



14 June 2021

**SUBMISSION ON THE EXPOSURE DRAFT OF THE
COMPETITION AND CONSUMER (INDUSTRY CODES – UNIT
PRICING) REGULATIONS 2021 AND THE OUTCOMES OF THE
REVIEW OF THE UNIT PRICING CODE OF CONDUCT**

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BACKGROUND

The Consumers Federation of Australia (CFA) is the peak body for consumer organisations in Australia. CFA represents a diverse range of consumer organisations, including most major national consumer organisations. Our organisational members and their members represent or provide services to millions of Australian consumers.

CFA's member organisations include membership-based organisations, organisations that provide information, advice, counselling or assistance to consumers and organisations that identify regulations or market features that harm consumer interests and propose solutions. A list of CFA's organisational members is available at <http://consumersfederation.org.au/members/cfa-organisational-members/>.

CFA advocates in the interests of Australian consumers. CFA promotes and supports members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services.

CFA is a full member of Consumers International, the international peak body for the world's consumer organisations.

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EXECUTIVE SUMMARY

We disagree strongly with the conclusions of the review of the current Code and with the proposed new Code's provisions, which are virtually identical to those of the current Code.

The review's conclusions and the proposed new Code fail to recognise the great need and scope for changes to the legislation to take account of:

- Learnings from the operation of the Code since late 2009.
- The many changes in retailing and consumer requirements and behaviours since 2009.
- The results of consumer surveys by Choice, the Queensland Consumers Association, and Treasury.
- The proposals made in many submissions to the review for changes to the Code needed to improve its effectiveness and scope for grocery products and retailers, and to increase the benefits available by requiring and facilitating provision of unit pricing for products sold by some non-grocery retailers.
- The requirements of consumers with specific needs, including those with disability, to be able to access the benefits of unit pricing, and the provisions of discrimination legislation.

We also consider that:

- Excessive weight has been given to possible (but often unquantified) negative implications for industry of changing the current legislation and insufficient account has been taken of the benefits for consumers, retailers, and the economy (including increased competition between retailers and between producers).

- There has been insufficient recognition:
 - that a very high proportion of the population spend large amounts of scarce time buying grocery products (and others to which the provision of unit pricing is highly relevant).
 - of the very large amounts consumers spend annually on grocery (estimated at around \$100 billion) and other relevant products.
 - of the very high value of the benefits relative to industry costs likely from even very small changes in consumer purchasing behaviours and time savings if the amount and quality of unit pricing provided by retailers were increased.
 - of the increasing awareness by regulators and others that the quality and consistency of provision greatly affects consumer awareness and use of written consumer information.

We consider that:

- The provisions of a new Code should be substantially different to those in the current Code and should address our recommendations for improvements.
- Implementation of the proposed new Code in its present form will be a great waste of a long overdue opportunity for consumers and the economy (including retailers) to gain even more benefits from grocery, and other relevant, retailers providing effective unit pricing.

RECOMMENDATIONS

On the draft new Code:

- 1. The proposed new Code should be changed to address our recommendations for improvement.**
- 2. The minimum size of unit prices printed on shelf labels, etc. in stores should be required in the proposed Code to be the greater of either 6mm or 50% of the height of the selling price.**
- 3. Definitions of “legible” and “prominent” be added to the proposed Code and that the definitions be:**
 - **Legible – means readable at a normal viewing distance by a person with at least normal visual acuity.**
 - **Prominence – means noticeable at a normal viewing distance by a person with at least normal visual acuity.**
- 4. 1000 square metres in the definition of store-based grocery retailer in Clause 3 be reduced to 300 square metres.**
- 5. In Clause 3 the definition of participating grocery retailer be changed to “(a) sells 6 or more of the range of food-based grocery items to consumers, and”.**
- 6. The proposed Code should be changed to include a requirement that a transparent public review be undertaken of the entire Code no more than 3 years after commencement.**
- 7. Non-grocery retailers be required to provide unit prices for pre-packaged products via changes to the proposed new Code or via another Code that would apply only to non-grocery retailers.**

8. If costs relative to benefits are proven to be excessive for small bricks and mortar non-grocery stores, mandatory provision of unit prices only be required for:
 - Online retailers
 - Large bricks and mortar stores.
9. Clause 12 be changed to require provision of the unit price on advertisements in all visual media i.e. print and other, where a selling price is displayed.
10. Clause 6(1) of the proposed Code be changed to make clear that each time the selling price of a product is displayed the unit price should also be displayed.
11. The proposed Code be modified to require that:
 - the print size used to show any additional unit price should be smaller than that used for the unit price required by the Code, and
 - the required unit price also be provided wherever an additional unit price is provided.Consideration should also be given to prohibiting the provision of additional unit prices.
12. Clause 6(2) of the proposed Code be amended to require that the unit price displayed for a grocery item is accurate.
13. The proposed Code be changed to require that the unit price be displayed below or adjacent to the selling price, where possible the unit price is the information closest to the selling price, and to avoid mixing the unit price with other text.
14. The proposed Code should require internet selling sites to have functions that allow consumers to search only for defined products and to sort by unit price the results, or a sub set, of such a search.
15. In Clause 11 of the proposed Code the table of alternative units of measurement should be amended to require that per kilogram be the unit of measurement for cake and bread mixes, sugar, salt, and rice and per 10 grams for dried herbs and spices.
16. The proposed Code should include civil penalty provisions for noncompliance with some key requirements, for example to provide unit prices and for unit prices to be prominent, legible, unambiguous, and in close proximity to the selling prices.

