

## PUBLIC VERSION

### MBIE DISCUSSION PAPER: MANDATORY UNIT PRICING FOR GROCERY PRODUCTS (MAY 2022)

#### SUBMISSION OF FOODSTUFFS NORTH ISLAND – 11 JULY 2022

## INTRODUCTION

- 1 Foodstuffs North Island (**FSNI**) appreciates the opportunity to provide input into MBIE's assessment of options for a mandatory unit pricing standard (**standard**) for grocery products in New Zealand.
- 2 FSNI previously provided submissions on this topic to the Commerce Commission (**Commission**) as part of its market study into the retail grocery sector.<sup>1</sup> Where applicable, we have referenced those submissions.
- 3 This document sets out FSNI's views and recommendations for how a uniform unit pricing standard could be applied in New Zealand. In preparing our submissions, we have closely considered the requirements of the Australian Unit Pricing Code (**Australian Code**), which we consider a useful starting point.<sup>2</sup> We have also provided detail in relation to FSNI's current unit pricing practices, and why we have chosen specific features.
- 4 FSNI supports MBIE's view that unit pricing offers a number of benefits to consumers, including by allowing them to directly compare product prices using standard units of measurement. This in turn helps customers make more informed purchasing decisions, and also drives competition. We agree that simplifying and standardising unit pricing practices across New Zealand retailers by setting minimum standards will be beneficial, provided this does not come at the expense of flexibility, innovation and customer experience. One aspect of ensuring this is to adopt a principles-based approach in preference to high levels of prescription. Further, implementation costs should be proportionate to expected consumer benefit, and there will need to be an achievable transition period.
- 5 Confidential information has been redacted from this version.

## SUMMARY OF KEY POINTS

- 6 FSNI acknowledges the work undertaken by MBIE to examine how a unit pricing standard could be applied to the New Zealand grocery sector.
- 7 FSNI makes the following key points in this submission:
  - 7.1 **FSNI supports a mandatory unit pricing standard:** FSNI already uses unit pricing in many of its stores,<sup>3</sup> but we agree that an industry standard is desirable and likely to lead to better outcomes for consumers.

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<sup>1</sup> FSNI Submission on Grocery Market Study Draft Report (**Draft Report Submission**) and Post-Conference Submission on the Grocery Market Study Draft Report (**Final Submission**).

<sup>2</sup> Australian Competition and Consumer (Industry Codes – Unit Pricing) Regulations 2021.

<sup>3</sup> References to "stores" in this submission refer to FSNI's retail stores.

- 7.2 **The standard should have broad industry application:** The Commission recommended mandatory unit pricing to assist consumers to make informed decisions.<sup>4</sup> In order to be of most benefit to consumers, the standard should apply broadly and consistently across suppliers of retail grocery products, where appropriate. FSNI acknowledges exemptions may be required in some instances. However, FSNI is proceeding on the assumption that all our stores will be subject to the new standard.
- 7.3 **The Australian Code provides a useful starting point, but some variation is needed:** The Australian Code provides a benchmark for how a unit pricing standard could be applied in New Zealand. However, some of the threshold aspects of the Australian Code are not suitable for the New Zealand market, and would result in a narrow application excluding a number of retailers that compete to supply grocery products.
- 7.4 **Requirements should be proportionate to benefit:** We expect that MBIE will consider whether the policy objectives for unit pricing can be achieved through existing industry systems that are already working well. If existing systems are made redundant, compliance and implementation costs could be significant. For example, a certain number of MBIE's suggestions could require the purchase of new electronic shelf labels (**ESLs**) and substantial re-builds of existing IT architecture, at considerable time, resource and cost. As well as driving up costs, if unit pricing requirements result in larger ESLs or paper tickets being required this would ultimately impact shelving systems and reduced product facings, which in turn reduces the number of products which can be held on shelves. This would mean fewer products on offer and poor consumer outcomes.
- 7.5 **Transitional periods are necessary:** The scope of the requirements will affect the duration of lead times that the industry needs in order to comply. A reasonable transitional period is necessary, consistent with the Commission's recommendation.<sup>5</sup> FSNI requests that MBIE invite separate submissions on this point once the scope of requirements is confirmed.
- 7.6 **Unit pricing requirements should apply at the point of purchase and not in advertising:** The primary requirement for unit pricing should be that it is displayed at the point of purchase, where it will be most relevant and informative to consumers. Requiring unit pricing to be displayed in other secondary formats such as advertising will, in our view, not achieve the policy intent. Where there is no meaningful opportunity for price comparison, unit pricing is superfluous and there is a risk customers are bombarded with too much information, which in turn results in a negative customer experience.

## FSNI'S CURRENT APPROACH TO UNIT PRICING

- 8 FSNI displays unit prices for most product categories sold in New World and PAK'nSAVE stores, and certain Four Square stores. Unit pricing is shown on paper tickets, ESLs and displayed on our e-commerce sites.
- 9 FSNI uses a range of ticketing solutions. ESLs<sup>6</sup> and/or automated paper tickets are the most commonly used ticketing solutions. Ticketing is enabled through our SAP IT system.<sup>7</sup> Both ticketing solutions display unit prices to the customer in store along with the retail price. ESLs rely on coded inputs to produce a digital ticket, and are widely regarded as a leading technology across the industry. However, the software has constraints. Most display formats are

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<sup>4</sup> Commerce Commission, Market study into the retail grocery sector: final report at [9.225] (**Final Report**).

