisions specifically for the trading of fresh produce, reflecting the perishability of the product and the particular vulnerability of suppliers;**
- **create a portal for suppliers to lodge issues, and once a threshold is met and a consistent theme is identified, the ACCC can investigate the issue;**
- **investigate implementing measures under the Code that provide suppliers with improved information symmetry, which should include creating a price register for farmers to assist them in understanding market prices across primary industries; and**
- **a public consultation period to implement all of the above.**

Recommendation 6

9.59 The committee recommends that The Treasury amend the mandatory Food and Grocery Code of Conduct to explicitly provide that:

- **greenlife industries are captured by the code; and**
- **the code includes any large retailer that stocks food and/or grocery products.**

Recommendation 7

9.1 The committee recommends that the Australian Government implement merger reforms as proposed by the Australian Competition and Consumer Commission (ACCC), including:

- **mandatory notification of mergers above a prescribed notification threshold, with a call-in power for proposed transactions below the threshold that raise potential competition concerns;**

- **merger clearance tests applied by the ACCC and Tribunal on review;**
- **reversal of the test for clearance under section 50 of the Competition and Consumer Act 2010 to require merger parties to satisfy the ACCC, or the Australian Competition Tribunal on review, that the transaction would not be likely to substantially lessen competition; and**
- **amendments to section 50 of the Competition and Consumer Act 2010 to provide for increased focus on changes to the structural conditions resulting from a merger that may make markets less competitive and to address creeping acquisitions.**

Recommendation 8

9.71 **The committee further recommends that as part of reform to merger laws, the Australian Government provide the Australian Competition and Consumer Commission with the powers to investigate and make recommendations to government to address land banking in the supermarket sector.**

Recommendation 9

9.75 **The committee recommends that the Australian Government amend the Unit Pricing Code made under the Competition and Consumer Act 2010, so that supermarkets are required to:**

- **adopt a mandatory information standard for unit pricing, including improvements to the legibility and prominence of unit prices, and changes in price and size of products, in line with consumer expectations;**
- **standardise and rationalise discount and promotional terms, to prevent promotional material indicating a discount when one is not available; and**
- **prominently disclose any changes in the price or size of a product.**

9.76 **The committee recommends that the Australian Government ensure the Australian Competition and Consumer Commission is provided with sufficient regulatory and enforcement powers regarding the Unit Pricing Code.**

Recommendation 10 —

9.80 **The committee recommends the Australian Government increase funding to the Australian Competition and Consumer Commission (ACCC) to ensure the ACCC is adequately funded and resourced to regulate, investigate, enforce and prosecute competition policy matters, including unfair trading practices, the Unit Pricing Code, the Food and Grocery Code of Conduct, and any other matters falling within its remit.**

9.81 **The committee further recommends that the ACCC be given appropriate legislative powers to compel whatever information it requires as part of its investigative work.**

Recommendation 11

9.86 The committee recommends that the Department of Climate Change, Energy, the Environment and Water update the 2017 National Food Waste Strategy to include a best-practice, nation-wide approach to addressing food waste in the supermarket chain. The updated strategy should consider:

- **reform of the use-by and best-before labels and their role in food wastage and consumer confusion;**
- **whether unrealistic cosmetic standards are adversely affecting farmers and the quantity of food waste across the country; and**
- **a requirement for supermarkets to publish regular data on food waste volumes, including food rejected for cosmetic reasons and food donated to foodbanks and similar charities.**

9.87 The committee recommends that the above reforms be progressed following a public consultation period.

Recommendation 12

9.90 The committee calls on supermarkets to do more to improve the health and safety standards for supermarket employees, to ensure supermarket workers are appropriately protected from customer abuse.

Recommendation 13

9.96 The committee recommends that the Senate refer to the Economics References Committee the following matters for inquiry and report by the last sitting day of February 2025:

- **The role of multinational food manufacturers in the supermarket industry in Australia, with particular reference to:**
  - **the bargaining power of multinational food companies when engaging with Australian supermarkets;**
  - **the process of multinational food companies in negotiating price changes with Australian supermarkets and retailers;**
  - **the role of the multinational food companies in price setting and how this impacts on food prices;**
  - **the price of company products in other jurisdictions and how these compare to Australia; and**
  - **any related matters.**

Recommendation 14

9.100 The committee recommends that the Senate refer to the Economics References Committee the following matters for inquiry and report by the last sitting day of February 2025:

- **The role of Australia's 'big box' retailers in price setting, with particular reference to:**
  - **the market behaviours of such retailers, including price negotiation practices and engagement with suppliers;**
  - **acquisition and use of land; and**
  - **any other related matters.**

Contents

Chapter 1
Introduction: the Australian supermarket sector

1.1 On 6 December 2023, the Senate resolved that the Select Committee on Supermarket Prices (the committee) be established to inquire into and report on the price setting practices and market power of major supermarkets, with particular reference to:

(a) the effect of market concentration and the exercise of corporate power on the price of food and groceries;
(b) the pattern of price setting between the two major supermarket chains;
(c) rising supermarket profits and the large increase in price of essential items;
(d) the prevalence of opportunistic pricing, price mark-ups and discounts that are not discounts;
(e) the contribution of home brand products to the concentration of corporate power;
(f) the use of technology and automation to extract cost-savings from consumers and employees;
(g) improvements to the regulatory framework to deliver lower prices for food and groceries;
(h) frameworks to protect suppliers when interacting with the major supermarkets;
(i) the role of multinational food companies in price inflation; and
(j) any other related matters.[1]

1.2 The committee was required to report by 7 May 2024.

1.3 Details of the inquiry were made available on the committee's webpage and the committee invited organisations, key stakeholders and individuals to provide submissions.

1.4 The committee received 155 public submissions, which are listed at Appendix 1 of this report, and held the following public hearings:

- 7 March 2024, in Hobart
- 12 March 2024, in Orange
- 13 March 2024, in Melbourne
- 11 April 2024, in Canberra
- 15 April 2024, in Canberra
- 16 April 2024, in Canberra.

1.5 A list of the organisations and individuals who attended as witnesses at these public hearings can be found in Appendix 2. The public submissions, additional

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1 *Journals of the Senate*, No. 93, 6 December 2023, pp. 2715–2716.

information received by the committee and Hansard transcripts are available on the committee's website.[2]

1.6 In addition, on 27 March 2024, through amendments to the fourth report of the Selection of Bills Committee, the Senate referred the Competition and Consumer Amendment (Divestiture Powers) Bill 2024 (Divestiture Powers Bill) to the Select Committee on Supermarket Prices (committee) for inquiry and report by 7 May 2024.[3] The committee's report on this bill can be found at Chapter 8.

Acknowledgement

1.7 The committee thanks all those who have contributed to the inquiry by making submissions, providing additional information, and appearing at public hearings. The committee also acknowledges and thanks those who made submissions to the committee's inquiry into Divestiture Powers Bill.

1.8 The committee especially thanks those current or former supermarket employees or suppliers who shared their stories with the committee. Your evidence was of great assistance to the committee in better understanding supermarket operations, and the committee knows that it was not an easy decision to come forward—the committee appreciates that you did so.

Report structure

1.9 The report is comprised of nine chapters:

- Chapter 1—outline of the inquiry and introduction to the Australian supermarkets sector;
- Chapter 2—recent reviews into supermarket prices and related matters;
- Chapter 3—the impacts of supermarket prices, including on consumers and in conjunction with other cost of living pressures; market concentration and lack of choice for consumers, particularly in rural and regional areas; food insecurity and wastage; opportunistic pricing practices and misleading advertising; and the value of unit pricing;
- Chapter 4—the relationship between suppliers and supermarkets, including feedback from suppliers in several specific sectors, including fruit and vegetables, meat and dairy, plant nurseries and goods suppliers;
- Chapter 5—considers the experiences of supermarket employees, looking at their take home pay and unsafe working environments;
- Chapter 6—investigates factors which create a competitive market, including mergers, land banking and independent retailers;
- Chapter 7—examines the current regulatory regime and considers evidence to the inquiry on how the supermarket industry could be better regulated,

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2 The committee's website is available at: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Supermarket_Prices

3 *Journals of the Senate*, No. 108, 27 March 2024, pp. 3234-3237.

including through improved regulatory settings; changes to the Food and Grocery Code of Conduct; price regulation and transparency;
- Chapter 8—presents the committee's report on the Competition and Consumer Amendment (Divestiture Powers) Bill 2024, and the evidence received by the committee both in favour and against the bill;
- Chapter 9—outlines the committee's views on supermarket prices and other matters included in the inquiry terms of reference, and the committee's recommendations for change.

Notes on references

1.10 References to the Committee Hansard may be references to a proof transcript. Page numbers may differ between proof and official transcripts.

The concentration of the Australian supermarket sector

1.11 Australia's supermarket sector is one of the most concentrated in the world, with the largest four supermarkets holding a market share of over 80 per cent, as shown in Figure 1.1.[4]

1.12 As noted by the Australian Competition and Consumer Commission (ACCC):

> The Australian retail grocery sector is today worth $135 billion with three main vertically integrated chains (Woolworths, Coles and ALDI), and what are commonly referred to as the independent supermarkets (such as Drakes, Harris Farms and IGA-branded independent retailers), most of which utilise Metcash for a significant portion of their wholesale supply. Since 2008, market dynamics have changed with the continued growth of Coles, Woolworths, Metcash and ALDI's expansions in Australia.[5]

1.13 The committee heard that the two major supermarket chains, Coles Group (Coles) and Woolworths Group (Woolworths) had combined sales of around $80 billion in the 2023 financial year and accounted for two-thirds of the food and grocery sector.[6]

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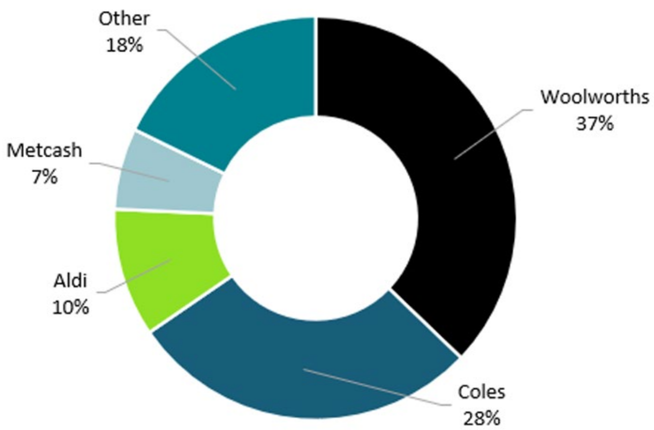
4 Professor Allan Fels AO reporting to the Australian Council of Trade Unions, *Inquiry into price gouging and unfair pricing practices: final report*, February 2024, pp. 52–54; The Treasury, *Independent review of the Food and Grocery Code of Conduct 2023–24: consultation paper*, February 2024, p. 6.

5 Australian Competition and Consumer Commission, *ACCC Supermarkets Inquiry: Issues Paper*, 29 February 2024, p. 6.

6 Dr John Hawkins, *Submission 32*, p. 1.

Figure 1.1 Australian food and grocery sector market share for financial year 2022–23



Source: The Treasury, Independent review of the Food and Grocery Code of Conduct 2023–24: consultation paper, February 2024, p. 6.

1.14 The National Farmers Federation (NFF) observed that this 82 per cent 'market share of the top four firms is significantly higher in the food and grocery sector than most other sectors in Australia's economy'. The NFF continued:

> In addition to their significant market share, supermarkets are one of the largest supply channels of perishable products to end customers.
>
> In addition to this market concentration, Australia's major supermarkets also account for a significant majority of the sale of perishable agricultural goods to end consumers.[7]

1.15 Metcash also advised the committee that there were 'some localities in Australia where the combined market share of the two major chains is over 90%, leaving local shoppers with no competitive tension in those grocery markets'.[8]

1.16 As The Treasury has identified, this high concentration can provide key retailers with substantial market power over suppliers, who rely on the retailers to distribute their products, especially in an isolated market like Australia.[9]

1.17 Mr Jeremy Griffith, a member of the NFF Horticulture Council spoke plainly about the market share of Coles and Woolworths, saying:

> There is nothing good about duopolies. It doesn't matter what economy you are in, they are bad for the economy. They slow economic growth, they

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7 National Farmers Federation, *Submission 97*, pp. 6–7.

8 Metcash, *Submission 24*, [p. 3].

9 *Independent review of the Food and Grocery Code of Conduct 2023–24: Consultation Paper*, pp. 6–7.

> reduce employment, and consumers will always pay more money. And they are extraordinarily difficult to regulate.[10]

1.18 Dr John Hawkins, a senior lecturer at the University of Canberra observed that the market share of Coles and Woolworths raised concerns about whether the level of competition was adequate, with the following possible adverse outcomes:

> Predatory pricing may lead to further concentration in the market. The threat of aggressive price-cutting, or difficulties created in obtaining good sites, may also deter new entrants in the market. Suppliers, such as local farmers, may fear offending such large purchasers. There are legitimate concerns that the margins between prices charged to consumers and those paid to suppliers are wider than they would be if there were more competitors in the market.[11]

1.19 Per Capita, an independent think tank, similarly submitted that the larger the market share, the more likely that retailers could 'operate outside of the best interest of consumers', where:

> … their share of sales is large enough to influence the price of goods or services sold – this is known as price setting. In such an environment, price setting firms can raise prices for reasons other than as a response to increased costs, or for other purposes such as expanding investment or for productivity improvements … The tendency over time is not toward greater competition but towards concentration.[12]

1.20 The NFF submitted that this market share allows the supermarkets to use its market power to create unfair relationships with its suppliers, which could be characterised as:

- supermarkets holding significantly more bargaining power due to their concentration in the market;
- suppliers committing a considerable amount of time and evidence to negotiate a wholesale price increase with supermarkets;
- supermarkets extracting a disproportionate level of profits from products; and
- supermarkets requiring suppliers to comply with onerous compliance standards.[13]

1.21 Conversely, the supermarkets and their representative body, the Australian Retailers Association, contended that recent new supermarket entrants, mainly

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10 Mr Jeremy Griffith, Representative, National Farmers Federation Horticulture Council, *Committee Hansard*, 7 March 2024, p. 17.

11 Dr John Hawkins, *Submission 32*, p. 2.

12 Per Capita, *Submission 10*, p. 4.

13 National Farmers Federation, *Submission 97*, p. 7.

Aldi and Costco, has boosted competition in the Australian supermarket sector.[14]

1.22 Woolworths similarly argued that 'Australia now has three of the largest and most efficient food and everyday needs retailers in the world competing to serve Australian consumers', in addition to Aldi, Costco and Amazon and their considerable global retail sales and increasing presence in Australia.[15]

The supermarket regulatory framework in Australia

1.23 The supermarket sector in Australia is governed by a mix of broad federal legislation, including the *Competition and Consumer Act 2010* (Competition Act) which includes the Australian Consumer Law (Consumer Law), as well as sector-specific regulations, such as industry codes including the Food and Grocery Code of Conduct and the Unit Pricing Code.[16]

Legislation

1.24 Australia's Competition Act, including the Consumer Law, applies equally to all businesses including the supermarket sector, and is enforced by the ACCC.[17]

1.25 As noted by the Treasury:

> Competition law prohibits anti-competitive practices including cartels, misuse of market power, and anti-competitive mergers. If the ACCC does find evidence of anti-competitive behaviour they have a powerful toolkit to investigate and take action through the courts where appropriate.[18]

1.26 The Consumer Law is a national law enacted by each state and territory, which 'establishes principles that generally apply across circumstances and industries'. The Consumer Law also contains specific provisions which establish clear offences for defined behaviours.[19] These provisions include prohibitions against:

- unconscionable conduct,
- misleading or deceptive conduct and unfair contract terms; and
- specific discrete unfair practices such as bait advertising.[20]

1.27 The Treasury noted that while there is no specific prohibition on excessive pricing:

14 Australian Retailers Association, *Submission 26*, pp. 1 and 4.

15 Woolworths, *Submission 23*, p. 3.

16 The Treasury, *Submission 53*, p. 6.

17 The Treasury, *Submission 53*, p. 8.

18 The Treasury, *Submission 53*, p. 8.

19 The Treasury, *Submission 53*, p. 8.

20 The Treasury, *Submission 53*, p. 8.

> … if a business makes misleading claims about the reason for price increases, it may be breaching the standards-based provision against misleading or deceptive conduct. In some limited circumstances excessive pricing may be considered unconscionable where it is extreme and targets particularly vulnerable consumers.[21]

1.28 Under the Consumer Law, the ACCC has legislative powers to prosecute companies that have engaged in misleading, deceptive or unconscionable conduct. However, there is no defined legal definition of what this entails.[22] This issue is discussed in greater detail in Chapter 7 on regulation.

Anti-competitive pricing

1.29 Some forms of pricing are considered illegal under the Competition Act, for example where businesses attempt to collude with other businesses, rather than undergoing competition. According to the ACCC, the three main forms of anti-competitive pricing methods are:

- price fixing—businesses form cartels to fix the price of a certain product;[23]
- minimum resale prices—suppliers set a minimum resale price of their goods;[24] and
- predatory pricing—businesses deliberately set their selling price below the cost price to discourage competition and force other businesses out of the market.[25]

Food and Grocery Code of Conduct

1.30 The Food and Grocery Code of Conduct (Grocery Code)[26] is a voluntary agreement that is central to the ACCC progressing improvements in business standards and behaviours in the food and grocery sector.

1.31 The Grocery Code has been signed and accepted by major grocery and food market powers such as Coles, Woolworths, Aldi and Metcash.

1.32 On 10 January 2024, Dr Craig Emerson was appointed by the Treasury to undertake a review of the Grocery Code to assess its effectiveness to 'improve the commercial relationship between retailers, wholesalers and suppliers in the

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21 The Treasury, *Submission 53*, p. 8.

22 Professor Rod Simms AO, *Address to the Australian Food & Grocery Council Industry Leaders Forum*, Canberra, 11 October 2012.

23 Australian Competition and Consumer Commission, *Cartels*, www.accc.gov.au/business/competition-and-exemptions/cartels (accessed 25 March 2024).

24 Australian Competition and Consumer Commission, *Minimum resale prices*, www.accc.gov.au/business/competition-and-exemptions/minimum-resale-prices (accessed 25 March 2024).

25 Australian Competition and Consumer Commission, *Minimum resale prices*.

26 Competition and Consumer (Industry Codes – Food and Grocery) Regulation 2015.

grocery sector'.[27] The review is ongoing but has released a substantial interim report calling for the Grocery Code to be made mandatory (the Code and its review are discussed in more detail later in this report).

Is regulation working?

1.33 Supermarket prices and their broader impact on the Australian economy have been a focus of discussion and inquiry for many years, but with the increasing costs of living, this discussion has broadened to consider the impact of food and grocery pricing on people's everyday lives. As noted by the ACCC, 'grocery prices have become a major concern for the millions of Australians experiencing cost of living pressures'.[28]

1.34 In 2008, the ACCC conducted an inquiry on the competitiveness of retail prices for standard groceries and concluded that:

> … grocery retailing in Australian was workably competitive, but that Coles, Woolworths and Metcash had significant buyer power in relation to many items, and there were a number of factors that limited the level of price competition'.[29]

1.35 At that time, the ACCC made a number of recommendations that were broadly supported by government.[30]

1.36 However, given the rates of food inflation, the increasing cost of living and continued focus on the impact of supermarket prices on all actors in the Australian economy, there are indications the current regulatory settings are not appropriate or fit for purpose.

1.37 Per Capita suggested that based on 'sales, revenues, prices and profits for the past few years':

> … Australian competition, consumer and industrial relations laws are not working as they ought to. Gaps and loopholes have been revealed … It is now clear that the unwavering trust that many governments, including those in Australia, have previously put in the market's capacity to self-regulate and produce competitive and benevolent results has been misplaced.[31]

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27 Department of the Treasury, *Food and Grocery Code of Conduct Review 2023-24 – Terms of reference*, treasury.gov.au/review/food-and-grocery-code-of-conduct-review-2023/terms-of-reference (accessed 25 March 2024).

28 Australian Competition and Consumer Commission, *Submission 107*, p. 3.

29 Australian Competition and Consumer Commission, *Submission 107*, p. 2.

30 Australian Competition and Consumer Commission, *Submission 107*, p. 2.

31 Per Capita, *Submission 10*, pp. 1 and 4.

Food inflation

1.38 There is disagreement on the rates of food inflation in Australia—and where rates are agreed to—what the causes of inflation may be. Supermarkets argued to the committee that there is low food inflation in Australia, because of an appropriately competitive grocery market.

1.39 For example, Woolworths argued that 'increased competitive intensity' has reduced grocery prices in real terms, submitting that 'economy-wide inflation (ABS CPI) has increased 4 percentage points faster than food inflation' since 2008.[32]

1.40 However, as this report will highlight, many other submitters from a range of backgrounds argued there is high food inflation in Australia, and it is caused by high profit margins and opportunistic pricing by supermarkets, ultimately causing high prices to be paid by consumers.

1.41 The Woolworths data, for example, does not hold up against other consumer price index data from the Australian Bureau of Statistics (ABS), which submitted that compared 'to the headline CPI (Consumer Price Index) increase of 17.1% over the last four years, the increase for Food and non-alcoholic beverages is higher at 18.8%'. The ABS further advised that in 2022 'inflation for both Food and non-alcoholic beverages and the CPI increased at their fastest rate in over 30 years'.[33]

1.42 The Australia Institute similarly submitted that in the past five years—despite a rapid increase in overall inflation (CPI increased by 19.3 per cent)—food and non-alcoholic beverages increases were higher at 20.4 per cent.[34]

1.43 The Australia Institute made clear that 'food inflation is a particularly important pain point for Australia's most vulnerable households', because low-income households spend a bigger proportion of their income on food.[35]

Drivers of inflation

1.44 Woolworths submitted that food inflation was driven by 'cost increases from our supplier partners and cyclical impacts in fresh food markets'. It also suggested that not only was food inflation falling, but that food inflation in Australia was much lower than the OECD (Organisation for Economic Co-operation and Development) average.[36]

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32 Woolworths Group, *Submission 23*, p. 4.

33 Australian Bureau of Statistics, *Submission 119*, p. 2.

34 The Australia Institute, *Submission 96.1*, p. 4.

35 The Australia Institute, *Submission 96.1*, p. 1.

36 Woolworths Group, *Submission 23*, p. 1.

1.45 Mr Brad Banducci, Chief Executive Officer of Woolworths noted that for fruit and vegetables 'we've had deflation in the last 12 months in Australia'.[37] Woolworths further submitted that:

> … it is important to note that suppliers are not obliged to provide cost information to justify their increased prices to retailers under the Food and Grocery Code of Conduct. This limits our ability to test and verify the basis for a cost increase request.[38]

1.46 Coles similarly argued that food inflation has been caused by external factors such as supply chain shocks, but that it remained lower than in other OECD nations and said, 'we do put that down to the fact that the market here in Australia is very competitive'.[39]

1.47 The ACCC agreed that '[s]ome key factors for higher grocery prices in Australia include global supply chain disruptions, higher global fuel and energy prices and various natural disasters and other significant weather events'.[40]

1.48 However, as outlined succinctly by a member of COTA Australia, while these arguments can be made for the cause of food inflation, supermarkets are still making massive profits, rendering this whole line of discussion moot:

> The supermarket chiefs email us that they are not profiteering from food inflation but doing everything they can to absorb some of the higher costs. I was almost won over. Then we read in the '23 FY, the Woolworths Group in Australia made a net after tax net profit of $1.72 billion (Aus) – a whopping increase from the previous year. What can we do? We may be old, but we need to eat. Woolworths and Coles dominate the country's food market. That's a problem![41]

Profit margins

1.49 NSW Farmers explained that high rates of food inflation 'can significantly increase grocers' profits even if their gross margins remain constant or increase only modestly', because while the margin remains the same, the gross profit increases. For example:

> Consider a grocer selling a can of soup. If a grocer is paying $1 for that can, and selling it to you for $1.20, they are making a 20% margin. They earn $0.20 per can of soup sold. Now, what happens if the grocer's cost for that can of soup goes up to $1.10, and they apply that same 20% margin? The

[37] Mr Brad Banducci, Chief Executive Officer, Woolworths Group, *Committee Hansard,* 16 April 2024, p. 11.

[38] Woolworths, Submission 23, p. 7.

[39] Ms Leah Weckert, Chief Executive Officer and Managing Director, Coles Group, *Committee Hansard*, 16 April 2024, p. 35.

[40] Australian Competition and Consumer Commission, *Submission 107,* p. 5.

[41] COTA Australia, *Submission 21*, p. 6.

price of that can of soup now goes up to $1.32. The grocer still makes a 20% margin, but now they get $0.22 cents to put toward their profit.[42]

1.50 The Treasury advised that the level of profitability and margins, and any recent changes to those rates, provides an indication of the level of competition in the supermarket sector. The Treasury submitted that:

> … in 2022-23 Woolworths obtained around 6 cents in every dollar spent as earnings before interest and tax (EBIT), while Coles obtained almost 5 cents. These figures have increased slightly over the past five years.[43]

1.51 Woolworths argued that 'grocery retail is a high-volume, low-margin sector and Australia has one of the most efficient and productive grocery sectors in the OECD' with Woolworths making 'around 3.6c in every $1 in our Australian Food Group'.[44] Coles similarly presented the sector as 'a typical example of a high volume, low margin sector' and submitted that it makes a net profit after tax of around 2.5 cents for every dollar spent.[45]

1.52 The Australia Institute submitted that the 'oft-heard claim' that higher supermarket profits have simply kept up with the overall rise in costs and prices 'is not supported by industry-wide data'. The Institute provided the following data, suggesting it indicated 'a significant increase in profit margins in the last five years' in food retail:

Figure 1.2 Profit margins in Australian food retail (% of total revenue)

	Woolworths			Coles			IBIS World
	EBIT		Corporate After-Tax Net	EBIT		Corporate After-Tax Net	After-Tax Net
	Group	Aus. Food		Coles Group	Supermarket		
2018	4.5%	4.7%	2.9%	3.8%	not reported	1.7%[a]	2.9%
2023	4.8%	6.0%	2.5%	4.8%	4.8%	2.6%	3.7%
2023 Revenue ($B)	$64.3	$48.0	$64.3	$41.5	$36.7	$41.5	$136.1
Extra Profit ($M)	$248.8	$620.7	-$247.2	$408.7	Approx. $360[b]	$387.6	$1,088.4

Source: Compilation from company financial reports and IBISWorld "Supermarkets and Grocery Stores in Australia" (August 2023 forecast). Company results include discontinued operations where reported.
a. 2018 after-tax return for Wesfarmers group.
b. Assuming 2018 margin equaled overall group, extra profit = $366 million. Assuming increase in margin since 2018 equaled increase in overall group, extra profit = $362 million.

Source: The Australia Institute, Submission 96.1, p. 6.

42 NSW Farmers, *Submission 105*, p. 11.

43 The Treasury, *Submission 53*, p. 3.

44 Woolworths Group, *Submission 23*, p. 2.

45 Coles, *Submission 20*, p. 20.

1.53 The Australia Institute also noted:

> … there is no sign that food retail margins are narrowing back to those historic norms, despite the downturn in global commodity prices ... other input costs (like energy), and the partial slowdown in food inflation over the past year.[46]

1.54 Associate Professor Andy Schmulow emphasised that low profit margins do not mean low profit for a high-volume business such as a supermarket:

> The narrative is: 'Oh woe is us; our margins are so low. Have some sympathy for us'. But the fact that their margins are low doesn't mean there's something wrong with the business. The fact that their margins are low is because that's the business that they're in …
>
> Under those environments and, typically, across their competitors across the globe, margins are low and volumes are high … So now we want to know how profitable that business is, because that's an indication to us as to whether your excessive market concentration is gouging consumers—which is the purpose of this inquiry. Of course they don't want to go there.[47]

Price gouging

1.55 Per Capita recognised that while there is no formal definition of price gouging, it 'colloquially refers to sudden increases in prices that people think are too high and without justification' and also 'connotes that firms are in a position in which they can raise prices in order to take profits without significant consequences'.[48]

1.56 The ACCC states that 'price gouging' or 'excessive pricing'—where the sale price of goods is set significantly above cost price due to a lack of competition—is not considered illegal.[49]

1.57 Similarly, 'surge pricing' is also not considered illegal, under the stipulation that a business must be clear about the price of the product. However, the ACCC states that it **is** illegal for businesses to distribute false and misleading claims about the reasons contributing to price increases.[50]

1.58 When the pricing of goods leads to outcomes considered by the public to be undesirable (but not illegal), governments will often attempt to implement

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46 The Australia Institute, *Submission 96*, p. 7.

47 Associate Professor Andrew Schmulow, Private capacity, *Committee Hansard*, 16 April 2024, p. 80.

48 Per Capita, *Submission 10*, p. 2.

49 Australian Competition and Consumer Commission, *Setting prices: what's allowed* (accessed 3 May 2024).

50 Australian Competition and Consumer Commission, *False or misleading claims* (accessed 3 May 2024). See also: The Treasury, *Submission 53*, p. 8.

policy mechanisms that increase competition and decrease concentrated market power.[51]

1.59 The issue of price gouging is one that is at the heart of this inquiry, which seeks to answer the question of whether supermarkets are using their market power to unfairly profiteer at the expense of competitors, suppliers and ultimately, customers. Chapter 3 examines the impact of supermarket pricing and profit-seeking behaviours on customers in more detail.

1.60 The following chapter first outlines in more detail the various inquiries and reviews into supermarket pricing and the food and grocery sector.

[51] See, for example, Section 6.3 of Jim Minifie, Cameron Chisholm and Lucy Percival, *Competition in Australia: Too little of a good thing?*, Grattan Institute 2017.

Chapter 2
Recent reviews into supermarket prices

2.1 This chapter presents a summary of current and recent major inquiries and reviews into supermarket prices and similar trading practices.

2.2 These reviews build a framework for considering the evidence received by the committee, by highlighting the key strengths and areas for change in Australia's competition and consumer regulatory environment. There are common themes across the findings of these reviews, including:

- the recognised impact of higher inflation and stagnant or declining real wages growth on the cost of living;
- the impact of current competition laws, policies and regulation on supermarket retailer behaviour and consumer prices;
- high supermarket sector concentration in Australia and the imbalance of power between producers, suppliers, smaller retailers and major retailers and wholesalers;
- the use of legal, but exploitative pricing mechanisms and behaviours by major retailers.

ACTU Inquiry into price gouging and unfair practices (2024)

2.3 In August 2023 the Australian Council of Trade Unions (ACTU) commissioned an inquiry into business pricing practices, given rising inflation and cost of living pressures, to be led by former Australian Competition and Consumer Commission (ACCC) Chair, Professor Allan Fels AO.

2.4 The ACTU committed to undertaking 'an inquiry into price gouging by big business in Australia' and that it would 'make findings and may make recommendations to the ACTU on policy solutions to limit future price gouging'.[1]

Key findings

2.5 The inquiry noted that weak competition in 'many sectors' was enabling businesses to charge higher prices to consumers through a range of sometimes 'dodgy—although not prohibited—pricing mechanisms, and that this pricing is 'a contributor to inflation'.[2]

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1 Australian Council of Trade Unions (ACTU), 'Professor Allan Fels to chair ACTU price gouging inquiry', *Media release*, 9 August 2023.

2 Professor Allan Fels AO, *National Press Club Speech*, Wednesday, 7 February 2024 pp. 1, 4–5 and 14; ACTU, 'Professor Fels' report shines a light on price gouging and unfair pricing', *Media release*,

2.6 The Fels Inquiry examined 'prices charged to consumers, the processes by which they are set, the profit margins and their possible contribution to inflation' rather than inflation and market power which are more commonly reviewed. It found that acceleration of inflation has been concentrated in non-discretionary items such as food and groceries, utilities, transport, housing and other vital goods and services.[3]

2.7 The inquiry found Australia's food and grocery sector:

- is one of the most concentrated in the world;
- has a stable average profit margin despite other volatility in the economy;[4]
- has a lack of information symmetry between producers and consumers, and buyers (including retailers);[5] and
- has evidence of potentially unfair price discounting and advertising practices.[6]

2.8 In addition, Professor Fels identified a number of factors which could explain the substantially higher-than-expected corporate profits since the pandemic, including:

- increased corporate concentration, including in Australia;
- the reduced power of organised labour;
- distributional conflict reinforcing profit-led inflation;
- consumer psychology and access to information; and
- informal price coordination in concentrated industries.[7]

2.9 The Fels Inquiry found that 'the high ranking of price increases in staple groceries points to the extreme price pressures workers are currently facing' and real-world impacts. A reported 60 per cent of households were facing food insecurity while having a least one family member in paid employment, and these pressures are significantly contributing to compromised nutrition, physical health concerns and negative mental and well-being impacts, particularly for low-income households.[8]

2.10 Professor Fels noted that in general, various pricing practices are used by business, 'unreasonably high prices are not prohibited by competition law'

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6 February 2024; Professor Allan Fels AO reporting to the ACTU, *Inquiry into price gouging and unfair pricing practices: final report* (Fels Inquiry), February 2024, pp. 2, 5 and 62–63.

3 Fels Inquiry, pp. 2, 5 and 14.

4 The report shows supermarket profit margins of around three to 3.5 per cent, contrasting with banking profit margin of around 26 to 35 per cent. Fels Inquiry, pp. 42 and 52.

5 Fels Inquiry, pp. 54–55.

6 Fels Inquiry, pp. 55–56.

7 Fels Inquiry, pp. 22–23 and 26.

8 Fels Inquiry, pp. 14–16.

and that there should not be direct controls on such practices.[9] Professor Fels' Inquiry concluded:

> Australians are paying prices that are too high, too often …
>
> A significant part of the cost-of-living crisis has been caused by companies taking advantage of their market power and relying on gaps in Government policy to squeeze consumers and often suppliers to breaking point.[10]

Box 2.1 Fels Inquiry: food and grocery findings

There is insufficient competition in the food and grocery sector as evidenced by poor price transmission to final consumers.

Market power is exercised over farmers and many other suppliers. In addition, the gain in profits from this is not passed on, certainly not promptly or fully, to consumers because of market power and a lack of competition in the product market.

Price transparency for those down the supply chain of supermarkets is low, and this is one barrier to effective price transmission.

Supermarkets have not been transparent with customers about price histories of their displayed items and their correlated discounts.[11]

Pricing mechanisms

2.11 The Fels Inquiry outlined a number of pricing mechanisms used in markets to maximise profits. The mechanisms below are known to be used by supermarkets:

- **loyalty schemes**—which offer points or discounts to encourage repeat business; these schemes:
- may not enable consumers to redeem benefits as expected;
- may not be well understood by consumers;
- make changes to terms and conditions which may be unfair to consumers; and
- collect, use and disclose data in ways which do not meet customer expectations;[12]
- **excuse-flation**—where frequent, large price increases affect the ability of consumers to judge the fairness of prices and reject those which are excessive, including businesses using broader inflation trends as a

9 Fels Inquiry, pp. 2, 5 and 62–63.

10 Professor Allan Fels AO, *National Press Club Speech,* Wednesday, 7 February 2024 pp. 1, 4–5 and 14.

11 Fels Inquiry, p. 56.

12 Fels Inquiry, pp. 31–32.

justification for higher prices where their own costs have not increased accordingly;[13]

- **asymmetric pricing or 'rockets and feathers'**—where the timing of price rise and falls are asymmetric and prices rise faster than they subsequently fall. Meat, fruit and vegetables were noted as key markets where this occurs;[14] and
- **algorithmic pricing practices**—where machine learning algorithms can make dynamic pricing decisions in digitalized markets based on instantaneous data, and which may enable a complex environment in which algorithms independently adjust to each other—a subtle form of collusion which reduces competition.[15]

The power imbalance

2.12 The Fels Inquiry found that limited costs and pricing information to producers and consumers makes it difficult to understand what is happening in the market and where practices may be unfair. However, buyers (including supermarkets) have 'near perfect information'.

2.13 Professor Fels also pointed to the market power of supermarkets and food processors compared to farmers, and considered this to be 'a significant concern in the agricultural sector'. He continued that asymmetric price transmission was further exacerbated by the 'lack of transparency in the pricing mechanisms within the food supply chain', with farmers often having 'limited visibility into the end pricing of their products and the margins added by processors and retailers'—impacting on their ability to negotiate. [16]

2.14 Noting that the power imbalance between the supermarkets and farmers manifests in several ways, the Fels Inquiry concluded that:

> This power imbalance allows these large entities to dictate terms and prices to farmers, who, due to the perishable nature of their products and lack of alternative market avenues, often have little choice but to comply. Consequently, farmers are frequently caught in a position where they must accept prices that may not adequately cover their production costs or reflect the fair value of their labour and investment.[17]

Inquiry recommendations

2.15 Professor Fels noted that greater transparency of prices, more investigations of overcharging, addressing excessive pricing in Australia's competition law and

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13 Fels Inquiry, pp. 33–34.

14 Prices rise quickly like rockets and fall slowly like floating feathers. Fels Inquiry, p. 34.

15 Fels Inquiry, pp. 34–35.

16 Fels Inquiry, p. 54.

17 Fels Inquiry, p. 53.

policy—a current policy gap—as well as other consumer protections could help improve competition and prices for consumers.[18]

2.16 Professor Fels argued for:

- improved transparency and scrutiny, including measures to address market concentration;
- mandatory reporting;
- fairer competition in the supply chain; and
- better producer collective bargaining to address this information lopsidedness.[19]

2.17 The Fels report pointed out that 'without special resources from the ACCC to monitor price movements it is impossible for consumers to have confidence that the law is being complied with'.[20] Further, the ACCC has no powers to 'even investigate whether [grocery] prices are excessive unless the government requires it to do so'.[21] The inquiry therefore found that the powers of the ACCC should be strengthened and investigations into excessive prices given a 'much higher priority'.[22]

2.18 To address this, the Fels report, recommended the Australian Government establish a 'Commission on Competition and Prices to review Government and other restrictions on competition and high prices caused by a lack of competition'.[23] This issue is discussed in greater details in Chapters 7 and 8.

2.19 In relation to supermarket prices the report found a 'strong case' for a comprehensive review of supermarkets, as well as making the Food and Grocery Code of Conduct (Grocery Code) mandatory, including by 'making the regulations legally enforceable by the ACCC and making membership of the code compulsory for large retailers'.[24]

2.20 The recommendations included three relating specifically to food and groceries, particularly aimed at improving transparency across the supply chain (see also Figure 2.1):

- **Recommendation 4.12**: It is recommended that there should be a comprehensive ACCC inquiry into competition and prices in the retail food and grocery industry.

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18 Fels Inquiry, pp. 2, 5 and 63–64.

19 Fels Inquiry, pp. 54–55.

20 Fels Inquiry, pp. 55–56.

21 Fels Inquiry, p. 53.

22 Fels Inquiry, p. 9.

23 Fels Inquiry, p. 64.

24 Fels Inquiry, p. 8.

- **Recommendation 4.13:** The Food and Grocery Code should be fully mandatory i.e. membership of retailers is mandatory and the rules are mandatory.
- **Recommendation 4.14:** The Food and Grocery Code should investigate creating a price register for farmers to assist them in understanding market prices across primary industries.[25]

Figure 2.1 Fels Inquiry—Key recommendations

Recommendations relating to prices
Recommendation 1.1: The Australian Government should use its power to require the ACCC to conduct more price and market investigations. **Recommendation 1.2**: The Australian Government should have power to require the ACCC to undertake market studies as well as price studies. **Recommendation 1.3**: The ACCC should have power of its own to initiate price and market studies. **Recommendation 1.4**: The GST pricing legislation of 2000-2003 provisions regarding the naming of businesses and industries that overcharge should be reinstated. **Recommendation 1.5**: Section 46 of the Australian Competition and Consumer Act should be amended to make it an offence to charge excessive prices in terms similar to the European Union provisions. **Recommendation 1.6**: The Government could establish a Commission on Competition and Prices to review Government and other restrictions on competition and high prices caused by a lack of competition.
Recommendations relating to mergers and divestiture
Recommendation 2.1: The Australian government should establish a pre-merger notification system along similar lines to most OECD countries. **Recommendation 2.2**: That in merger matters the onus should be on applicants to satisfy the ACCC and on appeal the Australian Competition Tribunal that the merger is not anticompetitive and is in the public interest. **Recommendation 2.3**: The merger test should be augmented to continue to prohibit mergers which substantially lessen competition but there should be an additional provision prohibiting mergers that give rise to substantial market power (a more structural and immediate test) and/or which entrench, create, or add to market power. **Recommendation 2.4**: A divestiture power should be introduced into the competition law.
Recommendations relating to competition
Recommendation 3.1: The Australian Consumer and Competition Act needs to be shortened. **Recommendation 3.2**: If the secondary boycott law is retained in the Competition Law there should be a provision that secondary boycotts are only unlawful if they substantially lessen competition. **Recommendation 3.3**: Australia should ban non-compete clauses in employment contracts affecting both employees during and post-employment. **Recommendation 3.4**: The current National Competition Review should examine policies and laws that prevent Governments from needlessly restricting competition. **Recommendation 3.5**: The ACCC receives further funding for strong enforcement of the cartel law. It should also apply the criminal sanctions available for unlawful price fixing and other cartel agreements. **Recommendation 3.5**: Treasury should conduct a public consultation to determine the need for improvement in the drafting of the criminal elements of the cartel law in view of recent difficulties in the bank cartel case.
Recommendations relating to specific industries – food and groceries
Recommendation 4.12: It is recommended that there should be a comprehensive ACCC inquiry into competition and prices in the retail food and grocery industry. **Recommendation 4.13**: The Food and Grocery Code Review should be fully mandatory. **Recommendation 4.14**: The Food and Grocery Code Review should investigate creating a price register for farmers to assist them in understanding market prices across primary industries.

Source: Fels Inquiry, pp. 10–12.

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25 ACTU, 'Professor Fels' report shines a light on price gouging and unfair pricing', *Media release*, 6 February 2024; Fels Inquiry, p. 69.

Government actions related to Fels Inquiry

2.21 The Australian Government has implemented a range of measures aimed at addressing the high cost of living, with responses relevant to the Fels Inquiry including the establishment of:

- a review into the Food and Grocery Code of Conduct; and
- an ACCC inquiry into the supermarket sector.[26]

2.22 The Australian Government is also providing $1.1 million to CHOICE, to provide price transparency and comparison reports on groceries, to be completed quarterly over three years. This reporting will commence in the second quarter of 2024, comparing the costs of a basket of groceries from different retailers, thus highlighting which retailers charge the most and the least.[27]

Food and Grocery Code of Conduct review

2.23 The Food and Grocery Code of Conduct (Grocery Code) is a voluntary code prescribed under the *Competition and Consumer Act 2010*, however once a retailer or wholesaler signs up to the Grocery Code it must adhere to its provisions. When introduced in 2015, the Grocery Code's aim was to address the 'imbalance of market power between supermarkets and their suppliers, especially smaller suppliers' and 'improve standards of business behaviour in the food and grocery sector. This includes the conduct of retailers and wholesalers towards suppliers'.[28]

2.24 It is enforced by the ACCC, including through compliance checks.[29] Current signatories are Aldi, Coles Group, Woolworths Group, and Metcash, with their suppliers also automatically covered by the Grocery Code. As it currently stands, the Grocery Code will automatically sunset on 1 April 2025.[30]

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26 ACTU, 'Professor Fels' report shines a light on price gouging and unfair pricing', *Media release*, 6 February 2024; Australian Competition and Consumer Commission, 'ACCC to examine prices and competition in supermarket sector', *Media release*, 25 January 2024; The Treasury, *Independent review of the Food and Grocery Code of Conduct 2023–24: consultation paper*, February 2024, p. 3.

