

15 January 2024

SUBMISSION TO SENATE SELECT COMMITTEE INQUIRY INTO SUPERMARKET PRICES

RECOMMENDATIONS

In relation to the following terms of reference:

- Improvements to the regulatory framework to deliver lower prices for food and groceries;
- Any other related matters,

we ask the Inquiry to **recommend that** :

1 The Australian Competition and Consumer Commission (ACCC) give higher priority to monitoring and enforcing retailer compliance with the Retail Grocery Industry (Unit Pricing) Code of Conduct and be resourced to undertake, or commission, such activities.

2. The Commonwealth government commission an independent, national review of the unit pricing system in order to:

- **Assess the effectiveness and administration of the current unit pricing and other relevant legislation (including measurement legislation).**
- **Identify opportunities to increase the effectiveness and scope of the current legislation and its administration.**

Background

Regarding Recommendation 1: The ACCC administers the Grocery Unit Pricing Code which since 2009 has required certain instore and online grocery retailers to: provide consumers with the unit price (price per standardised unit of measure) of packaged grocery products in order to facilitate value comparisons; increase informed consumer choice; and increase competition.

Our proposed changes to monitoring and enforcing Code compliance are urgently needed because consumer usage of grocery unit pricing is sub optimal due mainly to many unit prices not being easy enough for many consumers to notice, read, understand and use both instore and online¹.

¹ Photographs of some unsatisfactory unit pricing instore and online are provided in Appendix 1.

This is a long standing and major problem due mainly to:

Grocery retailers:

- Using small², non-bold print
- Using inconsistent units of measure
- Not providing unit prices for all items.

The ACCC:

Not sufficiently monitoring and enforcing retailer compliance with the Code, especially the mandatory requirements that the unit price be displayed prominently and legibly in close proximity to the selling price, and that specified units of measure be used to indicate the unit price.

The current situation greatly reduces the ability of consumers to easily compare the unit prices and the relative value of grocery products and thus the ability to save significant amounts of money or to get much more for the same expenditure. It is a major issue for Australian consumers and the economy given:

- The high cost of living and the declining standard of living.
- That grocery product unit prices vary greatly and can be used to make numerous types of value comparisons.
- Consumers spend at least \$100 billion a year on grocery products.
- Low income households spend an above average proportion of their income on grocery products.
- Higher levels of consumer use of unit pricing would increase competition throughout the grocery supply chain, including between retailers.

Regarding Recommendation 2: An independent, comprehensive review of the unit pricing system is needed because, to make the existing grocery unit pricing system much more effective, changes are required to the Code and the national measurement legislation.

The legislative obstacles to increased consumer use of grocery unit pricing include:

- Some store-based and online grocery retailers are not required by the Code to, and do not, provide unit pricing.
- The Code only requires that unit prices be displayed prominently and legibly and there is no enforceable guidance on how that might be achieved and or on how compliance will be assessed, and there are no penalties for non-compliance.
- The need to modernise and make fit for purpose the Code's provisions on the units of measure to be used to indicate unit prices.
- Measurement legislation which allows many products to be marked and offered for sale or priced by count or by weight, which results in inconsistent units of measure being used to unit price different items of the same product, or similar products.

Also, although outside the Inquiry's scope, we consider that there great potential to increase consumer use of unit pricing when buying packaged products instore or online from **non-grocery retailers** such as pet supplies stores, chemists, hardware stores, and stationers. This is because these retailers sell many packaged products, some of which also sold by grocery retailers covered by the Code, and consumers spend large amounts with these retailers, yet they are not required³ to provide unit prices and rarely do so

² This causes problems for consumers in many different situations and are particularly severe when unit prices are on labels on the edge of high and low shelves and when the labels are not angled away from the shelf edge towards the viewer. We consider that prominently and legibly means that consumers should be able to notice and read all unit prices from a normal viewing distance and position. They should not have to bend very low, or even get on their hands and knees, or stretch high to be able to read any unit price.

³ They are required to do so in several EU countries and the UK.

voluntarily. Therefore, we consider it relevant to suggest that any review of unit pricing should include grocery and other product sold by non-grocery retailers, as well as those sold by grocery retailers.

We consider that the overall costs associated with increasing consumer access to, and use of, unit pricing by grocery, and other types of, retailers would be low⁴ especially relative to the benefits which could be very large (potentially \$100s of millions annually) and that the costs to government would be extremely low.

