

EXPOSURE DRAFT EXPLANATORY STATEMENT

Competition and Consumer Act 2010

Competition and Consumer (Industry Codes – Unit Pricing) Regulations 2021

Section 172 of the *Competition and Consumer Act 2010* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Part IVB of the Act provides for industry codes. In particular, section 51AE of the Act allows for regulations to be made prescribing an industry code and declaring the industry code to be a mandatory or a voluntary industry code. Section 51ACB of the Act provides that a corporation must not, in trade or commerce, contravene an applicable industry code.

The *Competition and Consumer (Industry Codes – Unit Pricing) Regulations 2021* (the Regulations) prescribes an industry code for the retail grocery industry and declares that code to be mandatory. The purpose of the code is to require large grocery retailers, those grocery retailers that operate online, and those grocery retailers that voluntarily display unit prices, to use unit pricing when selling grocery items to consumers.

The Regulations remake the *Trade Practices (Industry Codes – Unit Pricing) Regulations 2009* which sunsets on 1 October 2021. The Regulations have been restructured and updated to reflect current drafting style and technologically neutral language but make no material changes to the code.

The Australian Competition and Consumer Commission (ACCC) provides guidance on unit pricing on its website. The ACCC updates this where necessary to assist traders and consumers in interpreting the requirements for units of measure and displaying of unit prices.

The Regulations require grocery retailers with a floor space greater than 1,000 square metres, all online grocery retailers, and all other grocery retailers that voluntarily enter the scheme, to display a unit price for all grocery items for which a selling price is displayed. The unit price – a price per unit of measurement (for example, per 100 grams) – must be displayed legibly, unambiguously, prominently and in close proximity to the selling price.

A review was undertaken by Treasury of the efficiency and effectiveness of the Code with a discussion paper released in November 2018. As part of this process, an online consumer survey was undertaken, meetings were held with a range of stakeholders and 31 written submissions were received. This review made similar findings to the post implementation review undertaken by Treasury in 2012 — that the Code remained efficient and effective in meeting its objective. In addition, the review found that fewer complaints had been made to ACCC about unit pricing since the 2012

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review. Evidence shows that consumers use and benefit from unit pricing, as it helps to simplify a consumer's decisions, supports value-for-money assessments and saves time and money.

The Act specifies no conditions that need to be satisfied before the power to make Regulations may be exercised.

Details of the Regulations are set out in Attachment A

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 October 2021.

ATTACHMENT A

Details of the Competition and Consumer (Industry Codes – Unit Pricing) Regulations 2021

Section 1 – Name

This section provides that the name of the Regulations is the *Competition and Consumer (Industry Codes – Unit Pricing) Regulations 2021* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commence on 1 October 2021.

Section 3 – Authority

The Regulations are made under section 51AE of the *Competition and Consumer Act 2010* (the Act).

Section 4 – Code of conduct

This regulation provides that the code set out in Schedule 1 to the Regulations is prescribed and declared as a mandatory industry code under section 51AE of the Act. The effect of this declaration is to make a breach of the code a breach of the Act, which makes available certain remedies provided for in Part VI of the Act.

Section 5 – Schedule 2

This section provides that Schedule 2 to the Regulations is amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Retail Grocery Industry (Unit pricing) Code of Conduct

Part 1 – Preliminary

Item 1 – Name of code

This item names the code the Retail Grocery Industry (Unit Pricing) Code of Conduct.

Item 2 – Purpose of code

This item provides that the purpose of the code is to require the use of unit pricing by certain grocery retailers.

Item 3 – Definitions

This item creates a number of definitions for the purposes of the code. The definitions establish to which retailers the unit pricing requirements apply.

Three types of retailer are captured by the code:

- ‘store-based grocery retailers’, which is defined by reference to a three-limbed test:
 - the retailer sells a minimum range of food-based grocery items;

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- the retailer has more than 1000 square metres of floor space for displaying grocery items; and
- the retail premises are used primarily for the sale of food-based grocery items (not, for example, a large department store with a relatively small grocery business).
- ‘online grocery retailers’ that sell a minimum range of food-based grocery items using the internet.
- ‘participating grocery retailers’, i.e. grocery retailers that sell a minimum range of food-based grocery items and voluntarily display a unit price for one or more grocery item that is required to be unit priced under the code (that is, intentionally displays a unit price – in whatever measurement and format – where it is not required to do so under a law of the Commonwealth or a State or Territory).

Item 4 – Application

The code applies to store-based grocery retailers and online grocery retailers from 1 October 2021. The obligation to display unit pricing continues to apply to grocery retailers that were required to do so under the previous code.

The code applies to a participating grocery retailer from six months after the retailer begins to display unit prices. Where the retailer began to display unit prices under the previous code (i.e before 1 October 2021), the six month period is from the date the retailer first displayed unit prices.

