

SUBMISSION ON CONSULTATION PAPER:
DRAFT CONSUMER INFORMATION STANDARDS
(UNIT PRICING FOR GROCERY PRODUCTS) REGULATIONS 2023

By Ian Jarratt

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

No.

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

12 months is too long. Given the cost of living crisis, consumers need to be able to get the benefits of a new unit pricing system as soon as possible. Nine months would deliver these benefits and still allow sufficient time for:

- All retailers of regulated grocery products, and those who choose to provide unit pricing voluntarily, to test and install their new or modified systems and implement compliance procedures.
- The design and implementation of education programs aimed at retailers and consumers.
- The design and funding of government compliance monitoring and enforcement arrangements

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

To increase consistency and clarity, in 3(1) remove the word *goods* from the definition of *product* and change the definition to “**product** means each individual item, or a package of items (for example, a watermelon or a package of toilet rolls (*see also* subclause (2)). If *goods* is retained in the definition, define it in regulation 3.

Because it is a product that would usually be exempt, in 3(2) remove the example of *a pair of shoes* but retain *a pair of gloves* since rubber gloves is a product commonly sold by grocery retailers singly or in multi packs and the latter will not be exempt.

To increase consistency, move the interpretations of *floor space* and *online* in 5(4) to 3(1) and if necessary provide a more precise definition of floor space especially whether it refers to net retail area (as mentioned in the Regulatory Impact Statement) and whether area refers to the total retail area or only that used for the sale of regulated grocery products.

4. Do you have any comments on regulation 5?

To increase consistency and clarity, in 5(1), (2) and (3) replace the word *goods* with *items*. If *goods* is retained define it in regulation 3.

To reduce the substantial risk that significant grocery retailers, will not be required to provide unit pricing because for example they do not sell just one of the 11 listed product categories (such as eggs, fruit or vegetables, or medicine (excluding prescription medicine)) only require that an online or store retailer sell 8 or more of the 11 product categories listed in 5(2). In Australia, the requirement to sell all 11 of the product categories listed in the Code has resulted in some grocery stores and online grocery retailers that sell most but not all of the 11 product categories not being required to provide unit pricing and not providing voluntarily. In this regard I note that under S28(A)(4) of the Commerce Act 1986 a *retail grocery store* is a place where only 1 or more of the 11 categories of grocery products are sold to consumers.

To ensure that consumers who shop where there are no stores with a floor space of 1000 square metre are able to compare unit prices, in 5(1)(b) and (c) reduce the minimum floor space to 600 square metres or more.

Making both or one of the changes I have suggested in the previous 2 paragraphs would also allow the many, and likely increasing number of, consumers who prefer to buy from specialty grocery retailers (for example those selling a wider range of grocery products used in other countries and by other cultures) to also have access to, and obtain the benefits of, unit pricing.

I presume that the product categories listed in 5(2) cover all types/forms of items of the products, for example for vegetables, sold fresh, canned, frozen, dried, pickled or otherwise preserved. If so, this will significantly increase consistency in the denomination of the unit of measure used to unit price many types of products. For example, it will greatly reduce or even eliminate the use of both per kg and per 100g to show the unit price of different items of the same product. If my assumption is correct, I suggest that this be indicated in Clause 5 as it is in the notes to Clause 11 of the Australian Unit Pricing Code. If my assumption is not correct, I suggest that the policy be changed to ensure that the categories cover all types/forms of the product categories.

**5. Do you have any comments on the “exempt products” set out in regulation 5(3)?
Is there anything that you think is missing, or anything that you think should not be exempt?
Please provide your reasoning.**

To prevent non-provision of the unit price in the same format as the unit price for items of the product sold by count that are regulated grocery products, in 5(3)(c) do **not** exempt a product if any other item of the product sold contains more than one item. There are many such types of products sold by grocery retailers, for example batteries, rubber gloves, and toothbrushes and it is important to make it easy for consumers to use unit pricing that the unit price for the single item be displayed in the same location, format, etc. as the unit price that must be displayed for other items of the product even though the unit price will be the same as the selling price.