JUSTIFICATION

General

Consumer access to, and use of, effective unit pricing (pricing per standardised unit of measure) of products greatly increases price transparency and therefore the ability of consumers to compare prices, assess value, and save money or get more for the same expenditure. Effective unit pricing also helps consumers to be more resilient when experiencing economic challenges such as the current cost of living crisis. It also greatly helps consumers to notice when effectively the price of packaged products has increased due to a reduction in the amount in the package (“shrinkflation”) and increases competition.

Therefore, ensuring that consumers have access to and use effective unit pricing is highly relevant to the Inquiry and the potential benefits⁵ from increased consumer access to, and use of, unit pricing to compare prices and values of all types of products are very large⁶.

The benefits are particularly large for **grocery products** because:

- Australian consumers spend at least \$100 billion a year on groceries⁷ and high grocery bills are one of the main causes of financial stress for many households.
- Grocery unit prices differ greatly between: pack sizes, brands, loose/packaged products, package type, fresh/frozen/canned products, substitute/alternative products, retailers, etc. and they can be used to make many types of value comparisons.
- Many disadvantaged and vulnerable consumers spend above average proportions of their, often low, incomes on groceries.

However, as shown later, consumer usage of unit pricing for groceries is currently sub optimal for a variety of reasons including retailer noncompliance with the Code, and some instore and online grocery retailers not being required by the Code to provide unit pricing.

And, consumer usage of unit pricing is extremely low when buying packaged products from non-grocery retailers⁸, such as pet supplies stores, chemists, hardware stores, and stationers, because these retailers are not required to provide unit prices and they rarely do so voluntarily. Consequently, since consumers

⁴ The cost of significantly improving the unit pricing currently provided by grocery retailers would be particularly low.

⁵ Other benefits include: increased consumer protection and empowerment, Improved social justice (it is a social justice principle that cost pressures should be eased, particularly for the disadvantaged and vulnerable groups), and increased supply chain competition and efficiency.

⁶ For example, they were the main reason why in the 1970s in response to the economic problems caused by the Oil Price Shocks that several states in the USA become the first places in world to mandate the provision unit pricing by grocery retailers for packaged products. For similar reasons, other countries have also done the same, including Australia in 2009 following a recommendation by the ACCC inquiry into retail grocery prices conducted partly commissioned mainly because of the negative economic effects of the Global Financial Crisis.

⁷ Equivalent to an average of around \$10,000 per household per annum.

⁸ Who often sell products also sold by grocery retailers – for example pet foods and health and beauty products.

spend large amounts with these retailers, the consumer detriment due to non-provision of effective unit pricing is very high.

The Grocery Unit Pricing Code

The provision of unit pricing for products sold loose (for example fruit and vegetables) and in packages of random weight (for example meat and cheese) has been required and regulated by measurement legislation for many years. And, these forms of unit pricing are much used by consumers to compare values and prices.

However, for many years the provision of unit prices was **not** being required for products sold in constant measure packages even though since the 1950s and 60s these have become the most common way to buy groceries and many other products.

However, since 2009 very large supermarkets and some online grocery retailers have been required by the Grocery Unit Pricing Code, administered by the ACCC, to provide the price per unit of measure for packaged grocery products and the unit prices have to be prominent and legible and specified units of measure must be used.

Code compliance and consumer use

Although many consumers use the grocery unit pricing regulated by the Code, the extent and frequency of usage is sub optimal for many reasons including:

- Many grocery unit prices are not easy enough even for consumers with normal vision and mobility to notice, read, understand and use both instore and online due mainly to small, non-bold print, inconsistent units of measure, and non-provision⁹.
- Insufficient proactive monitoring and enforcement of retailer compliance with the Code.

The high levels of difficulty consumers experience using grocery unit pricing are clearly shown by a 2022 national survey¹⁰ commissioned by the Australian Consumers Association (CHOICE) which found that 71% of unit price users in grocery stores and 80% of online users experienced difficulties doing so. It also showed that the main instore and online difficulties were:

<u>Difficulty experienced using unit pricing</u>	<u>Instore shoppers</u> (% who experienced problems)	<u>Online shoppers</u> (% who experienced problems)
Difficult to read	34	23
Obstructed/covered	31	N/A
Different units of measurement for the same type of products	26	31
Not displayed	35	29
Being unable to sort/search by lowest unit price	N/A	20
Difficult to compare products of interest side by side	N/A	25

⁹ Photographs of such unit pricing instore and online are provided in Appendix 1.

