



North Australian Aboriginal Justice Agency

27 October 2020

To Committee Secretary
Standing Committee on Indigenous Affairs
Department of the House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: IndigenousAffairs.reps@aph.gov.au

Dear Secretariat

NAAJA submission to the Committee's Inquiry into food pricing and food security in remote Indigenous communities

The North Australian Aboriginal Justice Agency (**NAAJA**) welcomes the opportunity to provide a submission to the inquiry by the House of Representatives Standing Committee on Indigenous Affairs into food pricing and food security in remote Indigenous communities (**Inquiry**).

NAAJA provides high quality, culturally appropriate legal aid and justice services to Aboriginal people throughout the Northern Territory. Our vision is to achieve True Justice, dignity and respect for Aboriginal people. NAAJA serves a positive role contributing to policy and law reform in areas affecting Aboriginal peoples' legal rights and access to justice.

This submission is predominantly concerned with item 8 of the Inquiry's terms of reference, which concerns the effectiveness of federal, state and territory consumer protection laws and regulators in:

- (a) supporting affordable food prices in Remote Communities particularly for essential fresh and health foods;
- (b) addressing instances of price gouging in Remote Communities; and
- (c) providing oversight and avenues for redress.

Our work has identified the difficulties of Indigenous Australians in remote communities accessing affordable food, grocery products and essential items. However, we also acknowledge the difficulty of identifying where high prices in these communities can be reasonably attributed to the increased freight and transport costs, and where these prices are artificially inflated to the detriment of Remote Communities.

The purpose of NAAJA's submission is to:

- 1 Identify the limited application of consumer laws to address high retail prices for essential items.
- 2 Provide support for the implementation of some form of food and essential items price monitoring regime – as we consider that increased transparency will enable stakeholders to properly understand the cause of the issue, and in turn, devise an appropriate solution.

- 3 Stress the importance of continued discussion (with the input, agency and leadership of Indigenous communities) and increased funding, so that appropriate steps may be taken to address the causes and effects of this issue.

2 Effectiveness of consumer protection laws in dealing with these issues

2.1 Summary

Australia's consumer protection laws (contained in the Australian Consumer Law (**ACL**) and *Competition and Consumer Act 2010* (Cth) and in various state and territory fair trading Acts) do not directly address the issues identified in the terms of reference for the Inquiry. In particular, supporting affordable food prices, or affordable prices generally, is not a specific objective of the ACL.

Further, the ACL does not contain a general prohibition relating to excessive pricing – excessive prices or price gouging are only be prohibited by the ACL in certain circumstances (see section 1.3 below). These circumstances are relatively limited and may not address or capture all the causes of higher prices in remote Indigenous communities.

Therefore, if higher prices in remote Indigenous communities are not as a result of the type of practices summarised in section 2.3 below, Australia's consumer protection laws are unlikely to be an effective way in which to support affordable food prices in remote Indigenous communities.

2.2 Objectives of the Australian Consumer Law

The objectives of the ACL are to “*improve consumer wellbeing through consumer empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.*”¹

The Australian Competition and Consumer Commission (**ACCC**) is the regulator responsible for administering and enforcing the ACL.

2.3 Circumstances in which the Australian Consumer Law prohibits excessive pricing

As noted above, the ACL does not contain a general prohibition on excessive prices and the ACCC does not have a general role in regulating prices.

However, excessive prices may be unlawful under the ACL in a number of circumstances, including the following:

- (a) **Unconscionable conduct:** Excessive pricing may be prohibited unconscionable conduct where, for example, a business exploits customers' vulnerabilities to charge unreasonable prices (e.g. setting exorbitant prices for a product that is critical to the health and safety of vulnerable consumers).
- (b) **Misleading and deceptive conduct:** If a business gives misleading or deceptive reasons for why food prices are so high, this will be prohibited by the ACL. For example, if a business states that the high price of a grocery item is due to the high cost of freight, but actually the high price reflects the margin being made by the business, this would likely be prohibited under the ACL.

2.4 Prohibitions on price gouging in relation to particular classes of goods

For completeness, we note that on 30 March 2020, the Minister for Health made a determination pursuant to the *Biosecurity Act 2015* (Cth), prohibiting price gouging on essential goods during the COVID-19 pandemic. In short:

- (a) “price gouging” is defined as supplying or offering to supply essential goods at a price which exceeds 120% of the initial purchase price; and

¹ Intergovernmental Agreement for The Australian Consumer Law, 2 July 2009.

