



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HIKINA WHAKATUTUKI



# Consultation paper

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## Draft Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023

14 April 2023

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ISBN 978-1-99-106939-9 (online)

How to have your say

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## Submissions process

The Ministry of Business, Innovation and Employment (**MBIE**) seeks written submissions on the issues raised in this document by 5pm on 12 May 2023.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please provide your submission by filling out the 'response' sections throughout this document. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- sending your submission as a Microsoft Word document to [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz).
- mailing your submission to:

Consumer Policy  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
PO Box 1473

Wellington 6140  
New Zealand

Please direct any questions that you have in relation to the submissions process to [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz).

## Use of information

The information provided in submissions will be used to inform MBIE's regulatory development process, and will inform advice to Ministers on the detail of the consumer information Regulations for mandatory unit pricing for grocery products. We may contact submitters directly if we require clarification of any matters in submissions.

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MBIE intends to upload PDF copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

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# 1 Introduction

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## Background

1. The Commerce Commission's market study into the retail grocery sector made several recommendations for improving competition in the sector, including mandating the consistent display of unit pricing for grocery products sold by New Zealand's major grocery retailers.<sup>1</sup>
2. The implementation of mandatory unit pricing will help consumers make informed purchasing decisions and promote competition in the retail grocery sector.
3. In May 2022, Cabinet agreed to implement mandatory unit pricing for grocery products. In November 2022, following public consultation, Cabinet also broadly agreed on the form, scope and content of the mandatory unit pricing rules.<sup>2</sup>

## What does this consultation paper do?

4. We are now consulting on an exposure draft of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023 (**the draft regulations**). This document seeks stakeholder feedback on the draft regulations, including any technical issues that may affect their workability and effectiveness.

## Process and timeline

5. Consultation is open until 12 May 2023. Following analysis of the submissions, the draft regulations will be revised based on the feedback received and the final regulations will be considered by Cabinet.

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<sup>1</sup> The Commerce Commission [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), 2022.

<sup>2</sup> MBIE <https://www.mbie.govt.nz/dmsdocument/25857-mandatory-unit-pricing-for-grocery-products-minute-of-decision-proactiverelease-pdf>, 2022.

## 2 Content of regulations and questions for submitters

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### Regulation 2 – Commencement

6. As provided in regulation 2, we propose a 12-month transition period before compliance is mandatory.
7. In its final report, the Commerce Commission recommended that an appropriate transitional period be provided before compliance is mandatory to ensure necessary retailer systems can be implemented. The Commerce Commission did not specify what this transition period should be.
8. In Australia, the Competition and Consumer (Industry Codes—Unit Pricing) Regulations 2021 (**the Australian regulations**) applied to store-based grocery retailers and online grocery retailers who met the criteria three months after the requirement were announced by the Government in the Australian Gazette. Voluntarily participating grocery retailers who had not started displaying unit pricing by the enforcement date were given an additional six-month period.
9. We believe this tiered approach is not necessary, and that a catch-all 12-month transition period will provide greater clarity around expectations, while ensuring that all parties have effective unit pricing in place within a reasonable timeframe.

**1** Do you consider 12 months to be an appropriate transitional period before compliance is mandatory?

**2** Please explain why you think a 12-month transition period is sufficient or not?

### Regulation 3 – Interpretation

10. Regulation 3 provides definitions for several essential concepts used throughout the regulations, such as “product” and “unit price”.

**3** Do you have any comments on the key definitions in regulation 3?

## Regulation 5 – Regulated grocery products

11. Regulation 5 provides the key definition of ‘regulated grocery product’ and sets the scope of the regulations.
12. In line with Cabinet’s decision, regulation 5(1) sets out who the regulations apply to. This includes:
  - a. online retail grocery stores
  - b. physical retail grocery stores with a floorspace above 1,000 square metres,
  - c. physical retail grocery stores with a floorspace below 1,000 square metres where unit pricing is displayed voluntarily.
13. The latter application is aimed at standardising practices so that unit pricing is clear and consistent, including in stores with a floorspace smaller than the threshold.
14. Regulation 5(2) provides the list of product categories which constitute a minimum range. This list is derived from the list of defined “grocery products” in section 28A of the Commerce Act 1986. Stores must sell all product categories for the regulations to apply. This is intended to limit the scope of the regulations to stores which sell a broad range of grocery products, and avoid capturing stores that may sell the odd item (eg a hardware store that also sells confectionary).

