

ACCC SUPERMARKETS INQUIRY 2024-2025
GENERAL PRACTICE NOTE FOR CONDUCT OF HEARINGS
(As approved by Inquiry Chair on 1 November 2024)

PART A: INTRODUCTION

1. This Practice Note relates to the conduct of hearings convened under Part VIIA of the *Competition and Consumer Act 2010* (Cth) (the **Act**), held pursuant to the [Competition and Consumer \(Price Inquiry—Supermarkets\) Direction 2024](#) given by the Treasurer on 1 February 2024 requiring the Australian Competition and Consumer Commission (**ACCC**) to hold an inquiry into the markets for the supply of groceries. It should be read in conjunction with that Direction.
2. The Inquiry Issues Paper has been published on the ACCC's website ([Supermarkets inquiry 2024-25 | ACCC](#)), together with all the public submissions received. The Interim Report has also been published on the ACCC's website.
3. The hearings are scheduled to take place between 14 October 2024 and 22 November 2024. Each witness will be informed of the particular day or days during this period on which their attendance will be required and the location of their hearing.
4. This Practice Note sets out general guidance about the procedures the ACCC will follow with respect to the hearings. If the ACCC considers it appropriate, the Practice Note may at any time be varied or replaced.

PART B: ATTENDANCE FOR PUBLIC AND PRIVATE HEARINGS

5. Witnesses who have been summonsed to give evidence will be required to attend the hearing in person.
6. All hearings will be conducted in public, unless a witness objects to giving evidence in public on the basis that their evidence is confidential, and the ACCC is satisfied that the evidence is confidential and that it is desirable for the evidence to be given in private.
7. Witnesses will be given an opportunity prior to the commencement of the public hearings to make an objection to giving all or part of their evidence in public. Such objections should be accompanied by reasons explaining why the relevant evidence is likely to be of a confidential nature and should be taken in private, and will be considered, and determined, by the ACCC in advance of the relevant hearing. If the ACCC is satisfied the evidence is of a confidential nature and considers it desirable to take the evidence in private, the hearing (or part of the hearing) will be closed to the public.
8. Public hearings will be open to all members of the public to observe via a live stream. The livestream will be accessible via a link that will be available on the [ACCC's website](#).
9. In person attendance at the public hearings will generally be limited to the Inquiry Chair, Commissioners, Counsel Assisting the Inquiry, staff of the ACCC and its legal representatives, third party service providers engaged under the Act to assist in the conduct of the inquiry, the witness(es) and the witness(es)' legal representatives, and other persons from the witness(es)' organisation(s) who have been approved to attend in advance.

10. Attendance at private hearings will be limited to the Inquiry Chair, Commissioners, Counsel Assisting the Inquiry, staff of the ACCC and its legal representatives assisting the inquiry, third party service providers engaged under the Act to assist in the conduct of the inquiry, the witness and the witness's legal representatives. If the witness is a representative of a company or other body, other staff of that company or body may be permitted to attend a private hearing at the discretion of the ACCC.
11. Private hearings will not be livestreamed.
12. If, during a public hearing, any evidence is to be taken in private, all persons other than those referred to in paragraph 10, above, will be required to leave the hearing room and any livestream of the public hearing will be paused.
13. At the discretion of the Inquiry Chair, individuals may be excluded from a hearing at any time, for any reason, including if they disrupt the hearing.

PART C: PROCEDURE FOR TAKING EVIDENCE DURING HEARINGS

14. The procedure to be followed is within the discretion of the Inquiry Chair. The procedure for taking evidence will generally be as follows:
 - a. Witnesses will be summonsed to give evidence by the ACCC. No evidence will be taken from parties who have not been summonsed by the ACCC to give evidence.
 - b. Witnesses may be required to give evidence separately or as part of a panel. Witnesses will be notified in advance of giving evidence whether they will give evidence individually or as part of a panel of witnesses.
 - c. All evidence will be taken on oath or affirmation.
 - d. In the weeks prior to the commencement of the hearing, the ACCC may invite a witness to provide evidence in the form of a written statement in advance of the witness giving oral evidence at the hearing. At the start of the hearing the witness will be asked to state (on oath or affirmation) that their statement is true and correct. The statement will not be read out during the hearing, but it may be displayed on screen and the witness may be asked questions about it, subject to any confidentiality claims which have been accepted. Where a claim of confidentiality has been accepted, a redacted version of the statement may be displayed during the hearing. No further opportunity to provide evidence by written statement will be permitted during or after the hearing.
 - e. Where a written statement has been provided, the statement will be published by the ACCC on its website after it has been sworn or affirmed during the relevant hearing, subject to any confidentiality claims which have been accepted. Where a claim of confidentiality has been accepted over part(s) of a statement, a redacted version of the statement will be published by the ACCC on its website after the relevant hearing.
 - f. Witnesses will not be permitted to give an oral opening statement, present documents, or make written submissions during the hearing.
 - g. Witnesses may be asked questions by Counsel Assisting the Inquiry, the Inquiry Chair, or any Commissioner present. There will be no cross-examination of any witness by another witness or interested party.