On the proposed review of the ACCC guidance for retailers

17. The ACCC should consult with all stakeholders (including consumers) during the review which should cover more than just display of unit prices and should also take into consideration:
 - the recommendations in the ISO standard ISO 21041:2018 *Guidance on unit pricing* and the USA National Institute of Standards and Technology (NIST) *Special Publication 1181: Unit Pricing Guide, A*

Best Practice Approach to Unit Pricing. US Department of Commerce, 2015;

- the English translation of the German standard DIN 1450:2013-04 *Lettering – Legibility*;
- other relevant legislation, especially on discrimination; and
- guidelines/standards on the provision of information on websites such as the Web Content Accessibility Guidelines (an internationally recognised standard created by the World Wide Web Consortium).

GENERAL COMMENTS

We disagree strongly with the conclusions of the review of the current Code and with the proposed new Code's provisions, which are virtually identical to those of the current Code.

The review's conclusions and the proposed new Code fail to recognise the great need and scope for changes to the legislation to take account of:

- Learnings from the operation of the Code since late 2009.
- The many changes in retailing and consumer requirements and behaviours since 2009.
- The results of consumer surveys by Choice, the Queensland Consumers Association, and Treasury.
- The proposals made in many submissions to the review for changes to the Code needed to improve its effectiveness and scope for grocery products and retailers, and to increase the benefits available by requiring and facilitating provision of unit pricing for products sold by some non-grocery retailers.
- The requirements of consumers with specific needs, including those with disability, to be able to access the benefits of unit pricing, and the provisions of discrimination legislation.

We are unaware of any other examples of the government proposing, following review, no significant changes to legislation in operation for over 11 years and covering such rapidly changing areas as retailing and consumer protection and empowerment.

We consider that:

- The review's conclusions reflect excessive weight being given to possible (but often unquantified) negative implications for industry of changing the current legislation and a failure to take sufficient account of, and quantify, the benefits of changes for consumers, retailers, and the economy (including increased competition between retailers and between producers).
- There has been insufficient consideration and provision for the unit pricing needs of consumers who are vulnerable or disadvantaged, including consumers with disability (such as vision impairment, reduced mobility or cognitive impairment).
- The review and proposed new Code fail to recognise that a very high proportion of the population spend large amounts of scarce time buying grocery products (and others to which the provision of unit pricing is highly relevant) and the very large amounts consumers spend annually on grocery (estimated at around \$100 billion) and other relevant products. It also fails to recognise the very high value of the consumer benefits relative to industry costs likely to arise from even very

small changes in consumer purchasing behaviours and time savings if the amount and quality of unit pricing provided by retailers were increased.

- The review and the proposed Code fail to recognise and reflect the increasing awareness that the quality and consistency of provision greatly affects consumer awareness and use of written consumer information. Recent examples, of this are for written information on food country of origin, health star ratings, pregnancy warnings on alcoholic beverages, and menu energy labelling, for which there are now very specific display requirements.

Therefore, we consider that:

- The provisions of a new Code should be substantially different to those in the current Code and should address our recommendations for improvements.
- Implementation of the proposed new Code in its present form will be a great waste of a long overdue opportunity for consumers and the economy (including retailers) to gain even more benefits from grocery, and other relevant, retailers providing effective unit pricing.

COMMENTS AND RECOMMENDATIONS ON THE REVIEW OUTCOMES REPORT

Our comments and recommendations below relate to the following matters in the review outcomes report:

- General
- Key Findings
- Print Size
- Extending Mandatory Code Requirements to Other Grocery Retailers
- Non-Grocery Retailers

General

“The Government will remake the Code without substantive changes and before its scheduled sunset date”.

We disagree strongly with this proposal for the reasons given in our General Comments and consider that:

- The provisions of a new Code should be substantially different to those in the current Code in order to address our recommendations for improvements.
- Implementation of the proposed new Code in its present form will be a great waste of a long overdue opportunity for consumers and the economy (including retailers) to gain even more benefits from grocery, and other relevant, retailers providing effective unit pricing.

Therefore, we recommend that the proposed new Code be changed to address our recommendations for improvement.

“The ACCC will review and update its guidance on unit pricing displays to take account of some of the feedback raised in submissions to the review, which will assist businesses looking to enhance their unit price displays.”

