THE MCKELL INSTITUTE

# Adding value: easing cost of living pressures through a price gouge crackdown

Submission to the Australian Council of Trade Unions Price Gouging Inquiry

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## About the McKell Institute

The McKell Institute is an independent, not-for-profit research institute dedicated to identifying practical policy solutions to contemporary challenges.

www.mckellinstitute.org.au

## Acknowledgement of country

This report was written on the lands of the Wurundjeri people of the Kulin Nation.

The McKell Institute acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Country throughout Australia and their continuing connection to both their land and seas.

## About this submission

This document has been prepared by the McKell Institute for the Australian Council of Trade Unions' Price Gouging Inquiry.

The opinions in this submission reflect the values of the institute and do not necessarily represent the views of the McKell Institute's members, affiliates, individual board members or research committee members. Any remaining errors or omissions are the responsibility of the author.

Dear Professor Fels,

The financial pain many Australians have experienced as living costs rise may be explained by global events and unmitigated disasters, but that pain has been unfairly reflected in record profits by major companies.

Costs have risen significantly for food, utilities, transport and housing, and this financial strain has been amplified with every interest rate hike the Reserve Bank has announced in the last two years.

We welcome the ACTU's approach to launching an inquiry into price gouging, appointing yourself to lead it, and calling for submissions. But we note the ACTU has done this in the absence of action on pricing from the Commonwealth Government.

This submission questions the role of the Australian Competition and Consumer Commission (ACCC) in pricing, and asks if legislation may address market evolution and functioning in the face of global influences, the pandemic and natural disasters.

The ACCC's website is the source of truth for businesses and consumers for price regulation and its website states that Australian businesses set their prices, influenced by supply and demand. It goes on to say, *prices that people think are too high, known as price gouging, or a sudden increase in price are not illegal*. Under today's conditions, consumers could read this another way: *prices are merely subjective and are market-driven, so price gouging is legal*.

The question of whether governments should regulate prices or allow market forces to be the determining factor is inherently political. But to punters, people filling up their cars and food shopping, philosophical debate about politics and economics are irrelevant.

Therefore, we aren't looking for debate about the merits of regulation versus the market. We want this inquiry to shine a light on regulatory gaps that have been exploited. Practical solutions are needed, because the rising cost of living is hurting many, while businesses selling essentials report record profits despite difficult economic headwinds. The resulting inflation has been a burden pushed unfairly onto consumers through interest rate hikes.

In post-COVID recovery, dealing with economic and budgetary pressures while grappling with inflation is difficult for all governments. People are looking to their leaders to act.

We hope the Commonwealth Government use this inquiry as the starting point for strengthened legislation to improve resilience during future global events and natural disasters, and to examine the role of the ACCC as a source of support for consumers.

With kind regards,

Rebecca Thistleton
Executive Director, McKell Institute Victoria

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# Summary


When the Reserve Bank of Australia (RBA) needed to put downward pressure on inflation, the Board had one blunt tool to reach for: interest rate rises, felt hardest by households.

While the RBA has only one lever to pull, the Commonwealth has a broader range of instruments to influence inflation and contributors to the cost of living.

This submission calls on the government to take action on pricing in order to achieve a two-pronged outcome: ease pressure on Australian households, and curb inflation.

While the Organisation for Economic Cooperation and Development (OECD) has found that historically high corporate profits have driven Australia's inflation, rather than wages, households bear higher interest rates on top of surging costs boosting those high profits.

Price gouging is not a new phenomenon. After the Great Fire of London in 1666, the price of eels – a staple food of the time – increased 300 per cent. After the San Francisco earthquake of 1906, the price of a wagon spiked 1900 per cent. With every sudden demand for goods and services, there is a supplier ready to capitalise on the moment.

Australia's pricing legislation is based on regulating competition to keep the market in check. But recent years have shown an urgent need for more rigour around a definition of price gouging and legislation to provide consumers with more protection.

In 2006, when Cyclone Larry ripped through Queensland and flattened 80 per cent of Australia's banana plantations, the price of the dietary staple soared 250 per cent. If a consumer was lucky enough to get hold of a bunch, and could pay for them, a kilogram was more than $15. It happened again when Cyclone Yasi struck in 2011.

Yet it is unclear how retailers arrived at their retail figures. Were these prices necessary or was this a case of price gouging? And, how long did it take for pricing to ease after supplies resumed?

In 2022, an iceberg lettuce was costing about $12 during a period of short supply. At that time, consumer price index figures showed an overall 12.7 per cent rise in the cost of vegetables.

