

PUBLIC VERSION

MBIE DISCUSSION PAPER: MANDATORY UNIT PRICING FOR GROCERY PRODUCTS (MAY 2023)

SUBMISSION OF FOODSTUFFS NORTH ISLAND LIMITED – 25 MAY 2023

INTRODUCTION

- 1 Foodstuffs North Island Limited (**FSNI**) appreciates the opportunity to provide input into MBIE's consultation on the draft Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023 (**Regulations**).
- 2 FSNI previously provided submissions on this topic to the Commerce Commission (**Commission**) as part of its market study into the retail grocery sector and on MBIE's May 2022 consultation on the design and scope of mandatory unit pricing for grocery products in New Zealand.¹ Where applicable, we have referenced those earlier submissions.
- 3 In preparing our submissions, we have closely considered the requirements of the Australian Competition and Consumer (Industry Codes – Unit Pricing) Regulations 2021 (**Australian Code**), which we consider a useful starting point. We have also provided detail in relation to FSNI's current unit pricing practices, where helpful.
- 4 FSNI already uses unit pricing in many of its stores. FSNI supports MBIE's view that unit pricing offers a number of benefits to consumers, including allowing them to directly compare product prices using standard units of measurement. This in turn helps customers make more informed purchasing decisions, and also drives competition. We agree that simplifying and standardising unit pricing practices across New Zealand grocery retailers, on core grocery products, with clear and simple rules set in the Regulations, will be beneficial, provided this does not come at the expense of flexibility, innovation and customer experience. One aspect of ensuring this is to adopt a principles-based approach in preference to high levels of prescription. Further, implementation costs should be proportionate to expected consumer benefit, and there will need to be an achievable transition period.
- 5 Confidential information has been redacted from this version.

SUMMARY OF KEY POINTS

- 6 FSNI acknowledges the work undertaken by MBIE and MBIE's consideration of our constructive engagement, and we are comfortable with many aspects of the draft Regulations.
- 7 FSNI makes the following key points in this submission:
 - 7.1 **The standard should have broad industry application:** Unit pricing assists consumers to make informed decisions. To be of most benefit to consumers, the Regulations should, and do, apply broadly and consistently across the retailers who are required to comply. However, it would be helpful for the Regulations to be clearer about what is required if a large retailer who sells core grocery products, not captured by the

¹ FSNI Submission on Grocery Market Study Draft Report and Post-Conference Submission on the Grocery Market Study Draft Report and FSNI Submission on Mandatory Unit Pricing Discussion Paper dated 11 July 2022 (**Earlier Submission**).

Regulations, wishes to voluntarily display unit pricing on core grocery products. It would be beneficial to consumers if there was consistency in units used, and the same display obligations. We also consider it would be better, balancing high implementation costs against the benefits for customers, if smaller grocery stores were only required to show unit pricing on a voluntary basis, on products selected by them, rather than across the whole store.

- 7.2 **Unit pricing requirements should be proportionate to benefit and flexibility is helpful:** Although most of our ticketing types can comply with the key display requirements (including a display at no less than 25 percent of the font size) we may struggle with some of our smallest electronic shelf labels². As well as driving up costs, if unit pricing requirements result in larger tickets (ESLs or paper) being required, this would ultimately impact shelving systems and reduced product facings, which in turn reduces the number of products which can be held on shelves. This would mean fewer products on offer and poor consumer outcomes. Some flexibility would assist in those types of situations. In addition, the advertising requirements, which have potentially high implementation costs, do not have a proportionate benefit to consumers (as unit pricing is far more likely to be relevant, and useful to consumers, at the point of purchase when a comparison is being made across similar products).
- 7.3 **Transitional periods are necessary:** The exact scope of the requirements will affect the duration of lead times that the industry needs in order to comply. A reasonable transitional period is necessary, consistent with the Commission's recommendation.³ Without knowing the exact final requirements of the Regulations it is challenging for us to provide an exact answer for how much of transition time is required for our stores. However, we believe 18 months transition would be reasonable.
- 7.4 **Clarity is needed when two different prices and unit prices may apply:** For some of our promotional types there is potential for two prices to apply. This is generally when we have a promotion with qualifying requirements⁴. A significant issue we require clarification on is, what unit pricing needs to be displayed when two prices may apply? We would appreciate the Regulations clarifying the requirement. We think consumers would benefit from the display of the *most likely* unit price. If two unit prices must be displayed this would likely be very challenging for us to comply with across all our ticketing types and would result in high compliance and implementation cost with, in our view, little benefit to consumers.

FSNI'S CURRENT APPROACH TO UNIT PRICING

- 8 FSNI displays unit prices for most product categories sold in New World and PAK'nSAVE stores, and larger Four Square stores. Unit pricing is shown on instore paper shelf tickets, electronic shelf labels ("ESLs") and displayed on our e-commerce sites and mobile apps.
- 9 FSNI uses a range of ticketing solutions. ESLs⁵ and/or automated paper tickets are the most commonly used ticketing solutions. Ticketing is enabled through our SAP IT system.⁶ Both ticketing solutions display unit prices to the customer in store along with the retail price. ESLs rely on coded inputs to produce a digital ticket, and are widely regarded as a leading technology across the industry. However, the software has constraints. Most display formats are restricted and do not allow for significant customisable formatting, for example, no dynamic or automatic

² Mostly used for herbs and spices, baking items, food colouring and small items of general merchandise.

³ Commerce Commission, Final Report, at [9.226.5], cited in Discussion Paper, at [13].

⁴ See paragraph 68 below for examples of these types of promotions.

⁵ Not all stores have ESLs, however they are used in most FSNI's PAK'nSAVE and New World stores.

