

Submission to ACCC Supermarkets Inquiry

April 2024



About FARE

The Foundation for Alcohol Research and Education (FARE) is a not-for-profit organisation with a vision for an Australia free from alcohol harms – where communities are healthy and well and where laws, policies and programs are fair, equitable and just.

Every day, people across Australia are negatively impacted by alcohol, through injury, violence, mental ill-health, chronic disease, family violence and disadvantage. Far too many Australians die because of alcohol.

We work collaboratively to build the capacity of people wanting to create change, raise community awareness of alcohol harms, advocate for policy change aimed at preventing alcohol-related harms and increase accountability of companies that fuel harm.

Working with local communities, people with lived experience of alcohol harm, values-aligned organisations, health professionals, researchers and governments across the nation, we are improving the health and wellbeing of everyone in Australia.

To learn more about us and our work visit www.fare.org.au.

You can get in touch via email at info@fare.org.au

FARE is a registered charity, and every dollar you give helps fund projects keeping our communities healthy and safe. You can make a tax-deductible donation at: www.fare.org.au/donate.

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Executive summary

All Australians should be able to shop for food and other essentials, and access the lowest possible prices at supermarkets, without having their data collected and shared for targeted advertising of harmful products.

Supermarkets should provide fair and transparent pricing information and should not push people to buy and spend more to access lower prices or discounts.

However, supermarkets are exploiting people's everyday shopping for groceries and essentials to target them with aggressive marketing and pricing strategies, such as:

- forcing people to join loyalty programs to access lower prices and discounts, enabling collection and sharing of their data for targeted alcohol advertising, including with alcohol retailers and digital platforms, and
- using unfair and potentially misleading pricing claims and promotions to push people to spend more, including on harmful products such as alcohol.

The use of these strategies to market alcohol has significant harmful impacts, and disproportionately harms people experiencing alcohol dependence or trying to reduce their alcohol intake.

Summary of recommendations

FARE supports the introduction of a prohibition on unfair trading practices in the Australian Consumer Law. This should include the following unfair trading practices by supermarkets and other retailers:

1. Requiring membership of loyalty schemes to access lower prices, discounts or other benefits.
2. Collecting people's data through loyalty schemes and sharing and using the data for targeted advertising.
3. Bulk purchase, multi-buy and minimum spend promotions that require people to buy or spend a minimum amount to access a lower price, discount or other benefits.
4. Confusing and potentially misleading price claims and promotions, including claims that lack the information needed to verify them.

Introduction

FARE welcomes the opportunity to provide a submission to the Australian Competition and Consumer Commission (ACCC) Supermarkets Inquiry.

Shopping at supermarkets for food and essential items is a necessary and everyday part of life for Australians. At a time when Australians are experiencing significant cost-of-living pressures, everyone should be able to access the lowest possible prices for groceries from supermarkets without being marketed to aggressively, having their data collected and tracked for targeted advertising, and being pushed to buy more. This is especially the case when it comes to the marketing of alcohol, a harmful and addictive product.

Despite many Australians struggling to afford food and other essentials, supermarkets and alcohol retailers are making things worse for people by using aggressive pricing and marketing strategies to target people when they are shopping for these essential items.

These strategies include:

- exploiting Australians' need to shop for low-cost groceries by forcing them to join loyalty programs, to collect, track and share their data for targeted advertising and personalised promotions, including alcoholic products
- targeting consumers with alcohol advertising and promotions when they are shopping for food and essential items
- using unfair and potentially misleading pricing strategies and promotions to push people to spend more of their income than they need to, including on non-essential products, such as alcohol, that are harmful to their health and wellbeing.

When it comes to alcohol, supermarkets' data-driven targeted advertising, aggressive marketing and unfair pricing strategies have harmful impacts in the community, and present higher risks for people experiencing alcohol dependence, who are most susceptible to, and most likely to be targeted by, alcohol marketing.

Alcohol is an addictive substance that causes significant harm to Australians. Every year, almost 6,000 lives are lost and more than 144,000 people are hospitalised from the use of alcoholic products.¹ Alcohol use causes over 200 diseases and conditions,² contributing to 4.5% of Australia's total disease burden³ and costing Australia an estimated \$66.8 billion annually.⁴

Research shows that exposure to alcohol marketing leads to increased use of alcoholic products.⁵ People experiencing problems with alcohol are more attentive to marketing cues, which in turn leads to increased cravings for alcohol.⁶ By design, people who purchase harmful and addictive products the most, are the most likely to be targeted with advertising for the products.⁷

This submission relates to part 2.3 of the ACCC Supermarkets Inquiry Issue Paper (Consumer experiences), specifically the following aspects of supermarkets' supply of groceries in Australia that have harmful impacts on consumers:

1. Data collection and targeted advertising through loyalty and rewards programs
2. Unfair and potentially misleading price promotions and strategies

Data collection and targeted advertising through loyalty and rewards programs

People should not be forced to join loyalty and rewards programs to access affordable grocery prices in exchange for supermarkets and other retailers collecting their data and using it for targeted advertising, including advertising of alcohol and other harmful products. In particular, people experiencing alcohol problems or dependence should be able to shop for food and essential items, without having their data collected for targeted alcohol advertising. However, increasingly, supermarkets are offering lower 'member-only' grocery prices and discounts to consumers only if they join these programs.

