



## 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.

# Regulatory Impact Statement: Mandatory unit pricing for grocery products

## Coversheet

Purpose of Document	
Decision sought:	Agree to the design and implementation of mandatory unit pricing rules for grocery products.
Advising agencies:	Ministry of Business, Innovation and Employment (MBIE)
Proposing Ministers:	Minister of Commerce and Consumer Affairs, Hon Dr David Clark
Date finalised:	16 November 2022
Problem Definition	
<p>Cabinet has agreed to implement mandatory unit pricing for grocery products [CAB-22-MIN-0186 refers] to address issues with inconsistent and unclear unit pricing, as identified by the Commerce Commission’s <b>(the Commission’s)</b> market study. According to the Commission’s final report <b>(the report)</b>, implementing mandatory unit pricing should help consumers to make better informed purchasing decisions, support inter-brand competition, and encourage grocery retailers to compete on metrics such as price and transparency.<sup>1</sup></p> <p>As the decision to implement mandatory unit pricing has already been made, the aim is to design the regime to maximise benefits to consumers, mitigate the risk of unintended consequences, and minimise compliance and implementation costs for the regulator and affected businesses. Therefore, further policy decisions are now needed regarding:</p> <ul style="list-style-type: none"><li>• which grocery retailers mandatory unit pricing should apply to</li><li>• to what extent unit pricing should be required in advertising</li><li>• how prescriptively display requirements should be specified.</li></ul>	
Executive Summary	
<p><i>Background</i></p> <p>On 8 March 2022, the Commission published its report into the retail grocery sector. The report made several recommendations for improving competition, including mandating the consistent display of unit pricing for grocery retail products. The major grocery retailers (Foodstuffs North Island Limited, Foodstuffs South Island Limited, Woolworths New Zealand Limited, and their franchisees and subsidiaries) already voluntarily display unit pricing for many products, albeit inconsistently.</p> <p>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</p>	

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<sup>1</sup> Commerce Commission, Market Study into the retail grocery sector - Final Report, 8 March 2022, at 9.222. See also: Competition Markets Authority “Pricing Practices in the Groceries Market, Response to a super-complaint made by Which? On 21 April 2015” (16 July 2015) at 4, available at: <https://www.gov.uk/cma-cases/groceries-pricing-super-complaint>.

report back to Cabinet Economic Development Committee (**DEV**) seeking agreement on the form and content of mandatory unit pricing regulation following consultation.

### *Options considered in this RIS*

The options considered in this RIS concern the form and content of the mandatory unit pricing regime, specifically:

- a. which grocery retailers mandatory unit pricing should apply to
- b. to what extent unit pricing should be required in advertising
- c. how prescriptively display requirements should be specified.

### **Which grocery retailers mandatory unit pricing should apply to**

Although unit pricing will likely have many benefits for consumers and competition,<sup>2</sup> 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,<sup>3</sup> and ticketing upgrades will be required for those stores which do not currently have the functionality to display unit pricing.

These competing interests can be balanced by setting threshold requirements for the application of mandatory unit pricing, as discussed below. 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.

The options for who mandatory unit pricing should apply to are:

- Option 1: Retail outlets of major grocery retailers with a floorspace larger than 1,000 square metres
- **Option 2 (preferred): Retail outlets of grocery retailers with a floorspace larger than 1,000 square metres, as well as online grocery retailers**
- Option 3: Retail outlets of grocery retailers with a floorspace larger than 280 square metres, as well as online grocery retailers
- Option 4: Grocery retailers with a market share (calculated on the basis of annual revenue) of more than 2%.

The preferred option is to adopt a 1,000 square metre floorspace threshold on the basis this approach will maximise benefits to consumers while minimising compliance and implementation costs. Grocery stores below a certain size threshold are unlikely to have sufficient product range to enable price comparison, meaning the benefits of unit pricing in smaller stores are minimal.<sup>4</sup>

As the compliance and implementation costs for smaller grocery retailers will be more significant than for larger grocery retailers, and the consumer benefits will be minimal, the 1,000 square metre floorspace threshold is aimed at ensuring the regime is implemented

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<sup>2</sup> Commerce Commission, Market Study into the retail grocery sector - Final Report, 8 March 2022, at 9.222: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf) .

<sup>4</sup> If the grocery retailer only sells one type of grocery product, price comparison is not possible.

proportionally. This is the same threshold that has been adopted in Australia, where it has proven to be effective following a comprehensive review.<sup>5</sup>

The preferred approach will cover around 90% of the retail grocery market by turnover, as it will cover all large grocery retailers (eg both major grocery retailers and Costco) and online-only grocery retailers (such as Supie). It will exclude most convenience stores, specialist grocery retailers and independent supermarkets, together making up around 10% of the market.

### **To what extent unit pricing should be required in advertising**

The options considered for the question of where mandatory unit pricing should apply are:

- Option 1: Require unit pricing in-store only
- **Option 2 (preferred): Require unit pricing in-store, as well as in physical and online print advertising**
- Option 3: Require unit pricing in-store and in all forms of advertising (including video and audio advertising).

The preferred option is to require unit pricing in-store, as well as in physical and online print advertising. This is on the basis that although the main function of unit pricing is price comparison, requiring unit pricing in certain forms of advertising is likely to increase consumer awareness and use of unit pricing in-store. This approach is consistent with unit pricing rules in Australia, the European Union, and the United Kingdom.

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

The options considered for the question of how unit pricing should be displayed are:

- Option 1: No display requirements
- Option 2: Adopt principle-based display requirements
- Option 3: Adopt prescriptive requirements around font size, font, contrast, and location
- **Option 4 (preferred): Adopt principle-based display requirements with some prescriptive elements.**

The preferred option is to adopt a combination of principle-based and prescriptive requirements. Experience in other jurisdictions, including Australia, suggests principle-based requirements are likely to be ineffective,<sup>6</sup> but that overly prescriptive requirements are likely to significantly increase costs for retailers and consumers and are also likely to hamper innovation. We consider that setting out general principles with some prescription strikes the appropriate balance between specificity and flexibility.

### **Stakeholder views**

On 30 May, the Minister of Commerce and Consumer Affairs released a discussion paper titled '*Mandatory unit pricing for grocery products*' (**the discussion paper**). Officials received 30 submissions from a range of interested parties, including consumers, grocery

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<sup>5</sup> The Australian Government reviewed the Australian Unit Pricing Code in 2021 and found that the code (including the 1,000 square meter threshold) was operating efficiently and effectively, in line with its primary objective of empowering consumers to make informed decisions about grocery purchases through greater price transparency.

<sup>6</sup> CHOICE "Grocery Unit Pricing Code Review – Submission to the Treasury" (28 February 2019).

retailers, academics, and consumer organisations. Although stakeholders agreed that mandatory unit pricing was necessary, views on the details of the regime diverged.

The major grocery retailers recommended that smaller grocery retailers should be required to display unit pricing and were not supportive of requiring unit pricing in advertising, or of prescriptive display requirements. In general, smaller grocery retailers recommended that only the major grocery retailers should be required to display unit pricing and were not supportive of prescriptive display requirements.

By contrast, consumers and consumer groups were generally supportive of implementing unit pricing as widely as reasonably practicable, including for smaller grocery retailers, in some or all forms of advertising, and through the adoption of more prescriptive display requirements.

### Limitations and Constraints on Analysis

We do not have much reliable quantitative data regarding the likely costs of compliance with the mandatory unit pricing regime. Individual businesses provided estimates of the cost to implement unit pricing or make changes to existing unit pricing systems. However, these costs are ballpark or order-of-magnitude estimates, and some may be overestimates. Similarly, we do not have much quantitative data on the marginal benefits of the options assessed in this RIS.

In general, the compliance costs for individual grocery retailers will depend on the functionality of the pricing and ticketing systems currently in use, the size of their store/s, and whether the unit pricing rules require grocery retailers to upgrade or replace their current systems. We have taken into account the limitations of this data in our options analysis.

### Responsible Manager(s) (completed by relevant manager)

Glen Hildreth

Manager

Consumer Policy

Ministry of Business, Innovation and Employment

16 November 2022

### Quality Assurance (completed by QA panel)

Reviewing Agency:

Ministry of Business, Innovation and Employment

Panel Assessment & Comment:

The Ministry of Business, Innovation and Employment's Quality Assurance Panel has reviewed the Regulatory Impact Statement 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.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

#### Background

1. Unit pricing is the price per unit of measure for a product, such as the cost per kilogram or litre. Unit prices are usually displayed as a price per standard unit of measurement, together with the retail price of the product. For example, where a 1.5 kilogram bag of flour is sold for \$3.00, the unit price displayed would be \$2.00 per kilogram.
2. The Commission published its report on the retail grocery market study on 8 March 2022 and found that competition in the sector is not working well for consumers. The Commission made several recommendations for improving competition, including implementing mandatory unit pricing for grocery products sold by certain grocery retailers.
3. Implementing mandatory unit pricing should help consumers make better informed purchasing decisions, support inter-brand competition, and encourage grocery retailers to compete on metrics such as price and transparency. The Commission noted that although unit pricing is not mandatory in New Zealand, it is used to a reasonable extent by the major grocery retailers, albeit inconsistently.
4. On 23 May 2022, Cabinet agreed to implement the Commission's recommendation as part of its overall response to the report and that the Minister of Commerce and Consumer Affairs would consult further on the form and content of the unit pricing requirements [CAB-22-MIN-0186]. A regulatory impact analysis was conducted in respect of this decision and has been published on the MBIE website.<sup>7</sup>
5. On 30 May 2022, MBIE released a discussion paper that sought feedback on the following substantive policy issues:
  - 5.1. which grocery retailers mandatory unit pricing should apply to
  - 5.2. to what extent unit pricing should be required in advertising
  - 5.3. how prescriptively display requirements should be specified.
6. The discussion paper also sought submissions on some minor and technical issues, including preferred standard and non-standard units of measurement, product exemptions, and the appropriate legislative instrument for implementing the regime.
7. 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.
8. This Regulatory Impact Statement (RIS) considers options to address the substantive policy issues consulted on, which will be tested further through release of an exposure draft of regulations.