⁶ SAP refers to FSNI's software/ IT system that is currently implemented across all New World and PAK'nSAVE stores and some Four Squares.

scaling of text to fit, line spacing control etc. There is a variety in the size of ESLs we use, with smaller ESLs having less space to display information. Some of our older ESL models use set areas for specific information displayed at specific sizing and do not have the option to change format.

- 10 All New World and PAK'nSAVE stores operate on SAP and are equipped to provide unit pricing using ESLs and/or paper tickets.⁷ 56 of 166⁸ Four Square stores also operate on SAP and display unit pricing accordingly. The decision not to roll out SAP to all Four Square stores to date reflects that many Four Square stores are significantly smaller than New World and PAK'nSAVE stores. FSNI intends to migrate "non-SAP" Four Square stores onto a new system that can accommodate unit pricing. However, as previously explained to the Commission, we expect this migration to take several years to complete due to the size and complexity.
- 11 We have completed a comprehensive review of unit pricing practices across each of our retail banners (PAK'nSAVE, New World and Four Square). In increasing our unit pricing offering, we have generally sought to align with relevant aspects of the Australian Code, and considered guidance material produced by the ACCC. As part of our work, we have reviewed ticketing templates and improved unit price readability where possible (this has included considering font size used, type face and condensing).
- 12 Our work to increase the number of products showing unit pricing is proceeding in two phases:
- 12.1 Phase 1: increasing the products showing unit pricing. This work is completed and has resulted in around 95% of eligible in-store products displaying unit prices (excluding those on promotions with two potential purchase prices or product we anticipate an exemption from unit pricing will be granted for).⁹
- 12.2 Phase 2: displaying unit prices for promotions with two potential purchase prices¹⁰ outside of the Australian Code "complex promotion" exempt scenarios and investigating opportunities to increase the overall coverage of our unit pricing. This work requires significant IT system upgrades and resources. Some of this work is on hold until we have greater certainty on final Regulations' requirements for promotions with two potential purchase prices.
- 13 FSNI recognises that many customers now prefer to browse and shop for groceries online, via our websites or apps. Our unit pricing strategy reflects this, and we now display unit pricing at the product grid and individual product tile pages on our PAK'nSAVE and New World websites and apps (other than for anticipated exempted products and for promotions with two potential purchase prices).

FSNI'S RESPONSE TO MBIE'S QUESTIONS

- 14 Below, we provide a response to each of MBIE's specific questions.

⁷ Stores are individually owned, and make their own decisions as to whether to take up ESL technology. Some stores use a combination of ESL and hardcopy ticket labels.

⁸ As of 18 May 2023. All Four Squares with a retail floor space of 1,000 square metres or more operate SAP and are therefore equipped to provide unit pricing using ESLs and paper tickets in store in accordance with the requirements of the Regulations.

⁹ Consistent with the Australian Code, we have exempted a number of products from unit pricing, on the basis it is not appropriate, see our Earlier Submission for details of these.

¹⁰ The number of products on promotion with qualifying requirements with two potential purchase prices will depend on the banner and store size. [REDACTED]

- 15 Our proposed changes to the Regulations and the reasons for them are explained in detail below. Each of our proposed amendments are shown collectively in a “marked up” version of the Regulations we have included in the annexed schedule.

Questions 1 & 2: Do you consider 12 months to be an appropriate transitional period before compliance is mandatory? Please explain why you think a 12-month transition period is sufficient or not?

- 16 Without knowing the exact final requirements of the Regulations, it is challenging to provide an exact answer for how much transition time is required for our stores.
- 17 Following our review of the initial draft of the Regulations, the key areas of work we anticipate we may need to undertake include:
- 17.1 *Advertising:* We currently do not show any unit pricing in any of our advertising. We will need to establish new systems and processes for this and will need to amend our existing advertising templates for all types of advertisements in which unit pricing would apply.
- 17.2 *Display requirement:* From our initial scoping review, we are generally comfortable most of our ticketing types can comply with the key display requirements but would struggle with some of our smallest ESLs¹¹. Notwithstanding this, we anticipate work and costs would be incurred for the following:
- (a) **ESLs:** Some of our older style ESLs would need to be replaced and some of our smaller ESLs may need to be replaced with larger ESLs.
 - (b) **IT systems:** If FSNI needs to roll-out new ESL templates then there would be associated IT design and other costs.¹² There would also be IT system costs associated with displaying unit pricing in digital and other ‘still’ advertising. Systems will need to be scoped, sourced and there will be lengthy lead times for delivery of technology.
 - (c) **Physical in-store reconfiguration:** If larger tickets (whether these are ESLs or paper tickets) are needed to accommodate additional text and/or larger fonts, this would require physical displays to be reconfigured and the number of product facings available on shelf may reduce most likely in areas which use our smallest tickets. This would, in turn, mean higher costs, fewer products on offer and ultimately a poor consumer outcome.
 - (d) **Print and production work and costs:** For stores on automatic hardcopy ticketing systems or bespoke manual tickets, printing significant number of tickets, and related production costs to relay the store, may be significant. Some stores rely on bespoke print and production software and facilities, which may not be able to support significant variations.
 - (e) **Staffing impacts:** There is a real chance of increased staffing and related labour costs, if there is a need to hire new staff, or re-deploy staff from existing programmes, if unit pricing cannot be accommodated by existing systems.
 - (f) **Scales:** We will need to make changes to our scale integration and management software and update some of our older scales used in our instore bakeries and

¹¹ Mostly used for herbs and spices, baking items, food colouring and small items of general merchandise.