Objectives of loyalty programs

Supermarket loyalty programs are designed to allow supermarkets and other retailers to collect, track and analyse consumers' data each time they shop, which they use to develop consumer insights and profiles, optimise, and personalise discounting and promotions, and hyper-target consumers with advertising based on their interests, preferences, characteristics and purchase history.

Woolworths recently introduced member-only pricing that consumers can only access if they sign up for their Everyday Rewards program. This was a deliberate strategy to enable Woolworths to collect more data from consumers. In October 2023, former Woolworths CEO Brad Banducci was reported in the Australian Financial Review as saying:

"The member pricing is aimed at encouraging shoppers to use their Everyday Rewards cards every time they shop, improving the scan rate and adding to the information collected by the retailer.

"Through that process, we get to learn a lot about the member, and therefore we get to personalise a lot of experiences for them, as well as a lot of offers for them."⁸

Woolworths has also been explicit in describing the objective of its Everyday Rewards scheme as to enable personalised and targeted advertising. Woolworths' submission to the Government Response to the Privacy Act Review Report in April 2023 stated:

"...we believe that an unqualified right to object to personalisation or targeting sits at odds with customer loyalty membership schemes, which are voluntary, opt-in, have no barriers to exit (or entry) and are, by their very nature, designed to tailor an Everyday Reward member's experience and reward their engagement with the brand through experiences including targeted advertising."

Woolworths' submission expressed concerns that possible regulation of targeted advertising as part of privacy law reforms would impede its ability to display targeted content on websites that matches consumers' interests and previous shopping habits:

"...while we support clarity about the regulation of targeted advertising, the new 'targeting' definition is extremely broad and would appear to...unduly restrict businesses from displaying content on their own websites in a way that matches the interests of customers browsing their site (for example, based on what the customer searches for or adds to their basket, or has purchased from us before) - referred to in the Report as 'contextual advertising' - or otherwise personalising experiences for customers on their website..."⁹

In addition to using data collected through loyalty schemes for targeted advertising by supermarkets and partner retailers, supermarkets sell the data to digital platforms and other third-party advertisers.

For example, the Terms and Conditions for Coles' loyalty program Flybuys state:

“In partnership with media, technology and advertising companies, Flybuys may provide aggregated audience segments to advertisers which are based on de-identified member data. This enables advertisers to provide you with more personalised and targeted advertising when you use our business partners' websites, social media and other platforms.

Flybuys also provides partners and advertisers with anonymised analysis, reporting and insight services related to their use of Flybuys data for advertising.

The third party platforms that use Flybuys aggregated audience segments include those offered by Google, Yahoo!, Adobe, The Trade Desk, LiveRamp, Amobee, MediaMath and Facebook.”

Woolworths' Privacy Policy, which applies to their Everyday Rewards program, states:

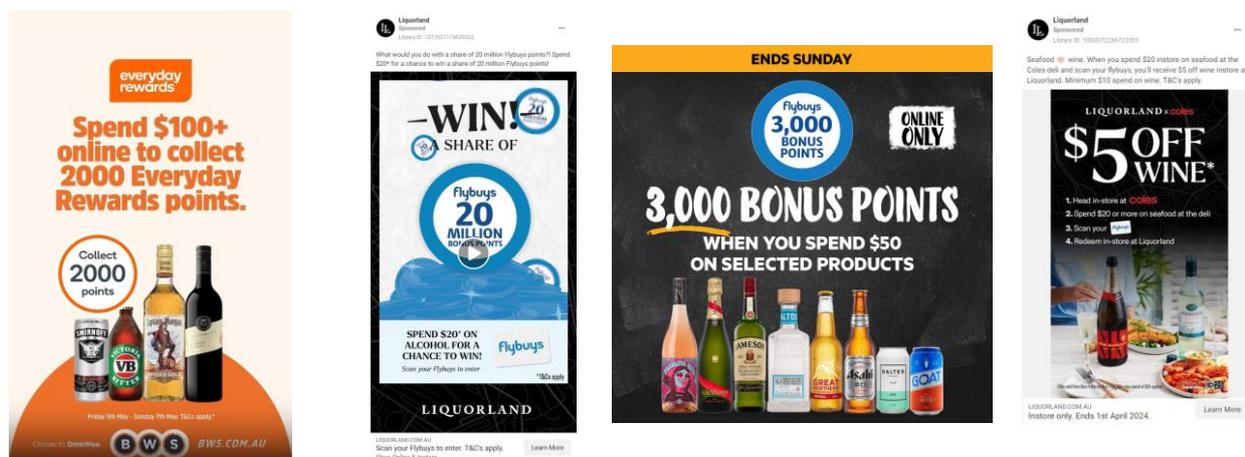
“We use your personal information to show you relevant advertising from us and third parties. For example, to help personalise the ads you see when browsing or on social media, we share certain information with digital platforms like Google and Meta to create audiences with common interests. We then use these groupings to tailor our advertising for a given audience.”

