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Submission to the ACCC Supermarkets Inquiry Interim  
report

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October 2024

# About Us

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## CHOICE

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

To find out more about CHOICE's work visit [www.choice.com.au/campaigns](http://www.choice.com.au/campaigns)

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# Introduction

CHOICE welcomes the ACCC's Supermarkets Inquiry interim report.

Consumers' concern about the cost of food and groceries remains high and those in remote communities are experiencing some of the highest prices. Since our last submission, CHOICE has conducted further research on consumer sentiment about food and grocery prices, visited remote First Nations communities, contributed to the National Indigenous Australians Agency (NIAA) proposed strategy on food security in remote First Nations communities and conducted two grocery basket surveys comparing the cost of a basket of grocery items at supermarkets across the country.

This submission summarises our new research (where it has been released) and outlines our views on the consumer focused policy options in the interim report. We support regulating price representations to address concerns around promotional activities, requiring large supermarkets to ensure that publicly-available pricing information is more accessible and an audit of unit pricing compliance. CHOICE also urges the ACCC to consider further measures to address multi-buy specials, shrinkflation and loyalty programs. CHOICE also welcomes the ACCC's support for a ban on unfair trading practices to address issues around loyalty schemes, data & privacy.

# Recommendations

The ACCC should:

1. Consider the joint consumer submission to the NIAA consultation on food security in remote First Nations communities and its recommendations as a part of this inquiry and for inclusion in the final report.
2. Adopt option 3, regulate pricing representations, to address concerns about promotional activities.
3. Adopt option 1, requiring large supermarkets to ensure that publicly-available pricing information can be accessed and used by price comparison websites, to address concerns about comparing prices between supermarkets. We also recommend that this information should be available to anyone who wishes to have access.
4. Consider further measures to address multi-buy specials in the final report and consider a ban on multi-buy specials for specified essential items.
5. Consider further measures to address concerns about shrinkflation such as the introduction of shrinkflation notices.
6. The ACCC should consider including the previous and current unit prices on the shrinkflation notice.
7. Adopt option 1, an audit of unit pricing compliance, alongside the government's recently announced changes to strengthen the Unit Pricing Code.
8. Consider the expansion of the Unit Pricing Code to other retailers that sell packaged products such as pet supplies stores, chemists, hardware stores and stationers.
9. Further investigate issues around loyalty programs such as the impact on competition and the practice of linking payment cards to loyalty scheme profiles.

10. Support a ban on unfair trading practices, in the final report, to address concerns about loyalty programs.
11. Support a ban on unfair trading practices, in the final report, to address concerns around data and privacy.
12. Support further reforms to the Privacy Act, such as a fair and reasonable use test, in the final report.
13. The ACCC should further investigate the potential issues around data collection practices at the major supermarkets to establish if there is cause for concern.

## New research since CHOICE's last submission

### New data shows concern over food and grocery prices has risen

CHOICE conducts quarterly nationally representative surveys which track consumer attitudes across a range of issues. In our last submission to the ACCC inquiry we shared the results that concern about the cost of food and groceries had sat above 80% from March 2022 to January 2024, a significant jump from January 2022 at 70%. Our latest survey from September 2024 shows that concern about the cost of food and groceries is now at 87%, 46% of those are very concerned.<sup>1</sup> Our data shows that consumer concern over the cost of food and groceries has remained high in recent months with the overwhelming majority of householders concerned about current costs.

### CHOICE's submission to the NIAA consultation on food security in remote First Nations communities

CHOICE, in partnership with Consumer Credit Legal Service Western Australia (CCLSWA), Financial Counselling Australia (FCA), Financial Rights Legal Centre (FRLC), Indigenous Consumer Assistance Network (ICAN) and Mob Strong Debt Help (Mob Strong) prepared a joint submission to the NIAA on the proposed National Strategy for Food Security for Remote First Nations Communities.

Financial counsellors and community organisations shared that high prices and limited availability of food and groceries is having a significant impact on remote First Nations communities. Healthy, quality food items in remote community stores generally cost more than the same items in metro areas. The Northern Territory market basket survey revealed that the average cost of the 'Healthy Food Basket', a basket of goods based on the Australian Dietary Guidelines intended to feed a family of six for a fortnight, in remote stores was 40% higher than the average district centre supermarkets. Compared with 2021, the average cost of the Healthy

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<sup>1</sup> CHOICE Consumer Pulse was conducted in September 2024 among 1,024 Australian households. The data is weighted to ensure it is representative of the Australian population.

