

# SUBMISSION ON THE NZ COMMERCE COMMISSION MARKET STUDY'S DRAFT REPORT INTO THE RETAIL GROCERY SECTOR

24 August 2021

## BACKGROUND

I am a retired economist and I work voluntarily for the Australian consumer movement.

I have a strong interest in unit pricing (pricing per unit of measure), especially for grocery products. I have been working on grocery unit pricing issues in Australia and other countries since 2003. My work has included observing and studying it, encouraging and assisting others to undertake research on it, publicising its benefits, and advocating for retailers to provide unit pricing that is very easy for consumers to notice, read, understand and use.

More information about me and the benefits of unit pricing is available from my submission on the Preliminary Issues Paper.

This submission is only about unit pricing.

## RECOMMENDATIONS

The Final Report should:

1. Recommend the introduction of mandatory provision of unit pricing.
2. Provide guidance on how New Zealand can design and implement a world-class, best-practice unit pricing system.

## GENERAL COMMENTS

I strongly welcome the many statements in the Draft Report which:

- identify the considerable benefits for consumers and competition from grocery retailers providing effective unit pricing for grocery products
- recognise that to be effective unit pricing needs to be provided and displayed well and consistently.

I particularly welcome the following statement on page 20:

"...we recommend making it mandatory through the use of a Consumer Information Standard implemented under the Fair Trading Act."

I hope that the final report will also contain this recommendation.

I also support the general intent of the statement in paragraph 9.153:

"A consumer information standard under the Fair Trading Act could be published that required:

- unit price to be prominently and clearly displayed both in store and online, in close proximity to the selling price including for products on promotion;
- products to display unit price using consistent units (for example, for goods sold by weight, a price per 100g);
- unit prices to be displayed in a consistent format including font style and size."

However, for the reasons provided later in this submission, I consider that the first dot point should be expanded to require that unit prices also be displayed with **all forms of advertising where the product's selling price is displayed**.

I also consider that, if the final report includes guidance about on the scope, requirements, etc. of a proposed unit pricing system and legislation, the dot points and additional guidance provided should take account of the information in this submission.

## **COMMENTS ON THE DESIGN AND IMPLEMENTATION OF A NEW ZEALAND GROCERY UNIT PRICING SYSTEM**

### **General**

If the final report recommends the introduction of mandatory grocery unit pricing and the recommendation is accepted by the government, the details of any legislation required will doubtless be determined by a separate process.

However, it is very desirable for the final report to provide guidance on key design and implementation issues additional to those mentioned in paragraph 9.153 of the draft report i.e that a consumer information standard under the Fair Trading Act could be published that required:

- unit price to be prominently and clearly displayed both in store and online, in close proximity to the selling price including for products on promotion;
- products to display unit price using consistent units (for example, for goods sold by weight, a price per 100g);
- unit prices to be displayed in a consistent format including font style and size.

Furthermore, as noted earlier, I consider that the first dot point should be expanded to require that unit prices also be displayed with **all forms of advertising where the product's selling price is displayed.**

My reasons for suggesting this include:

- 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.
- Paragraph 9.150 of the Draft Report notes that: "Even when not directly comparing products and retailers, clear and accurate pricing information can help consumers to develop perceptions of value over time which in turn help them to decide where to shop to best meet their needs."
- Many consumers are very aware of and use unit prices.
- It is now common for grocery retailers to advertise grocery items in a wide range of ways, including on TV and the internet, and to also display the selling price there.
- The EU Directive, the UK legislation (based in the EU Directive), and the Australian Code require the display of unit prices in print media advertising when a selling price is provided.

Therefore, retailers should be required to provide, 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 increase consumer awareness and use of unit prices.

Also, as mentioned earlier, if the final report includes guidance about on the scope, requirements, etc. of a proposed unit pricing system and legislation, the dot points and additional guidance provided should take account of the information in this submission.

## **Information to facilitate the design and implementation of an effective unit pricing system**

The final report should recognise that New Zealand has the opportunity to, and should, create a world-class, best-practice system of unit pricing and that to achieve this account should be taken of a wide range of information, including:

### **1. Recent publications on the design and implementation of unit pricing systems unit pricing and on print legibility**

These include:

The International Standards Organisation Guidance Standard **ISO 21041:2018 Guidance on unit pricing** available for purchase here <https://www.iso.org/standard/69727.html>

It contains guidance on each of the following principles considered necessary for the establishment and operation of effective unit pricing: Provision; Units of Measure; Display; Consistency; Planning, Implementation and Monitoring; Communication; and Consumer Education.