Harms from loyalty and rewards programs

Gamification of grocery shopping

Supermarkets use loyalty schemes to gamify grocery shopping and push people to buy and spend more – including through discounts and rewards from partner retailers, such as alcohol companies. For example, Woolworths' Everyday Rewards scheme encourages people to 'boost' products to earn additional points by spending a certain amount on those products. Coles' Flybuys scheme requires a weekly minimum spend to receive bonus points and discounts. Figure 1 (see below) provides evidence of these promotions. These strategies may also be particularly harmful for people experiencing alcohol dependence or who are trying to reduce the amount of alcohol they are drinking because they are more likely to be encouraged to 'boost' and spend on alcohol products based on past alcohol purchases.

Figure 1 - Gamification of Grocery Shopping



Use of data for targeted alcohol advertising

As identified by the ACCC in its 2019 Customer loyalty schemes investigation, data practices enabled by loyalty schemes can cause consumer harm.¹⁰

Among the many negative impacts of loyalty schemes on consumers, is the use of people's data for direct marketing and hyper-targeted advertising of alcohol, which is likely to have significant harmful impacts on individuals and the community.

These harmful alcohol marketing practices may include:

- Targeted advertising and personalised discounting and promotion of alcohol products on supermarket websites and apps, based on people's interests, characteristics and purchase history, which people are exposed to when shopping online or in apps for groceries and essential items.
- Targeted digital alcohol advertising on websites, social media and other online channels.
- Direct alcohol marketing by email, SMS and post.
- Advertising of alcohol retail partners on loyalty scheme websites, apps and advertising, pushing consumers to buy from the retailers to receive additional loyalty points, and earn discounts and rewards. For example, the Woolworths' Everyday Reward app features alcohol retailers BWS and Milkrun, and advertises Member Prices and other alcohol price promotions.
- Sharing data with alcohol retail partners and third-party alcohol companies, enabling data collection and tracking across consumers' supermarket and alcohol retail purchases, and use for targeted alcohol advertising and personalised alcohol promotions.

Once people are signed up to loyalty schemes, supermarkets and alcohol retailers push them to earn more loyalty points and rewards by shopping from alcohol retailers. They then collect and share people's data across their businesses.

For example, the Woolworths Everyday Rewards Privacy Policy includes the following terms:

"BWS is part of the Endeavour Group, which separated from Woolworths Group in July 2021. BWS is one of our long-standing Everyday Rewards Partners.

When you use your Everyday Rewards Card at BWS, limited information including your Everyday Rewards Card number is securely shared with Endeavour Group so they can understand your shopping preferences across their businesses.

This means that other Endeavour Group businesses, such as Dan Murphy's may, depending on your marketing preferences, share offers that could be of interest to you, based on how you shop at BWS (including via Woolworths Online) using your Everyday Rewards card."

The Privacy Policy also states:

"We may also share your personal information with Endeavour Group Limited (EGL), which includes BWS, so that EGL can use it for things such as better personalising its offers and information to you based on your scanned Everyday Rewards transactions at BWS."

Supermarkets and alcohol retailers' integrated collection and sharing of data through loyalty schemes enables these businesses to seamlessly and extensively profile and track people, and develop intimate insights into their behaviours and susceptibilities. Supermarkets and alcohol retailers use these insights to

target people with tailored advertising that is most likely to influence their perceptions and behaviour, pushing people to spend more, and increasing supermarket and alcohol retailer profits.

For example, alcohol and gambling corporation Endeavour Group – which uses loyalty scheme data from Everyday Rewards partner BWS – has developed and continues to invest heavily in their EndeavourX Initiative, which uses an AI-powered personalised marketing engine to drive increased sales of alcohol products.