Food Basket increased by 13% in remote stores and increased by 22% in supermarkets in 2023.<sup>2</sup>

The pricing practices of remote stores is also inconsistent both within and between different stores. Some stores do not provide any price labels, many are not required to provide unit pricing, so don't, and the major supermarkets continue to use confusing pricing practices - and all stores lack transparency in their pricing. All of this creates significant problems for people who often rely on just one store in their local community to fulfil their food and grocery needs.

In general, our coalition supports the target outcomes, underpinning principles and focus areas proposed in the Strategy, but further improvements can be made to help reduce grocery prices, improve accessibility and help close the gap for First Nations people living in remote communities.

Our joint submission made a number of recommendations to strengthen the strategy such as:

- Introducing a mandatory code of practice for remote stores;
- Considering price caps on essential food and grocery items in remote stores;
- Introducing an accessible price monitoring tool with current and historical prices across remote communities;
- Introducing regulations for informal credit schemes;
- Considering subsidies for freight across the country; and
- Significantly raising the remote allowance payment.

We have attached our joint submission to the Strategy for the ACCC's consideration in the Supermarkets Inquiry.

CHOICE calls on the ACCC to consider the joint consumer submission to the NIAA consultation and its recommendations as a part of this inquiry. The issues and recommendations we address could be included in the final report of the Supermarkets Inquiry as many are relevant to the inquiry's terms of reference.

CHOICE has recently worked with financial counsellors to collect data on prices in remote communities in the Northern Territory and Western Australia and hopes to release this research shortly. CHOICE welcomes the focus of the next phase of the ACCC inquiry looking into smaller format stores and stores in remote communities and the forthcoming recommendations to address these issues.

#### **Recommendation**

1. The ACCC should consider the joint consumer submission to the NIAA consultation on food security in remote First Nations communities and its recommendations as a part of this inquiry and for inclusion in the final report.

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<sup>2</sup> Northern Territory Government, NT Market Basket Survey 2023 - Key Findings, accessed at: <https://data.nt.gov.au/dataset/nt-market-basket-survey-2023>

## CHOICE's supermarket grocery basket surveys reveal the difference in prices between supermarkets

In January 2024, the Prime Minister announced that the government would fund CHOICE to conduct surveys of supermarket pricing over the coming three years. To date, we have conducted the first two of our quarterly surveys.

CHOICE's survey is conducted by recruiting mystery shoppers to collect prices across the country. We must do this manually because IGA and Aldi pricing information is not available online. The manual methodology also limits the size and scale of what we can collect data on and the number of locations we visit. We also are not able to disclose the details of the specific products or locations visited because it is an ongoing project and revealing these details may compromise our study.

CHOICE welcomes the ACCC looking at supermarket pricing and price setting practices using its compulsory information gathering powers. We expect the ACCC's data collection will be at a larger scale and size than CHOICE's and are eager to see the findings. We have summarised the key findings from our basket survey below.

Our first two surveys both revealed that Aldi is the cheapest place to buy food and groceries across the country, based on a basket of 14 commonly bought grocery items that include milk, bread, sugar, pasta, tea bags and two fresh fruits and vegetables. Our most recent results are based on a survey of 104 supermarkets in 27 locations in 2024.

### The average cost of a basket is similar at the two major supermarkets

Our latest survey results revealed that a basket of products, with specials, cost on average \$78.95 at IGA, \$68.37 at Woolworths, \$66.22 at Coles and \$50.79 at Aldi.<sup>3</sup> In the first round of our quarterly survey in March, Coles and Woolworths were very closely matched in price with just a 0.75 cents difference between the two. In June the difference increased to \$1.21 when specials weren't included, with Woolworths coming in as the cheaper of the two. When specials were included, Coles was cheaper than Woolworths by \$2.15. CHOICE's latest research continues to show that the two major supermarkets are very closely matched in price for an average basket of food and groceries. Consumers who are able to access an Aldi will be able to purchase the same basket of food and groceries for a lower price.

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<sup>3</sup> Rafferty M, September 2024 '*Which supermarket has the cheapest groceries?*', CHOICE accessed at: <https://www.choice.com.au/shopping/everyday-shopping/supermarkets/articles/cheapest-groceries-australia>

## Supermarket grocery prices (with specials) Baskets compared



Graphic depicting the results from CHOICE's June 2024 Grocery Basket Survey

## CHOICE's views on the proposed options

### Addressing concerns about promotional activities

CHOICE is concerned about the volume of different promotional tactics being used at the major supermarkets. In our previous submission, we highlighted how consumers find promotional tags confusing and difficult to quickly and easily interpret. We have received hundreds of examples from people who have come across potentially misleading tags while doing their grocery shopping, some of which we shared in our previous submission and previous correspondence with the ACCC.