The USA National Institute for Standards and Technology publication **NIST SP 1181 Unit Pricing Guide “A Best Practice Approach to Unit Pricing”** available free here

<https://www.nist.gov/system/files/documents/2017/04/28/SP1181-Unit-Pricing-Guide.pdf>

It contains recommendations on provision, display, etc. and many examples of effective unit pricing.

The German standard **DIN 1450:2013-04 Lettering – Legibility**

which recently has been published in English and which can be purchased here:

<https://www.beuth.de/en/standard/din-1450/170093157>

This contains information very relevant to the display of printed unit prices since it:

- Indicates the main factors that influence text legibility and to be considered when planning and executing the provision of printed information.
- Contains minimum type sizes for different types of text (signage, consultation, and body) at different viewing distances.
- Contains a formula to increase the type size to compensate for perpendicular text being viewed from above or below (a common situation with unit prices in stores).
- Contains type size conversion factors related to the viewer’s visual acuity and the luminance of the substrate.

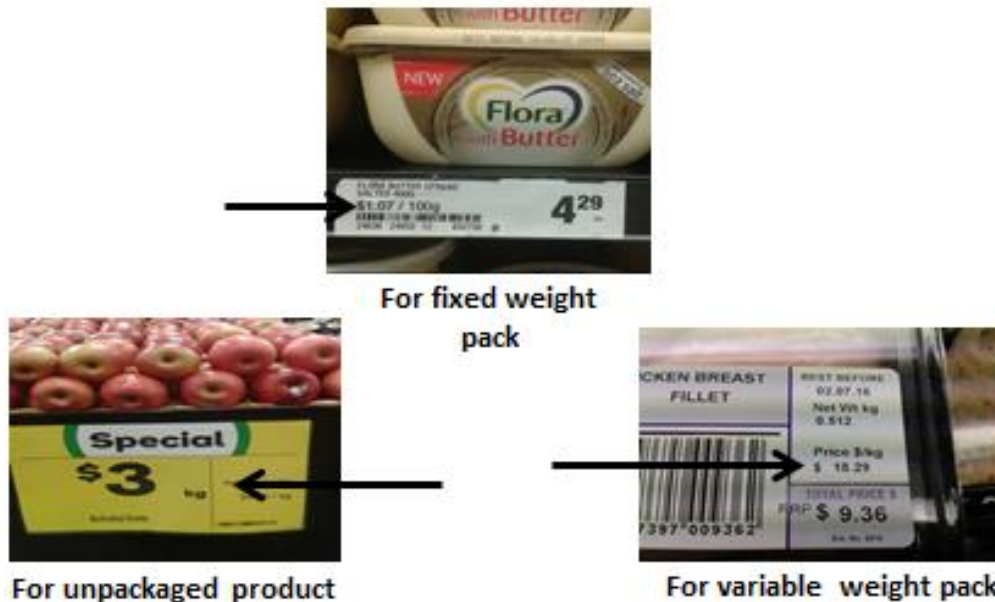
### **2. Other relevant legislation and guidelines/standards**

Examples of these include:

(a). Trade measurement/weights and measures legislation

In this regard it is important to recognize that there are three types of grocery unit pricing - for products sold loose from bulk; for products sold in random measure packages, and for products sold in constant measure packages. The three types are illustrated below:

# The 3 types of unit pricing



Weights and measures/trade measurement legislation often covers products sold loose from bulk and in random measure packages but not products in constant measure prepackages which are therefore the focus of new unit pricing regulation. For example this is the case with the legislation in Australia, the EU, the UK and several US states.

It follows therefore that to ensure the consistency of unit pricing of products sold in different forms, and thus to facilitate unit price comparisons, it is **extremely important** that any unit pricing system and legislation covering products only in constant measure packages takes full account of any legislative requirements for unit pricing products sold loose from bulk and in random measure prepackages. For example, in Australia because products such as meat, fish, cheese, fruit and vegetables, etc. which are sold loose from bulk and/or in random measure prepackages (many of which must be unit priced per kg) the unit of measure for the unit price of these products in constant measure packages must also be kg, not 100g which is the standard unit of measure in the unit pricing Code.