¹² FSNI can provide further information regarding the different categories of likely IT cost if required.

delis. Alternatively, we may need to find a different ticketing solution for some bakery and deli products.

17.3 *Four Squares*: Subject to the acceptance of our suggested changes in paragraph 27 below, we may need to undertake work to ensure our smaller Four Squares (which do not have SAP) are not captured by the Regulations. In addition, our Four Square website currently does not show unit pricing (as customers cannot currently purchase products via the website) but this will need to be updated due the website being captured within the new advertising requirements.

18 However, we anticipate we could ensure compliance with the Regulations within 18 months of the final form of the Regulations being available (depending on the time of this, which could be within 12 months of the Regulations come into force).

19 As noted above, we have already done a lot of work on unit pricing and, in our opinion, a 12-month transition period for any impacted grocery retailers commencing their unit pricing display work only now, would be very challenging.

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

20 We have proposed amendments as marked up in Schedule 1. An overview of the reasons for these is provided below.

21 For clarity for the reader, we suggest that the definitions of 'floor space' and 'online' be shifted from regulation 5(4) and included in the interpretation section in regulation 3. The definition of 'online' is also not just used in regulation 5 (and therefore should sit in the interpretation section).

22 We would suggest a change to the wording of the definition of 'floor space'. These would be to clarify that floor space is a reference to the *retail* floor area and does not include the 'back of house'. This would be in line with the corresponding full definition of 'floor space' in the Australian Code.¹³ The definition would become:

22.1 "floor space means the continuous internal retail floor area of a store (other than any area provided for the consumption of food)"

23 We would suggest a change to the wording of the definition of 'product' to remove any services from the requirement to show unit pricing. Services supermarkets sell can include gift cards, lotto, carpet cleaner hire and delivery charges. There is no applicable unit of measure for these and therefore services should not be captured as 'products' within the regime. There is also a cross referencing error in the definition to be corrected (subclause 1 is used twice in the numbering). With these changes the definition would become:

product means each individual item, or package, of goods (for example, a watermelon or a package of toilet rolls) *(see also subclause (2))* **but excludes any services** ¶

¹³ This definition seems to be replicating the definition of "floor space" in the Australia Code. However, that definition has the words "in relation to retail premises" at the start of that term, with "retail premises" itself a defined term, being essentially the retail floor area. See below the relevant definitions from the Australia Code:

floor space, in relation to retail premises, means the continuous internal floor area of the premises, but does not include any floor space provided for the consumption of food-based grocery items at the premises. ¶

retail premises means premises in which grocery items are displayed for retail sale to consumers. ¶

Question 4. Do you have any comments on regulation 5?

Suggested drafting changes to regulation 5(1)

24 Subject to our other comments below, if MBIE would prefer to continue with the current definition of 'regulated grocery product' we would suggest some changes.

24.1 The reference to 'goods' should be replaced with 'products', as this is the term used in the interpretation section.

24.2 We understand the intention is to not capture wholesalers within the regime (as unit pricing is designed to benefit consumers). Our Gilmours wholesale stores sell primarily to business and trade customers but may sell to individual consumers from time to time, as would other grocery wholesalers. We would therefore suggest the definition of regulated grocery product be amended so that applicable retailers are those which sell *primarily* to consumers.

24.3 With these suggestions regulation 5(1) would be amended to read:

5 → Regulated grocery product
(1) → A product is a regulated grocery product if it is sold—
(a) → online by a person who sells ~~goods~~ products in all of the product categories in subclause (2) ~~primarily~~ to consumers; or
(b) → at a store—
(i) → at which ~~goods~~ products in all of the product categories in subclause (2) are sold ~~primarily~~ to consumers; and
(ii) → that has a floor space of 1,000 square metres or more; or
(c) → at a store—
(i) → at which ~~goods~~ products in all of the product categories in subclause (2) are sold ~~primarily~~ to consumers; and

Voluntary application to smaller grocery retailers and larger grocery retailers not captured within regulation 5(1)(b)

25 The way the definition in regulation 5(1)(c) is currently drafted means if a small grocery store sells *just one* product displaying unit pricing¹⁴ then everything in the store becomes a “regulated grocery product.”¹⁵ Consequently, every product sold would need to display unit pricing, due to the application of regulation 6(1).

26 As explained at paragraph 10, some of our smaller Four Squares (those with a retail floor space of 1,000 square metres or less) are not likely to implement SAP and currently do not have a software solution to ensure full compliance with unit pricing. Due to the high implementation costs of the unit pricing regime for those stores, a likely outcome would be for FSNI to instruct those stores to remove any unit pricing in store to avoid being captured within the regime. This would not be of benefit to our customers when unit pricing could be available.

27 We suggest a better outcome, balancing high implementation costs against the benefits for customers, would be that if a smaller grocery store voluntarily displays unit pricing on some core grocery products, then those specific products should comply with the requirements of the Regulations, but the remainder of the store's products should not be required to have a unit price shown. This could be achieved by these amendments to regulation 5(1)(c):

¹⁴ See the wording in regulation (1)(c)(iii) “at which a unit price is displayed for any product”.

¹⁵ Other than the products which fall within the exceptions in regulation 5(3).