Food costs continue to impact households, and those with mortgages have taken the dual hit with steadily climbing interest rates, all while Australia's largest supermarket chains reported record profits. Given price gouging is not illegal in Australia, this should not be a surprise.

Regional and rural areas also suffer from decreased competition and increased costs of fruit and vegetable transport, which worsen during times of crisis. For many remote Indigenous communities, price gouging has become an unfortunate and unfair part of everyday life.

As vocal supporters of an Indigenous Voice to Parliament, The Mckell Institute recognises the opportunity for an Indigenous advisory body to provide advice to government in and collaborate in cutting the price of essential items in these communities.

This submission outlines how price gouging takes several forms and why it can be difficult to officially identify and label a price gouge.

We explain how legislative change is overdue, given how technology and current day practices have out-paced Australia's pricing laws while other countries have already made the move to protect consumers.

We talk about the impact interest rate rises have on renters, not just mortgagees, and refer to the McKell Institute Victoria's call for a shift in rental market ownership away from more than 80 per cent private landlords, in order to offer market variation and choice.

We also call for a shift in approach to pricing from the ACCC, to take more of a consumer-driven look at digital tools and comparators.

We also heed the call of the World Health Organisation, the Red Cross and international academics who warn that governments all over the world must be better prepared for future pandemics and natural disasters.

On average, by 2050, Australian households will be paying $2509.16 a year because of increasing extreme weather events, and that is before the added intangible costs such as resulting price spikes for food and fuel, according to The McKell Institute's 2022 report *The Cost of Extreme Weather*: Building Resilience in the Face of Disaster.

Our work found the Commonwealth Government had, to date, spent far more on recovery and relief than on resilience. While prevention and action to minimise future crisis gouging is critical, governments also have the responsibility of improving our resilience for major disruptive events.

Our recommendations aim to steer government away from expecting the market to keep prices affordable through competition. It is clear competition is not enough, with major players enjoying record profits at the expense of people already under pressure, and with little scrutiny.

So long as the Australian economy relies on interest rates to be the direct lever on inflation, mortgage holders, people wanting to buy a home, and renters will continue to bear the brunt of corporate profit impacts.

# How Australians experience price gouging

## How we define price gouging

Broadly, price gouging occurs when companies and individuals raise the prices of their goods and services to an unreasonable level. This often happens when the need for that good or service increases - supply and demand. However, it is difficult to define because there are not always means to establish when there is a justifiable reason for the price rise, and when it is an opportunistic response to consumers' needs.

Beyond the consideration of the economic climate and business activity itself, is the ethics – or lack thereof – underpinning the company's pricing decisions at any given time. Is the organisation genuinely raising their prices to cover increasing costs or is it using unethical opportunistic tactics in a moment of consumer demand? And, in the case of the latter, what are the consequences for the consumer, particularly in a time of already high inflation?

The ambiguity of price gouging in Australia will continue, and become increasingly problematic, unless there is a legislated framework for both governments and consumers to point to. Establishing the priorities of a framework is an important first step towards further action.

## Where and how price gouging happens

### 1. a consumable, such as vegetables

There is a direct correlation between natural disasters and world events such as Covid 19 that increases the potential for price gouging. However, there is little available data to provide a link between supply shortage and surging costs. Consumers are a captive market where food is concerned, paying the price if they wish to eat fresh fruit and vegetables.

While there is evidence of grocery prices rising in part due to external factors such as weather and logistics, they're also staying higher long-term as consumer accept that this is simply what food costs.

### 2. a utility; such as gas and electricity

Consumers face ongoing utility price rises with households facing spikes of up to 25 per cent after the Australian Energy Regulator set its default market offers that provide a retailer baseline in July 2023. This is despite federal price caps being placed on gas and black coal in December 2022. According to Australia's Climate Council one of the most significant problems is a gas export crisis, with Australia exporting nearly 80 per cent of its gas, it's placed in the top three exporters alongside Qatar and the US.

This in turn, means we now compete on price for our own supplies, with consumers ultimately paying in the end.

Additionally, Australia is lagging behind several other countries in the transition to renewable energy. While Victoria and NSW lead the charge for state-owned renewable power**,** there is only so much that can be achieved state-by-state. The ambitious market reset that Victoria and New South Wales have taken on will take time to establish. Without a national framework that includes a detailed strategy for investment and infrastructure development from both private and government organisations, consumers will continue to pay the price for the light, heat and cooling.

