

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Competition and Consumer Act 2010

Competition and Consumer (Price Inquiry – Supermarkets) Direction 2024

Section 95H of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may require the Australian Competition and Consumer Commission (ACCC) to hold an inquiry into a specified matter or matters.

The *Competition and Consumer (Price Inquiry – Supermarkets) Direction 2024* (the Direction) is made under subsection 95H(1) of the Act. The Direction requires the ACCC to hold a price inquiry into the markets for the supply of groceries.

The inquiry offers valuable transparency around Australia's supermarket business sector and the related supply chain, including the pricing practices of suppliers, wholesalers, and retailers of groceries.

Part 1 of the Direction provides the machinery provisions of the instrument, including the definitions.

Part 2 of the Direction provides the terms of reference for the inquiry and guidance on the matters the ACCC is to take into consideration in holding the inquiry. The ACCC must have particular regard to the structure of markets for the supply of groceries, including competition at the supplier, wholesaler and retailer levels, the interactions between these levels, the position of small and independent retailers, and the impact of technological change on the markets. The inquiry must also consider the price-setting approaches of suppliers, wholesalers and retailers, and factors affecting the price of inputs along the supply chain for groceries. As part of this, the ACCC must examine any difference between the prices paid by, and prices charged by, different participants in the markets. This ensures that the ACCC considers the prices of groceries along the supply chain – from the prices paid to farmers (also known as farmgate), to the prices paid by intermediaries such as processors, producers, transporters, to the prices paid by consumers at supermarkets. Finally, the ACCC must have regard to the non-price aspects of competition in the markets for groceries, including the impact of loyalty programs and discounts offered by retailers for future purchases of groceries or other goods or services.

The ACCC must provide an interim report to the Treasurer by no later than 31 August 2024 and a final report to the Treasurer by no later than 28 February 2025.

In accordance with section 17 of the *Legislation Act 2003*, the ACCC has been consulted on the terms of the Direction.

The Direction is a legislative instrument for the purposes of the *Legislation Act 2003*. In accordance with item 2 of the table in section 9 and item 3 of the table in section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is not disallowable and does not sunset as it is a direction by a Minister to a person or body. It is appropriate that this instrument is not disallowable as it is a Ministerial direction, and

therefore executive control is intended. Similarly, the direction is intended to remain in place until the inquiry is completed or unless and until revoked by the Treasurer, and therefore it is appropriate that it not sunset.

Details of the Direction are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

The Direction commences on the day after the instrument is registered.

The Office of Impact Analysis (OIA) has been consulted (OIA ref: OIA24-06442) and agreed that an Impact Analysis is not required.

Details of the Competition and Consumer (Price Inquiry—Supermarkets) Direction 2024

Section 1—Name

This section provides that the name of the Direction is the *Competition and Consumer (Price Inquiry—Supermarkets) Direction 2024* (the Direction).

Section 2—Commencement

Section 2 provides that Parts 1 and 2 of the Direction commence on the day after it is registered on the Federal Register of Legislation.

Section 3—Authority

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

Section 4—Definitions

Section 4 provides definitions of expressions used in the Direction.

A number of terms used in this instrument have the meaning given by Schedule 1 to the *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015* (Food and Grocery Code of Conduct).

This instrument extends the meaning of groceries given by the Food and Grocery Code of Conduct to also include items that are to be processed into, or used in the manufacture of, groceries.

Section 5—Commission to hold an inquiry

Section 5 directs the ACCC to hold an inquiry into the markets for the supply of groceries.

Section 5 clarifies that the inquiry is separate to the Government’s review of the Food and Grocery Code of Conduct which commenced on 3 October 2023. However, the ACCC may consider the operation or scope of the Food and Grocery Code of Conduct if necessary, in this inquiry.

This direction is given under subsection 95H(1) of the Act.

Section 6—Directions on matters to be taken into consideration in the inquiry

Section 6 directs the ACCC to have particular regard to certain matters in holding the inquiry.

The ACCC must have particular regard to the structure of grocery markets, including competition at the supplier, wholesaler and retailer levels, interactions between these levels, the position of small and independent retailers, and the impact of technological change on the markets.

The inquiry must also consider the price-setting approaches of suppliers, wholesalers and retailers, including the use of data analytics.

The ACCC must also have regard to factors affecting the price of inputs along the supply chain for groceries. As part of this, the ACCC must examine any difference between the prices paid by, and prices charged by, different participants in the market. This ensures that the ACCC considers the prices of groceries along the supply chain – from the prices paid to farmers to the prices paid by consumers.

Finally, the ACCC must have regard to the non-price aspects of competition in the markets for groceries, including the impact of loyalty programs and discounts offered by retailers for future purchases of groceries or other goods or services.

This direction is given under subsection 95J(6) of the Act.

Section 7—Directions as to holding of the inquiry

Section 7 directs the ACCC to give the Treasurer an interim report on the inquiry by 31 August 2024.

This direction is given under subsection 95J(6) of the Act.

Section 8—Period for completing the inquiry

Section 8 directs the ACCC to give the Treasurer a final report on the inquiry by 28 February 2025.

This direction is given under subsection 95K(1) of the Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Competition and Consumer (Price Inquiry–Supermarket) Direction 2024

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 95H of the *Competition and Consumer Act 2010* provides that the Minister may require the Australian Competition and Consumer Commission (ACCC) to hold an inquiry into a specified matter or matters.

The *Competition and Consumer (Price Inquiry–Supermarkets) Direction 2024* (the Direction) is a direction to the Chairperson of the ACCC to hold a price inquiry into groceries.

The Direction sets out the terms of reference for the inquiry. The ACCC must provide an interim report to the Treasurer by no later than 31 August 2024 and a final report to the Treasurer by no later than 28 February 2025.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.