27 The Treasury, *Independent review of the Food and Grocery Code of Conduct 2023–24: consultation paper*, February 2024, p. 21.

28 Australian Competition and Consumer Commission, *Food and Grocery Code of Conduct* (accessed 14 February 2024); The Treasury, *Statement by Dr Craig Emerson, independent reviewer of the Food and Grocery Code of Conduct*, 5 February 2024.

29 Australian Competition and Consumer Commission, *Rights and responsibilities under the food and grocery code* (accessed 14 February 2024).

30 Australian Competition and Consumer Commission, *Trade and business covered by the food and grocery code* (accessed 14 February 2024); The Treasury, *Statement by Dr Craig Emerson, independent reviewer of the Food and Grocery Code of Conduct*, 5 February 2024.

2.25 On 10 January 2024, Dr Craig Emerson was appointed to undertake a review of the Grocery Code, including to:

- assess the effectiveness of the Code's provisions in achieving the purpose of the Code to improve the commercial relationship between retailers, wholesalers and suppliers in the grocery sector;
- consider the need for the Code, whether it should be remade, amended or appealed;
- the impact of the Code in improving commercial relations between grocery retailers, wholesalers and suppliers;
- whether the Code's provisions should be extended to other retailers or wholesalers operating in the food and grocery sector;
- whether the Grocery Code should be made mandatory; and
- whether the Grocery Code should include civil penalty provisions.[31]

2.26 The Grocery Code Review is due to report by 30 June 2024.[32] It is the second of two mandatory reviews of the Grocery Code.[33]

Interim report

2.27 Dr Emerson released a substantive interim report on 8 April 2024, which found the current Grocery Code was not effective, especially as it contains no penalties for breaches, and because 'supermarkets can opt out of important provisions by overriding them in their grocery supply agreements'. The interim report therefore concluded that the:

> … heavy imbalance in market power between suppliers and supermarkets in Australia's heavily concentrated supermarket industry necessitates an enforceable code of conduct. An effective code of conduct would benefit smaller suppliers and consumers by enabling suppliers to innovate and invest in modern equipment to provide better products at lower cost.[34]

2.28 The interim report made eight firm recommendations, including that:

- the Code be made mandatory, with all supermarkets with a revenue threshold of $5 billion subject to the mandatory Code;

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31 The Treasury, *Food and Grocery Code of Conduct Review 2023–24 – Terms of reference* (accessed 25 March 2024).

32 The Treasury, *Review of Part 5 of the Food and Grocery Code of Conduct: report*, September 2023, p. 2; The Treasury, *Food and Grocery Code of Conduct Review 2023–24* (accessed 14 February 2024); The Treasury, *Food and Grocery Code of Conduct Review 2023–24 – Terms of reference* (accessed 14 February 2024).

33 The Treasury, *Review of Part 5 of the Food and Grocery Code of Conduct: report*, p. 2; The Treasury, *Food and Grocery Code of Conduct Review 2023–24 – Terms of reference*.

34 Dr Craig Emerson, *Independent Review of the Food and Grocery Code of Conduct: interim report*, April 2024, p. 1.

- the Code place greater emphasis on addressing fear of retribution against suppliers including through protections and supermarkets monitoring their commercial decisions;
- annual reporting on disputes and results of confidential supplier surveys, by the Grocery Code Supervisor; and
- significant penalties for non-compliance.[35]

2.29 Dr Emerson suggested effective penalties must apply for breaches. Under a mandatory code, the ACCC would:

> … be able to seek penalties for major or systemic breaches of up to $10 million, 10 per cent of a supermarket's annual turnover, or 3 times the benefit it gained from the breach, whichever is the greatest.
>
> In pursuing breaches, the ACCC would need to proceed through the courts. This would usually require a supplier witness who was willing to provide evidence and to stay the course of legal proceedings.[36]

2.30 As 'a low-cost alternative to court proceedings', the interim report also recommended independent mediation and arbitration mechanisms, similar to other industry codes, 'while also allowing for the complaint-handling provisions of the voluntary Code'.

2.31 The report made three draft recommendations, subject to amendment depending on stakeholder feedback prior to the final report, covering:

- alternative, informal, confidential and low-cost dispute resolution processes;
- minimum standards which cannot be contracted out of supply agreements; and
- increases to infringement notice amounts.

2.32 The interim report also drew attention to other areas which may need additional protections, including:

- fresh produce, given its perishable nature;
- contracted prices and volumes; and
- compliance checks by the ACCC.[37]

ACCC Supermarket sector inquiry

2.33 A 12–month ACCC Supermarkets Inquiry commenced on 1 February 2024 to examine a range of issues, 'including the pricing practices of the supermarkets and the relationship between wholesale, including farmgate, and retail prices', as well as matters relating to other mechanisms used by supermarkets such as

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35 *Independent Review of the Food and Grocery Code of Conduct: interim report*, p. 7.

36 *Independent Review of the Food and Grocery Code of Conduct: interim report*, p. 1.

37 *Independent Review of the Food and Grocery Code of Conduct: interim report*, pp. 1, 8, 56, 58 and 69.

loyalty programs and discounts on future purchases. This inquiry will not extend to examining the operation or scope of the Grocery Code.[38]

2.34 The ministerial direction by the Treasurer under the *Competition and Consumer Act 2010* gives the ACCC compulsory information-gathering powers as part of the inquiry.[39] An interim report will be delivered by 31 August 2024, with a final report due by 28 February 2025.[40]

2.35 In its Issues Paper (released as part of its inquiry) the ACCC pointed to concerns raised about 'price gouging', being 'prices and profit margins that are considered unreasonably high (or higher than would be expected in a competitive market)'. It also noted concerns with misleading pricing practices, 'shrinkflation', and data and privacy concerns with the increasing use of technology.

2.36 The ACCC explained in the Issues Paper that it would examine—among other matters—competition between supermarkets at the retail level, and competition at different levels through the grocery supply chain; the difference in prices paid to suppliers and paid by consumers; and how supermarkets approach price-setting, including discounts, and the role of small and independent retailers, including in regional and remote areas.

2.37 The ACCC contended that effective competition, including in the supermarkets sector, leads to 'lower prices, better quality products and services and increased retail choice for consumers'. In addition, the ACCC observed that:

> Competition between supermarkets also impacts farmers, manufacturers and wholesalers that supply supermarkets. Where suppliers have more choice about which retailers they provide goods to, this will typically improve their bargaining power and their long-run profitability.[41]

Competition Review

2.38 In August 2023, the Government established a two-year Competition Review, comprising a seven-person Advisory Panel. The review will:

> … respond to evidence that limited competition has contributed to a less dynamic and productive economy, and higher prices for consumers. The review will be looking especially at merger reforms and whether

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38 Australian Competition and Consumer Commission, 'ACCC to examine prices and competition in supermarket sector', *Media release*, 25 January 2024; The Hon Dr Jim Chalmers MP, Treasurer, *Competition and Consumer (Price Inquiry—Supermarkets) Direction 2024*, s. 5 and s. 6; *Independent Review of the Food and Grocery Code of Conduct: interim report*, pp. 70–71.

39 Australian Competition and Consumer Commission, 'ACCC to examine prices and competition in supermarket sector'.

40 Australian Competition and Consumer Commission, *Supermarkets inquiry 2024–25* (accessed 14 February 2024).

41 Australian Competition and Consumer Commission, *ACCC Supermarkets Inquiry: Issues Paper*, 29 February 2024, pp. 5–6 and 8–9.

creeping or serial acquisitions in sectors such as supermarkets, liquor and hardware are adequately captured by current competition laws.[42]

2.39 The Taskforce is working with state and territory governments. In December 2023, treasurers nationally agreed to 'revitalise the National Competition Policy', including national reforms which are designed to help address cost of living increases.[43]

2.40 Merger reform, being considered as part of the Competition Review, is discussed later in this report.

Other inquiries

2.41 Other jurisdictions have responded to cost of living pressures, and in particular food and grocery price increases, through jurisdiction-specific inquiries.

2.42 For example, on 7 March 2024, the Queensland Legislative Assembly established an inquiry into supermarket pricing, including consideration of the causes and effects of rising supermarket prices, and opportunities to increase transparency in the sector. The committee has now closed submissions and is holding hearings through April and May. It is due to report by 31 May 2024.[44]

The Treasury—Unfair trading practices

2.43 In 2023, The Treasury conducted consultation on options to address unfair trading practices which are not prohibited, but which can 'nevertheless distort competition and result in significant consumer and small business harm. The consultation was led by the Commonwealth with state and territory ministerial support. The consultation sought evidence about the nature and extent of unfair trading practices resulting from potential gaps in the Australian Consumer Law, and their harm.[45]

2.44 The consultation paper canvassed feedback on four policy options:

- retain existing legislative framework (status quo);
- amend statutory unconscionable conduct to include provisions relating to unfair conduct.
- introduce a general prohibition on unfair trading practices as a separate protection (the approach in some other countries); or

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42 The Treasury, *Independent review of the Food and Grocery Code of Conduct 2023–24: consultation paper*, February 2024, p. 23.

43 *Independent review of the Food and Grocery Code of Conduct 2023–24: consultation paper*, p. 23.

44 Queensland Parliament, *Supermarket Pricing Select Committee* (accessed 26 April 2024).

45 The Treasury, *Unfair trading practices - Consultation Regulation Impact Statement* (accessed 26 April 2024).

- introduce a combination of general and specific prohibitions on unfair trading practices for the most targeted and comprehensive approach (also used in other countries).[46]

2.45 The Australian Government is currently considering submissions to this consultation. Amendments to the Australian Consumer Law can only be progressed with the agreement of the Commonwealth and four other states or territories (including at least three states) following formal consultation. The Treasury indicated a decision on future direction would likely occur in 2024.[47]

Senate Select Committee on the Cost of Living

2.46 On 28 September 2022, the Senate established the Select Committee on the Cost of Living, to inquire into and report on:

- the cost of living pressures facing Australians;
- the Government's fiscal policy response to the cost of living;
- ways to ease cost of living pressures through the tax and transfer system;
- measures to ease the cost of living through the provision of government services; and
- any other related matters.

2.47 The committee is due to report by 15 November 2024.[48] It released an interim report in May 2023, which considered wider cost of living pressures, drivers (including inflation) and experiences of consumers, as well as a specific chapter on food and groceries. The increasing cost of food and groceries were found to be 'a major contributing factor to the cost of living crisis'.[49]

2.48 This more detailed chapter explored drivers and the impacts of food and grocery price rises, outlined key dynamics impacting the food and grocery sector, discussed food insecurity and inequality in Australia, and laid out some of the evidence received by the committee on proposed solutions to cost of living pressures as they relate to food and groceries.[50]

2.49 A range of potential solutions were put to the committee and reported in its interim report including the need to:

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46 The Treasury, *Protecting consumers from unfair trading practices: consultation regulation impact statement*, August 2023, pp. 21, 23, 25 and 27.

47 *Protecting consumers from unfair trading practices: consultation regulation impact statement*, pp. 2 and 20; The Treasury, *Submission 53,* p. 9.

48 Parliament of Australia, *Senate Select Committee on the Cost of Living* (accessed 30 April 2024).

49 Senate Select Committee on the Cost of Living, *Interim report*, May 2023, pp. 2–3 and 70–71.

50 Senate Select Committee on the Cost of Living, *Interim report*, p. 2.

- address supply chain issues, including through a national food supply chain resilience plan and greater transparency between growers, processors and retailers;
- ensure stronger competition and acquisition policies which change the balance between retailers and farmers, and major and independent retailers; and
- enable stronger regulatory action by the ACCC.[51]

House of Representatives Standing Committee on Agriculture: Inquiry into Food Security in Australia

2.50 On 26 October 2022, the House of Representatives Standing Committee on Agriculture Inquiry into Food Security in Australia commenced an inquiry into food security, including:

- national production, consumption and export of food;
- access to key inputs such as fuel, fertiliser and labour, and their impact on production costs;
- the impact of supply chain distribution on the cost and availability of food; and
- the potential opportunities and threats of climate change on food production in Australia.[52]

2.51 The committee reported in November 2023, making 35 recommendations, including:

- appointing a Minister for Food;
- establishing a National Food Council;
- making the Food and Grocery Code mandatory;
- reviewing laws to 'ensure fair practices between different actors in the food supply chain and prevent unconscionable conduct';
- regular ACCC reviews of perishable food supply chains;
- measures to eliminate food waste; and
- subsidisation of community stores in remote locations to make fresh food affordable.[53]

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51 Senate Select Committee on the Cost of Living, *Interim report*, May 2023, pp. 75–76 and 84–85.

52 House of Representatives Standing Committee on Agriculture, *Inquiry into Food Security in Australia: Terms of reference* (accessed 24 April 2024).

53 House of Representatives Standing Committee on Agriculture, *Australian food story: feeding the nation and beyond: report*, November 2023, pp. xix–xxv.

Chapter 3
The impact of supermarket prices on consumers

3.1 Cost of living pressures have been a focus of current public discussion. These pressures include increasing housing, energy and transport costs in the face of slow personal income rises, meaning people are unable to meet those increasing costs. Another key issue of concern for cost of living pressures has been increasing grocery prices.

3.2 The community groups and individuals who provided evidence to the committee expressed their deep concerns and frustrations about the current high prices they must pay for food and groceries, and outlined how this impacts everyone's lives, and in particular those who are the most vulnerable, disadvantaged, or marginalised.

3.3 The committee heard many accounts of how people struggle to afford healthy, nutritious, and culturally appropriate food, and how they are forced to resort to food relief services, 'dumpster-diving', or shoplifting to meet their basic needs.

3.4 People also explained to the committee how food insecurity affects their health, dignity and social cohesion, and how they feel powerless and voiceless in the face of the supermarket duopoly:

> Australians rely heavily on supermarkets to supply them with food, groceries and essential items, making consumers vulnerable to their conduct. The current cost of living crisis has further highlighted this dependency and reignited concern about supermarket pricing.[1]

3.5 This chapter outlines the evidence received by the committee about how high supermarket pricing impacts Australians in their daily lives.

3.6 The chapter further presents the evidence around opportunistic pricing and misleading price displays. It concludes with a discussion on the important role of unit pricing, and the Unit Pricing Code.

The increasing cost of living

3.7 Evidence to the committee was clear about cost of living increases having a direct and detrimental effect on people's access to food, and their health and wellbeing in general.

3.8 Dr Christina Zorbas of the Global Centre for Preventive Health and Nutrition at Deakin University (GLOBE) advised that 'food prices steadily rose after 2020, with increases between 2021 and 2023 being the greatest they've been in the last two decades' and that despite some known cost pressures from the Ukraine war,

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1 Fair Food WA and WA Council of Social Service, *Submission 6*, p. 2.

wheat prices and climate change, 'there's very little transparency in how this has affected supermarkets and how supermarkets set their prices across the board'.[2]

3.9 COTA Australia noted that even though inflation is now trending in the right direction, food and grocery prices remain high, with 3.7 million Australian households reportedly experiencing food insecurity in the last 12 months, many of those for the first time. COTA Australia further submitted that these people:

> … identified food and grocery prices (followed by energy and housing) as the key reason why food insecure households struggled to afford food amongst other living expenses in the last 12 months.[3]

3.10 Fair Food WA, and WA Council of Social Service (WACOSS) pointed to a wide variety of available data showing the increasing effects of cost of living rises on Australians, with a focus on the lived experiences of people in WA:

- The WACOSS *Cost of Living Report* (2023) found that many people, particularly those on minimum wage or government supports, are struggling to cover the increasing cost of essentials;
- Australian Bureau of Statistics' 2023 June Quarter data revealed that food prices have risen 7.5 per cent on the previous year;
- Foodbank Australia reported that in the past year, 3.7 million Australian households (36 per cent) experienced moderate to severe food insecurity, and the majority reported that cost of living expenses was the primary reason for food insecurity; and
- WA's Financial Wellbeing Collective's Emergency Relief and Food Access Service received 3165 calls for assistance in October 2023, compared to 2275 calls in the same month the previous year.

3.11 WACOSS also stressed the increasing levels of 'working poor' who are turning to food relief organisations because, despite being employed, they are unable to keep up with rising costs of living.[4]

3.12 Ms Tania Hunt, Chief Executive Officer of the Youth Network of Tasmania, told the committee that organisation regularly hears from youth that they are not able to access nutritious fresh foods, with young people:

> … forgoing supermarket groceries altogether because they're just too expensive, and they're relying on community sector organisations such as the Link Youth Health Service, their food pantry, headspace Hobart to

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[2] Dr Christina Zorbas, Research Fellow, Global Centre for Preventive Health and Nutrition, Deakin University, *Committee Hansard*, 13 March 2024, p. 56.

[3] COTA Australia, *Submission 21*, p. 5.

[4] Fair Food WA and WA Council of Social Service, *Submission 6*, p. 4.

> access free food, and emergency food relief at places like Hobart City Mission.[5]

3.13 Ms Hunt went on to report that many young people are taking actions such as eating two-minute noodles, rationing food to pay for 'cost-of-living expenses such as rent, electricity and heating', eating only one meal per day and learning to cope with being hungry. Ms Hunt further reported that these issues are exacerbated for young people in rural and remote communities, where the price of supermarket groceries could be up to 50 per cent more expensive than in city stores.[6]

3.14 The Combined Pensioners and Superannuants Association of NSW (CPSA) noted that price increases had not just economic impacts, but also psychological impacts. The CPSA noted that 87 per cent of respondents to its survey on cost of living said they had experienced financial distress in the past six months.[7]

3.15 Ms Gaye Matthews encapsulated the frustrations expressed by many people:

> I, and many other Aussies, are just outraged at the obvious price gouging going on by the big companies. Companies that claim they need to implement the prices increases to stay inline with inflation, yet are all posting billion dollar profits. Billion dollar profits for them while the ordinary, everyday Aussie has to decide between medicine and food, rent and power bill. Assistance being sought at charities is at an all time high, people that have jobs and never needed assistance, are now joining the queue just so they can make ends meet.[8]

3.16 Ms Louise Adams, appearing as a private individual, spoke about the new working poor who are 'struggling make ends meet', with this impacting mental health, social connections and a person's ability to engage in education and employment. Ms Adams told the committee:

> It means that people are literally going without. I see it all the time at work through child safety. We've got parents who simply can't afford to provide for their children, and they're being seen as not meeting their responsibilities. This is not an individual problem; this is a social problem.[9]

3.17 Mr Danny Carney of Grassroots Action Network Tasmania (GRANT) spoke about how the issue is critical to so many people:

> This is about whether people eat food. This is about whether kids eat good food that helps them grow so their brains develop and they can do well at

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5 Ms Tania Hunt, Chief Executive Officer, Youth Network of Tasmania, *Committee Hansard*, 7 March 2024, p. 2.

6 Ms Tania Hunt, Youth Network of Tasmania, *Committee Hansard*, 7 March 2024, p. 2.

7 Combined Pensioners and Superannuants Association of NSW, *Submission 18*, pp. 14–15.

8 Ms Gaye Matthews, *Submission 37*, p. 1. The related issues of food inflation, opportunistic pricing and profit margins are discussed in later in this report.

9 Ms Louise Adams, Private Capacity, *Committee Hansard*, 7 March 2024, p. 10.

> school. It's really serious stuff. It is getting much worse. I think we all know that. I think the really damning thing that makes us all really angry is that the supermarkets are making more and more money as it gets harder and harder for the rest of us.[10]

Lack of choice

3.18 The inquiry heard that the market concentration of the two supermarket giants meant that people were unable to exercise choice or seek other options to address the increasing costs of groceries. Mr Geordan Nicholson noted that due to the market concentration of Coles and Woolworths:

> … the regular argument of "vote with your money" or "go shop elsewhere" cannot work, as many items are only stocked by these two companies, and these companies have overrun small, local grocers, meaning that many places have no access to any other store.[11]

3.19 Similarly, the CPSA noted that the supermarket sector is too concentrated to 'provide any downward pressure on prices, especially in rural and regional areas where a single supermarket may have an effective monopoly on the sale of food and groceries in that community'. It went on to state that this means customers are forced to accept prices rises, without the freedom to choose different products or '"vote with their dollar" if they feel that prices are unreasonable'.[12]

3.20 GetUp submitted the results of a survey they conducted regarding supermarkets, where members 'spoke about the need for more competition in the grocery sector and a crackdown on price gouging'. One person noted:

> Whenever I go to the supermarket I take a list. I notice that most people now shop this way looking at their phones then up at the shelves. Even though the items I buy at one of the supermarkets aren't luxuries, my grocery bill has almost doubled. Please restore an equitable balance in our supermarkets where price gouging isn't the norm.[13]

3.21 Mr Carney of GRANT noted that grocery costs are far higher in regional communities. Speaking to the situation in Tasmania, Mr Carney observed that:

> … the thing that makes it particularly expensive here is that we simply have no choice of where to shop. It's the two big supermarkets or nothing, basically. Unless we bust up the power that they have and bring in more competition, we're stuck paying what they offer.[14]

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10 Mr Danny Carney, Grassroots Action Network Tasmania, *Committee Hansard*, 7 March 2024, p. 11.

11 Mr Geordan Nicholson, *Submission 29*, p. 1.

12 Combined Pensioners and Superannuants Association of NSW, *Submission 18*, p. 13.

13 GetUp, *Submission 54*, pp. 2 and 3.

14 Mr Danny Carney, Grassroots Action Network Tasmania, *Committee Hansard,* 7 March 2024, p. 13.

3.22 Mr Carney spoke about how the issue of the supermarkets' duopoly and lack of choice was now entering the broader public discussion and suggested that:

> … part of that is from the solidarity that's being built across classes and across demographics; everyone is realising that we're in this situation where most of us can only get food from two supermarkets, and we're completely powerless about what we can do about it.[15]

3.23 Fair Food WA and WACOSS highlighted 'the precarity of our food system for people living in regional and remote areas' and noted that people living in remote communities experienced far higher food prices across the country, where 'residents of remote communities pay, on average, 39 per cent more for supermarket supplies than those in capital cities'.[16] It further submitted that:

> Living in rural area the price of food items has skyrocketed, prices go up daily. We can't often afford the basics. Every fortnight there are major trade-offs. Even if we need both we must decide, is it eggs or cheese? Next decision, the quantity? No kidding it's now serious family business.[17]

Unaffordable necessities

3.24 The committee heard from diverse witnesses and submitters that many people can no longer afford to buy basic food and grocery staples, including toilet paper, underwear and back-to-school items.

3.25 The Consumer Action Law Centre advised the inquiry that 'it is increasingly common to hear from single parents who state they aren't eating themselves, to make sure their kids are'.[18]

3.26 GRANT told the committee:

> Members of our community who were nurses have reached out to us and said they're studying full time, they're working as nurses, and they're also having to go to the bins to get food, because that is just the most economically and environmentally friendly way they're able to source these essential items.[19]

3.27 COTA Australia advised that in their January 2024 survey, '90% of respondents indicated food and grocery price increases were affecting their fortnightly shop and financial planning with 66% saying this was impacting adversely on their psychological and emotional health'. Further, '80% of respondents said they have had to make major lifestyle changes to better manage the increased cost of

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15 Mr Danny Carney, Grassroots Action Network Tasmania, *Committee Hansard*, 7 March 2024, pp. 10-11.

16 Fair Food WA and WA Council of Social Service, *Submission 6*, pp. 3 and 5.

17 COTA Australia, *Submission 21*, p. 11.

18 Consumer Action Law Centre, *Submission 64*, p. 2.

19 Ms Amy Booth, Community Member, Grassroots Action Network Tasmania, *Committee Hansard*, 7 March 2024, p. 1.

food and groceries. For some respondents this has been an unwelcomed new experience'.[20]

3.28 COTA Australia concluded that:

> Weekly 'Specials' need to be aimed at food, hygiene products and baby care not seventeen different brands of vitamin supplements as Woolworths has recently done. Feeding a family with nourishing affordable food is an absolute priority.[21]

Aging Australians

3.29 National Seniors Australia submitted that for older people, groceries were the second most important cost of living concern behind insurance. But for older people whose income was the Age Pension only, groceries were the highest cost of living concern.[22]

3.30 Respondents to a cost of living survey noted that older people were unable to take similar actions to those of younger people to save on grocery items, saying:

> Some of us don't have the privilege of chasing bargains! We go to the nearest supermarket and pay whatever the cost is because we are physically weaker, and the number of visits has reduced to once a fortnight or monthly. We are not going back to pick up a bargain. This is what is happening in our lives.[23]
>
> …
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> Most older Australians believe supermarkets – including Coles and Woolworths – are entitled to make a profit as are their shareholders. However, they are equally clear that profit should not be achieved at the expense of primary producers, consumers and/or the natural environment.[24]

3.31 COTA Australia noted that for all income brackets 'the proportion which is needed to finance the regular supermarket shop is growing exponentially' and this means that for 'increasing numbers of older people, the ongoing rise in prices means a constant re-evaluation of the household shopping budget to determine what is affordable and, what (although needed) could be considered as discretionary purchases'.[25]

3.32 CPSA noted that many older Australians are:

> … cutting out meat, cheese and in some cases, fruits and vegetables from their diets, or skipping meals altogether in order to keep prices down. One respondent told us: "I rarely buy meat and if I buy vegetables I get frozen",

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20 COTA Australia, *Submission 21*, pp. 6, 10 and 11.

21 COTA Australia, *Submission 21*, p. 7.

22 National Seniors Australia, *Submission 13*, p. 1.

23 COTA Australia, *Submission 21*, p. 6.

24 COTA Australia, *Submission 21*, p. 7.

25 COTA Australia, *Submission 21*, p. 8.

> while another respondent said that "I have had to live on just the basics cutting out fruits, vegetables and meat". This appeared to be a common occurrence among our respondents. Another stated that: "We have had to reduce our fortnightly spend and concentrate on specials that are mainly junk food. Our diet has changed in keeping with what we can afford. We now have one or two meals per day instead of three. We cannot afford to buy red meat."[26]

Food insecurity

3.33 Many individuals and organisations pointed to the increasing levels of food insecurity for individuals. The issue of food insecurity at the national or regional level, caused by reduced levels of farming and production is discussed further in Chapter Four.

3.34 GLOBE pointed to the increased burden of food insecurity felt by Aboriginal and Torres Strait Islander peoples, telling the committee that 'depending on location, 22 to 32 per cent of our communities experience some form of food insecurity' but for Aboriginal and Torres Strait Islander people this could be 'as high as 59.6 per cent'.[27]

3.35 Dieticians Australia advised that food insecurity 'rarely happens in isolation but rather in co-occurrence with economic, health and housing insecurity and other hardships'. It further noted that food insecurity was 'associated with all forms of malnutrition including overweight/obesity, and chronic diseases such as type 2 diabetes, heart disease and mental illness' and more broadly, it can impact on 'quality of life, social and emotional well-being, and productivity'.[28]

3.36 Fair Food WA and WACOSS noted that 11 different government departments contribute to national food policy, each one focused on different aspects of the food system. Its submission pointed to the success of the Supermarket taskforce established during the COVID-19 pandemic, which 'demonstrated the value of a collaborative approach to issues impacting the food system' and became a:

> … mechanism for supporting industry cooperation with the aims of stabilising consumer confidence, maintaining equitable access to food, and minimising the negative impacts of the pandemic on the supermarket industry and consumers.[29]

3.37 Fair Food WA and WACOSS recommended 'the establishment of a single agency to coordinate food system policy in Australia' which:

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26 Combined Pensioners and Superannuants Association of NSW, *Submission 18*, p. 15.

27 Mr Troy Walker, Research Fellow, Global Centre for Preventive Health and Nutrition, Deakin University, *Committee Hansard,* 13 March 2024, p. 57.

28 Dieticians Australia, *Submission 7*, p. 3.

29 Fair Food WA and WA Council of Social Service, *Submission 6*, pp. 6–7.

> … would be responsible for overseeing the integration of a national food system framework that achieves positive outcomes for producers, suppliers, retailers and consumers and can explore issues such as supermarket pricing within the context of the National food system.[30]

Supermarket pricing and access to healthy food

3.38 The committee heard from individuals and organisations that with increasing grocery prices, many people were now unable to afford healthy foods, leading to negative health outcomes. As Healthy Food Systems Australia noted:

> Healthy food and good nutrition are major determinants of health. The right to adequate food is a basic human right. Price, affordability, availability and accessibility of healthy, nutritious food is fundamental to food security.[31]

3.39 Ms Aimen Jafri, Chair of the Multicultural Council of Tasmania, informed the committee that one in four families struggle to afford food, which impacts their food security. Families then eat cheaper junk food, impacting their health and causing financial stress.[32]

3.40 Ms Jafri continued that multicultural, international students were struggling to manage, especially those without full-time jobs, and finding it challenging to 'bring food to the table'. Ms Jafri also noted there was a lack of access to culturally-appropriate food, saying:

> … there is a big issue that we have to go to these supermarkets, spend hundreds of dollars there to get regular food, and then we have to go to these specialised cultural markets to get our other food. It just adds to the cost.[33]

3.41 The Public Health Association of Australia spoke plainly about the effects of supermarket duopolies on prices, and the flow-on effects of this on public health:

> Vulnerable Australians are already at an increased risk of adverse health outcomes; when supermarkets raise food prices, they contribute to the widening of existing health disparities, both directly (by influencing what and how much people buy and consume) and indirectly (by reducing the available budget for other living costs).[34]

3.42 The Public Health Association of Australia cited research from the Institute for Health Transformation, Deakin University, which showed the impact of 'specials' pricing on food choices by consumers. The research found that:

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30 Fair Food WA and WA Council of Social Service, *Submission 6*, pp. 6–7.

31 Healthy Food Systems Australia, *Submission 68*, p. 1.

32 Ms Aimen Jafri, Chair, Multicultural Council of Tasmania, *Committee Hansard*, 7 March 2024, p. 8.

33 Ms Aimen Jafri, Multicultural Council of Tasmania, *Committee Hansard*, 7 March 2024, pp. 10 and 14.

34 Public Health Association of Australia, *Submission 19*, p. 4.

> … in the two major Australian supermarkets, unhealthy foods are discounted twice as often and with a larger discount compared to healthier foods and beverages, and that sugary drinks make up approximately two thirds of all price-promoted beverages in any given week. As many Australian make shopping decisions based on items on that are on special, this increases the amount of food and drink items that are higher in sugar being purchased than would otherwise occur.[35]

3.43 Dieticians Australia likewise pointed to the research indicating that 'unhealthy foods and beverages are discounted more often than healthier alternatives, with larger discounts', influencing consumers' choices on dietary intake.[36]

3.44 The Food for Health Alliance similarly advised that supermarket pricing influences the foods that people buy and therefore impacts diets and health and wellbeing. The alliance argued that supermarkets often use price promotions and marketing to encourage consumers to purchase unhealthy food and drinks, which will 'have a significant impact on population diets and health over the long-term'. The alliance pointed to the National Obesity Strategy which recommends 'the restriction of temporary price reductions and promotions as an example action to reduce exposure to unhealthy food marketing'.[37]

Food wastage

3.45 The evidence is clear that many people can no longer afford to buy basic food and grocery staples. Despite this, when the demand does not meet the supply, it is well known that supermarkets throw out large volumes of food and grocery items.

3.46 GRANT noted that it sometimes found items in the bins that supermarkets had thrown out that were not even close to the used-by date, and that these items had not been diverted to the local food charities the supermarkets had a relationship with.[38]

3.47 GRANT observed Tasmanian supermarkets discarding large amounts of perfectly good food into the rubbish, leading Ms Amelia Cromb to suggest that either food donation programs were failing in a large way, or supermarkets were choosing to not put the required resources into maintaining those donation programs. Ms Cromb went on to state 'I think with the profit they've made over the past year they have the human and financial resources to put into blowing

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35 Public Health Association of Australia, *Submission 19,* p. 6. See also Global Centre for Preventive Health and Nutrition, *Submission 22*, p. 2.

36 Dieticians Australia, *Submission 7*, p. 2.

37 Food for Health Alliance, *Submission 8,* p. 2.

38 Ms Amelia Cromb, Community Member, Grassroots Action Network Tasmania, *Committee Hansard,* 7 March 2024, p. 4.

up and expanding their efforts on that food relief front, but they're not for whatever reason'.[39]

3.48 Ms Amy Booth concurred, observing that food donation programs were about corporate responsibility, and supermarkets were not making an effort to donate useable items to charity or find other ways of passing on items they wish to discard.[40]

3.49 GRANT noted that if supermarkets were in a position to put so many items into the bin, it lends support to the argument that their business models are very profit-driven.[41]

3.50 Ms Irene Di Lauro submitted that there is 'hypocrisy' in the current food and grocery system, where it 'creates so much waste and has contributed to creating a charitable sector that begs for that food to be given to people who cannot afford it at the current inaccessible rate'.[42]

3.51 GRANT representatives noted that other nations have regulations for supermarkets food wastage and noted 'it would be amazing to see things like that implemented here'.[43] It further recommended greater transparency on the statistics of what supermarkets discard:

> We don't know the statistics. I'm sure they have stats on tonnage that's going through their waste, but we don't know exactly how much in every store is being thrown out. They probably have donation statistics. I think if people found out exactly how much by tonnage or whatnot was actually going in the bin and seeing those items, then there would be a lot more transparency. That data is really important, because that's something we can't get. We just have firsthand experience multiple times a week of seeing what we see.[44]

3.52 Coles discussed this wastage, advising that 'with things that you would find in a bin, it's not always completely obvious as to why it was put there' and further advised 'we would just caution anyone not to eat food out of a Coles bin, because there's probably a good reason why it's there'.[45]

3.53 Both Coles and Woolworths pointed to their food donation programs as a means to address food waste while providing groceries to vulnerable Australians. For example, Coles submitted that it had:

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39 Ms Amelia Cromb, Grassroots Action Network Tasmania, *Committee Hansard*, 7 March 2024, p. 5.

40 Ms Amy Booth, Grassroots Action Network Tasmania, *Committee Hansard*, 7 March 2024, p. 5.

41 Ms Amy Booth, Grassroots Action Network Tasmania, *Committee Hansard*, 7 March 2024, p. 1.

42 Irene Di Lauro, *Submission 120*, p. 1.

43 Ms Amelia Cromb, Grassroots Action Network Tasmania, *Committee Hansard*, 7 March 2024, p. 8.

44 Ms Amy Booth, Grassroots Action Network Tasmania, *Committee Hansard*, 7 March 2024, p. 7.

45 Ms Leah Weckert, Chief Executive Officer and Managing Director, Coles Group, *Committee Hansard*, 16 April 2024, p. 62.

> … supplied the equivalent of 40.1 million meals of unsold, edible food to food rescue organisations such as SecondBite and Foodbank who support well over a thousand charities throughout local communities to feed individuals and families suffering food insecurity.[46]

3.54 Coles further addressed the issue, stating some food could not be donated, due to expiry or damage:

> If the product is still edible and within its use-by date, we will donate it, for example, to one of our charity partners, SecondBite or Foodbank. If, for example, the use-by date has expired or the product is damaged—for example, it might be cheese that has been left on a shelf outside of the refrigerator, so it hasn't been kept at the required temperature—we would then put it into an organic waste bin, and it would then be offered, for example, to farmers. Anything that we can do to minimise waste and further support our charity partners, such as SecondBite and Foodbank, we would be pleased to do.[47]

National Food Waste Strategy

3.55 The National Food Waste Strategy was finalised in November 2017. It notes that food waster costs the Australian economy around $20 billion per year and has a goal to halve food waste by 2030.[48]

3.56 Waste in Australia includes:

- Up to 25 per cent of all vegetables produced don't leave the farm—31 per cent of carrots don't leave the farm, equating to a cost of $60 million.
- The total cost of agricultural food losses to farmers is $2.84 billion.
- 2.2 million tonnes of food is wasted from the commercial and industrial sectors, resulting in significant waste disposal charges and lost product costs to business.[49]

3.57 The strategy notes a number of areas where avoidable food waste occurs and could be reduced, including in areas relevant to this inquiry:

- Primary production: a fall in market prices making it unprofitable to harvest, inability to meet contracted produce specifications, such as quality or size.
- Processing and manufacturing: excessive trimming of vegetables for processed foods, changes in production due to consumer demand.
- Retail: poor stock management, including over-ordering, produce no longer meets quality standards, last minute order changes that can leave suppliers

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46 Coles Group, *Submission 20*, p. 2.

47 Ms Vicki Bon, Government and Industry Relations Manager, Coles Group, *Committee Hansard,* 16 April 2024, p. 53.

48 Department of Climate Change, Energy, the Environment and Water, *National Food Waste Strategy,* November 2017, pp. 1 and 5.

49 *National Food Waste Strategy,* p. 6.

with excess product, limited access to facilities to recycle or repurpose food waste.[50]

Opportunistic pricing

3.58 It was put to the committee that the market concentration of supermarkets could result in companies using their power to engage in opportunistic pricing, resulting in consumers paying unnecessarily higher prices. The committee was provided with extensive examples of such opportunistic pricing, some of which are detailed below.

3.59 The CPSA noted its concerns with the two major supermarket chains and suggested they had used the 'twin spectres of inflation and rising supply chain costs as opportunities for profiteering'. The CPSA continued:

> Put simply, we argue that Coles and Woolworths have become drivers of inflation, increasing their profits during a time of hardship for most Australians. This has left their customers, especially vulnerable people, far worse off.[51]

3.60 The CPSA pointed to a recent study showing that 'firms with market power are likely to raise prices if they believe their competitors will do the same'—referred to as 'seller's inflation'. The CPSA further cited The Australian Institute which found:

> … historically high profits have accounted for a disproportionate share of the initial rise of economy-wide prices in Australia (and many other countries) since the pandemic. This confirms that Australian corporations had power to drive up their prices much more than their costs – and this, by definition, constitutes inflation.[52]

3.61 Mr Luke Curran submitted to the committee about the supermarkets' practice of consumer price index (CPI) grocery price updates, suggesting that Coles was updating its prices in line with any recent CPI increases:

> This is Coles' practice of increasing the price of almost every product on the shelves by the latest CPI price increase.
>
> Casual staff on the lowest wages and with no reasonable prospect of a pay increase were required to start early, and often finish late that day, to increase almost every price within the store.
>
> Coles even had the brazenness to call this generalised price increase the "CPI ticket update".
>
> Such a practice meant that a firm with significant market power, a near-duopoly with a price-setting ability, was increasing its prices simply

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50 *National Food Waste Strategy*, p. 9.

51 Combined Pensioners and Superannuants Association of NSW, *Submission 18*, p. 3.

52 Combined Pensioners and Superannuants Association of NSW, *Submission 18*, pp. 9–10.

> because it could. This process has zero regard to the actual input costs of the firm.
>
> Arguably, such a practice might be justifiable by a small firm with no cost-setting or price-setting power. But it is completely unacceptable for a large duopolistic firm to simply increase across the board prices without regard to actual input costs. It is both a failure of the market and a failure of competition law to moderate this behaviour.[53]

3.62 Mr Darryn Wiley also provided examples of opportunistic pricing, following the storms which hit the Gold Coast area. Mr Wiley said that in areas where several dairy farms and milk processing plants were located 'the price of UHT Milk suddenly shot up from $1.30/litre to $1.60/litre' and when Cyclone Yasi wiped out 75 per cent of Queensland banana farms, banana prices went up from $2.50/kg to $10.00/kg, including stock that was already delivered and paid for.[54]

3.63 Per Capita submitted an example of misleading advertising which also suggest opportunistic pricing is occurring:

> Take for example the story of Newcastle resident Rachel King, told by Guardian Australia journalist Johnathan Barret in June last year. King began tracking the price of a coffee product she regularly bought from Woolworths. In the 18 months from the end of 2021 the product could normally be bought for about $14 as part of the store's prices dropped promotion. However, at the beginning of 2023 'the price went from $14 to $22 and then discounted to $15, with the latter advertised as a cost saving, even though it was above the price charged just weeks earlier'.[55]

3.64 CHOICE agreed that opportunistic pricing occurs, submitting that:

> The major supermarkets employ a number of potentially misleading or deceptive pricing strategies. Discount and 'special' claims made by supermarkets are often confusing and difficult for consumers to verify, making it incredibly hard for people to know if they're getting a genuine discount or value for money.[56]

3.65 Mr Abdel Badoura provided a detailed submission discussing grocery price tactics and noted:

> In summary, both Coles and Woolworths are running risk-free businesses propped up by suppliers who are paying for the majority of their expenses, underpinned by the Australian public who is being overcharged at every step. They have gotten away with this for years due to the lack of competition in the market and market power abuse. As a result, you see

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53 Mr Luke Curran, *Submission 33*, pp. 1–2.

54 Mr Darryn Wiley, *Submission 81*, p. 1.

55 Per Capita, *Submission 10,* p. 4.

56 CHOICE, *Submission 72,* p. 9.

> higher recommended prices versus other countries on the same products from large multinationals. This hurts Australian households.[57]

Misleading price displays

3.66 Under laws and regulations enforced by the Australian Competition and Consumer Commission (ACCC), businesses cannot display incorrect pricing or pricing that could create a false impression.[58]

3.67 CHOICE outlined the ways in which it contended that supermarkets were 'potentially confusing, misleading or deceiving consumers through a number of pricing and promotional strategies' including, but not limited to:

- **False pricing claims:** for example where a supermarket advertised the price of a product was 'locked' until a certain date but raised the price of the product before the end of the promotional period.
- **Was/now pricing claims:** where supermarkets choose comparative prices from points in time that were long ago, giving a false impression of recent price reductions or where supermarkets use natural seasonal variations in pricing to make was/now discount claims.
- **Specials and discounts without contextual information:** where the price tag does not contain the previous price or the amount of the discount, which may lead consumers to believe that products are more discounted, or better value, than they actually are.
- **Tags designed to look like a discount offer:** when it is the regular price and a person could be easily misled into thinking the product is on sale.
- **Other promotional claims:** such as 'everyday', 'everyday low price', 'low price', 'fresh special'. People may be misled into thinking an item is of good value or discounted, when in fact it may be the price it has always been.[59]

3.68 CHOICE recommended that the government 'introduce a mandatory information standard for supermarkets that ensures their pricing is clear and consistent with consumer expectations'. CHOICE outlined its reasons for this recommendation, noting there needs to be 'increased price transparency around supermarket pricing to ensure that people are able to effectively assess the variety of ways supermarkets communicate specials and discounts'. CHOICE recommended that:

> Supermarkets should publish historical pricing data on all products in stock so that consumers are able to compare and verify pricing claims. Empowering consumers with this information will mean they are able to

57 Mr Abdel Badoura, *Submission 129*, p. 4.

58 Australian Competition and Consumer Commission, *Price displays*, accc.gov.au/consumers/pricing/price-displays (accessed 28 March 2024).

