

Chapter 2

The bill: provisions and rationale

2.1 The bill requires corporations to supply products at consistent prices across adjacent markets. All retail outlets owned by the corporation must sell at this price within a distance of 35 kilometres.

2.2 The bill inserts a new subsection 46C into the *Trade Practices Act 1974*. Subsection 46C(1)—labelled the Guaranteed Lowest Prices Rule—states:

A corporation must, at a retail outlet operated by the corporation or a related entity, supply or offer to supply a particular product to a consumer at a price being the lowest price the product is supplied or offered for supply at the same time at any retail outlet operated by the corporation or a related entity under the same trading name within a distance of 35 kilometres.

2.3 If the corporation or related entity offers a discount, rebate, credit, allowance or special deal to consumers in relation to products to which the Guaranteed Lowest Prices Rule applies, it must match the offer for the same product sold at each retail outlet covered by the Rule (46C(5)). Equally, where a corporation imposes a surcharge on consumers in relation to products to which the Guaranteed Lowest Prices Rule applies, it must impose the same surcharge at each retail outlet covered by the Rule (46C(6)).

Which entities are covered by the bill?

2.4 Subsection 46C(7) of the bill states that the provisions of the Guaranteed Lowest Price Rule do not apply to a corporation or a related entity which operates five retail outlets or less in Australia under the same trading name.

2.5 Subsection 46C(8) of the bill defines 'a retail outlet operated by' in terms of 'a corporation or a related entity'. All retail entities with more than five individual outlets will be covered by the legislation including franchises where the franchisee owns more than five outlets.

2.6 The bill applies only to the sale of goods. It does not apply to services.

Practices exempt from the bill's provisions

2.7 Subsection 46C(3) of the bill proposes several exceptions to the Guaranteed Lowest Prices Rule. These include where the price of a product is marked down because:

- the product is supplied or offered for supply at a genuine factory, warehouse or clearance outlet;
- the outlet is genuinely closing down;

- the product is imminently perishable;
- the product or its packaging is damaged;
- the product is to be permanently removed from the range of products supplied or offered for supply at the retail outlet; or
- the product has deteriorated in value as a result of being on display in a retail outlet for a substantial period of time, having regard to the nature of the product.

The rationale for the bill

2.8 The drafter of this legislation, Associate Professor Frank Zumbo of the University of New South Wales, has explained the bill's rationale in the following terms:

...the focus of the Blacktown Amendment is to ensure that consumers get the lowest possible price for a product everyday and everywhere in the same geographic area.¹

...the Blacktown Amendment simply requires that the company charges consumers the lowest price for the same product everyday and everywhere in all retail outlets operated by the company under same trading name in the same geographic area. Under the Blacktown Amendment so long as the company charges consumers the lowest price for the same product everyday and everywhere in the same geographic area, it is a matter for the company to choose that price, and even whether or not it chooses to sell products below cost.²

Concentration of the Australian retail grocery and petrol markets

2.9 The concern that geographic price discrimination allows firms to exploit a lack of competition in certain locations is partly founded on the view that Australia's retail grocery and petrol markets are highly concentrated. The argument is that the higher the market share a company enjoys, the less competition it faces and the greater its capacity to maintain higher prices in uncompetitive areas and lower—even predatory—prices in high competition areas.

2.10 The Southern Sydney Retailers Association told the committee that Australia had 'the highest and fastest accelerating supermarket food prices in the developed world'. Mr Craig Kelly, President of the Association, noted the retail price for products such as milk and eggs has been rising faster than the Consumer Price Index (CPI). The farm gate price for these products, on the other hand, has not kept pace with the CPI.³

1 Associate Professor Frank Zumbo, *Submission 11*, p. 8.

2 Associate Professor Frank Zumbo, *Submission 11*, p. 9.

3 Mr Craig Kelly, *Proof Committee Hansard*, 25 September 2009, pp 2 and 5.

2.11 In its 2008 report on the competitiveness of retail grocery prices, the ACCC noted the view of 'industry commentators' that Coles and Woolworths account for 80 per cent of retail sales. This estimate comes from analysis by PriceWaterhouse Coopers of ACNielsen data scan and defines grocery retail as all branded packaged groceries (dry goods) excluding house-brands.⁴

2.12 The ACCC has argued that in its view, the major supermarket chains:
 ...account for between 55 per cent and 60 per cent of consumer expenditure on grocery items. Woolworths accounts for at least 30 per cent and Coles around 25 per cent. Although each of these shares of retail grocery sales are large for a single company, to say that the MSCs enjoy an 80 per cent share of grocery sales exaggerates the position of the retailers.⁵

2.13 Table 2.1 presents the ACCC's view on the percentage share of Woolworths and Coles' sales for various categories of groceries. It concluded that while Woolworths and Coles are clearly the largest players in each of the product categories:

...with the exception of packaged groceries, the share of sales attributable to each of Coles and Woolworths are not at a level that raises significant concerns about the current market structure.⁶

Table 2.1: Woolworths' and Coles' share of key grocery category sales

Category	Major supermarket chains' share of sales
Packaged groceries	Approximately 70 per cent
Fruit and vegetables	Up to 50 per cent
Fresh meat	Approximately 50 per cent
Bakery products	Up to 50 per cent
Dairy products	50–60 per cent
Deli products	50–60 per cent
Eggs	Approximately 50 per cent

Source: Australian Competition and Consumer Commission, *Inquiry into the competitiveness of retail prices for standard groceries*, July 2008, p. 57.