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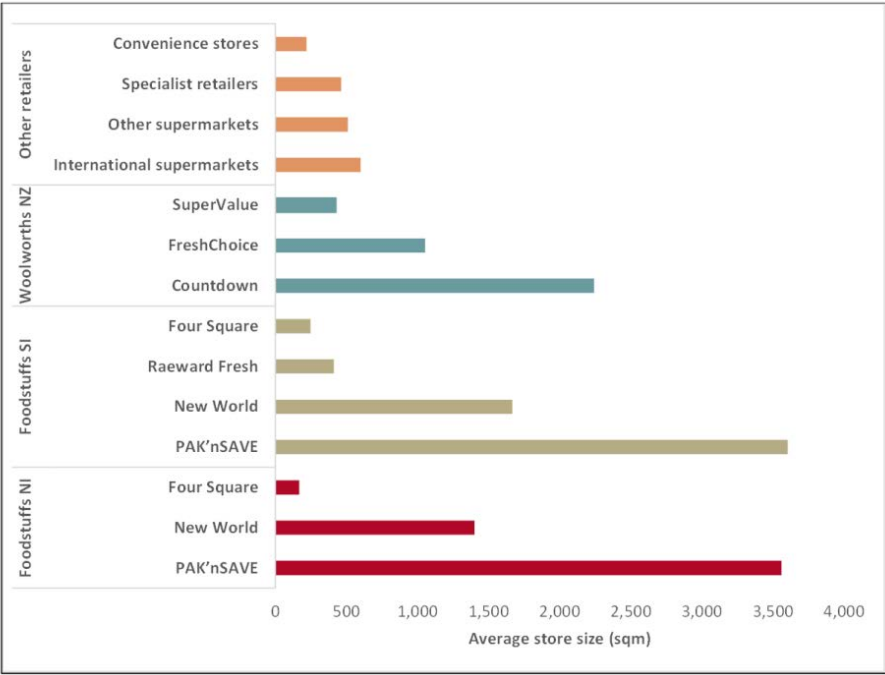
<sup>7</sup> [Regulatory Impact Statement: Government response to the Commerce Commission Grocery Sector Market Study – Policy decisions: https://www.mbie.govt.nz/dmsdocument/22638-regulatory-impact-statement-government-response-to-the-commerce-commission-grocery-sector-market-study-policy-decisions-proactiverelase-pdf](https://www.mbie.govt.nz/dmsdocument/22638-regulatory-impact-statement-government-response-to-the-commerce-commission-grocery-sector-market-study-policy-decisions-proactiverelase-pdf).

**Current state of the grocery market in New Zealand**

**New Zealand’s grocery market is dominated by two major grocery retailers**

- 9. There are two major grocery retailers operating in New Zealand, namely Woolworths New Zealand Limited (**Woolworths NZ**) and Foodstuffs North Island and Foodstuffs South Island (**Foodstuffs**).
- 10. Woolworths NZ operates three retail banners: Countdown, Fresh Choice and SuperValue. Under these banners, Woolworths NZ served about 3 million customers per week in 2019. Foodstuffs is a cooperative, with members owning the New World, PAK’nSAVE, Four Square retail banners. In 2019, Foodstuffs North Island and Foodstuffs South Island stores served an average of 2.7 million and 600,000 customers per week, respectively.
- 11. Major grocery retailers, on average, have larger stores than other grocery retailers, by floor-size. The average net retail area of grocery retailers is demonstrated in Figure 1 (below).

**Figure 1 - Average net retail area of major grocery retailers and other grocery retailers in square metres**



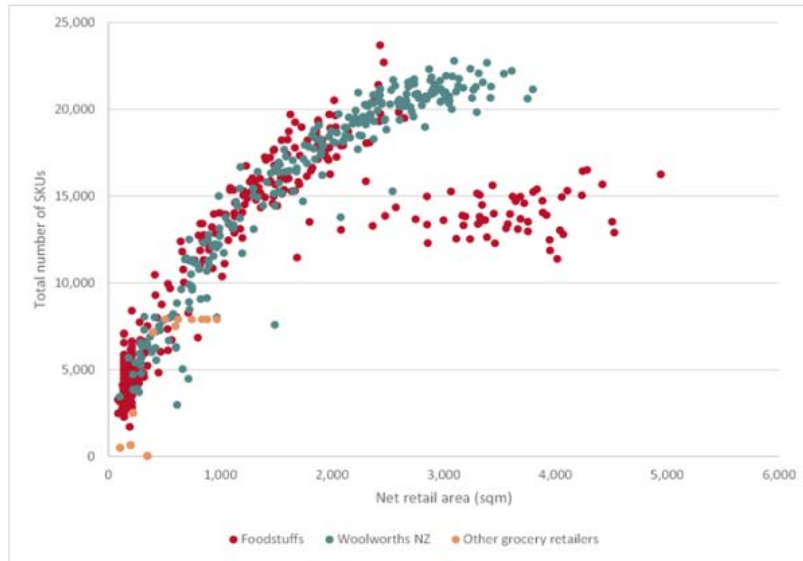
Source - Commerce Commission data from industry participants<sup>8</sup>

- 12. Figure 1 demonstrates that major grocery retailers have an average floorspace over 1,000 square metres in their Countdown, FreshChoice, New World and PAKn’SAVE stores. SuperValue and Four Square and other grocery retailers all have an average retail area under 1,000 square metres.
- 13. The large floorspace of the majority of major grocery retailers’ retail brands makes them uniquely placed to cater to consumer preferences by enabling them to offer a broad product range. The net retail area combined with the product range of major grocery retailers and other grocery retailers are demonstrated in Figure 2 (below).

<sup>8</sup> Commerce Commission, Market study into the retail grocery sector - Final Report, Figure 4.4, page 121.



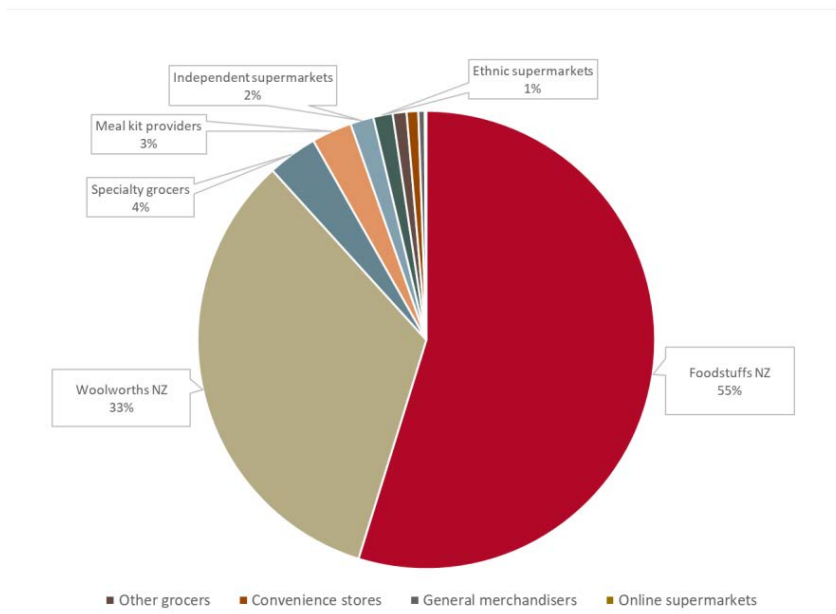
**Figure 2: Net retail area and product range (2019, square metres)**



Source: Commerce Commission data from survey of industry participants<sup>9</sup>

14. Figure 2 illustrates the correlation between floorspace and product range (SKU stands for stock keeping unit). A proportion of stores owned by Foodstuffs and Woolworths NZ have a similar or smaller floorspace and/or product range compared to other grocery retailers. Considering Figure 1, these are likely to mostly be the Four Square, SuperValue and Fresh Choice stores.
15. It is estimated that the major grocery retailers together have a market share of more than 90% for consumers' main shop:

**Figure 3 - Estimated national market share of grocery sector**



Source: Commission analysis based on data from consumer survey<sup>10</sup>

<sup>9</sup> Ibid, Figure 4.5, page 122.

<sup>10</sup> Ibid, Figure 4.2, page 110.