To increase consistency, move the interpretations of *floor space* and *online* in 5(4) to 3(1) and if necessary provide a more precise definition of floor space especially whether it refers to net retail area (as mentioned in the Regulatory Impact Statement) and whether area refers to the total retail area or only that used for the sale of regulated grocery products.

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

6(1) does not seem to require that the unit price must also be displayed each time the selling price of a regulated grocery product is displayed. If this is the case, to maximise consumer awareness and use of unit pricing, this should be required to cater for situations where for example the selling price is displayed on a packaged product and on a shelf label but the unit price is only displayed on the shelf label. This could be achieved by changing *If the purchase price.....* to *Wherever the purchase price.....*

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

What is meant by *a video or audio medium* needs to be made much clearer either in clause 9 or via a definition in clause 3. This is because video can have several meanings. The RIS and the Cabinet Proposal refer to the unit price having to be displayed (if a selling price is displayed) on physical and online print/static advertisements but not in video and audio advertisements. This suggests that the intent is to only require the provision of the unit price if the advertisement is static. Consequently, it

is important to indicate clearly that in clause 9 video means a moving image. This is needed to ensure that for example static electronic advertisements (for example advertisements at bus stops) as well as static printed advertisements that display the selling price will also display the unit price.

However, although I support an exemption for advertisements using only an audio medium I do not support an exemption for advertisements using a video (moving images) medium. My reasons for this include:

- Grocery retailers increasingly advertise products using a variety of moving image video advertisements on TV, the internet, etc. and in them also display the selling price. They do this to influence consumer choice and product perceptions just as they do with all other forms of visual advertising on which the unit price will have to be displayed if the selling price is displayed.
- The Commerce Commission report and the Cabinet Proposal supported the provision of unit pricing in some advertising in order to increase consumer awareness and use of unit pricing.
- No evidence has been made public to indicate that it will too expensive relative to the benefits to display the unit price in advertisements using a video (moving image) medium. Until such evidence is available to me and I have been able to assess it, I regard the cost benefit argument as: unconvincing, not passing the “pub test”, and failing to recognize that unit pricing regulation needs to reflect contemporary practices and needs, not historic ones.
- Unless the changes I suggested earlier are made, the unit price might not have to be displayed on static electronic advertisements, for example at bus stops, but would have to be on otherwise identical advertisements displayed there on paper or other material. This is illogical and inconsistent.

8. Do you have any comments on regulation 7

It is essential to maximize consistency in the units of measure used to unit price products sold loose from bulk and in random measure or constant measure packages and to reflect that some products are often sold in items weighing more than 1 kilogram or in volumes greater than 1 litre. Therefore, in 6(2) require the use of per kilogram as the unit of measure for more categories of product when sold by weight (for example nuts, cheese, flour, bread mixes, rice, sugar, ice, laundry supplies and pet products), and per litre for more categories of products sold by volume (for example laundry supplies and pet products). This is the approach taken in the Australian Code.

The proposed types of regulated grocery products in terms of how they are sold (by weight, volume, etc.) are satisfactory. However, it must be recognized that some products, for example fruit and vegetables sold loose or prepackaged, can be, and are, sold by reference to weight or number. Also, the weights and measures legislation allows some semi liquid products (for example icecream) to be sold by reference to weight or volume. Therefore, without changes to the weights and measures legislation, or to the draft Standard, there will still be significant inconsistency in the units of measure used to indicate the unit price of different items of the same product.

It is essential to ensure consistency in the unit of measure used to unit price items within a regulated grocery product. Therefore, add a requirement that if a product is sold by number of items and some items of the product contains 40 or fewer items and some contain more than 40 items, the unit price for **all** items of the product must be indicated in terms of the unit of measure required for the most numerous items. For example if more than 50% of the packs of nappies sold contain more than 40 nappies the unit price provided for all the packs must be per 100 nappies. The same should also apply to products such as toilet paper, freezer bags, dishwasher tablets, etc. This requirement is in the Australian Code.

