



**CONSUMERS'
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

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SUBMISSION TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

Inquiry into promoting economic dynamism, competition, and business formation.

The Consumers' Federation of Australia (CFA) welcomes the opportunity to contribute to the House of Representatives Standing Committee on Economics Inquiry into promoting economic dynamism, competition, and business formation. CFA is the peak body for consumer organisations in Australia. CFA represents a diverse range of consumer organisations, including most major national consumer organisations.

CFA considers that there is a lack of adequate competition in many market sectors in Australia, which enables business to sustain mark-ups and produces poor market outcomes. Many key sectors, including financial services, supermarkets, the energy market, telecommunications, remain highly concentrated. Furthermore, in a high inflationary environment, dominant firms are able to hide behind inflation to hike up their prices and increase their profits.

This submission makes a range of specific recommendations and urges the Committee to investigate what measures can be taken to improve competition in Australia to ensure markets are working effectively to enhance the economic wellbeing of all people, especially people experiencing vulnerability.

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Policy recommendations

CFA recommends the Committee should:

1. Examine the extent of sellers' inflation in highly concentrated markets in Australia. If sellers' inflation is established, the Committee should consider measures which will mitigate this harm, including:
 1. price gouging laws to prohibit excessive pricing in emergencies
 2. active monitoring and transparency of prices and profit margins;
 3. windfall profit taxes; and
 4. if the above fails, strategic price controls in key significant sectors.
2. Recommend the ACCC take a more proactive approach to monitoring and enforcing retailer compliance with the Grocery Unit Pricing Code.
3. Recommend the Federal Government initiate an independent and comprehensive review of the Grocery Unit Pricing Code and of unit pricing in general.
4. recommend the establishment of a trusted and independent party should be resourced to develop and maintain an online plan comparison tool about telecommunications services to support consumer choice.
5. Recommend the Federal Government regulate buy-now, pay-later and wage advance loans as credit products
6. support a National Energy Literacy program to provide timely, independent and accurate information and advice
7. Recommend the Federal Government initiate a review into the effectiveness of mergers laws in Australia.
8. Recommend the Federal Government legislate an unfair trading prohibition in the Australian Consumer Law and ASIC Act.
9. Recommend the Federal Government legislate penalties for breaches of consumer guarantee provisions of the Australian Consumer Law.

Ineffective competition leads to price mark-ups and poor consumer outcomes

There is ineffective competition in several key industries in Australia. The banking, supermarket, telecommunications, aviation, and energy sectors are all highly concentrated. CFA is concerned that excessive market concentration may be contributing to “sellers’ inflation” in Australia, and we urge this committee to investigate this phenomenon.

Recent academic research has found sellers’ inflation occurs when monopolistic companies are able to use “upstream shocks” as an impulse for further price increases.¹ Researchers found that:

“Rising prices in systemically significant upstream sectors due to commodity market dynamics or bottlenecks create windfall profits and provide an impulse for further price hikes.”²

As consumer demand for essential goods and services such as groceries and utilities are often inelastic, people are forced to purchase these products and cut back in other areas. This sentiment is shared by Rod Sims, the former chair of the Australian Consumer and Competition Commission (ACCC). He shared:

“When there is high inflation, dominant firms often realise they can increase prices above any cost rises because consumers will be more accepting of this.”³

As an example, Australia has one of the most highly concentrated supermarket sectors in the world, and supermarket profit margins have increased. Sellers’ inflation may be a possible cause of the recent profit announcements by Coles and Woolworths. Despite heightened cost of living pressures, Coles Group earnings increased 17.1% in the six months to December 30 2022. Woolworths had a 14% increase in earnings over the same time period. Both supermarkets increased their gross margins, which indicates they are earning more profit from each customer.

Researchers have found that sellers’ inflation is “not possible in a perfectly competitive economy, but in a highly concentrated economy in which large firms are price makers.”⁴ They suggested a number of policy measures to address this risk including:

- price gouging laws to prohibit excessive pricing in emergencies
- active monitoring and transparency of prices and profit margins;
- windfall profit taxes; and
- if the above fails, a strategic price controls in key significant sectors.

CFA encourages the Committee to investigate the extent of sellers’ inflation in Australia and if it is established, propose policy measures to address this issue.