CHOICE welcomes the recent announcement that the ACCC is taking enforcement action on the use of 'Down Down' at Coles and 'Prices Dropped' at Woolworths. CHOICE has received many examples of price promotions from CHOICE supporters, that we can share with the ACCC if needed.

CHOICE supports option 3, to *regulate pricing representations*, in the ACCC interim report to address the concerns around promotional activities. Regulating pricing representations will help to make pricing more reliable, consistent and clear for both consumers and supermarkets. As mentioned in our previous submission, a mandatory information standard could include:

- A requirement that clear prices be displayed on all products sold by supermarkets online and in-store;
- Standardisation and rationalisation of promotional terms;



- A requirement that supermarkets must provide relevant contextual information when making a price discount representation, such as the most recent previous price of the product, as well as the specific dollar and percentage discount being offered; and
- Specific requirements around ‘was/now’ pricing claims.

CHOICE would welcome, and engage in, a consultation around a proposed mandatory information standard that also considers how information can be clearly presented to people with low vision.

*Supplementing the ACCC’s Advertising and Selling Guide* would be beneficial to improve and clarify the rules around was/now pricing or 2-price comparison advertising. However, option 1 alone would not be sufficient to address the confusion around promotional pricing, but could be used to complement regulations around pricing representations and requiring supermarkets to publish information about their promotions (see below).

CHOICE also does not object to requiring supermarkets to publish information about their promotions (option 2) but we believe this will only improve clarity around pricing practices if it is enforced alongside the development of a mandatory information standard. If supermarkets were to only publish information about their promotions, it would put the onus on consumers to check pricing information and would not help the majority of consumers who may not have the time or awareness to do so.

**Recommendation**

2. The ACCC should adopt option 3, regulate pricing representations, to address concerns about promotional activities.

## Addressing concerns about comparing prices between supermarkets

CHOICE supports the ACCC’s view that price comparison websites and apps are an effective option for consumers to check and compare food and grocery prices. Consumers should be able to access information on the relative cost of groceries at a range of supermarkets to ensure they are able to access the cheapest prices.

Further to this, CHOICE supports option 1, *requiring large supermarkets to ensure that publicly-available pricing information can be accessed and used by price comparison websites*. Pricing data should be easily accessible to ensure a variety of apps and third-party websites can provide real time pricing information to consumers. CHOICE is also of the view that this pricing data, both current and historical, should be made available to anyone who wishes to access it. This would ensure that price comparison websites are not the only ones able to obtain and use the data. Consumers, the media, researchers and consumer groups such as CHOICE, would

also benefit from access to this data so that we can verify promotional claims as needed, and conduct analysis of price changes to inform public debate.

**Recommendation**

3. The ACCC should adopt option 1, requiring large supermarkets to ensure that publicly-available pricing information can be accessed and used by price comparison websites, to address concerns about comparing prices between supermarkets . We also recommend that this information should be available to anyone who wishes to have access.

## Addressing concerns about multi-buy specials

CHOICE supports the consideration of further measures to address multi-buy specials in the final report, namely, a ban on multi-buy specials for specified essential items to ensure all people can access products at the lowest price.

As mentioned in our previous submission, multi-buy offers may be beneficial for people who are able to bulk buy goods when they are on offer but disadvantage those who are not able to do so or simply do not require multiples of the same item. CHOICE recommends a ban on multi-buy offers for essential items, as people should be able to get what they need at the lowest price possible, especially when it comes to household necessities such as fruit, vegetables, milk, bread, baby formula, sanitary items and pharmaceuticals.

**Recommendation**

4. The ACCC should consider further measures to address multi-buy specials in the final report and consider a ban on multi-buy specials for specified essential items.

## Addressing concerns about shrinkflation

CHOICE reiterates our view that supermarkets should be required to notify consumers when a product has reduced in size and the price remains the same or is inflated. We support shrinkflation notices being considered as a recommendation for the final report.

It is also important to note, as was noted in the interim report, that reform to unit pricing will not address shrinkflation on its own as consumers would still have to have had prior knowledge of the previous price and size of the item to meaningfully compare it to its current price. CHOICE supports the model of shrinkflation notices that was undertaken in France where French supermarket Carrefour informed consumers of shrinkflation by placing stickers on impacted products and later the French government introduced requirements for supermarkets to display shrinkflation notices. CHOICE also supports the French model of requiring the notices to be displayed on store shelves for two months.