To avoid confusion about the unit of measure to be used for fresh herbs and spices sold by weight, in 6(2) change *herbs, spices* to *dried herbs and spices*.

In 6(2) change the unit of measurement for flavouring essences or food colouring from per milliliter to per 10 milliliters for the following reasons:

- The Cabinet Decision was that the unit of measure be 10 milliliters.
- To maintain consistency with 10 g which is the unit of measure used for flavouring and food colouring sold by weight.
- To avoid having very small unit prices per unit of measure and loss of comparability of unit prices after monetary rounding up or down.
- Because packages are usually not smaller than 50 mL.
- The unit of measure in the Australian Code is per 10 millilitres.

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

Add to 8(1) a requirement that even when the unit price and the selling price are identical (for example if the weight of a packet of biscuits is 100g or the selling price of loose apples is displayed as \$4 per kg), that the unit price must be provided in the same format, location etc. as other unit prices. This will increase consistency in the provision and display of unit prices and thus increase consumer awareness and use of them.

To ensure consistency in the format used to show the unit price and to encourage consumer friendly display, consider adding to 8(3) a requirement that the display requirements apply to all components of the unit price i.e. for the monetary component and for the unit of measure component. This would encourage displays like **\$5.55 per 100g** and prevent displays like **\$5.44** per 100g or **\$5.44** per 100g.

Add to 8(3) a requirement that the unit price must be displayed accurately. I suggest this be added because it is a basic requirement of any pricing system and is mentioned specifically in sub clause 7.3.1 of the ISO guidance standard on unit pricing (ISO 21041:2018). Furthermore, even though unit prices are usually calculated and printed electronically, it is not uncommon for them to be inaccurate. The ACCC's guidance document for retailers says that the Australian Code's requirement that unit prices be displayed so that they are **unambiguous** means that "the information must be **accurate** and its meaning must be clear". However, the draft Standard does not require that unit prices to be unambiguous and if it is considered desirable to require that unit prices are displayed accurately I consider that the best way to do this is to make it a specific requirement.

I have major concerns about the ability of the requirement of 8(3) (that the size of the print used for the unit price be no less than 25% of that used for the selling price) to result in all unit prices being sufficiently easy for consumers to notice and read, or even for many to be significantly better displayed than they are now. This is because the requirement that the font size be no less than 25 percent of the font size used to for the selling price will still result in many unit prices being in very small font and consequently too difficult or impossible for consumers to notice and read.

For example, a retailer may choose to use a font only 10mm (or even smaller) high for the selling price and the application of the 25% requirement to that would result in the unit price being only 2.5 mm high. In very many situations this would result in the unit price being impossible for most consumers, and particularly for those with impaired vision or mobility, to easily notice and read. An example of this would be a unit price on a shelf label close to ground level, not angled out, and poorly lit and where the unit price is not in bold font, or there is insufficient contrast with the background, or the font type is not easy to read, for example compressed italic.

Therefore, if this requirement is adopted it is essential that complying with this requirement does not mean that all the display requirements are being complied with. The clarity, legibility and prominence requirements should also have to be complied with and these should also be assessed. This is essential because of the wide range of situations where unit pricing will be provided and because size of print is not the only factor that influences a consumer's ability to easily notice and read a unit price.

If the type of prescriptive approach in 8(3)(b) is maintained, I consider the requirement should be that the minimum font size for the unit price be the greater of 6mm or 50% of the selling price print size. This is what the ACCC, in the current version of its Guide for Retailers, suggests for Australia and the NIST recommends for the USA in its Best Practices Guidelines.

I also consider that a measurable outcome-based approach be taken to assessing compliance with the legibility requirement and that if possible this be specified in the Standard. Such an approach would require that any unit price displayed can be read accurately by a person with normal vision without having to move from a normal viewing position i.e. standing upright in a store or sitting a normal distance from a computer screen. This approach would provide retailers and the regulator with an objective and easily-measurable way to assess compliance with the legibility requirement.