This use of consumer data to prey on people’s behaviour and susceptibilities is potentially harmful for all consumers, but especially for people experiencing alcohol problems or dependence, who are more likely to be targeted with alcohol advertising when shopping for food and essential items, based on their past alcohol purchases at supermarkets or alcohol retailers.

Selling data to third-party digital platforms

Consumers’ data collected through loyalty schemes and sold to third-party digital platforms such as Meta is used by alcohol companies for targeted digital alcohol marketing.

Digital platforms use data from loyalty programs to generate ‘custom’ audiences, which they then use to develop ‘lookalike’ audiences of potential customers with similar characteristics to the most valuable existing customers, such as people most likely to buy and spend the most on alcohol products. This allows alcohol companies to deliver highly personalised digital marketing campaigns that target people with specific demographics and behavioural profiles, including high frequency of alcohol use.

This data sharing with digital platforms has significant harmful impacts by enabling alcohol companies to prey on people with alcohol problems and dependence, and continually pushing people to buy more alcohol.

Unfair and limited opt-out mechanisms

Although loyalty schemes include mechanisms that allow individuals to opt-out of having some information shared with certain businesses, or receiving certain direct communications and marketing, these mechanisms are limited and do not enable people to opt-out of the range of ways their data may be collected, shared and used for alcohol and other product marketing, such as for targeted social media advertising, and sharing of their data with third parties and digital platforms.

To the extent that opt-out mechanisms do apply to data sharing and marketing, it is fundamentally unfair to place the burden on individuals to take proactive action to use opt-out mechanisms to avoid being subject to harmful data handling and marketing practices, including alcohol marketing, when they are forced to sign up to loyalty schemes to access the lowest available grocery prices. These practices are not brought to people’s attention when they sign up for the schemes. People should not have to find and read detailed terms and conditions and privacy policies to find out about these practices, and then take proactive steps to opt out.

Unfair and potentially misleading price promotions

Supermarkets use a range of pricing promotions and strategies to influence people to buy and spend more on groceries and other supermarket items, including alcohol products.

These strategies include promotional claims and tags, such as, 'Special', 'Was/Now', 'Low Price', 'Everyday Low Price', 'Down Down' and 'Locked', as well as multi-buy and bulk purchase discount, and 'minimum spend' promotions that aim to increase people's spending.

Supermarkets also use 'loss-leading' discount promotions (items priced at low or below cost on which they make a loss), to attract customers to their stores or websites, and lead them to buy other items from which they profit.

Supermarket price promotions are highly influential in pushing consumers to buy products and spend more of their money. Australian Bureau of Statistics data shows that promoted supermarket items can sell at up to 70 times their normal rate.¹¹

Confusing or misleading price claims and discount promotions

Often promotional claims and tags are confusing and potentially misleading, and lack transparency or contextual information that would enable people to check their veracity.

For example:

- **'Specials' claims:** These claims do not always include information about the previous price, leading consumers to believe products are discounted when they are not or only negligibly, or more discounted than they really are. Often nearly all alcohol products in a supermarkets' range are constantly advertised as being on special. Figures 2 - 4 show alcohol specials featured on the Coles and Woolworths website.

