



## **Key Issues for the Proposed National Unit Pricing Regime Briefing Paper February 2009**

Queensland Consumers Association and Consumer Action Law Centre welcome the Federal Government's announcement that it will establish a mandatory national unit pricing regime for Australia that will cover most packaged grocery items.

Unit pricing is the display of the price of goods for sale per a standard unit of measure, such as per kg or per litre, in addition to the selling price. This allows consumers quickly and easily to compare the value of different grocery items across package sizes, brands and different products. In Europe and the United States where unit pricing is already in place, it has been shown to save consumers large amounts of money on their weekly grocery bills.<sup>1</sup>

The Government has now announced the key features of its proposed national unit pricing regime and will be undertaking further consultation before finalising a new mandatory code of conduct for the grocery industry that will be prescribed under the *Trade Practices Act 1974* (the Act).

Australia deserves a best practice unit pricing system that is easy for consumers to be aware of, read and use; and is easy for retailers to provide. This requires a system with mandatory minimum standards to ensure consistency and sufficient quality in the display of unit prices. This is the only way to maximise the potential benefits that flow from unit pricing.

Not all of the key features of the proposed new regime meet the best practice standards we have previously advocated, including smaller than desirable standard units of measurement that minimise price differences, and the failure to specify minimum sizes for unit price displays to guarantee awareness and readability.

Overall, however, the proposed national unit pricing regime is a good quality one. It is now critically important that Australia gets the details right under this regime. If not, the system will be sub-optimal with consumer awareness and use substantially lower than expected, desirable or possible. This would minimise the unit pricing benefits Australian consumers deserve.

Our comments on the key issues relating to the announced key features of the proposed national unit pricing regime are set out in this briefing paper.

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<sup>1</sup> We have made numerous submissions in support of a national mandatory unit pricing regime which provide further details of the reasons for our support. These include to the Australian Competition and Consumer Commission's inquiry into the effectiveness of competition in the grocery sector, the Senate Economics Committee's inquiry into a private member's unit pricing bill and the Commonwealth Treasury's unit pricing issues paper. Ian Jarratt, Queensland Consumers Association member, also completed a detailed Churchill Fellowship report into unit pricing systems in Europe and the United States, available at [www.churchilltrust.com.au](http://www.churchilltrust.com.au).

## KEY FEATURES OF THE NATIONAL UNIT PRICING SYSTEM

The national unit pricing regime will:

- be established by regulation as a mandatory code of conduct under Part IVB of the *Trade Practices Act 1974*

We strongly support a mandatory unit pricing regime. Minimum unit pricing requirements must be made mandatory to ensure consistency of implementation across stores and across the country, maximising the ability of consumers to understand and use unit pricing.

The existing codes of conduct made under the Act concern business-to-business transactions. The mandatory unit pricing code of conduct (the Code) will be the first business-to-consumer code prescribed under the Act and there are therefore challenges for the Government in getting it right.

It is essential that the Code fully addresses consumer needs as well as business requirements and it will be useful to consider relevant features of any state or territory mandatory industry codes of conduct covering business to consumer transactions in drafting the new Code. We also consider that, in general, the Queensland Government's draft unit pricing regulation released for consultation in 2008 is an excellent framework for, and contains many important details relevant to, a national compulsory unit pricing regime.<sup>2</sup>

In addition, guideline documents exist to assist businesses to comply with various regulatory requirements, including the three existing codes of conduct under the Act, and it will be essential that guidelines be produced, perhaps by the Australian Competition and Consumer Commission (ACCC), to assist businesses with compliance and to help consumers understand their rights and obligations under the new unit pricing Code.

Monitoring and enforcement of the Code's requirements will need to be effective and efficient or the Code will not operate as intended. The use of local inspectors will make it easier for both businesses and consumers to deal with the Code and will make inspections easier to undertake. It also makes sense that the ACCC make maximum use of existing arrangements for other trade measurement compliance work. State and territory trade measurement staff have very relevant responsibilities and experience in similar work, for example monitoring compliance with existing statutory requirements for unit pricing of grocery products sold from bulk and random weight pre-packaged products, and this experience should be used regardless of when the transfer to national trade measurement regulation takes place.