In this regard the following extract from one of the published submissions on the Discussion Paper indicates clearly the need to ensure that all unit pricing is easy for consumers to notice and read: "I struggle to read the unit prices where they are shown. I have to get up really close to the shelf labels. For the bottom shelf I have to get down on my knees. For the top shelf there is no easy solution. Though I am 75 years of age I have reading glasses which have been updated in the last year." and "In particular I ask that display requirements suit the average 65-year old standing 1m from the shelf – whether the shelf be at floor level or the top shelf."

To maximise consumer awareness and use of unit prices, a requirement should be added that the same format for the display of the unit price must be used throughout a store or on a website, for example \$ per unit of measure eg \$15.35 per kg not a mixture of that and a different format such as 1kg = \$15.35. Also, requiring use of the format \$ per unit of measure by all retailers should be considered.

To ensure that the impact of unit prices mandated by the Standard is not diminished by retailer use of non-mandated unit prices (for example displaying for canned beverages the unit price of a can additional to the unit price per litre, or for toilet rolls the unit price of a roll as well as the unit price per 100 sheets) a requirement should be added that the print size used for a non-mandated unit price must be no larger or more prominent than that used for the mandated unit price. This approach is adopted in clause 7(4) of the UK's Price Marking Order 2004 which states that *Where, in addition to a unit price, a price per quantity is indicated in relation to a supplementary indication of quantity the unit price shall predominate and the price per supplementary indication of quantity shall be expressed in characters no larger than the unit price.*

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

Yes

1. If the draft Standard is implemented unchanged, New Zealand will have a very suboptimal grocery unit pricing system that will not deliver the benefits needed and possible from a better system. This is mainly because too many unit prices in stores and online will still not be easy enough for consumers to notice and read.

2. Confidential cost estimates provided by retailers have clearly influenced the content of the draft Standard. However, no attempt appears to have been made to estimate the likely consumer benefits of a range of different requirements and to undertake even a simple cost benefit analysis. For example, although the Australian Treasury's 2012 Post Implementation Review of the Australian Code acknowledged how difficult it is to measure the consumer benefits, it did contain some simple cost benefit analysis that clearly showed that the benefits greatly exceeded the costs. The analyses included comparing the estimated retailer and government costs (initial and ongoing) with how much consumers would have to save (on grocery bills and in time spent shopping) to at least equal the costs over time. The Review said "If it were assumed that only 10 per cent of households benefited from the Code and that annual compliance costs were \$15 million, the households that benefit from the Code would need to benefit by \$0.32 per week, or \$16.48 per year." and "It is not implausible that where households actively use unit pricing, they benefit by at least 32 cents per week. To achieve a saving of 32 cents per week, these households would need to do one of any of the following on a typical weekly shopping trip:

- save just under 58 seconds per shopping trip as a result of the Code;
- save just over 11 per cent on a 1kg bag of long grain rice as a result of using unit pricing provided for by the Code; or
- receive an additional 113 grams of rice as a result of using unit pricing afforded for by the Code when the consumer would have otherwise purchased a 1kg bag of long grain rice."

A similar approach to comparing the costs and the benefits of implementing a NZ Standard would indicate clearly that the benefits from requiring grocery retailers to provide very high quality unit pricing that is easy for consumers to notice, read, understand and use, rather than substantially suboptimal unit pricing, will result in much higher benefits than any additional costs.

Also, there appears to be insufficient recognition and account taken of the fact that most of the retailer costs will be one off initial costs whereas the consumer benefits will be ongoing. This is unfortunate and has resulted in a draft Standard that will provide New Zealand with a grocery unit pricing system that will not produce sufficient benefits for consumers and the economy.

3. The draft Standard is based largely on the Australian Code because the Treasury review of that Code published in 2021 concluded that it was operating efficiently and effectively. However, this conclusion is problematic because:

- Many submissions to the review, including those from the regulator and some retailers, as well as from consumers and consumer organisations and academics, identified many problems and requested many changes, however these were not made when a new Code was introduced in 2021.
- Nearly 4000 consumers participated in Treasury's online survey and 74% said that they had experienced difficulty finding and reading unit prices sometimes/often/always.
- A national consumer survey conducted for CHOICE in 2018 showed that very high proportions of consumers had difficulty using the unit prices provided by grocery retailers under the Code. And, in the CHOICE 2022 national survey 71% of participants who used unit pricing in stores had difficulty doing so as did 80% of online users. Most of the difficulties were due to the requirements of, and non-compliance with, the Code.