¹⁰ Available at <https://www.choice.com.au/unitpricing>

Significantly, most of these difficulties were caused by retailers not complying with the Code. And, the levels of difficulty were substantially higher for some types of consumers. For example, unit prices being difficult to read instore was a problem for 47% of retired users compared with 29% of non-retired users and 79% of people with a disability experienced difficulties using unit pricing instore compared with 69% of other users.

Also, in a 2018 Treasury online survey involving 3775 respondents 74% said they had trouble finding and reading the unit price always/often/sometimes.

Therefore, we consider that, in order to increase consumer usage, increased retailer compliance with the Code is required and that this can be best achieved by the ACCC giving higher priority to monitoring and enforcing compliance¹¹.

Accordingly, we ask that the Inquiry recommend that the Australian Competition and Consumer Commission (ACCC) give higher priority to monitoring and enforcing retailer compliance with the Retail Grocery Industry (Unit Pricing) Code of Conduct and be resourced to undertake, or commission, such activities.

Need for legislation review

The extent and frequency of consumer use of grocery unit pricing could also be substantially increased by legislative changes that would result in major benefits for consumers and the community.

The current legislative obstacles to increased consumer use of unit pricing include:

- Some supermarkets and online grocery retailers are not required by the Code to, and do not, provide unit pricing¹².
- The Code only requires that unit prices be displayed prominently and legibly and there is no enforceable guidance on how that might be achieved and or on how compliance will be assessed, and there are no penalties for non-compliance.
- Measurement legislation allows the quantity information on many packaged products to indicate either the number of items or the weight and for many products sold loose to be priced per item or per unit of weight. These result in significant inconsistencies in the units of measure retailers use to unit price different items of the same product, or similar products.

Also, non-grocery retailers such as pet supplies stores, chemists, hardware stores, and stationers sell packaged products, and consumers spend large amounts in these stores yet they are not required¹³ to provide unit prices and rarely do so voluntarily.

Yet, consumer surveys have shown that many consumers want unit pricing for packaged products to be provided by more grocery retailers and some non-grocery retailers.

For example, in a national CHOICE survey in 2018: 86% of respondents believed mandatory unit pricing should be extended to shops that are not currently covered by the Code and over 50% believed convenience stores and smaller grocery retailers should also be required to provide unit prices, Also, 66% of participants said unit pricing should be extended to pharmacies and 44% to hardware stores.

¹¹ This would also make the system fairer and less discriminatory.

¹² Only retailers who sell all of 11 specified categories of grocery products are required to provide unit pricing and the only instore retailers required to provide it are those with more than 1000 square meters of floor space.

¹³ They are required to do so in several EU countries and the UK.

Therefore, we consider that an independent and comprehensive¹⁴ review of unit pricing is needed. Such a review was supposed to be, but never was, undertaken 5 years after the Code started in 2009¹⁵.

It is also very relevant that in the UK, where provision of unit pricing is also compulsory for some grocery retailers, and where much of the unit pricing provided is also inadequate and/or non-compliant that a recent Competition and Markets Authority report¹⁶:

- Recommended numerous reforms to the unit pricing legislation including changes aimed at: improving the consistency of the units of measure used to show grocery unit prices; improving the legibility and display of unit prices; and clarifying the application of unit pricing to products sold on promotion.
- Noted the relevance of other legislation including on weights and measures, and the Consumer Protection from Unfair Trading Regulations which deal with unfair, misleading or deceptive conduct/practices

The UK government welcomed the CMA's report and following the release of a consultation paper¹⁷ on unit pricing and other ways to increase price transparency (and information about products) and is now considering changes to legislation.

Accordingly, we **recommend** that:

The Commonwealth government commission an independent, national review of the unit pricing system in order to:

- **Assess the effectiveness and administration of the current unit pricing and other relevant legislation (including measurement legislation).**
- **Identify opportunities to increase the effectiveness and scope of the current legislation and its administration.**

¹⁴ One which looks at unit pricing in general not just grocery unit pricing and the Code.

¹⁵ A Treasury review of the Code published in 2021: was not independent; was mainly undertaken to prevent the legislation being "sunsetting"; was insufficiently comprehensive; and did not accept any changes suggested by the ACCC, some grocery retailers and organisations, some academics, and several consumer and community organisations. No significant changes were made to the Code. The ACCC improved its retailer guidance document. However, we are unaware of any resultant improvements in the quality of retailer provision.

