

# 2023–24 Review of the Food and Grocery Code of Conduct

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Victorian Government Submission

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# 1. Preamble

The Victorian Government acknowledges Aboriginal and Torres Strait Islander people as the Traditional Custodians of the land and acknowledges and pays respect to their Elders, past and present.

The Victorian Government welcomes the opportunity to provide a submission to the Review of the Food and Grocery Code of Conduct conducted by the Hon Dr Craig Emerson on behalf of the Commonwealth Government. This submission has been prepared in consultation with key Victorian Government departments. It addresses the focal areas of the Review as outlined in the Terms of Reference, and considers:

- trends in grocery and food manufacturing costs, and their impact on consumers
- opportunities for reform.

## 2. Background

Many markets in Australia are dominated by a small number of providers, including energy retailing, mobile telecommunications, banking and supermarkets. Recent analysis indicates that concentration in the supermarket retailing sector is higher than in many economies of comparable size, including high income countries such as the US and the UK<sup>1</sup>. Increasing market power undermines the role of competitive markets to support innovation, productivity, and longer-term prosperity for consumers, households, and smaller businesses<sup>2</sup>.

### 2.1 Trends in grocery price and food manufacturing costs and cost of living impacts

Victoria is navigating a challenging period of high inflation and increased interest rates, as is the case nationally and globally. While headline inflation has declined from its peak, it is still high. Moreover, prices for many essential goods and services have risen significantly over the past two years, contributing to cost-of-living pressures for many Victorian families (**Chart 1**).

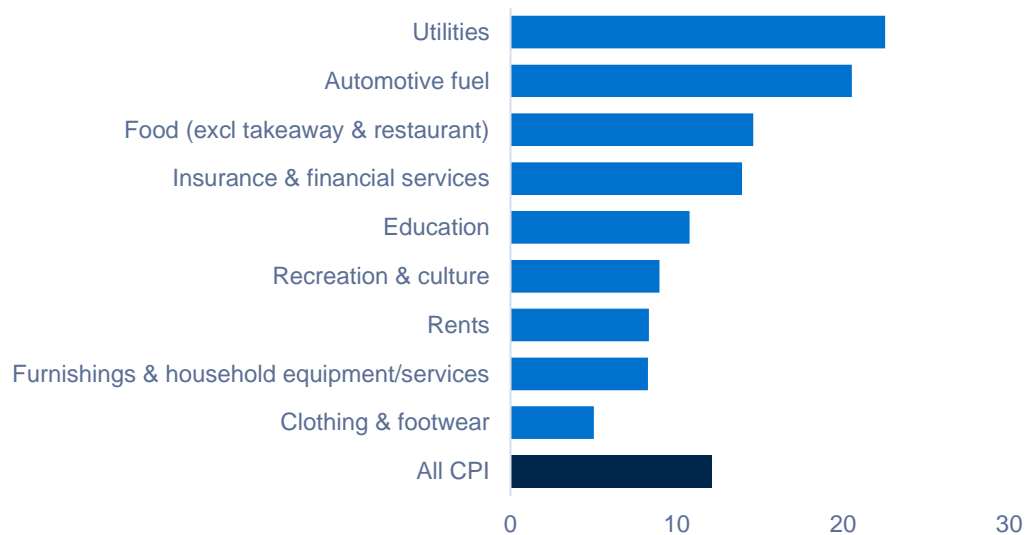
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<sup>1</sup> <https://grattan.edu.au/wp-content/uploads/2017/12/895-Competition-in-Australia-Too-little-of-a-good-thing-.pdf>

<sup>2</sup> <https://www.accc.gov.au/about-us/media/speeches/protecting-and-promoting-competition-in-australia-keynote-speech>