We welcome this proposal. However:

- There is no certainty that the ACCC will make any changes to its guidance on display of unit prices.
- Even if the guidance materials are changed, securing compliance if any retailers choose to not comply may be difficult/impossible without changes to the proposed Code, including the ability to impose civil penalties for non-compliance.
- Only display issues are to be reviewed and updated, yet there are many other issues that should also be addressed including when and where unit prices are provided and the units of measure to be used. The ACCC's ability to change and enforce its guidance materials on many of these issues is highly problematic if the Code is not changed.
- It is essential that: the ACCC consult with all stakeholders (including consumers) during the review, that it covers more than just display of unit prices, and that it takes into consideration the recommendations in the international standard ISO 21041:2018 *Guidance on unit pricing* and the USA National Institute of Standards and Technology (NIST) *Special Publication 1181: Unit Pricing Guide, A Best Practice Approach to Unit Pricing*. US Department of Commerce, 2015; the English translation of the German standard DIN 1450:2013-04 *Lettering – Legibility*; other relevant legislation, for example on discrimination; and guidelines/standards on the provision of information on websites such as the Web Content Accessibility Guidelines (an internationally recognised standard created by the World Wide Web Consortium to make web content more accessible to people with disabilities).

Therefore, we recommend that: the ACCC consult with all stakeholders (including consumers) during the review and it should cover more than just display of unit prices and it should also take into consideration:

- **the recommendations in the ISO standard ISO 21041:2018 *Guidance on unit pricing* and the USA National Institute of Standards and Technology (NIST) *Special Publication 1181: Unit Pricing Guide, A Best Practice Approach to Unit Pricing*. US Department of Commerce, 2015;**
- **the English translation of the German standard DIN 1450:2013-04 *Lettering – Legibility*;**
- **other relevant legislation, especially on discrimination; and**
- **guidelines/standards on the provision of information on websites such as the Web Content Accessibility Guidelines (an internationally recognised standard created by the World Wide Web Consortium).**

Key findings

“The Code is operating efficiently and effectively in line with its primary objective of empowering consumers to make informed decisions about grocery purchases through greater price transparency.”

As indicated in our submission on the 2018 Discussion Paper, and also in several other submissions, the Code could be even more efficient and effective in relation to grocery products.

For example, CHOICE's, 2018 survey of 1033 grocery buyers (all states, genders and ages 18+) found that 64% of unit price users (those who used it all or most times) had had issues using unit prices.

Also, many of the Code’s provisions could be extended to apply to other non-grocery retailers who also sell grocery products and to more specialist retailers such as hardware stores.

“The Code currently allows consumers to compare unit prices for the vast majority of grocery items and at the retailers where they buy most of their grocery supplies and when they make a large number of decisions under time pressure. It also promotes price competition between these grocery stores, while being well targeted in minimising regulatory costs for small retailers.”

As indicated in many submissions to this review, there is great scope for the Code to achieve even more of these benefits by increasing consumer use of unit prices by making them much easier to notice, read and use.

“Evidence from academic literature indicates consumers use and benefit from unit pricing because it supports value for money assessment, helps to simplify consumer decisions and ultimately saves consumers time and money.”

Academic studies also show that there is considerable scope to make changes to the Code and how it is administered and communicated to consumers that will increase consumer use of the grocery unit prices provided by retailers.

“Feedback from businesses indicated that there are low ongoing regulatory costs associated with continuing to provide unit pricing in accordance with the Code, following significant initial costs of adopting unit pricing.”

Initial costs are usually also very low relative to turnover and to the benefits for consumers, the economy and retailers who provide effective unit pricing.

“Amongst the more substantive suggestions for amending the Code were:

- *larger print on supermarket shelf labels to ensure the unit price is noticed and used more often; and*
- *extending mandatory Code obligations to other retailers including:*
 - *smaller grocery stores;*
 - *specialty retailers that sell a limited number of groceries; and*
 - *other types of retailers, such as hardware stores and pharmacies.”*

Other substantive suggested amendments included to:

- change some units of measure that must be used to indicate unit prices,
- require the provision of the unit price for products advertised via all visual methods (not just print media and on the internet) if a selling price is provided.

Print size

“The Code requires unit prices to be prominent.”

Although print size influences prominence, the key relevant Code requirement is that unit prices be **legible**.

“Consumer representatives suggested that unit prices are not sufficiently prominent to be easily seen and read and have sought greater specification of size requirements.”

Consumer representatives said that many unit prices are not sufficiently **legible or prominent**, for example on shelf labels used for special offers and on upper and lower shelves (especially when the label is not appropriately angled to facilitate legibility for consumers who need to look up or down to read the unit price).

“Contemporary Australian research has examined the effect of increasing the size of unit price print on supermarket shelf labels from those commonly used in Australia. The research did not demonstrate that consumers noticed the larger unit pricing information more or changed product selection decisions as a result.”

We strongly refute the conclusion that academic research shows that increasing the size of the unit price print on shelf labels in Australian supermarkets will not result in more or changed product selection decisions.

The research probably referred to is: *Bogomolova, S., Oppewal, H., Cohen, J., and Yao, J.(2020) How the layout of a unit price label affects eye-movements and product choice: An eye-tracking investigation. Journal of Business Research, Vol111, April 2020, pages 102-116* mentioned in the submission by 3 Australian academics.