Figure 2 Wine specials on Coles website

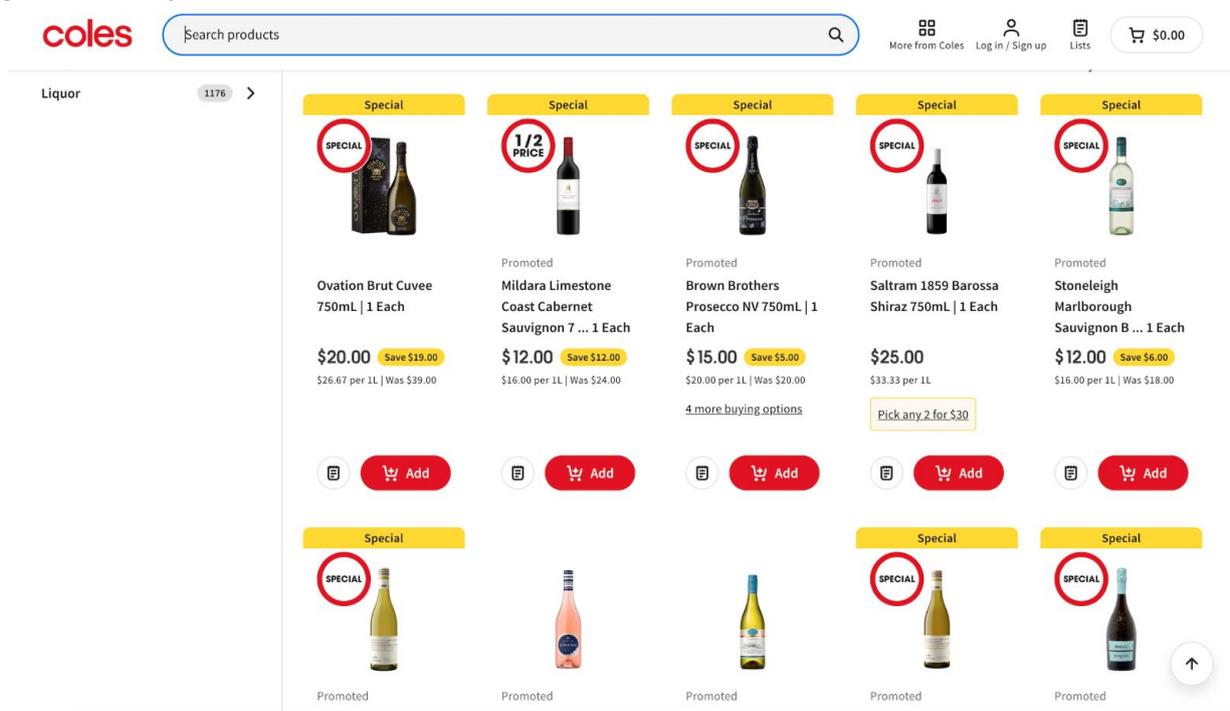


Figure 3 Beer promotions on the Woolworths website

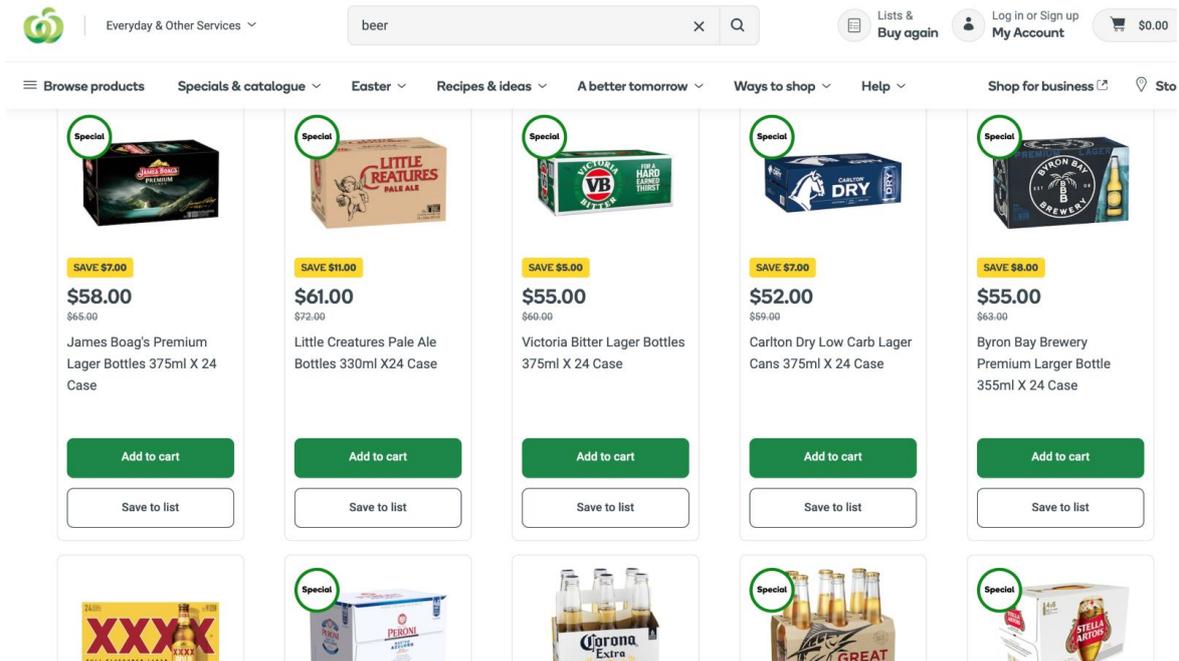
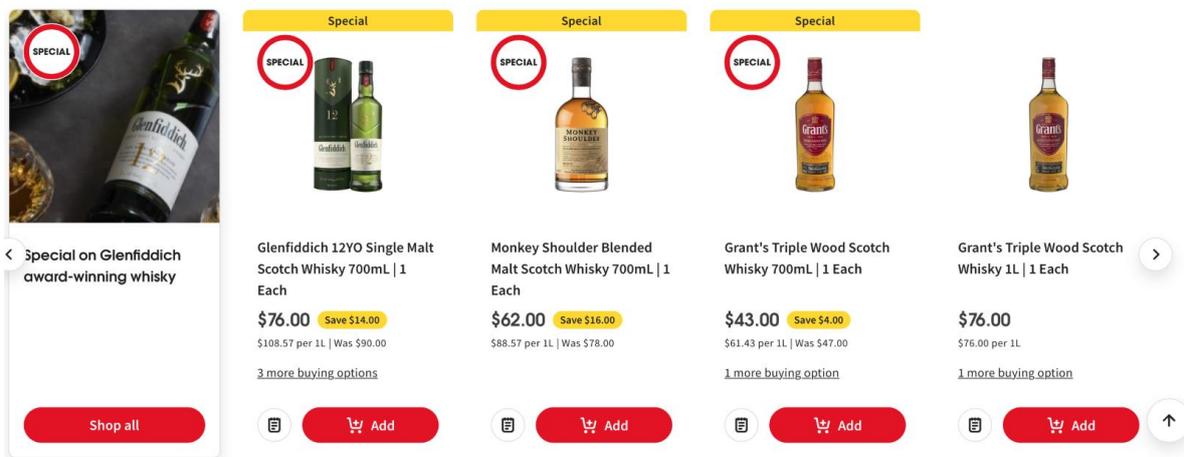