Recommendation 1

The Committee should examine the extent of sellers’ inflation in highly concentrated markets in Australia. If sellers’ inflation is established, the Committee should consider measures which will mitigate this harm, including:

¹I. Weber and E. Wasner, 2023, ‘Sellers’ Inflation, Profits and Conflict: Why can Large Firms Hike Prices in an Emergency?’ Working Paper Number 2023-2, https://scholarworks.umass.edu/econ_workingpaper/343/

²Weber and Wasner, 2023, p.1

³R. Sims, 2022, “Curbing use of market power can help fight against inflation”, Sydney Morning Herald, 25 July, <https://www.smh.com.au/business/the-economy/curbing-use-of-market-power-can-help-fight-against-inflation-20220724-p5b42l.html>

⁴Weber and Wasner, 2023, p.8-19

- price gouging laws to prohibit excessive pricing in emergencies
- active monitoring and transparency of prices and profit margins;
- windfall profit taxes; and
- if the above fails, a strategic price controls in key significant sectors.

Promote demand sides initiatives to stimulate competition in key markets

The terms of reference for this inquiry appear to focus on issues like industry structures and their impact on competition and economic dynamism. CFA considers that, in addition, a key focus should be on demand-side initiatives to promote more effective competition.

This was a key recommendation in the 2015 Harper Competition Policy Review. It recognised that competition will not be effective unless consumers are informed and are able to make effective choices without encountering undue barriers. The review stated:

“The Panel believes that markets work best when consumers are informed and engaged, empowering them to make good decisions. Empowering consumers requires that they have access to accurate, easily understood information about products and services on offer.

But just providing information is not enough to guarantee good choices by consumers. The ‘right’ type of information must also be provided, so consumers can (and want to) act on the available information. Insights from psychology and behavioural economics suggest that consumers can have behavioural traits that prevent them from making good use of even well-presented information. Governments should take account of these findings to ensure that consumers are able to enjoy the full benefits of competition and choice.”⁵

This submission makes recommendations about specific measures in particular markets to boost competition and more positive market outcomes for consumers.

Improve unit pricing in supermarkets

CFA considers the Federal Government should take action to reduce the cost of food and groceries, the increased cost of which is causing stress in many households, because:

- It is essential that all households have access to an adequate supply of food and groceries
- Food and groceries account for a significant proportion of annual expenditure for most Australian households.
- For many households, especially those with low incomes and large grocery bills, expenditure on food and groceries is a high proportion of annual expenditure.

CFA recommends that the Australian Consumer and Competition Commission take a more proactive approach to monitoring and enforcing retailer compliance with the requirements of the Grocery Unit Pricing Code (**the Code**). The Code requires very large grocery stores and some online grocery retailers to provide the unit price, which is the price standardised unit of measure, for most of the packaged products sold. Stronger oversight by the ACCC will make it much easier for consumers to compare the prices of food and grocery products.

There is currently widespread non-compliance with Code, especially the requirements that unit prices be displayed prominently and legibly and regarding the units of measure to be used to show the unit price. This has resulted in high proportions of consumers having difficulty using unit pricing.

⁵ Harper Competition Policy Review – Final Report, page 53.

Consumers therefore make less savings or get less for the same money than would be the case with higher levels of retailer compliance with the Code. A recent CHOICE survey found 71% of grocery unit price users in stores and 80% of online users had difficulty doing so, and that most of the difficulties were due to retailer non-compliance with the Code.⁶

Grocery unit prices vary greatly between pack sizes, brands, type of packaging, loose and packaged products, etc. Therefore, if the unit pricing provided is accurate and easy to use, consumers can use it to make many types of price and value comparisons. This will substantially reduce total expenditure on groceries or increase the amount obtained for the same expenditure. The ability to do this would clearly help many consumers to manage the current cost of living crisis.

CFA supports an independent and comprehensive review of the Grocery Unit Pricing Code and of unit pricing in general. Such a review was intended to be undertaken within 5 years after the Code commenced in 2009, however it never was. The review should examine the scope to improve the provisions of the Code and also to require some non-grocery retailers that sell packaged products, such as pet supplies stores, chemists (for non-prescription items) or hardware stores, to provide unit pricing. The latter is required in the UK and many countries in the European Union. The review should also include how to improve the impacts of measurement legislation on the effectiveness of unit price provision.

Recommendation 2

The Committee should recommend the ACCC take a more proactive approach to monitoring and enforcing retailer compliance with the Grocery Unit Pricing Code.

Recommendation 3

The Committee should recommend the Federal Government initiate an independent and comprehensive review of the Grocery Unit Pricing Code and of unit pricing in general.

Improve accessing consumer choice in telecommunications

Telecommunications is an essential service and many people struggle to afford and access services. Digital exclusion can have lasting social and economic outcomes for people, especially people experiencing vulnerability. This is exacerbated by information asymmetry—while the market has delivered good and affordable options for consumers, many consumers do not shop around due to a lack of awareness about the options available to them.