59 CHOICE, *Submission 72*, pp. 9–16.

make stronger purchasing decisions and not be lured into misleading specials and discounts.

Price tags offering specials and discounts should be consistent with consumer expectations and follow a mandatory information standard that outlines what qualifies as a discount and how it should be communicated.

A new mandatory information standard should mandate how the price of an item is displayed. The standard should:

- Require clear prices to be displayed on all products sold by supermarkets online and in-store.
- Standardise and rationalise discount and promotional terms, including preventing supermarkets from using terms, designs or colours that indicate a discount is being offered when the product is not discounted.
- Require supermarkets to publish the most recent previous price of the product, with the date, and clearly state the amount the product has been discounted in dollars and as a percentage.[60]

Unit pricing

3.69 Unit pricing is a fundamental strategy in maintaining competition in grocery pricing. Unit pricing details the cost of a product using standard units of measurement, thereby helping consumers to compare prices and find the best value for money.[61]

3.70 Unit pricing is enforced by the Unit Pricing Code (UPC), which is a mandatory industry code that outlines the rules regarding where, how, and for what products unit prices are displayed.[62] Most common grocery items must display unit pricing, including:

- Bread
- Butter
- Eggs
- Flour
- Fresh fruit and vegetables
- Fresh milk
- Meat
- Rice
- Sugar
- Other packaged food.[63]

60 CHOICE, *Submission 72*, p. 17.

61 Australian Competition and Consumer Commission, *Unit prices for groceries*, accc.gov.au/consumers/pricing/unit-prices-for-groceries (accessed 27 March 2024).

62 Australian Competition and Consumer Commission, *Unit Pricing Code*, accc.gov.au/business/industry-codes/unit-pricing-code (accessed 26 March 2024).

63 Australian Competition and Consumer Commission, *Unit Pricing Code*.

3.71 Physical businesses that use more than 1000 square metres of floor space to sell groceries must follow the UPC, and physical businesses that use less than 1000 square metres of floor space to sell groceries can choose to follow the UPC.[64]

3.72 The Queensland Consumers Association argued that the UPC needs increased monitoring and enforcement 'because consumer usage of grocery unit pricing is sub optimal due mainly to many unit prices not being easy enough for many consumers to notice, read, understand and use both instore and online'. The association noted that prices were often in small, non-bold print, used inconsistent units of measure or there were simply no unit prices for all items.[65]

3.73 National Seniors Australia submitted that 'supermarkets do not always provide unit pricing in ways that are easily legible and understandable, especially for older people with vision impairment'.[66]

3.74 The Consumers Federation of Australia also recommended the ACCC be resourced to 'prioritise the monitoring and enforcement of retail compliance with' the UPC.[67]

3.75 The ACCC itself recommended government action on the UPC, suggesting:

> … the Government could consider the benefits of including more prescriptive requirements to improve the legibility and prominence of unit prices in the next review. Such a change could be pro-consumer by improving consumers' access to unit pricing.[68]

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64 Australian Competition and Consumer Commission, *Unit Pricing Code*.

65 Queensland Consumers Association, *Submission 2*, pp. 1–2.

66 National Seniors Australia, *Submission 13*, p. 1.

67 Consumers Federation of Australia, *Submission 109*, p. 2.

68 Australian Competition and Consumer Commission, *Submission 107*, p. 17.

Chapter 4
The relationship between suppliers and supermarkets

4.1 Much has been made by the two major supermarkets, Coles Group and Woolworths Group, on their 'commitment to provide value to customers' and their focus on 'helping our customers find ways to spend less on their groceries'.[1]

4.2 Those two retailers also claim that these objectives are met through a highly competitive grocery sector where the two major supermarkets 'compete for customers, suppliers and team members' and where being 'price competitive is critical in trying to win our customers' shopping basket'.[2]

4.3 Both Coles and Woolworths each told the committee that the ongoing success of their companies relied on using low prices to bring in customers. For example, Ms Leah Weckert, Chief Executive Officer and Managing Director of Coles Group told the committee:

> As a customer-led organisation, our customers expect us to continue to provide a choice of quality products across a range of value propositions to suit their budget and the needs of their household. We are committed to providing this. This is something we remain very focused on, because we know if we don't that customers may have many other alternatives from which to purchase their food and groceries.[3]

4.4 Mr Brad Banducci, Chief Executive Officer of Woolworths Group likewise told the committee that:

> … we rely on our customers—they're our lifeblood—for us to be successful. If we do not get sales, if we do not generate value for our customers, they don't shop with us for the whole or part of their basket. That is the key for us, and, in the current market we're in, delivering value is critical on a daily basis and a weekly basis to enjoy the privilege of the custom of our customers.[4]

4.5 However, many of the suppliers to the supermarkets, particularly fresh food suppliers, argue that the supermarkets do not offer low prices through lowering their own profits. Instead, supermarkets keep their prices low by applying undue pressure on their suppliers to sell their products to supermarkets at lower

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1 Coles Group, *Submission 20*, p. i; Mr Brad Banducci, Chief Executive Officer, Woolworths Group, *Committee Hansard*, 16 April 2024, p. 1.

2 Ms Leah Weckert, Chief Executive Officer and Managing Director, Coles Group, *Committee Hansard*, 16 April 2024, p. 35; Woolworths Group, *Submission 23*, p. 1.

3 Ms Leah Weckert, Coles Group, *Committee Hansard*, 16 April 2024, p. 34.

4 Mr Brad Banducci, Woolworths Group, *Committee Hansard*, 16 April 2024, p. 1.

prices, thereby keeping supermarket profits higher whilst lowering—or completely eliminating—supplier profits. Suppliers argued that supermarkets do this by using their market power to pressure suppliers into unfair trading relationships.

4.6 For example, the National Farmers Federation (NFF) submitted that efforts by supermarkets to compete on price could lower prices for consumers, but 'under existing competition legislation, this behaviour has been allowed to occur, meaning that the lower prices through competition come at the expense of prices paid to farmers'.[5]

4.7 Ms Amelia Cromb of Grassroots Action Network Tasmania (GRANT) emphasised that food is a human right and compared people's inability to pay high prices for essential items, to the high wastage rates across supermarkets:

> … it almost seems like a cruel mockery that everyday people are going to the supermarket to buy food—and food is a human right … People look at them and they can't afford them. At the end of that day, the supermarket can basically rip off the tag of that high price, throw it in the bin as though it just had no value at all. Suddenly, it goes from this high price to nothing. It's criminal. There's no other way to put it.[6]

4.8 TasFarmers agreed, submitting that the concentration of the grocery market in Australia 'has significantly influenced the pricing of food and groceries' by granting supermarkets 'substantial corporate power, enabling them to dictate terms to suppliers and impact the overall market dynamics' which ultimately results in consumers bearing the brunt of higher prices for essential items.[7]

4.9 This chapter explores the relationship between supermarkets and their suppliers, with a focus on fresh food suppliers and plant nurseries (otherwise known as the greenlife industry). The evidence presented in this chapter demonstrates that the ways supermarkets engage with suppliers are putting Australia's food security at risk, with many suppliers finding it difficult to remain in business. The impact of this is already being felt in the general community, through price increases and lack of choice.

The supermarket-supplier relationship

4.10 The two major supermarkets, Coles and Woolworths, made many claims in their evidence to the inquiry about:

- the importance they place on ethical and balanced commercial relationships with their suppliers;
- how they seek feedback from suppliers; and

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5 National Farmers Federation, *Submission 97*, p. 8.

6 Ms Amelia Cromb, Grassroots Action Network Tasmania, *Committee Hansard*, 7 March 2024, p. 8.

7 TasFarmers, *Submission 3*, p. 2.

- how they engage with existing dispute resolution mechanisms.

The actions of buyers

4.11 As the Australian Competition and Consumer Commission (ACCC) explains, buyer power can refer to the 'ability of a person to exercise market power in a market in which they are a buyer'. Further, this power is 'typically demonstrated through the ability of a buyer to demand lower prices for goods and services or otherwise influence the terms of supply in its favour'.[8] The ACCC, in its Supermarkets Inquiry Issues Paper, said that it was aware:

> … concerns have been raised by suppliers regarding the buyer power of larger supermarkets and wholesalers. A common concern is that larger supermarkets and wholesalers are able to use their buyer power to extract more favourable terms and conditions from suppliers than would otherwise be the case, potentially impacting the sustainability of their operations.[9]

4.12 This aligns with what the ACCC found in its 2020 *Perishable Agricultural Goods Inquiry*. It reported that, 'generally speaking, the more perishable a product is, the weaker the producer's position from which to negotiate favourable terms of supply with the buyers of their goods'.[10]

4.13 This weaker negotiation and bargaining position was made clear to the committee by many fresh food suppliers who described their negative engagement with Coles and Woolworths and the aggressive and unconscionable tactics of their buyers and category managers.

4.14 But, as Dr Craig Emerson, Independent Reviewer of the Food and Grocery Code of Conduct Review (Grocery Code Review) told the committee, given the focus on prices by the supermarkets, it should not come as a surprise if some supermarket buyers acted poorly towards suppliers:

> We hear a lot of evidence that buyers and category managers behave badly. If they are deliberately or inadvertently incentivised to behave badly, they'll behave badly. It's just the way it works.
>
> If, for example, senior management had a very, very laser focus on the margins that each buyer achieved, and created, in some sort of sense, a competition amongst the buyers or at least an awareness that other buyers are doing better because they're getting better margins, what are you going to do as a buyer? You're probably going to start behaving pretty poorly towards your suppliers.[11]

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8 Australian Competition and Consumer Commission, [Supermarkets Inquiry: Issues Paper](), 29 February 2024, p. 19.

9 *Supermarkets Inquiry: Issues Paper*, p. 19.

10 Australian Competition and Consumer Commission, *Submission 107*, p. 15.

11 The Hon. Dr Craig Emerson, Private capacity, *Committee Hansard*, 16 April 2024, p. 70.

Feedback from suppliers

4.15 The major supermarkets explained to the committee the various ways they sought feedback from their suppliers about the behaviour and engagement of their buyers and category managers.

4.16 For example, Mr Banducci told the committee about different methods used by Woolworths to seek feedback from suppliers, firstly via an annual survey conducted by Vantage Group which:

> … gives us very detailed data on how we are behaving in respect of our suppliers by category. We review that. It is the key input into the modifier or performance bonus adjustment of our category managers. There is a very detailed process that goes on annually. We then supplement that with a bimonthly review, also by that Vantage survey, which drills downs and gives more immediate material. We get that every two months. It has in the order of 500 suppliers who have dealt with us in the last two months that provide feedback to that. We take that very seriously and review that, and it goes back into the feedback and performance for our team. We would like to be at a higher bar than we see on average, and those are two of the mechanics we use to help us assess our progress in that regard.[12]

4.17 Woolworths also provided information to the committee that since June 2023, in order to assist smaller suppliers working with large businesses like Woolworths, they 'had a dedicated team in place to support small supplier onboarding and in their first months partnering with us'. Further, Woolworths noted that it recently launched a 'Supplier Commercial Performance Report' for smaller suppliers, due to feedback received as part of the Grocery Code Review.[13] However, Woolworths did not provide details of what that feedback was, or the issue being addressed by this report, making it impossible to assess whether this program appropriately addressed concerns raised.

4.18 Ms Weckert of Coles responded to evidence about Coles' supplier engagement, telling the committee:

> Claims have been made about how we interact with our suppliers. We acknowledge that we don't always get it right, but all of our procedures seek to ensure fair and sustainable relationships.
>
> What has been missing in the conversation to date is the many suppliers who choose Coles: suppliers who have been working with Coles for generations—some for more than 50 years … We value our supplier relationships and work hard to interact in a fair, honest and transparent manner.[14]

4.19 This evidence was contradicted by suppliers who gave evidence directly to the committee. Mr Michael Crisera of Fruit Growers Victoria said that despite

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12 Mr Brad Banducci, Woolworths Group, *Committee Hansard,* 16 April 2024, p. 25.

13 Woolworths Group, *Submission 23*, p. 13.

14 Ms Leah Weckert, Coles Group, *Committee Hansard*, 16 April 2024, p. 34.

supermarkets claims of happy suppliers, that's not what it hears when it talks to its members, with the same feedback being constantly provided that '"we've talked to our suppliers, and there's no issue." Well, that's not the story we get as an advocacy body for our members'.[15]

4.20 In addition, the ACCC provided information on actions it had recently taken against the two large supermarkets:

> **Coles unconscionable conduct**
>
> In 2014 the ACCC took action against Coles Supermarkets Australia Pty Ltd (Coles) for engaging in unconscionable conduct in its dealings with some of its suppliers. The Federal Court made orders by consent that Coles pay $10 million in pecuniary penalties and costs. Coles also provided a court enforceable undertaking to the ACCC that it would implement a program that sought to provide redress to over 200 of its suppliers. Coles returned over $12 million to suppliers under this program.
>
> **Woolworths Mind the Gap**
>
> In December 2015 the ACCC instituted unconscionable conduct proceedings against Woolworths Ltd (Woolworths) in relation to its 'Mind the Gap' scheme. The ACCC alleged that under the scheme, Woolworths systematically sought to obtain payments from over 800 suppliers ranging from $4,291 to $1.4 million to urgently reduce Woolworths' expected significant half year gross profit shortfall. The ACCC further alleged that Woolworths was in a significantly stronger bargaining position than its suppliers and had no pre-existing contractual right to the payments. Woolworths sought over $60 million in payments and ultimately captured over $18 million in payments from suppliers pursuant to this scheme. The Federal Court dismissed the ACCC's case, considering that such action by Woolworths was a normal part of their arrangements with suppliers, and therefore not unconscionable.[16]

4.21 Dr Emerson in his role as Independent Reviewer of the Grocery Code told the committee that during his engagement with executives at Coles and Woolworths, they asserted that poor practices with suppliers either don't occur, or 'are very rare'. Dr Emerson noted, however, that the opposite view was held by suppliers and he suggested buyers might have some role in this discrepancy:

> When we hear from suppliers, they tell us that [these practices] do occur. I'm not saying that the supermarket CEOs are being untruthful, but it does make me think that it's very important for the top management to know exactly what their buyers and their category managers are doing.[17]

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15 Mr Michael Crisera, Grower Services Manager, Fruit Growers Victoria, *Committee Hansard,* 13 March 2024, p. 43.

16 Australian Competition and Consumer Commission, *Submission 107,* p. 6.

17 Dr Craig Emerson, *Committee Hansard,* 16 April 2024, p. 74.

4.22 Coles submitted that it was the first supermarket retailer to adopt and independent arbitration process. It told the committee:

> If a supplier does have a concern, not only do we have confidential, robust internal mechanisms, but we are bound by the Food and Grocery Code of Conduct, which has alternative complaint mechanisms and is enforced by the ACCC.[18]

4.23 Discussion of dispute resolution and arbitration is included at Chapter 7, on improved regulation of the supermarket industry.

Fruit and vegetable producers

4.24 By far, most of the evidence the committee received raising concerns about the supplier-supermarket relationships was from fresh food producers, particularly fruit and vegetable farmers. The committee heard from a variety of sources that fruit and vegetable farmers do not believe they have fair business relationships with supermarkets. The committee was told that the negotiations between supermarkets and farmers is uneven due to a range of issues, including:

- unenforceable contract terms;
- time limited negotiations of perishable products;
- data asymmetry on markets prices;
- lack of alternative markets;
- unrealistic quality expectations;
- forced involvement in supermarkets specials; and
- retribution resulting from the arbitration and complaints process.

4.25 The NFF outlined the 'perfect storm' of conditions for famers that made it challenging for them to negotiate successfully with supermarkets, where farmers are time and cash poor, and lack the resources to engage lawyers and go through court systems to have their contracts reviewed. Farmers also fear retribution should they object to contract terms from a supermarket, which is the farmer's only viable market. The NFF suggested complaints processes needed improvement:

> So when we talk about access to justice, it's incredibly important that we ensure that producers have the avenues to challenge unfair aspects of the relationships with the supermarkets or with those intermediaries without the ramifications, without the time or the cost or the barriers, essentially, which makes that a non-viable pathway for them.[19]

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18 Coles Group, *Submission 20*, p. 7; Ms Leah Weckert, Coles Group, *Committee Hansard*, 16 April 2024, p. 34.

19 Ms Charlotte Wundersitz, General Manager, Rural Affairs, National Farmers Federation, *Committee Hansard*, 13 March 2024, p. 6.

4.26 The NFF pointed to the ACCC's 2020 *Perishable Agricultural Goods Inquiry*, which outlined several examples of the misuse of the market concentration by the major supermarkets, including:

- Suppliers being asked to disclose commercially sensitive information, which can remove any information advantage they have in the negotiation. This includes providing intellectual property or details of input providers, which is of particular concern when the supermarket also retails a competing private label product.
- Pressuring suppliers of perishable agricultural goods to provide supermarkets with some form of offset in exchange for an increase in wholesale prices. This includes paying for promotional activity to an extent that almost negates the price increase.
- Retribution for initiating a cost increase discussion, by the de-listing of other products on some occasions.
- Using tender processes to procure the supply of chicken meat to increasingly reduce margins to barely viable levels, as supermarkets are able to bargain down prices with reference to price guides that may not be current or are below viability.
- Providing a supplier with very little time to negotiate prices in circumstances where their products have a very short shelf life.[20]

4.27 The following sections look into each of these concerns in further detail.

Unenforceable 'contracts'

4.28 The committee heard from many fruit and vegetable farmers that contract terms with supermarkets are opaque and unenforceable because they generally do not include agreed prices, or volumes. The NFF told the committee:

> … there are almost no pre-existing contracts in place. All price and volume is determined literally in the last week before it goes to sale. Again, this is from a negotiation 101 point of view. [The supermarkets] minimise [their] risk by deferring the risk to the grower. The growers bear all of the risk in this process. That's the general principle that we start with.[21]

4.29 Woolworths argued that the lack of pre-agreed volumes and pricing 'allows both parties to quickly and flexibly respond to the highly variable nature of fruit and vegetable supply volumes'. Woolworths went on:

> We predominantly buy from growers and grower/aggregators with whom we have long-term purchasing relationships. Many of these growers and grower/aggregators are given long-term forecast estimates to provide more certainty on the volumes we are likely to need. We then negotiate specific volumes and pricing with our supply partners each week.[22]

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20 National Farmers Federation, *Submission 97*, p. 10.

21 Mr Jeremy Griffith, Representative, National Farmers Federation Horticulture Council (NFF Horticulture Council), *Committee Hansard*, 7 March 2024, p. 16.

22 Woolworths Group, *Submission 23*, p. 8.

4.30 Coles similarly submitted that it has 'seasonal commitments, which are volume based, with agreed quality and volume specifications, ethical requirements, and distribution centre locations as part of these commitments', and where the 'length of these commitments varies based on seasonality and regionality'.[23]

4.31 Coles stated that following these commitments:

> … both parties then negotiate on a per order basis (with orders typically placed weekly over multiple days). Price is agreed by Coles and the supplier using a variety of factors from current market availability, and volumes needing to be moved within the time period of supply, along with promotional plans for the item.[24]

4.32 In contrast, Ms Eve Stocker told the committee that supermarket buyers could amend the price paid to a producer. Ms Stocker noted that 'the agreements are not contracts' and the suppliers held all the risk, saying:

> The grower or farmer has no power; the supermarket has all the power in the matter of agreement on price paid to the grower or farmer. The farmer has no alternative if the buyer offers a low price; the farmer can't sell to another market, because there isn't one. The price the farmer is coerced to accept by the buyer may not cover the farmer's costs of producing the product.[25]

4.33 AUSVEG presented similar evidence and told the committee of the experience of a grower who recently advised they were told by a retailer:

> 'We'll renegotiate your contract at the start of June, as long as you take a $300-a-tonne decrease on the product you've been supplying to us for the last 30 years'. And he says, 'Where am I going to go?' They know where he's going to go—out of business.[26]

4.34 AUSVEG suggested another key problem for growers was the variance in supply agreement lengths, from three months to a year, and stated this 'makes it exceptionally difficult for growers, who are trying to budget, trying to get loans from the bank, because they can't say what their cash flow is going to be'.[27]

4.35 AUSVEG submitted that many of the tactics that supermarkets employ could be considered 'manipulative and unconscionable' and often result in significant additional costs to growers, including growers having to:

> … repack, dump or donate cancelled orders; plough in crops grown to retailer estimated supply requirements but where significant volume is not

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23 Coles Group, *Submission 20*, p. 6.

24 Coles, *Submission 20*, p. 8.

25 Ms Eve Stocker, *Submission 31*, p. 1.

26 Mr Bill Bulmer, Chair, AUSVEG, *Committee Hansard,* 13 March 2024, p. 13.

27 Ms Lucy Gregg, General Manager Public Affairs, AUSVEG, *Committee Hansard,* 13 March 2024, p. 17.

required; dump or donate product that has been questionably rejected; and contend with what is akin to third line forcing across the supply chain.[28]

4.36 Melons Australia advised that 'some suppliers operate on verbal agreements, or supply is sourced direct from wholesale markets with no agreement in place'. Where agreements are in place 'they do not specify prices, which are negotiated weekly based on market conditions'.[29]

4.37 The committee heard evidence from multiple sources that the buying cycle of perishable fruit and vegetables exacerbated the lack of enforceable contracts.

4.38 For example, Fruit Growers Victoria laid out the buying scenario for its members, where buying prices for fruit are 'determined weekly via an online tender process with each of the retailers'. These weekly pricing fluctuations make it difficult for businesses to plan and budget. Fruit Growers Victoria argued that while the tender process 'appears to be a competitive process, unfortunately for suppliers the lowest price becomes the price in this process heavily weighted to the retailers'.[30]

4.39 AUSVEG also described a similar buying framework for a large portion of its members, where:

> … every week they basically put a price bid in for their product, and it's a bit like a Dutch auction. There might be 20 suppliers of vegetables to a retailer, and on a Monday morning they all put in their volumes and the price and hope that they might get some orders. Or they might get a phone call saying, 'You're a bit expensive; you need to drop this price.'
>
> … There are similar stories of growers saying 'We've had all these input price increases and we can't sell it for that.' It is literally the best offer of the day, and if you don't take the price what you do with your product? We not only have a very short shelf life, but we also have a very short harvest life. Something in a paddock is only eligible to meet those prime specifications for a few days or a week.[31]

4.40 The NFF similarly explained the supermarket buying cycle, and the adverse consequences of these processes for farmers:

> Firstly, the supermarkets set the buying patterns. It's normally on an extraordinarily compressed buying cycle—12 hours to 24 hours. That's a clear part of your negotiating strategy. The less time you give the growers to make a decision, the fewer options they have in that process.
>
> So, on Monday, growers will be required to go to their computers, go to the supermarkets portal and enter a price and a volume they're willing to provide to the supermarkets for that week … On the Tuesday the

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28 AUSVEG, *Submission 103*, p. 4.

29 Melons Australia, *Submission 100*, p. 3.

30 Fruit Growers Victoria, *Submission 5*, p. 1.

31 Ms Lucy Gregg, AUSVEG, *Committee Hansard*, 13 March 2024, p. 14.

> supermarkets will contact the growers and they'll either send them an email or a text message or will actually phone them … The communication will go, 'This is what we have determined the price to be. If you want to participate in the market, please acknowledge; go online and accept it. Any variation in price can significantly impact the volumes.' So there are no price negotiations going on. The price is determined and the price is set by the supermarkets.[32]

4.41 The NFF advised that for farmers, this buying cycle means they have about six to 12 hours to make a significant commercial decision, noting that their product is perishable, and they have limited alternative markets.[33]

4.42 TasFarmers argued for reform in this area, calling for:

> … the implementation of transparent contractual agreements between supermarkets and suppliers. These agreements should clearly outline pricing mechanisms, payment terms, and any potential changes, ensuring fairness and predictability for suppliers.[34]

Lack of alternative markets

4.43 As outlined above, the committee was told that as the majority of fruit and vegetables are perishable and cannot go to export, farmers are forced to deal with a local market dominated by the two largest supermarkets.

4.44 It was also noted that while accessing export markets may be successful for individual farmers, it was not necessarily in the best interests for Australians more broadly to have food exported rather than be available for local consumers.[35]

4.45 The NFF noted that if 'you're a grower of any size in this country, you almost have no choice but to deal with the major supermarkets'. It went on to advise that for many farmers, the lack of alternative markets combined with their product being so perishable, means:

> Once it's picked, once it's ripe, the clock starts ticking. If it's not sold within a certain time frame, it rots and it becomes worthless. The supermarkets are acutely aware of this issue, and it allows them to offer rock-bottom and, as the ACCC describes it, 'take it or leave it' prices, knowing full well that the growers have almost no choice but to accept the price that's on the table.[36]

4.46 Apple and Pear Australia Ltd (APAL) likewise submitted that the perishable nature of the products creates limited selling windows where the seller cannot

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32 Mr Jeremy Griffith, NFF Horticulture Council, *Committee Hansard*, 7 March 2024, p. 16.

33 Mr Jeremy Griffith, NFF Horticulture Council, *Committee Hansard*, 7 March 2024, p. 16.

34 TasFarmers, *Submission 3*, p. 5.

35 Mr Nathan Calman, Chief Executive Officer, TasFarmers, *Committee Hansard*, 7 March 2024, p. 29

36 Mr Jeremy Griffith, NFF Horticulture Council, *Committee Hansard*, 7 March 2024, p. 16.

sit out the market if the price is too low, and supermarkets can leverage this into lower prices.[37]

Data transparency and asymmetry

4.47 The committee heard from many sources that data asymmetry was a key driver of the unfair commercial conditions between farmers and supermarkets. In essence, supermarkets have access to a range of price data by virtue of dealing with hundreds of different farmers and wholesalers, while individual farmers only have access to their own price data.

4.48 APAL argued that because supermarkets have a combined 65 per cent of market share, they can develop 'detailed insights into national volumes and prices, not only for individual varieties but also for the whole horticulture sector', whereas growers were at a commercial disadvantage as they only had access to their own sales data.[38]

4.49 Melons Australia noted that data asymmetry was not restricted to prices, but also to supply volumes:

> Supermarket buyers typically provide volume forecasts to growers, but the actual purchase volumes often differ, leading to oversupply and increased price pressure. Supermarkets possess asymmetric data advantage in price negotiations, leaving suppliers with little recourse. This lack of transparency raises concerns about potential market manipulation by supermarkets to drive prices down further.
>
> The alleged practice of overstating forecasted volumes to trigger oversupply and lower prices requires scrutiny, given its potential to distort fresh produce markets. Further investigation is warranted to ensure fairness and market efficiency.[39]

4.50 The NFF pointed out that the supermarkets could exploit this data asymmetry in their buying negotiations.[40] The NFF argued for greater transparency to better balance the power asymmetry, saying:

> … farmers need to understand how the price they're being paid is determined and with greater oversight and greater data and information about how supermarkets or the intermediaries in that supply chain are determining that price that they're being offered. That then gives the grower more power to be able to understand and make a decision on whether that's

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37 Apple and Pear Australia Ltd, *Submission 102*, p. 2.

38 Apple and Pear Australia Ltd, *Submission 102*, p. 2.

39 Melons Australia, *Submission 100*, p. 3.

40 Mr Jeremy Griffith, NFF Horticulture Council, *Committee Hansard*, 7 March 2024, p. 19. See also National Farmers Federation, *Submission 97*, p. 9

> the best option for them, and also have more faith in the process and in that negotiation.[41]

4.51 AUSVEG noted that sometimes price data will be shared by supermarkets, but only in the context of lowering prices:

> … we have a case where one retailer will put a product on special, and even though the other retailer has an agreed price that week with the growers, they'll ring up and say, 'X has got that vegetable on special; we need to price match it, so this is what you need to drop to.' It's constant downward pressure on prices.[42]

4.52 Fruit Growers Victoria submitted that supermarkets 'may sometimes deliberately maintain an informational asymmetry for the purpose of extracting surplus margins from the grower' and argued that there was a lack of 'transparency along the supply chain to be able to determine what constitutes price gouging by supermarkets, and what is attributable to cost increases incurred between packing sheds and retail sale'.[43]

4.53 Fruit Growers Victoria provided data on mark-up percentages charged by supermarkets for certain fruits (see Figures 4.1 and 4.2 below). Fruit Growers Victoria noted that mark ups for granny smith apples varies between 100 per cent and 134 per cent, while the buying price to growers was so low that it is often below the cost of production.[44]

4.54 AUSVEG also raised concerns around price transparency, noting that while Coles and Woolworths were 'quick to outline that their profit margins are small … what is not clear is the distribution of income/profits across the store categories'. It pointed to industry identified mark-ups of over 300 per cent, leading AUSVEG to suggest that 'given the seasonal variability in pricing, fresh produce appears an ideal category to make significantly better margins than some shelf staple, higher volume products'.[45]

4.55 In Woolworths' submission, they themselves pointed to their use of a 'seasonal prices dropped' program to address grocery affordability, but did not outline whether these prices drops were a simple fact of seasonal availability of the relevant produce.[46]

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41 Ms Charlotte Wundersitz, National Farmers Federation, *Committee Hansard*, 13 March 2024, p. 3.

42 Ms Lucy Gregg, AUSVEG, *Committee Hansard*, 13 March 2024, p. 14.

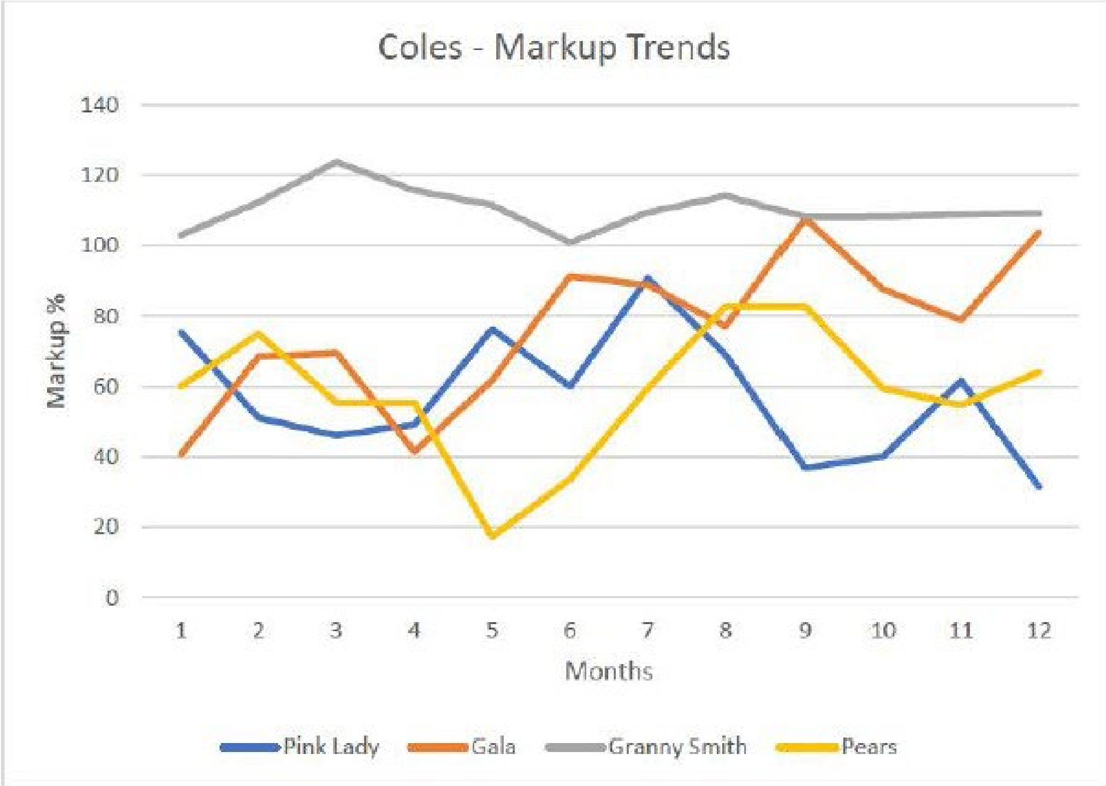
43 Fruit Growers Victoria, *Submission 5*, p. 2.

44 Fruit Growers Victoria, *Submission 5*, p. 3.

45 AUSVEG, *Submission 103*, p. 6.

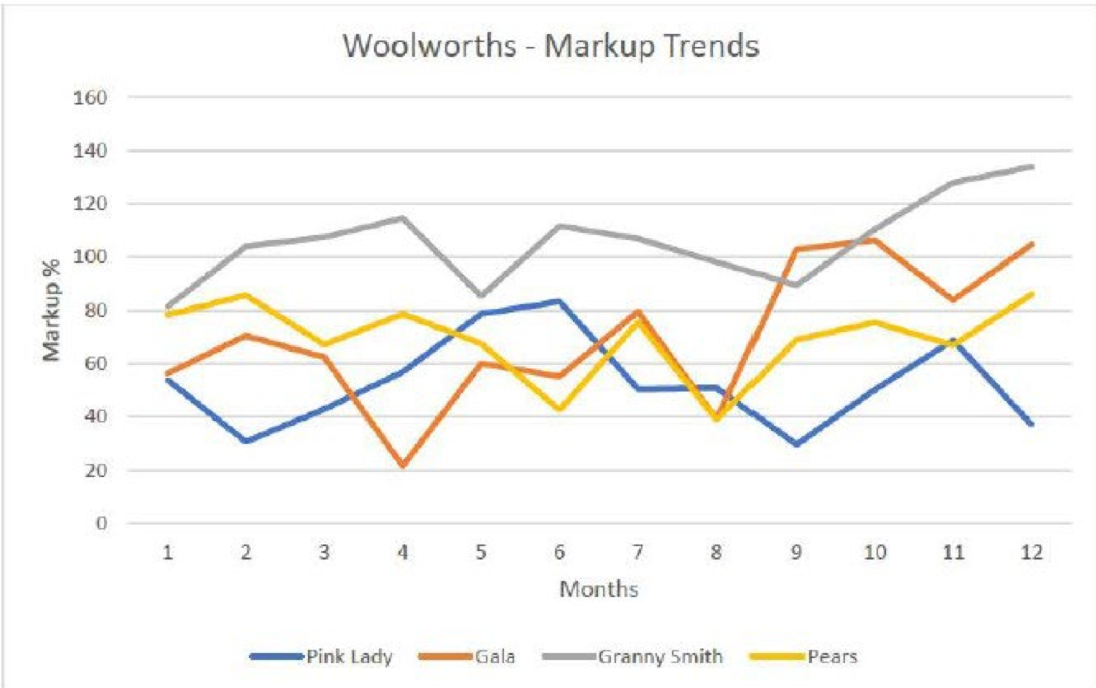
46 Woolworths Group, *Submission 23*, p. 2.

Figure 4.1 Coles—mark up percentages for apples and pears from January to December 2023



Source: Fruit Growers Victoria, Submission 5, p. 2.

Figure 4.2 Woolworths—mark up percentages for apples and pears from January to December 2023



Source: Fruit Growers Victoria, Submission 5, p. 3.

4.56 AUSVEG argued that both growers and the Australian public deserve to know supermarket profits on fruit and vegetables, at a time when growers are facing the threat of leaving the farming industry due to lack of profitability.[47]

4.57 Coles told the committee that 'we are listening, and we acknowledge some of the concerns that have been raised by the farming sector, particularly the horticultural sector, around price transparency' and further stated it would be 'very willing to be part of a solution that would involve greater transparency for fresh produce growers'.[48] However, it did not provide any details or suggestions for how it would achieve improved transparency on how the company operates.

4.58 The NFF called for producers to have access to the purchasing information, so that:

> … they know that they can take their capital away if they want, if they're not engaging in an exchange that allows them to sell for greater than their cost of production—that they're free to do what they want—whereas now we have a marketplace that does not reflect that.[49]

4.59 Many of these submitters and witnesses provided suggestions on how this data asymmetry could be addressed. These suggestions are captured later in this report, in Chapter 7.

Quality controls

4.60 The committee was told that 'quality controls' on fruit and vegetables were being misused to either control supply, or used as retribution against farmers who complained about supermarkets actions.

4.61 As Ms Stocker told the committee:

> If a supermarket buyer decides that the harvested fruit or vegetables does not meet the supermarket's standards, they can reject the produce. This means that the grower or farmer does not get any payment for the entire crop, which has cost the farmer a great deal in inputs.[50]

4.62 The Victorian Farmers Federation submitted that there were concerns around the transparency of how these quality controls are used by supermarkets to reject produce, meaning a farmer does not know what needs to be done to ensure it doesn't occur again, and there is no independent verification of that quality control. The federation put forward the experiences of its members, who told it that such rejections often occur when the market price has dropped on a

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47 AUSVEG, *Submission 103*, p. 6.

48 Ms Leah Weckert, Coles Group, *Committee Hansard*, 16 April 2024, p. 34.

49 Mr Christopher Young, General Manager, Trade and Economics, National Farmers Federation, *Committee Hansard,* 13 March 2024, p. 8.

50 Ms Eve Stocker, *Submission 31*, p. 1.

specific line of produce and the retailer wants to avoid paying a previously agreed higher price.[51]

4.63 AUSVEG argued the use of quality controls to reject produce appeared arbitrary and, combined with the overcalculation of supply volumes leading to crops being destroyed, was driving significant food waste. AUSVEG submitted that 'cosmetic standards have become unnecessarily stringent' with overly-prescriptive size specifications. AUSVEG pointed to the 2023 *Farm to Supermarket Food Waste Report* which found that:

> … 19 per cent of produce rejected by retailers was given away for free, whilst 19 per cent was thrown away, with farmers losing an estimated 14 million kilograms of fruit and vegetables from rejected deliveries each year.[52]

4.64 Woolworths submitted that it was addressing both grocery affordability and food waste arising from quality controls by developing the 'Odd Bunch' brand of fruit and vegetable products, which is produce that does not pass quality control but is still edible, which retail for an average 20 per cent below comparable fruit and vegetable products.[53]

4.65 In contrast, AUSVEG submitted that programs like the Odd Bunch were still problematic and didn't assist suppliers:

> … these pre-packs often cost more to pack than regular products, still have high specifications so only reduce waste minimally, and are often substituted by the consumer for 'Class 1' products therefore no additional volumes are sold but the returns to growers are less.[54]

Specials and 'loss leader' items

4.66 Fruit and vegetable growers told the committee of the practice of 'loss leading' products, whereby supermarkets sell products below cost to draw in customers.

4.67 AUSVEG outlined how this practice works:

> A loss leader strategy involves selling a product below its cost of production with the intention of enticing customers to visit the store and potentially make additional purchases. Major supermarkets can afford to price a product with no margin because they have other products they can sell for higher profit margins to make up for the loss.
>
> Supermarkets often use vegetables as loss leaders for several reasons; they are essential items in most households, have a high demand, and give the perception of value when first entering the supermarket.[55]

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51 Victorian Famers Federation, *Submission 62,* p. 4.

52 AUSVEG, *Submission 103*, p. 6.

53 Woolworths, *Submission 23*, pp. 2 and 9.

54 AUSVEG, *Submission 103*, p. 7.

55 AUSVEG, *Submission 103*, p. 15.

4.68 AUSVEG advised that while loss leader practices were not illegal, 'they represent an unfair playing field whereby the strength of negotiation skills and retail practices of buyers leave suppliers in a disadvantaged position'.[56]

4.69 Growers and their representative groups expressed concerns that this 'loss leader' strategy was worsening under the current environment of heightened scrutiny of consumer costs, with supermarkets reacting to current public and political focus on their profits by lowering prices—but doing so at the expense of farmers. It was put to the committee that Coles and Woolworths were lowering prices by paying farmers less, not by dropping profit margins:

> The greatest concern of every grower at this point in time is that the major supermarkets take the position to say, 'There's a lot of pressure out there. We're just going to reduce all of our prices.' And we have seen this. One of the major supermarkets announced last week that they are reducing the price of a whole series of things. I won't name the specific product, but it's a fruit. They said, 'We're going to reduce the price' of the fruit 'from $3.50 down to $2.50'.
>
> From a general PR [public relations] point of view and from the public's point of view, that's great. The supermarkets have read the tea leaves and they're going to take a hit on their margins. What I've just been made aware of in the last couple of days is that supermarket has now written and advised every one of the growers on the mainland that they will be reducing their purchase price down to $1 per kilogram. So one view is saying, 'That's great. We'll do all of the right things,' but, 'Growers, you are going to fund this.'[57]

4.70 A grocery supplier made similar allegations for their industry, that during 'discussions with a senior commercial team member at the retailer, it was explicitly stated that their CEO has mandated an emphasis on all promotional price points, in response to media pressure'. The supplier further submitted that suppliers must maintain the gross margins Woolworths during price promotions, as Woolworths 'will not fund any temporary price reduction from their own pocket, [price drops] must be funded fully by the supplier'.[58]

Impact on competition

4.71 The Australian Meat Industry Council (AMIC) noted that while taking a 'loss leader' approach impacts the suppliers required to provide items at a significant discount, it can also negatively impact competitors. The Council pointed to local butchers as an example:

> It is up to the supermarkets to explain how they make retail price decisions, but if the recent discounts in the meat cabinet have been in response to media and public pressure, and not market forces, this will pose a fundamental challenge to the business model of the independent local

[56] AUSVEG, *Submission 103*, p. 18.

[57] Mr Jeremy Griffith, NFF Horticulture Council, *Committee Hansard,* 7 March 2024, p. 18.

[58] Name Withheld, *Submission 138*, pp. 2 and 6.

> butcher. This is not a criticism of the supermarkets but rather a caution of the unintended consequences of when markets and competition cease being central to decision making.
>
> … Butchers must not become collateral damage from the supermarkets discounting their meat category as loss leaders in response to sustained public and political pressure.[59]

4.72 AMIC further observed that 'while livestock markets have rallied in 2024, the supermarkets have again discounted their meat categories amidst much fanfare'. AMIC said that for butchers:

> … this means additional pressure to their cost base and more competition to maintain sales, pressures which were identified in our survey. While half of butchers indicated they thought trading conditions would more or less stay the same in 2024, 41% responded that it would be worse and only 7% thought it would improve.[60]

The role of promotions

4.73 In responding to concerns about high grocery prices for customers, the Coles submission pointed to its weekly specials and promotions as a way the supermarket helps 'lower the cost of living for Australian households'. Coles submitted that it provides 'thousands of weekly specials offering short term discounts' of up to half price on 'high volume lines critical to the customer basket' including dairy, fruit and vegetables, meat and seafood. Coles also provided details on its seasonal promotions, such as having lowered the price of Christmas hams to the lowest price in four years.[61]

4.74 Coles informed the committee that the 'big specials' providing 40 to 50 per cent off, 'would be the ones where it would be most common to find that they are co-funded by both Coles and the supplier'. Coles argued that:

> Part of the reason for that is they are the ones that drive the big volume, and so it's about sharing risk appropriately between the two parties and not putting that risk just in one place.[62]

4.75 However, Coles did not specify the proportion of cost-bearing between it and its suppliers, remaining silent on the question of who in the supply chain was ultimately paying the cost of that low price to consumers.