Figure 4 Alcohol promotion on the Coles website featured along with grocery promotions

Award Winning Whisky



- **'Was/Now', 'Prices Dropped' and 'Down Down' claims:** These claims compare the current price of an item with a price in the past, and can be based on past prices set artificially high (even when past prices may also have been lower) to make promoted prices appear lower, or on past prices from many years earlier.
- **'Low price', 'Everyday low price':** These types of claims are confusing and ambiguous, may lead consumers to believe products are better value than they really are, and may not enable them to compare prices with previous prices or prices of alternative products.

Many of these pricing claims and tags are used across groceries and alcohol products. Alcohol discount promotions regularly appear alongside grocery promotions on supermarket websites, and may be used as

'loss leaders' for supermarkets. Figure 5 (see below) shows that 'low price' wine promoted on the Woolworths website.

Figure 5 'Low price' and 'Special' wine promotions on the Woolworths website

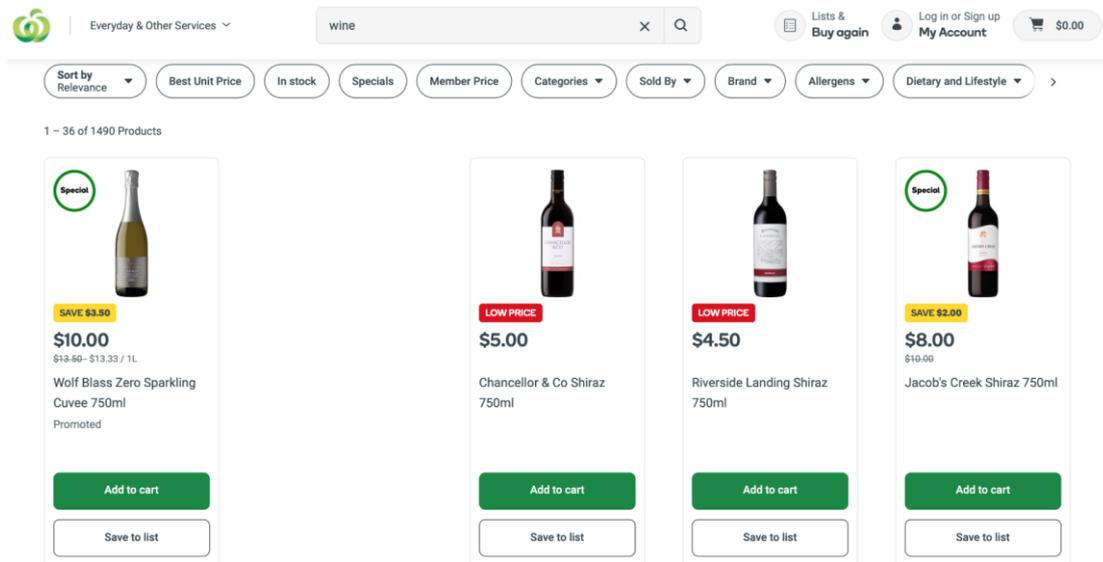
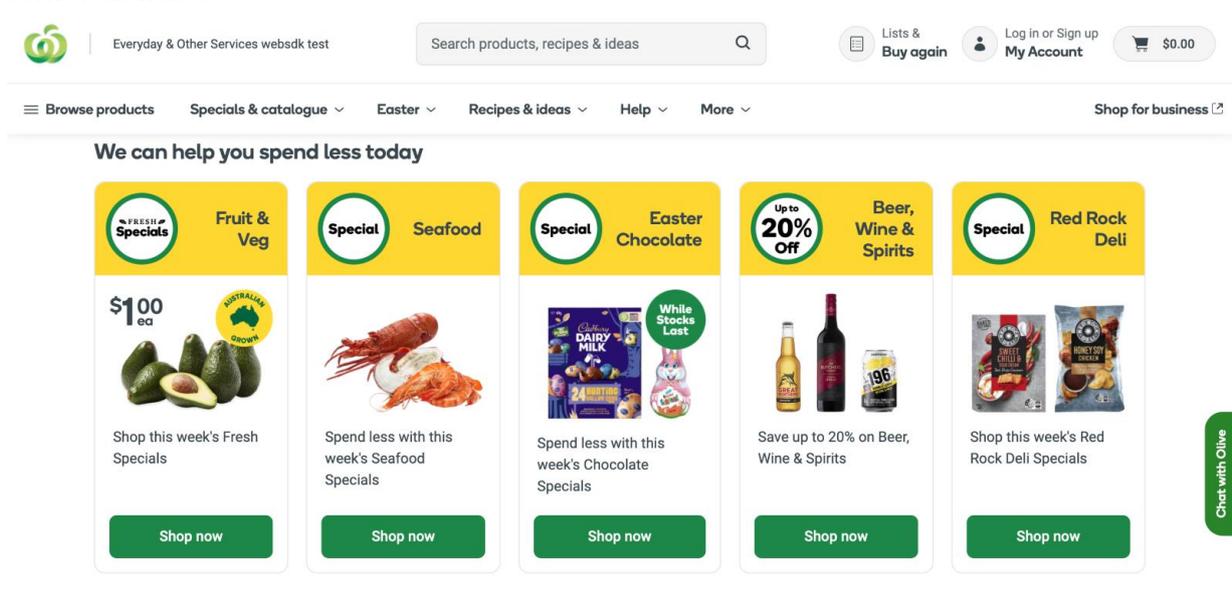