(b) “essential goods” include disposable face masks, gloves, gowns, goggles and hand sanitiser.

At this point in time, there are no proposals to extend the definition of “essential goods” to include food and other essential items (e.g. nappies, toilet paper). This regime is separate to the ACL.

3 Transparency and monitoring of prices

NAAJA is aware of the higher prices for food and essential items that are charged in remote Indigenous communities. However, it does not have the data or information required to determine the cause of these higher prices.

At a general level, NAAJA understands that a number of factors can contribute to higher retail food prices in remote communities. Crucially, the cost of freight and transport to community stores is significant, due to their remote location.

Therefore, in order to assess whether pricing by remote community stores is excessive, NAAJA believes that it is necessary to consider whether there are significant differences between wholesale costs and retail prices – and if there are, whether such differences can be justified on the basis of reasonable logistics costs. For this reason, NAAJA considers that an examination of the pricing margins, including comprehensive data for remote community stores on both wholesale costs and retail prices, is required to assess this issue. This data needs to be reliable and specific to location and product.

Of the submissions into the Inquiry so far, the most frequent recommendation in relation to the concerns raised in item 8 of the terms of reference, has been to implement mandatory reporting of retail food prices.² There are also a couple of novel suggestions made by different bodies around legislative and policy reform.³

NAAJA agrees that transparency is key, and on this basis, it also supports the implementation of some form of price monitoring and reporting system in relation to fresh food produce, grocery items and other essentials (e.g. toilet paper, nappies and baby items, sanitary products). The results should include information about profit margins and, subject to appropriate confidentiality requirements, should be made available to government and appropriate stakeholders, including Indigenous communities or representatives.

This mechanism will enable the government or a regulatory body to identify the cause of the higher retail prices, and consider specific targeted means of redress. For example, if the reporting identifies that the prices are directly attributable to higher freight costs, this could encourage consultation with the relevant industry, and an inquiry into these costs. By contrast, if community stores, wholesale suppliers or transport companies are setting unreasonable margins, this would necessitate a different course of action.

Finally, as we are referring to data that relates to Aboriginal people of the Northern Territory, access to this data could (in accordance with the principle of Indigenous Data Sovereignty) be made available to a mechanism comprising Aboriginal representatives and research and other experts to consider and analyse. This mechanism could be involved in decisions relating to aggregate data analysis that can be made available to the public and in the public interest. The mechanism could also consider, with appropriate confidentiality requirements, data that is confidential and more specific.

² Submissions received from Dietitians Australia, the Indigenous Data Network and the Public Health Association Australia pointed to the fuel reporting regime, and endorsed a similar regime for food prices.

³ See in particular, the submissions made by the ACCC (subsidising or supporting elements of the supply chain) and the Queensland Human Rights Commission (which recommended an expanded price-gouging prohibition to cover essential food items).

4 Importance of continued stakeholder engagement on these issues

NAAJA commends the Australian government for holding this Inquiry and considers that it is an important step towards addressing the issues associated with food prices and security in Indigenous communities.

While NAAJA supports the implementation of some form of price monitoring and reporting system, it also acknowledges that transparency and monitoring will not necessarily prevent the issues from continuing or address the ongoing impacts of the issues.

On this basis, NAAJA considers that further discussion and engagement will be needed to address the issues highlighted by the Inquiry, and generate real change for remote Indigenous communities (whether this be as part of a price monitoring framework or a different forum).

NAAJA also anticipates that increased funding at a Federal level will also be required to address these issues in a meaningful way. In the event that increased funding is not available in the next few years following this Inquiry, and the issues giving rise the Inquiry persist, then alternative and more substantive reforms may be required. These may include subsidies within the retail and supply markets across Australia so that the larger suppliers to areas with a higher density of consumers can help alleviate the freight and logistics costs associated with supplying regional and remote locations. Such arrangements already exist within large retail outlets, where a product is sold at the same price regardless of location even though the freight and logistic costs to supply that product are varied across locations.

Finally, NAAJA emphasises that the input of Indigenous communities is essential for any further stakeholder engagement in relation to these issues.

We would greatly appreciate the opportunity to discuss this submission further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Priscilla', followed by a long horizontal line extending to the right.

Priscilla Atkins
Chief Executive Officer
NAAJA