- (c) → at a store—¶
- (i) → at which ~~goods products~~ in all of the product categories in subclause (2) are sold primarily to consumers; and¶
- (ii) → that has a floor space of less than 1,000 square metres; and¶
- (iii) → at which a unit price is displayed for ~~any that product so long as that product is of a product categories in subclause (2) other than a product that is sold by weight or measure and is not prepackaged when it is offered for sale).~~¶

28 This leads to a related issue of how other large retailers of core grocery products, not captured by the definition in regulation 5(1)(b), should display unit pricing on core grocery products they sell. To us, there is a gap in the legislation for this. For example, if you are a large retailer and you sell most of the product categories in regulation 5(2) but not all (say for example, you didn't stock medicines or fresh fish) and you wanted to display unit pricing on say, your eggs and sugar, how legally would you be required to do this? As this store would not satisfy the requirements of Regulation 5(1)(b)(i), the eggs and sugar example, would not be within the current definition of "regulated grocery product"¹⁶ and the large retailer could display unit pricing as they saw fit using whichever unit of measure and format they selected. If the policy intention is to help consumers compare grocery prices on core grocery products more easily then we suggest that any *voluntary* display of unit pricing by larger retailers on core grocery products, covered by the product categories listed in regulation 5(2), should be done in line with the requirements of the Regulations.

29 If these suggestions were to be incorporated into the Regulations we suggest it may be easier to understand the Regulations if there were separate definitions of the types of retailers covered (such as a 'Compulsory Retailer' and a 'Voluntary Retailer'¹⁷) and then a different definition of the products the unit pricing regime applies to (such as a redrafted 'regulated grocery product' definition), rather than the current combined definition created by regulation 5(1) and (2). If it would be of assistance to MBIE, we would be more than happy to prepare suggested drafting for this.

Product categories in regulation 5(2)

30 We agree it would be sensible to have a consistent definition with the Commerce Act 1986 as a starting point but note that the definition is used in a very different context in that Act. Some tightening of the drafting for some product categories (by including reference to 'fresh') may be appropriate to avoid ambiguity and unintended consequences when considering types of retailers to be covered by the unit pricing regime. For example, a small local dairy may sell cans of peaches, cans of tuna and small packets of ham – is it intended that would satisfy regulation 5(2)(d), (f) or (g)?

Question 5. Do you have any comments on the "exempt products" set out in regulation 5(3)?

31 As outlined in our Earlier Submission, we agree that it would not be appropriate to show unit pricing on alcoholic beverages, tobacco or vaping products. However, we consider it would be beneficial to make the following amendments for clarity:

- 31.1 Include an exclusion for smoking accessories (as that term is defined in section 2 of the Smokefree Environments and Regulated Products Act 1990) that are treated as "dark" and therefore are not visible to customers; and

¹⁶ As the requirement in regulation 5 (1)(b)(i) to sell in all product categories would not be satisfied.

¹⁷ The Australian Code for example uses the definitions of "participating grocery retailers" for those with voluntary compliance and "prescribed grocery retailer" for all those who must comply with the Code.

31.2 Use the definition of 'alcohol' in the Sale and Supply of Alcohol Act 2012.

32 We agree with the other exempt products listed.

Question 5.1. Is there anything that you think is missing, or anything that you think should not be exempt? Please provide your reasoning.

33 As explained at paragraph 23, we believe services should be exempt. If our suggested change to the definition of "product" is not accepted then alternatively an exemption for services could be included in regulation 5(3).

34 As stated in our Earlier Submission we suggest the inclusion of a new category exclusion for "bakery items" that are prepared in store and have a pricing label attached to them item instore. Where this occurs, we recommend that the pricing labels should not need to show the unit price. The size and dimensions of individual bakery products vary (e.g. cakes, baguettes, a 12 pack of rolls, a 6 pack of muffins), which makes unit pricing an unhelpful measure. In addition, these types of products would typically have a pricing label printed in store from the store's scales. There are limitations to what the software which runs the scales is able to do for more complicated types of unit pricing, for example a "per muffin" or "per item" unit price would not be possible currently if a 6 pack of muffins was prepacked by the store. New scales may also be required to be purchased for some stores. We suggest this is a department where the benefit to consumers would be relatively low¹⁸ but implementation costs could be significant. In most cases, unit pricing would be available to the customer on the shelf ESL or paper ticket for the product and if our submission in paragraph 41 is accepted then this category exclusion would not be required.

35 We are strongly supportive of the "each" exception in regulation 5(3)(c).

36 However, we think a similar exception should be granted for products sold by weight, and so the purchase price is already on the ticket using the unit price. This would be most relevant in the meat, fruit and vegetable, seafood, deli and bulk food departments. In those situations the unit price is simply repeating the same information twice on the ticket. If the customer wishes to undertake a unit price comparison with say, a different sized pre-packaged product, we believe customers will be able to easily compare purchase price by weight of the weighed product with any pre-packed product's unit price.

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

Display of price – how many times and when?

37 Pricing is displayed in our supermarkets and grocery stores multiple times during a customer's purchasing journey in the store (whether this is in the physical store or online). For example if a shopper, Jodie, visits a physical store to purchase a packet of cookies she could see price in each of the following situations:

37.1 At the main biscuit and cookie shelf, on an ESL or paper ticket, when deciding which packet of biscuits to buy;

¹⁸ Most bakery items would be individual items and likely satisfy the "each" exception in regulation 5(3)(c) and therefore not need a unit price.