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59 Australian Meat Industry Council, *Submission 17*, p. 2.

60 Australian Meat Industry Council, *Submission 17*, p. 19.

61 Coles, *Submission 20,* p. 176.

62 Ms Leah Weckert, Coles Group, *Committee Hansard*, 16 April 2024, p. 57.

4.76 Mr Mitchell McNab of Fruit Growers Victoria however, said that from his understanding, such promotions 'are typically funded by a lower price paid at the farm gate'.[63]

4.77 Notably however, Mr Banducci did agree that lower prices for customers did mean, at least in part, lower prices to their suppliers, telling the committee:

> … what our customers want to see are prices come down, and we need to work with our suppliers, mainly in long-life categories, to deliver that at the shelf edge.[64]

4.78 Mr Abdel Badoura spoke to his insider knowledge of supermarket pricing practices, and submitted that for grocery items, promotions were either partly or fully funded by suppliers in advance, with failure to agree resulting in the items no longer being stocked by the supermarket. Mr Badoura noted that the two major retailers took different approaches: 'Woolworths has strict rules around promotional funding/allowance where they need to maintain their base margin, regardless of the promotion', whereas 'Coles on the other hand will contribute towards deeper promotions and drive '50% off' promotions throughout their stores'.[65]

Cost recovery and the viability of farming

4.79 Many fruit and vegetable growers are reporting that the downward pressure on prices caused by the various issues outlined above, has resulted in a market where they are not recovering their growing costs from the sales of their produce, leading their farms to become economically unsustainable.

4.80 For example, TasFarmers submitted that it remains highly concerned with the widening gap between farmgate prices and supermarket prices which 'threatens the economic viability of the agricultural sector'.[66] Another submitter contended that profits 'of major supermarket chains like Coles and Woolworths have been rising, while farm profits have been declining'.[67]

4.81 The committee was told by the NFF that many farmers have not received price increases for many years.[68] AUSVEG similarly advised that 'many growers are under increasing pressure from supermarkets to accept lower and lower prices,

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63 Mr Mitchell McNab, Chairman, Fruit Growers Victoria, *Committee Hansard*, 13 March 2024, p. 50.

64 Mr Brad Banducci, Woolworths Group, *Committee Hansard*, 16 April 2024, pp. 26–27.

65 Mr Abdel Badoura, *Submission 129*. p. 2.

66 TasFarmers, *Submission 3*, p. 2.

67 Name Withheld, *Submission 138*, p. 3.

68 Mr Jeremy Griffith, NFF Horticulture Council, *Committee Hansard*, 7 March 2024, p. 16.

with many receiving the same price they were receiving five, 10 or even more years ago'.[69]

4.82 Melons Australia similarly told the committee that external factors have worsened existing market deficiencies, making it challenging for growers to cover rising production costs; for example, 'freight and transport costs have increased 35% on average for our Australian melon growers over the past 3 years alone'.[70]

4.83 Fruit Growers Victoria also advised that it was 'concerned that abuse of market power and unfair buying terms is making fruit growing uneconomic, with our members reporting being forced to sell fruit below the cost of production'.[71]

4.84 These claims appear to be supported by the following information provided by the Australian Bureau of Statistics:

> Over the last four years, the largest price increase has been recorded for Dairy and related products (+26.7%) and Bread and cereal products (+24.0%). The smallest increase over the last four years was recorded for Fruit and vegetables (+12.0%) and Meat and seafoods (+15.2%). Looking at price change over the 12 months to the December 2023 quarter, price increases have been highest for Bread and cereal products (+8.2%) and Food products n.e.c (not elsewhere classified) (+6.5%). Price change has been flat (0.0%) for Meat and seafoods and fell 0.2% for Fruit and vegetables.[72]

4.85 Mr George Mills, a farmer from Tasmania, told the committee that farmers take on huge risks and often do not recover their costs:

> With the changing climate, heat stress, snap cold events and so on, the products that we produce are going to vary. But, at the moment, farmers are taking the whole cost of that on our shoulders. No-one else is in the community. The businesses that buy our products don't. The people who buy the products from those businesses don't. We are accepting the whole lot, and we can't afford to do it. We're going to go broke. We're going to go out.[73]

4.86 Coles also recognised that 'natural disasters and seasonal variations sometimes create an unpredictable environment for farmers, supermarkets, and consumers' but did not provide any information on how such occurrences impact their profits.[74] The evidence from farmers to the inquiry, outlined in this chapter,

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69 Mr Michael Coote, Chief Executive Officer, AUSVEG, *Committee Hansard*, 13 March 2024, p. 11.

70 Melons Australia, *Submission 100*, p. 2.

71 Fruit Growers Victoria, *Submission 5*, p. 1.

72 Australian Bureau of Statistics, *Submission 119*, p. 2.

73 Mr George Mills, Private Capacity, *Committee Hansard*, 7 March 2024, p. 33.

74 Coles Group, *Submission 20*, p. 14.

suggests that wherever there are such occurrences, the costs are borne by the farmers, with supermarkets retaining their profit margins at all times.

4.87 Dr Emerson remarked that many suppliers were not being paid enough to keep investing in new technologies, which itself would eventually drive up prices. Dr Emerson told the committee: 'I think it's an unsatisfactory situation where many are on such tight margins that they're not necessarily closing tomorrow, they've got enough just to survive, but definitely not enough to invest in those sorts of technologies to improve quality and reduce price'.[75]

Complaints and retribution

4.88 The committee was told from many sources that farmers fear retribution if they complain or do not agree to supermarkets' contract terms. For instance, Mr Mitchell McNab of Fruit Growers Victoria said that 'if anyone is to come forward with an issue in negotiation processes, well, typically there is a flow-on effect in that supply arrangement going forward between that supplier and the retailer'.[76]

4.89 The NFF told the committee that 'commercial retribution is a very real fact'. The NFF said that farmers worry that if they voice concerns and:

> … if they do not participate during the buy cycle, they will be punished. They'll get lower orders going forward, and they cannot commercially afford to do that. At this stage every grower in this country feels they have almost no choice but to accept the price that is put on the table. It's a very tilted playing field. This has had profound impacts for the entire sector.[77]

4.90 AUSVEG reported that growers fear commercial retribution for raising issues directly with a retailer, or any of the external complaints mechanisms, and reported that 'challenging unfair trading terms exposes individual growers to commercial retribution through various actions such as punitive treatment, reduced orders, or cancelled future contracts'.[78]

4.91 Mrs Anna Barker, from The Treasury Food and Grocery Code of Conduct Review, told the committee that the Grocery Code Review was finding suppliers reluctant to engage with it, due to fear of retribution:

> Some advocates of the voluntary code argue that there've been very few disputes and therefore the code must be working well. My argument is that it's evidence of the fear of retribution and that the code is not working well. … We had a lot of evidence that suppliers are in the slightly invidious

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75 The Hon. Dr Craig Emerson, Private capacity, *Committee Hansard*, 16 April 2024, p. 72.

76 Mr Mitchell McNab, Fruit Growers Victoria, *Committee Hansard*, 13 March 2024, p. 43.

77 Mr Jeremy Griffith, NFF Horticulture Council, *Committee Hansard*, 7 March 2024, p. 16.

78 AUSVEG, *Submission 103*, pp. 4 and 14.

> position where they're so fearful of retribution that they don't want to go on the record for the purposes of the review.[79]

4.92 Dr Emerson, Independent Reviewer of the Code Review agreed, also telling the committee about the possible repercussions of suppliers speaking out:

> … the category manager and/or the buyers—probably it would be at the category manager level where they oversee the buyers—might say, 'Okay, we will move your product to a less favourable part of the supermarket.' If you've got eyeline, they tend to be the premium positions. Maybe down the bottom, down at the end of the aisle, not so much. That's a move away from a prime spot to a much inferior spot. And indeed there's just delisting altogether.
>
> Now, they, as a supermarket buyer or a category manager, don't have to say, 'We are delisting you because you behaved badly,' or, 'You were rough with us.' They just fear being delisted. Again, it comes back to that very large imbalance in the market power between the two.[80]

4.93 TasFarmers recommended the creation of:

> … an independent Supplier Ombudsman to mediate disputes and ensure fair dealings between suppliers and major supermarkets. This third-party entity can investigate complaints, resolve issues, and provide a neutral platform for dispute resolution, promoting a balanced power dynamic.[81]

Food security

4.94 The issue of food security was discussed by many inquiry participants, from an individual level where people are unable to afford basic food staples, as well as from a national perspective in that much of farming itself is becoming uneconomically viable, threatening the rates of food production within Australia.

4.95 The Global Centre for Preventive Health and Nutrition (GLOBE) raised concerns around the impact that supermarket pricing has on the viability of the farming sector, and the flow-on effects this has for the Australian public:

> … supermarket concentration threatens the viability of [the agricultural] sector, particularly for independent and small farmers – who are key for ensuring biodiversity. Supermarkets have the power to negotiate poor prices to farmers, threatening their livelihoods and undermining the nutrient content of food, the type of food produced, the level of food waste, and the responsible use of production resources such as water.[82]

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79 Mrs Anna Barker, Acting Assistant Secretary, Food and Grocery Code Review, The Treasury, *Committee Hansard*, 16 April 2024, p. 64.

80 Dr Craig Emerson, Private capacity, *Committee Hansard*, 16 April 2024, p. 64.

81 TasFarmers, *Submission 3*, p. 5.

82 Global Centre for Preventive Health and Nutrition, *Submission 22*, p. 7.

4.96 The committee heard that many farmers were either forcibly or voluntarily leaving the industry, and that extreme prices pressures was impacting on the mental health of farmers.

4.97 Mr Jeremy Griffith of the NFF Horticulture Council told the committee that in the last year, farmers had bulldozed around 15 per cent of the entire Australian pear crop and expressed his concerns about this, saying 'We as a country are looking at our ability to be able to grow our own food. Our view is that we should not be held to ransom by a large corporate duopoly'.[83]

4.98 Mr Griffith emphasised the impact this has on the national interest and food security:

> If we still keep seeing farmers literally walking away and vegetable growers literally giving up the industry and the rest of it, we're going to see a reduction in supply. There are two ways you can deal with that. You can start to import. I don't necessarily think that's in our national interest. I think most countries would expect food security and the ability to feed yourself as a fundamental level 1 Maslow non-negotiable.[84]

4.99 Mr Joe Bradley of eastAUSmilk told the committee:

> I'm not in a position to get into how supermarkets should run their business, but one of the things I do know is that we have to ensure that this country always has food, and it's fast getting to the stage where food is coming in from overseas more and more.[85]

4.100 AUSVEG further submitted that 77 per cent of farmers in the ACT have experienced thoughts of self-harm or suicide—the highest of all the states and territories. It pointed to responses to its surveys indicating that many farmers were considering leaving the agricultural sector:[86]

> In June last year [2023] 34 per cent of vegetable growers in an AUSVEG industry sentiment survey indicated they were considering leaving the industry next year. In early 2024, about a month ago, a repeat of that survey revealed that that figure had increased to 37 percent. Input cost increases, poor retail pricing, and labour costs were the top three factors informing those considerations. Positive change is needed to stop more and more growers leaving the industry, which will just result in price increases for consumers.[87]

4.101 Ms Amy Booth of GRANT pointed to the need to look at the issue from a food systems perspective:

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83 Mr Jeremy Griffith, NFF Horticulture Council, *Committee Hansard,* 7 March 2024, pp. 16–17.

84 Mr Jeremy Griffith, NFF Horticulture Council, *Committee Hansard,* 7 March 2024, p. 18.

85 Mr Joe Bradley, President, eastAUSmilk, *Committee Hansard,* 13 March 2024, p. 54.

86 AUSVEG, *Submission 103*, p. 30.

87 Mr Michael Coote, AUSVEG, *Committee Hansard,* 13 March 2024, pp. 11 and 12.

> … we need to really have a big think about an overhaul of how our food systems are operating. If, from the farm to the plate, there are all of these middle players where all this waste is happening and all of these business practices aren't working the right way, then something needs to happen very systemically … the reality is that these are essential items, and getting food is an essential service, so we need to be drastically talking about how these items need to be in the store for longer and how people have access to them for longer.[88]

Meat and dairy suppliers

4.102 While facing slightly different concerns to the horticulture sector, the beef and dairy industries also gave evidence to the committee about issues in the supermarket supply chain—including a lack of transparency and fear of retribution.

Beef and pork

4.103 Cattle Australia, representing Australia's grass-fed cattle producers, said there has long been a frustration in the sector over the lack of 'transparency in price setting at the retail level'.[89] Cattle Australia noted the 2020 ACCC inquiry into bargaining power imbalances in supply chains for perishable agricultural products found 'a lack of transparency in relation to price and non-price factors and some beef producers have little transparency over the carcase grading process which can generate a lack of trust in the prices received' and further, 'that producers who raise concerns with a processor sometimes had their contract terminated or volumes reduced'.[90]

4.104 Perhaps reflecting the very different contracting and buying arrangements between beef suppliers and produce suppliers to supermarkets, the inquiry received multiple submissions from beef farmers stating they were satisfied with their supply relationships with supermarkets.[91]

4.105 Likewise, Australian Pork Limited, the peak national representative body for Australian pork producers, submitted that 'commercial arrangements in the Australian pork industry appear to be reasonably balanced and considered, especially when considering larger trading agreements' and this is 'largely due

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88 Ms Amy Booth, Community Member, Grassroots Action Network Tasmania, *Committee Hansard,* 7 March 2024, p. 6.

89 Cattle Australia, *Submission 67*, p. 1.

90 Cattle Australia, *Submission 67*, p. 2.

91 See, for example: Colin Say and Co, *Submission 12*, p. 1; Frampton Flat, *Submission 14,* p. 1; Gundamein Pastoral Co. *Submission 27;* Alexander Downs, *Submission 75;* West Talgai Feedlot, *Submission 79*, p. 1.

to these larger agreements being struck between sophisticated buyers and sellers'.[92]

4.106 Argus, a commodities markets price reporting company, publishes a weekly price for Australian frozen boxed beef export markets every Friday. Argus submitted that its price index contributes to price transparency that is 'well supported by those in the beef supply chain from farmer to feedlot to processor to exporter', but also noted that 'supermarkets (Coles and Woolworths) have been reluctant to engage with us fully, but this is a work in progress'.[93]

4.107 While the vegetable sector has pointed to the beef market as having better price transparency, Cattle Australia did observe that the ACCC inquiry 'found that producers were unable to compare prices across sales channels which hindered their ability to make farm production decisions or determine their best marketing options', and that cattle sales 'were reported inconsistently and price grids used by processors to indicate prices for specific carcase attributes varied in format and complexity'.[94]

Dairy

4.108 eastAUSmilk, an industry body representing dairy farmers in New South Wales and Queensland, noted that while its members sell directly to milk processors and do not deal directly with supermarkets, the milk processors on-sell their milk to supermarkets. eastAUSmilk noted that its members:

> … have frequent contact with milk processor companies at the local level and upwards.
>
> Every last one of those processors has horror stories to tell about being bullied by supermarkets, but they will not tell those stories. They tell our members, who tell us, but processors will not speak up.
>
> They know that if they are identified as the source of a negative story about a major supermarket, there are a myriad of ways, small and large, their business will be made to suffer.[95]

4.109 To counter this fear of retribution, eastAUSmilk supported the Food and Grocery Code of Conduct being made mandatory.[96]

4.110 Similar to the evidence received from fruit and vegetable farmers, eastAUSmilk reported that many dairy farmers are leaving the industry, adding to food insecurity in Australia:

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92 Australian Pork Limited, *Submission 16*, p. 5.

93 Argus, *Submission 34*, p. 1 and Argus, *Submission 34.1*, p. 1.

94 Cattle Australia, *Submission 67*, p. 2.

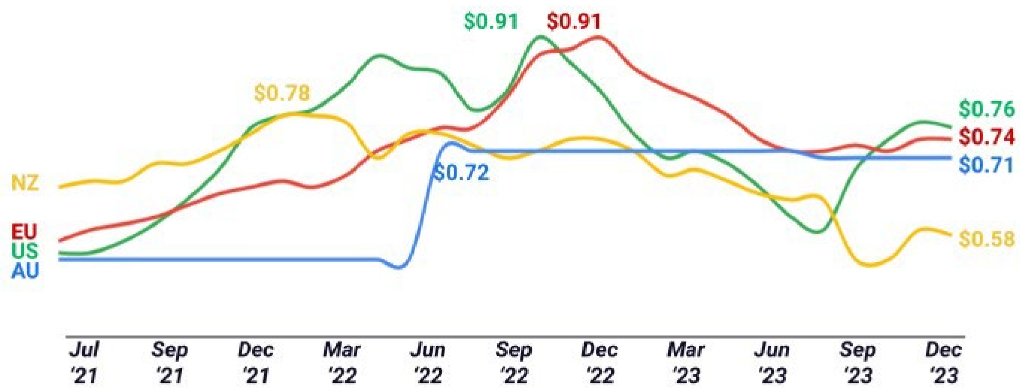
95 eastAUSmilk, *Submission 25*, pp. 7–8.

96 eastAUSmilk, *Submission 25,* p. 9.

> Dairy farmers are leaving in droves. As a good friend of mine said recently, 'There are easier ways to lose money than being a dairy farmer.' And they are just going out in droves. Every day farmers leave this industry. I can tell you, when they leave this industry, they don't come back. You don't come back to the seven-days-a-week, 365-days-a-year slog that dairy farming is. You just don't come back. We're losing it.[97]

4.111 Woolworths submitted that Australian dairy prices are influenced by global export prices and submitted a graph of prices (included at Figure 4.3) which it argued showed 'annual milk farmgate pricing remains elevated, driven by strong competition between milk processors to secure supply'. [98] However, this data also shows that despite claiming dairy prices are influenced by global export prices, which fluctuate greatly, Australian prices remain almost entirely static, indicating strong market controls on milk prices in Australia.

Figure 4.3 Global farmgate milk prices, AUD/litre, Jul 2021 –Nov 2023



Source: Australian Dairy Products Federation, Milk Values in Other Markets quoted in Woolworths, Submission 23, p. 11.

Plant nurseries

4.112 The committee was told of the situation for plant nursery growers, who produce plants, trees and seedlings for sale in supermarkets and 'big box' stores such as Bunnings and IKEA—referred to as the greenlife industry. The committee heard that although such plants are classified as groceries in the Food and Grocery Code of Conduct, as the 'big box' stores are not signatory to that Code, many plant nursery sales were not protected.[99]

4.113 Greenlife Industry Australia (Greenlife), the peak body representing supplier nurseries, submitted that 'Nursery growers experience similar trading inequities

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97 Mr Joe Bradley, President, eastAUSmilk, *Committee Hansard*, 13 March 2024, p. 53.

98 Woolworths Group, *Submission 23*, p. 11.

99 Greenlife Industry Australia, *Submission 99*, p. 2.

as those supplying supermarkets and yet are not protected by any code of practice regulating behaviour'.[100]

4.114 Ms Karen Brock, a nursery grower, told the committee that their industry is very similar to fruit and vegetable growers, and they experience the same supplier-buyer difficulties:

> We are dealing with a perishable product. It has a shelf time, it has a season and it has significant investments with technology, infrastructure, vehicles, human resources and land. We are farmers on a small footprint. We are dealing with the exact same situations as you have probably heard about across the agriculture sector.[101]

4.115 Greenlife noted that Bunnings has a market share of 70 per cent, rising to 80 per cent in some regions, and in 2023 reported a revenue increase of 4.4 per cent to $18.5 billion. Further, by volume of units sold, plants are second in sales only to tins of paint.

4.116 Greenlife submitted that in the 'absence of meaningful competitors … big box retailers are able to dictate terms of trade, set the prices and control the supply of nursery products in the retail supply chain'.[102] Ms Johanna Cave, Chief Executive Officer of Greenlife Industry Australia told the committee that:

> … because Bunnings has become a lot more powerful and they are outside any system of regulation so there are no checks whatsoever on how they exercise that power … Growers have zero power in the relationship, and even significant, large-scale, highly technological, advanced growers that operate nationally are on their knees in front of the big-box retailers.[103]

4.117 Similar to the perishable nature of fruit and vegetables, Greenlife observed that nursery plants have virtually no export markets, so growers often have little alternative market than to deal with the largest domestic plants buyer—Bunnings.[104] Mr Griffith of the NFF agreed with Greenlife, suggesting that whatever 'issues the fruit and vegetable sector faces [in dealing with supermarkets], the plant nurseries face exactly the same issues in dealing with Bunnings'.[105]

4.118 Greenlife advised the committee of other similar trading practices experienced in greenlife industries as by the horticulture industry. Nursery growers faced asymmetry of price information, which 'often encourages a "take it or leave it"

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100 Greenlife Industry Australia, *Submission 99*, p. 1.

101 Ms Karen Brock, Director, Brocklands Pty Ltd, *Committee Hansard,* 11 April 2024, p. 42.

102 Greenlife Industry Australia, *Submission 99*, p. 3.

103 Ms Johanna Cave, Chief Executive Officer, Greenlife Industry Australia, *Committee Hansard,* 12 March 2024, p. 40.

104 Greenlife Industry Australia, *Submission 99*, pp. 1 and 2.

105 Mr Jeremy Griffith, NFF Horticulture Council, *Committee Hansard,* 7 March 2024, p. 16.

attitude on the part of big box retailers and without alternative markets for the products, growers typically take the price – even if it means selling at a loss'.[106]

4.119 The committee was told that nursery growers also face the same lack of contract conditions, without enforceable terms such as volumes, and with contracts often 'limiting their buying commitment to one single plant or requiring growers to re-tender (at short notice) to become a preferred supplier'. Again, like reports from farmers, this requires nursery growers to bear all the risks of investing in their business in the hope—but not expectation—that the products will be sold.[107]

4.120 Mr Peter Smith, a nursery grower, told the committee of being encouraged to invest $4.5 million to grow his business, but without 'any orders or any firm confirmation about what would be taken as we were growing', those orders 'quickly started to dwindle and we are left with a facility that's not utilised'.[108]

4.121 It was put to the committee that nursery growers also experience the same 'specials' tactics, where the retailer asks the grower to participate in specials and sell at or below cost of production 'to demonstrate they are a "team player" with the implication that if they don't agree, they will be excluded from the team'.[109]

4.122 Ms Brock described her engagement with Bunnings as feeling like 'slaves to Bunnings', where her business was 'like a mouse running around the hamster wheel, and no matter how fast you spun that wheel you couldn't ever achieve the goal of making somebody happy in that environment'.[110]

4.123 Ms Brock confirmed that nursery growers also fear retribution from larger buyers, in this case Bunnings:

> Fear of retribution amongst the growers is real. With the mechanisms to create emails, listing meeting notes that are not a true record, targeting your top lines by raising their retail prices so that the sales slow down or suddenly there are specials that have to be displayed in the store taking up some space that your plants usually reside in, blocking your sales—and the list goes on—they have the means of penalising and controlling your sales.[111]

4.124 Bunnings refuted most of the assertions made by Greenlife and the nursery witnesses, submitting that it has less than 25 per cent of Australian nursery sales,

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[106] Greenlife Industry Australia, *Submission 99*, p. 2.

[107] Greenlife Industry Australia, *Submission 99*, p. 2. See also Ms Karen Brock, Brocklands Pty Ltd, *Committee Hansard*, 11 April 2024, p. 43.

[108] Mr Peter Smith, Chief Executive Officer, Boomaroo Nurseries, *Committee Hansard*, 11 April 2024, p. 42.

[109] Greenlife Industry Australia, *Submission 99*, p. 2.

[110] Ms Karen Brock, Brocklands Pty Ltd, *Committee Hansard*, 11 April 2024, p. 48.

[111] Ms Karen Brock, Brocklands Pty Ltd, *Committee Hansard*, 11 April 2024, p. 41.

that it operates 'within a comprehensive regulatory framework' overseen by the ACCC, and that 'claims our supplier agreements are not legally enforceable contracts are incorrect'.[112]

4.125 However, Bunnings' submission does not specifically refute the claim from Greenlife that some of its contracts are drafted with only one plant as the volume, essentially rendering the enforceable portion of the contract meaningless for recoverable funds. Instead, Bunnings noted that there are 'written commitments' to volume and that Bunnings is 'flexible on volume' in response to 'unplanned issues for its greenlife growers'.[113]

4.126 Greenlife recommended that:

- big box retailers be included in the Food and Grocery Code of Conduct;
- that the code become mandatory;
- that an independent arbiter oversee complaints; and
- that the ACCC is appropriately funded to initiate inquiries into these trading relationships.[114]

4.127 Bunnings, however, submitted that it should not be included in the Grocery Code, largely because of the broad range of other products and services of Bunnings that are not relevant to the Code and fall outside the scope of food and groceries.[115]

Goods suppliers

4.128 The committee received evidence that not only fresh food producers and suppliers, but goods suppliers are facing pricing pressures from supermarkets, and negotiating environments where supermarkets use their market power for unfair trading relationships.

4.129 Mr Abdel Badoura, who had spent over a decade working with grocery suppliers to supermarkets, submitted that supermarkets:

- undertake unethical dealings when bringing on new suppliers, enabled by the lack of competition in the market and their abuse of market power;
- engage in aggressive price increase negotiations and tactics to increase their profits; and that
- this misuse of market power by the supermarkets results in substantially lessened competition.[116]

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112 Bunnings, *Submission 128*, p. 1.

113 Bunnings, *Submission 128*, p. 4.

114 Greenlife Industry Australia, *Submission 99,* p. 4.

115 Bunnings, *Submission 128,* p. 5.

116 Mr Abdel Badoura, *Submission 129,* p. 1.

4.130 Mr Badoura outlined the terms that manufacturers must meet to supply Coles and Woolworths, including the discounts to be given off the list price for all items and advance agreement on the 'specials' discounts to be provided periodically. His submission provided copies of emails outlining that Coles' 'margin expectation went from 39.5% to 45% in the span of six months' and that 'failure to meet these margins means that Coles will not range the company's products'. Mr Badoura further argued that the emails show that Coles expects those margins to increase 'year on year to enhance profits'.[117]

4.131 Further, Mr Badoura's evidence suggested that suppliers must also agree to use the Coles and Woolworths advertising catalogues, which can be 'over half a million dollars per annum advertising support'.[118]

4.132 Mr Badoura provided an example of an Australian start up business which attempted to get its products sold in Coles and Woolworths:

- the product costs $8.45 to manufacture and ship into Australia, not including supplier's operational cost (warehousing, hiring, salaries, rent, marketing, etc.)
- the list price for this product is $15.91 which means the supplier is making 46.8% profit margin or $7.46 per unit
- the retailer has stipulated that the everyday discount is 20 per cent. Their buying price becomes $12.73, a discount of $3.18. The supplier went from making $7.46 down to $4.28 (33.61 per cent)
- the category margin is set at 50 per cent by the retailer. The choice for the supplier is then to either set the recommended retailer price at $28 (or higher) or eat into the $4.28 profit that is then used to pay rent, salaries, marketing, etc.
- additionally, the retailer dictates that this supplier will need to run '50% Off' promos (as is the category norm). The retailer has stipulated that they want to maintain their profit margin at 50 per cent. During these promotions, supermarkets are making $6.37 per unit sold which is funded by the supplier. As a result, the supplier loses $2.09 for every unit sold on promotion.[119]

4.133 Not only that, Mr Badoura outlined the additional costs to the supplier imposed by the supermarkets:

- Freight charges to move products from one Distribution Centre (DC) to another: supplier sends stock to one main DC, then the retailers charge the supplier to distribute to other DCs

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117 Mr Abdel Badoura, *Submission 129*, p. 1.

118 Mr Abdel Badoura, *Submission 129*, pp. 2–3.

119 Mr Abdel Badoura, *Submission 129*, p. 3.

- Store markdowns: when a product is about to expire, customers will see a sticker with a markdown. It is within each store manager's discretion to make markdowns, which supplier pays for
- Clearance: if a product is not performing, it might get deleted and will be discounted to clear space for another product
- Loyalty program promotions: loyalty program offers are paid for by the supplier. When you redeem at the store, the supplier gets charged the redemption.[120]

4.134 Mr Badoura summarised the above processes by providing a powerful statement on how the major supermarket retailers are operating:

> These are the elements of the market power abuse, which then essentially forces the suppliers to agree or to provide higher recommended prices, which you would not see in other countries with the same product. That's essentially the cost of doing business in Australia with these two players, because there is essentially no difference between Coles and Woolworths when you're dealing with them. Their operations seem identical. Their margin asks, weirdly enough, are identical. Their rate cards on certain things are also identical. It puts a lot of financial strain on businesses, which are then forced to increase prices over time.[121]

4.135 To address these issues, Mr Badoura recommended, among other things:

- increasing the responsibility and funding of the ACCC where they are responsible for overseeing price increases to validate what is price gouging and what is legitimate;
- a review of the Grocery Code of Conduct, working with both sides of the pendulum and passing it into law;
- introducing penalties for price gouging with an unlimited cap on the penalty, thus leaving it for the regulator/tribunal to decide;
- margin control to bring prices down in the short term and alleviate the financial pressure currently being felt across the country; and
- divesture legislation to enable the government to act similar to the United States and the United Kingdom.[122]

4.136 Many of the inquiry participants have recommended a range of actions that could be taken to strengthen competition and address unfair supermarket practices that impact consumers, suppliers and other smaller competitors. These are discussed in greater detail in Chapter 7.

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[120] Mr Abdel Badoura, *Submission 129,* p. 4.

[121] Mr Abdel Badoura, Private capacity, *Committee Hansard,* 15 April 2024, p. 12.

[122] Mr Abdel Badoura, *Submission 129*, pp. 7–8.

Chapter 5
The experiences of supermarket employees

5.1 There are more than 230 000 people employed across the country by the supermarket branches of Coles and Woolworths. Supermarket employees play a vital role in supporting Australians who shop at supermarkets every day—and yet, evidence to the committee suggests that some employees can barely afford to eat the food they are selling in store, in sharp contrast to the huge profits generated by Coles and Woolworths.

5.2 This brief chapter considers the evidence received about the impacts of supermarket pricing and market power on supermarket workers, and their pay, health and safety.

Low hourly rates for workers

5.3 Woolworths is Australia's largest private sector employer, employing around 176 000 workers, with an estimated 128 000 working in its supermarkets, including in regional areas. In 2021 the group's wage bill was around $8 billion.[1]

5.4 Mr Brad Banducci, CEO of Woolworths, advised the committee that on average its adult team members earn $29 per hour—above minimum award rates—with actual take home pay dependent on the shifts employees work and whether they work full time or not. Woolworths estimated around 40 per cent of its workers earn less than $500 per week.[2]

5.5 Mr Banducci estimated that around 75 per cent of its workers shop at Woolworths weekly, with workers receiving a five per cent team discount.[3]

5.6 Coles employees approximately 120 000 workers, of which around 103 000 work in its supermarkets business. It noted that its wages and salaries spending is around $5 billion per annum, growing around $600 million over the last

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1 Senate Standing Committee on Economics, *Submission 71* to the inquiry on the Unlawful underpayment of employees' remuneration, 2021, [p. 1].

2 Woolworths, *Submission 23*, pp. 2 and 15–16; Mr Brad Banducci, Chief Executive Officer, Woolworths Group, *Committee Hansard,* 16 April 2024, p. 6; Woolworths Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 10 April 2024), [pp. 47, 73 and 88].

3 Mr Brad Banducci, Woolworths Group, *Committee Hansard,* 16 April 2024, pp. 6–7; Woolworths Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 10 April 2024), [pp. 71–72].

four years, driven by increases to the minimum wage and superannuation guarantee.[4]

5.7 Ms Leah Weckert, CEO of Coles, advised its adult shopfloor workers are paid around $25 per hour.[5] Based on 2024 figures, Coles explained that around 40 per cent of its workers earnt less than $500 per week, with a range of factors influencing take home pay, 'including team members who seek part time and casual employment with Coles'.[6]

5.8 Ms Weckert advised that a proportion of its team members shop with Coles, with around 500 000 team member transactions occurring weekly.[7]

5.9 The Retail and Fast Food Workers Union (RAFFWU) clarified that enterprise bargaining agreements for Coles and Woolworths workers pay higher than the minimum wage, but only by a 'matter of cents'.[8]

5.10 The committee heard that supermarket workers are 'among the lowest paid workers in Australia', with rates of pay just above award rates, and lower for younger workers. In addition to low pay rates, there is clear evidence, prosecuted through the courts and similar forums, of repeated underpayment and exploitation of tens of thousands of workers by the big supermarket chains.[9]

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4 Ms Leah Weckert, Chief Executive Officer and Managing Director, Coles Group, *Committee Hansard*, 16 April 2024, pp. 34 and 36; Coles Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 12 April 2024), [p. 3]; Coles Group, *Annual report*, 2023, p. 14.

5 Ms Leah Weckert, Coles Group, *Committee Hansard*, 16 April 2024, p. 38; Coles Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 12 April 2024), [p. 6].

6 Coles Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 12 April 2024), [p. 7].

7 Ms Leah Weckert, Coles Group, *Committee Hansard*, 16 April 2024, p. 38.

8 Mr Josh Cullinan, Secretary, Retail and Fast Food Workers Union, *Committee Hansard*, 15 April 2024, p. 24.

9 See, for example: Retail and Fast Food Workers Union, *Submission 125*, pp. 3 and 6; Coles Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 12 April 2024), [p. 1]; The Australia Institute, *Submission 96.1*, pp. 12–14; Fair Work Ombudsman, *Enforceable undertaking between The Commonwealth of Australia and Coles Supermarkets Australia Pty Ltd* (accessed 26 April 2024); Fair Work Ombudsman, 'FWO takes action against Coles Supermarkets', *Media release*, 10 January 2023; Fair Work Ombudsman, 'FWO takes action against Woolworths', *Media release*, 18 June 2021; Fair Work Ombudsman, *Proactive Compliance Deed The Commonwealth of Australia and Woolworths Ltd* (accessed 26 April 2024); Federal Court of Australia, Fair Work Ombudsman v Woolworths Group Limited (ACN 000 014 675) & Anor, NSD581/2021; Federal Court of Australia, Fair Work Ombudsman v Coles Supermarkets Australia Pty Ltd ACN 004 189 708, NSD1252/2021. Mr Josh Cullinan, Retail and Fast Food Workers Union, *Committee Hansard*, 15 April 2024, pp. 23–24; Mr Bernard Smith, New South Wales Branch Secretary, Shop, Distributive and Allied Employees Association, *Committee Hansard*, 15 April 2024, p. 47.

5.11 Supermarket workers are also consumers, and they advised the committee in some cases they could not afford the groceries being sold in the supermarkets in which they worked, and other cost of living challenges posed by low pay. Mr Reinecker from the RAFFWU said:

> We have to buy the groceries on the shelf, and the prices are going up to the point that we can't afford it—to the point that even our staff discount isn't enough to enable us to buy the stuff that we sell, and we have gone to Aldi because there are more bargains there.[10]

5.12 The Australia Institute suggested that 'the economic power wielded by these twin large employers [Coles and Woolworths] helps to suppress wages and working conditions, since they do not compete with others for scarce labour'.[11]

5.13 The payment rates for shop floor workers for both Woolworths and Coles are contrasted dramatically by the earnings of their chief executive officers, with Mr Banducci paid $8.65 million in 2023 (including fixed remuneration, bonuses and other compensation), with Ms Weckert paid $3.3 million in 2023 (for two months as CEO and 10 months in a previous role at Coles).[12]

The need to increase wages

5.14 Along with other submitters and witnesses, the Australia Institute advocated for 'higher wages, more stable jobs, and adequate rosters for supermarket workers—and this will require countervailing pressure to be applied against the concentrated monopsony power of the supermarket duopoly'. It also supported strengthened powers for labour regulators, including the Fair Work Ombudsman, to address wage theft and other exploitative practices.[13]

5.15 The Combined Pensioners and Superannuants Association of NSW argued for increases to wages, submitting that 'in the face of such market power and profiteering from Coles and Woolworths, Government must intervene to regulate price increases and support consumers through wage and welfare payment increases'.[14]

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10 Mr Josh Reinecker, Delegate, Retail and Fast Food Workers Union, *Committee Hansard*, 15 April 2024, pp. 22–23; Retail and Fast Food Workers Union, *Submission 125*, pp. 4–5; The Australia Institute, *Submission 96.1*, pp. 13–14.

11 The Australia Institute, *Submission 96.1*, p. 12.

12 Woolworths Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 10 April 2024), [p. 36]; Coles Group, answers to questions taken on notice at a public hearing in Canberra, 16 April 2024 (received 24 April 2024), [p. 1]; Ms Leah Weckert, Coles Group, *Committee Hansard*, 16 April 2024, pp. 37–38; Woolworths Group, *Annual report*, 2023, p. 80; Coles Group, *Annual report*, 2023, p. 74.

13 The Australia Institute, *Submission 96.1*, pp. 13–15.

14 Combined Pensioners and Superannuants Association of NSW Inc., *Submission 18*, p. 10.

Unsafe working environments

5.16 In addition to inadequate wages, the committee received advice that large supermarket employers were delivering poor outcomes to their workers, through unsafe work environments and practices.

5.17 For example, the RAFFWU submitted that Coles and Woolworths workers:

> … feel the effect of price gouging every day in two critical ways. Firstly, they simply cannot afford the food and groceries they sell in their workplaces. Secondly, they are the public face to irate consumers who exact their disquiet onto workers. When an aggrieved consumer decides to give a spray to Coles or Woolworths for gouging them at the checkout, it is not the CEO, CFO [Chief Financial Officer], hardened executive or managing director who is being abused.
>
> It is a mum, dad, child, sibling, young worker, older worker, poverty wage worker, insecure worker who is facing the brunt of the abuse. A worker who is in the same financial position as the aggrieved consumer – or often far worse.[15]

5.18 The committee heard Coles received around 8000 reports of worker abuse between June 2013 and March 2024, with around 7000 events recorded for Woolworths from March 2014 to March 2024. Woolworths advised that a Point of Sale Verbal Abuse Tool launched in February 2024 showed an average of nearly 700 verbal abuse incidents impacting 430 staff weekly. However, Mr Josh Cullinan from the RAFFWU told the committee that abuse incidents were likely underreported.[16]

5.19 The Shop, Distributive and Allied Employees Association (SDA) also highlighted abuse and violence by customers, advising 87 per cent of their members worker for a supermarket retailer experienced abuse—76 per cent of them on a regular basis.[17]

5.20 Mr Reinecker of RAFFWU went into further detail on the incidents that are occurring in our supermarkets:

> The acts of violence that I've witnessed at my store in the past 12 months have been quite disturbing, and it has escalated. We've had shopfront windows smashed, with glass landing near children in prams. We had the same alleged perpetrator come into the store two days later and actually punch a staff member. We had an incident where a man wasn't happy at the

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15 Retail and Fast Food Workers Union, *Submission 125*, p. 3.

16 Ms Helen Cooney, Principal Policy Officer, Shop, Distributive and Allied Employees Association, *Committee Hansard*, 15 April 2024, p. 45; Coles Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 12 April 2024), [p. 2]; Woolworths Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 10 April 2024), [pp. 51–52].

17 Ms Helen Cooney, Shop, Distributive and Allied Employees Association, *Committee Hansard*, 15 April 2024, p. 45.

> checkout and spat on a co-worker. There was an altercation between two customers. It is increasing and it's putting a lot of stress on people, in that when they engage with customers they don't know what the end of that engagement is going to be—whether it's going to be violent, whether it's going to be abusive or whether it's going to be pleasant.[18]

5.21 Mr Cullinan argued that the high rates of threats and abuse towards supermarket staff was unacceptable:

> That it is allowed to occur and continues to occur to some of our youngest and most vulnerable workers, who are paid poverty wages, says a lot about the power-mongering and power of this duopoly. It would not be acceptable in any other workplace.[19]

5.22 In addition to unsafe work environments, the SDA drew attention to the 'use of technology and automation to extract cost savings from consumers and employees'. It discussed with the committee the use of technology and automation on shop floors and warehouses to allocate work, monitor, train and communicate with workers, and determine how and when work is completed. The SDA advised that nevertheless, work should be 'secure and safe', workers should be skilled up in the use of technology, and they should ' receive a fair share of productivity gains' and improved profits.[20]

5.23 Supermarket workers also highlighted safety issues faced by supermarket workers because of asset stockpiling and food waste and disposal practices.[21]

5.24 The supermarkets responded and told the committee that they have 'a range of measures and interventions in place to support and protect team members'.[22]

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18 Mr Josh Reinecker, Retail and Fast Food Workers Union, *Committee Hansard*, 15 April 2024, p. 22.

19 Mr Josh Cullinan, Retail and Fast Food Workers Union, *Committee Hansard*, 15 April 2024, p. 22.

20 Mr Bernard Smith, New South Wales Branch Secretary, Shop, Distributive and Allied Employees Association, *Committee Hansard*, 15 April 2024, pp. 43–45; Shop, Distributive and Allied Employees Association, *Submission 126*, [pp. 3 and 5–6].

21 Mr Josh Cullinan, Retail and Fast Food Workers Union, *Committee Hansard*, 15 April 2024, pp. 23 and 25.

22 Coles Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 12 April 2024), [p. 2]; Woolworths Group, *Annual report*, 2023, p. 17.

Chapter 6
Mergers, land banking and independent retailers: creating a competitive market

6.1 Independent retailers are essential to ensuring a competitive grocery market, and therefore increasing competition through support for viable independent supermarkets would only be of benefit to consumers.

6.2 However, the committee heard that the major retailers, including Coles and Woolworths, were engaging in practices which directly and negatively impacted on competition and did not allow smaller, independent retailers to establish themselves as sustainable competitors in the food and grocery sector.

6.3 This chapter describes the views of the main independent retailers, and the unique issues faced in supply food and groceries to rural, regional and remote areas.

6.4 It also details some of the practices which the major retailers are allegedly pursuing, such as land banking, creeping acquisitions, and increasing market dominance through mergers. It also presents the evidence put to the committee about the need to reform Australia's merger laws.

Independent retailers

6.5 Metcash advised that it was 'Australia's leading wholesale distribution, marketing, and independent retailer services company supporting over 4,000 retailers' across food, hardware, and liquor. Metcash has over 1600 stores, including the IGA and Foodland brands. It was Metcash's view that the domination of the market by Coles and Woolworths, at the expense of independent retailers, has pricing implications, with Metcash having less 'buying power as compared to our larger competitors'.[1]

6.6 However, while pointing the finger at Coles and Woolworths and the impact of their larger market share on food and grocery pricing, SPAR Australia was of the view that Metcash, as 'the primary supplier to approximately 4500 independent , was creating a situation where competition was severely lacking. SPAR Australia operates an independent retailer model and argued that in the rural and regional independent supermarket space where it operates, a 'single dominant supplier may have the ability to exert control over pricing, potentially leading to higher costs for consumers'.[2] SPAR concluded that:

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1 Metcash, *Submission 24,* pp. 1, 2.