### Unit pricing is used to an extent by the major grocery retailers

16. Unit pricing is not mandatory in any New Zealand retail market, but it is used to an extent by the major grocery retailers, albeit inconsistently. The major grocery retailers currently determine the appropriate display size and units of measurement for unit pricing, and this varies between different stores and products.
17. Foodstuffs displays unit pricing for most products in their New World and PAK'nSAVE stores, sometimes including products on promotion, but usually not products on multi-buy offer.<sup>11</sup> Woolworths NZ displays unit pricing for most of its packaged grocery and perishable products in its Countdown stores, sometimes including products on promotion.<sup>12</sup>

### Smaller grocery retailers typically provide a more focused offering

18. Together, smaller grocery retailers service approximately 10% of the grocery retail market for consumers' main shop.
19. Examples of smaller grocery retailers include:

•International food stores (eg Tai Ping, Japan Mart)	•Fresh format or cash'n carry (eg Farro Fresh, Moore Wilson's)	•Single category or specialist grocery stores
•General merchandisers (eg The Warehouse)	•Convenience stores (eg dairies, petrol stations, Night 'n Day)	•Meal kit providers (eg Hello Fresh, My Food Bag)
•Food box operators (eg Foodbox and Oooby)	•Online-only supermarkets (eg Supie)	•Specialist online retailers (eg Hypermeat).

20. Most of these retailers have a smaller floorspace and more limited product range than the major grocery retailers, as demonstrated in Figures 1 and 2. These smaller grocery retailers tend to focus on offering specific product ranges, such as fresh produce and meat products, take-away food options, convenience / impulse products, and international foods.<sup>13</sup>

### What is the policy problem or opportunity?

21. As mentioned above, Cabinet has agreed to implement mandatory unit pricing for grocery products [CAB-22-MIN-0186 refers] to address issues with inconsistent and unclear unit pricing, as identified by the Commission's report. Where unit pricing information is not consistently available or cannot easily be accessed and acted upon by consumers, they are less able to make informed decisions and are less likely to shop around, reducing grocery retailers' incentives to engage in price-based competition.<sup>14</sup>
22. We recognise that the policy objective of introducing mandatory unit pricing is to maximise benefits to consumers, while ensuring that compliance and implementation

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<sup>11</sup> Ibid, at 7.107.1.

<sup>12</sup> Ibid, at 7.107.2.

<sup>13</sup> Ibid, at 4.86, and 5.34-5.45. The Commission notes that major grocery retailers are not consistently monitoring the prices and products carried by other grocery retailers.

<sup>14</sup> Ibid, at 7.1119.

costs for the regulator and affected businesses are adequately considered. Therefore, further policy decisions are sought regarding:

- 22.1. which grocery retailers mandatory unit pricing should apply to
  - 22.2. to what extent unit pricing should be required in advertising
  - 22.3. how prescriptively display requirements should be specified.
23. As Cabinet has already agreed to implement mandatory unit pricing for grocery products but has not agreed on the form and content of the proposed regime, we have adopted a counterfactual that the regime is implemented as narrowly and least prescriptively as possible. This means standardising rules for the grocery retailers that already display unit pricing voluntarily, not requiring unit pricing in any forms of advertising, and not specifying display requirements. The RIS considers the problems that remain under the counterfactual, and options for addressing these issues.
24. We consider the main problems that remain under the counterfactual are that:
- 24.1. consumers who purchase groceries from other grocery retailers will continue to face difficulties comparing prices across products with different quantities or units<sup>15</sup>
  - 24.2. consumers are less likely to build a strong awareness of unit pricing or develop perceptions of value over time if unit pricing is not consistently displayed in advertising<sup>16</sup>
  - 24.3. grocery retailers will continue to display unit pricing in a manner that is often unclear, inconsistent, or in sizes that are too small to read. This is a particular issue for consumers with impaired vision or reduced mobility.<sup>17</sup>
25. We elaborate further on these problems below.

### **Consumers who shop with other grocery retailers will be less able to make informed purchasing decisions**

26. Clear and consistent unit pricing information can help consumers to make better informed purchasing decisions. It supports inter-brand competition and encourages grocery retailers to compete on metrics such as price and transparency.<sup>18</sup>
27. If the regime is confined to major grocery retailers that already display unit pricing voluntarily, it is likely that unit pricing will continue to be displayed by the major grocery retailers only.
28. If mandatory unit pricing is implemented narrowly, those consumers who do not buy groceries from the major grocery retailers (around 10% of the market) will continue to

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<sup>15</sup> Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 47-48; Dr Svetlana Bogomolova and Ian Jarratt "Unit pricing in supermarkets: review of past evidence from academic and industry studies" (18 October 2016) prepared for Working Group of the International Standards Organisation Project Committee ISP/OC 294, at 10, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2853977](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2853977).

<sup>16</sup> The value of unit pricing in advertising was highlighted in the Commission's Final Report at 9.226.4 and was a theme in several submissions received in response to the discussion paper.

<sup>17</sup> Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [51]-[52]. Also see Consumer NZ "Submission on Market study into grocery sector draft report" (26 August 2021) at 6; National Council of Women NZ "Submission on Market study into grocery sector draft report" (23 August 2021) at [13]; Health Coalition Aotearoa "Submission on Market study into grocery sector draft report" (2 September 2021) at 3; NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [5.12].

<sup>18</sup> ACCC "Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries" (July 2008) at 450, available at: <https://www.accc.gov.au/system/files/Grocery%20inquiry%20report%20-%20July%202008.pdf>.

face difficulties comparing prices across products with different quantities and units, and will therefore be unable to make fully informed purchasing decisions.<sup>19</sup>

29. This is especially an issue for low-income households that spend a higher proportion of their weekly income on groceries.<sup>20</sup> These households could benefit most from consistent unit pricing information that helps them to make informed purchasing decisions, as research has shown that, over time, unit pricing will result in cost savings for consumers as the quality of price comparisons improve.<sup>21</sup>

**Displaying unit prices in-store only means consumers are less likely to build a strong awareness of unit pricing or develop perceptions of value over time**

30. If unit pricing is not displayed in any advertising, consumers will not have the opportunity to compare unit pricing information outside the supermarket.
31. This means consumers will be less likely to develop perceptions of value over time which could inform their decision of where to shop, or which brands to buy.<sup>22</sup> Consumers are also less likely to build up strong awareness of unit pricing where it is in-store only, which is likely to reduce the effectiveness of the regime. The value of unit pricing in advertising was highlighted in the Commission's report<sup>23</sup> and was a theme in several submissions received in response to the discussion paper.

**Grocery retailers will continue to display unit pricing in a manner that is often unclear, inconsistent, or in sizes that are too small to read**

32. 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. Research by the Competition and Markets Authority indicates that there is less scope for consumers to realise the benefits of unit pricing, and increased potential for confusion, if unit pricing is poorly or inconsistently displayed.<sup>24</sup> The Commission noted this was a theme in several submissions received in response to its preliminary issues paper and draft report.
33. Inaccessible unit pricing (eg small font sizes, bad contrast) is a problem for all consumers, but is especially significant for consumers who have impaired vision or reduced mobility, who may find it difficult to bend or stretch to read small print labels on

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<sup>19</sup> Commerce Commission, Market study into the retail grocery sector - Final Report, at 7.1119.

<sup>20</sup> Health Coalition Aotearoa "Submission on Market study into grocery sector draft report" (2 September 2021) at 1-2; Christians Against Poverty "Submission on Market study into grocery sector draft report" (26 August 2021) at 1; Auckland Regional Public Health Service "Submission on Market study into grocery sector draft report" (2 September 2021) at [4]; FinCap "Submission on Market study into grocery sector draft report" (25 August 2021); Kore Hiakai Zero Hunger Collective "Submission on Market study into grocery sector draft report" (26 August 2021) at [3]; National Council of Women "Submission on Market study into grocery sector draft report" (23 August 2021) at [5]-[6]; The Salvation Army Te Ope Whakaora "Submission on Market study into grocery sector draft report" (26 August 2021) at [11].

<sup>21</sup> ACCC "Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries" (July 2008) at 449, available at: <https://www.accc.gov.au/system/files/Grocery%20inquiry%20report%20-%20July%202008.pdf>.

<sup>22</sup> Commerce Commission, Market study into the retail grocery sector - Final Report, at 7.105.

<sup>23</sup> Commerce Commission, Market study into the retail grocery sector - Final Report, at 9.226.4.

<sup>24</sup> Competition Markets Authority "Pricing Practices in the Groceries Market, Response to a supercomplaint made by Which? On 21 April 2015" (16 July 2015) at 4, available at: <https://www.gov.uk/cma-cases/groceries-pricing-super-complaint>.

upper and lower shelves. This is a significant issue, as it is estimated that around 30,000 New Zealanders are blind, while another 150,000 have low vision.<sup>25</sup>

34. Around half of the 400 individuals surveyed as part of public consultation on the discussion paper did not consider unit prices in New Zealand were currently large and prominent enough to read without difficulty. Therefore, without minimum display requirements, decisions around font size, location, and prominence of unit pricing will continue to be based on retailer preferences instead of benefit to consumers. Consumers will continue to find it difficult to rely on unit pricing in-store, and the benefits of unit pricing are unlikely to be fully realised. This conclusion is consistent with research conducted by the Queensland Consumers Association regarding the legibility and prominence of unit prices in supermarkets.<sup>26</sup>

### What objectives are sought in relation to the policy problem?

35. Mandatory unit pricing for grocery products is aimed at ensuring that grocery retailers display unit pricing in a manner that is clear and consistent, and that consumers are enabled to make informed purchasing decisions. Particularly, any decision to mandate the display of unit pricing will aim to achieve the following outcomes:
- 35.1. **Legibility and clarity:** The required information should be prominently displayed in a manner that can be easily seen and read, including by consumers who have impaired vision or reduced mobility.
  - 35.2. **Consistency of units of measure:** The unit pricing for a particular product category should be uniformly and consistently expressed in the same unit of measure.
  - 35.3. **Accuracy:** The required information should be accurate and should be displayed accurately.