In terms of enforcement, the Act provides the ACCC with different remedies to secure compliance with the Act and codes made under it, including enforceable undertakings and injunctions. However, the range of remedies currently available is not sufficiently flexible or appropriate for unit pricing regulation and for many unit pricing breaches, such as inaccurate

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<sup>2</sup> Fair Trading (Unit Pricing) Amendment Regulation 2008. Changes suggested by consumers include requiring the provision of unit prices for multibuy offers.

or hard to read unit prices, a more appropriate, efficient and fast enforcement remedy would be the ability to issue infringement notices with set penalties lower than the maximum penalty following full court action. We note that the Government has now committed to introducing new and more flexible powers for the ACCC to enforce consumer laws, including infringement notices in some circumstances. We urge the Government to ensure these powers are available for the enforcement of mandatory codes of conduct under the Act and that, in particular, infringement notices are available for breaches of certain unit pricing requirements.

Finally, the Government must allocate additional resources to the ACCC for its unit pricing inspection and enforcement activities in recognition that the Code vests it with new responsibilities.

- **be established by 1 July 2009, to apply from 1 December 2009**

We have concerns that a 1 July 2009 establishment date does not allow for sufficient time for stakeholder consultation and other tasks related to the introduction of the new Code, including the preparation of educational materials for the public. Australian consumers have waited a long time for a compulsory unit pricing regime and the system implemented should take full account of overseas experiences and the needs of Australian consumers. We would strongly support a stakeholder conference being held as part of the consultation process.

The phased introduction of unit pricing by different supermarkets during the period from 1 July to 1 December 2009 should be discouraged. Full implementation by supermarkets at the same time allows shoppers to make full use of new unit prices from the start, rather than a partial introduction which reduces the value of the unit price displays and discourages consumer interest and use. It would also undermine the effectiveness of consumer education activities. The phased introduction of a voluntary unit pricing system by Woolworths supermarkets despite the Government's ongoing consultation process has probably already had a negative effect on consumers' understanding and use of unit pricing.

It is also unclear at what time supermarkets will be expected to display educational materials about using unit prices in their stores. It should be clarified whether stores will be required to display relevant information once the Code is made or only after 1 December 2009.

- **apply to all store-based retailers with floor space for the display of groceries greater than 1000m<sup>2</sup> and that supply at least a prescribed range of food-based grocery items;**

Restricting the unit pricing regime to stores with floor space greater than 1,000m<sup>2</sup> will ensure that major supermarkets must comply with the Code while not imposing a burden on smaller business such as milk bars.

We strongly recommend that the Government commit to requiring this exemption to be reviewed five years post-implementation (and if necessary, every five years after that), perhaps by subjecting the exemption to a sunset clause. It is highly likely that the introduction of electronic shelf labelling and other technological advances will continue to

roll-out in Australia and these will make it increasingly easy and more cost-effective for all stores to unit price over time. This was the approach to the small retailer exemption taken in Europe.

A concern with this exemption for smaller retailers is that it may exclude some medium to large retailers operating from stores with a smaller floor space than 1,000m<sup>2</sup>, such as many Aldi, IGA and Franklins stores. The Queensland draft regulation's approach, which requires compliance with the Code when a retailer operates from a smaller floor space (200m<sup>2</sup>) but only if the retailer also uses computerised shelf labels and barcode scanners at the checkout, may be worth considering further.

There may need to be a definition of groceries and the items included in the proposed prescribed range of food-based grocery items will need to be specified in the Code, with some method set for deciding the minimum proportion of items in the specified range which if supplied determines that a store is covered by the Code. The Queensland Government's draft regulation lists 11 types of grocery products and requires provision of unit prices if a retailer sells a range of least seven of these types. We support this sort of approach but note that, in order to cater for the sale of alcohol in supermarkets in some states, the definition of grocery products should include alcoholic beverages.

We agree that the introduction of a mandatory unit pricing Code should apply to retailers which sell mainly a range of food products, but over time it may become desirable to extend the provisions to stores which sell a smaller range of food products or which specialise in one product, such as bottle shops.

- **apply to all online retailers that supply at least a prescribed range of food-based grocery items**

We strongly support the application of the Code's requirements to online retailers as well as store-based retailers. Our comments regarding the prescribed range of food-based grocery items also apply to online retailers.