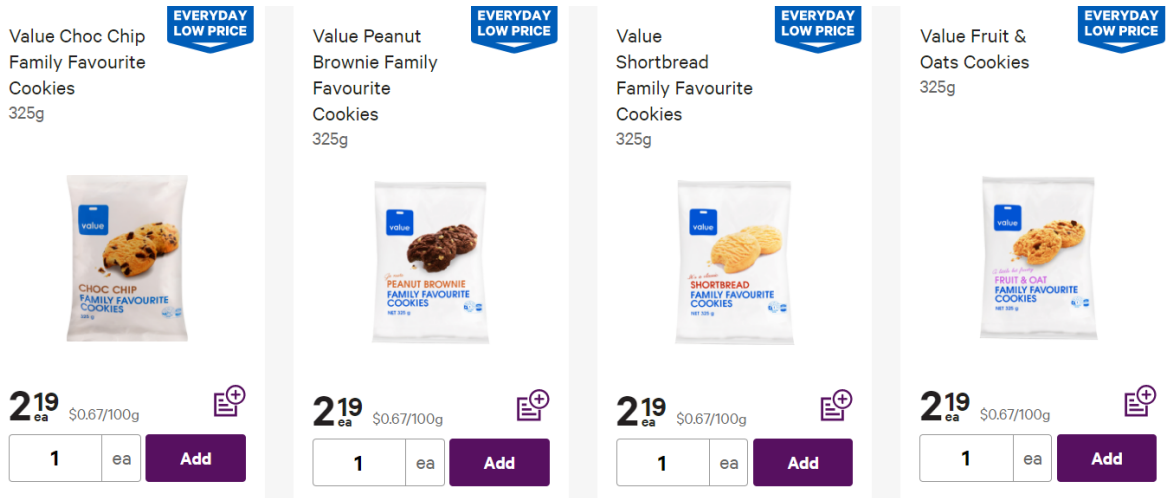
37.2 Possibly on an aisle end display or on an 'aisle of value', if that packet of cookies was also promoted there. It would have a price at shelf on an ESL or paper ticket but may also have price displayed on a large aisle end poster;

37.3 At the checkout on the display screen at both a staffed checkout and a self checkout; and

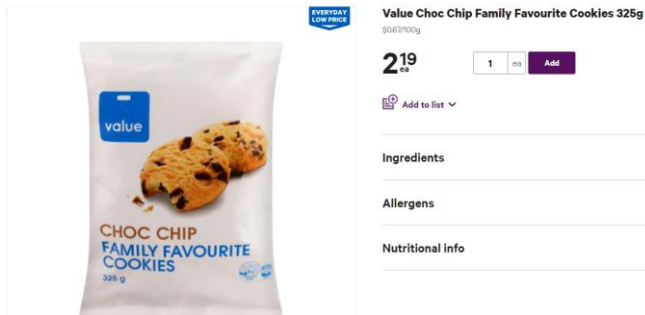
37.4 On her till receipt.

38 If Jodie was purchasing these biscuits online she could see price in these situations:

38.1 At a product grid level which displays if customers search for the product:



38.2 On the product tile page – a more detailed product description page which displays when a customer clicks on a product:



38.3 In her interim trolley view:

> Your Trolley 3 items

Groceries \$10.37

Plus service and bag fees \$1.00

Proceed to Checkout

EVERYDAY LOW Value Choc Chip Family Favourite Cookies 325g **\$2.19**

1 ea - +

EVERYDAY LOW Value Wheat Biscuits 1kg **\$5.99**

1 ea - +

EVERYDAY LOW Value Peanut Brownie Family Favourite Cookies 325g **\$2.19**

1 ea - +

38.4 At the online checkout view:

Your Trolley

You're collecting from **New World Victoria Park** [Select Timeslot](#)

Biscuits & Crackers

EVERYDAY LOW Value Choc Chip Family Favourite Cookies **2¹⁹** ×

EVERYDAY LOW Value Peanut Brownie Family Favourite Cookies **2¹⁹** ×

Breakfast Cereals

EVERYDAY LOW Value Wheat Biscuits **5⁹⁹** ×

Order Summary
3 Items

Promo code [Apply](#)

Groceries \$10.37
Service Fee \$0.00
Bag fee \$1.00

Estimated total \$11.37
Incl. GST

Checkout

[Save trolley to a list](#)
[Print](#)

38.5 On the physical paper receipt, or the email receipt, provided to Jodie when the cookies are delivered.

38.6 In addition, she could also see pricing from a shoppable recipe for cookies on the New World website:

Shop ingredients

Chocolate cookies

🍴 Serves 30 ⌵ ⌴ ⌚ Cooking time: 30 mins

✓  Pams Creamy Sweetened Condensed Milk 395g [Swap](#) - 1 + **2⁸⁹**

✓  Mrs Rogers Natural Vanilla Essence 38ml [Swap](#) - 1 + **1⁸⁹**

- 39 To us, it is unclear from the wording of regulation 6 if a unit price would need to be displayed in *each* of these examples. We do not think it is necessary on all places product and price is displayed as explained further below.

Unit pricing helpful when making purchase decision

- 40 Unit pricing is helpful when a customer is making a purchase decision. We don't believe it adds value to customers (and would be very challenging to execute) if it needs to then be replicated again for the other multiple places pricing is then subsequently displayed to the customer and we don't believe this was MBIE's intention. Using the cookie example above, it helps Jodie at the time she is selecting her cookies but not later once the cookies are in her (online or physical) basket or when her purchase is being processed at the (online or physical) till/checkout or once the sale has occurred.

- 41 We suggest to clarify this, that the wording in regulation 6(1) be amended slightly as follows:

6 → Unit price must be displayed

(1) → ~~If the purchase price of a regulated grocery product is displayed in a store or online where the product is sold, offered for sale or in any advertisement for the product, the unit price for the product must also be displayed.~~

(2) → ~~The unit price for a product must be—~~

(a) → ~~worked out in accordance with regulation 7; and~~

(b) → ~~displayed in the way required by regulation 8.~~

(3) → ~~This regulation is subject to regulation 9.~~

How many times? Each or once?

- 42 However, even if this change was adopted, it is unclear to us how many times a unit price would need to be displayed. Using our example in paragraph 37.2, would it be sufficient that the unit price is displayed once on the ESL or paper ticket and not again on the aisle end poster?