<sup>5</sup> Commerce Commission, Final Report, at [9.226.5], cited in Discussion Paper, at [13].

<sup>6</sup> Not all stores have ESLs, however they are used in several of FSNI's PAK'nSAVE and New World stores.

<sup>7</sup> SAP refers to FSNI's software/ IT system that is currently implemented across all New World and PAK'nSAVE stores and some Four Squares.

standardised and do not allow variation in, for example, font size or text wrapping. There is a variety in the size of ESLs we use, with smaller ESLs displaying less information.

- 10 All New World and PAK'nSAVE stores operate on SAP, and are equipped to provide unit pricing using ESLs and paper tickets.<sup>8</sup> 51 of 167 Four Square stores also operate on SAP and display unit pricing accordingly. The decision not to roll out SAP to all Four Square stores to date reflects that many Four Square stores are significantly smaller than New World and PAK'nSAVE stores. FSNI intends to migrate "non-SAP" Four Square stores onto a new system that can accommodate unit pricing. However, as previously explained to the Commission, we expect this migration to take several years to complete.<sup>9</sup> For this reason, FSNI seeks an initial exemption from unit pricing requirements for non-SAP Four Square stores. We would appreciate the opportunity to discuss this further with MBIE (which could be part of the transitional period discussions, see para 7.5 above), or provide separate submissions on this point in due course.<sup>10</sup>

### **INCREASING OUR UNIT PRICING OFFERING – IN STORE AND ONLINE**

- 11 In December 2021, FSNI began a comprehensive review of unit pricing practices across each of our banners (PAK'nSAVE, New World and Four Square). As a result of this review, we commenced work this year to increase the proportion of products that show unit pricing both in-store and online. In increasing our unit pricing offering, we have generally sought to align with relevant aspects of the Australian Code, and considered guidance material produced by the ACCC. As part of our work, we have reviewed ticketing templates, increased unit pricing font size<sup>11</sup> for some banners, and intend to review remaining banners and increase unit pricing font size where feasible over the next year.
- 12 Our work to increase the number of products showing unit pricing is proceeding in two phases:
- 12.1 Phase 1: increasing the products showing unit pricing. This work has recently been completed and has resulted in the majority of eligible in-store products displaying unit prices (excluding those on "complex promotions").<sup>12</sup>
- 12.2 Phase 2: displaying unit prices for "complex promotions" outside of the Australian Code exempt scenarios and investigating opportunities to increase the overall coverage of our unit pricing. This work requires significant IT system upgrades and resources. (We note that work is currently underway in parallel to simplify FSNI's pricing and promotions, in line with the Commission's recommendations.)
- 13 FSNI recognises that many customers now prefer to browse and shop for groceries online. Our unit pricing strategy reflects this. In particular, we are exploring ways to increase online display visibility, to make unit prices more readily accessible to consumers. [REDACTED]

### **ENSURING COMPLIANCE COSTS ARE NOT DISPROPORTIONATE**

- 14 Depending on the nature and extent of new requirements, and how these differ from current practice, compliance costs associated with new regulations could be significant. FSNI

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<sup>8</sup> Stores are individually owned, and make their own decisions as to whether to take up ESL technology. Some stores use a combination of ESL and hardcopy ticket labels.

<sup>9</sup> IT/ SAP projects of this nature and scale require significant work, and are highly resource intensive. [REDACTED]

<sup>10</sup> FSNI, Final submissions, [196.2]. This issue could also be dealt with by way of an appropriate transitional period for non-SAP Four Square stores, as noted by the Commission (Final Report at [9.226.5]).

<sup>11</sup> Where possible within the parameters of our existing ESLs, discussed further below.

<sup>12</sup> Consistent with the Australian Code, we have exempted a number of products from unit pricing, on the basis it is not appropriate. See further information in response to Q14 below.

recommends that the principle of “proportionality” inform MBIE’s assessment of options, in addition to the criteria set out in paragraph [7] of the Discussion Paper.

- 15 Compliance costs for FSNI will be particularly significant if the standard results in additional requirements to increase the size of ticketing (for both paper and ESLs solutions), and if material system change and additional labour costs are required. For this reason, we suggest MBIE consider the extent to which any new requirements can be accommodated by the industry, and ensure additional measures actually benefit – and are supported by – consumers.
- 16 Below, we provide a response to each of MBIE’s specific questions.

## **POTENTIAL BENEFITS AND COMPLIANCE COSTS ASSOCIATED WITH MANDATORY UNIT PRICING REGIME**

### ***Question 1: Are there any other benefits or costs associated with mandatory unit pricing that are not mentioned above?***