### 3. a critical basic need, such as housing or a rental property

There is no uniform approach to rental property price increases in Australia, and rental increase laws vary from state-to-state. For example, in Victoria, a landlord must provide a notice of rent increase and provide at least 60 days' notice before it is implemented. However, there is now law that provides limits to rental increases. Generally, in Victoria, rents may rise in line with the consumer price index (CPI), metropolitan rent index or regional rent index and can be applied as a percentage or a fixed dollar amount.

And yet, because there is little enforcement of appropriate rental increases, private landlords and agents are free to mark-up rent over and above the CPI. In 2022, a Brisbane-based agent came under fire for recommending that landlords raise the rent for their properties by more than 20 per cent to boost their income. The move was called out as "opportunistic price gouging".

While some states are considering reforms such as price caps, The McKell Institute argues that a rental market reset is sorely needed to shift property ownership structures away from almost all the country's rental properties being owned by private landlords as part of wealth creation efforts. More efforts are required on a national scale to protect tenants' rights equally.

### 4. a service, such as an allied health practitioner appointment

Questions have been raised regarding the costs of services and appointments provided by allied health practitioners, particularly in relation to the National Disability Insurance Scheme. Participants have dubbed this a "disability tax" claiming they have been charged significantly more for appointments compared to non-NDIS participants.

In June 2023, Government Services Minister Bill Shorten said those using the scheme to profit from vulnerable Australians could face civil penalties. An example of which was a provider charging $1000 for a shower chair that would ordinarily cost $150.

All consumers in need of healthcare should have the confidence to know that there is a fair and reasonable cost associated with the services the required, but as long as practitioners can alter and set prices without regulatory oversight, people risk delaying measures that support their wellbeing, in turn placing further strain on the already overwhelmed public system.

### 5) transport, such as Uber

Increasingly, technology is contributing to price gouging, with digital disruptors such as Uber taking advantage of consumer demand. The automated 'surging' feature of the model means the global business can charge higher prices at busy times, with consumer having no choice but to pay the price if alternative transport is not available, while drivers see no increase in pay for their work. Among the worst examples is the 2014 hostage crisis in Sydney's CBD. People were urged to leave the city, and Uber's automated surging feature meant passengers were charged $100 as they attempted to flee (at least four times a standard fare). While Uber later refunded the impacted customers, this shines a spotlight on the increasing potential danger of automated price gouging as technology continues to evolve.

The impact of app-based transportation such as Uber also presents flow-on ramifications where there has historically been better compliance in place, with taxi drivers increasingly refusing to turn on their meters and instead negotiating fares with their customers. In May 2023 the NSW government increased the fines from $300 to $1000 for drivers caught operating without their meters.

# Key points

**Existing price legislation has not kept pace with technology**

In recent years, technological developments have made way for demand-based price rises that are not considered in existing price legislation. While the ACCC is in the process of conducting a digital platform service inquiry, the five-year duration (2020 – 2025) will not deliver findings in an adequate timeframe, no does it sufficiently address the matter of price gouging because of automation.

Further, in cases such as Uber surging prices, the additional profit is not shared with driver, so no only are consumers disadvantaged, Australian gig economy workers are losing the opportunity to improve their income while multinational corporations reap the ultimate reward. While some international digital service providers such as Amazon have a price gouging policy, a holistic, Australia-wide policy is overdue.

**Reputational damage is not acting as a deterrent**

In Australia, there appears to be little reputational damage presenting in the form of boycotts or a downturn in sales caused by negative media. For example, Uber encountered push-back in most countries it entered, ignored 'cease and desist' demands and reached a critical mass that allowed it to out-run bad press.

Whether it be price gouging, wage theft or profit transferring to avoid taxes- our major corporations are still banking record profits. In fact, "greedflation" and "excuseflation" are now part of the economic zeitgeist. In 2022, a small Chicago-based bakery owner said: "When it makes national news, just running a business, it's an opportunity to increase the prices without getting a whole bunch of complaining from the customers."

There is little doubt this mindset is in place across many businesses here in Australia, and the cumulative cost to consumers is immeasurable. The expectation that prices will rise and rises across the board has enabled many companies to benefit from the increasing apathy from consumers and results and companies profiteering.

**So long as it is legal, price gouging will continue.**

The current Australian rules in relation to price gouging are set by the ACCC, with businesses knowing they can raise their prices to recover costs, earn profits and alter in line with supply and demand activity. However, sudden and unreasonable spikes in prices are not illegal.

According to the ACCC: "If consumers or businesses think the prices another business is charging are too high, they can consider alternative suppliers, or consider not purchasing the product or service at all, where this is possible." In other words: price gouging is fair game.