- 43 Our understanding is that the Australian Code has been interpreted as only requiring the display once on the ESL or paper ticket. We consider this is an appropriate interpretation and most relevant to customers.

- 44 If MBIE's intention is for it to be sufficient that the unit price is shown at least once (as opposed to each time) then regulation 6(1) could be amended as follows:

44.1 "if the purchase price of a regulated grocery product is displayed in store....a unit price for the product must also be displayed"¹⁹; or

44.2 "if the purchase price of a regulated grocery product is displayed in store....the unit price for the product must also be displayed at least once".

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

- 45 FSNI uses a range of different advertising formats. These include:

45.1 printed advertisements – including in store displays such as large promotional posters, displays outside of the store but on the premises (such as poster on exterior windows)

¹⁹ The language of "a unit price" is used in the Australian Code at clause 6(1).

and out of home displays (such as bus stops and print ads), which are not proximate to particular products,

45.2 digital advertisements, displayed online. This includes the New World “mailer”, direct emails to customers and advertisements run at store-level, e.g., on a store’s Facebook page, and

45.3 television and radio advertisements.

46 As noted in our Earlier Submission, FSNI considers that unit pricing should not be required in advertising. It is far more likely to be relevant, and useful to consumers, at the point of purchase.²⁰ To be meaningful, customers need to be able to directly compare similar products. Single advertisements do not enable this comparison. Our customer sampling indicates that unit price details in advertisements are seldom remembered, and it creates a poor experience when customers are bombarded with too much information. It obscures and undermines the key messages, and results in lower customer engagement. We would query if MBIE has undertaken any consumer research to support that customers want and/or remember unit pricing when it is displayed in advertising.

47 To demonstrate this, we set out below an extract from a recent page of a (digital) New World Mailer which we have mocked up to show the unit pricing requirements of the Regulations. Displaying a unit price would add clutter²¹, especially where it would be required alongside Country of Origin requirements. We consider having too much information would result in unclear/ cluttered messages, and produce an overall lower engagement by consumers.



²⁰ See also FSNI Final MS Submission at [195.5].

²¹ This real life example also demonstrates the points made at paragraph 36, and how repetitive unit pricing is for products sold by weight and the purchase price and unit price at the same. Unit pricing only adds information in the kiwifruit example.

- 48 However, we acknowledge that Cabinet has agreed that physical and online print/static advertising will be required to display unit pricing.
- 49 We are generally comfortable with the proposed wording in regulation 9 but would suggest some minor changes to ensure a unit price is not required when an animation medium is used:

9 Unit price not required for video, animation or audio advertisement

If regulated grocery product is advertised for sale using a video, animation or audio medium, the unit price is not required to be displayed in the advertisement.

- 50 We note we anticipate some issues with certain types of digital advertising we place such as Facebook ads, Google ads and grocery items sold via Uber Eats. In those examples we are dealing with limited advertising space, set advertising templates and large multinational companies who dictate requirements to us on how unit pricing is presented and the units of measure. While we will work with those advertisers to try to achieve compliance, if this is not possible this may impact the advertising platforms we can use to communicate pricing to our customers.

Question 8. Do you have any comments on regulation 7?

Bulk items

- 51 In relation to regulation 7(1) we believe products sold by number of items should display a 'per item' unit regardless of whether the pack size is smaller or greater than 40. The category this would have most relevance to would be nappies and a 'per item' unit allows the consumer to quickly compare the price per nappy across a convenience, regular and bulk box pack of nappies quickly.

Measure for fresh meat, seafood, fruit and vegetables

- 52 In relation to regulation 7(2) we currently display meat or seafood sold by weight, and fruit or vegetables sold by weight, using a unit of measure of 'per 100g.' We are mindful this is a difference to the Australian Code but have specifically chosen this difference as we feel it is more helpful to customers (as they generally purchase these products in measures under 1kg). However, if this was the final requirement of the Regulation we don't envisage major issues with complying.

Measure for flavouring essences or food colouring

- 53 We would suggest flavouring essences or food colouring could use the unit of measure for a product sold by volume (ie per 100 millilitre) rather than the 'per millilitre' exception proposed. This would avoid (due to the generally very small pack size of these products) creating very small unit prices. However, if this was the final requirement of the Regulation we don't envisage major issues with complying.

Abbreviations

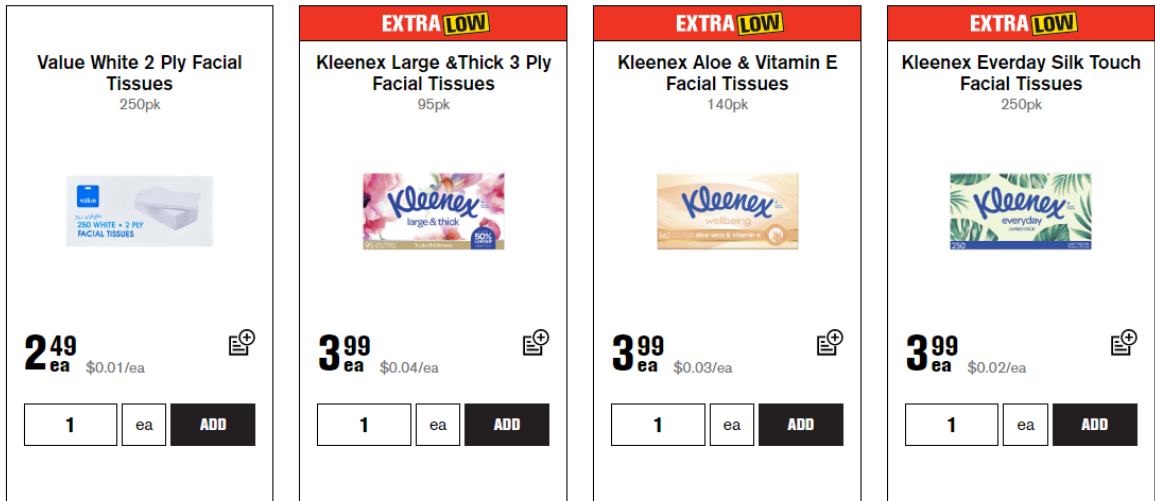
- 54 In addition, keeping in mind the space limitations we have in some mediums for displaying unit pricing, it would be helpful for the Regulations to confirm that commonly understood abbreviations may be used, for example saying ". /kg" using a lot less space than ". per kilogram." On our review of Australian grocery retailers' websites it seems to be common practice to use abbreviations when space is limited and to use "/" rather than "per" and "ea" rather than "each".