- 17 As noted above, depending on the scale and complexity of the new standard, and the extent to which prevailing New Zealand systems cannot support the new requirements, compliance costs could be significant. Long lead times for implementation may also be necessary.
- 18 Key cost categories include:
- 18.1 **ESLs:** If FSNI’s ESLs cannot support all requirements of the standard, FSNI would likely need to purchase new ESLs, or procure a new digital ticketing platform. Significant cost will be associated with this, as well as a long lead times for implementation. New and/or bespoke ESLs would need to be imported from overseas. While it may be possible that some newer model ESLs (and paper tickets) can be adjusted for a prescribed font and font size, it may result in other information on the ticket not being readable and require larger ESLs (and paper tickets) to be purchased.
- 18.2 **IT system costs:** Upgrading or investing in new IT systems. If FSNI needs to roll-out new ESLs, then there would be associated IT design and other costs.<sup>13</sup> There would also be IT system costs associated with displaying unit pricing in digital advertising and making changes to FSNI’s online shopping platforms. Further, other important IT projects and customer improvement programs would be put on hold.
- 18.3 **Physical in-store reconfiguration costs:** If larger tickets (whether these are ESLs or paper tickets) are needed to accommodate additional text, this would require physical displays to be reconfigured and the number of product facings available on shelf would reduce. Deeper shelf strips may need to be used, with more space between products so that the larger tickets are not knocked when customers remove products. This would, in turn, mean higher costs, fewer products on offer and ultimately a poor consumer outcome.
- 18.4 **Print and production costs:** For stores on automatic hardcopy ticketing systems or bespoke manual tickets, print and production costs to relay the store may be significant. Some stores rely on bespoke print and production software and facilities, which may not be able to support significant variations.
- 18.5 **Labour costs:** There is a real chance of increased labour costs on account of a need to hire new staff, or re-deploy staff from existing programmes, if unit pricing cannot be accommodated by existing systems. For example, labour costs would be particularly

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<sup>13</sup> FSNI can provide further information regarding the different categories of likely IT cost if required.

significant if in-store shelving and data strips required full refurbishment to accommodate larger tickets, as noted above. The same would apply to any complex re-design of ESLs.

18.6 **Education costs:** Depending on the nature and extent of activities required, if retailers must carry out educational initiatives in relation to unit pricing, such as those outlined at paragraph [24] of the Discussion Paper, costs could increase further. This would require additional staff, training/ up-skilling and resource commitments. For the reasons set out in response to Q2 below, FSNI does not recommend this approach and considers the function should be performed by the regulator.

19 Some of the above costs may be particularly acute for smaller stores or retailers who rely on paper tickets. However, in many cases, they will have a broader and significant impact across industry.

20 The costs associated with each of the different options should be factored into MBIE's assessment, guided by the principle of "proportionality" to ensure costs are not disproportionate to expected consumer benefit.

21 Finally, to the extent the new requirements diverge significantly from industry standards or are not compatible with existing systems, the introduction could take additional time, and be disruptive. For this reason, FSNI suggests an appropriate lead time/transitional period be reflected in the standard.

***Question 2: Should grocery retailers be required to educate consumers about unit pricing by providing in-store and online pamphlets, posters and/or other guidance?***

22 In FSNI's view, this function should be centrally administered and independently overseen by the appropriate Government agency. This approach would ensure consistency and alignment of messaging across the industry in one definitive source. We expect consumers to be more likely to look to a Government information source for guidance on unit pricing in the first instance. Relevant materials (e.g. pamphlets or posters) could then be replicated by retailers in-store or online. FSNI would be happy to display this material in its stores and on its websites, as well as contribute to its development.

23 As far as FSNI is aware, the prevailing practice overseas, including Australia, is for regulators to assume this role. For example, the ACCC currently provides educational material on its website, including videos to explain how unit pricing works.<sup>14</sup>

24 As the Discussion Paper notes, placing this responsibility on industry could also complicate the compliance and enforcement responsibilities of the regulator (at [24]).

***Question 3: How much do you estimate it will cost to implement unit pricing in grocery stores? Please explain how you have arrived at this estimate.***

25 Implementation and compliance costs will depend on the specific requirements of the new standard, and whether existing systems can accommodate these requirements. As such, FSNI is not able to provide a precise estimate of the cost to implement unit pricing in its stores.

26 Instead, FSNI provides a high level indication of some of the larger implementation costs:

26.1 **ESLs:** If FSNI's existing ESLs cannot accommodate the new unit pricing requirements, we estimate the cost to purchase new ESLs would be high [REDACTED].<sup>15</sup> Our newer larger ESLs are widely regarded as best standard, and were selected for that reason. FSNI therefore considers that all effort should be made to ensure that the requirements of

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<sup>14</sup> See <https://www.accc.gov.au/business/industry-codes/unit-pricing-code#unit-pricing-explained>

<sup>15</sup> [REDACTED]

the new standard can be accommodated within the existing ESL system parameters, given the significant efficiency benefits of doing so and to minimise disruption to grocery operations.

26.2 **IT system upgrades:** Some of the unit pricing requirements suggested by MBIE will require IT system upgrades. For example, FSNI currently does not have the requisite IT functionality to display a “sort by” unit pricing feature on its online shopping platform. Depending on scope and complexity, further design and development of new IT functionality could have considerable cost implications [REDACTED]. Further, if FSNI was required to display unit pricing in digital advertising, FSNI estimates that the associated IT costs for the initial data feed alone would be between [REDACTED].<sup>16</sup>

27 Other cost categories could also be material, depending on the ultimate requirements of the standard and whether these can be operationally supported at a retail level. Business and staff re-deployment costs associated with any major work could also be significant.