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<sup>25</sup> [Blindness and Low Vision in New Zealand – Latest statistics, https://blindlowvision.org.nz/information/statistics-and-research/.](https://blindlowvision.org.nz/information/statistics-and-research/)

<sup>26</sup> Queensland Consumers Association, Ian Jarratt “Summary of results of a study on the legibility and prominence of unit prices on supermarket shelf labels 20cm from the ground” (28 December 2016).

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

36. The following criteria will be used (and given equal weight) to assess the merits of policy options in the context of the desired outcomes set out above:
  - 36.1. **Effectiveness (33.3%)**: The potential for each policy option to drive the outcomes of legibility and clarity, consistency, and accuracy so that consumers can make effective use of unit pricing information.
  - 36.2. **Practicality (33.33%)**: The cost and feasibility of implementing each policy option.
  - 36.3. **Certainty (33.3%)**: Certainty for retailers regarding their obligations, and certainty for consumers regarding where they can expect to see unit pricing.
37. These criteria have been selected on the basis that the options that score highest against them are most likely to produce the highest net benefits.
38. There are likely to be some trade-offs between these criteria. For example, prescriptive display requirements are likely to be more effective for consumers but could result in higher compliance costs for retailers and are therefore less practical.

### What scope will options be considered within?

39. The scope of options considered in this RIS is constrained by Cabinet's existing agreement to mandatory unit pricing. For each issue considered by the RIS, we have considered the range of options for implementing the regime from least expansive / prescriptive to most expansive / prescriptive.
40. The options themselves draw on equivalent aspects of unit pricing in Australia, the United Kingdom and European Union. This is because unit pricing requirements in these jurisdictions have largely proven to be effective and fit-for-purpose, and because these grocery markets share similar characteristics to New Zealand. We have also considered the options that the Commission put forward in the report.

### What options are being considered?

41. There are multiple proposals outlined in the discussion paper. These proposals, and the options being considered under each, are as follows:
  - 41.1. **Issue 1: Which grocery retailers mandatory unit pricing should apply to**
    - 41.1.1. Option 1 (counterfactual): Major grocery retailers with a floorspace larger than 1000 square metres
    - 41.1.2. Option 2 (preferred): Retail outlets of grocery retailers with a floorspace larger than 1,000 square metres, as well as online grocery retailers
    - 41.1.3. Option 3: Retail outlets of grocery retailers with a floorspace larger than 280 square metres, as well as online grocery retailers
    - 41.1.4. Option 4: Grocery retailers with a market share (calculated on the basis of annual revenue) of more than 2%.
  - 41.2. **Issue 2: Where mandatory unit pricing should apply**
    - 41.2.1. Option 1 (counterfactual): Require unit pricing in physical and online stores only
    - 41.2.2. Option 2 (preferred): Require unit pricing in physical and online stores, as well as in physical and online print advertising

41.2.3. Option 3: Require unit pricing in physical and online stores and in all forms of advertising (including video and audio advertising).

41.3. **Issue 3: How unit pricing should be displayed**

41.3.1. Option 1 (counterfactual): Do not adopt display requirements

41.3.2. Option 2: Adopt principle-based display requirements

41.3.3. Option 3: Adopt prescriptive requirements

41.3.4. Option 4 (preferred): Adopt a combination of principle-based and prescriptive display requirements.

42. The preferred options are discussed below, while the non-preferred options are set out in **Annex 1**.

**Issue 1: Which grocery retailers mandatory unit pricing should apply to**

**Option 2 (MBIE preferred): Retail outlets of grocery retailers with a floorspace larger than 1,000 square metres, as well as online grocery retailers**

43. Under this option, mandatory unit pricing would apply to retail grocery stores with a floorspace above 1,000 square metres. We have proposed 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. We have proposed that the relevant product categories for this definition be tested through an exposure draft of regulations to ensure it is appropriate and fit-for-purpose.
44. Defining “retail grocery store” is aimed at ensuring the requirements do not inadvertently apply to large retailers that sell some food items as an ancillary service to their primary offering (eg a hardware store that sells confectionary), or to specialist grocery retailers that only sell a narrow range of grocery items.
45. As the compliance and implementation costs for smaller grocery retailers will be more significant than for larger grocery retailers, and the consumer benefits will be less (as less product choice is typically available in smaller retail stores), the proposed threshold is aimed at ensuring the regime maximises benefits and minimises costs. The 1,000 square metre floorspace threshold is the same threshold that has been adopted in Australia, where it has proven to be effective following a comprehensive review.<sup>27</sup>
46. We also propose that mandatory unit pricing should apply to online grocery retailers. We consider that consumers will benefit from being able to accurately compare unit prices online, and that the costs of compliance should be lower for online retailers than for physical retailers, as no investment in physical ticketing systems is required. Additionally, we propose that any grocery retailers voluntarily displaying unit pricing for grocery products would need to comply with the mandatory unit pricing rules, including in relation to standard and non-standard units of measurement, display requirements and advertising requirements.
47. In practice, this will mean the major grocery retailers that already voluntarily display unit pricing will be required to comply with the mandatory unit pricing rules in all their stores. This approach to the regulation of grocery retailers voluntarily displaying unit pricing is

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<sup>27</sup> The Australian Government reviewed the Australian Unit Pricing Code in 2021 and found that the code (including the 1,000 square meter threshold) was operating efficiently and effectively, in line with its primary objective of empowering consumers to make informed decisions about grocery purchases through greater price transparency.



consistent with the Australian unit pricing code, where the rules were found to achieve the desired effect following an extensive review.<sup>28</sup>

48. Practically, the preferred approach would therefore cover around 90% of the retail grocery market, namely Countdown, New World and PAKn'SAVE stores, including those with a floorspace smaller than the threshold (such as Countdown and New World Metro stores) where unit pricing is displayed voluntarily. It would also include new entrants such as Costco if it meets the threshold requirements, and online retailers like Supie.
49. This approach would potentially exclude around 10% of the market, namely stores with a smaller footprint, SuperValue, Four Square and FreshChoice stores, most convenience stores (like Night 'n Day), specialist retailers, and international supermarkets that do not already voluntarily display unit pricing. We expect that, as consumers come to expect unit pricing, an increasing number of grocery retailers will adopt the standards.

### Benefits

50. A floorspace and product threshold will be effective in ensuring most consumers benefit from unit pricing by having the rules apply to sufficiently large and established grocery retailers. This approach is more future proof than naming specific grocery retailers and will allow unit pricing to be adopted in those contexts where it is most useful, ie when there is a sufficient range and quantity of products to allow for price comparison.
51. This option will cover more of the smaller independent grocery retailers than Option 1, meaning more consumers will have access to effective unit pricing information. However, fewer consumers will have access to effective unit pricing information than outlined in Option 3. Rural and small urban stores, which service a smaller population, are less likely to meet the floorspace threshold. This could disadvantage rural and small urban communities, in particular Māori, who are more likely to represent a high proportion of these communities.
52. However, the benefits of unit pricing are likely to be limited in this context, as there are fewer items in each grocery category to select from in smaller stores. We therefore consider the proposed policy parameters constitute an appropriate balance between promoting greater price transparency and competition amongst larger grocery retailers while acknowledging that compliance costs are a significant concern for smaller retailers.<sup>29</sup>
53. This option will provide a reasonable amount of certainty to grocery retailers regarding whether their stores are required to comply with the regime and provides certainty for both physical and online stores. This approach also provides certainty to consumers because grocery retailers that voluntarily display unit pricing (ie almost all major grocery retailer stores) will be required to comply with the mandatory unit pricing rules.
54. As mentioned above, the proposed threshold is consistent with the Australian unit pricing code. The Australian Government reviewed the operation of the code in 2019 and undertook extensive consultation to inform the review, including through:
  - 54.1. release of a discussion paper seeking feedback on the operation of key provisions in the Code and changes in the supermarket sector
  - 54.2. an online consumer survey attracting 3,733 responses
  - 54.3. receiving public submissions and meeting with 22 stakeholders.

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<sup>28</sup> Australian Government, The Treasury “Grocery Unit Pricing Code Review – Review outcomes”, available at: <https://treasury.gov.au/review/grocery-unit-pricing-code-review/reviewing-code>.

<sup>29</sup> Ibid.