Our reasons for refuting this conclusion are that:

1. The published study states clearly that there are limits to the external validity of the results because:

“The setting was a frontal, eye-level and clear exposure to three items at a time. Although participants were instructed to shop as under normal shopping circumstances, and were blind to the real focus on the study, there was likely greater attention to all stimuli, than in a regular shopping setting.”

.. “in our experimental setting participants were directly in front of the price information. In practice, many price labels within stores tend to be read from an angle, for example when products are placed at bottom or top shelves.”

“The current study did not examine the influence of promotional information, which is arguably the most confusion-prone element of the retail environment.”

“..we examined the influence of unit price on choice as the propensity to choose lowest per unit price brands. This is the approach typically used in prior unit price studies. However, the unit price information could also prompt consumers to buy more expensive per unit price items, for example when they are concerned more about quality than expense. Alternatively, the choice could remain unchanged, but the presence of prominent unit price information could help consumers confirm their prior preference.”

“We also did not test how fixations relate to how consumers actually experienced the tasks. Perceptions of ease of use and legibility would be relevant to include to further inform the policy about which layout elements have the strongest effect on legibility, attention drawing potential, choice and also store perceptions and repeat visitation.”

2. The experiment was conducted in a very artificial online experimental situation completely different to what consumers experience when looking at printed paper shelf labels in bricks and mortar stores and even at online selling sites.

3. The legibility, prominence and location of unit prices on shelf labels varies enormously between Australian supermarket chains, yet the Australian shelf label used in this experiment was similar only to that used by one supermarket chain.

4. The size of the shelf label type used (for regular prices) for the Australian type label was larger and there was much more white space/clear space on the label than on the labels used by some other Australian supermarket chains.

5. The experiment did not include or analyse consumer groups, such as those with vision impairment or reduced mobility, whose ability to use unit pricing is most likely greatly influenced by the print size.

6. A 2000 USA study using physical shelf labels found that, even though there were only small differences in the size of print used for the unit price, the unit price's prominence (legibility) influenced the unit price awareness and product choices of the less price conscious consumers. *Miyazaki, A., Sprott, D., Manning, K., Unit prices on retail shelf labels: An assessment of information prominence, Journal of Retailing, volume 76, issue 1, p. 93 – 112.*

7. A recent Australian study using data on actual purchases of grocery products by consumers over 20 weeks found that they used unit prices in many and varied ways, not just to buy products with the lowest unit price. *Mortimer, Gary & Weeks, Clinton (2019) How unit price awareness and usage encourages grocery brand switching and expenditure. Journal of Retailing and Consumer Services, 49, pp. 346-356.*

“In this context, the existing Code requirement remains an efficient basis for regulating unit pricing displays. It enables flexibility for the size of print to be tailored to the environment (e.g. to different online devices or store formats) and balances the way consumers use unit price information against additional regulatory costs, particularly where larger shelf labels might otherwise be required and there is limited space on existing shelf edges.”

We recognise that unit prices have to be provided in a wide variety of situations instore and online. However, grocery retailers recognise that print size has a great influence on legibility and therefore always use very large size print for selling prices displayed in stores and online. Obviously, this is done to ensure that the selling prices are extremely easy to read by a wide range of consumers in all situations.

Since it is known that many consumers are very interested in and use unit prices, retailers should have the same objective when deciding how to display unit prices.

Unfortunately, this does not happen. For example, even when grocery retailers are easily able (e.g. when there is plenty of space on shelf and other labels and online) most do not take this opportunity to provide unit prices that are very easy to notice and read. Indeed, one grocery retailer with large shelf labels has even reduced the size of the print used for unit pricing.

Although some retailers have over time slightly increased the print size for the unit price on regular shelf labels, the print size is still considerable smaller than that used for the selling price and still not sufficiently legible or prominent in all display situations, even for consumers without vision impairment or reduced mobility.

Retailers have also not addressed the problem of inadequate legibility and prominence of the unit prices on many labels used for special offers or when labels are on low and high shelves and the labels are not appropriately angled to facilitate legibility for consumers standing beside the shelf.

How unit prices should be displayed should be determined by the needs of the many consumers (including those who are vulnerable and disadvantaged and those with disability (such as vision impairment, reduced mobility and cognitive impairment)) who are aware of and interested in using them, as well as by the need to facilitate awareness by consumers unaware of the presence of unit prices on shelf labels etc. Unit prices that are not sufficiently prominent or legible achieve neither of these objectives.

The current Code requirements are that unit prices be displayed legibly and prominently. However, the large proportions of surveyed consumers who say they have problems noticing and reading unit prices indicates clearly that the objectives of the current requirements are not being achieved. There are many reasons for this but the main one is likely that retailers and the ACCC have insufficient information to assess whether these requirements are being achieved due to the absence of either:

- minimum standards/specifications for key influences on the legibility and prominence of printed information, such as print size, and/or
- specification of the required consumer outcomes.

This is in contrast to the situation regarding the display of comparison interest rates which must be in a print no smaller than that of the advertised interest rate.