#### **WHICH RETAILERS SHOULD MANDATORY UNIT PRICING APPLY TO?**

##### ***Question 4: Which grocery retailers should a mandatory unit pricing standard apply to?***

28 FSNI supports the Commission’s recommendation that unit pricing should be used more widely and consistently in New Zealand, and that working towards an industry-wide standard is likely to be beneficial to consumers. A broad application across retailers competing for the sale of grocery products, including both physical and online retailers, is likely to achieve the policy outcome of allowing consumers to meaningfully compare prices.<sup>17</sup> However, FSNI agrees that exemptions may be required, including to accommodate a reasonable transitional period.

29 FSNI is proceeding on the basis that all our stores will likely be in scope.

##### ***Question 5: Which of the approaches to threshold requirements (store size, product range, annual revenue) should be used to set the threshold for mandatory unit pricing in NZ?***

30 FSNI considers minimum floor space would be an appropriate threshold for physical stores.<sup>18</sup>

31 For the avoidance of doubt, FSNI does not consider that the minimum threshold should apply to exclude any of its stores (nor any of Woolworths New Zealand’s stores). That is, FSNI considers that the new standard should apply to all FSNI stores regardless of size, including Four Squares and New World Metros.

32 FSNI considers that the requirement in the Australian Code for retailers to supply a minimum range of food-based grocery items is unduly narrow.<sup>19</sup> The Commission similarly concluded that this approach was not desirable as it would risk excluding grocery retailers which consumers could benefit from being included.<sup>20</sup>

33 FSNI does not consider that a revenue based approach would be appropriate but, if adopted, we suggest this be assessed at a group level.

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<sup>16</sup> [REDACTED]

<sup>17</sup> See also FSNI, Final Submission at [195.3].

<sup>18</sup> Separate consideration will need to be given to the appropriate threshold for retailers that operate online only.

<sup>19</sup> FSNI Final Submission at [195.3].

<sup>20</sup> Final Report at [9.231].

**Question 6: If NZ adopts**

- a) **A floor size threshold, what should be the appropriate floor size (in square metres) for this threshold?**
- b) **A product range threshold, what products should be included?**
- c) **An annual revenue threshold, what is the appropriate dollar amount for this threshold, and should the threshold be set at group level or store level?**

34 Please see our response to Q4 and 5 above, and previous submission to the Commission.

**WHERE SHOULD RETAILERS DISPLAY UNIT PRICING?**

**Question 7: Where should retailers be required to display unit pricing, and why?**

35 The Discussion Paper refers to three potential locations:

- 35.1 point of purchase, in close proximity with the product,
- 35.2 specific advertising formats, such as print media, and
- 35.3 all advertising formats where a retail price is displayed or shared, including print, radio, television and online print, audio or video.<sup>21</sup>

36 We comment on each below.

*Point of purchase*

37 FSNI agrees unit pricing should apply at the point of purchase, whether this be in-store or online. We have assumed in this submission that by “point of purchase” MBIE means a location that is proximate to the product and the product’s selling price (i.e. at the shelf itself rather than the checkout), consistent with clause 6(2)(a) of the Australian Code.<sup>22</sup> This is likely to be the most directly relevant to consumers. Our current unit pricing practices reflect this.

38 Paragraph [46] of the Discussion Paper refers to an approach whereby pricing information is placed on the product itself, and notes that in these cases it may be appropriate to require manufacturers to add unit prices. We assume this is referring to retail-level activity, where products are packaged in-store, for example, in-store bakery products and deli-foods. In these circumstances, FSNI as the retailer can provide unit prices for certain products, as it is the retailer that determines the retail price (which then sets the appropriate unit price). However, for some products this will not be appropriate. Further detail is provided below in response to Q8 and 14.

39 Conversely, if this discussion is targeted at manufacturers, we do not consider this would be appropriate. Manufacturers should not be required to display unit pricing on pre-packaged products. As noted above, price information, including unit price, should be set and displayed at the retail level. Requiring otherwise could also conflict with the resale price maintenance prohibition in the Commerce Act 1986.

*Advertising*

40 FSNI uses a range of different advertising formats. These include:

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<sup>21</sup> Discussion Paper, at [41].

<sup>22</sup> If this assumption is not correct, we would appreciate MBIE’s clarification as to what it envisages by “point of purchase” as this may change our submission.

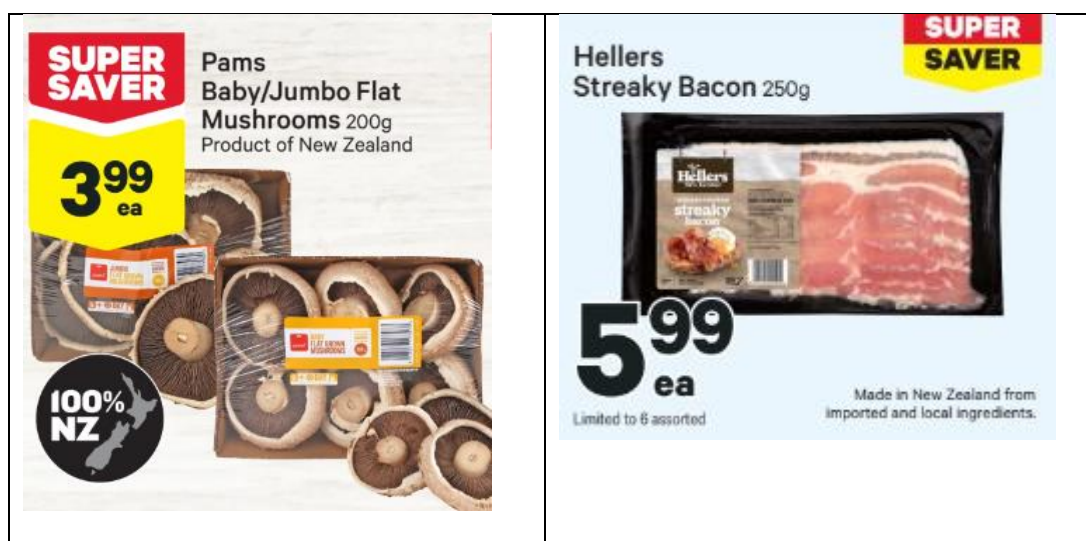
40.1 printed advertisements – including in store displays such as large promotional posters and out of home displays (such as bus stops and print ads), which are not proximate to particular products,<sup>23</sup>