4. Although, the initial MBIE Discussion Paper included questions about whether grocery retailers should be required to have a "sort and/ or filter by unit price" option on their website, this is not mentioned in the RIS or the other documents published nor in the draft Standard. This is unfortunate because the lack of these functions can substantially reduce consumer use of unit pricing online. For example, in the CHOICE 2022 survey 25% of the online shoppers who experienced difficulty using unit prices had difficulty comparing products of interest side by side and 20% had

difficulty due to being unable to sort/search by lowest unit price. The percentages were even higher for those who shopped only or mainly online.

5. Unless there is effective monitoring and enforcement of retailer compliance with the Standard the quality of the unit pricing system, and consumer use of it, will be suboptimal, as is the situation in many countries, including Australia. Therefore, it is essential that sufficient resources are available, and that there are effective processes, for compliance monitoring and enforcement. Also, this needs to occur not only after the transition period but also during it. If the latter can occur while retailers are developing new systems and modifying existing ones, compliance costs can be considerably reduced. For example, if this had occurred in Australia, a major national grocery retailer would not have been required soon after the end of the transition period to redesign and replace most of the paper shelf labels it had introduced into its stores.

6. New Zealand should use weights and measures, not Commerce Commission, officers to monitor and enforce compliance because they undertake similar activities on a day to day basis and already regularly visit and interact with grocery retailers on weights and measures issues that are very similar to those in the Standard. Compliance with the Grocery Unit Pricing Code would be much higher now if this approach had been taken in Australia. (However, the ACCC did successfully take this approach with the Country of Origin Food Labelling Information Standard 2016.) Also, a proactive not a reactive approach to compliance monitoring and enforcement is required since in Australia, and other countries, high levels of: consumer difficulty using and dissatisfaction with the unit pricing provided; and non-compliance with unit pricing legislation, have not resulted in high levels of consumer complaints to regulators.

7. To reduce implementation costs and facilitate high levels of compliance, It is essential that comprehensive easy-to-understand information be available when the final version of the Standard is made public (not at the end of the transition period) to assist retailers to understand the requirements and to give them guidance on how these might be complied with, especially the display and unit of measure requirements. The latest edition of the ACCC's retailer guidance document published in 2021, contains suggestions/tips on how to effectively display grocery unit prices in Australia, and could be a useful resource for the preparation of similar information for retailers on the New Zealand Standard.

8. An effective publicly funded campaign is needed at the end of the transition period to facilitate and increase consumer understanding and use of the grocery unit pricing regulated under the Standard. The campaign should also include helping consumers to identify and complain about noncompliance. It is particularly important that the campaign makes consumers aware of the many ways that unit prices can be used to compare values and to make more informed choices other than just to compare the unit prices of different sizes of packaged grocery products. For example, uses such as to compare the unit prices of a product when sold loose and in packages, or in different forms (such as fresh and frozen) were included in social media consumer education campaigns with the theme CHECK AND COMPARE run by all Australian state and territory consumer regulators during the Covid pandemic. The ACCC's consumer information sheet "Saving Money Buying Groceries – how unit pricing helps" (published in 2020 in English and numerous other languages) also contains several examples of different ways to use unit prices. Research has shown that providing consumers with information about how to use grocery unit prices has significant effects on what they buy.

9. A comprehensive and independent review of the Standard's effectiveness should be undertaken no later than three years after the end of the transition period. Such a review is needed for many reasons including that: (a) the Standard has many detailed and complex requirements; (b) most

households spend substantial proportions of their incomes on grocery products; (c) overseas failure to review effectiveness has resulted in the persistence of significant systemic problems, failure to adapt to changes in retailing and consumer needs, and sub optimal consumer use of unit pricing; and (e) there may be scope and need to expand the system to cover more grocery retailers and/or other types of retailers.