We recognise the great diversity of situations where retailers are required, or choose to provide unit prices and consumers want to use them. We also recognise retailer preferences for the maximum flexibility in how unit prices are displayed. However, the current requirements and how they are implemented are not working for consumers and changes are needed.

In addition, as far as we are aware, all the major supermarket chains now have large shelf labels on which there is plenty of space to provide unit prices in larger sizes.

Therefore, we recommend that the minimum size of unit prices printed on shelf labels, etc. in stores should be required in the proposed Code to be the greater of either 6mm or 50% of the height of the selling price.

We also consider that the required print legibility and prominence outcomes for consumers should be made clearer in the proposed Code.

Therefore, we recommend that definitions of “legible” and “prominent” be added to the proposed Code and that the definitions be:

Legible – means readable at a normal viewing distance by a person with at least normal visual acuity.

Prominence – means noticeable at a normal viewing distance by a person with at least normal visual acuity.

These definitions would ensure that consumers with at least normal visual acuity (but ideally also those with less than normal acuity) are able to notice and read all unit prices

when standing upright and a normal distance from a label/sign. And, they make clear that consumers should not have to bend low or get on their hands and knees to be able to notice and easily read unit prices on shelf labels at ankle level.

The definitions would provide much greater clarity for everyone about the minimum consumer outcomes unit prices are required to deliver in relation to two of the most important influences on the effectiveness of the display of printed consumer information.

The above new requirements could be phased in to give retailers time to implement the changes, including as part of the normal replacement of labels and signs when selling prices change.

Print legibility in particular is routinely objectively measured for people with different levels of visual acuity located at various distances from the print. Therefore, compliance with the legibility requirement could be very easily assessed by retailers, consumers and the ACCC.

“Where the ACCC has concerns about the prominence of unit prices, it is able to consider compliance and enforcement action.”

Although prominence is very important, **legibility** is the most important display requirement for unit pricing and it can be objectively measured and minimum standards can be set for print size. For example the Trade Measurement Regulations 2009 specify minimum print sizes for the display of quantity information on packages of different dimension and the display of country of origin information food is highly regulated.

Without specification in legislation (or in other enforceable documents) of minimum print sizes or a requirement that (as a minimum) unit prices are readable by a person with at least normal visual acuity at a normal viewing distance, it will be very difficult for the ACCC to assess and enforce compliance.

Extending mandatory code requirements to other grocery retailers

“Extending the mandatory coverage of the Code to a wider set of retailers was suggested to provide greater price transparency for consumers, allowing them to more easily compare the value of goods within and between retailers.”

We support this. We also note and agree with the observation in some retailer submissions that this would create a more level playing field for retailers.

“The parameters built into the Code recognise that most household spending on groceries occurs in major supermarket chains and large independent stores (approximately 86 per cent of industry revenues are generated by the five largest supermarket chains). These stores maintain a large product range, such that consumers make rapid value judgements about a large number of goods packaged in different sizes.”

We disagree.

The size of small grocery stores varies greatly. Many stores with a floor area less than 1000 square metres sell a large number of brands and pack sizes and non-packaged grocery products.

Also, we understand that some supermarkets in some chains need not, and may not, provide unit pricing because they are smaller than 1000 square metres.

If the industry turnover is around \$100 billion a year, and if 14% do not provide unit prices, \$14 billion of consumer expenditure does not benefit from consumer use of unit pricing. This is a very significant amount of consumer expenditure.

“By comparison, the value of unit pricing to consumers shopping in small grocery stores and specialty retailers (who sell a very limited number of groceries) is more limited. This is particularly the case because there are fewer items in each grocery category to select from and because consumers often shop at such stores for convenience (e.g. to top-up items such as bread and milk) or to obtain a premium product.”

We disagree.

Many stores with a floor area less than 1000 square metres sell a large number of brands and package sizes and also non-packaged grocery products. Therefore, many value comparisons are possible.

Also, some consumers, including those who may be disadvantaged, vulnerable, or have disability, only have easy access to small stores.

Furthermore, prices at small stores can be significantly higher overall than at large stores. The provision of unit prices would help small store customers to get the best value in the store and to compare its unit prices with those at alternative sources, such as online retailers.

“The existing policy parameters remain an appropriate balance between promoting greater price transparency and competition amongst larger grocery retailers and enabling small retailers to comply with the Code. Feedback suggested that changes to IT platforms, software and label replacement costs remain a significant concern for smaller retailers.”

Unfortunately, no information has been provided about retailer costs, or about the benefits for consumers, retailers and the economy.

The same retailer cost-focused arguments against unit pricing were made by many retailers prior to, and during, the ACCC inquiry that recommended a mandatory system of grocery unit pricing. But, it is now widely accepted that the costs for retailers required to provide unit pricing have been low, and especially relative to the resultant benefits, some of which are also obtained by retailers.

We consider that the greater than 1000 square metres floor area used for grocery products requirement for mandatory provision of unit prices is far too high and that it should be reduced to 300 square metres. (The minimum area in the UK is 280 square metres.)