- **apply to any other retailer that chooses to display unit prices for grocery items with a transition period of six months;**

This is a welcome provision. It is important that all retailers which unit price do so consistently so that consumer understanding and use is maximised. At the same time, retailers which voluntarily introduce unit pricing after the Code commences should have sufficient time to establish their unit pricing system and ensure it complies with the Code.

The Code must specify when the transition period begins. One option would be for the retailer to notify the ACCC that it will start implementing unit pricing from a specified date. Some quantitative threshold for requiring voluntary provision to comply with the Code may also be required. The threshold could be the provision of unit prices for a specified proportion of relevant products. Under the Queensland draft regulation, where the unit price is displayed for more than half of the grocery products in the premises, unit pricing must comply with the regulation's requirements.

- **require retailers covered to provide a unit price for all items they sell for which a selling price is displayed, unless the item is part of a prescribed category of exempt items**

We support the general aim of this provision. We note that the Queensland draft unit pricing regulation refers to grocery product (defined) as any product other than an excluded product supplied by a grocery retailer (defined) to consumers. A list of excluded products is then provided in a schedule.

A guiding principle for the unit pricing regime should be that a unit price is provided wherever it is likely to be of value to the consumer. In this regard, items or products sold by number/count should also generally be covered by the regime, including non-food items that are common household grocery purchases. For example, products such as video tapes, compact discs and batteries are sold in packages containing different numbers of the item and by different brands, and consumers will wish to and can compare the price per individual tape, disc or battery. The question of which standard unit of measurement should be used for any given product is a separate question to whether it should be included under the Code.

- **not apply to goods sold at a reduced price due to damage or their perishable nature; offered for sale as a bundle of different types of items for a single price; or that are part of a prescribed category of exempt goods for which unit prices are not practical**

There is a need for some exemptions from the Code, such as for goods sold at a reduced price due to their perishable nature or for mixed-packs. However, there is a need to ensure that exemptions do not deprive consumers of important unit price information.

For example, there is no reason why unit prices should not be provided to help consumers compare value across a range of special offers that are displayed on a planned basis by retailers and are not related to items being perishable or in a mixed pack of different single items. These special offers include short-term price reductions (normally on offer for a week and for which retailers normally produce new shelf labels and other price displays), temporary increases in the package size, discounts only available to holders of loyalty cards and multi-buy offers. Indeed, overseas experience has shown that retailers will often not provide the unit price for special offers unless required by regulation, yet when required appear to have no problem doing so.

Multi-buy offers (where two or more of the same item are supplied with one selling price, but where the items can also be bought separately at a higher price per item than the price per item if bought as a multi-buy) are increasing in importance but are confusing for shoppers. Excluding such offers would result in a huge gap in the unit pricing regime. Woolworths is not providing a unit price for its multi-buy offers under its current voluntary unit pricing system but is for most other special offers, creating some confusion and highlighting the problems that can arise if certain offers are not unit priced.

We also oppose the exclusion of products simply because of a small package size, for example 50g or less, or because they are not basic staples, for example snack foods. Such

exclusions would significantly reduce the usefulness and use of unit pricing and there appears to be no logical reason to exclude them.

It is not clear how the proposed new Code will interact with existing trade measurement requirements for unit pricing of products sold from bulk or in random weight packages. In particular, the requirements for the marking of prices on products and packages should continue. We also consider that these products should continue to be unit priced as they currently are, given that consumers are already familiar with these unit price displays and understand how to use them.

- **apply to all in-store representations of price unless specifically excluded**

Further clarification is required about the objective for excluding some price representations and what sort of price representations might be excluded.

It is important that there is no exclusion from unit pricing for items for which the unit price and the selling price are the same. For example, if the standard unit is 100g and a 100g package costs \$1.68, the unit price should still be shown as \$1.68 per 100 grams. This minimises consumer confusion and provides a unit price for more products and packages.

Again, we also strongly oppose the exclusion of special offers that can readily be unit priced, for example multi-buy offers.

- **apply to all online store price lists unless specifically excluded**

We agree that online price lists should display unit prices. Our comments above in relation to in-store representations of price also apply to online price lists.

- **apply to other non-store print advertising such as catalogues, newspaper advertisements or front-page website advertisements**

We strongly support this feature of the proposed regime. Unit pricing in such advertisements will assist in increasing competition between supermarkets as many consumers use catalogues and advertising to compare prices and decide where to shop. It should be made clear that this requirement only applies if the advertisement shows a selling price.