**Chart 1: Victorian households have faced rising living costs over the past two years**

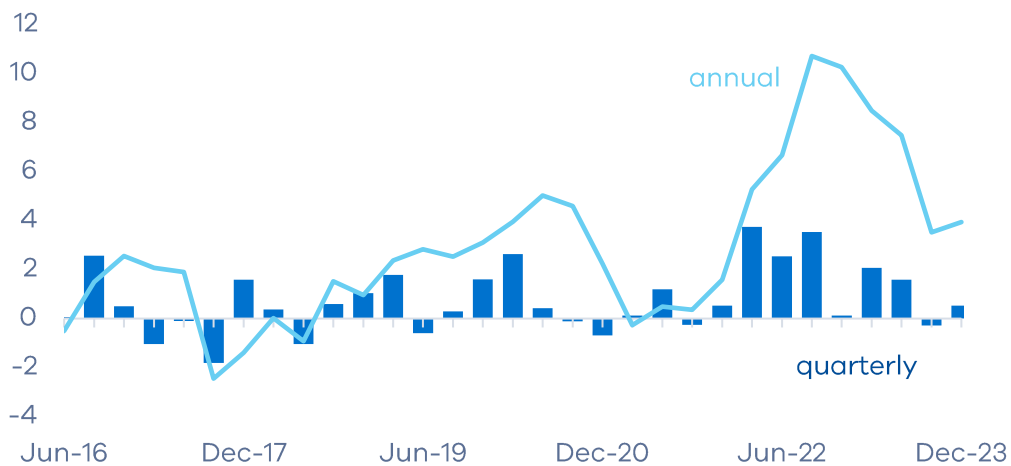
*selected CPI categories, prices growth from December 2021 quarter to December 2023 quarter (%), Melbourne*



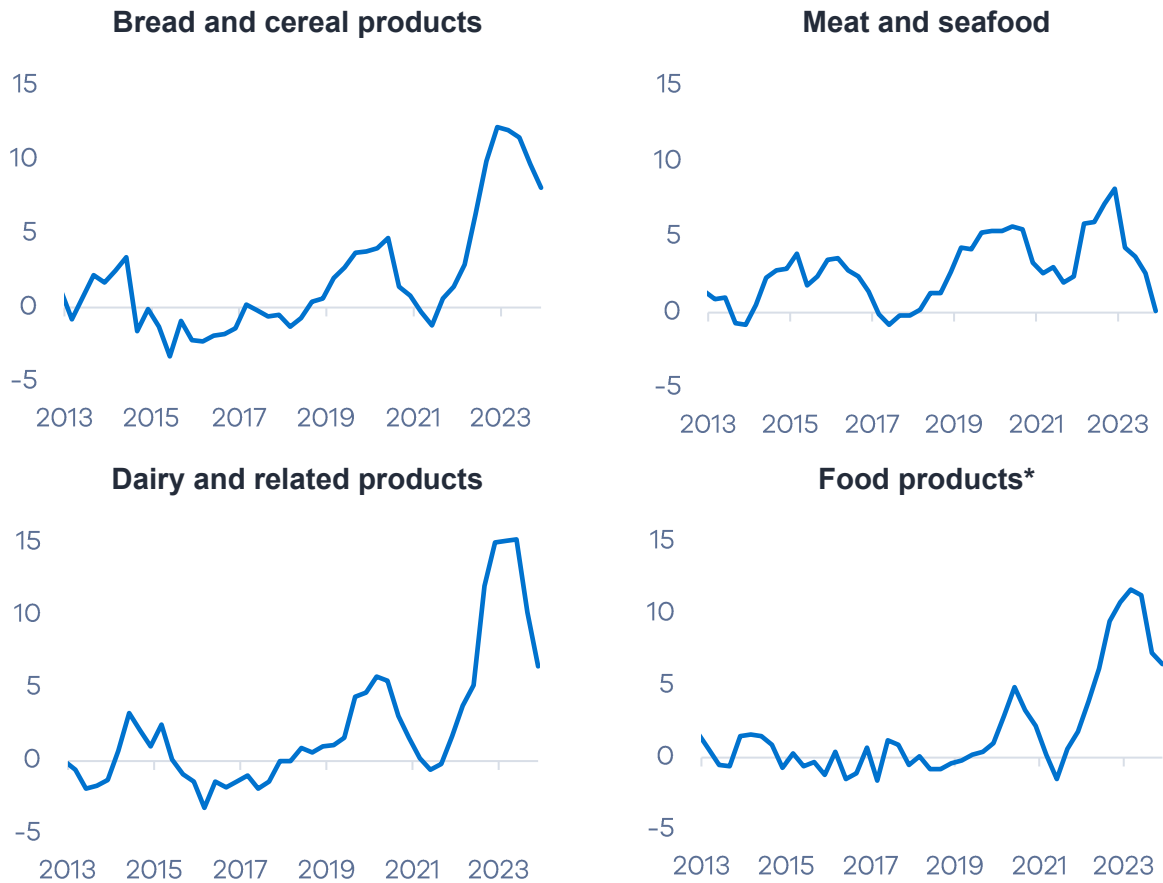
Prices for food – a significant share of household budgets, especially for those on low incomes – are a key concern for Victorians. Melbourne food inflation rose significantly in 2022 (**Chart 2**). Annual growth peaked at 10.7 per cent over the year to the September quarter 2022, and price rises were strong across many of the main food categories (**Chart 3**).