4 See Australian Competition and Consumer Commission, *Inquiry into the competitiveness of retail prices for standard groceries*, July 2008, pp 45, 47–48.

5 Australian Competition and Consumer Commission, *Inquiry into the competitiveness of retail prices for standard groceries*, July 2008, pp 45 and 47.

6 Australian Competition and Consumer Commission, *Inquiry into the competitiveness of retail prices for standard groceries*, July 2008, p. 57.

2.14 The concentration of Australia's retail grocery market is also indicated in a comparison of food price inflation with other countries. Australia's prices for food and non-alcoholic beverages are compared with those in some comparable economies in Table 2.2. In 2005, Australian food prices were notably higher than in the US, comparable to those in most European countries and well below those in Japan. Since 2005, food prices (in local currency terms) have grown faster in Australia than in most comparable countries, but so have prices in general (Table 2.3), reflecting among other factors the milder economic slowdown here. The relative price of food has increased in most comparable economies.

Table 2.2: Price level indices: Food and non-alcoholic beverages, 2005, World =100

Australia	137	Japan	241
Belgium	138	Netherlands	112
Canada	137	New Zealand	147
France	133	Singapore	119
Germany	133	Sweden	152
Hong Kong	127	Switzerland	186
Ireland	159	United Kingdom	144
Italy	147	United States	112

Source: *Global Purchasing Power Parities and Real Expenditures: 2006 International Comparison Program*, World Bank, Table 2.

Table 2.3: Consumer prices: % change 2005 to 2009 (Q3)

	Food	Core*		Food	Core*
Australia	18.3	11.7	Japan	4.2	-1.1
Belgium	13.0	6.8	Netherlands	8.6	5.8
Canada	14.9	6.5	New Zealand	25.7	9.8
France	7.5	5.9	Sweden	12.9	4.7
Germany	9.7	5.6	Switzerland	3.2	3.4
Ireland	5.6	7.2	United Kingdom	22.4	7.1
Italy	12.2	7.6	United States	12.5	9.4

* All items excluding food and energy. Source: Secretariat, based on OECD, *Main Economic Indicators*.

2.15 Independent retailers have increased their sales over the 2000s, as the (nominal) economy has expanded. The number of independent stores has increased by about 50 per cent since 1999, although this is mostly 'convenience' stores rather than large supermarkets.⁷

2.16 The market share of Metcash-affiliated independent supermarkets has held up, but this appears to mainly reflect takeovers of other independent supermarkets.⁸

2.17 Aldi is the most significant new entrant, now having over 200 stores and aspiring to expand to around 700. Costco has only one store, but plans others in the capital cities.⁹

2.18 The market share of independents also varies considerably from state to state. During the inquiry into the GROCERYchoice website the National Association of Retail Grocers discussed what proportion of the market independent retailers covered:

In Sydney the independent sector is below 10 per cent. It is somewhere around eight per cent...In Victoria, the independent sector sits at about 18 per cent...South Australia sits at about 24 or 25 per cent, and WA is 31 per cent...[and Tasmania] I think the independent sector is somewhere around 12 per cent or 13 per cent.¹⁰

2.19 In the retail petrol market, the ACCC estimated in a 2007 report that Woolworths/Caltex and Coles Express/Shell account for about 63 per cent of all petrol sales (Table 2.4). As Woolworths/Caltex and Coles Express/Shell have become market leaders, the process of petrol station rationalisation has continued. The ACCC also reported increased use of both outlets' 'shopper docket' schemes, which give shoppers at the respective supermarkets a discount when purchasing their petrol.¹¹

7 Australian Competition and Consumer Commission, *Inquiry into the competitiveness of retail prices for standard groceries*, July 2008, p. 132.

8 Australian Competition and Consumer Commission, *Inquiry into the competitiveness of retail prices for standard groceries*, July 2008, p. 128.

9 Hon Dr Craig Emerson MP, Minister for Competition Policy and Consumer Affairs, media statement, 18 September 2009.

10 *Proof Committee Hansard*, 18 September 2007, pp 71-72.

11 —and, by extension, penalise customers who do not buy at these supermarkets. ACCC, *Petrol Prices and Australian Consumers*, December 2007, p. 77.

Table 2.4: Shares of retail sales by volume by brand in Australia (%)

	2002–03	2003–04	2004–05	2005–06	2006–07
BP	20	20	18	19	19
Shell/ Coles Express	20	20	28	28	25
Mobil*	19	19	12	11	11
Caltex/ Woolworths	34	34	36	36	38
Independents	6	6	6	6	7

Source: *Petrol Prices and Australian Consumers*, Report of the ACCC inquiry into the price of unleaded petrol, December 2007, p. 77. The committee notes that at the time of writing, the ACCC was considering Caltex's proposed \$300 million acquisition of 302 Mobil service stations.