40.2 digital advertisements, displayed online. This includes the New World “mailer”<sup>24</sup>, direct emails to customers and advertisements run at store-level, e.g., on a store’s Facebook page, and

40.3 television and radio advertisements.

41 FSNI considers that unit pricing should not be required in advertising. It is far more likely to be relevant, and useful to consumers, at the point of purchase.<sup>25</sup> To be meaningful, customers need to be able to directly compare similar products. Single advertisements do not enable this comparison. Our customer sampling indicates that unit price details in advertisements are seldom remembered, and it creates a poor experience when customers are bombarded with too much information. It obscures and undermines the key messages, and results in lower customer engagement.

42 To demonstrate this, we set out below extracts of our digital New World Mailer, which show that the space for additional information is small. Displaying a unit price would add clutter, especially where it would be required alongside Country of Origin requirements. We consider having too much information would result in unclear/ cluttered messages, and produce an overall lower engagement by consumers.



43 The compliance costs associated with including unit prices across all advertising media are significant, despite providing little or no benefit. For this reason, we consider the focus of the standard should be point of purchase. The costs associated with requiring it in advertising are likely to be disproportionate to any expected consumer benefit.

**Question 8: Where the retail price is displayed on a product itself, should the unit price also be displayed on the product?**

44 See above comments at paragraph [38] above.

45 In some instances, FSNI stores will package, barcode and apply a price to goods in-store, e.g. bakery and deli. For certain of those items, unit prices may be appropriate e.g. deli meats.

<sup>24</sup> [REDACTED]

<sup>25</sup> See also FSNI Final submission at [195.5].



However, it is important to bear in mind that FSNI physically prints pricing tickets for these items from scales in store. There are limits to what the scales can produce e.g. in terms of space available and font size.

- 46 For other products, unit pricing is not appropriate (e.g. cakes and bread where individual product dimensions such as weight can differ, so it is not possible to have a consistent unit price). Please see further comments at paragraph [74] below, in relation to product exemptions.

**Question 9: Should grocery retailers be required to have a “sort and/or filter by unit price” option on their website?**

- 47 FSNI does not consider this to be an essential feature of unit pricing, and it is not currently enabled by our IT systems or part of our roll-out strategy. In particular, we have not observed any strong demand for this feature from our online customers.

- 48 FSNI currently displays unit pricing at the individual product level on its New World and PAK’nSAVE websites.<sup>26</sup> An example is shown below:

**EVERYDAY VALUE**

**Pams Rolled Oats 1.5kg**  
\$0.29 per 100g

**4.29**  
ea

1 Ea **Add**

Add to list

Ready in 3 Minutes. Low Sodium. Low Sugar. No Added Colours. 1 Source of Fibre. Contains Gluten.

HEALTH STAR RATING

Ingredients

Allergens

- 49 However, we recognise the value to our customers of having the option to view the unit price of multiple search results at grid level, as shown below.

Categories Brand Specials

Showing 1 - 50 of 67 products 20 60 per page Popularity High to Low

<p>Pams Rolled Oats 750g</p> <p><b>EVERYDAY VALUE</b></p> <p><b>2.29</b> ea</p> <p>1 Ea <b>Add</b></p>	<p>Pams Rolled Oats 1.5kg</p> <p><b>EVERYDAY VALUE</b></p> <p><b>4.29</b> ea</p> <p>1 Ea <b>Add</b></p>	<p>Harroways Traditional Rolled Oats 800g</p> <p><b>SAVER</b></p> <p><b>3.99</b> ea</p> <p>1 Ea <b>Add</b></p>	<p>Harroways Extra Creamy Scotch Oats 850g</p> <p><b>SAVER</b></p> <p><b>3.99</b> ea</p> <p>1 Ea <b>Add</b></p>	<p>Harroways Traditional Wholegrain Oats 1kg</p> <p><b>SAVER</b></p> <p><b>4.29</b> ea</p> <p>1 Ea <b>Add</b></p>
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<sup>26</sup> Four Square does not offer online shopping.

50 FSNI has commenced work to implement unit pricing at a grid level, which we expect to be complete by end of 2022/ early 2023. This change will allow consumers to compare unit prices between products. We expect IT costs to introduce “grid level” online display of unit pricing across product categories to be in the vicinity of [REDACTED].

**Question 10: In what forms of advertising should retailers be required to display unit pricing?**

51 As set out in our response to Q7 above, FSNI does not consider that retailers should be required to display unit pricing in advertising. In our view, unit pricing is not helpful in advertising, and should not be required by the new standard (although there may be instances where a retailer chooses to include it). Typically, advertising formats are condensed (meaning the unit price may need to come at the expense of other information) and do not allow direct comparability of products. This is particularly the case for single advertisements.