**Chart 2: Overall food inflation has declined from its late 2022 peak in year-ended terms, although picked up a little again in the December quarter**

*food price growth (excl. takeaway and restaurant meals), %, Melbourne*



**Chart 3: Inflation has eased for most food categories, particularly for meat and seafood**  
*food price growth, selected categories, year-ended growth (%), Melbourne*

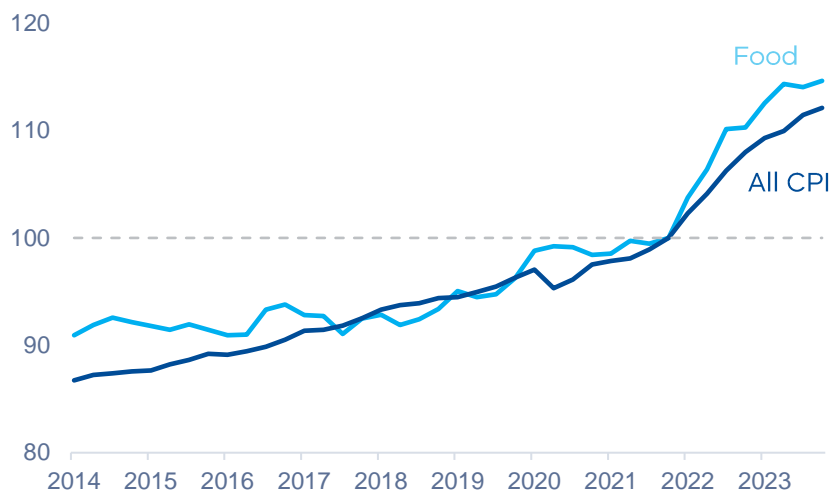


*\*includes products such as eggs, jams, oils, snacks, etc.*

While the pace of price increases moderated over the second half of 2023, prices remain much higher than two years ago (**Chart 4**). For example, poultry prices are up 14.3 per cent since the end of 2021, while bread prices are up 24.4 per cent, and dairy products are 22.5 per cent more expensive than they were two years ago. Furthermore, overall food prices have risen by more than overall consumer prices have. These price rises are putting significant pressure on the finances of many Victorian households.

#### Chart 4: Food inflation has moderated, but prices are still much higher than they were in 2021

food prices (excl. takeaway and restaurant meals), index = 100 in December 2021 quarter, Melbourne



Strong growth in consumer food prices has coincided with a large increase in food manufacturing costs (**Chart 5**). Nationally, these costs rose strongly in the year to June 2022 due to damaging weather and higher input costs, including energy, transport, fertiliser, and labour.