CHOICE also supports the inclusion of the previous and current unit prices on the shrinkflation notice, so that a consumer is able to tell how much the price of the product has changed.

#### **Recommendation**

5. The ACCC should consider further measures to address concerns about shrinkflation such as the introduction of shrinkflation notices.
6. The ACCC should consider including the previous and current unit prices on the shrinkflation notice.

## **Addressing concerns about unit pricing**

CHOICE welcomes the Government's recent announcement about strengthening the Unit Pricing Code (the Code) by introducing penalties for breaches of the Code and conducting a review of the Code, to improve the rules around how unit prices should be displayed.

CHOICE also supports option 1 from the ACCC interim report, *an audit of unit pricing compliance*. An audit will help to establish how unit pricing is currently being used in the major supermarkets and could provide evidence to inform any review of the rules.

Many Australians rely on unit pricing to make informed decisions when shopping at the major supermarkets and these are positive steps forward to ensure unit pricing is effective into the future. CHOICE also encourages the ACCC to consider further measures such as an expansion of the Code to include other retailers that sell packaged products such as pet stores, hardware shops, pharmacies and stationary shops.

#### **Recommendations**

7. The ACCC should adopt option 1, an audit of unit pricing compliance, alongside the government's recently announced changes to strengthen the Unit Pricing Code.
8. The ACCC should consider the expansion of the Unit Pricing Code to other retailers that sell packaged products such as pet supplies stores, chemists, hardware stores and stationers.

## **Addressing concerns around loyalty programs**

A number of issues around loyalty programs warrant further investigation and consideration by the ACCC, such as the impact of loyalty schemes on competition and whether major supermarkets and loyalty schemes are continuing the practice of linking payment cards to loyalty scheme profiles even when a loyalty card is not scanned.

CHOICE is supportive of the ACCC's position on a ban on unfair trading practices as a means to address any potentially concerning practices around loyalty programs. There are many pricing practices occurring at the major supermarkets that may not be illegal, but are unfair, as they could result in consumers spending more than they intended or making purchasing

decisions that they otherwise wouldn't. A ban on unfair trading practices would cultivate a healthier marketplace, ensure more equitable economic transactions and benefit vulnerable individuals and small businesses who may be less able to protect their own interests.

CHOICE also recommends a ban on member-only discounts on specified essential items and requests that this issue be considered further by the ACCC. Member-only discounts, as mentioned in our previous submission, push consumers to sign up for a membership program in order to access the lowest prices for certain products. This results in the cheapest prices only being available to members. This is an issue for those who do not want to sign up for membership programs but also significantly an issue for people experiencing homelessness as you are required to have a fixed address to even sign up for the program. CHOICE encourages the ACCC to consider a ban on member-only pricing for essentials such as fruit, vegetables, milk, bread, baby formula, sanitary items and pharmaceuticals, to ensure everyone is able to access the lowest price for these necessities.

#### **Recommendations**

9. The ACCC should further investigate issues around loyalty programs such as the impact on competition and the practice of linking payment cards to loyalty scheme profiles.
10. The ACCC should support a ban on unfair trading practices, in the final report, to address concerns around loyalty programs.

## **Addressing concerns around data and privacy**

Supermarkets hold a considerable amount of consumer data obtained through loyalty programs, in-store point-of-sale systems and online stores and mobile apps, as noted in the ACCC's interim report. Supermarkets have invested heavily in data-driven technology in order to protect and grow their revenue and market share.

CHOICE is very supportive of the ACCC's view that a ban on unfair trading practices could apply to conduct related to data collection. CHOICE supports a recommendation for a ban on unfair trading practices in the final report.

CHOICE also supports further reforms to the Privacy Act, particularly a fair and reasonable use test that would provide consumers with greater certainty that their data is being used in line with consumer expectations, and hold businesses to account when they don't.

CHOICE is supportive of the ACCC investigating the issue of data collection practices at the major supermarkets further.

#### **Recommendations**

11. The ACCC should support a ban on unfair trading practices, in the final report, to address concerns about data and privacy

12. The ACCC should support further reforms to the Privacy Act, such as a fair and reasonable use test, in the final report.
13. The ACCC should further investigate the potential issues around data collection practices at the major supermarkets to establish if there is cause for concern.