52 [REDACTED].

53 If FSNI was to incorporate unit pricing in its digital advertising, it expects the associated IT costs would be between [REDACTED]. This estimate is based on the cost of rolling out Country of Origin labelling in digital advertising.

**Question 11: What are the potential costs and benefits of including unit pricing in audio and video advertising formats?**

54 As above, FSNI considers advertising is the wrong format for unit pricing. This is particularly the case for audio and video. We agree with MBIE’s comment at [49] of the Discussion Paper that audio and video advertisements are impermanent and do not offer an opportunity for price comparison.

55 The Australian Code accordingly does not require unit pricing to be displayed in audio and video advertisements. We expect that the compliance costs associated with mandating its inclusion in bespoke advertising formats such as audio and video media will be significant and, in our view, will produce little value to consumers.

**WHAT SHOULD BE THE STANDARD AND NON-STANDARD MEASUREMENTS FOR UNIT PRICING?**

**Question 12:**

- a) **What should be the standard and non-standard measurements for unit pricing in NZ?**
- b) **Should one litre or 100 millilitres be used as the standard measurement for volume?**
- c) **Should one kilogram or 100 grams be used as the standard measurement for weight?**

56 FSNI’s view is that standard and non-standard measurements should be informed by what is most useful and informative to New Zealand consumers, and their typical purchasing habits (e.g. the quantity or volume they typically purchase the product in).

57 From an implementation perspective, our preference is for clear measures that can be applied consistently. However, we caution against mandating a “one size fits all” approach, e.g. a default requirement to show *all* liquids in litres would be unduly restrictive and not customer-focused (see further below).

58 We set out FSNI’s responses to MBIE’s questions below, together with an overview of the business rules we currently use to sort and characterise products and apply unit prices to them.

**Standard measurements**

59 FSNI supports using the clause 10 of the Australian Code as a starting point for standard measurement units, that is:

- 59.1 for products supplied by volume—per 100 millilitres;
- 59.2 for products supplied by weight—per 100 grams;
- 59.3 for products supplied by length—per metre;
- 59.4 for products supplied by area—per square metre; and
- 59.5 for products supplied by number—per item included.

60 These are broadly consistent with FSNI’s current business practices, and we consider will be suitable for most products. Where we identified discrepancies, we have suggested these be subject to non-standard measurements – see further below.

61 We do not consider it helpful or necessary to deviate from the Australian position by increasing the standard measurement units for volume and weight to 1L and 1KG respectively. Most products sold in store are sold in quantities smaller than 1L and 1KG, and as such FSNI uses 100mL and 100g as the standard units for unit pricing for most product categories. To adopt 1L and 1KG would therefore produce less accessible information for customers. These larger metrics will not be useful indicators of value for the majority of products sold in store, which are typically weighted and sold in smaller quantities.

**Non-standard measurements**

62 FSNI does not consider the non-standard measurement units set out in clause 11 of the Australian Code to be suitable for New Zealand. Instead, FSNI recommends the following non-standard measurements. This reflect the product categories where the standard units of measurement are likely to be inappropriate – and therefore less useful to the consumer – given the typical size of the products sold:

Grocery category	Unit of measurement	Explanation
Drinks – carbonated and non-carbonated	Per litre	This is consistent with the Australian Code, and reflects that the majority of beverages are typically sold in quantities 1L or greater.
Produce	a. Per item included b. If supplied by weight, per 100g	Per item is necessary as some fruit and vegetables are typically sold as individual units, rather than by weight (e.g. broccoli, capsicum, watermelon, pineapple).
Pet products (other than pet food)	a. Per item included b. If supplied by weight, per kilogram c. If supplied by volume, per litre	This is consistent with the Australian Code and reflects that non-food pet products tend to be supplied in quantities larger 1L or 1KG.
Pet Food – Butchery	a. Per kilogram	Products in this category are typically sold in quantities larger than 1KG e.g. dog food rolls. This category does not include

Grocery category	Unit of measurement	Explanation
		shelf pet food (e.g. canned food), which is typically sold in quantities smaller than 100g.
Oils and fats	<ul style="list-style-type: none"> <li>a. Per item included</li> <li>b. If supplied by weight, per kilogram</li> <li>c. If supplied by volume, per litre</li> </ul>	The majority of products sold in this category are between 500mL and 2L.
Milk and cream	<ul style="list-style-type: none"> <li>a. Per item included</li> <li>b. If supplied per weight – per 100g</li> <li>c. If supplied by volume, per litre</li> </ul>	Litre is appropriate for this product category given that milk is most commonly supplied in volumes 1L or higher. However, 100g is the appropriate weight measurement given that whipped cream is supplied in quantities less than 1KG.
Frozen meat and poultry	<ul style="list-style-type: none"> <li>a. Per item included</li> <li>b. If supplied by weight, per kilogram</li> </ul>	Per kilogram is the appropriate unit for this category as frozen meat and chicken tends to be sold in quantities larger than 1KG. On the other hand, 100g is appropriate for fresh meat and poultry which tends to be sold in quantities smaller than 1KG.