2 SPAR Australia, *Submission 63,* pp. 1—2.

> The lack of competition in the grocery supply chain has far-reaching implications for consumers, small businesses, and the overall economic well-being of rural communities. It is imperative to address this issue comprehensively to ensure a fair and competitive marketplace.[3]

6.7 SPAR Australia recommended:

- the development of policies and incentives to encourage new supplies to the rural and regional market;
- enhancement of regulatory oversight of anti-competitive practices;
- greater support for small business resilience;
- a community-centric approach to ensure local communities have tailored approaches; and
- efforts to diversify supplier relationships for independent retailers.[4]

Remote Aboriginal and Torres Strait Islander stores

6.8 The committee also received evidence about the unique challenges facing Australia's regional, rural, and remote areas.

6.9 For example, Community Enterprise Queensland (CEQ) discussed the unique pricing pressures it faced operating stores in remote Aboriginal and Torres Strait Islander communities, where food retailing 'is the manifestation of an extremely complex supply chain, charged with delivering a broad range of products to widely distributed communities that are located on both the mainland and islands of North Queensland'.[5]

6.10 Due to the remoteness of many stores, 'the CEQ network has a unique supply chain which is managed individually to ensure that fresh food is delivered on a weekly basis'. CEQ noted that as a not-for-profit, it 'does not alter prices during significant events rather budgeting for such and smoothing costs over a financial year'.[6]

6.11 CEQ explained that 'freight constitutes approximately 14.2% of cost of goods sold due to the supply chain length and associated costs' and CEQ's greatest barrier to lowering prices was the lack of competition in freight on the routes it uses, where there is often only a single provider. CEQ pointed to successful models elsewhere, including 'Nutrition North Canada', a 'long term program is delivered by the Government of Canada to help make nutritious food and some essential items more affordable and more accessible to people living in remote areas'.[7]

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3 SPAR Australia, *Submission 63,* p. 2.

4 SPAR Australia, *Submission 63,* p. 4.

5 Community Enterprise Queensland, *Submission 65,* p. 4.

6 Community Enterprise Queensland, *Submission 65*, pp. 5 and 7.

7 Community Enterprise Queensland, *Submission 65*, p. 7.

6.12 To address these concerns and improve food access in rural and remote locations, CEQ recommended:

- the Australian Government implement a freight equalisation scheme to reduce the cost of living pressures experienced more acutely in remote First Nations communities; and
- the Australian Government establish more local distribution centres by wholesalers in major regional centres, closer to remote communities.[8]

Land banking and creeping acquisitions

6.13 As explained by The Treasury, serial or creeping acquisitions 'generally refers to a series of acquisitions of smaller competitors over time which do not individually raise competition concerns, but which when taken together may have a significant impact on competition'.[9]

6.14 Creeping acquisitions have been on the radar of the Australian Competition and Consumer Commission (ACCC) for many years and was raised by many inquiry participants as a serious concern with direct impacts on pricing and competition.

6.15 Land banking was similarly raised with the committee as an action taken by the major supermarkets to control and limit competition. Land banking occurs where large blocks of undeveloped land are purchased but not necessarily developed[10]—in this case, land purchased by Coles and Woolworths for possible future development and stores.

Creeping acquisitions

6.16 Allegations have been made that Woolworths and Coles are opening small format stores in sites that would have been suitable for smaller independent stores. As of early 2024, Woolworths reportedly had 103 Metro stores, and Coles 21 Local stores.[11]

6.17 Metcash raised concerns that the major supermarket chains are 'continuing strategies involving the acquisition of independent stores, with a resulting increase in their market powers without constraint, to the long-term detriment of consumers', via creeping acquisitions. Metcash noted that in the 1980's Coles

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8 Community Enterprise Queensland, *Submission 65*, p. 12.

9 The Treasury, *Merger Reform: Consultation paper – Appendices*, November 2023, p. 10.

10 Moneysmart.gov.au, 'Land Banking: A property investment scheme with many risks', https://moneysmart.gov.au/investment-warnings/land-banking (accessed 1 May 2024).

11 Sue Mitchell, ''*Reform is needed': why ACCC is looking at Woolies and Coles stores*', *Australian Financial Review*, 14 March 2024, Supermarkets inquiry: Why ACCC is looking at Woolworths and Coles stores (afr.com) (accessed 1 May 2024).

and Woolworths held less than 40 per cent of the market, but now it was over 70 per cent and in some geographic regions, it was over 90 per cent.[12]

6.18 Metcash concluded that the 'failure of Australian competition law to address the issue of creeping acquisitions has had longer [term] implications for retail competition and, consequently, supermarket pricing'.[13]

6.19 Ritchies, an independent supermarket business in Victoria, observed that while supermarkets are governed by the *Competition and Consumer Act 2010* (Competition Act) and the Food and Grocery Code of Conduct (Grocery Code), both of these instruments ignore the fact retail is intrinsically linked to property. Ritchies pointed out that the success or failure of a supermarket is largely determined by the quality of its property, and larger supermarket chains have enormous financial capacity which is used to outbid competitors for the best sites for new stores.[14]

6.20 Ritchies advised it had been outbid by the major chains on many new store sites over the years, and further noted that planning systems also ignore competition issues as a relevant consideration in the planning approvals process.[15]

Case study – Milton IGA and Coles

Coles purchased the Milton Village Shopping Centre three years ago, after which they lodged a development application to replace the IGA supermarket in the centre for a new larger Coles store. The IGA store closed last month because Coles would not offer the IGA owner a new lease.

The customers of the IGA store have expressed outrage online at the closure of the IGA, as there are two Coles supermarkets less than a five-minute drive from the Milton Village Shopping Centre. The Milton IGA customers are losing their last non-chain supermarket, and they know this also means they will lose any chance of choice and competition into the future. As far as I am aware the ACCC was not advised of this acquisition by Coles nor their plan to close the last remaining competitor in the area.[16]

12 Metcash, *Submission 24*, pp. 2–3.

13 Metcash, *Submission 24*, p. 3.

14 Ritchies, *Submission 66*, p 1.

15 Ritchies, *Submission 66*, p 1.

16 Mr Fred Harrison, Ritchies Stores, *Committee Hansard*, 13 March 2024, p. 19.

6.21 Mr Fred Harrison of Ritchies recommended the competition test should be reformed to consider national market share.[17] Ritchies contended that stronger merger laws were needed to ensure that the Milton case (above) does not occur again, as a 'classic example of creeping acquisitions which Australian merger laws don't stop':

> Supermarket retailing is first and foremost a property business. If you don't get the right site, it doesn't matter how good a retailer you are; you will likely fail. That is why independent retailers believe competition laws need to be laser focused on mergers, which in my sector means opening new stores. Currently, the competition laws stop virtually nothing. That's why we see the chains roll out new stores essentially unchecked by the ACCC.
>
> … IGA retailers believe that the Treasurer should have the power to designate who is dominant. Once designated, the onus of proof would fall on that company to prove their new store acquisitions don't breach the competition test, which it would be presumed to do. If you disrupt the chain's ability to saturate the market with new stores, you stop the chain's ability to maintain their dominance. I believe that is what Australian consumers want.[18]

6.22 Metcash recommended the merger reforms should consider including a 'satisfaction test' that the Treasurer could apply to large vertically integrated supermarkets, 'whereby a transaction would not be cleared unless the ACCC is satisfied that the transaction is not likely to substantially lessen competition'.[19]

6.23 Metcash further recommended legislative change that would allow the ACCC when making these decisions, to consider the cumulative effect of multiple acquisitions within a particular period, and to consider national dominance, not just the local market, when considering mergers and acquisitions.[20]

Land banking

6.24 Woolworths stated that it does not engage in land banking in the 'traditional sense', where a greenfield site is bought with no intention of developing it, but is purchased to keep it out of the market. Mr Brad Banducci, Chief Executive Officer of Woolworths told the committee:

> We do not do that. We do buy land in growth corridors, both for potential new developments that come up as the population of Australia grows and, very importantly, for our supply chain. Senator Sterle would know well the importance of getting the right places to have DCs, distribution centres, for the future. So we would be looking for opportunities in growth corridors for industrial and retail land and with an eye to developing those sites. The lead time on those developments can take between five, seven and perhaps

17 Mr Fred Harrison, Ritchies Stores, *Committee Hansard*, 13 March 2024, p. 19.

18 Mr Fred Harrison, Ritchies Stores, *Committee Hansard*, 13 March 2024, p. 19.

19 Metcash, *Submission 24*, p. 3.

20 Metcash, *Submission 24*, p. 3.

> 10 years. There is a long lead time in doing that. We do not hold any site without a plan to develop it….
>
> All the land that we acquire is with an eye to developing it as either a distribution centre or any form of other industrial support infrastructure we need to put in or into growth corridors where we hope that we'll see a new Australian community that we will have the privilege to serve.[21]

6.25 Coles outlined a similar strategy of purchasing greenfields sites well before new residential developments are built, with some differences.

6.26 Coles purchases land which 'could be bought a long time out from when the store opens because many of those pieces of land are in growth corridors'. A store is then built 'when there is sufficient infrastructure and population so that, when the store opens, it can be a success from day one'. Later, when the store is operating successfully 'we would sell it—sell the land with the site with the store on it—and we would put in place a lease with the new landlord and then we would take the proceeds from the sale and we would repeat the process'.[22]

6.27 While stating these practices are not land banking, in fact, the descriptions given above could arguably describe land banking, which is 'a real estate investment scheme that involves buying large blocks of undeveloped land'.[23] Woolworths intends to use the land when it becomes valuable due to new residential areas being built around the greenfield site, rather than sell the land, while Coles undertakes what could be described as 'rolling' land banking.

6.28 In 2012 the ACCC reached agreement with Coles, whereby Coles would notify the ACCC in advance when it planned to acquire new store sites, in return for a streamlined assessment process. This agreement expired in 2015 and has not been renewed. However, there was no such agreement with Woolworths, which maintained that the protocol should apply to all retailers, including Metcash, Costco and Aldi.[24]

6.29 The ACCC noted in its submission that in its 2008 inquiry into the competitiveness of retail prices for standard groceries, one of its recommendations was 'that all appropriate levels of government consider ways in which zoning and planning laws should have specific regard to competition between supermarkets'. The ACCC also indicated at that time that 'it would

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21 Mr Brad Banducci, Chief Executive Officer, Woolworths Group, *Committee Hansard,* 16 April 2024, p. 9.

22 Ms Leah Weckert, Chief Executive Officer and Managing Director, Coles Group, *Committee Hansard*, 16 April 2024, p. 53.

23 Australian Securities and Investment Commission, *Land Banking*, https://moneysmart.gov.au/investment-warnings/land-banking (accessed 29 April 2024).

24 Sue Mitchell, '"Reform is needed": why ACCC is looking at Woolies and Coles stores', *The Financial Review*, 14 March 2024.

investigate restrictive provisions in supermarket leases in shopping centres, which lead to undertakings to phase out restrictive covenants announced in late 2009.[25]

6.30 Dr Craig Emerson, Independent Reviewer of the Food and Grocery Code, told the committee that supermarkets buying land in new residential developments can have the effect of ensuring rivals can't set up, and stated that the Code Review will look at those issues 'to make sure that the environment is as pro-competitive as possible'.[26]

Merger reforms

6.31 There was strong support received by the committee for merger reform, and the committee notes the announcements of the Treasurer in early April 2024 about a proposed suite of changes to merger and acquisition law.

The need for reform

6.32 In calling for merger reform, the ACCC said it was 'urgently needed to bring Australia in line with other developed economies and ensure the merger laws are effective in preventing anti-competitive transactions'. The ACCC has stated that about 1000-1500 mergers occur in Australia each year, and about half of those are made by the largest one per cent of businesses—but about only 330 of these are notified to the ACCC under the existing voluntary merger regime. The head of the ACCC, in a media release, said that:

> Australian consumers, farmers, and small businesses need to have confidence that potentially anti-competitive acquisitions will be scrutinised and if necessary prevented.
>
> … Without effective merger control, we are all likely to face higher prices, lower quality, less innovation, less choice and lower productivity across the economy.[27]

6.33 Per Capita endorsed these views by the ACCC, observing that 'an alarming number of mergers involving Australian companies are escaping the notice of the ACCC due to the voluntary notification system' and supported merger law reforms proposed by Professor Fels (below).[28]

6.34 Speaking specifically of supermarkets, CHOICE argued that Australia's 'supermarket sector is highly concentrated and the major supermarkets have grown in size and power in a way that very likely harms consumers'. CHOICE

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25 Australian Competition and Consumer Commission, *Submission 107*, pp. 2–3.

26 The Hon. Dr Craig Emerson, Private capacity, *Committee Hansard*, 16 April 2024, p. 71.

27 ACCC, 'Evidence backs case for critical merger law reform', *Media Release*, 2 February 2024, https://www.accc.gov.au/media-release/evidence-backs-case-for-critical-merger-law-reform (accessed 1 May 2024).

28 Per Capita, *Submission 10*, p. 9

noted the steady acquisition by Coles and Woolworths of smaller independent supermarkets, and while ‘individual acquisitions may not have contravened competition laws or triggered the merger control regime … taken together the impact of these “creeping acquisitions” is very likely to have harmed competition in the grocery market’.[29]

6.35 Mr Rod Sims, as chair of the ACCC, observed in 2021 that the Australian approach to merger control, which does not require companies to obtain ACCC clearance for mergers, was ‘out of step with most merger regimes internationally, under which mergers are required to be notified as part of a formal assessment regime, and must obtain clearance before they can proceed’.[30]

6.36 The February 2024 report by former ACCC Chair, Professor Allan Fels AO, *Inquiry into price gouging and unfair pricing practices: final report* (Fels Review) also observed that ‘Australia is one of the few OECD countries with no compulsory pre-merger notification law’ which results in ‘tactical behaviour by businesses in terms of non-notification, late or no provision of relevant information required by the ACCC and other forms of game playing’. Ultimately, this makes the merger oversight task of the ACCC much more difficult.[31]

6.37 The Fels Review also noted that ‘an anticompetitive merger can only be blocked by the ACCC if it can prove in a court of law that the merger would be likely to substantially lessen competition’ and that under the current system this is often difficult to do.[32]

6.38 The Fels Review recommended:

- The Australian government should establish a pre-merger notification system along similar lines to most OECD countries.
- That in merger matters the onus should be on applicants to satisfy the ACCC and on appeal the Australian Competition Tribunal that the merger is not anticompetitive and is in the public interest.
- The merger test should be augmented to continue to prohibit mergers that give rise to substantial market power and/or which entrench, create, or add to market power.[33]

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29 CHOICE, *Submission 72*, p. 29.

30 Australian Competition and Consumer Commission, Mr Rod Sims: ‘Protecting and promoting competition in Australia keynote speech’, 27 August 2021.

31 Professor Allan Fels AO reporting to the Australian Council of Trade Unions, *Inquiry into price gouging and unfair pricing practices: final report* (ACTU Fels Review), February 2024, p. 65.

32 ACTU Fels Review, p. 65.

33 ACTU Fels Review, p. 65.

6.39 CHOICE supported the ACCC merger reform proposals but added that the reforms should require that 'consumer advocates are notified of potential mergers that may harm consumers and are invited to provide evidence'.[34]

6.40 The Australia Institute supported the tightening of regulation around mergers and acquisitions, noting that '[f]urther concentration of ownership in the market will further reduce competition'. However, the Australian Institute noted that while this would 'help slow the decline in competition, it does not help increase competition into a market that is already highly concentrated' and recommended laws that would allow 'the dominant players in highly concentrated markets, like food retail, to be broken up into a number of smaller firms, when the power of these large firms is clearly harmful'.[35] These divestiture powers are discussed in Chapter 8.

Views of the ACCC

6.41 The ACCC advised the committee that it can 'face evidentiary challenges in preventing [creeping acquisitions], even where the net impact of these acquisitions over time may be a significant increase in broader market concentration'. The ACCC noted that the current mergers test and the approach by the courts using the current mergers test looks at the 'incremental effect of the merger before it rather than the broader structural changes in markets and incremental increases in market power over time'.[36]

6.42 The ACCC advised that an important focus of its merger reform proposals as part of The Treasury Competition Review (discussed below) was to:

> … ensure that serial acquisitions that may raise competition concerns, including in sectors prone to serial acquisitions, are able to be assessed by the ACCC and that the test for approval is capable of taking into account the particular competition effects raised by serial acquisitions.[37]

6.43 The ACCC submitted that Australia's current merger regime should be made more fit-for-purpose and advised that it has made a detailed submission to the Competition Review with the below proposed changes to the merger regime:

- Establish an administrative approval regime that is balanced and targeted:
  - non-contentious acquisitions (the vast majority) should be dealt with quickly with minimal regulatory burden, and
  - the small number of complex and contentious acquisitions which raise potential competition concerns can be carefully scrutinised via a structured, transparent, and timely process.

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34 CHOICE, *Submission 72*, p. 30.

35 The Australia Institute, *Submission 96.1*, p. 16.

36 Australian Competition and Consumer Commission, *Submission 107*, p. 11.

37 Australian Competition and Consumer Commission, *Submission 107*, p. 11.

- – The merger regime should address serial acquisitions, of particular relevance to the supermarket sector.
- The ACCC would be the first instance decision maker, with review by the Tribunal available to merger parties and third parties. Merger parties would be required:
  - (i) to notify the ACCC of mergers that meet clear, certain and objective thresholds for notification; and
  - (ii) not to complete the transaction without ACCC or Tribunal approval, or unless the ACCC grants a 'fast-track waiver' from the full notification and approval requirements.[38]

Merger Reform: April 2024

6.44 As one of its first priorities, the Competition Review considered potential changes to Australia's merger rules and processes. From late 2023 to early 2024 it sought input on whether existing rules and processes are effective, enabling beneficial mergers and addressing those that could be anti-competitive, and ways in which current provisions could be improved.[39]

6.45 The review released its report in April 2024, with the Government committing to making 'Australia's merger control system stronger, simpler, targeted, faster and transparent', as per Figure 2.2.

6.46 Proposed reforms will apply from 1 January 2026 and include a mandatory merger reporting regime with a single merger control pathway; risk-based merger reviews by the ACCC within set timeframes and charged at cost recovery; and a public register of all merger reviews and decisions. Further details will be released after extended consultation with stakeholders.[40]

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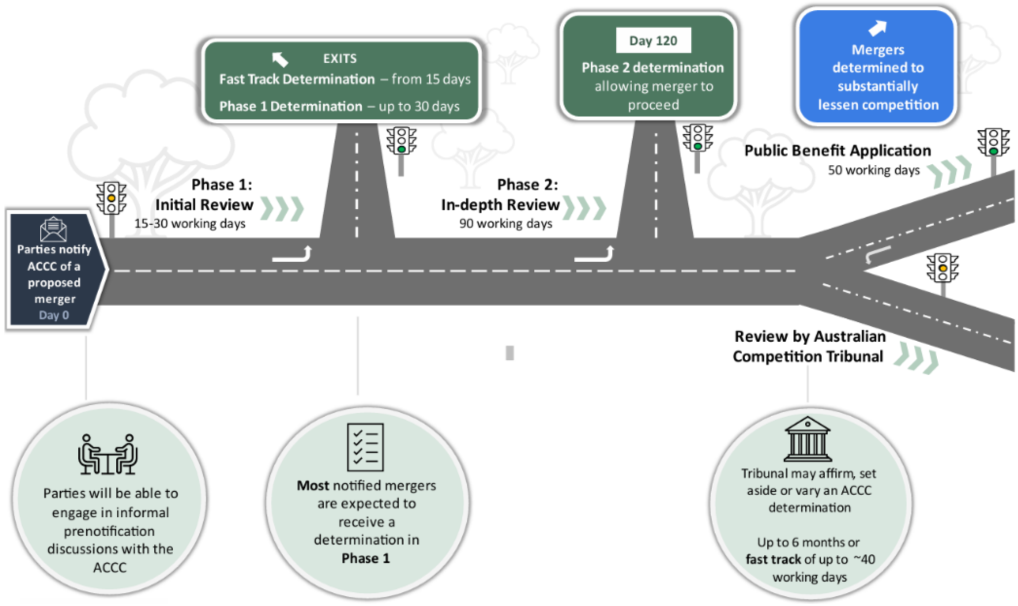
[38] Australian Competition and Consumer Commission, *Submission 107*, pp. 3–4.

[39] The Hon Dr Andrew Leigh MP, Assistant Minister for Competition, Charities and Treasury, 'Opinion piece: Chocolate, cartels and competition', Published in *The Daily Telegraph*, 30 January 2024.

[40] The Treasury, *Merger Reform: A Faster, Stronger and Simpler System for a More Competitive Economy*, 10 April 2024, pp. 2 and 14.

Figure 6.1 'A faster, stronger and simpler merger system'



Source: The Treasury, Merger Reform: A Faster, Stronger and Simpler System for a More Competitive Economy, 10 April 2024, p. 14.

Chapter 7
Better regulation of the supermarket industry

7.1 This report's first chapter briefly outlined the regulatory framework which supermarkets operate under. However, as the evidence to the committee has shown, and as detailed throughout this report, it is clear that the regulatory framework is not fit for purpose and does not properly promote and support a competitive supermarket sector, offering affordable food and groceries.

7.2 This chapter examines in further detail the existing regulatory frameworks, while highlighting the concerns and issues raised during this inquiry about concerns and need for reform. The committee also heard that current regulations were being flouted with limited or no consequences, and as a result, the monitoring and enforcement regime over supermarket business practices needs strengthening.

Existing regulatory regime

7.3 Oversight of the supermarket sector in Australia is mostly administered by the Australian Competition and Consumer Commission (ACCC), which administers and enforces the *Competition and Consumer Act 2010* (Competition Act) that 'provides a number of protections to both consumers and suppliers through the promotion of competition and fair trading'.[1]

7.4 Box 7.1 below provides more detail on the current legislative provision relating to market power, unconscionable conduct, and price surveillance.

Box 7.1 Federal competition and consumer regulation

Supermarkets must comply with federal competition and consumer law which is enforced by the ACCC, who have powers under Part IV, section 46 of the Competition Act in relation to anti-competitive practices, such as misuse of market power.

To establish if misuse of market power has occurred, the ACCC must demonstrate to a court that:

(i) A company has market power;
(ii) The company has used this market power to their advantage; and

1 Australian Competition and Consumer Commission (ACCC), *Submission 107*, p. 2.

(iii) The market power was used in an anti-competitive nature (the ACCC must prove that this use of power was intentional)[2]

Under the Australian Consumer Law, the ACCC has legislative powers to prosecute companies that have engaged in misleading, deceptive or unconscionable conduct.

However, there is no defined legal definition of 'unconscionable conduct'. In most cases it is understood as 'conduct that goes beyond robust commercial dealings or the notion of unfairness, to that which shows no regard for conscience and is irreconcilable with what is right or reasonable'.[3]

Product pricing in Australia

The ACCC is responsible for the surveillance of product pricing in Australian supermarkets. This surveillance power comes from three laws detailed in Part VIIA of the Competition Act, and includes:

- **Price Notifications** – the Minister, or the ACCC with Ministerial approval, may declare goods to be notified. Firms must then advise the ACCC of any proposed price increases for these declared goods, thereby allowing the ACCC to monitor price rises in monopoly markets;
- **Price Monitoring** – the ACCC may be directed by the Minister to monitor prices, costs and profits relating to certain goods or the supply of goods/services by a specified person; and
- **Price Inquiries** – the ACCC may be directed by the Minister to inquire into specific pricing of goods and this inquiry must be in public (unless directed otherwise by the Minister).[4]

Calls for greater regulation

7.5 Many inquiry participants, from all sectors, called for greater government intervention in the supermarket sector—particularly with regard to strengthened regulation, monitoring and enforcement.

7.6 In addition to detailed recommendations from experts citing economic reasons for intervention, many organisations told the committee of the need for government action simply on the basis of the positive impact this would have on the lives of so many individual Australians.

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2 *Competition and Consumer Act 2010*, s. 46.

3 Rod Simms, *Address to the Australian Food & Grocery Council Industry Leaders Forum*, Canberra, 11 October 2012.

4 *Competition and Consumer Act 2010*, Part VIIA.

7.7 For instance, COTA Australia advised that in its January 2024 survey, 'respondents had a close to unanimous agreement that the Australian Government has a responsibility to intervene to':

> a) protect consumers from unfair pricing practices
>
> b) ensure all households can afford necessities – for example, food and hygiene products
>
> c) create environments that enable robust and fair competition rather than those that breed monopolistic behaviour
>
> d) ensure transparency re how prices are derived inclusive of costings pertinent to all major milestones in the journey.[5]

7.8 COTA Australia further noted there is an 'increasing mistrust in regulatory institutions being able to enforce relevant legislation and/or champion consumer rights by taking appropriate action when they are, or at risk of, being compromised'.[6]

7.9 The National Farmers' Federation (NFF) was of the view that 'Australia's existing competition policy frameworks are not fit-for purpose to prevent the abuse of market power that occurs in Australia's agricultural supply chain', primarily due to:

> - consumer-centric focus on market power provisions, providing minimal protections to supply chain abuses
> - equal consumer centric focus of fair-trading provisions
> - unconscionable conduct provisions are so narrowly defined to render them of little use for small to medium businesses, such as farmers.[7]

7.10 The NFF stressed that it was seeking 'a competition policy environment that allows businesses of any shape and form to compete, find their niche and find their ability to win or lose in negotiations from their own merit', to ensure the supply chain is 'resilient, dynamic and diversified', which in turn will 'ensure proper outcomes from the farm gate to the consumer'.[8]

7.11 The NFF also made a range of recommendations for greater regulation including:

> … making the food and grocery code mandatory, attaching significant civil penalties to that, ensuring a truly independent arbiter through that code and a lot of what the government is looking at at the moment such as advancing those efforts to increase market price transparency through grants to

5 COTA Australia, *Submission 21*, p. 13.

6 COTA Australia, *Submission 21*, p. 9.

7 National Farmers Federation, *Submission 97*, p. 11.

8 Mr Christopher Young, General Manager, Trade and Economics, National Farmers Federation, *Committee Hansard,* 13 March 2024, p. 2.

> different organisations, clearer price reporting, addressing any information asymmetries and those types of measures ...[9]

7.12 The Public Health Association of Australia likewise recommended enhanced regulatory frameworks that were mandatory and government-led and ensured equitable access to healthy and affordable foods.[10]

7.13 The ACCC has itself called for strengthening of the regulation of supermarkets in a number of areas, which are outlined throughout this chapter.[11]

Unfair trading practices

7.14 Evidence provided to the committee—and detailed in this report—showed that supermarkets are engaging in forms of unfair trading practices in their dealings with suppliers—with direct impacts on the price of food and groceries for consumers. There is clearly a need for action in this area.

7.15 The ACCC outlined some of the unfair trading practices it has identified across many sectors in the economy that are not currently addressed in competition law. This includes conduct that can be:

- harmful but does not reach the legal threshold for unconscionable conduct;
- not misleading or deceptive, but distorts consumer choice by creating confusion or hiding or omitting relevant information; or
- is not captured by the unfair contract term provisions because the conduct is not undertaken pursuant to a written term of a contract or is otherwise outside the scope of a contract.[12]

7.16 Per Capita argued that although competition law prohibits 'misleading, deceptive, and unconscionable conduct', there remains 'systematic unfair business practices that target vulnerable consumers, which are not caught by these prohibitions'. Per Capita noted that the High Court has consistently interpreted unconscionable conduct in a conservative fashion, which 'imposes a high threshold before conduct can be considered unconscionable, so that conduct that is simply unfair or unjust is not captured'.[13]

7.17 Per Capita recommended the introduction of a prohibition on unfair trading which would:

> … aid in empowering consumers to address the sorts of unfair business practises that we have witnessed over recent years, which have helped to

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9 Ms Charlotte Wundersitz, General Manager, Rural Affairs, National Farmers Federation, *Committee Hansard*, 13 March 2024, p. 2.

10 Public Health Association of Australia, *Submission 19*, p. 8.

11 ACCC, *Submission 107,* p. 3.

12 ACCC, *Submission 107,* p. 13.

13 Per Capita, *Submission 10*, pp. 6–7.

deliver massive profits for big companies and made it more difficult for small businesses to enter the market during a cost-of-living crisis.[14]

7.18 CHOICE shared a similar view, submitting that supermarkets use a number of pricing and other deceptive tools 'that could result in consumers spending more than they intended or making purchasing decisions they otherwise wouldn't'. CHOICE recognised that many of these practices may not be illegal and recommended 'a strong ban on unfair trading practices' to 'cultivate a healthier marketplace, ensure more equitable economic transactions and benefit vulnerable individuals and small businesses who may be unable to protect their own interests'. CHOICE recommended this ban should:

- be drawn broadly, and be able to respond to conduct and practices that exist today and that could develop over time;
- be accompanied by a guiding principle that requires the consideration of consumer vulnerability and should include a blacklist prohibiting certain practices that should be specified and managed by the ACCC; and
- should be economy-wide and include penalties and remedies, including civil penalties and actions for damages and compensation, for each breach of the prohibition.[15]

7.19 Ms Rosie Thomas, Director of Campaigns and Communications at CHOICE, pointed out that prohibitions on unfair trading are 'a protection that exists in many international jurisdictions, and it's time for the Australian consumer law to catch up'.[16]

7.20 The ACCC has offered its support for the introduction of an economy-wide prohibition on unfair trading practices and 'considers this will set an improved standard for business behaviour and promote better conduct across all markets, including the financial services sector'. The ACCC also stated such a prohibition 'would empower the ACCC to address unfair practices in the supermarket sector and across the economy which are not currently captured by existing laws'. However, the ACCC stressed that this reform would not be a 'complete solution to address all of the harms to consumers and small businesses identified in this Inquiry'.[17]

7.21 The Australian Government recently consulted on options to address unfair trading practices, as outlined in Chapter 2, with a decision on potential reforms likely in 2024. As part of the consultation, one of the options being considered is

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14 Per Capita, *Submission 10*, p. 7.

15 CHOICE, *Submission 72*, p. 31.

16 Ms Rosie Thomas, Director of Campaigns and Communications, CHOICE, *Committee Hansard*, 13 March 2024, p. 24.

17 ACCC, *Submission 107*, pp. 3 and 13.

the introduction of a combination of general and specific prohibitions on unfair trading practices, for the most targeted and comprehensive approach.[18]

Price gouging

7.22 The issue of price gouging was raised consistently with the committee. The term price gouging refers to 'sudden increases in prices that people think are too high and without justification'.[19]

7.23 The Combined Pensioners and Superannuants Association of NSW (CPSA) noted that anti-price gouging laws are used in other countries, but there is nothing to prohibit or outlaw such behaviours in Australia.[20]

7.24 A submitter with significant experience as a grocery supplier informed the committee that throughout the COVID pandemic, it was widely understood that 'Woolworths tasked its commercial buying teams with recovering an additional 200 basis points of 5th margin from any CPI [consumer price index] negotiations'. The submitter went on to say:

> There is evidence, through CPI negotiations, of retailers engaging in 'margin grabbing' by raising recommended retail prices (RRP) beyond the CPI requirements from suppliers.[21]

7.25 An anonymous submitter, who had previously worked in the Coles head office, presented evidence to the committee about Coles, saying that during 2022 there was an 'unprecedented amount of cost increase requests from suppliers'. This would be negotiated between the parties, until an agreement was reached on the final cost increase. The former employee explained that:

> Coles then decides how much of that cost increase to pass on to consumers – in my experience this was always 100%. In addition, they would increase the price by more than 100% to ensure they were *holding gross margin %* [ensuring that the gross margin % does not change even though the absolute gross profit $ may change].[22]

7.26 Mr Abdel Badoura similarly submitted evidence of a grocery item where the margin expectation went from 39.5 per cent to 45 per cent in the span of just six months, and further submitted that margin expectations are increased year on year to enhance profits.[23]

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18 The Treasury, *Protecting consumers from unfair trading practices: consultation regulation impact statement The Treasury*, August 2023, p. 27.

19 Per Capita, *Submission 10*, p. 2.

20 Combined Pensioners and Superannuants Association of NSW Inc., *Submission 18*, p. 23.

21 Name Withheld, *Submission 138*, pp. 3–4.

22 Email from former Coles employee, received 16 April 2024, p. 1. Emphasis in original.

23 Mr Abdel Badoura, *Submission 129*, p. 2.

7.27 Price gouging was the focus of the February 2024 Professor Allan Fels AO report, *Inquiry into price gouging and unfair pricing practices* (Fels Inquiry). That report concluded:

> The often-weak state of competition in many sectors of the Australian economy provides a platform which enables many businesses to charge higher prices to consumers than they would if there were effective competition. Businesses seek to capture as many consumer dollars (or 'consumer surplus') as they can whether by charging high prices uniformly to all consumers or by charging different consumers different prices according to their willingness to pay – that is price discrimination.[24]

7.28 The Fels Inquiry made two recommendations to address price gouging. The first was to reinstate past provisions that allowed for the naming of businesses and industries that overcharge.[25] The second recommendation was to amend the Competition Act to 'make it an offence to charge excessive prices in terms similar to the European Union provisions'.[26]

Unit pricing

7.29 Chapter 3 outlined how unit pricing helps consumers to compare prices and find the best value for money by showing the cost of a product using standard units of measurement.[27]

7.30 Unit pricing is enforced by the ACCC via the Unit Pricing Code (UPC), which is a mandatory industry code that outlines the rules regarding where, how, and for what products unit prices are displayed.[28]

7.31 CHOICE noted that unit pricing 'is an objective tool that empowers people to make well-informed decisions and ensures they are getting value for money on their purchases' but that supermarkets 'are making it increasingly difficult for consumers to see, read and understand unit pricing both instore and online'.[29] CHOICE further noted that '80% of shoppers who are aware of unit pricing, use it regularly and yet, when in store, an alarming 71% say that they have encountered issues with the unit pricing provided', including the unit price was

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24 Professor Allan Fels AO reporting to the Australian Council of Trade Unions, *Inquiry into price gouging and unfair pricing practices: final report* (Fels Inquiry), p. 62.

25 These was the GST pricing legislation of 2000 to 2003.

26 Fels Inquiry, p. 64.

27 ACCC, *Unit prices for groceries*, accc.gov.au/consumers/pricing/unit-prices-for-groceries (accessed 27 March 2024).

28 ACCC, *Unit Pricing Code*, accc.gov.au/business/industry-codes/unit-pricing-code (accessed 26 March 2024).

29 CHOICE, *Submission 72*, pp. 9 and 20.

not always displayed, it was difficult to read for reasons such as the text being too small, or it was obstructed or covered up by another label.[30]

7.32 The Queensland Consumers Association argued that the current situation with unit pricing:

> … greatly reduces the ability of consumers to easily compare the unit prices and the relative value of grocery products and thus the ability to save significant amounts of money or to get much more for the same expenditure. It is a major issue for Australian consumers and the economy.[31]

7.33 The Queensland Consumers Association suggested that an independent, comprehensive review of the unit pricing system was needed, to ensure it was effective and to determine whether any changes were needed to the UPC and to national measurement legislation.[32]

7.34 CHOICE recommended the ACCC should be given further resourcing to prioritise the monitoring and enforcement of retailer compliance with the UPC, as supermarkets currently in breach of the code are not being penalised, and that the Government prescribe a specific mandatory labelling standard for unit pricing.[33]

7.35 The ACCC noted that the UPC was reviewed in 2019 by the Government with no substantive changes made. The ACCC noted that while it receives few complaints about the UPC, it recommended the inclusion of 'more prescriptive requirements to improve the legibility and prominence of unit prices in the next review' which could be 'pro-consumer by improving consumers' access to unit pricing'.[34]

Food and grocery code of conduct

7.36 As outlined in Chapter 1, the Food and Grocery Code of Conduct (Grocery Code) is a voluntary agreement that is central to the ACCC enforcing standards of business behaviour in the food and grocery sector, particularly between supermarkets and their suppliers.

7.37 The Grocery Code will automatically sunset on 1 April 2025 and is currently under review by The Treasury, with Dr Craig Emerson appointed as the independent reviewer (Grocery Code Review). As outlined in Chapter 2, the interim report of that review made a number of recommendations, including:

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30 CHOICE, *Submission 72*, pp. 20–21. See also: Queensland Consumers Association, *Submission 2*, p. 1.

31 Queensland Consumers Association, *Submission 2*, p. 2.

32 Queensland Consumers Association, *Submission 2*, p. 2.

33 CHOICE, *Submission 72*, p. 21.

34 ACCC, *Submission 107*, p. 17.

- the code being made mandatory with all supermarkets with a revenue threshold of $5 billion subject to the code;
- the code placing greater emphasis on addressing fear of retribution against suppliers including through protections and supermarkets monitoring their commercial decisions;
- annual reporting on disputes and results of confidential supplier surveys, by the Grocery Code Supervisor; and
- significant penalties for non-compliance.[35]

7.38 In addition to the recommendations above, the interim report of the Grocery Code Review drew attention to other areas which may need additional protections, including:

- fresh produce, given its perishable nature;
- contracted prices and volumes;
- compliance checks by the ACCC.[36]

7.39 Elsewhere in the report, the detailed evidence showed the difficulties faced by grocery and fresh food suppliers, particularly the difficulties faced by fruit and vegetable suppliers to supermarkets.

7.40 Many farming organisations spoke about price negotiations taking place in an unfair context, where supermarkets have access to the prices of other farmers, while each farmer is 'flying blind':

> Immediately, the growers are behind the eight ball. The supermarkets now have a national snapshot of all prices and volumes across the country. The growers are essentially flying blind because they only have the data that's in front of them.[37]

7.41 The committee also heard that farmers hesitate to share such pricing information between themselves, as they are concerned that may be considered collusion under Trade Practices law.[38] The NFF, for example, expressed concerns, telling the committee:

> … we do want to see the collective bargaining power more widely advertised so that growers who don't understand or may have concerns around it or fear using it because of the potential to fall outside the lines or whatever can have those issues addressed. So there is a communications piece there for government, for the ACCC and, mostly likely, for us to make sure that growers understand that that is available to them and, as we have said, ensure that the limit doesn't preclude businesses from participating in

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35 Dr Craig Emerson, *Independent Review of the Food and Grocery Code of Conduct: interim report*, April 2024, p. 7.

36 *Independent Review of the Food and Grocery Code of Conduct: interim report*, pp. 56, 58 and 69.

37 Mr Jeremy Griffith, Representative, National Farmers Federation Horticultural Council (NFF Horticultural Council), *Committee Hansard,* 7 March 2024, p. 16.

38 Mr Michael Crisera, Private capacity, *Committee Hansard*, 13 March 2024, p. 45.

> that where it would be beneficial and address some of the issues we have outlined today.[39]

7.42 AUSVEG offered its support for price transparency but cautioned it should not be done in a way that itself could cause an artificial distortion of the market, or an increased compliance burden on producers. AUSVEG further noted that price negotiations for the vegetable sector was much more complex that for dairy and beef, due to the greater variance in produce.[40]

Independent arbitration

7.43 This report has also outlined the fear that many farmers have in making complaints under the Grocery Code, due to fears of retaliation.[41] The NFF observed that the arbitrators of the Code 'are often, or in most cases, put in place by retailers', with Mr Young of the NFF stressing that:

> Of course I would make no assertions about the credibility of the judgements made by those arbitrators, but you can understand why producers looking to raise issues might perhaps feel more comfortable doing that with someone independently appointed.[42]

7.44 AUSVEG similarly noted:

> The growers definitely have concerns about voicing anything to the code arbiters, because the code arbiters are appointed by the retailers. Once again, we're not questioning the integrity of the arbiters … But I just feel that if they're paid for and appointed by a retailer, no matter what, there is no confidence in the system from our growers.[43]

7.45 Another submitter, a grocery producer, noted that while suppliers with a solid understanding of the Grocery Code could use it to limit punitive behaviours from supermarkets, the burden still lies on the supplier to file a formal complaint. The submitter further contended that:

> … the fact that not a single supplier has ever lodged a formal complaint in this concentrated market speaks volumes … it is clear that the fear of retribution and reliance on both Woolworths and Coles in Australia is a factor suppliers cannot overlook.[44]

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39 Ms Charlotte Wundersitz, National Farmers Federation, *Committee Hansard*, 13 March 2024, p. 7.

40 Mr Michael Coote, Chief Executive Officer, AUSVEG, *Committee Hansard*, 13 March 2024, p. 16.

41 See, for example: Mr Nathan Calman, Chief Executive Officer, TasFarmers, *Committee Hansard*, 7 March 2024, p. 28.

42 Mr Christopher Young, National Farmers Federation, *Committee Hansard*, 13 March 2024, p. 6.

43 Ms Lucy Gregg, General Manager Public Affairs, AUSVEG, *Committee Hansard*, 13 March 2024, p. 15.

44 Name Withheld, *Submission 138*, p. 9.

Mandatory code

7.46 The NFF called for the Grocery Code to be mandatory and include 'substantial civil penalties attached to noncompliance'. The NFF argued that 'without that threat there is a fear that it will not be followed'.[45]

7.47 The Fels Inquiry noted that the 'disproportionate market power held by supermarkets and food processors compared to farmers is a significant concern in the agricultural sector and that this imbalance 'manifests in several ways, profoundly impacting the dynamics of food pricing and distribution'.[46] To address this, the Fels Inquiry recommended:

- the Grocery Code be fully mandatory i.e. membership of retailers is mandatory and the rules are mandatory; and
- the Grocery Code should investigate creating a price register for farmers to assist them in understanding market prices across primary industries.[47]

7.48 The ACCC similarly noted that while the Grocery Code had led to improvements in dealings between signatories and suppliers, 'it is the ACCC's view as the regulator of the code that it is not achieving all its intended purposes and improvements can be made to address these issues'.[48]

7.49 The ACCC therefore recommended:

- the Grocery Code should be made mandatory;
- there should be financial penalties available for non-compliance with the code; and
- signatories should not be able to opt out of minimum standards set out in the code.[49]

Non-compete clauses

7.50 Non-compete clauses are conditions in employment contracts that restrict an employee from moving to a competitor. As noted by The Treasury, such clauses usually define a specific period of time and/or geographic area over which the clause applies after the employee leaves the employer.[50]

7.51 The Government's 2023 Employment White Paper suggested that:

> There is emerging evidence that non-compete clauses in workers' employment contracts may be hampering job mobility, innovation and

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[45] Ms Charlotte Wundersitz, National Farmers Federation, *Committee Hansard*, 13 March 2024, p. 7.

[46] Fels Inquiry, p. 53.

[47] Fels Inquiry, p. 69.

[48] ACCC, *Submission 107*, p. 13.

[49] ACCC, *Submission 107*, p. 14.

[50] The Treasury, 'Non-compete clauses and other restraints', treasury.gov.au/review/ competition-review-2023/non-compete-clauses (accessed 1 May 2024).