If at any time a participating grocery retailer stops displaying unit pricing, it ceases to be a participating grocery retailer from that time, and the code no longer applies to the retailer.

Item 5 – Consistency with other Commonwealth legislation

The code has effect only to the extent to which it is not inconsistent with a law of the Commonwealth. For example, the code does not override any Commonwealth trade measurement laws, which may require unit pricing in certain circumstances and in certain forms.

Part 2 – Requirements about unit prices

Division 1 – Requirement to display unit prices

Item 6 – Display of unit prices

This item mandates the display of unit prices by a prescribed grocery retailer, for all grocery items for which a selling price is displayed. Where there is no selling price displayed, for example in an advertisement based on product quality rather than product price, no unit price is required.

The unit price must be displayed prominently and in close proximity to the selling price. It must be legible and unambiguous. Within these parameters, grocery retailers are able to use such signs, labels, fonts and colours as they see fit.

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Item 7 – Exemption – selling prices that apply to more than one grocery item

Where a single selling price is displayed to refer to more than one grocery item, the code does not require grocery retailers to display a unit price in connection with that selling price. For example, a range of grocery items (such as snack foods) may be sold at a single price, but each item may be a different weight or other measure.

Item 8 – Exemption – marked down or bundled grocery items

This item exempts a retailer from displaying unit prices in some situations.

A grocery item that has been marked down from its usual selling price because the item or its packaging is damaged, because it is a perishable item that may deteriorate if not used by a particular date, or because it is an item which the retailer does not intend to restock (a 'discontinued item'), is not required to bear a unit price. However, items that are simply on special are still required to bear a unit price.

A grocery item that is a bundle of different grocery items is exempt from the unit pricing requirements. An example of such a bundle is a soup kit consisting of carrots, potatoes, onions, split peas and stock.

However, where several of the same grocery item are sold together for a discount, there is still a requirement to display a unit price. For example, if one bottle of lemonade is sold for \$2, and the retailer offers a 'multi-buy' of five bottles of lemonade for \$8, the price representation of five bottles for \$8 requires the display of a unit price.

Finally, unit prices are not required in any situation for items in any of the exempt grocery categories that are listed in item 9.

Item 9 – Exemption – particular grocery categories

This item creates a list of grocery categories for which display of a unit price is not required. The list includes categories for which unit pricing would not be meaningful or practical. It also includes categories that do not contain traditional grocery items and are not likely to form part of a consumer's regular grocery purchases.

Division 2 – How to display unit prices

Item 10 – Units of measurement and form of unit price

This item provides for the standard units of measurement to be used when calculating unit prices. While item 11 lists a number of exceptions, the general rule established by this item is that grocery items are to be unit priced using the most relevant of per 100 millilitres, per 100 grams, per metre, per square metre, and per item. Where a grocery item is to be unit priced 'per item', more meaningful expressions such as 'per nappy' or 'per tablet' are permitted.

The item provides that the most relevant unit of measurement is the measurement displayed on the grocery item's packaging or, if there is more than one unit displayed on the packaging, the unit of measurement by which items in the same grocery category are most often supplied.

The item establishes that the unit price must be displayed in dollars and whole cents or, if the unit price is less than \$1, either in dollars and whole cents or in whole cents alone. Unit prices are to be worked out to the nearest cent, with half-cents rounded upwards.

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Item 11 – Alternative units of measurement

This item creates a list of grocery categories for which units of measurement that differ from those established by item 10 are required.

This list includes categories for which existing national trade measurement legislation already requires alternative units of measurements. For example, meat, fruit, vegetables and cheeses are to be unit priced per kilogram rather than per 100 grams.

The list also includes categories for which the standard units of measurement would generate excessively large, small or meaningless unit prices. For example, herbs and spices are to be priced per 10 grams, and products supplied by number in packages of 41 or more items, including sheets on a roll, are to be priced per 100 items or sheets.

If use of the alternative units of measurement leads to grocery items in the same grocery category having unit prices in different units of measurement, retailers are able to use in all cases the unit of measurement most often required for products in that category. For example, if most nappies are supplied in packages of fewer than forty nappies, a retailer is able to unit price a 44-pack of nappies ‘per nappy’ notwithstanding the fact that item 11 requires that pack to be unit priced ‘per 100 nappies’.

Division 3 – Display of unit prices in advertising

Item 12 – Advertising

This item requires grocery retailers covered by the code to display unit pricing in their print media and internet advertisements. This requirement does not apply to advertisements on television, radio or other similar media.

The display of a unit price in advertising material has to comply with the requirements of the code, that is, it must be legible, unambiguous, prominent, in close proximity to the selling price, and in accordance with the established units of measurement.

Schedule 2 – Repeal

This schedule repeals the *Trades Practices (Industry Codes–Unit Pricing) Regulations 2009* upon the commencement of the Regulations.