While it is illegal for businesses to make false or misleading claims regarding pricing and price changes, the ambiguity places too much power in the hands of the businesses and does little to protect consumers.

In fact, the ACCC cites examples such as football stadiums where people can't bring food or drinks into the venue and are therefore must pay the prices that are set by the establishment if they want refreshments. The ACCC deems this to be "normal commercial practice" providing it doesn't harm competition in some way. But when a stadium has a contained market for the duration of an event, there is a clear opportunity to profiteer, both through admission prices and retail offerings.

For example, the percentage increase for admission to the Australian Grand Prix in 2023 climbed dramatically, with general admission for the Friday concession ticket rising 68 per cent compared to 2022, and the Friday adult pass up by 52 per cent. The four-day concession also jumped 50 per cent. Additionally, a humble chicken sandwich could cost $19. Arguably, excessive pricing at major events is not acceptable in a setting which people are forced to overspend simply because they need to eat and drink.

**The ACCC has been directed to act in favour of corporations, not consumers, for the last decade**

As a government agency, the ACCC's remit is set by the government of the day.

Statements of Expectations set by successive Coalition governments over the last decade show no directive to protect consumers, and every expectation set in favour of corporations – whose profits have driven inflation.

For example, the 2019 Statement of Expectations states the government's preference for principles-based regulation that defines desired outcomes, rather than prescribing how to achieve them. This statement sets one key principle for the ACCC: to deliver the government's deregulation agenda.

The statement instructs the ACCC to minimise costs to business without compromising commercial activity and remain in keeping with the Regulatory Burden Measurement Framework.

There is no mention of how the ACCC is to act in the interests of consumers.

**Renters are feeling the pain**

It is not only mortgage holders who are paying higher interest rates as well as more for groceries and utilities. Corelogic has reported that the rental supply market was already tightening before interest rates started to rise. Interest rate rises tend to reflect the cash rate, as rate rises are passed on to tenants, and that has also been reflected in rental data over the last two years. Corelogic has also reported that mortgage-free investment property owners are also most likely to increase rents when competition increases.

So Australian renters are living with the combination of higher rents, more competition for vacant properties, and higher costs on utilities, food and fuel. This makes saving a mortgage deposit difficult, and interest rate rises also heighten the hurdles mortgage applicants have to clear.

The McKell Institute has called for a shift in Australia's rental market structure, which has been built on using negative gearing to stimulate supply. As a result, the bulk of rental properties are owned by private investors grappling with the same cost of living influences and pressures as their tenants. Regardless of personal wealth, a rate rise is a rate rise. So long as a third of Australians are living in properties purchased with the purpose of wealth creation for others, renters are vulnerable.

**Australia already has parameters in place for where price gouging should be prevented through the existing goods and services tax legislation.**

First, we need to ensure that competition is retained in sectors where price gouging is particularly prevalent. Second, a super profits tax could be a solution that not only prevents price gouging, but also redirects significant funds back into much-needed solutions for Australians.

**Overseas examples offer lessons to Australia**

Developing practical solutions to combat price gouging is not impossible. Internationally, governments have intervened successfully. According to a UNSW law journal report, there is a California-based statute that places a 10 per cent cap on the increase of prices for goods and services for 30 days when an emergency is declared. In the State of Connecticut, the law prohibits any price increases at all during an emergency.

In 2020, a regulation was implemented in Ontario, Canada, prohibiting the sale of goods at a price that "grossly exceeds the price at which similar goods are available to like consumers.

While government intervention and price caps don't offer a quick fix, such solutions should still be explored. At a minimum, Australian business operators should have a clear legislative framework to refer to as those in other countries do.

While there is evidence suggesting that price caps are not a practical long-term response, and don't offer a quick fix, there is a need for the Commonwealth to investigate more sophisticated and short-term ways that instant price spikes can be curbed to help consumers. It is far too easy to rule out price caps entirely on economic grounds.

As inflation has risen, and the price of every day essentials has gone up with it, more and more essentials have become unaffordable.

We know the supermarkets are aware which essentials are unaffordable, because they're protecting them against theft. Meat used to be a staple served with vegetables on most dinner tables in the country. Now, supermarkets have got security tags on packaged meat and basic toiletries are being kept behind the counter.

**Other countries have already recognised the need for government intervention**

In the United States, 37 states have already introduced price gouging laws- largely linked to when there is a natural disaster or crisis, however some also include more specific guidelines relating to issues ranging from petroleum prices to unreasonable rental pricing.