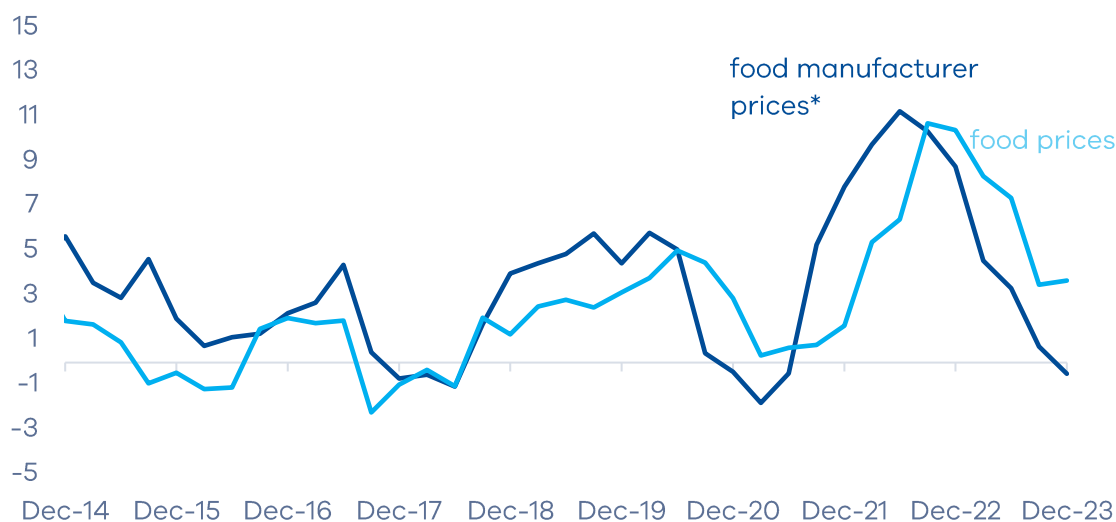
Food manufacturers have looked to pass on higher manufacturers' prices to supermarkets, who passed on these costs to consumers in the form of higher food retail prices. The number of price requests made to Coles and Woolworths rose sharply between 2020-21 and 2022-23, although it is unclear what share of these have been accepted by supermarket chains. While many food manufacturing cost pressures moderated in 2023, leading to manufacturing costs stabilising, the RBA has noted that the El Niño weather pattern and ongoing climate change effects could cause disruptions to agricultural production that would continue to increase food prices in the long run<sup>3</sup>.

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<sup>3</sup> Economic Outlook | Statement on Monetary Policy – November 2023 | RBA

### Chart 5: Consumer food price changes have tended to follow movement in food manufacturer output prices with a delay

food manufacturer output prices (producer price index) and consumer food prices (excl. takeaway and restaurant meals), year-ended growth (%), Australia



\*such as manufacturers' prices for meat, dairy, fruit/vegetable & bakery processing and manufacturing

## 3. Potential Reform Opportunities

### 3.1 Reform merger laws

Merger laws administered by the Australian Competition and Consumer Commission (ACCC) under the *Competition and Consumer Act 2010* (Cth) should be reviewed and strengthened. This would ensure that the ACCC has adequate oversight of proposed mergers and has the necessary tools to help strengthen competition in Australia.

Former and current ACCC chairs have raised concerns that there is no current requirement for merger parties to notify the ACCC of proposed mergers and acquisitions<sup>4</sup>. As it stands, there is no mandatory merger clearance regime, that is parties do not have to wait for clearance before they can complete a merger. The ACCC must rely on voluntary actions to address any ACCC concerns or take action in the Federal Court. However, the current regime does not necessarily give the ACCC enough time/information to act before the merger has occurred.

<sup>4</sup> See for example, <https://www.accc.gov.au/media-release/evidence-backs-case-for-critical-merger-law-reform> or <https://www.accc.gov.au/media-release/reform-of-merger-laws-critical-for-australias-economic-transition>

Consideration of a merger clearance system should also consider appropriate offences and remedial and sanctioning powers for the ACCC. This should include consideration, and strengthening where needed, of structural remedies (such as divestiture of assets, where appropriate) and focus given to behavioural remedies to prevent and deal with anticompetitive conduct and misuse of market power in the post-merger context and ensure adequate ongoing oversight rather than one-time or point-in-time fixes.