This would ensure that those grocery retailers now providing unit pricing even though the store is smaller than 1000 square metres will continue to do so and would provide unit pricing in more stores that sell mainly grocery products, but not in convenience stores.

Therefore, we recommend that 1000 square metres in the definition of store-based grocery retailer in Clause 3 be reduced to 300 square metres.

However, if the current minimum floor area is retained in the Code mainly to allow small bricks and mortar retailers that sell grocery products to remain exempt from providing unit prices, other methods should be used to expand the number of retailers required to provide unit prices, and to increase equity of treatment of large bricks and mortar stores and all online retailers.

For example, changing the requirement that a grocery retailer is only required to provide unit prices if selling **all** of the minimum range of 11 food-based staple grocery items to selling **6 or more** would extend the proposed Code to include large bricks and mortar grocery retailers as well as online retailers currently exempt because they do not sell fresh fruit and vegetables or fresh milk or eggs.

We consider that the costs of mandatory provision would be low for both types of retailers.

Therefore, we recommend that in Clause 3 the definition of participating grocery retailer be changed to “(a) sells 6 or more of the range of food-based grocery items to consumers, and”.

“Future consideration can be given to whether the Code should apply to grocery sales by specialty retailers if such retailers gather a more substantial market share. While some online retailers are selling grocery items, this has tended to be a limited number of pre-packaged non-perishable goods (e.g. breakfast cereals or detergents). The cost of transport refrigeration is likely to be a significant barrier to further product range expansion but, where adopted, may bring such retailers within the requirements of the Code.”

We disagree.

As indicated above, we consider that the proposed Code should be changed now in relation to the minimum number of types of grocery items sold before mandatory provision of unit prices is required.

Regarding the suggested future consideration of whether the Code should apply to more retailers who sell groceries, we are concerned that the proposed Code does not require any review before that which would most likely be undertaken just prior to the Code’s 10 year expiry date.

Retailing and consumer requirements are changing rapidly. Therefore, the proposed Code should be changed to include a requirement that a transparent public review be undertaken of the entire Code no more than 3 years after commencement. Also, the national measurement laws are being reviewed and changes to them could have significant impacts on some Code requirements.

Such a requirement needs to be in the proposed Code to prevent a repetition of what happened with the current Code. During the development of the current Code there were many government written statements that a review would be held within 3 years of commencement. However, this never happened and this is the first opportunity since

2009 for formal consideration of stakeholder views on whether the Code should be changed.

Therefore, we recommend that the proposed Code should be changed to include a requirement that a transparent public review be undertaken of the entire Code no more than 3 years after commencement.

Non-grocery retailers

“In examining product ranges available in such retailers, it was noted that there are a large number of single unit or specialty items with limited substitutes, for which a mandatory requirement to provide a unit price would have no or very limited price transparency benefits.”

We disagree with this assessment of the situations consumers encounter in pharmacies and hardware stores and the conclusion that there would be no or very limited benefits from the provision of unit prices.

In our experience, especially in medium and large size pharmacies and hardware stores, there are usually several substitutes and almost always a choice of pack size.

Also, pharmacies in particular sell many products (shampoos, cosmetics, non-prescription medicines, vitamins and supplements, etc.) that are also available in supermarkets or online where unit pricing is usually provided.

Mandatory provision of unit prices is required by many of these, and other, types of non-grocery retailers in many EU countries and we are not aware of any major problems.

Retailers that specialise in selling products for pets also sell many packaged products (e.g. pet foods) that are also sold by grocery retailers who are required to provide unit pricing. These products are very numerous and there are many brands and pack sizes.

“In contrast to groceries, most consumers spend a smaller proportion of their incomes in these stores, make far fewer purchasing decisions and may rely more on prior research or advice because their purchases are often driven by the need to fix a problem.”

We disagree with this statement.

Although less than that of grocery stores, the total annual turnover of non-grocery retailers selling products suitable for the provision of unit prices is still very large and totals many \$ billions.

Also, the range in spending will vary greatly between customers. Some consumers may spend large amounts in these stores, especially in hardware stores when undertaking projects.

The Choice 2018 national survey indicated strong consumer support for these retailers to be required to provide unit prices (66% wanted unit pricing provided in pharmacies and 44% in hardware stores).

It is also highly likely, especially in view of the large increase in pet ownership as a result of the COVID pandemic, that many consumers would want and benefit from the

provision of unit prices by retailers specialising in selling products for pets, for example pet food.

We are also aware that a few non-grocery retailers voluntarily provide unit prices for some packaged products. However, although we welcome such provision, and consider it strong evidence that providing unit prices for non-grocery items is beneficial for consumers, we also emphasise that:

- few non-grocery retailers currently provide unit prices,
- unit prices are only provided for some products,
- the quality of some provision is not best practice,
- we favour such retailers being covered by the provisions of the proposed new Code or by another Code that applies only to non-grocery retailers.

Therefore, we recommend that non-grocery retailers be required to provide unit prices for pre-packaged products via changes to the proposed new Code or via another Code that would apply only to non-grocery retailers.