CFA supports the call from the Australian Communications Consumer Action Network (ACCAN) for an unbiased and independent information and plan comparison tool for phone and internet products and services similar to EnergyMadeEasy.gov.au, which targets consumers in the energy sector. A trusted independent plan comparison tool that would address consumer knowledge gaps and provide accurate and customisable information about the availability and price of various phone and internet services.

Recommendation 4

The Committee should recommend the establishment of a trusted and independent party should be resourced to develop and maintain an online plan comparison tool about telecommunications services to support consumer choice.

⁶CHOICE, 2023, 'CHOICE survey: Shoppers use unit pricing to combat rising grocery bills', <https://www.choice.com.au/shopping/everyday-shopping/supermarkets/articles/unit-pricing-survey-rising-grocery-prices>

Ensuring a level-playing field in consumer credit

Due to a lack of a regulatory level playing-field in consumer credit, buy-now, pay-later (BNPL) and wage advance products contribute to ineffective competition and widespread consumer harm. Due to a lack of safeguards, there is no legal obligation to conduct an affordability assessment to determine whether the loans will put them in financial hardship or not. This poorly-regulated credit industry is causing serious economic and social harm to people, families and households across the country

CHOICE's nationally representative surveys conducted in June and in September 2022 found that a significant number of people are being sold into unaffordable BNPL debt:

- 1 in 7 BNPL users were sold more than 20 BNPL loans in the past year.⁷
- 1 in 5 BNPL users missed or had been late with a payment for a BNPL service.⁸
- Of those users with late payments, 2 in 5 have taken out another loan to pay for BNPL fees or debts.⁹
- 1 in 4 BNPL users used this credit product to pay for essential products or services.¹⁰

The Consumer Policy Research Centre's Victorian Consumer Survey found:

- BNPL usage is high among those with no savings buffers: 62% of those taking out a BNPL loan couldn't raise more than \$2000 in an emergency, 30% reported they couldn't raise \$500.
- 22% of those using BNPL products went without a meal in the last 6 months to due costs.¹¹

CHOICE also found that 1 in 4 BNPL users who have missed or been late with a payment had to cut back on essentials to pay for BNPL fees or debts.¹² Many consumers would likely be better served by accessing financial hardship assistance through their service providers, no interest loans, or seeking independent financial counselling.

People taking a BNPL loan deserve the same consumer protections as when they take out a personal loan or credit card. CFA supports the Federal Government's commitment to regulate the BNPL industry. We recognise the Treasury is consulting on proposed options to regulate BNPL. CFA supports the full regulation of BNPL and wage advance under the *National Consumer Credit Protection Act 2009* and the National Credit Code.

Recommendation 5

The Committee should recommend the Federal Government regulate buy-now, pay-later and wage advance loans as credit products.

Provide timely, independent and accurate information and advice on energy

In the transition to a net-zero economy, households are being faced with more complex choices about energy, including solar, batteries, vehicles, heating/cooling, appliances etc. However,

⁷CHOICE Consumer Pulse June 2022 is based on a survey of 1,083 Australian households. Quotas were applied for representations in each age group as well as genders and location to ensure coverage in each state and territory across metropolitan and regional areas. Fieldwork was conducted from 13th to 28th of June 2022.

⁸CHOICE Consumer Pulse September 2022 is based on a survey of 1,090 Australian households. Quotas were applied for representations in each age group as well as genders and location to ensure coverage in each state and territory across metropolitan and regional areas. Fieldwork was conducted from 6th to 26th of June 2022.

⁹CHOICE Consumer Pulse September 2022.

¹⁰CHOICE Consumer Pulse September 2022

¹¹Consumer Policy Research, January 2023, Buy Now Pay Later: The Experience of Victorian consumers with Buy Now, Pay Later loans, <https://cprc.org.au/victorian-consumer-survey/>

¹²CHOICE Consumer Pulse September 2022

according to Energy Consumers Australia, only 57% of residential consumers feel that there is enough easily understood information available to make decisions about energy. And only 63% feel confident in their ability to make choices about energy products and services. Furthermore, both of these have seen a 4% decrease in the past year.

We need all Australians to find it easy and intuitive to make decisions about new appliances, changes to their homes and businesses and potential changes to their behaviour, as these can all drive efficient business investment decisions and deliver lower bills.

This was recognised in the 2018 ACCC Retail and Pricing Inquiry which recommended measures to improve energy literacy for both households and small businesses (recommendations 38 and 52).

CFA supports calls for a national energy literacy program¹³ to provide timely, independent and accurate information and advice.

Recommendations 6

The Committee should support a National Energy Literacy program to provide timely, independent and accurate information and advice.