- 55. Following this review, the Australian Government found that the unit pricing code (including the threshold requirements) was operating efficiently and effectively in line with its primary objective of empowering consumers to make informed decisions about grocery purchases through greater price transparency.
- 56. The review found that the parameters built into the unit pricing code recognise that most household spending on groceries occurs in major supermarket chains and large independent stores (approximately 86% of industry revenues are generated by the five largest supermarket chains). These stores maintain a large product range, such that consumers make rapid value judgements about a large number of goods packaged in different sizes. As 90% of New Zealand’s retail grocery market is dominated by its two major grocery retailers, the Australian approach to unit pricing is both relevant and instructive for the New Zealand context.

**Costs and risks**

- 57. For smaller grocery retailers that are caught by the thresholds, the costs associated with compliance may be significant. If costs are too high for these smaller retailers, this may negatively impact competition in the grocery sector. **Commercial Information**  
[Redacted]  
[Redacted] For online retailers, we consider the costs of compliance should be lower than for physical retailers, as no investment in physical ticketing systems is required.
- 58. Based on the cost estimates provided by a small number of retailers, we consider the aggregate cost of compliance across the retail grocery market will [Redacted]  
**Confidential advice to Government**  
[Redacted]  
[Redacted] The cost of compliance for the major grocery retailers who already display unit pricing voluntarily will likely be marginal. The only significant costs should therefore be for other grocery retailers covered by the regime who may need to upgrade their ticketing or software systems to display unit pricing (which may include Supie, The Warehouse, and Moore Wilson’s, depending on how “grocery retail store” is defined in regulations).<sup>30</sup>
- 59. These costs will be influenced by the design of the regime. The costs of compliance are likely to be higher if display requirements are prescriptive, if unit pricing is required in all forms of advertising, and if the standard and non-standard units of measurement require grocery retailers to change their systems and processes. We consider the costs can be minimised by adopting flexible display requirements, not requiring unit pricing in all forms of advertising, and allowing for an appropriate transitional period before compliance is mandatory.
- 60. There is a theoretical risk that grocery retailers may attempt to evade unit pricing rules by opening stores that are only barely smaller than 1,000 square metres, or by limiting their product range to avoid being classified as a grocery retailer. However, we consider this risk is minimal, as the proposed requirements of the regime are not onerous and should not require the major grocery retailers to upgrade their ticketing systems. For smaller grocery retailers, ticketing upgrades may be required for existing stores, but it should be straightforward to ensure that any new stores above the threshold have the necessary systems in place from day one.
- 61. The costs and revenue loss associated with artificially limiting product range or modifying a store to be below 1,000 square metres are likely to be substantial and ongoing, and greatly outweigh the costs associated with unit pricing. This risk also did

Commercial Information

not eventuate in Australia or the United Kingdom, which has adopted similar floorspace thresholds for its unit pricing regimes.

### Stakeholder views

62. Most submitters on the discussion paper, including the major grocery retailers and consumer advocates, were supportive of implementing unit pricing beyond the major grocery retailers. Many submitters were supportive of a floorspace threshold, with some submitters proposing to exclude grocery stores with a floor size smaller than 1,000 square metres, while others proposed only to exclude stores smaller than 280 square metres.<sup>31</sup>
63. Most submitters generally agreed that the rules should not apply to stores where consumers are likely to purchase only a few items, such as dairies, corner stores and petrol stations. It was on this basis that Consumer NZ suggested that floorspace should not be the only threshold determinant.
64. Foodstuffs, New Zealand Food and Grocery Council (**NZFGC**) and Trading Standards NZ felt a product range threshold would be appropriate for online retailers with no physical presence. Some submitters noted that requiring only a product range threshold may lead to strategic behaviours by retailers to dodge mandatory unit pricing rules such as avoiding or removing certain product categories.

### Issue 2: Where mandatory unit pricing should apply

#### Option 2 (MBIE preferred): Require grocery retailers to display unit pricing in physical and online stores, and in physical and online print advertising (excluding video and audio advertising)

65. With this option, relevant grocery retailers will be required to display unit pricing in-store (physical and online), as well as in physical and online print advertising. This is on the basis that although the main function of unit pricing is price comparison:
  - 65.1. requiring unit pricing in appropriate forms of advertising is likely to increase consumer awareness and use of unit pricing in-store
  - 65.2. retailers already provide the retail price in advertisements to inform and influence customers even where there is no opportunity for price comparison, and
  - 65.3. even when not directly comparing products, clear and accurate pricing information can help consumers to develop perceptions of value over time.
66. Audio and video advertisements are excluded under this option on the basis that the costs of compliance for these forms of advertising are likely to be significant, whereas the benefits to consumers are marginal. This approach is consistent with unit pricing rules in Australia, the European Union, and the United Kingdom.

### Benefits

67. Requiring unit pricing in appropriate forms of advertising is likely to increase consumer awareness and use of unit pricing in-store. Excluding audio and video advertising is likely to be more practical than including these forms of advertising under Option 3, as the costs of compliance for these forms of advertising are likely to be significant, whereas the benefits to consumers are marginal.

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<sup>31</sup> In Australia, application of mandatory unit pricing rules is limited to grocery retailers that sell the minimum range of grocery products and have a floorspace of more than 1000 square metres. In the United Kingdom, application of mandatory unit pricing rules is limited to grocery retailers that have a floorspace of more than 280 square metres.

### Costs and risks

68. Requiring grocery retailers to display unit prices at point of sale, as well as in certain forms of advertising, will be a practical way of implementing mandatory unit pricing for consumers, but will incur some compliance costs for grocery retailers. However, not requiring unit pricing in video and audio advertising may limit the benefits of unit pricing for consumers who are blind or visually impaired.

### Stakeholder views

69. As mentioned above, the major grocery retailers support displaying unit pricing in-store only, on the basis that unit pricing is more likely to be relevant and useful where consumers can make price comparisons. Some submitters, including academics Dr. Jun Yao and Prof. Harmen Oppewal, suggested that requiring unit pricing in print medium may be more relevant than in audio and video format.
70. Several consumers and consumer organisations recommended requiring unit pricing in all forms of advertising. One individual submitter on the discussion paper suggested that, as a start, retailers should provide unit pricing in print advertising, and that officials should conduct further engagement with visually impaired consumers to determine how advertising of unit prices would best suit their needs.

### Issue 3: How unit pricing should be displayed

#### Option 4 (MBIE preferred): Adopt principle-based display requirements with some prescriptive elements

71. This option will involve the application of general principles (for example, that unit pricing should be prominent, legible, unambiguous, and close to the selling price), as well as flexible prescriptive requirements (for example, that the unit price should not be less than 25% of the height of the retail price). These examples are drawn from submissions and targeted stakeholder consultation, and the final design of the requirements will be tested through an exposure draft of regulations.
72. This approach aims to combine the benefits and mitigate the drawbacks of Option 2 and Option 3. This approach acknowledges that prescriptive requirements are likely to increase compliance costs, but that some prescription will be necessary to ensure the benefits of unit pricing are fully realised. We consider setting out general principles with some prescription strikes the appropriate balance between prescription and flexibility.

### Benefits

73. This approach acknowledges that specifying font size, font, contrast, and location is likely to significantly increase compliance costs for retailers and may increase the prices of grocery products and hamper innovation.
74. Setting out general principles with some prescription strikes a practical and appropriate balance between prescription and flexibility, by ensuring unit pricing information is accessible (clear, prominent, legible) while allowing retailers some discretion over how information is displayed.

### Costs and risks

75. This approach does not provide as much certainty for retailers about their obligations as full prescriptive requirements would. It may also be less effective for consumers, as it will allow for grocery retailers to design their labels differently. This option could reduce consumer familiarity and use of unit pricing information to compare products.

### Stakeholder views

76. We expect that grocery retailers will prefer a hybrid approach to a prescriptive approach, based on their submissions in favour of a wide rather than narrow approach. We also expect that those who favoured a more prescriptive approach will find the hybrid option preferable to a principled approach.