“In the hardware sector, it was also noted that stores typically maintain separate pricing arrangements for trade customers.”

We do not see this as a problem. In retail stores the prices currently displayed are used by all customers. If the store has separate prices for trade customers these are not usually displayed for non-trade customers. They are applied at the time of purchase.

Also, we are aware that the nation’s largest hardware chain now provides unit prices for at least one pre-packaged product (tiles which are unit priced \$ per square metre). We presume that this does not cause any major problems for the store or its trade customers and certainly greatly helps consumers to quickly and easily compare costs and values.

“Some businesses/their representatives in the pharmacy and hardware sectors highlighted the potential for significant regulatory costs ranging from updating software and replacing shelf labels and, in some cases, replacing existing shelving, which can be quite different from supermarkets.”

In the absence of any estimates of what the costs (establishment depreciated over several years and ongoing) might be for retailers, and the potential benefits for consumers and the economy, we are unable comment on this statement.

However, we understand that the majority of pharmacies and hardware stores already have back office servers (BOS) linked to point of sale systems. Unit pricing software could easily be modified to include unit pricing and the ability to print shelf labels or online information.

Also, we note that Bunnings’ submission said: “... we would welcome any changes that have the potential to increase consistency and simplify pricing for consumers.”

If costs relative to benefits are proven to be excessive for small bricks and mortar stores a policy option could be to only make provision mandatory for:

- Online retailers
- Large bricks and mortar stores.

Therefore, we recommend that if costs relative to benefits are proven to be excessive for small bricks and mortar non-grocery stores, mandatory provision of unit prices only be required for:

- **Online retailers**
- **Large bricks and mortar stores.**

COMMENTS AND RECOMMENDATIONS ON OTHER ISSUES

Our comments and recommendations on other important issues not mentioned in the review outcomes document or in the draft Code are below.

Advertising unit prices

Clause 12(2) of the proposed Code, and the current Code, exempt a prescribed retailer from displaying the unit price if the grocery item is advertised with a selling price but the advertisement is on television or a video file on the internet. Yet, since 2009 it has become common for grocery retailers to advertise grocery items on a range of media outlets and to also display the selling price.

We see no justifiable reason for this exemption and note that Part 10 of the National Credit Code requires that credit providers include a comparison interest rate when they advertise fixed-term credit which is for, or mainly for, personal domestic or household purposes and that are no such exemptions provided.

Furthermore, retailers provide the selling price in grocery advertisements to inform and influence consumers even though there may not be other products advertised there with which to compare selling prices. Retailers should therefore be required to provide, in addition to in print media, the unit price of a product in any advertisement where the selling price is displayed visually, including on television, in cinemas, on internet video advertisements, and on outdoors advertisements. Such a requirement would also ensure consistency between types of advertisements and increase consumer awareness and use of unit prices.

Therefore, we recommend that Clause 12 be changed to require provision of the unit price on advertisements in all visual media i.e. print and other, where a selling price is displayed.

Provision of a unit price with each displayed selling price

Clause 6(1) of the proposed Code, and the current Code, require a prescribed retailer to “display a unit price for each grocery item sold by the retailer for which a selling price is displayed.” This does not appear to require the display of a unit price each time a selling price is displayed.

As a result, often when the selling price of an item is displayed on more than one place/label, the unit price is only provided on one, and usually the least prominent. This greatly reduces consumer awareness and use of the unit price of these products.

This is an increasing problem, especially with pre-packaged fresh fruit and vegetables and chilled products, that needs to be addressed. The Code should be changed to require that each time the selling price of a product is displayed the unit price should also be displayed.

Therefore, we recommend that Clause 6(1) of the proposed Code be changed to make clear that each time the selling price of a product is displayed the unit price should also be displayed.

Provision of non-standard unit prices

For some products, for example rolls of toilet paper and cans of soft drink, a unit price other than that required by the Code is sometimes also displayed, and usually very prominently and in large print, on the product, on shelf labels, in adverts, etc. These alternative units of measure for unit pricing, such as per roll for toilet paper and per can for soft drinks, compete for consumer attention, cause confusion, and reduce consumer usage of the unit price required by the Code.

It is also open to question whether the provision of such unit prices complies with the Code's requirement that the unit price be "unambiguous".

There is also the possibility that retailers may want to provide an additional unit price using a different denomination of the unit of measure required by the Code. For example, to also provide the unit price per 100g for products that must be unit priced per kg, such as pre-packaged cheese.

Therefore, as a minimum, the proposed Code should be modified to require that:

- the print size used to show any additional unit price should be smaller than that used for the unit price required by the Code; and
- the required unit price also be provided wherever an additional unit price is provided.

Consideration should also be given to whether the provision of additional unit prices should be prohibited.

Therefore, we recommend that the proposed Code be modified to require that: the print size used to show any additional unit price should be smaller than that used for the unit price required by the Code; and that the required unit price also be provided wherever an additional unit price is provided. Consideration should also be given to prohibiting the provision of additional unit prices.