> wage growth in industries where their use is prevalent … While there is uncertainty around enforceability of individual contracts in Australia, non competes may nonetheless deter workers from switching jobs. In Australia, initial survey evidence suggests that up to 22 per cent of Australian workers may be subject to non-compete clauses, ranging from child care workers to management consultants.[51]

7.52 In improving competition and employment law, the Fels Inquiry called for a ban on all non-compete contacts, in line with emerging American practice. The Fels Inquiry argued that such clauses have a 'chilling effect' on employees moving between employers, and:

> … inhibit the transfer of talent to more efficient firms. These clauses are also used to prevent part-time and casual employees from finding employment elsewhere, stifling employment growth.
>
> Australia needs to follow laws which are emerging in the United States and elsewhere which ban no compete clauses in employment contracts.[52]

Grocery pricing regulation and transparency

7.53 The Consumer Action Law Centre observed that as supermarkets 'are selling groceries and food to some of the most disadvantaged people in our community' there should be strong oversight and transparency.[53]

7.54 As noted by Fair Food Western Australia (WA) and the WA Council of Social Service (WACOSS), there is currently no system to routinely monitor the cost of food and grocery items in supermarkets across Australia. While there are some surveys conducted on healthy food pricing, these lack consistency and are therefore not able to be compared either across time or geographic regions.[54]

7.55 Fair Food WA and WACOSS noted that establishing such routine monitoring of food and grocery items prices nationally would also assist in efforts to develop greater transparency on comparing 'farm-gate prices, wholesale prices and those set by supermarket retailers' and would be 'critical to ensuring that food system policy minimises the risk of unequal market concentration'.[55]

7.56 The CPSA provided an example of price monitoring that did not end up in any meaningful outcomes:

> CPSA is particularly concerned that instances such as [misleading pricing] go largely unpunished, especially as our constituents may face barriers to

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51 The Treasury, *Working Future: The Australian Government's White Paper on Jobs and Opportunities – Chapter 3: Promoting job security and strong, sustainable wage growth*, 25 September 2023, p. 55.

52 Fels Inquiry, p. 66.

53 Ms Stephanie Tonkin, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 13 March 2024, p. 35.

54 Fair Food WA and WA Council of Social Service, *Submission 6*, p. 6.

55 Fair Food WA and WA Council of Social Service, *Submission 6*, p. 6.

> shopping online or to accessing available information relating to opportunities for refunds. As such, they are at greater risk of missing out on reimbursement in these situations. CPSA argues that there should be mandatory penalties put in place for these cases to ensure the highest standard of compliance and to protect customers who may otherwise be less able to seek a refund.[56]

7.57 Many submitters and witnesses argued the need for an independent pricing regulator. TasFarmers recommended the establishment of an independent pricing regulator, with the authority to:

> … monitor and regulate the pricing practices of major supermarket chains. This regulator would ensure adherence to fair pricing standards, investigate complaints, and impose penalties for non-compliance. The regulator should be empowered to publish regular reports on pricing trends and market competition.[57]

7.58 Dr Greg Jericho, Chief Economist for The Australia Institute also recommended the establishment of such as commission or regulator, with sufficient powers to:

> … enable it to say to companies, 'You say you're doing it tough and that you are raising prices in line with cost. Show us the books. Let's have a look.' We think transparency would bring much greater benefits for consumers.[58]

7.59 The Fels Inquiry likewise recommended the government 'could establish a Commission on Competition and Prices to review Government and other restrictions on competition and high prices caused by a lack of competition'. The Fels Inquiry suggested that a commission:

> … would review government and other anticompetitive restrictions, and high prices caused by a lack of competition. The ACCC would continue to enforce the law and where appropriate undertake pricing and market studies.[59]

7.60 The Australian Council of Trade Unions (ACTU) informed the committee that such a body was its core 'ask' coming from its review:

> Emerging from the price gouging inquiry, our core ask is the establishment of a national prices and competition commission. There is clear need for a permanent and ongoing focus on prices by government.[60]

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56 Combined Pensioners and Superannuants Association of NSW Inc., *Submission 18*, p. 17.

57 TasFarmers, *Submission 3*, p. 3. See for example: Mr Abdel Badoura, Private capacity, *Committee Hansard,* 15 April 2024, p. 13.

58 Dr Greg Jericho, Chief Economist, The Australia Institute, *Committee Hansard,* 11 April 2024, p. 28.

59 Fels Inquiry, p. 64.

60 Mr Joseph Mitchell, Assistant Secretary, Australian Council of Trade Unions, *Committee Hansard,* 15 April 2024, p. 39.

Increased funding for ACCC

7.61 The committee heard that in addition to strengthening of the regulatory regime around supermarkets, the ACCC should also be bolstered—not just to administer new powers, but also to have sufficient funding and resources to appropriately enforce its existing powers. The NFF drew attention to insufficient resources at the ACCC and its repercussions:

> The under-resourcing of the ACCC has meant it is unable to investigate and prosecute the full extent of firms that break existing laws and regulations. The ACCC has also not been able to adopt new capabilities to proactively monitor firms and supply chains for increasing market concentration, abuse of market power and the use of unfair business practices. The ACCC is also not able to review natural changes in the distribution of firms that impact market concentration. This includes changes in the location of activities and changes in market share due to organic firm growth.[61]

7.62 Per Capita recommended 'strengthening the powers of, and increasing resources to, the ACCC so it can actively monitor market supply chains and take swifter action on competition and consumer issues is needed'.[62]

7.63 CHOICE also recommended increased funding for the ACCC, particularly to enforce the Unit Pricing Code.[63]

7.64 The NFF pointed to remarks by a former ACCC chairperson, and their regular complaint that they 'do not have the teeth to do the job that we need to do to ensure fair competition in this country ...'.[64]

Additional safeguards

7.65 The committee heard from many inquiry participants that regulation needs to be backed up by strong additional powers to be used when existing regulation fails to deliver an appropriately competitive environment.

7.66 Not only would such powers provide an avenue for action when regulation was unable to enforce competition and appropriate pricing, but they would most likely ensure that supermarkets take such regulation more seriously, as non-compliance would lead to the use of these additional powers—which they presumably would want to avoid. Suggestions for such powers included making individuals accountable for regulatory breaches; excess profits taxes; and divestiture powers.

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61 National Farmers Federation, *Submission 97*, p. 11.

62 Per Capita, *Submission 10*, p. 9.

63 Ms Rosie Thomas, CHOICE, *Committee Hansard*, 13 March 2024, p. 27. See also Queensland Consumers Federation, *Submission 2*, p. 5, and Consumers Federation of Australia, *Submission 109*, p. 2.

64 Mr Jeremy Griffith, NFF Horticultural Council, *Committee Hansard*, 7 March 2024, p. 17.

7.67 The NFF recommended that regulation should extend beyond corporations to individuals, 'because once you make individuals accountable for their actions that changes behaviours within organisations'.[65]

7.68 With regard to excess profit taxes, The Australia Institute noted that competition regulation is not always an effective control on market power, and it argued in these instances such a tax could be 'an effective way of recapturing the benefit firms extract from their excessive market power, and at the same time compensating consumers'. The Australia Institute noted that such compensation for consumers could be targeted to the most vulnerable consumers.[66]

Divestiture

7.69 The committee heard from many participants that a final power to have—if all else fails—would be divestiture powers, where supermarkets can be forced to divest certain stores if there is no other way to ensure appropriate market competition, and if it was proven they had abused their position in the market.

7.70 Professor Allan Fels, whose evidence on divestiture is captured in greater detail in Chapter 8, noted that divestiture would have a significant long-term effect on competition, and ultimately deliver a large 'payoff' for consumers.[67]

7.71 Likewise The Australia Institute, also discussed further in Chapter 8, advised that divestiture would bring a whole new set of tools to the ACCC and the courts to bring improved competition into the market.[68]

7.72 The CEO of TasFarmers told the committee that divestiture was 'definitely something that should be kept on the table. I think the view for myself would be that it's something that should be looked at if everything else has failed'.[69]

7.73 The NFF advised that divestiture as a government policy option should never be 'taken off the table' as doing so would essentially be 'giving a licence to print money to the existing duopoly'.[70]

7.74 Mr Danny Carney from the Grassroots Action Network Tasmania, put it succinctly from the point of view of food being a basic human right that is being impacted by the power of the supermarket duopoly:

> I very much feel like—I'll just put it out there—the supermarket duopoly should be broken up. That's the role of government. You can't live without food. We shouldn't have certain demographics of Australians skipping

[65] Mr Jeremy Griffith, NFF Horticultural Council, *Committee Hansard*, 7 March 2024, p. 17.

[66] Mr Jeremy Griffith, NFF Horticultural Council, *Committee Hansard*, 7 March 2024, p. 17.

[67] Professor Allan Fels AO, *Committee Hansard*, 15 April 2024, p. 6.

[68] Mr Matt Grudnoff, The Australia Institute, *Committee Hansard*, 11 April 2024, p. 27.

[69] Mr Nathan Calman, TasFarmers, *Committee Hansard*, 7 March 2024, p. 27.

[70] Mr Jeremy Griffith, NFF Horticultural Council, *Committee Hansard*, 7 March 2024, p. 17.

> meals, stealing food, eating from bins, having to rely on charity for their whole life simply because we have these companies that make millions of dollars in profit, that have CEOs that make tens of thousands of dollars a day to maintain a profit line … With the power of duopoly, they can do whatever they want, and that's what we're seeing … The government should use its powers to bust that open.[71]

7.75 The question of divestiture powers is discussed in greater detail in the following chapter, where the committee presents its report on the Competition and Consumer Amendment (Divestiture Powers) Bill 2024.

[71] Mr Danny Carney, Grassroots Action Network Tasmania, *Committee Hansard*, 7 March 2024, pp. 14–15.

Chapter 8
Competition and Consumer Amendment (Divestiture Powers) Bill 2024

8.1 The Competition and Consumer Amendment (Divestiture Powers) Bill 2024 (bill) was introduced in the Senate on 20 March 2024.

8.2 On 27 March 2024, through amendments to the fourth report of the Selection of Bills Committee, the Senate referred the bill to the Select Committee on Supermarket Prices (committee) for inquiry and report by 7 May 2024.[1]

8.3 In this chapter, the committee presents the evidence put forward specifically in relation to the bill, while also highlighting other evidence and views received throughout the committee's broader inquiry about divestiture.

8.4 This chapter therefore constitutes the committee's report on the bill, as required by the Senate.

Conduct of the inquiry

8.5 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties, inviting written submission by 12 April 2024. The committee received 10 submissions (listed at Appendix 3).

8.6 The committee sought evidence about the bill during its three public hearings in Canberra on 11, 15 and 16 April 2024, conducted as part of committee's broader inquiry work. The names of the witnesses who appeared at the hearings can be found at Appendix 2.

Purpose of the bill

8.7 The bill proposes to amend the *Competition and Consumer Act 2010* (Competition Act), to implement divestiture powers in circumstances where market power has been misused.

8.8 Section 46 of the Competition Act provides that a corporation that has a substantial degree of power in a market 'must not engage in conduct that has the purpose, or is likely to have the effect, of substantially lessening competition' in that market.[2]

8.9 The bill would insert an amendment after section 80AC of the Competition Act to 'add a further legal remedy … where a corporation that has, or is taken to

1 *Journals of the Senate*, No. 108, 27 March 2024, pp. 3234–3237.

2 *Competition and Consumer Act 2010*, s. 46 – Misuse of market power.

have, a substantial degree of market power has been found to have misused their market power under section 46 of the Act'.[3]

8.10 That remedy would be, via court order, 'a reduction in the corporation's power in, or share of, the market' (that is, divestiture).[4]

8.11 As explained by the Explanatory Memorandum (EM), enacting the bill would:

> … grant powers to the Court, following an application by the Australian Competition and Consumer Commission (ACCC) to issue orders that will reduce the corporation's power in a particular market, or their share in the market.[5]

8.12 The ACCC could make an application to the court for divestiture within three years after the date the contravention occurred.[6] The courts could also determine to accept, upon any agreed conditions, an undertaking by the corporation to take particular action to reduce the corporation's power in, or share of, the market.[7]

Statement of Compatibility with Human Rights

8.13 The bill's EM contains a statement of compatibility with human rights, stating that the bill does not raise any human rights issues.

8.14 In its third report of 2024, the Parliamentary Joint Committee on Human Rights indicated it had considered the bill and offered no comments on it.[8]

Financial impact

8.15 No financial implications have been identified in relation to this bill.

Background

8.16 As this report has already highlighted, Australia's retail grocery and supermarket sector has become increasingly concentrated, thereby potentially creating an environment for anti-competitive practices and price gouging by the major supermarket brands.

8.17 Despite the critical importance of the supermarket sector in providing food and groceries at reasonable prices to Australians, and the importance of maintaining

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3 Explanatory Memorandum, p. 2.

4 Competition and Consumer Amendment (Divestiture Powers) Bill 2024, proposed subsection 80AD(2).

5 Explanatory Memorandum, p. 2.

6 Competition and Consumer Amendment (Divestiture Powers) Bill 2024, proposed subsection 80AD(3).

7 Competition and Consumer Amendment (Divestiture Powers) Bill 2024, proposed subsection 80AD(5).

8 Parliamentary Joint Committee on Human Rights, *Report 3 of 2024*, 17 April 2024, p. 1.

fair competition in the retail grocery sector, legislation has not yet been established to provide legal powers which would enable the courts to divest corporations which have been proven to have misused their market power.

8.18 The bill was introduced with this in mind. During his second reading speech, Senator Nick McKim provided the following rationale for introducing the bill:

> Monopolies and oligopolies are bad for consumers, bad for workers, bad for suppliers and bad for the economy more broadly … Market concentration impedes competition and is a massive drain on the economy as a whole. It reduces productivity growth, slows innovation, impacts the quality of products available to consumers and leads to higher inflation through excessive prices. Evidence shows the more market share a corporation has, the easier it is for them to maintain and increase their power. Instead of spending their time focusing on improving productivity they use their excessive power to aggressively block competitors and influence key decision makers to weaken any attempts at regulation.[9]

Consideration of divestiture powers in Australian consumer law

8.19 In conjunction with current Australian consumer law, the Competition Act exists to 'enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection' via legislative powers entrusted in the ACCC and the courts.[10]

8.20 Over the years, there have been multiple reviews of Australia's competition laws, making observations and recommendations on divestiture and the impact such powers could have for Australian consumers.

8.21 For example, in 2003 Sir Daryl Dawson delivered a review of the Trade Practices Act (Dawson Review) then in force, finding at that time that, in light of other remedies, it was 'unnecessary to recommend the extension of the remedy of divestiture'.[11]

8.22 Since that time, however, Australia's retail and supermarket environment has changed dramatically, and more recent reviews into competition policy have been completed or are underway, as discussed below.

2015 Competition Policy Review

8.23 In 2015, the Competition Policy Review chaired by Professor Ian Harper (Harper Review), reported on the state of Australia's competition policy, laws and institutions and whether they were fit for purpose.[12] The Harper Review

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9 Senator Nick McKim, *Senate Hansard*, 20 March 2024, pp. 64–65.

10 *Competition and Consumer Act 2010*, s. 2.

11 Sir Daryl Dawson, *Review of the Competition Provisions of the Trade Practices Act*, January 2003, pp. 162–163.

12 The Treasury, *Competition Policy Review*, March 2015, p. 1.

looked closely at the 'purpose' and 'take advantage' tests of section 46 of the Competition Act and wrote that:

> The Panel considers that section 46 is deficient in its current form. The 'take advantage' limb of section 46 is not a useful test by which to distinguish competitive from anti-competitive unilateral conduct. The 'purpose' limb, that prohibits conduct if it has the purpose of harming competitors, is misdirected as a matter of policy and out of step with equivalent international approaches. The provision should be directed to conduct that has the purpose, or would have or be likely to have the effect, of substantially lessening competition, in a similar manner to the prohibitions in sections 45, 47 and 50 [of the Act].[13]

8.24 The Harper Review acknowledged that divestiture was not available to Australian courts but was a potential legal remedy that had been used in other countries, such as the United States, to prevent monopolies from forming.[14]

8.25 When considering the value of introducing divestiture powers to Australia, the Harper Review echoed the findings of the Dawson Review and deemed that they would not be necessary as:

> … the existing range of remedies is sufficient to deter a firm from misusing its market power and to protect and compensate parties that have been harmed by such unlawful conduct. Where section 46 is breached, the court already has available to it a wide range of sanctions, including: pecuniary penalties that can greatly exceed the benefit the firm has obtained from the conduct; a range of remedial orders, such as compensation payments to parties who have suffered loss or damage; and injunctive relief.[15]

8.26 However, the Harper Review did note that this legislative environment could be changed in future, saying:

> … if circumstances were to arise where the public interest would be served by breaking up a firm or redesigning an industry, for competition or other policy purposes, it is open to the Parliament to legislate to bring about such reform. Such action would be expected to be rare and exceptional. Nevertheless, the Panel considers it preferable for any such action to be implemented by the Parliament rather than by the court as a remedy for breaches of competition law.[16]

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13 The Treasury, *Competition Policy Review*, March 2015, p. 347.

14 United States Department of Justice Archives, *The AT&T Divestiture: Was it Necessary? Was it a Success?*, March 28 2007, justice.gov/archives/atr/att-divestiture-was-it-necessary-was-it-success (accessed 5 April 2024).

15 The Treasury, *Competition Policy Review*, March 2015, p. 347; *Competition and Consumer Act 2010*, s. 76, s. 87 and s. 80.

16 The Treasury, *Competition Policy Review*, March 2015, p. 347.

2023 Competition Review—The Treasury

8.27 On 23 August 2023, Treasurer the Hon Dr Jim Chalmers MP launched a two-year Competition Review to focus on the Government's priorities for modernising the Australian economy.[17]

8.28 In a media release Dr Chalmers outlined the necessity of the review in assisting the future of competition policy in the Australian economy, stating:

> Greater competition is critical for lifting dynamism, productivity and wages growth, putting downward pressure on prices and delivering more choice for Australians dealing with cost-of-living pressures.[18]

8.29 According to Dr Chalmers, the review will consider the following:

- proposals put forward by the ACCC around merger reform, as well as other competition law issues;
- options for coordinated reform with states and territories, to be progressed through the Council on Federal Financial Relations;
- non-compete and related clauses that restrict workers from shifting to a better-paying job; and
- providing advice on competition issues raised by new technologies, the net zero transformation and growth in the care economy.[19]

8.30 Importantly, the review outline does not demonstrate a focus on abuse of market power and the potential impacts of divestiture on competition in Australia. However, the Competition Review may present compelling evidence that highlights issues with contemporary competition policy and may strengthen the case for the introduction of divestiture powers when misuse of market power occurs.

The Independent Review of the Food and Grocery Code of Conduct 2024

8.31 The Independent Review of the Food and Grocery Code of Conduct (Grocery Code Review) was commissioned by The Treasury on 10 January 2024, with the Hon Dr Craig Emerson appointed as the independent reviewer.

8.32 The purpose of the 2023–24 Grocery Code Review is to:

- assess the effectiveness of the Food and Grocery Code of Conduct (Grocery Code) provisions (other than Part 5 of the code) in achieving the purpose of

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17 The Treasury, *Competition Review*, August 2023, https://treasury.gov.au/review/competition-review-2023 (accessed 12 April 2024).

18 The Hon Jim Chalmers MP, Treasurer, 'A more dynamic and competitive economy', *Media Release*, 23 August 2023, https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/more-dynamic-and-competitive-economy (accessed 12 April 2024).

19 The Hon Jim Chalmers MP, Treasurer, 'A more dynamic and competitive economy', *Media Release*, 23 August 2023.

the code to improve the commercial relationship between retailers, wholesalers and suppliers in the grocery sector; and

- consider the need for the code, including whether it should be remade, amended or repealed.[20]

8.33 The Interim Report of the Grocery Code Review (the Interim Report) was released on 8 April 2024, presenting eight recommendations and three additional draft recommendations to which it was seeking further stakeholder input. In the context of the bill and divestiture, the Interim Report stated that the Grocery Code Review:

> … does not support a forced divestiture power to address market power issues in the supermarket industry … If forced divestiture resulted in a supermarket selling some of its stores to another large incumbent supermarket chain, the result could easily be greater market concentration.[21]

8.34 The Interim Report also put forward the view that:

> If large incumbent supermarket chains were prohibited from buying the divested stores, that would leave only smaller supermarket chains and foreign supermarkets as potential buyers. Further, if these smaller chains were not interested, or were not in a position to buy, these stores would be forced to close. This would be at the cost of the jobs of the workers in those stores and of inconvenience to local shoppers who would need to go elsewhere to buy their groceries.[22]

Evidence regarding the bill

8.35 There were mixed views on the bill and its aims, with some in strong support of divestiture powers and the legislation passing as a priority. Conversely, others drew attention to the numerous reviews had found divestiture powers were not needed, and could instead lead to unintended consequences.

8.36 Without commenting on the bill and noting its role as an independent regulator, the ACCC was asked its general views on divestiture, with Mr Mick Keogh, Deputy Chair, observing that:

> … divestiture powers are common as part of the toolkit of competition regulators internationally. I would note that, where used, they could involve quite an extended time frame in terms of processes associated with them. Where there is evidence that the existing market structure is so fundamentally dominated perhaps by a smaller number, or a single player, and that these available tools to try to bring some kerbing to that power are ineffective or are not likely to work, it is conceivable that divestiture could be a tool that is employed and it could be that it could force the creation of

[20] The Treasury, *Food and Grocery Code of Conduct Review 2023-24 – Terms of reference*, treasury.gov.au/review/food-and-grocery-code-of-conduct-review-2023/terms-of-reference (accessed 12 April 2024).

[21] The Treasury, *Independent Review of the Food and Grocery Code of Conduct*, April 2024, p. 74.

[22] The Treasury, *Independent Review of the Food and Grocery Code of Conduct*, April 2024, p. 74.

> a more competitive market which ultimately would, you'd expect, reduce prices, but the ACCC doesn't have policy on whether or not we support a divested power.[23]

Support for the bill

8.37 Supporters of the bill argued legislating divestiture powers for the ACCC and the Courts would provide greater competition in the retail grocery sector and thus pass on cost savings to consumers. Supporters of the bill also agreed with the idea of legislating divestiture powers in line with other Organisation for Economic Co-operation and Development (OECD) countries.

8.38 Professor Allan Fels AO called for the power of divestiture, in circumstances where a business has been found to seriously breach competition law, and especially section 46 of the Competition Act. Professor Fels argued that:

> … if that [divestiture] power was available it would step up compliance with the law, particularly where there's abuse of market power provisions by big business. That law, which is about big business taking actions that are anticompetitive, against small business and so on, is not backed by very strong sanctions, and those sanctions, fines and so on are seen as the normal cost of doing business. If they faced the possibility of divestiture, you'd get a lot more compliance with a key part of the competition law.[24]

8.39 Professor Fels noted that divestiture was an important tool to have to be used in 'fairly special circumstances', and which could take some time to be fully effective—but he made the point that competition law 'has a really big long-term effect on competition' and that the 'payoff long term to consumers is very large'.[25]

8.40 The Australia Institute offered its support for the bill, suggesting such powers were a good idea noting that the 'ACCC, as it currently stands, has very few powers to actual inject competition into a market that is already low in competition'. Mr Matt Grudnoff from The Australia Institute continued that:

> Mergers and acquisition laws, which also get a lot of attention, particularly at the moment, stop a market from becoming more concentrated but they're not particularly useful once a market is concentrated. If you have a market like we have at the moment with supermarkets, mergers and acquisition laws are not particularly useful—whereas if you can break up the major competitors you can actually inject more competition in the market. At the moment the ACCC has regulatory powers, and I think they need further beefing up. But that's really all they can do once a market is uncompetitive.

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23 Mr Mick Keogh, Deputy Chair, ACCC, *Committee Hansard,* 15 April 2024, p. 63.

24 Professor Allan Fels AO, Private capacity, *Committee Hansard*, 15 April 2024, p. 1.

25 Professor Allan Fels AO, Private capacity, *Committee Hansard*, 15 April 2024, p. 6. See also: Mr Abdel Badoura, Private capacity, *Committee Hansard*, 15 April 2024, p. 13.

> Divestiture powers is an entirely different tool that the ACCC or the courts can use in order to inject more competition into a market.[26]

8.41 Representatives of Per Capita also endorsed the bill, noting that while such powers have been controversial in the past, they are 'not something that the parliament hasn't done' and that 'self-regulation … has failed consumers on most fronts'. Ms Sarah McKenzie, Director of Policy and Research at Per Capita explained Per Capita's position on the bill:

> Our position on those powers is that we need some sort of mechanism where there has been a serious breach of the act, where there are real consequences for these companies. I think there is a real lack of consequences. I believe that, stemming from the lack of consequences, these companies are able to do some bad practices and really just get a slap on the wrist for it. There needs to be something a little bit tougher. Overall, we welcome the introduction of these laws.[27]

8.42 NSW Farmers was of the view that 'far from being an extreme measure against any and all businesses that wish to grow', the bill was instead a 'reasonable middle-of-the-road amendment'. NSW Farmers continued that the bill:

> … establishes the fact that once a corporation has grown to such a size as to be able to shape their market, they have an obligation to meet a higher standard of behaviour for the sake of the national interest. Enabling the Courts to enforce this standard of behaviour through a divestiture mechanism is the only counterweight to the other fiduciary obligation that corporations have to their shareholders to maximise their market power and profits.[28]

8.43 Like other submitters, NSW Farmers observed that comparable countries had divestiture laws, and that the proposals put forward by the bill 'are in fact weaker than those in other capitalist democracies such as France, the United Kingdom, the United States of America, Germany, Canada, Iceland, Italy, Japan, Mexico [and] Spain'.[29] NSW Farmers supported the bill and considered it to be 'an appropriate tool for the regulator to disincentivise harmful misuse of market power in the supermarket sector'.[30]

8.44 Similarly, the Global Centre for Preventive Health and Nutrition (GLOBE) offered its support for the bill and observed that many OECD countries already have similar divestiture powers, and the bill could therefore be seen increasing

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26 Mr Matt Grudnoff, Senior Economist, The Australia Institute, *Committee Hansard,* 11 April 2024, p. 27.

27 Ms Emma Dawson, Executive Director and Ms Sarah McKenzie, Director, Policy and Research, Per Capita, *Committee Hansard*, 11 April 2024, p. 21.

28 NSW Farmers, *Submission 6*, p. 1.

29 NSW Farmers, *Submission 6*, p. 1. See also: Queensland Fruit & Vegetable Growers, *Submission 7*, [p. 2].

30 NSW Farmers, *Submission 6*, p. 3.

'Australia's compliance with international 'best practice' in regulating misuses of market power'. GLOBE concluded that:

> By addressing serious misuses of market power, the Bill represents a powerful, appropriate and feasible measure to promote a healthy Australia – a prerequisite for a prosperous and competitive Australian economy.[31]

8.45 In supporting the bill, Healthy Food Systems Australia submitted that it would:

> … align Australia with many other OECD countries that have similar divestiture powers to those proposed in the Bill. The proposed Bill will be essential for keeping highly concentrated Australian sectors, such as the supermarket sector, accountable and honest to the Australian public.[32]

8.46 The Retail and Fast Food Workers Union (RAFFWU) also supported divestiture. Mr Josh Cullinan, RAFFWU Secretary, maintained that divestiture would not lead to fewer supermarkets nor see workers paid less. Conversely, Mr Cullinan argued that divestiture would rebalance the bargaining power between employers and employees in the supermarket sector.[33] Mr Cullinan concluded that:

> Divestiture is not going to lead to fewer supermarkets; there's still going be the number of supermarkets. Workers don't have this amazing set of conditions and experiences. They don't even have safety clauses. They don't have wages that are above the absolute minimum. So divesting those and having them run by someone else, that still has to maintain and apply the current laws, is not going to see workers paid less. Workers are only going to have more power in their negotiations with their employer … [34]

8.47 Associate Professor Andy Schmulow suggested divestiture laws were the solution to excessive market concentration, as they would facilitate 'refreshing, rejuvenating, renewing and revitalising our free market by introducing choice and competition'. Associate Professor Schmulow argued that doing so:

> … requires the power to break up monopolies, duopolies and oligopolies. While Dr Emerson's solution to make the code of conduct mandatory is helpful and no doubt will afford some benefits, it fails to grasp the nettle, and the nettle is divestiture. This is not radical. It's standard practice in many other leading G20 jurisdictions and has been for decades. Examples include divestiture steps against AT&T, Microsoft, Ma Bell and others. In all cases that I'm aware of, the results were strongly positive for employment, economic growth, competition, price elasticity, consumer choice and service.

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31 Global Centre for Preventive Health and Nutrition (GLOBE), *Submission 4*.

32 Healthy Food Systems Australia, *Submission 5*, p. 1.

33 Mr Josh Cullinan, Secretary, Retail and Fast Food Workers Union, *Committee Hansard*, 15 April 2024, p. 29.

34 Mr Josh Cullinan, Retail and Fast Food Workers Union, *Committee Hansard*, 15 April 2024, p. 29.

8.48 Associate Professor Schmulow suggested, however, that giving divestiture power to the courts would present some limitations, arguing that:

> This won't work, or it won't work well. Our courts are terribly bad at qualitative economic decisions. They are not practised or equipped to do so. Moreover, our legislative drafters, at least insofar as corporations, commercial or competition law is concerned, churn out some of the most turgid, redundant, ambiguous and contradictory legislation I've seen anywhere in the English-speaking world. The result will be a never-ending series of litigation failures. Instead, the divestiture powers should be vested in the ACCC and should be drafted by experts in plain English drafting, supported by linguists and economists, and the role of the court should be left to that of review.[35]

Concerns with the bill

8.49 Despite this significant support, other submitters raised concerns with the bill, including:

- the ability of the bill to create greater competition in the grocery sector;
- the potential for the bill to cause unintended consequences if supermarket stores were divested; and
- the benefits of strengthening merger laws and making the existing voluntary Grocery Code mandatory, instead of divestiture.

8.50 Dr Craig Emerson, the independent reviewer for the Grocery Code Review, appeared before the committee and was asked about the interim report of the review, which did not support divestiture powers.

8.51 Dr Emerson was of the view that forced divestiture would not be an effective remedy to address supermarket power, could result in job losses, and would take a long time to progress through the courts—both because the ACCC would have to win the case, but and because it would also have to argue that divestiture was the correct remedy (and not the significant financial penalties). Dr Emerson also considered the threat of forced divestiture was not credible when considered against the significant financial penalties already available in the Competition Act:

> You can threaten anything, but, if it's not credible, it won't have the sorts of desirable effects that I think you and I would agree on—more competition and not breaching section 46 of the Competition and Consumer Act. A credible effect is … for a breach of section 46, a penalty which is the largest of $10 million or three times the benefit that the supermarket gained or 10 per cent of the turnover of the supermarket in the last 12 months, which, in relation to one supermarket, is $5 billion. Now, that is a credible threat.[36]

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35 Associate Professor Andrew Schmulow, Private Capacity, *Committee Hansard*, 16 April 2024, p. 76.

36 Dr Craig Emerson, Independent Reviewer of the Food and Grocery Code of Conduct, *Committee Hansard*, 16 April 2024, pp. 67 and 69.

8.52 The Business Council of Australia (BCA) likewise did not support the bill, saying it was 'ill-conceived' and pointing to successive reviews of competition laws which have 'concluded that not only would a general divestiture power be unhelpful, but that such a power is likely to lead to adverse consumer outcomes'. The BCA continued:

> The Harper [2015], Dawson [2003] and Hilmer [1993] Reviews all rejected the introduction of such a power as did the Griffiths and Cooney Reports due to its unpredictable results, including that the target could be left less productive, efficient, profitable or even viable—and so reducing rather than enhancing consumer welfare.[37]

8.53 The BCA did not support the suggestion that divestiture powers were necessary to provide a deterrent against breaches of the Competition Act, arguing that section 46 of the Act already provides significant penalties for breaches and thus deters abuses of market power. It also pointed out that the reviews already underway, including the Competition Review by The Treasury, should be given the opportunity to conclude and present their findings before any legislative changes were progressed. [38]

8.54 The BCA also addressed comparisons with other OECD and comparable countries, saying such comparisons were 'unhelpful' as:

> … such arrangements appear to be in the context of mergers and acquisitions and are comparable to Australia's existing competition law and practice where divestiture may be agreed to by merger proponents to enable a merger to proceed or as a remedy available to the regulator for an unlawful merger or acquisition.[39]

8.55 It is noted that both Coles and Woolworths are members of the BCA.[40]

8.56 The Australian Retailers Association (ARA) was likewise against the bill, arguing that it would have the opposite effect of what it intended. The ARA contended that the bill lacked 'clear thresholds for intervention', without an objective test of what constitutes 'a substantial degree of power' in a market—which in turn could undermine investor confidence and economic stability. Further, divestiture had an 'unproven efficacy in reducing grocery prices', with a potential for job losses.[41]

8.57 The ARA called for the proponents of the bill to explain how divestiture as envisaged by the bill would result in reduced prices for consumers and 'offer

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37 Business Council of Australia, *Submission 9*, pp. 1 and 3. See also: Australian Retailers Association, *Submission 10*, p. 2.

38 Business Council of Australia, *Submission 9*, pp. 2 and 3.

39 Business Council of Australia, *Submission 9*, p. 3.

40 See: Business Council of Australia, *Membership*, bca.com.au/membership (accessed 29 April 2024)

41 Australian Retailers Association, *Submission 10*, pp. 1 and 2.

fairer deals for farmers', especially considering that 'similar measures have not yet yielded the desired outcomes both internationally and within the energy market'. The ARA concluded that:

> … that the implementation of divestiture powers in the food and grocery sector should be approached with caution. The lack of evidence demonstrating their effectiveness in reducing prices, coupled with consumer trends indicating continued price inflation, highlights the need for government to explore alternative strategies to promote competition and affordability in the grocery market.[42]

8.58 Woolworths Group maintained that the case had not been made for 'significant regulatory intervention such as divestiture', saying that such an approach:

> … is at odds with a modern and open economy. There is also a real question of which companies would have the scale or the inclination to buy some of these assets, and whether that would be the best outcome for Australia and the community.[43]

Unintended consequences of divestiture

8.59 Some stakeholders submitted that the proposed divestiture powers to remedy market power misuse may cause unintended consequences 'for supply chain resilience, food security, employment, investment in infrastructure and, ultimately, [increase] costs to consumers'.[44]

8.60 Mr Grant Ramage of Metcash, in response to a question from Senator McKim on Metcash's views on the proposed bill, argued that it was choice that drives competition and is a restraint on pricing and to that end:

> Our view is that we're not sure that that proposal will deliver the additional choice that the community is looking for. We are more focused on mergers and on limiting the increasing market power, making it harder for those entrenched positions to grow further.[45]

8.61 Woolworths Group did not support the bill, or 'divestiture powers more broadly'. Woolworths listed several concerns about the possible unintended consequences of divestiture, and by way of example suggested that:

- it was unclear who would acquire a divested store, and whether the acquirer would be capable of running the store efficiently and cost-effectively;

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42 Australian Retailers Association, *Submission 10*, p. 2.

43 Woolworths Group, *Submission 1*, p. 3.

44 Woolworths Group, *Submission 1*, p. 1. See also: Ms Anna McGrath, Chief Executive Officer, ALDI, *Committee Hansard,* 11 April 2024, p. 9.

45 Mr Grant Ramage, Chief Executive Officer, Metcash, *Committee Hansard*, 11 April 2024, pp. 15 and 19.

- a divested store would no longer have the support of a national supply chain and technological platforms – impacting on the delivery of products to stores efficiently, cost-effectively and reliably, and with 'inevitable supply chain disruptions';
- a divested store would no longer price its products according to a national or state-based pricing policy – 'which would impact significantly any regional or remote store, including increased prices for the local community'; and
- if a divested store was not as successful under new ownership, 'it may reduce its range, operations and employment and would be a less reliable source of food and everyday needs for its local community'.[46]

8.62 Woolworths also pointed to the possible unintended consequences of divestiture on broader supply chains and transport networks:

> If divestiture was implemented, end-to-end supply chain, transport and distribution networks would be threatened. … Disruptions to information flows, integrated systems and processes, logistics scale and current supply chain investment would add inefficiencies. A reduced scale and greater reliance on third party supply arrangements would also impact future supply.[47]

8.63 In appearing before the committee, Coles Group also put forward its concerns about unintended consequences of divestiture. Chief Executive Officer Ms Leah Weckert provided a list of potential adverse consequences, including 'higher prices for consumers, potential lower investment in the grocery sector in Australia [and] potential poorer outcomes' for regional areas, and job losses.[48] Ms Weckert also saw several risks resulting from the enactment of divestiture laws:

> If you have grocery operators knowing that, because of divestiture laws, there's almost a cap on the size to which they can grow, that potentially limits the investment that businesses are willing to make to continue to develop their supply chain capability, to expand stores. One of the things, when you look at the grocery industry in Australia, is that customers have hugely benefited of from the amount of capital investment that the large supermarket chains have put into Australia, whether that's Woolworths, Coles or Aldi—or even Costco—with the development of infrastructure and stores.[49]

8.64 The National Farmers Federation (NFF) suggested that 'supermarkets and retailers do use their market power to the detriment of farmers', and that the

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46 Woolworths Group, *Submission 1*, pp. 1 and 2.

47 Woolworths Group, *Submission 1*, p. 4.

48 Ms Leah Weckert, Chief Executive Officer and Managing Director, Coles Group, *Committee Hansard*, 16 April 2024, p. 50.

49 Ms Leah Weckert, Coles Group, *Committee Hansard*, 16 April 2024, p. 51.

sector had advocated for a range of measure to 'improve and strengthen Australia's competition policy settings'. Notwithstanding these views, the NFF took a cautious approach to the bill and its aims:

> From the NFF's perspective, both the provision and any use of such remedies by the ACCC would represent both a significant shift and magnitude of intervention by government in the regulation of corporate activity in Australia. Given this, thorough investigation would be required to provide significantly greater clarity on how such provisions would be operationalised and the consequences of such divestment orders on the supply chain.[50]

Strengthened merger laws and a mandatory food and grocery code of conduct

8.65 Some submitters did not directly comment on the proposed divestiture laws, but instead suggested other solutions that may improve competition in the retail grocery sector in Australia.

8.66 For instance, SPAR Australia offered several recommendations focused on 'transparency, innovation, and fair market access', including:

- implementation of a mandatory Grocery Code;
- prohibition of unfair practices;
- the strengthening of merger assessments; and
- establishing robust reporting and monitoring mechanisms to the ACCC.[51]

8.67 SPAR suggested that implementation of these steps would:

> … cultivate a more dynamic and competitive marketplace that benefits consumers, supports small businesses, and fosters innovation and growth. It is crucial for policymakers, regulators, and industry stakeholders to collaborate in enacting these measures to ensure a vibrant and sustainable future for the supermarket sector.[52]

8.68 Woolworths was similarly supportive of the Grocery Code becoming mandatory, instead of the enactment of divestiture powers.[53]

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50 National Farmers' Federation, *Submission 2*, p. 2.

51 SPAR Australia, *Submission 3*, pp. 1–2.

52 SPAR Australia, *Submission 3*, p. 2.

53 Woolworths Group, *Submission 1*, p. 2.

Chapter 9
Committee views and recommendations

9.1 Australia is in the midst of a cost of living crisis, and yet the supermarkets—and especially the Coles and Woolworths duopoly—are making record profits.

9.2 Consumers are bearing the brunt of increases in food and grocery prices, and domestic small agricultural suppliers and businesses are being squeezed to constantly provide more for less, risking their livelihoods and those of the people around them. They risk even more if they dare to speak out and question the way this duopoly deals with its suppliers.

9.3 The evidence to this committee from shoppers, consumers, farmers and other suppliers, supermarket employees and even smaller supermarket competitors has shown that reform of the supermarket sector is needed. The supermarket duopoly in this country is operating without proper oversight and restraint, thanks to outdated and ineffectual consumer and competition law.

9.4 The committee received many submissions from people struggling to make ends meet, struggling to feed their families and to buy the most basic necessities of life. We heard from welfare organisations and directly from individuals about the toll this takes on their lives. While there are many causes of the current cost of living pressures, supermarket prices are certainly contributing. That they are faced with choices of buying food or seeing the doctor; skipping meals; going without healthy food in favour of cheaper unhealthy foods. We heard about people who have resorted to dumpster-diving to rescue discarded groceries in order to eat.

9.5 This is not okay in a wealthy nation like Australia.

9.6 The committee heard from some farmers and other suppliers who struggle to make ends meet when they haven't been given a price increase in 15 years. We heard that farmers fear retribution for trying to negotiate on a level playing field. The committee heard again and again of the numbers of smaller farmers who are leaving the industry, saying 'there are easier ways to lose money'. Not only does this impact those individual farming families, but it also puts Australia's food security at risk.

9.7 This is not okay in a wealthy nation like Australia.

9.8 The evidence before the committee suggests that an overhaul of the supermarket sector and a competition policy is needed.

9.9 To that end, this chapter lays out the committee's views on how such reform should progress, through:

- divestiture powers, to reduce the market share of supermarkets, where a supermarket retailer has been found to have misused their market power or engaged in unconscionable conduct;
- prohibiting the charging of excess prices;
- creation of a new Commission on Prices and Competition with appropriate powers of oversight, investigation and referral to the Australian Competition and Consumer Commission (ACCC);
- giving the ACCC new and improved powers to investigate and enforce unfair trading practices and pricing, the Unit Pricing Code, merger reforms and other competition and consumer laws;
- making the Food and Grocery Code of Conduct mandatory, and including the greenlife industry in the code;
- reforms to the Unit Pricing Code to introduce mandatory labelling standards and to help consumers identify and understand 'shrinkflation' and promotional material; and
- strengthening the National Food Waste Strategy.

Engagement with the committee

9.10 Before moving to recommendations, the committee wishes to extend its thanks to the many correspondents who came forward with stories about the often-inexplicable pricing practices seen in supermarkets and the further impact this has had on their lives in a cost of living crisis while they are trying to make ends meet.

9.11 The committee is especially grateful to those who took on the role of whistleblower, speaking frankly to the committee—both publicly and privately—about how Coles and Woolworths treat and engage with their farmers and suppliers, and how they set food and grocery prices. Your evidence was invaluable in helping the committee develop its views and recommendations, and the committee acknowledges the courage it took for you to share your experiences.

9.12 Notwithstanding the evidence put to this committee about the behaviour of supermarkets towards both consumers and suppliers, the committee acknowledges that the major supermarkets and most other key inquiry participants engaged cooperatively with the committee where possible, which the committee appreciates.

Mr Brad Banducci

9.13 However, one area where the committee did not enjoy productive engagement with the major chains was during the public hearing appearance of the Chief Executive Officer of Woolworths, Mr Brad Banducci.

9.14 Mr Banducci persistently refused to provide the committee with Woolworths' most recent return on equity (ROE) result, despite being asked to do so many times by multiple senators. It remained open to Mr Banducci to provide the ROE figure as requested, and then inform the committee about how Woolworths does or does not consider such a metric as relevant to the measure of success of its business.