#### ***FSNI's current business rules***

- 63 FSNI currently uses business rules to determine the measurements for products currently part of our unit pricing regime. FSNI would be happy to discuss the detail of these business rules with MBIE to illustrate our current approach and reasons for selecting particular measurement units to apply to our products.
- 64 Our business rules were developed by:
- 64.1 sorting products into relevant sub-departmental categories;
  - 64.2 evaluating the unit measurements used by suppliers;
  - 64.3 considering what units are likely to be most useful to customers;
  - 64.4 feedback and discussions with product managers; and
  - 64.5 drawing guidance from the Australian Code.
- 65 Our general approach is to have uniform measurements units across the same or similar products (e.g. milk is shown as per litre, but not necessarily across wider product categories e.g. all dairy).
- 66 For discount sales or fresh food promotions (e.g. for bulk delivering intended for quick sale), FSNI considers it is important retailers retain flexibility to display the unit price as “each”. Items in these categories are often affected by seasonal variation. There is limited utility displaying a standard unit measure as the size and weight of each item can differ. Watermelons, broccoli and capsicums are good examples, where single items are typically purchased. For this reason, the

standard should allow retailers flexibility to display prices as “each” in these cases, consistent with the Australian Code.<sup>27</sup>

- 67 The same goes for in-store bakery products. The unit price for products baked in store is always “each”, and we consider this setting should be retained. Weights across baked items, e.g. bread rolls, will invariably differ. Allowing the use of “each” would permit FSNI’s in-store bakeries to simply print a price ticket in bulk, without needing to weigh each individual packet. Conversely, if a unit price was required based on weight, then FSNI’s in-store bakeries would need to weigh each pack of bread rolls before it could print the price sticker. This would be unduly burdensome. Further detail is provided in response to Q17 below.

**Question 13: Should the same unit of measurement be used for all products within the same product category?**

- 68 This depends on what is meant by “product category”. Assuming this to be broad in scope, imposing such a requirement could be unduly restrictive. In particular, it could result in measurements that are ultimately unhelpful or even nonsensical to consumers. For example, a requirement to use the same unit of measurement for all “beverages” would not be appropriate, given the significant variation in the types of products falling within such a broad category. For example, the “beverages” category includes coffee powder (unit price per 100g), tea bags (unit price per bag), and coffee syrups (unit price per 100mL). Requiring only one unit of measurement across all of these products would not be helpful for consumers.
- 69 Conversely, if the concept of “product category” is more narrowly defined, it may be appropriate for the same unit of measurement to apply across items within that category. For example, the unit pricing for all instant coffee powder to be displayed per 100g.

70 [REDACTED].

- 71 Finally, we suggest retailers retain residual flexibility to determine the most appropriate measurement unit for scenarios not clearly covered by the standard, or where there is a high level of variation among products. This discretion is important to ensure that the standard remains workable and sustainable longer term to accommodate product changes and innovations in the market, e.g. new products coming to market that do not clearly fit within a specific category.<sup>28</sup>

**WHAT PRODUCTS SHOULD BE EXEMPT FROM A COMPULSORY UNIT PRICING STANDARD?**

**Question 14: Is the Australian approach to product exemptions appropriate for NZ?**

- 72 It is important that reasonable exemptions be reflected in the New Zealand standard. For example, there may be instances where unit pricing is unhelpful to consumers, or where including it would be impracticable or impose disproportionate cost on retailers and/or suppliers of the product (e.g. in-store bakery products).
- 73 With new products constantly entering the market, MBIE should also ensure exemption descriptions are appropriately broad and flexible enough to accommodate new products, and minimise the number of regulatory changes required to the standard over time.

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<sup>27</sup> Clause 11, item 8, of the Australian Code which allows fruits and vegetables to be displayed “per item”.

<sup>28</sup> By way of illustration, we note that the Australian Code provides retailers with discretion to determine the most relevant measurement unit in particular cases, e.g. see clause 10(2). We suggest a similar provision be considered in the New Zealand context.

- 74 The Australian Code exemptions are a good starting point. However, FSNI recommends some amendments to reflect the New Zealand market.
- 75 In summary, we consider the following exemptions should be available in New Zealand:
- 75.1 selling prices that apply to more than one grocery items (per clause 7 of the Australian Code), e.g. promotions where different items are offered at the same price;
- 75.2 marked down or bundled grocery items (per clause 8 of the Australian Code), e.g. perishables, damaged goods and discontinued items or products bundled in packs (e.g. travel packs); and
- 75.3 particular grocery categories (per clause 9 of the Australian Code) but with the following additions/ amendments:
- (a) inclusion of a new category for “bakery items” prepared in store. The size and dimensions of individual bakery products vary (e.g. cakes, baguettes, a pack of rolls), which makes unit pricing an unhelpful measure,
  - (b) broadening the reference to “meals prepared at the retail premises for immediate consumption” to include all relevant café items that may be sold in-store, including coffee and small snacks. These products are typically sold as an individual units,
  - (c) broadening the examples of “services” to include items like lotto, gift cards and delivery charges.<sup>29</sup>

**Question 15: Should mandatory unit pricing apply to tobacco products in New Zealand?**

- 76 As the Discussion Paper notes, tobacco products are not available on display to customers and must typically be requested at the check-out. For this reason, there are no customer visible tickets for tobacco items in any FSNI stores and, in our view, it would not be appropriate to impose unit pricing requirements given the limited opportunity for price comparison. This is consistent with the Australian Code.