Accuracy of unit prices

The proposed Code, and the current Code, do not specifically require that unit prices be accurate. However, the ACCC's Guide for Retailers interprets the unambiguous requirement to mean that "the information must be accurate and its meaning must be clear".

This is not satisfactory since the accepted definition of unambiguous is only that the meaning of something is completely clear. It does not include accuracy. Therefore, the Code should be amended to include a specific and basic requirement that displayed unit prices are accurate.

Therefore, we recommend that Clause 6(2) of the proposed Code be amended to require that the unit price displayed for a grocery item is accurate.

Location of unit price relative to selling price

The proposed Code and the current Code require only that the unit price be located “in close proximity to the selling price” but the example shelf label in the ACCC’s Guide for Retailers has the unit price immediately below the selling price.

However, it is common for the unit price to not be located immediately below the selling price. Examples of this include:

- the unit price being among information on another part of the label about the product and for use by the retailer,
- especially for special offers, the unit price being a long way from the selling price and with much other information between it and the selling price.

These forms of presentation and inconsistency of display between and within retailers reduce consumer awareness and use of unit pricing.

This problem is recognised and addressed in the international standard, ISO 21041:2018 *Guidance on unit pricing*, which recommends: displaying the unit price below or adjacent to the selling price; where possible the unit price being the information closest to the selling price; and avoiding mixing the unit price with other text.

Therefore, we recommend that the proposed Code be changed to require that the unit price be displayed below or adjacent to the selling price, where possible the unit price is the information closest to the selling price, and to avoid mixing the unit price with other text.

Provision of unit prices on internet selling sites

Online grocery retailers that sell the minimum range of prescribed of food-based grocery items are required by the proposed Code to provide unit prices. This is essential since consumer use of the internet to purchase grocery products is increasing rapidly.

However, the ability of consumers to use unit pricing effectively to compare products on internet selling sites is often reduced by how the unit prices are provided and functions to facilitate consumer use.

For example, unit prices may not be provided for special offers in initial advertisements on the website and it can be very difficult to get a list of similar products to compare. Also, consumers need a search by size of unit price facility to be able to make quick and effective use of unit prices on internet selling sites, yet this is not provided on some websites.

It would be very helpful to consumers if the proposed Code required internet selling sites to have functions that allow consumers to search only for defined products and to sort by unit price the results, or a sub set, of such a search.

Therefore we recommend that the proposed Code should require internet selling sites to have functions that allow consumers to search only for defined products and to sort by unit price the results, or a sub set, of such a search.

Also, much more attention is needed on how best to assist consumers to use unit prices on websites, including more consumer education and monitoring of current practices and to encourage provider compliance with the Web Content Accessibility Guidelines. The

Guidelines are an internationally recognised standard created by the World Wide Web Consortium to make web content more accessible to people with disabilities, including people with vision impairment. The guidelines also make web content more useable by older individuals with changing abilities due to aging, and often improve usability of users in general.

Alternative units of measure

The table of alternative units of measurement in Clause 11 of the proposed new Code for certain products is identical to that in the current Code. This table should be changed to make unit price comparisons easier and more consistent for consumers and to provide retailers greater clarity about requirements.

In addition to flour, cake and bread mixes should have to be unit priced per kg, as also should products commonly sold in packages of more than 1kg, for example sugar, salt, and rice.

The current alternative unit of measurement for herbs and spices is per 10g. This works well for most packaged dried herbs and spices (except for salt which should be unit priced per kg). However, it can cause problems with packaged fresh herbs and spices, because the latter are often also sold loose from bulk and thus under trade measurement regulations must be unit priced per kg. To facilitate unit price comparisons between fresh herbs and spices sold loose from bulk and in packages, the new Code should state that per 10g is the unit of measure only for dried herbs and spices. This will make it clear that packaged fresh herbs and spices are to be unit priced per kg.

Therefore we recommend that in Clause 11 of the proposed Code the table of alternative units of measurement should be amended to require that per kilogram be the unit of measurement for cake and bread mixes, sugar, salt, and rice and per 10 grams for dried herbs and spices.

Compliance and enforcement

To enforce compliance with the Code by any retailer who does not comply with other enforcement actions, we understand that the ACCC would need to initiate legal proceedings against the retailer. We consider that this is very unsatisfactory and contrary to modern regulatory practice.

However, S51ACD(1) of the Competition and Consumer Act 2010 allows the ACCC to issue an infringement notice for a contravention of a provision in an industry code if it is of a civil penalty provision in the code. And, we understand that there are such provisions in the franchise, horticulture and dairy industry codes.

However, the Grocery Unit Pricing Code has no civil penalty provisions; so infringement notices cannot be issued. Therefore, we consider the new Code should include civil penalty provisions for noncompliance with some key requirements, for example to provide unit prices and for unit prices to be prominent, legible, unambiguous, and in close proximity to the selling prices.

Therefore, we recommend that the proposed Code should include civil penalty provisions for noncompliance with some key requirements, for example to provide

unit prices and for unit prices to be prominent, legible, unambiguous, and in close proximity to the selling prices.