9.15 The committee can only surmise that in failing to provide the ROE, Mr Banducci knew full well that the ROE figure would not reflect well on his company during a cost of living crisis and during intense public scrutiny—to the point where the committee had to explain to Mr Banducci the significant personal penalties which the Senate could impose if a witness is found to be in contempt of the Senate.

9.16 Penalties for contempt can include financial penalties, or up to six months jail time. The committee takes this opportunity to reiterate that any such penalties would be a matter for the Senate as a whole to consider and determine—committees themselves have not been delegated such powers by the Senate. Committees can, however, make recommendations to the Senate that it investigate matters further, in order to determine if contempt has occurred.

9.17 Woolworths later provided its 2023 ROE to the committee on notice. The committee is therefore not minded to pursue the matter. However, the committee reminds all those engaging with the Senate about the powers of committees to compel the production of documents, the answering of questions and the appearance of witnesses.

9.18 Other companies, like Bunnings, were also not forthcoming with the committee and its requests for evidence. The committee was disappointed that the Bunnings Chief Executive Officer did not appear personally to give evidence. The committee also sought to hear from a range of multinational companies, to seek their explanations as to their roles in food and grocery price setting. As laid out later in this chapter, the committee considered the engagement of these companies to be unsatisfactory.

Divestiture powers

9.19 It is a well-accepted proposition that market concentration impedes competition, reduces productivity growth, slows innovation, and is a massive drain on the economy as a whole. It is another well-accepted proposition that competition stimulates economic activity, and sometimes the market requires intervention in order to ensure that competition is set at an appropriate level.

9.20 There was considerable support put forward during the inquiry for Australia's competition and consumer laws to be supported by expanded powers of divestiture. While noting that some participants did not agree that divestiture powers were the best approach, a clear majority of inquiry participants advised that divestiture powers would be an important 'final step' in competition regulation, to be drawn upon when all else fails.

9.21 The committee was also told that having divestiture powers in the face of proven abuses of market power would have a 'big stick' impact of ensuring that supermarkets take regulation more seriously. Divestiture would be a valuable final option in the arsenal available to government to ensure that supermarket economic activity remains on an appropriately level playing field, to the benefit of all within the Australian economy.

9.22 The Competition and Consumer Amendment (Divestiture Powers) Bill 2024, subject to inquiry by this committee and currently before the Senate, would implement a divestiture remedy for addressing abuses of market power, and it received considerable support during the committee's inquiry into the bill. However, the powers being enacted in the bill would be economy-wide powers rather than focused on the issue before the committee, being supermarkets. The committee could not reach agreement on the bill.

9.23 The committee did agree to divestiture powers being enacted, if directed specifically at the supermarket sector.

Recommendation 1

9.24 The committee recommends the Australian Government amend the *Competition and Consumer Act 2010* to create divestiture powers specific to the supermarket sector, where a supermarket has been found to have misused their market power under section 46 of the Act, or engaged in unconscionable conduct.

Price gouging

9.25 The question of whether price gouging exists in the supermarket sector was at the heart of this inquiry. Chapter Seven outlined that price gouging refers to sudden and seemingly unjustified increases in prices, and how this manifests in Australia was outlined in detail in chapters three and four. The answer seems to be resounding yes, with it occurring in many and varied ways. While many of those ways appear minor on the surface—a dollar here, a fraction of a percentage there—they add up incrementally. Taken as a whole, those individual activities create a picture of an industry driven by profits at the expense of consumers, who have a right to affordable and nutritious food.

9.26 There were many calls from consumers and suppliers alike, to enact stronger protections specifically against price gouging, while improving transparency around price-setting practices and ensuring adequate enforcement mechanisms.

9.27 The committee heard from the supermarkets and their advocate organisations, that price gouging does not exist. The question remains: if there is no price gouging, then such legislation is not to be feared, as the prohibitions would not be triggered.

9.28 However, the evidence brought forward by people willing to speak out about the business practices of Coles and Woolworths suggests that maintaining margins and increasing margin growth is occurring at the expense of suppliers, consumers, and best business practices, and without proper justification.

9.29 The committee therefore recommends that section 46 of the *Competition and Consumer Act 2010* be amended to make it an offence to charge excessive prices, in terms similar to the European Union provisions. Consideration should also be given to the reinstatement of GST (Goods and Services Tax) pricing legislation of 2000 to 2003, regarding the naming of businesses and industries that overcharge.

Recommendation 2

9.30 The committee recommends that the Australian Government progress legislative amendments to section 46 of the *Competition and Consumer Act 2010* to prohibit the charging of excess prices (otherwise known as price gouging).

Pricing commission

9.31 Many expert witnesses recommended a new commission be established to review the competition environment and the impact of that environment on supplier and consumer prices.

9.32 The committee supports these views and considers that such a commission would work in collaboration with the ACCC, where high-level breaches of regulation would be referred to the ACCC for investigation and prosecution.

9.33 However, a commission could work more holistically on competition issues and have a more detailed pricing oversight function than would be appropriate for the ACCC, including requiring data transparency from supermarkets and publishing regular reports on pricing trends.

9.34 The committee agrees with these expert recommendations, and is of the view that a new Commission on Prices and Competition (Pricing Commission) should be established to:

- monitor and investigate supermarket prices and price setting practices, including prices along the supply chain (including the farmgate, wholesale and retail price), mark-ups and profits;
- conduct market studies to review restrictions on competition in the supermarket sector;
- require supermarkets to publish historical pricing data that is transparent and accessible to both suppliers and consumers;
- access any data and information required to undertake its work, including supermarket pricing, mark-ups and profits data and price setting policies (both historical and current);

- make referrals to the ACCC for enforcement; and
- publish reports as required and at least on an annual basis.

9.35 The Pricing Commission should have access to any data it requires from the supermarket retailers and publish regular reports on the data, including but not limited to farmgate, wholesale and retail prices, input costs and trends in supermarket pricing, profits and mark ups.

9.36 The Pricing Commission should require all major supermarkets to publish historical grocery pricing information to increase transparency and allow consumers to track price changes over time.

9.37 The Pricing Commission should also review potential reforms that would:

- enforce supermarkets to publish the cost of produce available for both small and large format stores online where there is a price difference; and
- prevent supermarket practices of:
  - multi-buy discounts that aim to increase consumer spending;
  - use of app-only discounts on essentials; and
  - member-only pricing.

Recommendation 3

9.38 The committee recommends that, as a matter of priority, the Australian Government establish a Commission on Prices and Competition to examine prices and price setting practices of industries across the economy, and review government and other restrictions on effective competition which are leading to high prices. In relation to supermarkets, the commission should be provided with the authority to:

- **monitor and investigate supermarket prices and price setting practices, including prices along the supply chain (including the farmgate, wholesale and retail price), mark-ups and profits;**
- **conduct market studies to review restrictions on competition in the supermarket sector;**
- **require supermarkets to publish historical pricing data that is transparent and accessible to both suppliers and consumers;**
- **access any data and information required to undertake its work, including supermarket pricing, mark-ups and profits data and price setting policies (both historical and current);**
- **make referrals to the Australian Competition and Consumer Commission for enforcement; and**
- **publish reports as required and at least on an annual basis.**

Unfair trading relationships

9.39 The committee heard story after story about the power imbalances that supermarkets exert over their suppliers to bring down the wholesale prices of groceries and fresh foods. The same stories were told from different people, in different regions and across different sectors and industries. The committee heard the same stories of unfair trading practices arising from supermarket duopoly of Coles and Woolworths.

9.40 The committee heard from many small business farming organisations and individual farmers about their supplier relationships and contracts with supermarkets. This evidence was of concern, not only because of what was said, but because witnesses themselves were so fearful of speaking and so thankful that their voices were being heard.

9.41 Many of these stories were told to the committee in confidence, or with hidden identities because people were afraid of backlash from supermarkets with whom they had ongoing trading relationships. The committee also heard that many farmers are too scared to speak out and use the existing complaint and arbitration processes under the current Food and Grocery Code.

9.42 Once again, the committee heard from the supermarkets and their advocate organisations, that prohibitions on unfair trading practices were not needed. And just as with price gouging, the question remains: if there are no unfair trading practices, then such legislation is not to be feared, as the prohibitions would never be triggered.

9.43 In addition, there is now a volume of evidence and support—including from the supermarkets themselves—to make the Grocery Code mandatory. This has now been recommended by people across the political spectrum, including, for example, by Professor Allan Fels in his ACTU report; by Dr Craig Emerson in his interim report for the Food and Grocery Code of Conduct review; and by the House of Representatives Standing Committee on Agriculture (chaired by the Government).

9.44 But it was agreed that a mandatory code must be accompanied by financial and other penalties if it was to act as an effective deterrent to the use and abuse of negotiation and market power.

9.45 The committee supports the Code being made mandatory and being bolstered by appropriate financial and other penalties. The committee acknowledges that the Dairy Code of Conduct and the Horticulture Code of Conduct are existing, mandatory codes, imposing minimum standards on those industries, with penalty provisions. Making the Food and Grocery Code of Conduct mandatory should not adversely impact existing industry codes, and the committee recommends the Dairy and Horticulture Codes become schedules to the Food and Grocery Code to ensure their seamless intersection.

9.46 The committee also notes that The Treasury recently consulted on unfair trading practices and potential gaps in the Australian Consumer Law. Public consultation closed on 29 November 2023. The Government is currently considering the submissions received.[1] The committee encourages The Treasury to consider the evidence put to this committee when formulating its views.

9.47 The ACCC recommended the introduction of an economy-wide prohibition on unfair trading practices which would empower the ACCC to address unfair practices in the supermarket sector and across the economy which are not currently captured by existing laws.[2]

9.48 The committee supports this position and in light of the evidence before it likewise recommends that the ACCC be given the appropriate authority to investigate and prosecute unfair trading practices.

Recommendation 4

9.49 The committee recommends the Australian Government progress legislative amendments to allow the Australian Competition and Consumer Commission (ACCC) the authority to investigate and prosecute unfair trading practices.

Recommendation 5

9.50 The committee recommends that The Treasury take immediate steps to make the Food and Grocery Code of Conduct mandatory, with an appropriate regime of financial and other penalties for breaches and protections against supplier retribution. The code should be made mandatory as soon as possible and no later than 30 September 2024.

9.51 To ensure complete supply chain protection, the mandatory Food and Grocery Code of Conduct must include the Dairy Code of Conduct and the Horticulture Code of Conduct as schedules.

9.52 The Food and Grocery Code of Conduct should:

- **be fully mandatory for retailers with enforceable rules;**
- **be enforceable with substantial penalties for breaches;**
- **include mandatory minimum standards that cannot be 'opted out' of;**
- **be overseen by Code arbiters who are fully independent of supermarkets, who should proactively conduct random audits so suppliers have anonymity in the process;**
- **create provisions specifically for the trading of fresh produce, reflecting the perishability of the product and the particular vulnerability of suppliers;**
- **create a portal for suppliers to lodge issues, and once a threshold is met and a consistent theme is identified, the ACCC can investigate the issue;**

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1 The Treasury, *Submission 53*, p. 9.

2 Australian Competition and Consumer Commission (ACCC), *Submission 107*, p. 4.

- **investigate implementing measures under the Code that provide suppliers with improved information symmetry, which should include creating a price register for farmers to assist them in understanding market prices across primary industries; and**
- **a public consultation period to implement all of the above.**

Greenlife industry

9.53 The committee heard that certain products that are defined as groceries in the Grocery Code are not protected by the Code, when sold by stores that are not a code signatory.

9.54 Specifically, when greenlife products such as seedlings and plants are sold in Coles and Woolworths stores, those suppliers are protected by the Grocery Code. But when sold in Bunnings, they are not protected by the Code.

9.55 Bunnings has indicated it does not believe it is appropriate for it to be covered by the Code, as it is not a traditional grocery store. The committee considers this to be a moot point. If a store sells items defined as a grocery, and has such a significant retail footprint as a big box store like Bunnings, then that store is—at least in part—a grocery store, and it should be required to abide by the laws and regulations of a grocery store.

9.56 The committee was disappointed by the engagement of Bunnings throughout its inquiry. The CEOs of Coles, Woolworths, ALDI, Metcash and other major retailers all appeared before the committee, voluntarily, when asked to do so. However, the Bunnings CEO elected not to appear and to not respond directly to the evidence this committee had heard from the greenlife industry.

9.57 The committee heard alarming evidence of greenlife suppliers being treated in similarly unfair ways to farmers in the horticultural sector. And just as with the supermarkets, the committee heard from Bunnings that they do not use their excessive market power to engage in unfair trading practices. Indeed, Bunnings declared no less than four times they were 'shocked' and 'saddened' to hear such accounts.

9.58 The committee sees no reason indicating greenlife industries should be excluded from the Grocery Code. The committee recommends that The Treasury ensure that greenlife industries are captured by the provisions of the mandatory Grocery Code, along with any large retailer that stocks food and/grocery products—even if those products are not their main products, all such stores should be Code signatories.

Recommendation 6

9.59 The committee recommends that The Treasury amend the mandatory Food and Grocery Code of Conduct to explicitly provide that:

- **greenlife industries are captured by the code; and**

- **the code includes any large retailer that stocks food and/or grocery products.**

Merger reforms

9.60 The ACCC has noted that of the 1000 to 1500 mergers that take place in Australia each year, only 330 of those come to its attention under the current voluntary merger regime. The fact that so few mergers are subject to compulsory oversight and scrutiny is alarming, and in the context of supermarkets, does nothing to prevent the duopoly of increasing its market share without proper investigation and oversight.

9.61 There have long been calls for reforms to Australia's merger laws, including recent calls to reverse the onus of proof, whereby corporations would be required to show their acquisitions are not anti-competitive, rather than the current case where government must prove otherwise. The current framework is clearly not working in the interests of the Australian public or economy.

9.62 In March 2023, the ACCC outlined a range of reforms to 'strengthen the effectiveness of Australia's current merger regime' as an 'an essential ingredient in the creation and maintenance of competitive, dynamic, and resilient markets'.[3] Supermarkets were noted in the proposal paper as being one of the areas of the economy that were 'highly concentrated with a small number of providers retaining large market shares over long periods of time'.[4]

9.63 The steady acquisition of smaller food and grocery retailers by Coles and Woolworths is significantly dampening competition in an already highly-concentrated market. Alongside divestiture powers, merger reform will play a vital role in promoting a more competitive and diverse supermarket sector.

9.64 The Australian Government published a proposal for merger reform on 10 April 2024. The committee suggests that the Government's proposal does not go far enough, as it does not include some important changes to merger laws as proposed by the ACCC.

9.65 The committee supports the merger reforms as suggested by the ACCC and echoes the calls from the ACCC that Australia's merger regime be made fit-for-purpose, noting such reform will play an important role in increasing competition in and properly regulating the supermarket industry.

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3 ACCC, *Outline to Treasury, ACCC's proposals for merger reform*, March 2023, p. 1.

4 ACCC, *Outline to Treasury, ACCC's proposals for merger reform*, March 2023, p. 4.

Recommendation 7

9.1 The committee recommends that the Australian Government implement merger reforms as proposed by the Australian Competition and Consumer Commission (ACCC), including:

- **mandatory notification of mergers above a prescribed notification threshold, with a call-in power for proposed transactions below the threshold that raise potential competition concerns;**
- **merger clearance tests applied by the ACCC and Tribunal on review;**
- **reversal of the test for clearance under section 50 of the *Competition and Consumer Act 2010* to require merger parties to satisfy the ACCC, or the Australian Competition Tribunal on review, that the transaction would not be likely to substantially lessen competition; and**
- **amendments to section 50 of the *Competition and Consumer Act 2010* to provide for increased focus on changes to the structural conditions resulting from a merger that may make markets less competitive and to address creeping acquisitions.**

Land banking

9.66 Despite their suggestions to the contrary, it appears to the committee that land banking practices are being used by supermarkets as means to reduce competition, particularly in greenfield sites. The Australian Securities and Investments Commission (ASIC) definition of land banking is 'a real estate investment scheme that involves buying large blocks of undeveloped land'.[5] In trying to suggest that Woolworths does not engage in land banking, Mr Brad Banducci, CEO of Woolworths, described an approach to site acquisitions which, in essence, meets that ASIC definition.

9.67 The committee heard that Coles holds around 50 development sites, some acquired up to 20 years ago, while Woolworths holds around 60 development sites, some of which were acquired nearly 30 years ago. Between the two retailers, these are significant land holdings.

9.68 The committee wishes to thank Woolworths and acknowledge the comprehensive and timely way it engaged with the committee on this issue. Conversely, the committee expresses its concern and disappointment with Coles, which did not comply with similar requests from the committee, and which meant issues around land acquisition by the major retailers could not be properly interrogated.

9.69 Nonetheless, evidence to the inquiry (discussed in Chapter 6), was that land banking and creeping acquisitions are used concurrently by the supermarket duopoly to solidify their position and market power in the industry. The ACCC advised the committee that zoning and planning laws should have better regard

5 *Land Banking*, moneysmart.gov.au/investment-warnings/land-banking (accessed 29 April 2024).

to supermarket competition, and that past site acquisition notification agreements between the ACCC and supermarkets have lapsed. It is therefore appropriate that any reforms to merger law be considered alongside issues of land banking.

9.70 The committee is therefore of the view that land banking should be addressed in the merger reforms being progressed, to increase the powers of the ACCC to allow it to investigate and make recommendations to government on land banking in the supermarket sector.

Recommendation 8

9.71 The committee further recommends that as part of reform to merger laws, the Australian Government provide the Australian Competition and Consumer Commission with the powers to investigate and make recommendations to government to address land banking in the supermarket sector.

Unit Pricing

9.72 Unit pricing helps consumers to compare prices and find the best value for money by showing the cost of a product using standard units of measurement. Furthermore, unit pricing in an effective tool to help consumers identify and understand when stores or producers use 'shrinkflation' tactics, where the price of an item is kept the same but the item itself is made smaller—effectively making it more expensive by weight or size.

9.73 To protect and enhance unit pricing, the committee supports amendments and improvements to the Unit Pricing Code. The Government should introduce a mandatory information standard for supermarkets that ensures their pricing is clear, and consistent with consumer expectations. This mandatory standard should include a requirement to prominently display a change in size and price of a product, along with any corresponding change in unit price.

9.74 In addition, the Government should convene an independent, national review of the unit pricing system to identify barriers to compliance (including penalties for non-compliance, 'principles-based' requirements and the units of measure used for unit pricing) and identify opportunities to increase its effectiveness and scope.

Recommendation 9

9.75 The committee recommends that the Australian Government amend the Unit Pricing Code made under the *Competition and Consumer Act 2010,* so that supermarkets are required to:

- **adopt a mandatory information standard for unit pricing, including improvements to the legibility and prominence of unit prices, and changes in price and size of products, in line with consumer expectations;**

- **standardise and rationalise discount and promotional terms, to prevent promotional material indicating a discount when one is not available; and**
- **prominently disclose any changes in the price or size of a product.**

9.76 The committee recommends that the Australian Government ensure the Australian Competition and Consumer Commission is provided with sufficient regulatory and enforcement powers regarding the Unit Pricing Code.

9.77 The committee appreciates that the ACCC is already doing important work in price monitoring and regulatory enforcement and oversight.

9.78 The recommendations put forward by this committee will only increase the volume of work for the ACCC and the legislation it must administer. It is therefore crucial that the ACCC be given additional funding and resourcing to complete its work and to regulate, investigate, enforce and prosecute competition policy matters.

9.79 For the avoidance of doubt and to ensure there are no unforeseen barriers to the ACCC doing its work, the committee also recommends that any legislative powers given to the ACCC be accompanied by the power to compel evidence whenever necessary.

Recommendation 10

9.80 The committee recommends the Australian Government increase funding to the Australian Competition and Consumer Commission (ACCC) to ensure the ACCC is adequately funded and resourced to regulate, investigate, enforce and prosecute competition policy matters, including unfair trading practices, the Unit Pricing Code, the Food and Grocery Code of Conduct, and any other matters falling within its remit.

9.81 The committee further recommends that the ACCC be given appropriate legislative powers to compel whatever information it requires as part of its investigative work.

National food waste strategy

9.82 In addition to paying low wholesale prices to suppliers and charging high prices to consumers, supermarkets are contributing to the unacceptably high rates of food waste in Australia.

9.83 This is both by individual supermarkets binning fresh food and grocery items, but also by the enforcement of unrealistic cosmetic standards on fresh foods, particularly fruit and vegetables. The committee heard of pallets of produce being turned away at the supermarket back door, or entire crops being abandoned or ploughed back into fields.

9.84 In the current environment of cost of living pressures and climate change, this cannot be allowed to continue. Whether a supermarket is appropriately managing food waste should not come down to individual store managers; there is clearly an absence of a consistent best practice approach to this issue, while foodbanks and other charities are being overwhelmed.

9.85 The committee recommends that in order to address food waste in the supermarket chain, the Department of Climate Change, Energy the Environment and Water should update and broadly consult on the 2017 National Food Waste Strategy to:

- ensure supermarkets publish regular data on how much food they donate to foodbanks, throw in the bin (the reasons why they throw it in the bin), and how much fresh produce they reject from growers;
- investigate how cosmetic standards impact farmers and whether there should be independent standards;
- investigate reforming to use-by and best-before labels to reduce wastage of edible food due to consumer confusion; and
- ensure these changes have a widely consulted public consultation period.

Recommendation 11

9.86 The committee recommends that the Department of Climate Change, Energy, the Environment and Water update the 2017 National Food Waste Strategy to include a best-practice, nation-wide approach to addressing food waste in the supermarket chain. The updated strategy should consider:

- **reform of the use-by and best-before labels and their role in food wastage and consumer confusion;**
- **whether unrealistic cosmetic standards are adversely affecting farmers and the quantity of food waste across the country; and**
- **a requirement for supermarkets to publish regular data on food waste volumes, including food rejected for cosmetic reasons and food donated to foodbanks and similar charities.**

9.87 The committee recommends that the above reforms be progressed following a public consultation period.

Retail worker wages and conditions

9.88 Tragically, the committee heard that supermarket workers—some of the lowest paid workers in Australia—are often the ones copping the anger from a public fed up with being ripped off by supermarkets. This anger and frustration can manifest in ways that create working environments that are clearly a breach of the work health and safety standards that all workers should expect in their workplace.

9.89 The committee appreciates that many of these incidents are outside the control of the supermarket chains, and don't doubt that the employers take this seriously. The committee shares the view that there is never a reason why anyone should be abused in their workplace. Nonetheless, as employers it is beholden to both Coles and Woolworths—as with all other employers—to create and maintain safe working spaces for employees wherever possible, to the fullest extent possible.

Recommendation 12

9.90 The committee calls on supermarkets to do more to improve the health and safety standards for supermarket employees, to ensure supermarket workers are appropriately protected from customer abuse.

Multinational food companies and 'big box' companies

Multinational companies

9.91 As part of its work, the committee invited the following companies to appear before it at a public hearing: Coca-Cola Europacific Partners; Kellanova (formerly Kellogs); Kraft Heinz Australia; Mars Australia; Nestle Australia; PepsiCo Australia; Procter & Gamble Australia; and Unilever Australia.

9.92 All eight companies declined the committee's invitation, much to the committee's dissatisfaction. All companies argued that they were given insufficient time in which to prepare for the hearing, and further, that their CEOs and other key executives were on leave and/or overseas. As a result, the committee instead requested written submissions from these companies and placed written questions on notice to them—however, this did not give the committee the ability to properly interrogate the evidence put forward.

9.93 The committee would expect that when invited to appear before a Senate committee, companies as large as those invited would have enough personnel to appear before the committee, regardless of the availability of the CEO or other executives. To say that officials were unavailable seems somewhat disingenuous to the committee.

9.94 While these companies have now provided submissions and other written materials to the committee, this information came in far too late for the committee to interrogate it or engage with it in any meaningful way.

9.95 This is an unsatisfactory outcome, but noting this committee must conclude, members will seek to continue this work in other ways. The committee therefore recommends a referral to the Senate's Economics References Committee, to ensure that these companies are given ample opportunity to face scrutiny and answer to the Australian public for their role in the cost of living crisis.

Recommendation 13

9.96 The committee recommends that the Senate refer to the Economics References Committee the following matters for inquiry and report by the last sitting day of February 2025:

- **The role of multinational food manufacturers in the supermarket industry in Australia, with particular reference to:**
  - **the bargaining power of multinational food companies when engaging with Australian supermarkets;**
  - **the process of multinational food companies in negotiating price changes with Australian supermarkets and retailers;**
  - **the role of the multinational food companies in price setting and how this impacts on food prices;**
  - **the price of company products in other jurisdictions and how these compare to Australia; and**
  - **any related matters.**

Big box companies

9.97 The committee received some evidence about the actions of the big box retailers—and in particular Bunnings—which is increasingly selling products that would traditionally fall into the food and grocery sector.

9.98 Big box retailers did not engage with this committee, but are key players in the supermarket space and in the retail sector more broadly. The committee suggests that these big box stores should be subject to an inquiry of their own.

9.99 Together, the committee's recommendations for inquiries into multinational and big box companies will increase transparency around pricing practices and market behaviours, and their role the cost of living challenges currently facing Australians.

Recommendation 14

9.100 The committee recommends that the Senate refer to the Economics References Committee the following matters for inquiry and report by the last sitting day of February 2025:

- **The role of Australia's 'big box' retailers in price setting, with particular reference to:**
  - **the market behaviours of such retailers, including price negotiation practices and engagement with suppliers;**
  - **acquisition and use of land; and**
  - **any other related matters.**

Senator Nick McKim
Chair

Chair's Additional Comments

Introduction

1.1 As Chair I would like to thank everyone who participated in this inquiry, including through providing a submission, appearing at a hearing, submitting confidential information to the committee and to my office, and engaging with the inquiry through social media channels.

1.2 I would also like to thank the members of the committee for their collaborative engagement throughout the inquiry, and the secretariat for its support for the committee.

Divestiture powers

1.3 I note the committee recommended the Australian Government create divestiture powers specific to the supermarket sector.

1.4 I also note the committee was unable to agree whether the Senate should pass the Australian Greens' Competition and Consumer Amendment (Divestiture Powers) Bill 2024 that would introduce economy-wide divestiture powers into Australia's competition law.

1.5 Whilst the Greens support the creation of divestiture powers that would apply to the supermarket sector, we strongly prefer economy-wide divestiture powers to improve competition and bring down the cost of essential products and services across the economy.

1.6 An economy-wide divestiture power as proposed by the Competition and Consumer Amendment (Divestiture Powers) Bill 2024 would allow the Courts to order a firm to divest assets to reduce its market share, where a firm has been found to have misused its market power. This would provide a powerful stick to disincentivise firms from using their market power to price gouge consumers and engage in anti-competitive behaviour. Where a firm was required to divest assets, it would lead to greater competition in an industry which, under accepted economic analysis, would bring down prices for consumers.

1.7 Australia has one of the most concentrated supermarket sectors in the world, with Coles and Woolworths together holding 65 per cent share of the market. However, market concentration is not an issue unique to the supermarket sector, with many industries across the Australian economy becoming increasingly concentrated, including in the banking, airline, energy and telecommunications sectors.

1.8 Treasury analysis shows that the market power of Australia's largest firms across the economy has increased in the last two decades. This has coincided with higher price markups and sluggish productivity. Average firm mark-ups in Australia increased by around six per cent between 2004 and 2017.

1.9 This high level of market concentration has contributed to the inflationary cycle Australians have experienced since the COVID-19 pandemic began. At Senate Estimates in February this year, Reserve Bank Governor, Ms Michele Bullock agreed that some firms are using a lack of competition and the cover of high inflation to hike prices above what would be required to meet increases in their input costs.[1]

1.10 The inquiry received overwhelming evidence that everyday Australians are increasingly struggling to afford to buy food as the price of groceries have skyrocketed in the last few years.

1.11 However, the evidence provided to the inquiry was clear that whilst the cost of groceries is impacting everyday Australians, this is not happening in isolation. Instead, the high cost of food needs to be addressed in the context of the escalating cost of many essential goods and services, including rents, mortgages, energy bills, insurance, and medical services. As Mr Owen Gregory from Grassroots Action Network Tasmania observed:

> … between cost-of-living costs such as continuously increasing rent prices, fuel prices, energy and heating bills going up, there's less you can spend on groceries or that you have left in that allowance each fortnight, and the prices seem to increase.[2]

1.12 Economy-wide divestiture powers were supported by a clear majority of witnesses that provided relevant evidence to the inquiry including, Professor Allan Fels, Associate Professor Andy Schmulow, Professor John Quiggin, the Australia Institute, Per Capita, the National Farmers Federation Horticultural Council, and TasFarmers.[3]

1.13 Mr Matt Grudnoff from the Australia Institute supported economy-wide divestiture powers, noting:

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1 Ms Michele Bullock, Governor, Reserve Bank of Australia, *Senate Economics Legislation Committee Hansard,* 15 February 2024, pp. 11–12.

2 Mr Owen Gregory, Community Member, Grassroots Action Network Tasmania, *Committee Hansard,* 7 March 2024, p. 2.

3 See: Professor Allan Fels AO, Private capacity, *Committee Hansard,* 15 April 2024, p. 1; Associate Professor Andy Schmulow, Private capacity, *Committee Hansard,* 16 April 2024, pp. 80–81; Professor John Quiggin, Private capacity, *Committee Hansard,* 11 April 2024, pp. 35–36; Mr Matt Grudnoff, Senior Economist, and Dr Greg Jericho, Chief Economist, The Australia Institute, *Committee Hansard,* 11 April 2024, p. 27–29; Ms Sarah McKenzie, Director, Policy and Research, and Ms Emma Dawson, Director, Per Capita, *Committee Hansard,* 11 April 2024, p. 21; Mr Jeremy Griffith, Representative, National Farmers Federation Horticultural Council, *Committee Hansard,* 7 March 2024, p. 18; Mr Nathan Calman, Chief Executive Officer, TasFarmers, *Committee Hansard,* 7 March 2024, pp. 27–28.

> We think divestiture powers are a good idea, and the main reason is the ACCC, as it currently stands, has very few powers to actually inject competition into a market that is already low in competition.[4]

1.14 Associate Professor Andy Schmulow also called for divestiture powers, stating:

> So what is the solution to excessive market concentration? The answer lies in refreshing, rejuvenating, renewing and revitalising our free market by introducing choice and competition. That requires the power to break up monopolies, duopolies and oligopolies. While Dr Emerson's solution to make the code of conduct mandatory is helpful and no doubt will afford some benefits, it fails to grasp the nettle, and the nettle is divestiture. This is not radical. It's standard practice in many other leading G20 jurisdictions and has been for decades.[5]

1.15 Not a single witness to the inquiry who supported divestiture powers, stated that divestiture powers should apply solely to supermarkets, rather than broadly across the economy. Former Australian Competition and Consumer Commission Chair, Professor Allan Fels indicated:

> I've long been of the view that our competition laws should include a power of divestiture for all businesses and that it should only apply if a business has been found in a court of law to have breached the competition provisions of the law, especially section 46, which prohibits misuse of market power …[6]

1.16 An economy-wide divestiture power would also bring Australia's competition policy in line with comparable international jurisdictions. Economy-wide divestiture powers are a standard part of the competition toolkit of most so-called free market economies around the world. The United States of America has had divestiture powers for over 130 years, and these have been used effectively to reduce the market power of companies in a range of industries, notably including the break-up of the AT&T telephone monopoly in the 1980s. The United Kingdom also has economy-wide divestiture powers.

Recommendation 1

1.17 That the Senate pass the Australian Greens' Competition and Consumer Amendment (Divestiture Powers) Bill 2024.

Senator Nick McKim
Chair
Greens Senator for Tasmania

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4 Mr Matt Grudnoff, The Australia Institute, *Committee Hansard,* 11 April 2024, p. 27.

5 Associate Professor Andy Schmulow, Private capacity, *Committee Hansard,* 16 April 2024, p. 76.

6 Professor Allan Fels AO, Private capacity, *Committee Hansard,* 15 April 2024, p. 1.

Additional Comments from Labor Senators

1.1 Labor Senators understand that the cost-of-living crisis is a major concern for many Australians. Greater competition is critical for putting downward pressure on prices and delivering more choice for Australians. With this in mind, we are fully supportive of the actions taken to date by the Government to ensure our competition and consumer policy settings achieve their purpose of enhancing the welfare of Australians.

1.2 This includes increasing penalties for anti-competitive conduct, banning unfair contract terms, establishing a designated complaints function within the Australian Competition and Consumer Commission (ACCC), making the most significant changes to merger laws in 50 years, and establishing the Competition Taskforce to investigate critical policy issues, including non-compete clauses, and ongoing work to prohibit unfair trading practices.

1.3 Labor Senators also note the Government's specific actions relating to supermarket prices, namely directing the ACCC to conduct an inquiry into Supermarket Pricing, appointing former Competition and Small Business Minister the Hon Dr Craig Emerson to lead an independent review of the Food and Grocery Code of Conduct and providing funding to consumer body CHOICE to provide price transparency and comparison reports on a quarterly basis.

1.4 In order to facilitate the committee's report, Labor Senators provide these additional comments to indicate our position on the various recommendations.

Divestiture powers

1.5 Labor Senators do not support passage of the Competition and Consumer Amendment (Divestiture Powers) Bill 2024, and do not support the committee's first recommendation around supermarket-specific divestiture powers.

1.6 Labor Senators note that greater competition is critical for lifting dynamism, productivity and wages growth, putting downward pressure on prices and delivering more choice for Australians dealing with cost-of-living pressures. Australia's productivity growth has slowed over the past decade, particularly during the period of the Coalition Government, and reduced competition has contributed to this—with evidence of increased market concentration, a rise in markups and a reduction in dynamism across many parts of the economy.

1.7 Many witnesses highlighted the importance of stronger merger laws, which address issues of creeping acquisitions, and include significant penalties for anti-competitive conduct. Labor Senators support recent reforms in this area.

1.8 Many witnesses to the committee noted that divestiture powers could lead to unintended consequences that have the potential to make Australian consumers and farmers worse off.

1.9 Previous Competition Reviews, including the 1993 Hilmer Review, 2003 Dawson Review and 2015 Harper Review, all considered, but recommended against the introduction of a divestiture power due to likely unintended consequences. These reviews found that to break up a firm may significantly reduce a firm's general efficiency and viability. We are particularly concerned about the impact that disruption to thin supply chains may have on regional communities.

1.10 We are also strongly of the view that consideration of additional powers for the ACCC should occur after the report of the current ACCC inquiry is received by the Government. We also note that the Government is already progressing important work that will address many of the concerns that have been expressed about market concentration—including merger reform—which many stakeholders have indicated is a greater priority.

Recommendation 2

1.11 Labor Senators note that the Australian Competition Law already contains significant provisions to address misleading and deceptive conduct, which includes actions which mislead consumers about the reasons for pricing and price changes.

1.12 Consideration of additional powers for the ACCC should occur after the report of the current ACCC inquiry is received by the Government.

Recommendation 3

1.13 Labor Senators do not support this recommendation. We note that the Competition Taskforce is already considering the various roles of competition institutions, as did the Harper Review. We are of the view that it is appropriate to allow the Taskforce to complete its work, and the ACCC to complete its inquiry, before consideration of any changes to the structure of institutions.

Recommendation 4

1.14 Labor Senators note that the Government is already progressing significant work in this area, in conjunction with the States and Territories. On 30 August 2023, the Government launched consultation on possible reforms to address unfair trading practices. The Government is currently considering the issues raised by stakeholders as part of that consultation period.

Recommendations 5 and 6

1.15 Labor Senators support a strengthened and mandatory Food and Grocery Code. We note that the interim report of the independent review of the Food and Grocery Code of Conduct has already recommended that the Code be made mandatory, with the introduction of significant penalties for breaches and a strengthened dispute resolution process.

1.16 Dr Emerson's independent review is also considering whether the scope of the Code should be expanded to other retailers and wholesalers and/or sectors.

1.17 We are also aware that the final report of the independent review is due by 30 June 2024, and believe that these recommendations should be considered alongside that report when the Government is determining its response to the review.

Recommendation 7

1.18 Labor Senators support the announcement made by the Treasurer on 10 April 2024, where he outlined the Government's proposed merger reforms. The priority for the Government is to ensure mergers are faster, stronger, simpler, targeted and more transparent.

1.19 Under the Government's proposals, the ACCC will have greater visibility of merger activity and competition issues, as a public register of mergers will be created. Subject to the passage of this legislation, the ACCC will have greater ability to review mergers that pose a risk to competition, consumers and the economy, while transactions that are in the national interest will be fast tracked.

1.20 It will also mean that all decisions on merger applications will be made within 30 days, unless appealed. Mergers above certain monetary and market share thresholds, which will be determined through consultation, will be required by law to be notified to and determined by the ACCC—ensuring acquisitions most likely to impact consumers are subject to extensive scrutiny.

1.21 The ACCC supports the Government's proposed approach.[1]

Recommendation 8

1.22 Labor Senators note that the issue of land banking is currently being considered by the ACCC Supermarkets Inquiry. Consideration of additional powers for the ACCC should occur after the report of the current ACCC inquiry is received by the Government.

Recommendation 9

1.23 Labor Senators support the Government considering any legislative change and any additional powers for the ACCC after the report of the current ACCC inquiry is received by the Government.

Recommendation 10

1.24 Labor Senators support the Government continuing to ensure the ACCC is appropriately funded. Additional funding would also be considered in the financial impact statement accompanying any relevant legislative reforms.

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1 Australian Competition and Consumer Commission, 'ACCC welcomes proposal for stronger merger laws', *Media Release*, 10 April 2024, https://www.accc.gov.au/media-release/accc-welcomes-proposal-for-stronger-merger-laws (accessed 6 May 2024).

1.25 The ACCC currently possesses extensive investigation and information gathering powers. Consideration of additional powers for the ACCC should occur after the report of the current ACCC inquiry is received by the Government.

Recommendation 11

1.26 Labor Senators support this recommendation.

Recommendation 12

1.27 Labor Senators support this recommendation. Labor Senators also note the considerable community education and campaigns being undertaken by retail workers and their trade union to highlight the treatment of these workers by consumers as well as their employers. Labor Senators fully support the "No-one Deserves A Serve" campaign.

Recommendations 13 and 14

1.28 Labor Senators note the significant work already being undertaken by the Government (through policy and legislative changes like merger reform), the ACCC Inquiry and the Independent Review of the Food and Grocery Code of Conduct. We do not support further Senate inquiries being established before the ACCC inquiry and the Emerson Review are completed. Labor Senators were disappointed that invited multinational companies declined the committee's invitation to appear.

1.29 Labor Senators thank the many members of the public who took the time to share their experiences with the committee, along with the industry groups, unions and retailers who appeared before the committee. We also sincerely thank the committee secretariat and other members of the committee for their hard work and cooperation, which has ensured the committee has been able to complete this important inquiry.

Senator Glenn Sterle
Deputy Chair
Labor Senator for Western Australia

Senator Louise Pratt
Member
Labor Senator for Western Australia

Additional Comments from Senator Tammy Tyrrell

1.1 It's an undeniable fact that governments, to the detriment of consumers and producers, have allowed Coles and Woolworths to amass an unjustifiable duopolistic market power. The extent of this power is staggering, as we discovered during the inquiry. The major supermarkets have used their influence and power to stifle any potential competition, creating this market imbalance.

1.2 The Senate Select Committee on Supermarket Prices was born out of pain at the checkout and pain at the farm gate. Yet, there is a gaping hole between the consumer and producer where the major supermarkets profit off the backs of others.

1.3 It is my belief that it is the prerogative of Woolworths and Coles to maximise profits for shareholders. However, I do not believe that this prerogative can be exercised in a way that is incompatible with checks on market power.

1.4 Coming from a state that has high rates of social and economic disadvantage, I'm especially concerned by the unaffordability of groceries for consumers. In Hobart, we heard that some people are forced to dumpster dive to obtain reasonable food. We've heard from people who simply can't afford to feed their family, impacting the quality of life for them and their children. For example, we heard that Tasmanians, even those who are employed, are struggling to make ends meet:

> We seem to have a lot of agency and choice: food or doctor? Food or the power bill? Food or the uniform? There seems to be a lot of those sorts of choices. But I agree: there are not a lot of choices as far as food pricing… Everybody is suffering this, even people who work. You've now got a new working poor who are struggling to be able to make ends meet.[1]

1.5 It's fairly obvious that Tasmania does not enjoy the competition that is seen on the mainland: we don't have low-cost providers like Costco or ALDI. Tasmanians are missing out, and with the CEO of ALDI Australia ruling out investment in Tasmania,[2] they will continue to be disadvantaged by a concentrated market. ALDI Australia noted that difficult supply chains were a factor for not establishing stores in Tasmania.

1.6 The committee heard that in communities where an Aldi is established, it placed downward pressure on the prices at competitors. In his evidence, Professor Allan Fels expressed that increasing competition is the principal mechanism for

[1] Ms Louise Adams, private capacity, *Committee Hansard,* 7 March 2024, p. 10.

[2] Ms Anna McGrath, CEO, ALDI Stores Australia, *Committee Hansard,* 11 March 2024, p. 3.

placing pressure on prices.[3] Despite Woolworths CEO Mr Brad Banducci's deflection, pointing to the fact that there are 78 independent stores in Tasmania,[4] I hold concerns that the major supermarkets have entrenched their power in the Tasmanian market, preventing new entrants.

1.7 That's why the Australian Government should investigate ways to remove barriers to entry for grocery competitors, particularly in regional areas. Whilst this committee has recommended a number of ways to help lower prices for Australians at the checkout, it's clear that increased competition will continue to be one of the best ways to achieve lower prices.

Recommendation 1

1.8 The Australian Government should investigate ways to remove barriers to entry for grocery retailer competitors, including through collaboration with state and territory government where necessary. Such an investigation should focus on regional areas, and particularly Tasmania, which lacks competition and where unique logistical and supply chain issues apply.

1.9 A major focus of this inquiry was how producers interact with, and are treated by, Coles and Woolworths. We saw producers sit in front of the committee shaking and crying because of fear of retribution. Several organisations spoke on behalf of farmers and producers, noting that their members did not want to appear themselves because they were scared. Tasmanian farmer Mike Badcock, a former supplier to Woolworths, plainly said:

> The presentation I'm about to give, if I was an active supplier or a packer to a supermarket for what I'm going to present today, I would be history. I would be, for some reason or other, not getting any more orders.[5]

1.10 Many producers raised concerns about the contracts they have with supermarkets. In most cases, there were no written agreements. Many of the concerns producers had about their relationships with supermarkets stemmed from this issue.

1.11 The committee recommends that Treasury should take immediate steps to make the Food and Grocery Code of Conduct mandatory. This recommendation should ensure that all contract agreements are now in writing and enforce penalties if they are not. However, it will be important to assess if the mandatory code does work to improve producer-supermarket relationships, especially when it comes to contracts. This should be reviewed after 24 months of the code becoming mandatory. If a mandatory Food and Grocery Code fails to properly

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3 Professor Allan Fels, *Committee Hansard,* 15 April 2024, p. 5.