55 If MBIE was comfortable with this suggestion regulation 7(5) could be updated as follows:

(5) → In this regulation, ~~measurement type means volume, weight, length, area, or number~~ and commonly understood abbreviations may be used.

Flexibility for very small and very big unit prices

56 There are some types of products, generally those sold by number of item when the number of items is very high but the purchase price is low, which could result in a very low unit price such as \$0.01 or \$0.00 when rounding is applied. Examples of these types of products would be toothpicks, staples and facial tissues.



57 In that situation the unit price can be misleading, for example, in the Kleenex Aloe Tissues example above if the unit price of \$0.03 per unit is viewed in isolation it suggests the purchase price for the packet would be \$4.20 ($\0.03×140 units) not \$3.99. In these situations, we think it would be better if retailers had a discretion as to whether the set unit of measure in regulation 7(1) and (2) was applied or something more helpful to the customer.

58 Similarly, when products are expensive but small in volume, such as cosmetics and certain therapeutic goods, this can create very large unit prices (over \$1,000 per 100 millilitres or per 100 grams) which we feel could confuse the customer. Again, in those situations we would suggest the flexibility for retailers to use 'per item' would be beneficial.

59 This could be achieved by amending regulation 7 to include the following:

(6) → Notwithstanding the rest of this regulation 7, if the unit price applicable for a regulated grocery product is very small or very large, the retailer, acting reasonably, may use an alternative unit of measurement.

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

Per each

60 In regulation 8(2) we recommend allowing flexibility for the retailers to refer to the item or use "each". For example, the regulation 8(2) refers to the example of nappies, we currently use an 'each' unit for this as we believe this is clearer for customers.

How unit prices must be displayed

61 As noted in our Earlier Submissions, FSNI is strongly of the view that a principle-based approach is preferable. This would be consistent with the Australian Code²² and, in our view, is equally appropriate for New Zealand.

62 A principle-based approach is preferable because:

62.1 FSNI would likely be able to comply with principle-based requirements using its current equipment (ESLs), paper and other tickets and IT systems. There is a finite amount of space available on the ESLs, and limits as to what they can display. As such, FSNI's ESLs may not always be able to accommodate all prescriptive requirements, such as a particular font size, particularly in our smallest ESLs. FSNI considers it would be preferable to specify a principle-based requirement (e.g. that the unit price be displayed prominently and legibly as proposed in regulation 8(3)(a) and (c)), rather than a prescriptive requirement to use a 25 per cent font size as required by regulation 8(3)(b).

62.2 A prescriptive requirement could result in the unit pricing on some smaller ticket types being larger in size than other equally important information to our customers, such as the product description or country of origin statement.

62.3 it provides retailers flexibility to ensure unit pricing can be displayed in a manner that is tailored to specific products, mediums and customer base. This flexibility is important so that retailers can make their own decisions about what the most beneficial display is for their customers, e.g. by using formats with which customers are familiar, and

62.4 it permits industry innovation, rather than locking in a set of prescriptive requirements.

63 FSNI's own customer research indicates most customers prefer simple ticketing labels, which are used consistently across a retailer's stores, and/or online platforms. They also value the use of different colours for special displays, e.g. sales and promotions, as opposed to a standard white ticket with cluttered information. Again, this highlights the value of ensuring retailer-specific innovations can be maintained to produce a positive customer experience.

64 Adopting a principle-based approach will help ensure retailers can differentiate themselves in their labelling practices (including by using bespoke fonts, colour and positioning), deliver a positive customer experience, continue to use systems that work well, and take up new innovations that may become available over time.

65 Currently our tickets must convey a lot of information in a small amount of space as they must contain:

65.1 the product name/article description,

65.2 the size of the product,

65.3 the price (in some cases two prices e.g., promotion and non-promotion price);

65.4 in some cases, country of origin information,

65.5 in many cases, we already show the unit price;

65.6 in some cases, purchasing limits,

²² Clause 6.

65.7 in some cases, date information referring to promotion period, and

65.8 in many cases, product barcode and ID.

We also use ticket types to, at a glance, quickly, convey certain types of promotions to consumers. This is a lot of information to convey, and our concern is by “crowding” tickets with prescriptive unit price size we are impacting our customers’ experience and legibility of all relevant information. Flexibility gives us the ability to adjust as applicable for the relevant product and whether the product is on promotion. For example, as illustrated below where we need to convey the multi-buy price, the single unit price, the country of origin, a unit price, purchasing limit and the type of special.