**There are lessons from natural disasters and the COVID pandemic**

Older arguments against price gouging rules have suggested that a sudden spike in prices can prevent panic buying. But that certainly wasn't the case during Covid- the threat of not being able to buy things outweighed the cost. Post-Covid research into panic buying showed the perception of scarcity is what motivated people. In Victoria, panic buying continued despite government assurances the supermarkets would remain open. Panic buying was an emotion-led response to a lack of control.

**We are on track for more natural disasters and more pandemics**

Price gouging action now needs to be a part of preparation for future events.

In the World Disasters Report 2022, the IFRC said "all countries remain dangerously unprepared for future outbreaks" despite COVID-19 killing more people than any earthquake, drought or hurricane in history.

## Recommendations

1. **A curb on price gouging should be seen as part of the solution to rising inflation**

While monetary and fiscal settings are the government's core investment setting managers, the role of corporate profits in rising inflation levels needs addressing.

As rising corporate profits have been linked to profiteering and identified as a greater driver of inflation than wage growth, now is the time for a crackdown on price gouging across essential items, for the good of consumers, and to reduce upwards pressure on inflation.

The Parliament's Senate Select Committee on Cost of Living has reflected on the impact inflation, wage stagnation and interest rises have had, as well as the cost of goods and the resulting rise in corporate profits. The Committee's remit has not extended to examining the impact of pricing.

Australia's existing goods and services tax exemptions provide a transferrable framework for identifying essential items where price gouging prevention measures should apply.

Penalties for price gouging must be a genuine deterrent, strong enough to outweigh the benefits to business, because reputational damage is not acting as a deterrent.

2. **Price gouging preventions should be part of government work to improve resilience in the face of a crisis or natural disasters.**

The Australian Government introduced bans on price gouging in relation to personal protective equipment (PPE) during Covid-19. However, we cannot continue to be reactionary in our response to price setting in times of crisis.

### 3. Expand the ACCC's remit to scrutinise price gouging and profiteering, and proactively market their work and resources to consumers

The Senate has held two inquiries related to this issue that show the rising number of voices calling on the Commonwealth to act in their interest. While the Senate has not probed price gouging, the ACTU has launched this inquiry off the back of rising anguish from workers in the face of stagnant wage growth, rising interest rates and the rising cost of living.

The call on government to take action is growing louder, and this is an opportunity for the ACCC to be directed to take a greater focus on consumer protection against rising prices.

While the ACCC does provide watchdog efforts that seek to maintain healthy competition and prices, as seen recently in the aviation industry, too many sectors are successfully avoiding the regulator.

The ACCC already monitors and publishes their petrol price watch activities. This is an example of a service that could be expanded to other essentials. The information should be easy to understand and accessible to consumers. In its current state, it isn't in a format where people are aware of it and using it day-to-day to determine their spending. There is public demand for trustworthy sources of pricing information and the ACCC should be the source of truth.

### 4. Proactively identify legislation that is no longer serving the interests of consumers as markets and technology have evolved

**For example:**

- Supermarkets
- Ride-sharing technology
- Digital marketplaces
- State-based and council-based urban planning regimes with regards to supermarkets and petrol station locations, proximity to fresh food markets and places where food is grown
- Housing and rental costs
- Energy markets

# Conclusion

In less than half a decade, Australians have lived through bushfires, floods, a global pandemic, extreme inflation and a series of successive interest rate hikes that have triggered a cost of living crisis. People are lining up around street corners to secure rental properties, and those with mortgages are cutting all non-essential items from their household budgets. Many are going without heating and cooling to reduce the impact of their utilities.

Australia is, for the most part, an incredibly privileged and wealthy country. But the divide between the 'haves' and the 'have nots' is now cavernous, with price gouging playing a central and unacceptable part in the financial struggles of hard-working members of our society.

We cannot watch large corporate organisations – with the means to comfortably continue their operations – continue to take advantage of people. Price gouging is pervading all aspects of basic human needs in Australia: groceries, shelter, utilities and transport.

It's clear that competition is no longer a sufficient lever to pull, as big corporates continue to take record profits and digital businesses move with the agility of automation. A complete review of fair pricing structures is imperative.

We call for immediate legislative action that supports all Australians in their day-to-day lives, but also provides businesses with a clear set of guidelines to follow as they establish their pricing structures.

The ACTU has the full support of The McKell Institute and we will continue to work with all THE MCKELL INSTITUTE supporting parties to draw attention to this urgent matter, with the belief this will ultimately drive overdue action from the Commonwealth Government.

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