



## COVERSHEET

<b>Minister</b>	Hon David Clark	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of briefing</b>	Mandatory Unit Pricing for Grocery Products	<b>Date to be published</b>	19 December 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
16 November 2022	Regulatory Impact Statement: Mandatory Unit Pricing for Grocery Products	MBIE
November 2022	Mandatory Unit Pricing for Grocery Products	Office of the Minister of Commerce and Consumer Affairs
23 November 2022	DEV-22-MIN-027 Mandatory Unit Pricing for Grocery Products	Cabinet Office

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's and MFAT's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

## In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Economic Development Committee

## Mandatory unit pricing for grocery products

### Proposal

1. This paper seeks agreement to introduce mandatory unit pricing for grocery products sold by regulated grocery retailers in New Zealand. If agreed, these proposals will be implemented through a consumer information standard under the Fair Trading Act 1986.

### Relation to government priorities

2. This paper relates to our priorities of improving the wellbeing of New Zealanders and their families, and of growing the economy for all. Empowering consumers to make more informed purchasing decisions indirectly supports competition in the grocery sector and thereby benefits New Zealanders by contributing to lower grocery prices, better quality grocery products, increased innovation, a wider product range, and better service.

### Executive Summary

3. The Commerce Commission's (the Commission) market study into the retail grocery sector made several recommendations for improving competition in the sector, including mandating the consistent display of unit pricing for grocery products sold by certain grocery retailers. This is on the basis that implementation of mandatory unit pricing will help consumers make better informed purchasing decisions, support inter-brand competition, and encourage grocery retailers to compete on metrics such as price and transparency.
4. On 23 May 2022, Cabinet agreed to implement mandatory unit pricing for grocery products [CAB-22-MIN-0186 refers] and that the Minister of Commerce and Consumer Affairs would report back to the Cabinet Economic Development Committee seeking agreement on the form and content of mandatory unit pricing regulation following public consultation. On 30 May 2022, MBIE released a discussion paper titled 'Mandatory unit pricing for grocery products' that sought feedback on the scope and content of the rules.
5. In light of submissions received and further targeted stakeholder consultation, I propose to introduce mandatory unit pricing requirements through a consumer information standard under the Fair Trading Act 1986. This will require groceries sold online or in grocery retail stores above a prescribed floorspace to provide clear information to consumers about unit prices in store, online, and in print advertising.
6. Subject to Cabinet authorisation, I intend to release an exposure draft of the regulations for public consultation.

## Background

7. Unit pricing is the price per unit of measure for a product, such as the cost per kilogram or litre and is usually displayed together with the retail price of the product. Some grocery retailers already voluntarily display unit pricing for certain grocery products. However, unit pricing is not mandatory in New Zealand and is not standardised or consistent across grocery retailers or grocery products.
8. The Commission published its final market study report on the retail grocery sector on 8 March 2022 and found that competition in the retail grocery sector is not working well for consumers. The report made several recommendations for improving competition, including mandating the consistent display of unit pricing for grocery products.
9. On 23 May 2022, Cabinet agreed to implement the Commission's recommendation as part of its overall response to the report and agreed that the Minister of Commerce and Consumer Affairs would publicly consult further on the form and content of the unit pricing requirements [CAB-22-MIN-0186].
10. On 30 May, MBIE released a discussion paper titled 'Mandatory unit pricing for grocery products' (the discussion paper) that sought feedback on which grocery retailers mandatory unit pricing should apply to, to what extent unit pricing should be required in advertising, and how prescriptively display requirements should be specified. The discussion paper also sought submissions on some technical issues, including preferred standard and non-standard units of measurement, product exemptions, and the appropriate legislative instrument for implementing the regime.
11. Officials received 30 submissions from a range of interested parties, including consumers, grocery retailers, academics, and consumer organisations. Officials also conducted an online survey of 400 individuals to seek consumer views. Following review of submissions, policy analysis, and further targeted stakeholder consultation, I am now seeking Cabinet decisions for the form and content of the proposed mandatory unit pricing regime.