66 [REDACTED]

67 However, if a certain percentage font size is to be adopted we recommend the following:

67.1 *Recommendation rather than a requirement:* Consider whether percentage font size should be a recommendation rather than a requirement. Retailers should have flexibility to make sensible adjustments when it benefits the consumer. For example, depending on font type/condensing of type face on the relevant ticket, it may actually be harder for customers to read a 25 percent unit price and condensed to fit into space, as opposed to a size that maybe slightly less than 25 percent unit price but not as condensed.

67.2 *Requirement only at shelf (recommendation in other places):* Consider requiring a set percentage font size only when unit pricing is most helpful to customers making a purchasing decision, which to us is at the shelf (instore) and on the product grid (online). That then leaves flexibility for other places when pricing is displayed such as posters and other displays and in advertising.

67.3 *Impact on smallest and largest tickets:* A percentage font size can cause issues for both smaller and larger ticket types. By using a percentage font size rather, than a minimum height in millimetres, this could result in a really small unit price being shown when the price itself is not large because the ticket itself is small. If a price is large (for example on posters or billboard advertisements) having a 25% percentage font size unit price could be physically quite large and then may “take over” the advertisement and any other important customer information displayed.

67.4 *Challenging for our promotions with two potential purchase prices:* As explained further below at paragraph 68, complying with a percentage font size could be very challenging for us for our promotions with two potential purchase prices (as we already need to ‘squeeze’ into certain ticket types two purchase prices and potentially two unit prices).

67.5 *20 per cent:* If a percentage font size is to be adopted as a requirement our recommendation would be for a minimum of 20 percent rather than 25 percent.

Question 9. Do you have any general comments regarding the regulations?

Unit pricing challenge for certain promotions

- 68 As noted above, we have some implementation challenges for certain types of our promotions. For us, promotions with qualifying requirements and two potential purchase prices include:
- 68.1 'Multi-Buys'²³ where we need to show the price for one unit of the product (and the combined price for the multi-buy offered.
 - 68.2 'Club Deals'²⁴ where we need to show the price available to our New World Clubcard members and the price available to customers who are not Clubcard members.
 - 68.3 'Super Savers' or 'Extra Low'²⁵ with a purchase limit.²⁶
- 69 A significant issue we require clarification on, is what is required for unit pricing when two prices may apply, generally as a result of a promotion? We would appreciate the Regulations clarifying the requirement as it would impact our stores but also other major grocery retailers²⁷. We believe this is an area where New Zealand requires a different approach to the Australian Code²⁸. We think consumers would benefit from the display of the *most likely* unit price as the majority of customers are purchasing to take advantage of the promotion price. In making that purchase decision, customers want to compare the promotion unit price to the unit price of other like products and the non-promotion unit price information is irrelevant.
- 70 If two unit prices must be displayed this would likely be very challenging for us to comply with across all our ticketing types and would result in high compliance and implementation cost with, in our view, arguably little benefit to consumers. As such we would suggest that the Regulations be amended so that if two purchase prices may apply the retailers is required to show the most likely unit price (ie that for the promotion price) and an option to display a second unit price at the election of the retailer. If this was not acceptable to MBIE an alternative suggestion would be that the second unit price be required to be displayed where it is reasonably practicable for the retailer to do so. We think these suggestions strike the appropriate balance between giving consumers the information they need to make informed decisions and keeping implementation costs of unit pricing at reasonable levels for retailers.

²³ Promotional type available at PAK'nSAVE, New World and Four Square stores. Two prices may apply if the customer doesn't purchase the exact number of products required to get the multi-buy price.

²⁴ Promotional type available at New World stores for Clubcard members. A different price will apply if a Clubcard is not used as part of the purchase.

²⁵ Super Savers available at New World stores and Extra Low prices at PAK'nSAVE stores.

²⁶ Limit is applied to ensure equitable availability of special offer pricing for all customers. As most of the time customers are purchasing within the limit amount we do not always show the price payable if the limit is exceeded.

²⁷ We note for completeness the other major grocery retailer in New Zealand is showing for multi-buy promotions the unit price for the single unit (ie the non- promotional price) and for 'One Card prices' the unit price for the promotional price and no unit price for the non-promotional price.

²⁸ From our understanding of the Australian Code the unit price would need to be displayed for both the promotional and non promotional price. However, in Australia most supermarket promotional activity is generally focused on single unit promotions, and loyalty schemes which give loyalty points rather than a discounted price for loyalty scheme members, which is quite different to the way promotions are undertaken by New Zealand supermarkets, and are not promotional types which result in two potential prices.

71 This could be done by including one of the following as new regulation 10:

10 – Unit pricing requirements when two purchase prices may apply

If a regulated grocery product has two potential purchase prices (for example, a promotional and non promotional price) then the unit price must be displayed for the price most likely to apply to consumers and the second unit price may also be displayed.

OR

10 – Unit pricing requirements when two purchase prices may apply

If a regulated grocery product has two potential purchase prices (for example, a promotional and non promotional price) then the unit price must be displayed for the price most likely to apply to consumers, and, wherever reasonably practicable the second unit price must also be displayed.

Unit pricing for grocery wholesalers

72 As noted above at paragraph 24.2, we understand the intention is to not capture wholesalers within the regime (as unit pricing is designed to benefit consumers). If this was not the case, and our Gilmours stores were captured by the Regulations, we would need to scope the impacts and costs of this, but believe these would be significant (with very little consumer benefit) and we don't anticipate those stores could achieve compliance within 12 months of the Regulations commencing.

CONCLUSION

73 Thank you for the opportunity to provide feedback on the draft Regulations. FSNI would be happy to provide further detail on any aspect of our submissions if it would be useful to MBIE.

74 We look forward to continuing to participate in the process as the Regulations develop.