Improve competition and consumer laws

Review the effectiveness of Australia’s merger laws

CFA supports a new Federal review of merger laws to examine if they are working to maximise outcomes for the Australian consumers and the community. The purpose of Australia’s merger laws is to make sure the market serves consumers, not to enable mergers. The former ACCC Chair Rod Sims said, “the Australian approach to merger control is out of step with most merger regimes internationally”.¹⁴ Stronger and more robust merger laws will prevent the growth of anti-competitive businesses and industries. The review should consider whether the merger framework should have a formal clearance-based merger process, with approval by the ACCC.

Recommendation 7

The Committee should recommend the Federal Government initiate a review into the effectiveness of mergers laws in Australia.

Introduce an unfair trading prohibition

CFA supports the introduction of an unfair trading prohibition in the Australian Consumer Law (ACL) and *Australian Securities and Investments Act 2001 Cth* (ASIC Act). If legislated, this new provision will prohibit businesses from engaging in unfair practices, including those that distort the free choices of consumer or unduly cause confusion. It is only if consumers are unrestrained in their choices, and are not hampered by unfair business conduct, can they make choices that will drive markets to deliver what the community wants in an efficient way.

There are presently gaps in our consumer laws. For example:

- The prohibition on misleading and deceptive conduct does not require a business to be upfront in its communication.

¹³ Energy and Climate Change Ministerial Council, Communique, 24 February 2023.

¹⁴R Sims, 2021, Protecting and Promoting Competition in Australia, <https://www.accc.gov.au/speech/protecting-and-promoting-competition-in-australia>

- The prohibition on unconscionable conduct focuses on whether the trader’s conduct is outside the norms of accepted business conduct. This means that the prohibition won’t address unfair conduct that is endemic or widespread in a market, because it will be considered ‘accepted’. It focuses on the morality of the trader, not the outcome for the consumer.
- The prohibition on unfair contract terms does deal with fairness, but only in relation to standard form contracting. It doesn’t deal with unfairness in other aspects of commerce—marketing and advertising; product design and pricing; or after-sales service.

A well-functioning market, in which competition drives healthy innovation, is an effective institution to promote community wellbeing. However, as business models become more complex—particularly due to online commerce which can manipulate our behaviour in new ways—we need the consumer law to be focusing more on outcomes of market competition, not just the morality of traders. A prohibition on unfair trading would direct consideration of whether a business practice unduly limits the ability of consumers to make informed choices, thereby driving effective competition.

Australian is also out-of-step with other comparable jurisdictions. Unfair trading laws operate effectively in the United States, European Union, United Kingdom and Singapore. A prohibition on unfairness would address the inherent limitations of laws that prohibit unconscionable conduct and prevent business practices that are contrary to consumer expectations of fairness in the market. This is a missing link in Australia’s consumer protection regime.

CFA welcomed the commitment in September 2022 by Commonwealth, State, and Territory consumer affairs ministers to consult on proposed reforms to address unfair trade practices.¹⁵ This will help better protect consumers from harm, especially from harmful or predatory business models.

Recommendation 8

The Committee should recommend the Federal Government legislate an unfair trading prohibition in the Australian Consumer Law and ASIC Act.

Penalties for breaches of consumer guarantee provisions

Currently, businesses face no penalties if they fail to comply with consumer guarantees provisions of the ACL. This means that consumers are often unable to secure adequate remedies for faulty products, including major purchases like cars, caravans, and large household appliances. This is especially important as households face heightened cost of living pressures.

Businesses put up barriers that limit people from being easily able to enforce their consumer guarantee rights. Misleading information on what people’s rights are, as well as who is responsible for a remedy, makes it difficult and time-consuming for people to enforce their rights.

In June 2021, CHOICE undertook a nationally representative survey about people’s experiences with their consumer guarantee rights that confirms the findings from the survey CHOICE members. This

¹⁵SA Attorney-General’s Department, Consumer Affairs Ministers meet in Adelaide, 2022, <https://www.agd.sa.gov.au/about-us/news/consumer-affairs-ministers-meet-in-adelaide>

survey found that 23% of people had problems with their products in the past 12 months.¹⁶ 55% of those problems were with products that were under 1 year old.

CFA supports the Federal Parliament legislating penalties for breaches of the consumer guarantee provisions of the Australian Consumer Law. The Treasury has already completed consultations on some of these reforms.

Recommendation 11

The Committee should recommend the Federal Government legislate penalties for breaches of consumer guarantee provisions of the Australian Consumer Law.

¹⁶This survey was conducted online between 25-28 June 2021. The survey was designed and analysed by CHOICE and put in the field by accredited research agency Dynata as part of their weekly "Omnipulse" omnibus. 1,005 people completed the survey, data has been weighted to ensure it is representative of the Australian population based on the 2016 ABS Census.