4 Mr Brad Banducci, CEO, Woolworths Group, *Committee Hansard*, p. 17.

5 Mr Michael Badcock, private capacity, *Committee Hansard*, 7 March 2024, p. 48.

address problems with supplier contracts, there is a concern that local producers will continue to shut down, increasing issues with Australia's food security.

1.12 The inclusion of a price register for farmers as part of a mandatory Food and Grocery Code of Conduct is critical. The committee heard from producers that the lack of transparency around pricing information is another way in which the supermarkets hold power over suppliers. A price register would further address this power imbalance.

1.13 It's also clear that the use of supermarket-appointed arbiters is not working, with fear of retribution evident in the fact there have been very few formal complaints against the major supermarkets over the past few years. I stress the importance of appointing independent arbiters to maintain integrity in this process.

1.14 It would be amiss of me not to reflect on the power Bunnings exhausts to stratify power and increase market power in the greenlife sector. We heard from Karen Brock, the Director of Brocklands Nursery, based in Tasmania. Ms Brock said the 'fear of retribution amongst the growers is real.' Ms Brock spoke to the impacts trading with Bunnings had on her husband's mental health.[6]

1.15 Based on the evidence of Bunnings, Ms Brock, Mr Smith, and Greenlife Industry Australia, it is apparent that Bunnings has yielded significant power over growers. I strongly support recommendations by the committee to include greenlife industries in a mandatory Food and Grocery Code of Conduct.

Recommendation 2

1.16 The effects of the Food and Grocery Code of Conduct becoming mandatory should be independently reviewed 24 months after implementation. The review should:

- **have a particular focus on agreements between producers and supermarkets;**
- **invite public submissions; and**
- **include provisions for producers to put in submissions without fear of retribution.**

1.17 Throughout this process, many people asked me: what can this inquiry actually do to help consumers?

1.18 An area of concern was the difficulty consumers face in identifying a good discount. In some cases, promotional material can be misleading about the size of the discount, and in other cases, sometimes there was no discount found at all. Coles CEO Leah Weckert admitted that the store had not 'kept up' with changing price tickets where price for an item had increased. This is misleading

6 Ms Karen Brock, Brocklands Nursery, *Committee Hansard*, 11 April 2024, p. 41.

to consumers and causes considerable confusion. Changes to the Unit Pricing Code for supermarkets to prominently disclose any changes in the price or size of products and adapt a mandatory information standard for unit pricing are welcome.

1.19 The establishment of a Commission on Prices and Competition is necessary and welcome. Whilst the ACCC already does a lot of work in this area, a Commission is a permanent body designed to keep the supermarkets in check. It is important to ensure this body doesn’t recreate the wheel of work already done by the ACCC, but rather works collaboratively with the ACCC. The Commission will allow the public to track price changes over time and look at further pricing reform. It would also be worth considering how the Commission interacts with the public. The ACCC told the committee they don’t have the resources to respond to a lot of the correspondence they receive from the public regarding alleged price gouging, and this is a gap the Commission could fill.

1.20 There was discussion throughout the inquiry about divestiture powers, with witnesses divided on whether this was a useful tool to deal with competition. The Australian Greens currently have the Competition and Consumer Amendment (Divestiture Powers) Bill 2024 before the Parliament. I believe divestiture powers are a tool that the Australian Government should have at its disposal. There are similar measures legislated internationally, and extends current divestiture power that can only be obtained where a breach of merger power has occurred. This is an entirely sensible approach, and as such, I support current legislation before the Parliament.

1.21 This report contains a number of excellent recommendations that, if implemented, would relieve pressure on Australians' wallets and the hardship Australian farmers face. It is a thorough and wide-ranging report that encompasses many of the issues associated with the duopoly domination of market power. I look forward to working with the Government to progress these recommendations, and urge them to act swiftly to provide relief to Australians as soon as possible.

1.22 These recommendations shouldn’t be left on a shelf collecting dust.

Senator Tammy Tyrrell
Member
Independent Senator for Tasmania

Coalition Senator's Dissenting Report

Introduction

1.1 The Chair's report represents a missed opportunity to address some of the structural imbalances in our supermarket sector that are impacting Australia's growers, farmers, small businesses, and ultimately consumers.

1.2 This inquiry offered an opportunity for the Senate to examine these issues after almost 18 months of inaction from the government, who have failed to stand up for our farmers, or put in place policies that will drive inflation down.

1.3 Australia's supermarket sector remains dominated by two large players for a variety of reasons ranging from competition policy, investment settings, planning laws, transport, energy and industrial relations costs, and economies of scale. It is important that those companies do not abuse that market position and that appropriate safeguards are put in place to ensure the disincentives are substantial should they treat their producers or consumers unfairly. It is important Australia's competition regulator be empowered to act where this occurs, and for producers to have access to reasonable, affordable, and fair dispute mechanisms without fear or the threat of reprisals.

1.4 Australia's policy settings are creating substantial disincentives for growers and farmers to remain in business, and present an intergenerational threat to our agricultural industries. The inquiry has heard of substantial discrepancies in market power between the large supermarket chains, large suppliers and processes, and the small and family businesses that make up much of our agricultural producer industry.

1.5 Similarly, the inquiry has heard of the deeply traumatising impacts of high prices on all demographics, and the impact they are having on social cohesion.

1.6 The Coalition believes that strong competition policy plays a crucial role in our economy to ensure our small businesses and consumers get a fair go.

1.7 The Coalition implemented a number of reforms to bolster our competition framework in government—including reforming the franchising code of conduct; the automotive code of conduct; establishing the Food and Grocery Code; the Dairy Code; and the Horticultural Code; reforming our energy markets to ensure fair pricing and disincentives for market misconduct; establishing the Consumer Data Right; and taking action on unfair contract terms and small business payment times.

1.8 However, Australians are let down by politicians promising silver bullets to the inflation problem and who are dragging their feet on obvious solutions.

1.9 While there are persistent and entrenched competition challenges in our supermarket supply chain, Australia's current inflation problem is the consequence of a government that has failed to put in place policies to fight inflation over almost three budgets. This has unfairly forced the burden on Australians with a mortgage, renters and small business borrowers.

1.10 The best policy solution to the inflation crisis is for government to rein in spending and put in place policies that reduce costs for businesses.

1.11 At the same time, the Labor government has talked a lot about competition but is yet to make substantive policy changes to support small businesses and consumers. It is clear from this inquiry that there are a number of ready-made solutions to improve competition in our supermarket sector, and to support consumers to get a better price at the checkout.

1.12 Labor is failing on two fronts: to fight inflation in a way that all Australians benefit, and to take action on competition to support our small businesses and farmers.

Labor's cost of living crisis is driving up prices

1.13 Australians are struggling from entrenched and increasingly homegrown inflation, and the supermarket check-out is one of the main contact points for Australians' to feel the impact.

1.14 Inflation has now been above the Reserve Bank's target band for 10 quarters.[1]

1.15 The Employee Living Cost Index, which measures inflation for households that primarily derive their income from salaries, is currently running at 6.5 per cent, and has been above 3 per cent since December 21.[2]

1.16 Consumer confidence has remained at recessionary levels for more than 18 months,[3] and Australia is in GDP per capita recession.[4]

1.17 Prior to the last election, the Labor government promised $275 off energy bills, cheaper mortgages, and that they would only increase taxes on multinational companies.

1.18 Instead, mortgage rates have increased by 4 per cent eroding the purchasing powers of families and putting pressure on the 50 per cent of small businesses that secure financing against the family home, unfairly placing the impost of managing inflation on these cohorts.

1 Australian Bureau of Statistics (ABS), Consumer Price Index, March Quarter 2024, released 24 April 2024. .

2 ABS, Selected Cost of Living Index, March Quarter 2024, released 1 May 2024.

3 ANZ-Roy Morgan, 'Australian Consumer Confidence', 30 April 2024.

4 ABS, National Accounts, December Quarter 2023, released 6 March 2024.

1.19 The cost of electricity and gas have increased by 18 per cent and 25 per cent respectively,[5] putting increasing costs on manufacturers and producers, as well as supermarkets.

1.20 Income taxes have increased by 23 per cent.[6] Labor's revised Stage 3 tax cuts will raise an extra $28 billion over the medium term,[7] entrenching bracket creep and unwinding serious tax reform. Labor's tax changes on multinational corporations have been so badly drafted that they capture domestic industries and businesses, which are being passed on to consumers.

1.21 This is having profound and distressing impacts on families, some of which have been articulated in evidence to this committee:

- Dumpster diving for food;[8]
- Reducing meals to one a day to afford their bills;[9]
- Increasing reliance on credit cards and other debt products.[10]

1.22 While this inquiry has highlighted competition issues that ought to be addressed, the price at the checkout is just one pain point in a broader problem. It is important the government address homegrown inflation at its source, not just the symptoms.

Recommendation 1

1.23 The Labor government should deliver a budget that fights homegrown inflation and addresses Australians' falling standard of living.

Recommendation 2

1.24 The Labor government should accept responsibility for the impact of its failing economic policies on driving up inflation. Labor should stop putting all the costs of bringing down inflation on mortgage holders.

Recommendation 3

1.25 The government should explore incentive-based policies to support better use of food waste.

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5 ABS, National Accounts, December Quarter 2023.

6 ABS, National Accounts, December Quarter 2023.

7 The Treasury, *Advice on amending tax cuts to deliver broader cost-of-living relief*, January 2024, p. 8.

8 *Committee Hansard*, 7 March 2024.

9 *Committee Hansard*, 7 March 2024.

10 *Committee Hansard*, 13 March 2024.

Labor's failure to stand up for small business, growers and farmers

1.26 The Coalition first called for the statutory review of the Food and Grocery Code of Conduct to be brought forward in late 2022.

1.27 The government failed to act until January 2024.

1.28 The statutory review of the Food and Grocery Code was scheduled to commence in October 2023, three years after the commencement of the previous reforms to the Code, but it took the government almost 100 days to appoint a Reviewer in January 2024.

1.29 The Coalition also called for the ACCC to undertake a price inquiry into meat and fresh produce armed with tough powers in November 2023, to investigate the supermarkets, to deal with the spiralling cost-of-living crisis that was being felt by Australians at the supermarket checkouts.

1.30 Under section 95 of the *Competition and Consumer Act 2010* the Treasurer has the legislated power to direct the ACCC and give it strong powers to compel information. It wasn't until 25 January 2024 that the Government directed the ACCC to conduct an inquiry into Australia's supermarket sector, including the pricing practices of the supermarkets and the relationship between wholesale, including farmgate, and retail prices.

1.31 Again, the Government was slow to act.

1.32 This committee has heard substantial evidence about the disparity of the relationships between growers, suppliers, and the supermarkets and its harmful impact, particularly on the horticultural sector:

- "Dutch auctions" with no capacity to bargain on price;
- Inconsistent and non-uniform product standards being used as a justification to reduce contracts;
- Risk and costs being passed down the supply chain;
- Extended payment timeframes of up to 184 days;
- Informal contracting arrangements that leave producers with excess product and supermarkets an ability to set price;
- The lack of alternative markets, particularly for fresh produce, to sell surplus product to.

1.33 Wholesale price transparency is crucial to closing this disparity and to reduce the impacts of asymmetric information on competition. However, price transparency measures should not be confused or conflated with price caps or price setting.

1.34 Further, measures to support price transparency are best delivered through existing mechanisms and agencies—noting the ACCC already has significant resources and capabilities to monitor pricing.

1.35 The government delivered an interim report of the Review of the Grocery Code of Conduct in the middle of this inquiry. Despite making clear recommendations, there is no indication from witnesses including the ACCC that there is an urgency to act.

1.36 The government needs to act faster to strengthen the Food and Grocery Code and respond to the serious concerns of our horticultural sector. As delegated legislation, making the code mandatory does not require legislation to pass parliament but rather the political will of the Treasurer to make it a priority.

1.37 To ensure complete supply chain protection the Food and Grocery Code of Conduct must seamlessly intersect with the horticulture and dairy codes of conduct. This could occur by having the horticulture and dairy codes as schedules of the Food and Grocery Code of Conduct.

Recommendation 4

1.38 The Coalition reaffirms the recommendation that the Food and Grocery Code of Conduct be made mandatory with increased penalties and improved access to dispute resolution. As part of this reform, the supermarket appointed arbiter be replaced with an independent arbiter.

Recommendation 5

1.39 The ACCC should be empowered to collect, investigate and publish long term data on prices in the food and grocery sector. The ACCC should publish regular data on horticultural and vegetable pricing from the major supermarkets to enhance price transparency and support better bargaining power for horticultural producers.

Recommendation 6

1.40 Price transparency policies should be carefully designed to ensure maximum benefit to consumers with minimum compliance burden to companies and delivered through the Australian Competition and Consumer Commission, rather than new bodies.

Recommendation 7

1.41 The government should create clearer pathways for small producers and growers to apply for ACCC exemptions to share information.

Recommendation 8

1.42 The government should explore policies to strengthen protection for mutuals and cooperatives from creeping acquisitions.

Recommendation 9

1.43 **Bring the horticulture and dairy codes in as schedules of the Food and Grocery Code of Conduct to enshrine them and complete the supply chain protection.**

The need for strong but pragmatic competition policy

1.44 The committee heard extensive evidence of the need for strong competition policy in Australia.

1.45 The dominance of duopoly market structures heightens the need for robust protection for consumers and small businesses in our major corporations supply chain.

1.46 The inquiry has also heard evidence how commercial practices inhibit competition:

- **Land banking:** with the property development arms of the major supermarkets accused of securing sites well in advance of demand to prevent competitors gaining footholds in the market.
- **Creeping acquisitions:** with the large supermarket operators acquiring competitors without ACCC notification. This practice is rife across not just supermarkets but 'big box' retail as well, with the ACCC only becoming aware of the issue when they are notified of larger mergers.
- **Lack of bargaining parity:** with suppliers and growers threatened with loss of contracts for pursuing breeches of the code, querying rejection of non-standard produce, and not accepting drawn out payment times.
- **Lack of incentives for mutualisation and cooperatives:** the committee has heard that farmers and growers are increasingly unaware, or time poor to utilise, of the process and ability to seek ACCC exemptions to share information. The committee has also heard how the current cooperative regimes are easy to be picked apart by would be acquirers by targeting individual members.

1.47 The committee is not convinced that divestiture, as a principle, is a substantive deterrent to investment. As many witnesses, including Professor Allan Fels have pointed out, divestiture powers exist in many comparable jurisdictions without chilling investment. Further, divestiture exists within the Competition law already through the energy code, and divestiture is a regular part of the merger and acquisition process as it currently operates.

1.48 However, the committee accepts that the Competition and Consumer Amendment (Divestiture Powers) Bill 2024 (the Bill) as drafted does not put in place appropriate safeguards to ensure any divestiture power operates in a way that offers procedural fairness and prevents adverse outcomes for communities. Notably, the Bill provides no clear public benefits test or protections for loss of jobs or services, while also providing too narrow a timeframe for assets to be divested.

1.49 Accordingly, given the lack of wide consultation it is not the view of Coalition Senators that the Bill should be passed.

1.50 The Coalition is not opposed to the principle of divestiture, however any divestiture power needs clear guidance on how and when it can be applied, and must have appropriate safeguards to protect jobs, services, and consumer outcomes. This requires a clear public benefit test to any proposed legislation.

1.51 It is crucial as a first step, that the government's merger reforms create an adequate regime to counter the issue of creeping acquisitions and land banking that have been provided to the committee.

Recommendation 10

1.52 The Coalition does not support the passage of the Competition and Consumer Amendment (Divestiture Powers) Bill 2024.

Recommendation 11

1.53 The Coalition does not believe the committee has persuasively found that divestiture powers should not be pursued at all. However, divestiture powers should be targeted to sectors of concern—with appropriate safeguards for regional jobs and services, and have a clear public benefit test.

Recommendation 12

1.54 The government's merger reforms must adequately address the practice of creeping acquisitions and land banking.

The need for strong economic management and investment to drive greater competition

1.55 The committee has heard that new market entrants are one of the most effective ways to boost competition.

1.56 Recent new market entrants and investors have helped support competition and lower prices in the food and grocery market. ALDI, Costco and Amazon have introduced substantial competition into the market that is delivering benefits to consumers and creating alternative markets for growers to sell to.

1.57 Further, the committee has heard how new market entrants have adopted different approaches for dealing with suppliers, leveraging the opportunities of more streamlined business models to deliver mutual benefits to customers and suppliers.

1.58 However, the Kaufland example provides a cautionary case study for the impact of poor policy settings on the likelihood of further market entrants. Kaufland's abandoning of its expansion into Australia despite having begun acquisition and construction shows the challenges of the Australian market to new entrants. Government is often one of the biggest impediments to this.

1.59 Red tape, high energy and construction costs, tax settings, and restrictive industrial relations laws all create impediments to investment that mean that the success of ALDI and Amazon are less likely to be repeated. This means less choice: for farmers to supply to, and for consumers to shop.

1.60 The inquiry has heard that these challenges extend beyond federal jurisdiction and into state and local council planning laws.

1.61 An unattractive investment environment will continue to operate as an impediment to new market entrants.

1.62 The government must address these anti-competitive and anti-investment policy settings as a matter of priority.

1.63 Putting in place policies that support private sector growth and make Australia an attractive investment destination for companies to invest, grow, and employ more Australians will also deliver better outcomes to growers and suppliers.

1.64 The expansion of buyers for Australian growers will increase their ability to accept the best price, rather than be subject to onerous price setting from two major retailers.

Recommendation 13

1.65 The government should put in place enterprise-led economic strategy that supports business growth and job creation through energy, industrial relations, tax, and workforce policies to drive investment to increase competition.

Recommendation 14

1.66 The government should put a pro-investment, pro-competition planning reform on the National Cabinet agenda at Premier, Treasurer, and building Minister's level. The government should use these forums to drive planning reform that enables competitors to enter the market and prevents land banking.

Addition comments

Food wastage and incentivising charitable food donations

1.67 Australian charities and not for profits are fighting to meet record demand, with many clients seeking food relief for the first time. In the year to July 2023, 3.7 million Australian households experienced moderate to severe food insecurity.[11] While this is occurring, there is a widespread culture of food

[11] Foodbank Australia, *Hunger Report 2023*, 25 September 2023, p. 4.

wastage in Australia, with a reported 7.6 million tonnes of food being dumped annually, about 70 per cent of it able to be consumed.[12]

1.68 AUSVEG highlighted the wastage occurring in food supply chains, especially regarding produce that fails to meet the specific requirements of suppliers. The organisation notes that, largely due to transport costs, it is often more cost effective for suppliers to dispose of produce and record it as a loss to their business rather than donate it to charity.[13]

1.69 As a solution, AUSVEG proposed the introduction of tax incentives that 'permit growers to offset a percentage of costs related to food donations from taxable income'.[14]

1.70 Similar tax incentives exist in several countries around the world and a proposal geared to Australia has been developed by Foodbank Australia and its partners, among them OzHarvest and First Bite, with economic modelling undertaken by KPMG.[15]

1.71 The House of Representatives Standing Committee on Agriculture recommended 'an incentive through the tax system for those who donate food or related services, based on the Food Waste Tax Incentive developed by KPMG and the Fight Food Waste Cooperative Research Centre'.[16]

Transportation costs

1.72 The cost of transporting food and beverages has increased rapidly in Australia. These additional costs are being felt by everyone, from the average Australian to major supermarket chains. In their submission Coles pointed out that 'Operational costs remain high including transport, processing, packaging, and labour'.[17] Coles evidence notes '[t]he cost of doing business has increased: energy, labour, logistics and packaging costs have all risen resulting in a $1.4b increase in Coles annual operating costs from FY19 to FY23'.[18]

1.73 During the hearing similar sentiments were made by Woolworths who said:

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12 KPMG, *Australian National Food Donation Tax Incentive Implementation Analysis 2023*, p. 5

13 AUSVEG, *Submission 103*, p. 32.

14 AUSVEG, *Submission 103*, p. 32.

15 See Foodbank Australia reports undertaken with KPMG, *A National Food Waste Tax Incentive 2020* and *Australian National Food Donation Tax Incentive Implementation Analysis 2023*

16 House of Representatives Standing Committee on Agriculture, *Australian Food Story: Feeding the Nation and Beyond*, Recommendation 19, November 2023, p. 105.

17 Coles Group, *Submission 20*, p. 6.

18 Coles Group, *Submission 20*, p. 15.

> Senator Sterle would rightly know that the biggest cost increase is actually just the pressure in transportation…[19]

1.74 Transportation costs are also being felt by agricultural suppliers. In its submission the Victorian Farmers Federation noted that higher input costs derived from transportation is felt throughout the supply chain.[20]

1.75 The National Farmers Federation Horticulture Council noted in their submission that increases of six per cent annually for three years of the heavy vehicle road user charge will result in 'significantly lifting transport costs'.[21]

1.76 Transport costs from farm to plate are on the rise. The Albanese Labor Government needs to find a solution to sky-rocketing fuel costs and review the impact of higher taxes and increased red tape places on our trucking and logistics industry.

Labour costs and IR changes

1.77 Labour costs and changes to industrial relations laws have made doing business in Australia harder and has driven up costs.

1.78 During the Canberra hearings, the CEO of Coles, Ms Leah Weckert stated:

> … labour has been a part of our cost base, which has increased significantly.[22]

1.79 This sentiment was shared by ALDI's CEO Ms McGrath who said:

> … labour costs do continue to rise, and we hear that from our suppliers as well; they're obviously in the same market that we are, and they're contending with increases in labour costs. So those costs do rise.[23]

1.80 Supermarkets, and suppliers can only find so many efficiencies within their business to absorb additional labour costs, but they ultimately will always find their way down to the consumer who will have to pay for them.

1.81 These are warnings the business sector has been making for months. Innes Wilcox from AI Group stated in February 2024:

> The latest round of industrial relations changes passed by the senate today are a further handbrake on productivity that will add more complexity,

[19] Mr Brad Banducci, CEO, Woolworths Group, *Committee Hansard*, 16 April 2024, p. 33.

[20] Victorian Farmers Federation, *Submission 62*, p. 3.

[21] National Farmers' Federation – Horticultural Council, *Submission 101*, p. 13.

[22] Ms Leah Weckert, CEO, Coles Group, *Committee Hansard*, 16 April 2024, p. 39.

[23] Ms Anna McGrath, CEO, ALDI Stores Australia, *Committee Hansard*, 11 April 2024, p. 4.

> conflict and rigidity to our workplaces and increase job insecurity for many Australians.[24]

1.82 This echoes previous warnings from the Business Council of Australia, which said in September of 2023 that 'IR changes to add cost, complexity and delay'.[25]

1.83 By complicating industrial relations during a period of rampant inflation and rising labour costs, the Albanese Government has only fuelled the fire in sky-rocketing grocery prices.

1.84 The Government must consider putting a handbrake on radical changes while businesses still adapt to post-pandemic market settings.

Roles of consumer goods companies

1.85 The supermarkets alleged in their evidence that increased prices are the consequence of multinational consumer goods companies.

1.86 In its submission, Woolworths explained that:

> Price inflation in long-life products is driven predominantly by the multinational consumer goods companies that supply Woolworths. We negotiate directly with them with the intent of trying to ensure that their price increases are reasonable and based on genuine changes in their cost. However, it is important to note that suppliers are not obliged to provide cost information to justify their increased prices to retailers under the Food and Grocery Code of Conduct. This limits our ability to test and verify the basis for a cost increase request.[26]

1.87 Similar sentiments were echoed by the Coles CEO, Ms Weckert during a line of questioning on this issue:

> There are many categories where the multinational players have very significant levels of concentration. So, if you think about areas like soft drinks or snacks or confectionary or biscuits, they have high levels of concentration from certain suppliers, and I would describe them as absolute must-have brands—that is, our customers come into our stores and expect to be able to find those products. They're a core part of their weekly shop, and they're much-loved brands. So the ability for us to end up in a situation where supply is withheld because we would not accept a cost price increase is challenging in those categories for us because they are such a significant part of it and customers love them so much.[27]

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24 AiGroup, 'Latest IR changes create less productive and more rigid and complex workplaces', *Media Release*, 8 February 2024, https://www.aigroup.com.au/news/media-centre/2024/latest-ir-changes-create-less-productive-and-more-rigid-and-complex-workplaces/ (accessed 6 May 2024).

25 Business Council of Australia, 'IR changes to add cost, complexity and delay', 4 September 2023, *Media Release*, https://www.bca.com.au/ir_changes_to_add_cost_complexity_and_delay (accessed 6 May 2024).

26 Woolworths Group, *Submission 23*, p. 7.

27 Ms Leah Weckert, CEO, Coles Group, *Committee Hansard*, 16 April 2024, pp. 43-44.

1.88 Coles, Woolworths, ALDI and other supermarkets claim they are presented with a binary choice—either they accept price hikes by the multinationals, or they reject them and lose the product. The Coles CEO said Australians expected to see these products on the shelves. Nobody wants to create a scenario where Australians have less choice at the supermarket, so it should have been incumbent of this committee to investigate the claims made by the major supermarkets.

1.89 The Australian Food & Grocery Council (AFGC) has argued there is still unequal buying power to the major supermarkets, and pointed out that these increases have not occurred in isolation. The AFGC noted supplier costs reflect costs due to energy, transport, and wages:

> Supermarket retailers have pointed to supplier cost increases as a major contributor to food and grocery inflation. In considering the issue of supplier inflation, we encourage the committee to consider the following factors that have happened over a number of years. In the pre-COVID decade, suppliers wholesale prices rose at only half the rate of their input costs and the industry's profitability fell from $8 billion to $5 billion. During that same period, capital investment in food and grocery manufacturing stagnated. In recent years, COVID saw significant supply chain disruption. Coupled with adverse domestic and overseas weather events and geopolitical tensions, this resulted in significant increases in supplier costs across all fronts including agricultural commodities, other ingredients, packaging, transport, warehousing, logistics, energy and, more recently, wages.
>
> Given the effect of the preceding period, suppliers were no longer able to absorb the extraordinary level of costs that were coming down the supply chain without risking the viability of domestic manufacturing and the jobs associated with that. As a result, suppliers have sought to pass on a proportion of their cost increases, in many situations negotiating a price increase for the first time in over a decade. Therefore, in considering the pricing dynamics of the major supermarkets, the AFGC encourages the committee to consider the importance of the long-term sustainability of food and grocery manufacturers.[28]

1.90 The committee did not have the opportunity to thoroughly examine these claims in detail in the time available. It is our view these claims should be examined through future hearings and forums.

Shrinkflation

1.91 Shrinkflation is when a product will reduce in size but remain at the same cost. This has been a common practice for long-shelf-life items, such as Cadbury's

[28] Ms Tanya Barden, CEO, Australian Food and Grocery Council, *Committee Hansard*, 15 April 2024, p. 30.

chocolate.[29] The key issue with shrinkflation is that it is done covertly, and in a way that is not obvious to the consumer, who the producer is passing the cost on to.

1.92 Supermarkets and multinational food suppliers should notify shoppers of shrinkflation so that consumers are able to make informed purchasing choices. This is not a new idea and was recently done voluntarily in France by Carrefour[30] who in 2023 sought to name and shame the big multinational food suppliers for giving their customers less for more.

1.93 While it began as a voluntary move by Carrefour, the Government of France has ordered that from 1 July 2024, retailers in France must notify shoppers of shrinkflation.[31]

1.94 It is our view that supermarkets should begin voluntarily advertising shrinkflation so that pressure is placed on multinational producers who are ultimately responsible for the reduction in product size, and the increase in product cost. An example of this would be a pink ticket displayed for 60 to 90 days when packaging size has changed.

1.95 This would be a move that also supports consumers, who will be notified when the product they're frequently buying has suddenly reduced in size but gone up in price.

Senator Ross Cadell
Member
Nationals Senator for New South Wales

Senator Maria Kovacic
Member
Liberal Senator for New South Wales

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29 Alex Turner-Cohen, 'Cadbury's 'stealthy' move amid inflation crisis', *News.com.au*, 5 April 2022, https://www.news.com.au/finance/money/costs/cadburys-stealthy-move-amid-inflation-crisis/news-story/61fe0fe74d5f2cd910ff854f6db08746 (accessed 6 May 2024).

30 Lucy Hooker, 'France's Carrefour puts up 'shrinkflation' warning signs', *BBC*, 15 September 2023, https://www.bbc.com/news/business-66809188 (accessed 6 May 2024).

31 Reuters, 'France orders retailers to display shrinkflation', 19 April 2024, https://www.reuters.com/markets/europe/france-orders-retailers-display-shrinkflation-2024-04-19/ (accessed 6 May 2024).

Appendix 1
Submissions, tabled documents and additional information

1 Australian Beef Association
2 Queensland Consumers Association
- 2.1 Supplementary to submission 2

3 TasFarmers
4 Metcalfe Pastoral
5 Fruit Growers Victoria
6 Fair Food WA & WACOSS
7 Dietitians Australia
8 Food for Health Alliance
9 Mr Charles De Fegeley
10 Per Capita
11 Australian Meat Industry Employee's Union
12 Colin Say & Co
13 National Seniors Australia
14 Frampton Flat
15 ALDI Stores Australia
16 Australian Pork Limited (APL)
17 Australian Meat Industry Council
18 Combined Pensioners and Superannuants Association of NSW Inc (CPSA)
19 Public Health Association of Australia
20 Coles Group
21 COTA Australia
22 Global Centre for Preventive Health and Nutrition (GLOBE)
23 Woolworths Group
24 Metcash Limited
- 24.1 Supplementary to submission 24

25 eastAUSmilk
26 Australian Retailers Association
27 Gundamain Pastoral Co
28 Australian Food and Grocery Council
29 Mr Geordan Nicholson
30 Dr Farida Akhtar
31 Ms Eve Stocker
32 Dr John Hawkins
33 Mr Luke Curran
34 Argus

35 Mr Marcus Bleechmore
36 Mr Tim Jeffrey
37 Ms Gaye Matthews
38 Mr Greg Hughes
39 Sean Withheld
40 Rheimon Smith
41 Name Withheld
42 Mr Brian Reynolds
43 Mr Robert Gibellini
44 Mr Brian Dunphy
45 Dr Sanjoy Paul
46 Name Withheld
47 Name Withheld
48 Name Withheld
49 Mr & Mrs Jenny & Tony Hayward
50 Name Withheld
51 Ms Rachel Anderson
52 Mr Ben Rees
53 The Treasury
54 GetUp!
55 Name Withheld
56 Mr David Bell
57 Greater Shepparton City Council
58 Mr Shane Callahan
59 Australian Greens
60 Neilsen IQ
61 Sustain
62 Victorian Farmers Federation
63 SPAR Australia
64 Consumer Action Law Centre
65 Community Enterprise Queensland
66 Ritchies Stores
67 Cattle Australia
68 Healthy Food Systems Australia
69 Name Withheld
70 Hon Bob Katter MP
71 Australian Dairy Farmers
72 CHOICE
73 Mr John Raymond
74 Ms Maggie Travers
75 Alexander Downs Pty Ltd
76 Ms Angela Manns
77 Common Sense Party of Australia

78 Mr Peter Booth
79 West Talgai Feedlot
80 Mr Richie Cuskelly
81 Mr Darryn Wiley
82 Mr Rodney Hutchison
83 Professor Harmen Oppewal and Dr. Jun Yao
84 Mr William Hughes
85 Mr Micheal Martin
86 Ms Doreen Tey
87 Ms Elizabeth Beattle
88 Mr David McGrath
89 Mr Pat Cleary
90 Mr Mike Fenton
91 Name Withheld
92 Name Withheld
93 Name Withheld
94 Name Withheld
95 Name Withheld
96 The Australia Institute (updated see 96.1)
- 96.1 Supplementary to submission 96

97 National Farmers' Federation
98 Department of Agriculture, Fisheries and Forestry
99 Greenlife Industry Australia
- 99.1 Supplementary to submission 99
- Bunnings Group-response to evidence

100 Melons Australia
101 National Farmers Federation - Horticulture Council
102 Apple & Pear Australia Ltd. (APAL)
103 AUSVEG
104 Business Council of Australia
105 NSW Farmers
106 Queensland Fruit and Vegetable Growers
107 Australian Competition and Consumer Commission (ACCC)
108 Australian Small Business and Family Enterprise Ombudsman
109 Consumers' Federation of Australia
110 ACT Government
111 Grain Producers Australia
112 Name Withheld
113 Name Withheld
114 Name Withheld
115 Name Withheld
116 Mr Stephen Bates MP
117 Australian Prune Industry Association

118 Mr John Dahlsen
- 118.1 Supplementary to submission 118

119 Australian Bureau of Statistics
120 Ms Irene Di Lauro
121 Mr Graeme Lindsay
122 Mr Bill Kosky
123 Mr Timmy Carey
124 Endeavour Group
125 Retail and Fast Food Workers Union
126 sda National
127 The Hon Mr Steven Miles MP
128 Bunnings Group
- 128.1 Supplementary to submission 128

129 Mr Abdel Badoura
130 Coles Liquor
131 Queensland Farmers Federation
132 PFT Agriculture
133 Silver Orchards
134 Dr Mark Glazebrook
135 Australian Grape & Wine
136 Jamie Goode
137 Mr Michael Reilly
138 Name Withheld
139 Coca-Cola Europacific Partners Australia
140 Kraft Heinz Australia
141 Nestle Australia
142 PepsiCo Australia & New Zealand
143 Procter & Gamble Australia Pty Ltd
144 Unilever Australia
145 Name Withheld
146 Mr Alan Kelly
147 Name Withheld
148 Mr Lloyd Woodford
149 Invisible Disabilities Australia
150 Mr William Mobbs
151 Name Withheld
152 Ms Madonna Waugh
153 Kellanova Australia
154 Chato International Pty Ltd
155 Mars Australia

Media Releases

1 Call for submissions

Tabled Documents

1 Ms Amy Booth, Organiser, Grassroots Action Network Tasmania (GRANT), photos of salvaged food from the dumpsters of Coles and Woolworths in Hobart, tabled at a public hearing in Hobart on 7 March 2024

2 Ms Rosie Thomas, CHOICE, summary of Submission 72, tabled at a public hearing in Melbourne on 13 March 2024

3 Mr Joe Bradley, eastAUSmilk, submission to 2023-24 Review of the Food and Grocery Code of Conduct, tabled at a public hearing in Melbourne on 13 March 2024

4 Email from former Coles employee, received 16 April 2024

Answer to Question on Notice

1 CHOICE, answers to questions taken on notice at a public hearing in Melbourne, 13 March 2024 (received 5 April 2024)

2 Coles Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 10 April 2024)

3 Woolworths Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 10 April 2024)

4 Coles Group, answers to written questions on notice from Senator Nick McKim, 15 March 2024 (received 12 April 2024)

5 Dr Craig Emerson, answers to questions taken on notice at a public hearing in Canberra, 16 April 2024 and written questions on notice of 19 April 2024 (received 22 April 2024)

6 ALDI, answers to questions taken on notice at a public hearing in Canberra, 11 April 2024 (received 24 April 2024)

7 Coles Group, answers to questions taken on notice at a public hearing in Canberra, 16 April 2024 (received 24 April 2024)

8 Woolworths Group, answers to questions taken on notice at a public hearing in Canberra, 16 April 2024 (received 26 April 2024)

9 Bunnings Group, answers to questions taken on notice a public hearing in Canberra, 15 April 2024 (received 29 April 2024)

10 Australian Competition and Consumer Commission, answer to a question taken on notice at a public hearing in Canberra, 15 April 2024 (received 30 April 2024)

11 Woolworths Group, answers to written questions on notice from Senator Ross Cadell, 29 April 2024 (received 3 May 2024)

12 Nestle Australia, answers to written questions on notice from Senator Louise Pratt, 26 April 2024 (received 1 May 2024)

13 Procter and Gamble, answers to written questions on notice from Senator Louise Pratt, 26 April 2024 (received 1 May 2024)

14 Coles Group, answers to questions on notice, 29 April and 3 May 2024 (received 6 May 2024).

Appendix 2
Public hearings and witnesses

Thursday, 7 March 2024

Hotel Grand Chancellor Hobart
Grand Ballroom 1
1 Davey Street
Hobart

Community roundtable

- Ms Louise Adams, private capacity
- Ms Amy Booth, Community Member, Grassroots Action Network Tasmania (GRANT)
- Mr Danny Carney, GRANT
- Ms Amelia Cromb, Community Member, GRANT
- Mr Owen Gregory, Community Member, GRANT
- Ms Tania Hunt, Chief Executive Officer, Youth Network of Tasmania
- Ms Aimen Jafri, Chair, Multicultural Council of Tasmania

National Farmers Federation - Horticultural Council

- Mr Jeremy Griffith, Council Member

TasFarmers

- Mr Nathan Calman, Chief Executive Officer

Australian Beef Association

- Mr George Mills
- Mr David Byard, Executive Officer

Fruit Growers Tasmania

- Mr Peter Cornish, Chief Executive Officer

Mr Michael Badcock, Private capacity

Tuesday, 12 March 2024

Hotel Canobolas
248 Summer Street
Orange

NSW Farmers

- Ms Rebecca Reardon, Vice President
- Mr John Lowe, Chair: Business, Economics and Trade Committee
- Ms Johanna Brighenti, Chair: NSW Farmers Horticultural Committee

- Ms Kathy Rankin, Head of Policy and Advocacy
- Mr Guy Gaeta
- Mr James McClymont, Farmer
- Mr Ian Pearce, Orchard farmer

Cattle Australia

- Dr Chris Parker, Chief Executive Officer

Dairy Connect

- Mr Graham Forbes, Farmers' Group President

Macquarie River Food and Fibre

- Mr Michael Drum, Executive Officer

Greenlife Industry Australia

- Ms Joanna Cave, Chief Executive

Wednesday, 13 March 2024

PARKROYAL Melbourne Airport
Arrival Drive Melbourne Airport
Tullamarine (Melbourne)

National Farmers' Federation

- Charlotte Wundersitz, General Manager Rural Affairs
- Chris Young, General Manager Trade and Economics

AUSVEG

- Bill Bulmer, Chair
- Michael Coote, Chief Executive Officer
- Lucy Gregg, General Manager Public Affairs

Ritchies Stores

- Frederick Harrison, Chief Executive Officer

CHOICE

- Rosie Thomas, Director of Campaigns and Communications

Consumer Action Law Centre

- Stephanie Tonkin, Chief Executive Officer
- Claire Tacon, Acting Director Financial Counselling Practice

Consumers' Federation of Australia

- Gerard Brody, Chairperson

Fruit Growers Victoria

- Mitchell McNab, Chairman
- Michael Crisera, Grower Services Manager

eastAUSmilk

- Joe Bradley, President and Chair of the Board

Global Centre for Preventive Health and Nutrition (GLOBE), Deakin University

- Professor Kathryn Backholer, Professor of Global Public Health Policy, Institute for Health Transformation
- Dr Christina Zorbas, Research Fellow, Institute for Health Transformation
- Khalid Muse, Associate Research Fellow, Institute for Health Transformation
- Dr Troy Walker, Associate Research Fellow, Institute for Health Transformation

Thursday, 11 April 2024

Committee Room 2S3
Parliament House
Canberra

ALDI Stores Australia

- Ms Anna McGrath, Chief Executive Officer
- Mr Jordan Lack, Managing Director, National Buying
- Mr Viktor Jakupec, Group Managing Director

Metcash Limited

- Mr Grant Ramage, CEO, Metcash Food

Per Capita

- Ms Emma Dawson, Executive Director
- Ms Sarah McKenzie, Director of Policy and Research

The Australia Institute (updated see 96.1)

- Mr Matt Grudnoff, Senior Economist
- Dr Greg Jericho, Chief Economist

Professor John Quiggin, Private capacity

Brocklands Nursery

- Ms Karen Brock, Owner

Boomaroo Nursery

- Mr Peter Smith, CEO

Endeavour Group - via videoconference

- Mr Steve Donohue, Chief Executive Officer and Managing Director

Monday, 15 April 2024

Committee Room 2S1
Parliament House
Canberra

Professor Allan Fels AO (via videoconference), Private capacity

Mr Abdel Badoura, Private capacity

Retail and Fast Food Workers Union

- Mr Josh Cullinan, Secretary
- Mr Josh Reinecker, Delegate
- Mr Taylor Dempsey, Delegate

Australian Food and Grocery Council

- Mr Scott McGrath, Director,Government and Media Relations
- Ms Tanya Barden, Chief Executive Officer

Australian Dairy Products Federation

- Mr John Williams, President
- Ms Janine Waller, Chief Executive Officer

Australian Council of Trade Unions (ACTU) (via videoconference)

- Mr Thomas Greenwell, Senior Economist
- Mr Joseph Mitchell, Assistant Secretary

sda National

- Ms Helen Cooney, Principal Policy Officer (Superannuation and Industry Training)
- Mr Bernie Smith, Branch Secretary-Treasurer

Bunnings Group (via videoconference)

- Ms Laura Gaspert, Ethical Sourcing Manager
- Ms Belinda Rakers, Category Manager

Australian Competition and Consumer Commission (ACCC)

- Mr Mick Keogh, Deputy Chair
- Mr Daniel McCracken-Hewson, General Manager-Supermarkets Inquiry

The Treasury

- Mrs Anna Barker, A/g Assitant Secretary, Food and Grocery Code Review
- Mr Marcus Bezzi, Chief Advisor
- Mr Tony McDonald, Assistant Secretary,Competition and Consumer Branch

- Mr Jason McDonald, Division Head Competition Taskforce

Department of Agriculture, Fisheries and Forestry

- Dr Jared Greenville, Executive Director Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES)
- Ms Joanna Stanion, First Assistant Secretary, Agricultural Policy Division
- Ms Kaz Graham, Acting Assistant Secretary, Workforce Engagement and Productivity Branch
- Mr Matt Lowe, Deputy Secretary, Agriculture, Fisheries and Forestry Policy Group
- Mr Matt Lowe, Deputy Secretary, Agriculture, Fisheries and Forestry Policy Group

Tuesday, 16 April 2024

Committee Room 2S1
Parliament House
Canberra

Woolworths Group

- Mr Brad Banducci, CEO

Coles Group

- Ms Vicki Bon, Government & Industry Relations Manager
- Ms Leah Weckert, Chief Executive Officer and Managing Director

Dr Craig Emerson, Private capacity

The Treasury

- Ms Anna Barker, Assistant Secretary, Food and Grocery Code Review

Associate Professor Andrew Schmulow, Private capacity

Appendix 3
Submissions to the Competition and Consumer Amendment (Divestiture Powers) Bill 2024 inquiry

1	Woolworths Group
2	National Farmers' Federation
3	SPAR Australia
4	Global Centre for Preventative Health and Nutrition (GLOBE)
5	Healthy Food Systems Australia
6	NSW Farmers
7	Queensland Fruit and Vegetable Growers
8	Dr Robyn Stephenson
9	Business Council of Australia
10	Australian Retailers Association