Figure 6 (see below) shows 'Up to 20% off Beer, Wine and Spirits' promotion, featured on the Woolworths website, alongside a range of food 'Specials'.

Figure 6 Beer, wine and spirits discount promotion featured alongside grocery promotions on the Woolworths website



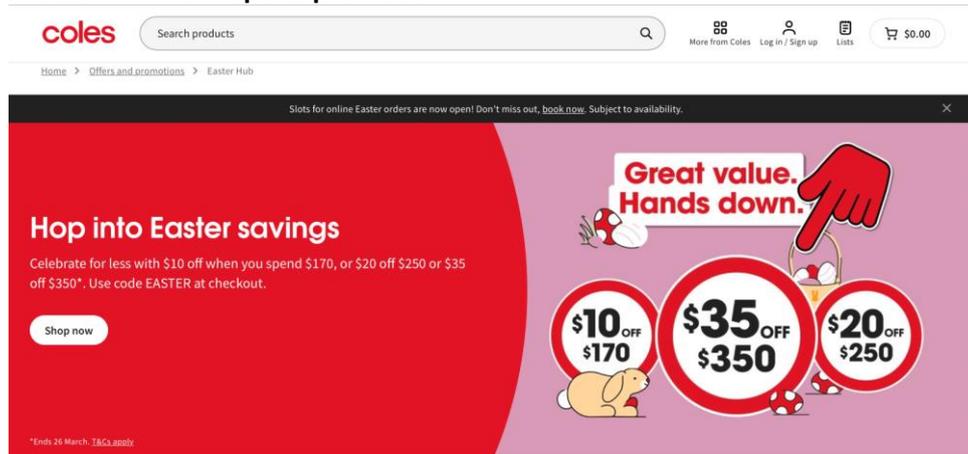
In addition to confusing and potentially misleading consumers, the powerful influence of these price promotions has negative impacts on the health and wellbeing of consumers when applied to alcohol products, which are harmful and addictive. People cannot avoid being targeted with these alcohol promotions when shopping at supermarkets for food and essential items.

Multi-buy, bulk discount and minimum spend promotions

People should not be penalised by supermarkets for buying the amount of a product they actually want and need. However, supermarkets also regularly use multi-buy, bulk discount and minimum promotions, which require people to buy more of a product, or spend more money, to access a discount, reward or other benefit.