- 77 There are also broader policy considerations, particularly if unit prices encourage greater consumption. We also note the Government’s recent introduction of the Smokefree Environments and Related Products Bill to Parliament on 21 June 2022, and proposed measures that may impact retail availability of tobacco products. One of the proposed purposes of the changes is “to significantly reduce the retail availability of smoked tobacco products” (section 5).

**Question 16: Should mandatory unit pricing apply to alcohol products in NZ?**

- 78 As a responsible retailer, we do not consider it appropriate to display a unit price for alcohol. This is consistent with the Australian Code.

**Question 17: Are there any other products for which unit pricing may not be workable or appropriate? What are these products?**

- 79 Please see above comments in response to Q14.

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<sup>29</sup> Additional exemption categories may need to be considered once further detail is available

## HOW SHOULD UNIT PRICING BE DISPLAYED?

### ***Question 18: Should New Zealand adopt a principle-based approach to the display of unit pricing, or should there be more prescriptive requirements around font size, font, contrast, and location?***

- 80 FSNI is strongly of the view that a principle-based approach is preferable, for a number of reasons. This would be consistent with the Australian Code<sup>30</sup> and, in our view, is equally appropriate for New Zealand.
- 81 A principle-based approach is preferable because:
- 81.1 FSNI would likely be able to comply with principle-based requirements using its current equipment (ESLs), paper and other tickets and IT systems. There is a finite amount of space available on the ESLs, and limits as to what they can display. As such, FSNI's ESLs may not be able to accommodate prescriptive requirements, such as a particular font size. To comply with additional prescription, FSNI would need to purchase new ESLs at an estimated cost [REDACTED] to meet requirements. FSNI considers it would be preferable to specify a principle-based requirement (e.g. that the unit price be displayed prominently and legibility), rather than a prescriptive requirement to use a particular font size,
  - 81.2 it provides retailers flexibility to ensure unit pricing can be displayed in a manner that is tailored to specific products and customer base. This flexibility is important so that retailers can make their own decisions about what the most beneficial display is for their customers, e.g. by using formats with which customers are familiar, and
  - 81.3 it permits industry innovation, rather than locking in a set of prescriptive requirements.
- 82 FSNI's own customer research indicates most customers prefer simple ticketing labels, which are used consistently across a retailer's stores, and/or online platforms. They also value the use of different colours for special displays, e.g. sales and promotions, as opposed to a standard white ticket with cluttered information. Again, this highlights the value of ensuring retailer-specific innovations can be maintained to produce a positive customer experience.
- 83 Adopting a principle based approach will help ensure retailers can differentiate themselves in their labelling practices (including by using bespoke fonts, colour and positioning), deliver a positive customer experience, continue to use systems that work well, and take up new innovations that may become available over time.
- 84 To help illustrate this point, we include below an example of a FSNI price ticket amended to reflect the suggested prescriptive requirements set out at [74] of the Discussion Paper. In our view, this ticket appears cluttered.

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<sup>30</sup> Clause 6.



85 We have also included an example below to show how the ticket can become even more cluttered if a product is on a complex promotion and needs to show the customer both the special and non-special price, together with the relevant unit prices (such as a “multi-buy”):



86 Additional “before and after” examples can be provided to MBIE upon request if helpful, to illustrate the impact of particular requirements. A key consideration from FSNI’s perspective is ensuring the ticket remains accessible and readable for the customer.

**Question 19: In your view, what are the most important principles or requirements for the display of unit pricing?**

87 From FSNI’s perspective, the most important principles for the display of unit pricing are clarity, simplicity and readability for the customer. It is essential that customers not be bombarded with excessive information, which leads to disengagement and dissatisfaction. In our view, this is also consistent with the Commission’s theme regarding the benefits of simplifying pricing.

88 FSNI generally supports the display principles set out in the Australian Code, being prominence, legibility, unambiguity, and proximity. FSNI considers these would be equally appropriate for New Zealand. As above, we consider it important that these display principles be underpinned by an approach that preserves industry flexibility and the potential for innovation to develop tickets and displays in a bespoke and customised manner for their customers, whilst upholding the core principles.

89 Our customer research has indicated that the most important information on the ticket is generally price, and whether there is a discount. In our PAK’nSAVE stores, we use colour as a shortcut to communicate particular specials, and there is strong colour recognition by our customers who value this approach. For this reason, we would want to retain flexibility to use specific colours on our tickets

90 MBIE could consider including some indicative examples of unit pricing displays in guidance material, showing the types of displays it considers would meet the new standard.



**Question 20: What should officials keep in mind when considering a more prescriptive option that specifies minimum requirements for the display of unit pricing?**

91 Please see our response above. An overly prescriptive approach is likely to be counterproductive, costly, and stifle innovation.

**WHAT SORT OF LEGISLATIVE INSTRUMENT COULD BE USED TO IMPLEMENT MANDATORY UNIT PRICING?**

**Question 21: Do you have any views on whether mandatory unit pricing should be implemented through a consumer information standard under the Fair Trading Act 1986, or through amendment of the Weights and Measures Act 1987?**

92 We consider this is a policy matter for MBIE. However, of the two options outlined in the Discussion Paper, FSNI considers a consumer information standard (CIS) to be the more suitable approach for unit pricing. As MBIE notes, a number of similar information requirements have been implemented through this regime.