- h. Witnesses will be given the opportunity to make any clarifying remarks, either directly or (where the witness is legally represented) through questioning by the witness's legal representative, at the conclusion of their evidence. Any such remarks must be confined to clarifying or responding to issues that arose during their evidence.
15. The ACCC will not be inviting submissions at the conclusion of the hearings about the matters canvassed during the hearings from the public, interested parties or witnesses who have been summonsed to give evidence.

Use of documents during hearings

16. Witnesses may be shown documents during the hearing. These documents will be displayed on screens during the hearing. These documents may relate to the company or other body the witness is associated with, or they may be documents provided by third parties.
17. The ACCC will consult with relevant companies or other bodies prior to the hearing before referring to a document over which they have claimed confidentiality in a public hearing, or in a private hearing in the case of a third party's confidential document. The company or other body will be asked to provide reasons for each confidentiality claim. The ACCC will advise the relevant party whether or not it accepts the confidentiality claim(s). Where the ACCC accepts a claim for confidentiality over part of a document, it will refer to a redacted version of the document or ask the witness questions about the document in a private hearing where appropriate.

Questions during the hearing

18. If during a public hearing a witness objects to giving evidence in response to a particular question in public as a result of a confidentiality claim, the witness or their legal representative should raise that objection when the question is asked and reasons in support of the objection should be given at that time.
19. The ACCC will inform the witness whether or not it (a) is satisfied that the evidence is of a confidential nature and (b) considers it desirable to take the evidence in private. If the ACCC considers it desirable to take the evidence in private, the hearing will be closed to the public while the relevant evidence is being heard. If the ACCC decides the hearing will proceed in public, the witness will be reminded of their obligations under section 95U of the Act (see Part G below). If the witness so requests, they will be permitted a short adjournment to consult with their legal representative.

PART D: LEGAL REPRESENTATION DURING HEARINGS

20. A witness may have a legal representative, but any participation by a legal representative present at a hearing will be at the discretion of the Inquiry Chair. A legal representative's role will generally be limited to raising objections to questions and asking any clarifying questions following the conclusion of their evidence, and they may not interrupt or disrupt the hearing.
21. Any witness who intends to have a legal representative present at a hearing should notify the ACCC of the identity of the representative at least one week prior to the commencement of the hearing.

PART E: RECORDINGS AND TRANSCRIPT

22. All hearings will be recorded and transcribed by third party transcript providers engaged under the Act to assist in the conduct of the inquiry. No other recordings of the hearings will be permitted.
23. Transcripts of public hearings will be published on the ACCC's website. Any evidence taken in private during a public hearing will be clearly identified on the hearing transcript and redacted from any transcripts publicly released.

PART F: DISCLOSURE

24. Evidence provided at a hearing is subject to section 95ZN of the Act. Where the ACCC agrees to hear evidence in private pursuant to section 95R of the Act, the ACCC reserves its right pursuant to section 95ZN to disclose that information (for example in its final inquiry report) where a claim for confidentiality is not made out after evidence is taken, where a claim for confidentiality is no longer pressed or where a claim for confidentiality is made but the ACCC decides after evidence is taken that a claim of competitive damage is not justified or that disclosure is necessary in the public interest. The ACCC will consult with the relevant company or body prior to disclosing any information obtained during a private hearing.

PART G: PROTECTION AND LIABILITY OF WITNESSES

25. Under section 95V of the Act, a witness summoned to appear at the inquiry, or giving evidence on oath or affirmation, has the same protection, and is subject to the same liabilities, as a witness in proceedings in the High Court of Australia. A barrister, solicitor or other person appearing on behalf of another person at the inquiry has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.¹
26. It is a criminal offence under section 137.1 of the Criminal Code for a witness to give evidence at the inquiry that the witness knows is false or misleading, or to omit any matter or thing without which the evidence is misleading.
27. Under sections 95T and 95U of the Act, it is a criminal offence if a person, without reasonable excuse:
 - a. fails to attend as required by a summons or appear and report from day to day, unless excused or released from further attendance;
 - b. refuses or fails to swear an oath or make an affirmation if required to do so;
 - c. refuses or fails to answer a question that they are required to answer by the Inquiry Chair; or
 - d. refuses or fails to produce a document that they are required to produce by a summons.

PART I: OTHER MATTERS

28. Journalists and media employees may contact the ACCC's media team on 1300 138 917 or email media@acc.gov.au.

¹ *Competition and Consumer Regulations*, reg 28AA.