## Mandatory unit pricing for grocery products

12. Unit pricing can help consumers more easily compare the prices of similar products, especially where products are sold in different sized packaging and by different brands. Where unit pricing information is not consistently available, consumers may be less able to make informed decisions, which can indirectly lessen competition between grocery retailers.
13. Mandatory unit pricing for grocery products is aimed at ensuring grocery retailers display unit pricing in a manner that is clear and consistent, and that consumers are empowered to make informed purchasing decisions. The discussion paper highlighted that any decision to mandate the display of unit pricing would aim to achieve the outcomes of legibility and clarity, consistency of units of measure, and accuracy, and that the options would be evaluated against the criteria of effectiveness, practicality, and certainty.

14. Therefore, I am seeking agreement to proposals relating to the following key aspects for mandatory unit pricing:
  - 14.1. what goods mandatory unit pricing should apply to
  - 14.2. where mandatory unit pricing should apply
  - 14.3. what units of measurement should be used
  - 14.4. how unit pricing should be displayed
  - 14.5. what legislative instrument should be used.

**What goods mandatory unit pricing should apply to**

15. Although unit pricing will likely have many benefits for consumers and competition, it will involve compliance costs for grocery retailers and should therefore be implemented proportionally. The estimated costs of compliance for small, independent grocery retailers are likely to be significant, and ticketing upgrades will be required for those stores which do not currently have the functionality to display unit pricing.
16. These competing interests can be balanced by setting threshold requirements for the application of mandatory unit pricing, as discussed below. These threshold requirements are intended to exclude grocery products sold in retail grocery stores where the compliance costs will be significant, and where the benefits to consumers may be limited.

*I propose that unit pricing should apply to grocery products sold in physical grocery stores with a floorspace above 1,000 square metres and in online grocery stores*

17. Considering the importance of appropriately balancing the costs and benefits of the proposed regime, I propose that mandatory unit pricing requirements should only apply to grocery products sold in retail grocery stores where unit pricing will provide a useful opportunity for price comparison and in respect of which the costs of compliance will be proportional.
18. To achieve this, I propose that the regulations should apply to grocery products sold in physical retail grocery stores with a floorspace above 1,000 square metres and in online retail grocery stores.
19. I propose that “retail grocery store” be defined as a retail store that sells the minimum range of grocery products, which could include items such as bread, dairy products, eggs or egg products, fruit, vegetables, meat, fish, rice, sugar, manufacturer-packaged food, and medicine other than prescription medicine. I propose that the relevant product categories for this definition should be tested through an exposure draft of regulations.
21. I also propose that mandatory unit pricing requirements should apply to grocery products in respect of which unit pricing is displayed voluntarily. This rule is aimed at standardising practices around units of measurement and display so that unit pricing is clear and consistent across supermarkets. In practice, I expect the major grocery retailers that already voluntarily display unit pricing will continue to do so, but that

they will now use consistent units of measurement and comply with the relevant display and advertising requirements.

22. In practice, my proposal would cover grocery products sold by Countdown, New World and PAK n'SAVE stores, including stores with a floorspace smaller than the threshold (such as Countdown Metro and New World Metro) where unit pricing is displayed voluntarily. It would also cover grocery products sold by stores such as The Warehouse, new entrants such as Costco, and online retailers like Supie, if the thresholds are met. It would exclude grocery products sold by stores with a smaller footprint, such as convenience stores, specialist retailers, and international supermarkets.
23. I note the Commission initially recommended adopting an annual revenue threshold to ensure that only grocery retailers with sufficient resources are required to display unit pricing. However, I have not proposed the use of annual revenue threshold, as I consider it will be difficult to monitor and enforce and will require comprehensive information regarding the annual revenue of grocery retailers. This information is likely to be costly and time-consuming to collect and assess on a yearly basis. This threshold is also unlikely to provide as much certainty to grocery retailers as the threshold option which I have proposed above.

**What types of grocery products should not be covered by the mandatory rules**

24. I propose that mandatory unit pricing rules apply to all grocery products, with certain exceptions. This is because grocery retailers sell a range of products in respect of which the benefits of unit pricing are likely to be limited, impractical, or undesirable.
25. In Australia, many products are exempt from unit pricing rules, including books, stationery, furniture, hardware items, toys, household appliances, clothing, jewellery, and tobacco and alcohol products. Ideally, unit pricing rules should be appropriately broad and flexible to accommodate new products and to minimise the number of regulatory changes required over time.

