

Submission to the Ministry of Business, Innovation & Employment

12 May 2023

1. Introduction

- 1.1. Costco Wholesale New Zealand Limited (**Costco NZ**) welcomes the opportunity to submit on the draft Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023 (the draft **NZ Regulations**) and the related consultation paper issued by the Ministry of Business, Innovation & Employment dated 14 April 2023 (the **Consultation Paper**).
- 1.2. Costco NZ is a membership warehouse club that sells a wide variety of consumer goods including groceries, electronics, furniture, and pharmaceuticals. Costco NZ has one New Zealand store (in Westgate, Auckland). Further information about our business is available at [costco.co.nz/warehouse-products-services](https://www.costco.co.nz/warehouse-products-services).

2. Summary of submissions

- 2.1. Costco NZ strongly supports the objectives of the draft NZ Regulations, and is committed to helping consumers make informed purchasing decisions. Costco NZ already implements unit pricing standards voluntarily in its Auckland store, having adopted the Australian unit pricing regime (the Competition and Consumer (Industry Codes-Unit Pricing) Regulations 2021 (**Australian Regulations**)).
- 2.2. Costco NZ submits that the draft NZ Regulations should be amended to ensure greater alignment with the Australian Regulations. In our view, aligning the regimes (and removing the various differences created by the draft NZ Regulations) would deliver various benefits, in particular:
 - (a) *Reduced compliance costs*: Aligning the unit pricing standards will avoid duplication of compliance costs for trans-Tasman businesses (and the administrative burden of managing two similar but divergent regimes).
 - (b) *Facilitate competition*: A consistent standard would also reduce the risk of error, and would facilitate growth of New Zealand businesses in the groceries sector into Australia (and vice versa). That may be particularly valuable for smaller businesses who may otherwise struggle to administer and resource compliance with two different frameworks.
 - (c) *Consistent pricing for consumers*: Having consistent regulations for unit pricing across Australia and New Zealand is likely to benefit consumers who travel between the two countries, and would ensure the same level of transparency and pricing information regardless of which country they are shopping in. In contrast, inconsistent regulations could lead to pricing disparities and potential confusion when making purchasing decisions.
- 2.3. We consider that the benefits of consistency between the NZ Regulations and the Australian Regulations outweigh any benefits of adopting a divergent approach. In the following section we discuss what we see as the key areas of divergence which we submit should be amended in line with the Australian Regulations.

3. Differences between the draft NZ Regulations and the Australian Regulations

Unit of measurement

- 3.1. While the proposed units of measurement are generally consistent between the draft NZ Regulations and the Australian Regulations, Regulation 7(2) of the draft NZ Regulations is considerably briefer than the equivalent list in Regulation 11 of the Australian Regulations ("*Alternative units of measurement*"). For example, the NZ Regulations do not include any

express requirements for cheese, ice, flour, air fresheners, or packaged eggs (all of which are specifically addressed in Regulation 11 of the Australian Regulations).

- 3.2. There are also various differences between the units of measurement for certain products. For example, the Australian Regulations require that flavouring essences and food colouring are priced per 10 millilitres, whereas the draft NZ Regulations require pricing those products “per millilitre”.
- 3.3. The consultation paper does not explain why such differences have been adopted. Absent a strong justification for adopting a different approach, Costco NZ submits that it would be preferable to ensure that units of measurement were standardised across the New Zealand and Australian regimes.

Display of Unit Price

- 3.4. Regulation 8(3)(b) of the NZ Regulations requires that the unit price must be displayed “*in a font size no less than 25 per cent of the font size in which the product’s purchase price is displayed.*” That is an additional prescriptive requirement which goes beyond the more flexible standard under the Australian Regulations (which instead requires at Regulation 6 that the price “*is displayed prominently and in close proximity to the selling price for the grocery item*” and is “*legible and unambiguous.*”
- 3.5. The prescriptive requirement proposed under the draft NZ Regulations is likely to impose additional compliance costs on retailers. As the Consultation Paper acknowledges at paragraph 24: “*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.*” However, the Consultation Paper does not explain why, notwithstanding those material disadvantages, the prescriptive percentage-based size requirements have been proposed.
- 3.6. In our view, the more flexible requirements adopted in the Australian Regulations are more appropriate and will achieve the same consumer protection outcomes without imposing unnecessary compliance costs. They will also preserve the benefits of consistency for trans-Tasman retailers as noted above.¹

Scope of goods subject to the NZ Regulations

- 3.7. Regulation 5 of the NZ Regulations defines “regulated grocery product” by reference to a list of specific goods. That list differs slightly from the similar list of goods defined as the “*minimum range of food-based grocery items*” under the Australian Regulations. For example, the NZ Regulations refer to certain categories which do not feature in the Australian Regulations (“*fish*” and “*medicine*”) and also omit certain categories listed in the Australian Regulations (“*breakfast cereal*” and “*flour*”). These differences are not explained in the Consultation Paper.
- 3.8. In addition, the NZ Regulations also refer to various categories of products which are similar to the Australian Regulations, but expressed differently. For example, NZ Regulations refer to “*dairy products*” (whereas the Australian Regulations refer to “*butter*” and “*fresh milk*”) and to “*eggs or egg products*” (rather than the Australian: “*eggs*”).
- 3.9. Again, the choice of different descriptions under the NZ Regulations are not explained in the Consultation Paper. However, they could be potentially significant, and could result in stores being treated differently in Australia and New Zealand despite offering largely similar product ranges (increasing the risk of customer confusion). Costco NZ submits that a consistent threshold should be adopted.

¹ That approach would also be more aligned with wider consumer protection frameworks in New Zealand (such as the Fair Trading Act 1986) which avoid prescriptive standards as to what level of disclosure is suitably prominent, clear, and not misleading.

Scope of goods exempt from the NZ Regulations

- 3.10. Regulation 5(3) of the NZ Regulations exempts certain goods from the definition of “regulated grocery product.” The only two specific exemptions are: (a) an “alcoholic beverage”; and (b) “a tobacco product or vaping product (both as defined in section 2(1) of the Smokefree Environments and Regulated Products Act 1990).” In contrast, Regulation 9 of the Australian Regulations sets out a much longer and more detailed list of 24 specific exemptions.
- 3.11. The Consultation Paper states that the draft NZ Regulations include more flexible exemptions in the NZ Regulations (e.g. Regulation 5(3)(c) to (e)). However, while those additional flexible exemptions are helpful, they should apply in conjunction with (and not instead of) a similarly precise list of specific exemptions which matches Regulation 9 of the Australian Regulations.
- 3.12. In that regard, the Consultation Paper does not appear to disagree with any of the specific Australian exemptions (and lists them, without any apparent objection, in paragraph 16). On that basis, and in the interests of ensuring the benefits noted above at paragraph 2.2, we submit that these product categories should also be expressly exempt under the NZ Regulations.

Thank you again for the opportunity to provide this submission on the draft NZ Regulations. If you would like to discuss any of the matters we have raised in this submission, or the details of any specific amendments arising from our submission, we would be happy to discuss our position further.