### 3.2 Review of unit pricing

The Retail Grocery Industry (Unit Pricing) Code of Conduct ('the Unit Pricing Code') should be reviewed and extensions considered. The Unit Pricing Code is a legally-binding set of rules administered by the ACCC under the *Competition and Consumer Act 2010* (Cth) to make it easier for shoppers to quickly and accurately compare the value of pre-packaged grocery items. Unit pricing requires two prices per item – the selling price and the unit price (price against a standard unit of measurement).

A comparison by the Queensland Consumers Association in 2021<sup>5</sup> found consumers could pay up to 42% less simply by choosing, based on lowest unit price, a different pack size of the same product.

The Unit Pricing Code applies to large stores of more than 1 000 square metres and has required such stores to give the unit price for packaged grocery items since 2009 (for both in-store and online purchases). Unit pricing requirements apply to staple grocery items, namely: bread, breakfast cereal, butter, eggs, flour, fresh fruit and vegetables, fresh milk, meat, rice, sugar, and other packaged food.

A review of the Unit Pricing Code could consider extensions of the code to other staple consumer items and to pharmacies, hardware stores, smaller supermarket stores (such as IGAs), to further support consumers to reduce the total cost of their shopping basket.

The Unit Pricing Code also requires that the unit price be prominent, legible, positioned closely to the selling price, and unambiguous. But supermarkets vary in how these principles are implemented, meaning there are variations in font size, whether the unit price appears on the same tag or in the same font as the selling price, and the level of online accessibility for people with disabilities using assistive technology. There is also typically no ability to search for products by unit price. A review of the Unit Pricing Code could consider ways to standardise the presentation of unit price across supermarkets to improve consumers' ability to access and use unit pricing to save on staple items.

### 3.3 Regular ACCC price enquiries into supermarkets

Government should consider the more frequent use (and enhancement where needed) of the ACCC's existing price monitoring powers under the *Competition and Consumer Act 2010* (Cth). This would allow the ACCC to publish regular comparisons across supermarkets of a basket of common staple goods over time and trends in the cost of that basket may help consumers make more informed decisions, compare pricing across supermarket chains, and encourage competitive pricing from supermarkets.

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<sup>5</sup> <https://consumersfederation.org.au/unit-pricing-pricing-per-unit-of-measure-global-update-march-2021>



### **3.4 Strong and continued enforcement action from the ACCC on pricing transparency**

Strong and continued enforcement action from the ACCC to ensure that supermarkets are not engaging in misleading or deceptive conduct under the Australian Consumer Law about ‘was/now’ pricing will assist consumers to make informed choices, noting that the ACCC has publicly raised some concerns in this area.

To the extent that supermarket claims about the causes of price increases (such as claiming price increases are due to supply chain issues or logistical costs and constraints) are demonstrably inaccurate, Victoria supports strong ACCC monitoring and enforcement of the Australian Consumer Law’s prohibition against misleading or deceptive conduct.

### **3.5 Prohibition on unfair trading**

Victoria supports a clear and expedited timeframe for work already underway through consumer affairs forums to scope a potential national prohibition on unfair trading in the Australian Consumer Law<sup>6</sup>.

While supermarkets are not necessarily engaging in unfair pricing, a prohibition on unfair trading has potential to future proof laws against businesses of all kinds misusing ever-increasing amounts of consumer data (such as by filtering what prices across certain consumers in particular locations or with certain items already in their online carts can see on a supermarket’s website), and (depending on the final design of the prohibition) any exorbitant, harsh and unjustifiable differential pricing.

### **3.6 Reforms to commercial land use planning**

The Commonwealth should consider how reforms to simplify and standardise commercial zoning could be supported in States and Territories. This in turn would make scale and expansion more accessible for new supermarket competitors.

Overly prescriptive planning which limits the kinds of business uses that can occur on commercially zoned land inadvertently acts as an additional barrier to new supermarket entrants by limiting the number of sites available.

Victoria introduced reforms to simplify and standardise commercial zoning in 2013 by merging five previous business zones into two broad commercial zones and subsequently introduced a mixed-use employment zone in 2018. These reforms have increased the availability of suitable land and reduced set-up costs for new supermarkets.

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<sup>6</sup> <https://treasury.gov.au/consultation/c2023-430458>

