

Submission template

Exposure draft of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the draft Regulations by 5pm on **12 May 2023**.

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading your submission in full including your name by making a submission, unless you clearly specify otherwise. Please note that submissions are subject to the Official Information Act 1982.

Submission instructions

Please make your submission as follows:

1. Fill out your name and organisation in the table, "Your name and organisation".
2. Fill out your responses to the consultation document questions in the table, "Responses to discussion paper questions". Your submission may respond to any or all of the questions in the discussion paper. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues in the "Other comments" section below the table.
4. When preparing to send your submission:
 - a. Delete these first two pages of instructions.
 - b. Include your e-mail address and telephone number in the e-mail or cover letter accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
 - c. If your submission contains any confidential information:
 - i. Please clearly indicate this on the front of your submission or in the accompanying cover letter or e-mail. Any confidential information, together with reasons for withholding the information, should be clearly marked within the text of your submission. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Please provide a separate version of your submission excluding the relevant information for publication on MBIE's website.
 - d. If you do not wish for your submission to be published please clearly indicate this in the cover letter or e-mail accompanying your submission. However, please note that submissions remain subject to request under the Official Information Act 1982. MBIE will consult with submitters when responding to requests under the Official Information Act 1982.
5. Send your submission:

- as a Microsoft Word document or searchable PDF to consumer@mbie.govt.nz (preferred), or
- by 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.

Submission on the exposure draft of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023.

Your name and organisation

Name	James Radcliffe, General Counsel james.radcliffe@countdown.co.nz
Organisation (if applicable)	Woolworths New Zealand

Responses

Statistical Information	
1	<p>Do you consider 12 months to be an appropriate transitional period before compliance is mandatory?</p> <p>Yes - Woolworths New Zealand (WWNZ) considers 12 months to be an appropriate transitional period before compliance with the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023 (Regulations) is mandatory.</p> <p>WWNZ supports the adoption of an industry-wide unit pricing regime to ensure unit pricing is as effective as possible for New Zealand consumers. WWNZ has proactively displayed unit pricing across our Countdown store network for several years.</p> <p>This submission should be read in conjunction with WWNZ’s Submission on the Ministry’s of Business, Innovation and Employment’s Discussion Paper on Mandatory Unit Pricing for Grocery Products (July 2022) (WWNZ’s Mandatory Unit Pricing Submission).</p>
2	<p>Please explain why you think a 12-month transition period is sufficient or not?</p> <p>WWNZ believes that a 12-month transition period is sufficient because it would provide an appropriate amount of time for retailers to implement new unit pricing displays and also allow for necessary system enhancement or reconfiguration to be undertaken, such as updates to shelf ticketing templates, electronic ticketing and back-end merchandise systems. We are also pleased to see that the 12-month transition period applies equally to all parties.</p>