New Zealand needs a mandatory effective, comprehensive, integrated and consistent unit pricing system that covers grocery products sold loose from bulk, and in random and constant measure prepackages. Depending on the provisions of New Zealand's weights and measures legislation, to achieve this may require:

- New legislation to cover the provision of unit pricing for grocery products sold in prepackages of constant measure and for products sold loose from bulk and in prepackages of random measure
- changes to weights and measures legislation on the units of measure used for the pricing of grocery products loose from bulk and the quantity information displayed on packaged products.

(b). Anti-discrimination legislation

This is particularly relevant for consumers with disabilities such as impaired vision/reduced mobility/impaired cognition and age consumers, who wish to use unit pricing.

For example, the UK regulator's guidance<sup>1</sup> on the unit pricing legislation's prominence and legibility requirements says:

*Pricing information must be available, and clearly visible to consumers without them having to ask for assistance in order to see it.*

*Legibility refers to a consumer with normal sight. Traders must also comply with the Equality Act 2010 and take account of the special needs of the elderly and disabled groups.*

(c). Guidelines/standards on the provision of information on websites.

For example, the Web Content Accessibility Guidelines (an internationally recognised standard created by the World Wide Web Consortium).

### **3. The situations in other countries with mandatory grocery unit pricing systems.**

However, great care is needed when assessing unit pricing systems in other countries because these systems are often very sub-optimal for consumers. The many reasons for this including that many systems have not been adjusted to take account of: negative consumer experiences, changing consumer needs and retailing practices, new insights into consumer decision-making, new research on unit pricing; etc. Lack of monitoring and enforcement of compliance with legislative requirements are also an important reason for systems often being sub-optimal.

Sub-optimal mandatory systems often:

- Result in unit prices that are not easy for consumers to notice, read, understand and use. (The main causes are usually small print size, non-prominent location, non/intermittent-provision, use of inappropriate/inconsistent units of measure, and unit price inaccuracy.)
- Do not require the provision of unit prices on websites, or on any (or only some) types of advertisements, when selling prices are provided.

### **Unit pricing in Australia**

I note that in relation to unit pricing Paragraph 9.154 says:

“As noted above in relation to the Food and Grocery Code, if regulation is to be adopted in New Zealand, consideration should be given to the potential benefits of alignment between New Zealand and Australia.”

However, I firmly believe that adopting the Australian system without significant modification will **not** produce the high quality unit pricing system that New Zealand needs.

The Australian system for unit pricing of constant measure pre-packaged grocery products has many strengths including:

- Consistency with the units of measure (kg, litre, etc.) required by the trade measurement regulations for unit pricing of products sold loose from bulk or in random measure packages, for example - meat, seafood, cheese and fruit and vegetables.
- Requiring some grocery retailers providing unit pricing voluntarily to also comply with the unit pricing legislation.
- Requiring the provision of unit prices for products on promotion.

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<sup>1</sup> <https://www.businesscompanion.info/en/quick-guides/pricing-and-payment/providing-price-information>

- Requiring the use of only one unit of measure for all the packages of a product category irrespective of package size.
- When the product is on a roll or sold per item, allowing the use of a measurement unit related to the amount of product but also requiring that the unit of measure used for all unit prices for the category be that most often required by the regulation.
- Requiring the use of an alternative to the standard units of measure (100g, 100mL, metre, square metre, and item included) for the unit pricing of some products, for example - litre for beverages, kg for sugar, and 10g for powdered sauce and stock.

However, the Australian system also has many weaknesses<sup>2</sup> that significantly reduce its effectiveness, consumer use, and the benefits obtained by consumers and the economy.

These weaknesses are reflected in the results of some national consumer surveys. 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. And, in an online consumer survey (completed by almost 4,000 consumers) conducted in 2018-19 by the Australian Treasury, 27% of participants said they always/often had trouble finding and reading the unit price and 74% said this was a problem always, often or sometimes.