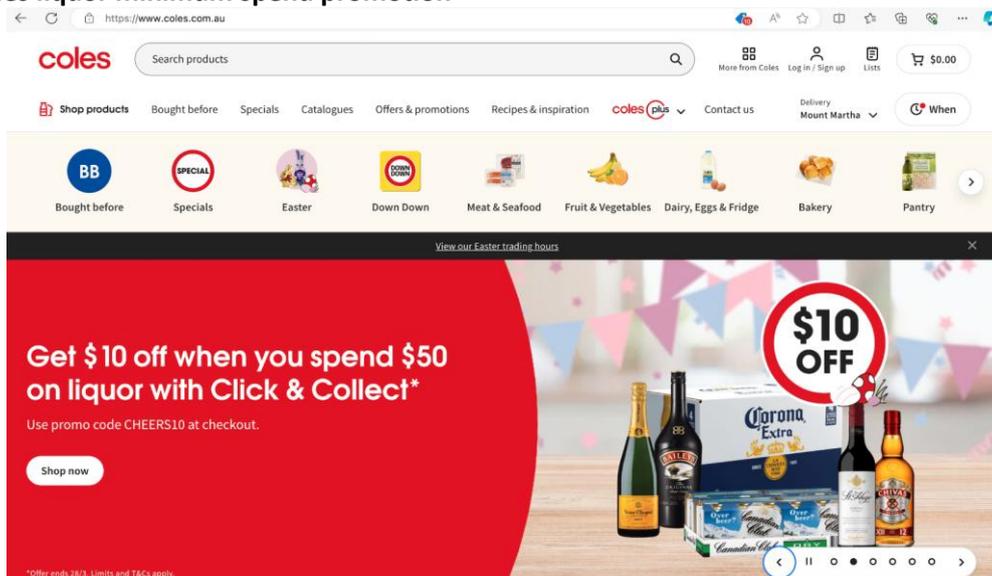
Minimum spend promotions often apply to a range of eligible products, including groceries and alcohol, pushing people to spend more on alcohol and other products to receive discounts, rewards or free delivery. Figure 7 (see below) shows that the recent Easter minimum spend promotion on the Coles website homepage.

Figure 7 Coles Easter minimum spend promotion



Bulk purchase, multi-buy and minimum spend promotions are also heavily used by supermarkets to promote alcohol products, and are featured on supermarket websites alongside similar grocery promotions. Figure 8 (see below) shows Coles' 'minimum spend' liquor promotion, which recently appeared on the Coles website homepage as one of a series of rotating Easter promotions, which also included the Easter minimum spend promotion (referred to above), discounted Coles pork leg roasts, and this week's half-price specials.

Figure 8 Coles liquor minimum spend promotion



At a time when people are having trouble affording food and essential items, these promotions are fundamentally unfair, and influence people to buy and spend more than they need to. When used to promote alcohol products, they also have damaging impacts on people's health and wellbeing. They are likely to disproportionately impact people who use alcohol at high risk levels, and those experiencing alcohol dependence, pushing them to buy and use large quantities of cheap alcohol.

Recommendations

Supermarkets and other retailers should not be permitted to require people to join loyalty or rewards programs to access lower prices, discounts or other benefits. Harms from these programs include the collection, sharing and use of people's data for targeted alcohol advertising.

Supermarkets and other retailers should be required to use fair and transparent pricing strategies and promotions, and should not be allowed to require people to buy or spend more to access lower prices, discounts or other benefits. Unfair, confusing and potentially misleading pricing promotions and strategies influence people to buy and spend more than they need to, including on harmful products such as alcohol.

FARE supports the introduction of a prohibition on certain unfair trading practices in the Australian Consumer Law, as recommended by the ACCC in the Digital Platforms Inquiry Final Report.

We recommend that an unfair trading practices prohibition should apply to the following unfair trading practices by supermarkets and other retailers:

1. Requiring membership of loyalty schemes to access lower prices, discounts or other benefits.
2. Collecting data through loyalty schemes, and using and sharing the data for the purpose of targeted advertising.
3. Bulk purchase, multi-buy and minimum spend promotions that require people to buy or spend a minimum amount to access a lower price, discount or other benefit.
4. Confusing and potentially misleading price claims and promotions, including claims that lack the information people need to verify them.

Conclusion

We thank the ACCC for the opportunity to provide input to the ACCC Supermarkets Inquiry.

In considering the impacts on consumers from supermarkets' supply of groceries in Australia, we ask the ACCC to take into account the range of harms from supermarkets' grocery pricing and marketing strategies. These include the significant harmful impacts of supermarket loyalty schemes in enabling data-driven targeted alcohol marketing, as well as people's exposure to aggressive alcohol marketing and pricing promotions when they are shopping for food and essential items.

During a cost-of-living crisis, it is imperative that people can access affordable food and essential items, without being forced to have their data collected for harmful product marketing, or being influenced to increase their spend on non-essential products that will hurt their health and wellbeing.

We ask the ACCC to consider our recommendations to ensure Australians are protected from these practices when shopping for everyday groceries.

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