	Issue 1				Issue 2			Issue 3			
	Option 1 (counterfactual) – Major grocery retailers with a floorspace larger than 1,000 square metres <sup>32</sup>	Option 2 – Grocery retailers with a floorspace larger than 1,000 square metres, as well as online grocery retailers <sup>33</sup>	Option 3 – Grocery retailers with a floorspace larger than 280 square metres, as well as online grocery retailers	Option 4 – All grocery retailers with a market share (calculated on the basis of annual revenue) of more than 2%	Option 1 (counterfactual) – Physical and online stores only	Option 2 – In-store and some forms of advertising	Option 3 – In-store and all forms of advertising <sup>34</sup>	Option 1 (counterfactual) – No display requirements	Option 2 – A principle-based approach	Option 3 – Prescriptive approach	Option 4 – Hybrid approach
<b>Effectiveness</b> The potential for this policy option to drive the outcomes	0 Effective in ensuring major grocery retailers continue to use unit pricing for the benefit of most consumers	+	+	0	0	++	+	0	+	++	++
	Effective in ensuring major grocery retailers continue to use unit pricing for the benefit of most consumers	Effective in ensuring most major grocery retailers and other large retailers use unit pricing for the benefit of most consumers	Effective in ensuring major, large and some smaller grocery retailers use unit pricing for the benefit of most consumers, but benefits of unit pricing in small stores is marginal	Effective in ensuring larger grocery retailers with sufficient resources display unit pricing	Moderately effective in driving policy outcomes, but less effective for promoting consumer awareness of unit pricing	Reasonably effective in driving policy outcomes, and effective for promoting consumer awareness of unit pricing	Effective in ensuring unit prices are displayed in a broad range of settings, however audio and video advertising likely to provide marginal benefits	Ineffective in driving outcomes of legibility and clarity, consistency of units of measure, and accuracy	Likely to be effective in driving the outcomes of legibility and clarity, consistency of units of measure, and accuracy	Likely to be highly effective in driving the outcomes of legibility and clarity, consistency of units of measure, and accuracy	Likely to be highly effective in driving the outcomes of legibility and clarity, consistency of units of measure, and accuracy
<b>Practicality</b> The cost and feasibility of this policy option	0 Smaller retailers would not be caught, large new entrants would not be immediately caught, review and update of regulations as competition improves	0 More future proof and requires less review than the counterfactual, but a few smaller retailers may be caught	- Requires less review than the counterfactual, but more than a few smaller retailers will be caught for who the compliance costs are likely to impact their ability to compete	-- More difficult to monitor and enforce than a floorspace and product range threshold; more difficult than naming the major retailers	0 Practical for promoting inter-brand competition, but not inter-store competition. Will not incur compliance costs	-- A relatively practical way of implementing mandatory unit pricing but will incur some compliance costs	-- Will likely increase compliance costs more than if unit pricing is only required for certain forms of advertising	0 Will not incur any compliance costs for grocery retailers who already display unit pricing, but may involve costs for grocery retailers who do not currently display unit pricing	- Will incur more compliance costs for major grocery retailers than the counterfactual, as they will have to meet new requirements; costs for other retailers will be similar to the counterfactual	-- Will likely increase compliance costs for major grocery retailers more than Option Two and is likely to be less practical; costs for other retailers will be similar to the counterfactual	0 Subject to consultation, this option will not require major grocery retailers to invest in new labelling systems; costs for other retailers will be similar to the counterfactual
<b>Certainty</b> Certainty for retailers regarding their obligations and for consumers regarding unit prices	0 Major grocery retailers would be certain of their obligations, majority of consumers would be certain of who should display unit prices	0 Grocery retailers meeting threshold would be certain of their obligations, majority of consumers would be certain of who should display unit prices	0 Grocery retailers meeting threshold would be certain of their obligations, majority of consumers would be certain about who should display unit prices	- Grocery retailers meeting the threshold would be less certain of their obligations until annual determinations are made, consumers would not have certainty about who should display unit prices	0 Will provide certainty to retailers and consumers about where unit pricing should be displayed	0 Will provide certainty to retailers and consumers about where unit pricing should be displayed	0 Will provide certainty to retailers and consumers about where unit pricing should be displayed	0 Retailers will be certain they do not have display obligations, but consumers will not be certain about unit prices	0 Will provide some certainty to consumers regarding unit prices, and to retailers regarding their obligations	++ Will likely provide considerable certainty to consumers regarding legibility and accuracy of unit prices, and to retailers regarding their obligations	0 Will provide reasonable certainty to consumers regarding legibility and accuracy of unit prices, and to retailers regarding their obligations
<b>Overall assessment</b>	0	+	0	-	0	+	-	0	+	++	+++

<sup>32</sup> Previously a status quo of not implementing mandatory unit pricing was used to assess the options. This has been altered to a counterfactual scenario to more accurately represent the options available, given Cabinet has decided to implement unit pricing. This has resulted in some changes to the qualitative assessment values from the discussion paper.

<sup>33</sup> This option is a hybrid of the proposed thresholds in the discussion paper; the qualitative values of this option have been newly assessed based on the combination of these thresholds.

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

77. On the basis of the above assessment of options against the stated criteria, our view is that:
- 77.1. Mandatory unit pricing should be implemented for “grocery retail stores” that meet the minimum floorspace threshold (**Proposal 1, Option 2**).
    - 77.1.1. Based on comparison with the counterfactual, the preferred option is to adopt a floorspace threshold.
    - 77.1.2. This approach would exclude most convenience stores, specialist grocery retailers and international supermarkets from the mandatory unit pricing regime (around 10% of the retail grocery market).
    - 77.1.3. This threshold will be effective in ensuring most consumers benefit from unit pricing, is reasonably practical and future-proof, and will provide certainty regarding the scope of unit pricing rules. This approach is also consistent with unit pricing rules in Australia and the United Kingdom, where it has proven to be effective.<sup>35</sup>
  - 77.2. Mandatory unit pricing should apply to products being sold in-store (physical and online) and in print and online print advertising (**Proposal 2, Option 2**).
    - 77.2.1. Based on comparison with the counterfactual, the preferred option is to require unit-pricing in-store, as well as in physical and online print advertising. This is on the basis that although the main function of unit pricing is price comparison, requiring unit pricing in certain forms of advertising is likely to increase consumer awareness and use of unit pricing in-store.
    - 77.2.2. This approach will be effective in ensuring consumers benefit from unit pricing, is practical, and will provide more certainty to consumers. This approach is also consistent with unit pricing rules in Australia, the European Union, and the United Kingdom.
  - 77.3. Display requirements for mandatory unit pricing should be based on a combination of principled and prescriptive rules (**Proposal 3, Option 4**).
    - 77.3.1. Based on comparison with the counterfactual, the preferred option is to adopt a combination of principle-based and prescriptive requirements. This is on the basis that specifying font size, font, contrast, and location is likely to significantly increase costs for retailers and consumers and hamper innovation. Instead, we consider that setting out general principles with some prescription strikes the appropriate balance between specificity and flexibility and should enable grocery retailers to use existing labelling systems, reducing compliance costs.

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<sup>35</sup> Australian Government, The Treasury “Grocery Unit Pricing Code Review – Review outcomes”, available at: <https://treasury.gov.au/review/grocery-unit-pricing-code-review/reviewing-code>.



## What are the marginal costs and benefits of the option?

78. As set out above, the combination of preferred options is as follows:
- 78.1. Mandatory unit pricing should be implemented for “grocery retail stores” that meet the minimum floorspace threshold.
  - 78.2. Mandatory unit pricing should apply to products being sold in-store (physical and online) and in print and online print advertising.
  - 78.3. Display requirements for mandatory unit pricing should be based on a combination of principled and prescriptive rules.
79. We set out the marginal costs and benefits for this preferred package of options below.

<b>Affected groups</b> (identify)	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	<p>There will be some upfront compliance costs of adjusting physical and online labelling compared to the counterfactual, as well as some ongoing costs to maintain the necessary systems and databases. There will also be costs associated with displaying unit pricing in print advertising.</p> <p>We do not have a large amount of reliable quantitative data regarding the likely costs of compliance with the mandatory unit pricing regime. Individual businesses provided estimates to implement unit pricing or make changes to existing unit pricing systems. However, these costs are ballpark or order-of-magnitude estimates, and some may be overestimates.</p>	<p>Low - likely around</p> <p><b>Commercial Information</b></p> <p>grocery retailers, and marginal costs for the major grocery retailers that already display unit pricing voluntarily and therefore already have the necessary systems in place.</p> <p>.</p>	Low
Regulators	The Commission has indicated it does not foresee any significant difficulties with enforcement of the proposed consumer information standard, as around 90% of the retail grocery market is dominated by the major grocery retailers, who are expected to adopt standardised unit pricing practices across their various grocery retail	Low	Medium

	stores. This is likely to make investigation and enforcement considerably less costly and time-consuming than (for example) the standard for used motor vehicles, which applies to all motor vehicle traders in New Zealand.		
Others (eg, wider govt, consumers, etc.)	N/A	N/A	N/A
<b>Total monetised costs</b>	N/A		
<b>Non-monetised costs</b>	Low		
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	Grocery retailers will have clarity regarding how to display unit pricing information in a way that is useful for consumers and that supports competition in the sector. Under the preferred option for the adoption of display requirements, which involves adopting a combination of principled and prescriptive rules, grocery retailers should have more clarity regarding how to ensure their unit pricing is sufficiently clear and prominent.	Medium	Medium
Regulators	The Commission will have a clear mandate to enforce mandatory unit pricing rules and to ensure that grocery retailers display unit pricing in a manner that is clear, consistent, and accurate.  The Commission has indicated that the preferred option for display requirements, which involves adopting a combination of principled and prescriptive rules, will be easier to enforce than if only principle-based display requirements were adopted. Prescription should help ensure consistency across grocery retailers and ease the burden on the regulator, making	Medium	Medium



	inspection and enforcement easier and more efficient.		
Consumers	<p>The preferred package of options will ensure most consumers (around 90% of the retail grocery market) have access to unit pricing and are thereby empowered to make better informed purchasing decisions. This will support inter-brand competition and encourage grocery retailers to compete on metrics such as price and transparency.</p> <p>Requiring unit pricing to be displayed in advertising will allow consumers to compare prices between different grocery retailers and to use this information to determine which retailer offers the best value. This is likely to encourage price competition between grocery retailers and lead to lower grocery prices as competition improves.</p>	Medium	Medium
<b>Total monetised benefits</b>	N/A		
<b>Non-monetised benefits</b>	Medium		

## Section 3: Delivering an option

### How will the new arrangements be implemented?

80. The proposals will be given effect to in a consumer information standard made under section 27 Fair Trading Act 1986. These are regulations made by Order in Council. The regulations will be notified in the New Zealand Gazette and will be the subject of communications material released by the office of the Minister of Commerce and Consumer Affairs. Subject to further consultation, we propose the regulations will commence after a transitional period to give the relevant grocery retailers the necessary time for implementation.
81. The Commission, as the enforcement agency for the Fair Trading Act, will be responsible for enforcing the requirements. The Commission is already responsible for enforcing other consumer information standards under the Fair Trading Act, so has significant experience enforcing similar requirements.
82. The Commission has indicated it does not foresee significant difficulties with enforcement of the proposed consumer information standard, as around 90% of the retail grocery market is dominated by the major grocery retailers, which are expected to adopt standardised unit pricing practices across their various grocery retail stores. This is likely to make investigation and enforcement considerably less costly and time-

consuming than, for example, the consume information standard for used motor vehicles, which applies to a large number of motor vehicle traders in New Zealand.