Therefore, New Zealand should avoid introducing a system with these weaknesses which include:

- A store must be very large (=> 1000sq m floor area) before unit price provision is mandatory. (This means that many supermarkets are not required to provide unit pricing.)
- All of 11 types of categories of grocery products listed in the legislation must be sold before unit price provision is mandatory. (One effect of this is that online retailers who do not sell perishable products like fresh fruit and vegetables are not required to provide unit prices.)
- Not requiring that unit prices be provided for **all** types of advertisements where a selling price is displayed. (See my earlier comments about why this is needed.)
- No specific requirement that unit prices be accurate. (Since unit prices are provided to facilitate informed choice, and they sometimes are inaccurate, there should be a specific requirement that unit prices provided are accurate.)
- No specific requirement to provide a unit price with each selling price displayed (This is needed to cater for situations where more than one label/sign is used to show the selling price e.g. on both the package and on a shelf label.)
- No requirements: for the unit price be displayed below or adjacent to the selling price; that where possible the unit price be the information closest to the selling price; and to avoid mixing the unit price with other text. (This results in great variation between and within retailers in how unit prices are displayed.)
- Insufficient specification of how to achieve satisfactory levels of unit price prominence and legibility. (This results in great variation within and between retailers in the prominence and legibility of unit prices. This is a systemic problem often greatest for unit prices provided in stores on labels for special offer labels and on upper and lower shelves, and provided in printed advertisements.)
- No requirement to take account of the needs of consumers with disabilities. (This is a systemic problem that affects the many consumers with disability especially those with impaired vision and reduced mobility. The latter reduces the consumer's ability to bend or stretch to be able to read many small print unit prices on labels on upper and lower shelves.)

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<sup>2</sup> See also the Consumers Federation of Australia's recent submission on the Australian Code available at <http://consumersfederation.org.au/wp-content/uploads/2021/06/210614-CFA-final-sub-on-UP-review.pdf>

- No requirements regarding the use of additional unit prices e.g. per roll for toilet rolls and per can for drinks which can confuse consumers and reduce use of the unit prices required by the legislation. (Examples of requirements that could reduce these problems include: that the print size used to show any additional unit price should be smaller than that used for the unit price required by the legislation and that the required unit price should also be provided wherever an additional unit price is provided.)
- No requirement to provide the range of unit prices when the selling price on a label/sign/advertisement relates to packages containing different quantities of the product. (This is helpful for consumers and is provided voluntarily by some Australian supermarkets, however others provide no unit price in such situations.)
- Inconsistency in the units of measure used for unit pricing due to the trade measurement regulations allowing many products (for example fruit and vegetables) to be offered loose for sale at a price either per each or per unit of weight, or to display no quantity information if in transparent packages with small numbers of pieces. (Inconsistencies also occur when more than one indication of the amount of product in a package is provided on the package, for example with the many products where the net weight and the number of items are both shown. Examples of such products include tea and coffee bags.)
- Lack of distinction between dried and fresh herbs and spices in the unit of measure to use for the unit price. (This results in packaged fresh herbs and spices being inconsistently unit priced as either per 10g – required for herbs and spices, or per kg - required for fresh fruit and vegetables.)
- No requirement that some products normally sold in packs of 1kg or more, such as rice and sugar, be unit priced per kg, not per 100g, yet this is required for flour.
- No provision for unit prices to be expressed in terms of the amount of final usage (not quantity of product), for example price per wash for laundry products of different concentration or in different forms such as powder/liquid/table/capsule. (This can give consumers inaccurate value information. The problem has been addressed in some EU countries which allow laundry products to also be unit priced per dose/wash.)
- No requirement to use drained weight as the unit of measurement for unit pricing when net and drained weight information is available. (This is a requirement in the EU and the UK.)
- No requirements for online retailers to provide effective product search or sort-by-unit price functions. (This is a major and growing problem that greatly reduces the ability of consumers to easily compare unit prices when shopping for groceries online.)
- No provision for infringement notices and civil penalties for non-compliance. (This means that if other enforcement actions have not succeeded, compliance with the legislation can only be enforced via legal proceedings, which are time consuming and costly.)
- There was no requirement in the original legislation for an independent review after a few years of operation. (Such a review after 5 years was mentioned in consultation documents on the 2009 legislation but was not included in the legislation. The 5 year review never occurred, so the original legislation was only fully reviewed in 2018, due to the 10 year legislation “sunsetting” rules, and the review was not independent. New unit pricing systems should be fully reviewed soon after introduction to ensure that they are achieving their objectives and to take account of changes in retailing, consumer needs, etc.)