	For WWNZ, the 12-month transition period would be sufficient to implement unit pricing at WWNZ's SuperValue and FreshChoice franchised stores, which do not currently display unit pricing.
3	Do you have any comments on the key definitions in regulation 3?
	WWNZ recommends that a definition of 'purchase price' be added to the key definitions in regulation 3 (see our response to question 6 below).
4	Do you have any comments on regulation 5?
	<p>WWNZ is generally pleased to see that the Regulations would apply to all retailers that sell the prescribed products categories, to allow consumers to make accurate comparisons and decisions. Furthermore, WWNZ:</p> <ul style="list-style-type: none"> • supports the store size threshold of 1,000 square meters, as this would ensure that large bricks and mortar retailers are included but smaller retailers are excluded; and • supports the inclusion of online retailers to ensure that competitors are competing based on, and consumers can access, equivalent unit pricing information regardless of store format (bricks-and-mortar or online).
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.
	<p>WWNZ supports the exclusion of alcoholic beverages, and tobacco and vaping products from the definition of 'regulated grocery products', which means that alcoholic beverages and tobacco products would be excluded from unit pricing requirements. This will reduce incentives that may result in irresponsible consumer decisions, particularly in relation to alcohol where a purchase decision may be based on the lowest price per unit of alcohol. WWNZ also supports the exclusion of products sold at reduced prices, different products sold as bundles, different products sold at the same price, and meals, snacks or beverages prepared at the store for immediate consumption.</p> <p>WWNZ also supports a principled approach to the other categories of excluded products, that are broad and flexible to better accommodate new products and future proof the unit pricing regime, rather than providing an exhaustive list. This would also ensure that any grocery retailers, including potential new entrants, that choose to retail products that are not typically part of a consumer's basket such as general merchandise or homeware, are exempt. In relation to the exempted category of different products sold as a bundle, WWNZ also supports the fact that this exemption does not apply to multiple similar items sold within a single package (e.g. multipack of toothbrushes) but only applies to a bundle of different items (e.g. toothbrush, toothpaste and floss). This aligns with the purpose of the unit pricing regime, which is to help consumers make informed purchasing decisions and promote competition in the retail grocery sector.</p>
6	Do you have any comments on the requirements for where unit pricing must be displayed, as set out in regulation 6?

	<p>WWNZ supports the requirement that the unit price of the product must be displayed if the purchase price of a regulated grocery product is displayed in a store, online where the product is sold, or in any online print / static advertisement of the product (but not in audio or video advertisements).</p> <p>Regulation 6 refers to the ‘purchase price’, however no definition of ‘purchase price’ is provided in the Regulations. WWNZ is concerned that this may cause ambiguity as to the scope of purchase price and whether this includes regulated grocery products that are advertised to be purchased for a certain amount of bonus or loyalty points. For example, some grocery retailers use advertisements, such as direct to consumer emails that are sent to consumers who are part of a loyalty programme and that allow consumers to purchase products using loyalty or bonus points.</p> <p>WWNZ’s view is that these advertisements should not be required to display unit pricing in circumstances where a product can be purchased for bonus or loyalty points (rather than money) given the issues in seeking to calculate and communicate a unit price in such circumstances.</p> <p>Furthermore, WWNZ recommends that a definition of ‘purchase price’ is added to regulation 3 to make it clear that this purchase price is the sum of money paid for a regulated grocery product (including GST) and does not include loyalty points or bonus points that can be used to purchase products. A similar definition is provided under the Australian regime, where ‘selling price’ is defined as the final price (including GST) at which the grocery item is sold by a prescribed grocery retailer to a consumer. Such a definition would provide clarity, avoid ambiguity, and align with the purpose of the unit pricing regime, which is to help consumers make informed purchasing decisions and promote competition in the retail grocery sector.</p>
7	Do you have any comments on the advertising exemption set out in regulation 9?
	<p>WWNZ supports the advertising exemption in regulation 9 under which a regulated grocery product advertised for sale using a video or audio medium is not required to display unit pricing. As set out in WWNZ’s Mandatory Unit Pricing Submission, WWNZ is of the view that unit pricing is not valuable for consumers in audio and video media because with such advertising, a consumer often does not have time to process more detailed information about a product offer in the same way that they may in print media or at the shelf itself.</p>
8	Do you have any comments on regulation 7?
	<p>WWNZ supports the Cabinet’s approach to adopting consistent standard units of measurement, to ensure that unit prices are expressed in a uniform and consistent manner. We support the standard units of measurements related to products sold by volume, weight, length, area and number of items. In particular, WWNZ is pleased to see that 100 milliliters and 100 grams are the relevant units of measurements for products sold by volume and weight.</p> <p>WWNZ also supports the non-standard units of measurements in regulation 7(2) for certain categories of products, including meat, seafood, fruits and vegetables sold by weight, herbs, spices, powdered sauces or stocks, flavouring essence, and beverages. However, WWNZ is concerned that this prescriptive approach may be problematic. This is because it may be problematic to have the same measurement unit for all products within a product category.</p>

For example, in the broader category of “beverages”, it does not make logical sense to use the same unit of measurement for a can of soft drinks and a box of tea bags. It is unclear whether a product like a box of tea bags would fall within the category of “a product sold by number of items” under regulation 7(1) or as a “beverage” under regulation 7(2).