83. The Commission has indicated that the preferred option for display requirements, which involves adopting a combination of principled and prescriptive rules, will be easier to enforce than if only principle-based display requirements were adopted. Prescription should help ensure consistency across grocery retailers and ease the burden on the regulator, making inspection and enforcement easier and more efficient.
84. The Fair Trading Act contains existing penalties for a breach of a Consumer Information Standard. An individual can be liable for a fine of up to \$10,000 if convicted, and a body corporate for a fine up to \$30,000 if convicted. The Commission can also issue infringement offences for a breach, with a fee of \$1,000.

### How will the new arrangements be monitored, evaluated, and reviewed?

85. The Commission already collects data on complaints and investigations for the consumer protection system. These existing methods of data collection will continue. The Commission shares this data with MBIE on an ad-hoc basis as needed and when there are no constraints on data sharing.
86. MBIE will monitor the implementation of the regulations and will carry out a review if material concerns are raised, or it is desirable to further consider to the scope of the Consumer Information Standard, such as by including additional grocery retailers, grocery products, or by updating the display requirements.
87. The grocery regulator established by the Grocery Industry Competition Bill will undertake annual state of competition reviews of the retail grocery sector. The detail of these reviews will be determined by the regulator and will draw on best practice for reviewing retail grocery sector competition from overseas (such as the annual reviews undertaken by the United Kingdom Groceries Code Adjudicator). This would likely involve an annual review of the competition dynamics in the retail grocery sector to assess the impacts of the Commission's recommendations, including in relation to unit pricing.
88. The Australian Competition and Consumer Commission (**ACCC**) has reported that, since the implementation of its mandatory unit pricing code, complaints about unit pricing have been declining over time (from 50 complaints in 2013 - 2014 to 11 complaints in 2017 - 2018).<sup>36</sup> If the Commission receives a similar proportional number of complaints under the mandatory unit pricing regime, this would constitute only 2 – 10 complaints out of a total of about 9,000 complaints relating to Fair Trading Act matters per year.
89. In 2010, the ACCC conducted a survey of 388 supermarkets and 17 online grocery retailers and found a 98% level of compliance with the code by major supermarkets and a 35% level of compliance by online traders. We would expect the proposed mandatory unit pricing regime for New Zealand to be similarly effective in ensuring compliance across time, and that compliance should be particularly high for major grocery retailers. Although the Australian experience suggests that compliance may be an issue for online grocery retailers, this should be easier for the Commission to monitor, as it does not involve physical inspections of retail premises.

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<sup>36</sup> Australian Government "Review of the Retail Grocery Industry (Unit Pricing) Code of Conduct (November 2018), available at: [https://treasury.gov.au/sites/default/files/2021-05/c2018-174951\\_discussion\\_paper.pdf](https://treasury.gov.au/sites/default/files/2021-05/c2018-174951_discussion_paper.pdf).

## Annex 1: Options analysis for non-preferred options

### Issue 1: Which grocery retailers mandatory unit pricing should apply to

#### Option 1: Mandatory unit pricing applies only to major grocery retailers with a retail outlet floorspace larger than 1000 square metres

90. Under this option, unit pricing would apply to all retail outlets that are part of the Woolworths and Foodstuffs brands and are larger than 1,000 square metres. This floorspace threshold would include PAK'n'SAVE stores and most New World and Countdown stores. It would exclude most FreshChoice and Four Square stores, some SuperValue stores, and some Countdown and New World Metro stores. As competition in the sector improves, the regulations could be amended to cover other grocery retailers.

#### Benefits

91. Naming the major grocery retailers will ensure that smaller retailers are not caught by the rules, even where their floorspace is larger than 1,000 square metres. Initially excluding smaller grocery retailers should ensure the costs of compliance do not hinder these retailers from competing effectively with the major grocery retailers.
92. Under this option, major grocery retailers will continue to use unit pricing in their larger stores (Countdown, New World, and PAK'n'SAVE) for the benefit of most consumers. This option will also not increase compliance costs for smaller, franchised stores of the major grocery retailers.

#### Costs and risks

93. Smaller stores of the major grocery retailers, as well as other grocery retailers, will not be subject to mandatory unit pricing, even where their product range is sufficiently large for the display of unit pricing information to be useful for product comparison. Consumers who shop at these stores may continue to struggle in comparing prices between products and may not be able to make fully informed purchasing decisions.
94. Some larger firms entering the market (such as Costco) would not immediately be subject to requirements, which creates a risk that unit pricing would not meet consumer expectations. This option is therefore likely to be less practical, as it will require regular review of regulations to ensure relevant grocery retailers are named as competition improves and new competitors enter the market.

#### Stakeholder views

95. Smaller grocery retailers, including Supie and Night 'n Day, were supportive of mandatory unit pricing being implemented narrowly, which would likely mean only capturing the major grocery retailers. However, consumers, consumer organisations and the major grocery retailers were supportive of implementing mandatory unit pricing more broadly.

#### Option 3: Grocery retailers with a retail outlet floorspace larger than 280 square metres, as well as online retailers

96. Under this option, mandatory unit pricing would apply to grocery retailers with a floor size above 280 square metres, as well as to online grocery retailers.
97. This approach combines elements of the UK and Australian unit pricing codes. In the UK, the floorspace threshold is 280 square metres. As with Option 2, the minimum range of grocery products would be based on similar requirements in the Australian unit pricing code.
98. This option would cover all the larger major grocery retailer stores, as well as Costco and Supie. A larger proportion of convenience stores, specialist retailers and international supermarkets would be caught by the lower floorspace threshold under

this option, but some are likely to be excluded from the regime under the product range threshold.

### Benefits

99. This option is more future proof than naming the major grocery retailers and is effective in ensuring both major grocery retailers and other grocery retailers use legible, consistent, and accurate unit pricing for the benefit of a wide range of consumers. This option should provide a high level of certainty to retailers as to whether they are caught by the regime, and a high number of consumers would have access to unit pricing information to enable them to make informed purchasing decisions.

### Costs and Risks

100. This option will apply mandatory unit pricing rules to a larger proportion of smaller grocery retailers. The costs of compliance for these retailers could be significant while the benefits to consumers may be marginal. This is because smaller stores do not usually stock enough grocery products to make unit pricing a useful comparison tool, and because purchasing decisions in these stores are usually made on preferences other than price, such as convenience.
101. Furthermore, the costs of compliance are likely to be proportionally higher for smaller, independent grocery retailers and more difficult for these retailers to absorb. This could result in higher prices for consumers and will likely make it difficult for smaller grocery retailers to compete with the major grocery retailers, thereby negatively impacting competition in the grocery sector.
102. Night 'n Day has estimated that upgrading its ticketing systems to display unit pricing in-store [redacted] Commercial Information [redacted]  
[redacted] Supie has also estimated that making the necessary system upgrades to display unit pricing on its website [redacted] Commercial Information [redacted] For online retailers, we consider the costs of compliance should be lower than for physical retailers, as no investment in physical ticketing systems is required.

### Stakeholder views

103. As discussed above, smaller grocery retailers submitted that unit pricing requirements should apply narrowly, and likely only to major grocery retailers. By contrast, the major grocery retailers, consumer organisation and most individual submitters are likely to favour this option as it results in broader application of the mandatory unit pricing regime across the retail grocery market.

### Option 4: Grocery retailers with a market share (calculated on the basis of annual revenue) of more than 2%

104. This option involves adopting an annual revenue threshold by having the unit pricing rules apply to physical and online grocery retailers that meet a minimum market threshold of 2% (calculated on annual grocery revenue) at group level, ie all stores operating under the same retail banner.
105. Based on the data shown in Figure 3, this approach would effectively mean only the major grocery retailer stores are covered. No other independently owned grocery retailers have sufficient market share to be covered by the regime at this time.
106. Adopting an annual revenue threshold was initially recommended by the Commission in its report. However, in the Commission's submission on the discussion paper, it noted there were practical difficulties associated with this approach, and no longer recommended this as a threshold option.