*I propose that certain grocery products should not be subject to mandatory unit pricing rules*

26. I propose that unit pricing should not apply to products where it will not be useful or appropriate, for example:
  - 26.1. a bundle of different grocery products sold at a single price
  - 26.2. single products not sold by volume, weight, length, or area, for which unit pricing will not provide additional information to consumers
  - 26.3. services, goods for hire, and goods supplied as part of providing a service (such as mobile phone recharges, lotto, and gift cards)
  - 26.4. grocery products sold at a reduced price because the grocery product or packaging is damaged, or the grocery product has been discontinued
  - 26.5. tobacco products and alcoholic beverages

26.6. meals prepared at the retail premises for immediate consumption.

27. I propose to test the products that should be excluded from unit pricing rules through an exposure draft of regulations.

**Where mandatory unit pricing should apply**

28. The main location for the display of unit pricing is in store (physical and online), close to the selling price. Occasionally, unit pricing is also displayed in advertising.

*I propose that grocery retailers be required to display unit pricing in store (physical and online), as well as in physical and online print advertising*

29. I propose that grocery retailers be required to display unit pricing in store (physical and online), as well as in physical and online print/ static advertisements (i.e., not including video or audio advertisements). This is on the basis that although the main function of unit pricing is price comparison, requiring unit pricing in appropriate forms of advertising is likely to increase consumer awareness and use of unit pricing in store. This is consistent with the approach in Australia, the United Kingdom, and the European Union.
30. Some submitters were supportive of having mandatory unit pricing rules apply in store and to all forms of advertising, including print, video, and audio advertising. I do not recommend this approach, as requiring the display of unit pricing in all forms of advertising is likely to significantly increase compliance costs for retailers while providing only marginal benefit to consumers.

**What units of measurement should be used?**

31. Unit prices for grocery products must be expressed in uniform and consistent measurements to enable direct comparisons between products. This requires standard units of measurement for most products, as well as non-standard units of measurement for certain products where the standard measurements are not useful or appropriate.

*I propose adopting standard and non-standard units of measurement*

32. I propose adopting the following standard measurements:
- 32.1. For products supplied by volume: Per 100 millilitres
  - 32.2. For products supplied by weight: Per 100 grams
  - 32.3. For products supplied by number: Per item
  - 32.4. For products supplied by length: Per metre
  - 32.5. For products supplied by area: Per square metre.
33. These standard units of measurement are consistent with the Australian unit pricing code and are, for the most part, already used by the major grocery retailers when displaying unit pricing.

34. I also propose using non-standard measurements for products where the standard measurements are not appropriate, such as:
  - 34.1. Herbs, spices, powdered sauce, and stock: Per 10 grams
  - 34.2. Flavouring essences and food colouring: Per 10 millilitres
  - 34.3. Fresh meat and seafood: Per kilogram
  - 34.4. Fruit and vegetables: Per kilogram if supplied by weight or per item if supplied by number
  - 34.5. Beverages: Per litre
  - 34.6. Bakery items prepared in store: Per item.
35. These non-standard measurements are intended for products where, because of the standard size or nature of the grocery product, the standard measurements will not provide useful or appropriate information. I propose to test the proposed standard and non-standard measurements through an exposure draft of regulations.

### **How unit pricing should be displayed**

36. Unit pricing is only beneficial if consumers can clearly and quickly view and interpret unit prices and make meaningful comparisons between products based on this information. If unit prices are illegible or are not plainly visible, the benefits of unit pricing are unlikely to be fully realised.
37. Issues around legibility and visibility are important for all consumers but are particularly relevant for people with visual impairments and for those with reduced mobility, who may find it difficult to bend or stretch to read small print labels on upper and lower shelves.
38. There are two broad approaches for specifying how unit pricing should be displayed, namely specifying general principles around legibility, and specifying requirements around font size, font type, contrast, and location (a prescriptive approach). While a prescriptive approach is likely to result in better outcomes for consumers, specifying font size, font, contrast, and location is likely to significantly increase costs for grocery retailers, as grocery retailers may have to upgrade their software and ticketing systems to comply with these requirements.