As such, whilst the principle of consistency within a category is something that WWNZ supports, WWNZ strongly recommends that the Regulations allow for exceptions, if products are sufficiently different, despite being in the same category, or the fundamental retail proposition is such that a unique measurement unit makes more sense for consumers.

One way to allow for exemptions, as set out in WWNZ’s Mandatory Unit Pricing Submission, would be to add an exemption to regulation 7 in relation to non-standard unit measurements, which allows different unit quantum to be used when a retailer can demonstrate that the majority of the products in a product segment are sold in a sufficiently unique size. For example, if the majority of the products in a product segment are sold in a quantity of larger than 1 kilogram, then the retailer should be able to use an alternative unit, such as 10 grams. Retailers should then be allowed to apply these exemptions based on their specific product offerings, which will ensure that consumers are able to make consistent unit measurement comparisons between similar products. Therefore, WWNZ would strongly recommend amending the Regulations to insert such an exemption, to ensure that the unit pricing regime is fit for purpose and allows for some flexibility. This flexibility would in turn assist retailers be more compliant and allow consumers to have access to unit pricing information to make more informed purchasing decisions.

WWNZ is also concerned that regulation (7), as currently drafted, does not account for dual weighted products, for example that may be sold by weight, but refer to the quantity of the product that can be made using that product (for example, an aerosol canned chocolate mousse product that is sold in a 250 gram can, but is market as “mak[ing] 1.3L” of product).

9

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

WWNZ does not hold a view on how the unit pricing must be displayed in terms of dollars and cents. WWNZ supports the combination of prescriptive and general display requirements that require the unit price to be displayed clearly and legibly, in a font size of no less than 25% of the purchase price’s font size, prominently, and in close proximity to the purchase price. As outlined in WWNZ’s Mandatory Unit Pricing Submission, WWNZ is of the view that the unit price being displayed prominently, in close proximity to the purchase price, legibility and unambiguously are important general principles for the display of unit pricing.

As outlined in WWNZ’s Mandatory Unit Pricing Submission, we note that the proposed prescriptive requirements may pose some risk in the digital environment, where technology may be sourced from third parties and not always in the control of the retailer. Retailers may not have the features necessary to support the font size requirement of no less than 25%. Implementing this prescriptive requirement is likely to be more costly and difficult for retailers, as opposed to having well-defined general principles. Further, price ticketing

	<p>technology is evolving quickly, with electronic shelf labelling becoming an increasingly common feature of retail stores. This prescriptive requirement might be impractical for such new technologies, or could risk stifling new innovations.</p> <p>WWNZ is also pleased to see that if a unit price is displayed per item, the type of item can be displayed as the unit (e.g. per nappy). This will provide helpful unit pricing information to consumers and allow consumers to compare between competing products based on the item that they are purchasing.</p>
10	Do you have any general comments regarding the regulations?
	<p>WWNZ strongly supports unit pricing as a valuable tool to help consumers make informed decisions when shopping in New Zealand supermarkets. We know it's a tough time for New Zealanders, and our absolute priority remains making sure the food on our shelves is as affordable as possible for our customers. WWNZ is also working to make pricing clearer in stores. Electronic shelf labels are now live in 30 stores, with another 60 stores to have these by the end of 2023.</p> <p>WWNZ supports the Regulations with the minor changes suggested above. In our experience, the industry will be able to successfully implement unit pricing in conjunction with clear guidelines but will need degrees of flexibility in the way unit prices are communicated in some categories. With the amendments proposed in our submission, our view is that the Regulations will provide both the necessary clarity and the necessary flexibility to deliver the best outcomes for consumers.</p>