### Benefits

107. An annual revenue threshold would limit the application of mandatory unit pricing to grocery retailers where the costs and benefits of unit pricing are proportionate. This threshold would likely ensure that larger grocery retailers with sufficient resources

display unit pricing. This approach would also capture both physical and online stores on a consistent basis, and therefore be more practical for online-only retailers than the other options.

#### **Costs and risks**

108. The main difficulty associated with an annual revenue threshold is that it is likely to be difficult to monitor and enforce, as it will require accurate and comprehensive information regarding the annual revenue of grocery retailers, which could be costly and time-consuming to collect and assess on a yearly basis. An annual revenue threshold is also unlikely to provide as much certainty for grocery retailers or consumers as the other options in terms of who mandatory unit pricing applies to.

#### **Stakeholder views**

109. Most submitters were not supportive of an annual revenue threshold on the basis there would be difficulties with monitoring and enforcement. NZFGC and Night 'n Day were supportive of a market share threshold for physical stores, and Woolworths NZ was supportive of a market share threshold for online stores.

### **Issue 2: Where mandatory unit pricing should apply**

#### **Option 1: Require relevant grocery retailers to display unit pricing in physical and online stores only**

110. With this option, regulated grocery retailers will be required to display unit pricing in-store (physical and online) in close proximity to the product, but not in advertising. This is on the basis that the key location for the display of unit pricing is where product selection is taking place, and unit pricing in advertising is likely to provide only marginal benefit.

#### **Benefits**

111. Requiring grocery retailers to display unit pricing in-store only is likely to provide more certainty for retailers about the extent of their obligations under the mandatory unit pricing regime. It will involve lower compliance costs and is therefore more practical.

#### **Costs and risks**

112. If unit pricing is displayed in-store only, consumers are less likely to develop strong awareness of unit pricing or develop perceptions of value over time. Price is also less likely to be a factor in a consumer's determination of where to conduct their weekly shop if unit pricing information is not displayed in advertising. If consumers can compare unit pricing between different grocery retailers, they can use this information to determine which retailer offers the best value. This can also encourage price competition between grocery retailers.

#### **Stakeholder views**

113. The major grocery retailers submitted that unit pricing should not be required in any forms of advertising, as unit pricing information is more likely to be relevant and useful where and when consumers can make price comparisons. The major grocery retailers further submitted that, given the pricing information is seldom remembered from advertisements, the costs associated with including unit pricing in advertising were significant despite providing little benefit.
114. Other submitters, including consumers, academics, and consumer organisations, were supportive of having unit pricing apply more broadly, including to either some or all forms of advertising.

#### **Option 3: Require grocery retailers to display unit pricing in physical and online stores, and in all forms of advertising**

115. With this option, grocery retailers would be required to display unit pricing in physical and online stores and all forms of advertising, including audio and video. The main

rationale for this approach is that requiring unit pricing in advertising is likely to increase consumer awareness and use of unit pricing in-store, and that unlike television and radio, audio and video files on the internet are often displayed for an extended period and may therefore provide an opportunity for price comparison. This option will also benefit consumers who are blind or visually impaired.

116. This was initially assessed as the best option when weighed against the criteria in the discussion paper. However, following submissions on the discussion paper and further targeted consultation, we consider this option is less practical than originally assessed. Further details are set out below.

#### Benefits

117. Requiring unit pricing in-store and in all forms of advertising will mean that unit prices are displayed in a broad range of settings, making this option highly effective in driving the policy outcomes. This option is also likely to provide considerable certainty to consumers, and to grocery retailers regarding their obligations, by setting an expectation that unit pricing information must be included in any advertisement.

#### Costs and risks

118. Including unit prices in audio and visual advertising is likely to be less practical for enabling price comparison and will increase compliance costs significantly more than if unit pricing is only required in print advertising. We consider that requiring unit pricing in audio and video advertising is likely to provide only marginal benefits to consumers at significant costs to grocery retailers.

#### Stakeholder views

119. District Health Boards, Consumer NZ and Trading Standards NZ, as well as individual submitters and survey participants, were supportive of having mandatory unit pricing apply in-store and to all forms of advertising. This was largely on the basis that restricting advertising requirements to only some mediums will prevent some consumers, eg those with disabilities, from having the same unit pricing information as other consumers.

### Issue 3: How unit pricing should be displayed

#### Option 1: Adopt no display requirements

120. This option would not require grocery retailers to adopt any minimum display requirements or standards. Under this option, grocery retailers would likely continue existing practices outlined in Section 1.

#### Benefits

121. The major grocery retailers would not incur any additional compliance costs by having to change the design of existing unit pricing labels. Grocery retailers would be certain they have complied with the regime if the relevant unit pricing information is displayed in any format.

#### Costs and risks

122. This option would not be effective for consumers because it would not encourage the display of legible, consistent, and accurate unit pricing information. Unit pricing is only beneficial if consumers can clearly and quickly view and interpret unit prices to make meaningful comparisons between products based on this information.
123. If unit prices are illegible or not plainly visible, this would continue to drive existing problems associated with inconsistent pricing information outlined in section 1. Around half of the 400 individuals surveyed as part of public consultation on the discussion paper did not consider unit prices in New Zealand were currently large and prominent enough to read without difficulty. This will particularly impact consumers who have vision or mobility issues, and low-income consumers who could derive significant benefits from prominent, legible, and clear unit pricing information.



## Stakeholder views

124. All submitters on the discussion paper accepted that some display requirements were required to ensure consumers could access and use unit pricing information effectively. Grocery retailers generally favoured a principle-based approach, while individuals, academics and consumer advocates favoured a more prescriptive approach.

### Option 2: Adopt a principle-based approach

125. This option would involve the application of general principles, for example, that the unit price for a grocery item must be:
- 125.1. prominent – it must stand out so that it is easily seen
  - 125.2. legible – it must not be difficult to read
  - 125.3. unambiguous – the information must be accurate and its meaning clear
  - 125.4. in close proximity to the selling price for the grocery item.

## Benefits

126. The principle-based approach to the display of unit pricing is likely to have lower compliance costs than a prescriptive approach and is less likely to stifle pricing innovations, including in relation to electronic shelf labels (**ESLs**). Principle-based requirements are regarded by many retailers as providing sufficient direction to retailers and protection to consumers and are appropriate where the information might be displayed in a wide range of circumstances.

## Costs and risks

127. The costs and risks associated with a principle-based approach includes:
- 127.1. lack of clarity for retailers – requiring unit prices to be “prominent” and “legible” without defining these terms or providing further guidance does not provide clarity to retailers regarding their obligations
  - 127.2. difficult to enforce – a principle-based approach can be more difficult to enforce as requirements around prominence and legibility can be interpreted differently
  - 127.3. reduced accessibility – general requirements around prominence and legibility do not always consider the needs of people with visual impairments or reduced mobility
  - 127.4. potentially ineffective – according to a 2018 CHOICE survey, 25% of Australians find unit pricing for groceries to be too small and difficult to read, and 24% had experienced issues with unit pricing being obstructed or covered.

## Stakeholder views

128. The major grocery retailers favoured a principle-based approach, highlighting the importance of flexibility and the limitations of ESLs, paper tickets, and existing IT systems. Most consumers and consumer organisations were not supportive of a principle-based approach and proposed a prescriptive approach instead.

### Option 3: Adopt a prescriptive approach

129. Option 3 would involve the application of prescriptive requirements regarding font size, font, contrast and location of unit pricing. The discussion paper set out the following examples of prescriptive requirements that could help ensure that unit pricing is accessible for all New Zealanders:
- 129.1. the font size for the unit price should not be smaller than 6mm and should not be less than 50% of the size of the selling price
  - 129.2. text should use both upper and lower case
  - 129.3. unit price and selling price should be in bold font



129.4. retailer specific information (such as store name) should be less prominent in type size than the selling price and unit price.

#### Benefits

130. This option is likely to provide more certainty for retailers about their obligations and make consistent unit pricing easier to enforce. Further, the prescriptive requirements suggested above would largely address issues with accessibility and effectiveness by requiring the font to be of a reasonable size and text to be well contrasted.
131. This option will be more effective at driving the outcomes of legibility, clarity and accessibility than giving retailers full discretion over how unit pricing is displayed.

#### Costs and risks

132. This option is likely to significantly increase compliance costs for retailers, particularly those retailers that have established systems for unit pricing which would need to be upgraded or replaced. Foodstuffs North Island submitted that prescriptive requirements could require it to purchase new ESLs at significant cost,<sup>37</sup> and would remove the flexibility to ensure unit pricing was tailored to specific products and consumers. These costs are likely to be passed on to consumers and may therefore cause increases in the prices of grocery products. Prescriptive requirements may also stifle innovation in major grocery retailers' pricing and ticketing systems, as retailers will be significantly constrained in the way they can present pricing information.

#### Stakeholder views

133. Individuals, academics, and consumer advocacy groups generally recommended a prescriptive approach to display requirements, as experience in other jurisdictions (including Australia) has suggested principle-based requirements are ineffective, and do not adequately address issues around legibility and prominence of unit pricing.
134. Foodstuffs North Island, Foodstuffs South Island and Woolworths NZ submitted that overly prescriptive requirements would risk making current labels and ESLs non-compliant with unit pricing rules. As stated above, this would likely require significant investment to remedy and would risk these costs being passed on to consumers, raising the price of grocery products.