### *I propose adopting a combination of prescriptive and general requirements*

39. Considering the need to balance prescription and flexibility, I propose adopting a combination of prescriptive and general requirements for the display of unit pricing. This will involve the application of general principles (such as that unit pricing should be prominent, legible, and unambiguous), as well as flexible prescriptive requirements (such as that the unit price should not be less than 25% of the height of the retail price).
40. I consider this approach acknowledges that specifying font size, font, contrast, and location is likely to significantly increase costs for retailers and consumers and hamper innovation, but that some prescription will be necessary to ensure unit pricing is effective.

41. I believe that setting out general principles with some prescription will strike the appropriate balance between specificity and flexibility. I propose that the design of these display requirements should be tested through an exposure draft of regulations.

### Financial Implications

42. In July, Cabinet agreed to provide \$4.790 million in funding to the Commission to establish and carry-out the grocery sector regulator role in financial year 2022/23 [CAB-22-MIN-0259 refers].

Confidential advice to Government

### Legislative Implications

43. The proposals in this paper will be implemented through consumer information standard regulations made under the Fair Trading Act 1986.

### Impact Analysis

44. The Regulatory Impact Analysis requirements apply to the proposals in this paper. A Regulatory Impact Statement (RIS) has been prepared and is attached.
45. The Ministry of Business, Innovation and Employment's Quality Assurance Panel has reviewed the RIS and considers that it partially meets the RIA requirements. The Panel was satisfied that there was sufficient evidence presented to suggest that intervention through mandatory pricing was likely to provide benefits, and the choice of coverage was a pragmatic response to the need to benefit coverage (90% of consumers) against cost of compliance. To move to fully meets, it would need to demonstrate a methodology to quantify the options and to present a cost-benefit analysis of some description.

### *Climate Implications of Policy Assessment*

46. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

### Population Implications

47. The proposals in this paper will not disproportionately impact population groups.

### Human Rights

48. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### Consultation

49. On 30 May 2022, MBIE released a discussion paper titled *Mandatory unit pricing for grocery products*. Submissions on the discussion paper closed on 11 July 2022. Officials received 30 submissions and officials separately surveyed 400 individuals.



50. Throughout the policy process, officials have conducted targeted stakeholder consultation with Trading Standards, the Commission, the major grocery retailers, other grocery retailers, and consumer groups.
51. Subject to Cabinet authorisation, I intend to release an exposure draft of the regulations for public consultation

### **Communications**

52. I expect to make announcements about the mandatory unit pricing regime.

### **Proactive Release**

53. This paper will be published on MBIE's website within 30 working days once announcements have been made, subject to withholdings as appropriate under the Official Information Act 1982.

### **Recommendations**

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. note that on 23 May 2022, Cabinet agreed to implement mandatory unit pricing for grocery products [CAB-22-MIN-0186 refers] and that the Minister of Commerce and Consumer Affairs would report back to the Cabinet Economic Development Committee seeking agreement on the form and content of mandatory unit pricing regulation following consultation;
2. agree that mandatory unit pricing requirements should apply to grocery products sold in physical grocery stores with a floorspace above 1,000 square metres and in online grocery stores, as well as to grocery products in respect of which unit pricing is displayed voluntarily;
3. agree that prescribed products should not be covered by mandatory unit pricing rules where the benefits of unit pricing will be limited, or unit pricing will be impractical or undesirable for these products;
4. agree that unit pricing should be required to be displayed in store (physical and online), as well as in physical and online print/ static advertising;
5. agree to adopt consistent standard units of measurement (e.g. 100 grams for products supplied by weight) for unit pricing;
6. agree to adopt non-standard units of measurements for products where, because of the standard size or nature of the grocery product, the standard measurements will not provide useful or appropriate information;
7. agree to adopt a combination of prescriptive and general requirements for the display of unit pricing (e.g. requirements that unit pricing be prominent, clearly legible, and should not less than 25% of the height of the retail price);

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8. agree to implement the above proposals through regulations under the Fair Trading Act 1986;
9. invite the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
10. authorise the Minister of Commerce and Consumer Affairs to make minor or technical changes, consistent with the policy framework in this paper, on any issues that arise during drafting; and
11. authorise the Minister of Commerce and Consumer Affairs to approve and release an exposure draft of the regulations for consultation purposes.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

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