## Exempt products

15. Cabinet further agreed that some products will not be covered by the mandatory unit pricing rules in cases where the benefits of unit pricing will be limited, or where unit pricing would be impractical or undesirable. This includes products that:
  - a. are sold as single items and not in large quantities (in such cases, the unit price is identical to the retail price and is not likely to provide significant additional information to consumers)
  - b. are sold in quantities that are difficult to measure (such as flowers)
  - c. can cause harm, such as alcohol and smoking products.
16. Regulation 5(3) sets out the exempt products which are not ‘regulated grocery products’. These goods are similar to those exempt in the equivalent Australian regulations.<sup>3</sup> However, in Australia, an exhaustive list is used to identify the many products that are exempt from unit pricing rules. This list includes including books, stationery, furniture,

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<sup>3</sup> *Competition and Consumer (Industry Codes—Unit Pricing) Regulations 2021*, <https://www.legislation.gov.au/Details/F2021L01017>, 2021.



hardware items, toys, household appliances, clothing, jewellery, and tobacco and alcohol products.

17. Rather than providing an exhaustive list, we propose to adopt rules that are slightly broader and more flexible to better accommodate new products and to minimise the number of regulatory changes required over time.
18. For example, regulation 5(3) provides exemptions for alcoholic beverages and tobacco and vaping products, and regulation 5(3)(c) provides a broad category that includes products sold as an individual item, and not sold by volume, weight, length or area.
19. We consider this would likely cover many of the products exempted from the Australian regulations, as specified in paragraph 16, such as a book or a kitchen knife. However, regulation 5(3)(c) does not apply where multiple similar items are sold within a single package (eg a multipack of toothbrushes) as there is likely to be a benefit to consumers in being able to more accurately compare prices between multipacks and individual items.

**4** Do you have any comments on regulation 5?

Do you have any comments on the “exempt products” set out in regulation 5(3)?

**5** Is there anything that you think is missing, or anything that you think should not be exempt? Please provide your reasoning.

#### Regulation 6 – Unit price must be displayed

20. Cabinet agreed that unit pricing should be required to be displayed in store (physical and online), as well as in physical and online print/static advertising. Regulation 6 sets out this requirement and provides that unit pricing is required when the retail price is displayed.
21. Regulation 9 provides that unit pricing is not required for video or audio advertisement.

**6** Do you have any comments on the requirements for where unit pricing must be displayed, as set out in regulation 6?

**7** Do you have any comments on the advertising exemption set out in regulation 9?

## Regulation 7 – Unit of measurement for unit price

22. Unit prices for grocery products will be required to be expressed in uniform and consistent measurements to enable direct comparisons between products. Cabinet agreed consistent standard units of measurement will be adopted for unit pricing. Non-standard measurements will be used where, because of the standard size or nature of the grocery product, the standard measurements will not provide useful or appropriate information (eg where products are typically sold in volumes that are large or small).
23. Standard units of measurement are set out at regulation 7(1). Non-standard measurements for products are set out at regulation 7(2).

### 8 Do you have any comments on regulation 7?

## Regulation 8 – How unit price must be displayed

24. Cabinet has agreed to adopt a combination of prescriptive and general requirements for the display of unit pricing. This is intended to strike the appropriate balance between specificity and flexibility. This approach recognises that many retailers have already invested in a ticketing system with unit pricing capability. Detailed prescriptive requirements which require retailers to upgrade their ticketing systems and software may increase costs for those grocery retailers. These costs may be passed on to consumers.
25. Regulation 8 sets out requirements for how the unit price must be displayed, including that it must be:
  - a. clear and legible; and
  - b. in a font size no less than 25 per cent of the font size in which the product's purchase price is displayed; and
  - c. prominently, and in close proximity to the purchase price displayed for the product, so that its connection to the product is clear.
26. Additionally, the unit price of a product must be displayed:
  - a. using numerals and a dollar sign; and
  - b. if the unit price is \$1.00 or more, in dollars and cents; and
  - c. if the unit price is less than \$1.00, either in dollars and cents, or in cents; and
  - d. using the unit of measurement required by regulation 7.

### 9 Do you have any comments on the display requirements provided in regulation 8?

## General comments

27. We would like to hear any general comments you may have that may not be related to any specific aspect of the regulations.

**10** Do you have any general comments regarding the regulations?