¹⁶ <https://www.gov.uk/government/publications/unit-pricing>

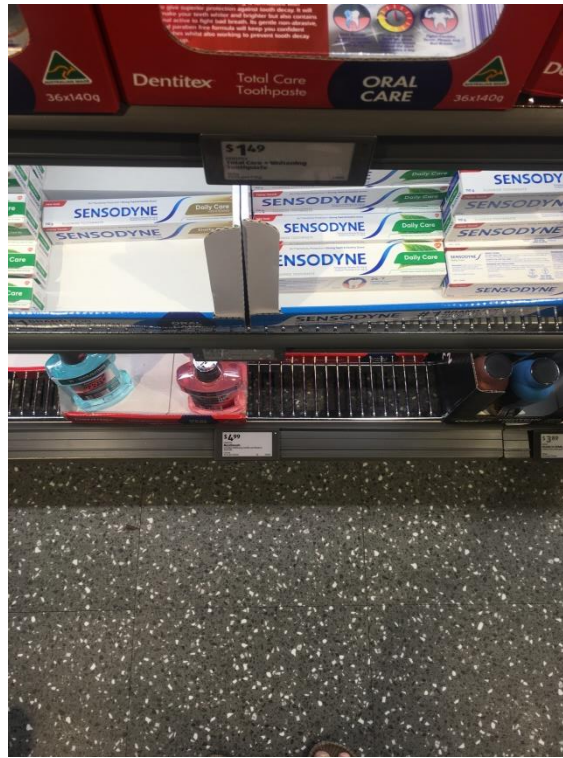
¹⁷ Available at <https://www.gov.uk/government/consultations/smarter-regulation-improving-price-transparency-and-product-information-for-consumers> and the Minister's Foreword includes the following statements:

- "Information and consumer transparency is not a luxury or a nice to have, it is a must."
- "Choice and information go hand in hand, and in this economic climate it is even more important. When shopping for your groceries, you should know at a glance which products are best value."
- "Clearer information allows consumers to make more informed choices, thereby encouraging producers to compete with one another. Increased competition amongst producers generally leads to better functioning markets, including higher quality products, innovation, and price reductions. These changes further improve consumers' ability to gain welfare from their consumer spend."

APPENDIX 1

EXAMPLES OF UNSATISFACTORY GROCERY UNIT PRICING

INSTORE



Unit prices very difficult to read on electronic labels on lower shelves due to small print, non bold font and one label being vertical



Unit price very difficult to read on paper label on bottom shelf due to small print and non bold font



Unit prices difficult to notice and read on special offer label due to use of small, non bold font and not being close to selling price



Unit price on paper shelf label obscured by edge of label holder



Unit price not provided



Tea bags unit priced per 100g and per bag (all should be the same unit of measure)






Beverages unit priced per 100mL (all should be per litre)







Toothpaste unit priced per 10g (should be per 100g)

ONLINE

 <p>McKenzie's Rice Flour Gluten Free 375g</p> <p>\$1.70 \$4.53 per 1kg</p> <p>★★★★★ 0.0 (0)</p> <p>Add</p>	 <p>Erawan Glutinous Rice Flour 500g</p> <p>\$1.90 \$3.80 per 1kg</p> <p>★★★★★ 0.0 (0)</p> <p>Add</p>	 <p>Pattu Fine Rice Flour 1kg</p> <p>\$4.80 \$0.48 per 100g</p> <p>★★★★★ 0.0 (0)</p> <p>Add</p>
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Rice flour unit priced per kg and per 100g (all should be per kg) and unit price in non bold font

 <p>Amplify Ginger Lemon Sparkling Kombucha 750 Millilitre</p> <p>\$8.50 \$1.13 per 100mL</p> <p>Add to Cart</p>	 <p>Amplify Organic Kombucha Passionfruit & Lemonade 330 Millilitre</p> <p>\$4.20 \$1.27 per 100mL</p> <p>Add to Cart</p>	 <p>Bickford's Bitter Lemon 4 Pack</p> <p>\$6.40 \$1.60 each</p> <p>Add to Cart</p>	 <p>Charlie's Super Smoothie with Plant Protein, Orange, Pear & Banana 300 Millilitre</p> <p>\$3.75 \$1.25 per 100mL</p> <p>Add to Cart</p>
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Beverages unit priced per 100mL and per each (all should be per litre) and unit price in non bold font not close to the selling price