We note that the Queensland draft regulation applies this requirement to any printed grocery advertisement, not only to advertisements made by retailers covered by its requirements for in-store unit pricing. This wider coverage for advertisements should also be required by the Code, just as online price displays will not be excluded based on retailer size. It is easy and cheap for retailers to provide this information in advertisements and it is a strongly pro-competitive measure.

- **not apply to non-print advertising such as radio and television;**

It may be impractical to apply unit pricing to television and radio advertising and we support this feature relating to the Code.

- require the unit price to be prominent, unambiguous, legible and in close proximity to the selling price;

This is one of the most important aspects of the Code. It is critical that, in practice, unit prices are easy to notice, easy to read and easy to use.

We strongly advocate for satisfactory requirements regarding the adequate and appropriate display of unit prices. Much of the unit pricing currently being provided voluntarily by Australian supermarkets is insufficiently prominent or legible, highlighting the need for minimum standards in this area.

We continue to support as best practice the setting of minimum standards for matters likely to have major effects on presentation, such as size.

However, we do recognise that the Government's proposed approach is helpful in that it requires unit prices to be not only legible and in proximity to the selling price but also prominent and unambiguous.

The current UK system requires unit price information to be "unambiguous, easily identifiable and clearly legible" but it also requires that consumers should not need to seek assistance to be able to see a price. The Government could consider adopting this standard as part of the definition of prominent under the Code.

However, UK guidance notes remind traders of their obligations to take account of the special needs of the elderly and disabled groups and encourage traders to take account of the Royal National Institute for the Blind's *Clear Print Guidelines*. Despite these suggestions, many UK consumers consider that much unit price information is too small, with a recent submission to the UK government from the Trading Standards Institute stating that:

Also the opportunity must be taken to increase the size of the unit pricing information, which is virtually unreadable to anyone without 20/20 eyesight or without a magnifying glass. This is a particular problem for the elderly with products that are displayed on bottom shelves, as age and infirmity preclude many people from bending or stooping to examine price labels.<sup>3</sup>

To avoid such problems in Australia we consider that, if the Code will not be prescriptive on the actual size of unit pricing displays, it should provide examples of what would be considered "prominent and legible" to act as a guide in how businesses may display their unit prices. This would give stores the ability to create some certainty for themselves by meeting such standards, as well as the flexibility to design their own unit price displays if they preferred, provided they remained "prominent and legible". For example, the Code could deem that a unit price is considered prominent and legible if it is displayed on the same shelf label as the relevant selling price and is the greater of either 10mm or 50% of the height of the selling price. A similar approach could be taken with other price signs, for example 10mm or 25% of the height of the selling price on off-shelf price signs. Such

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<sup>3</sup> Trading Standards Institute, *Specified Quantities Consultation - NWML Consultation 2008 - Response of The Trading Standards Institute*, December 2008, p.8, available at [www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk).

clauses in the Code will not only encourage retailers to comply by giving them more scope for displaying their unit pricing while giving them a sense of minimum standards, but will also guide a court or the ACCC in assessing compliance.

Other important presentation factors which require consideration include the type and presentation of the monetary units used to indicate unit prices. As with the Queensland draft regulation, the Code should require all unit prices to be shown in \$ form such as \$0.76 rather than 76 cents and \$1.85 rather than 185c or \$1 and 85c. The Code will also need to specify rules for rounding up or down unit prices to the nearest cent, as has been provided for under the Queensland draft provisions. It does not make sense to display multiple decimal places beyond what consumers are actually able to use as currency. Currently, Aldi and Woolworths differ in how they present this type of information. For unit prices below \$1, Aldi gives the price in “c” (not “cents”) to one decimal place whereas Woolworths gives the price in \$ to the nearest cent. This is not conducive to consumer understanding generally, let alone price comparisons between stores.

The need to show unit prices to one decimal place of a cent can usually be easily removed by using more appropriate units of measure. For example, by unit pricing facial tissues per 100 tissues rather than per tissue, the unit price would be, say, \$3.20 per 100 tissues rather than 3.2 cents per tissue.

Finally, the proposed display requirements do not actually confirm that unit prices must be accurate. The Code must explicitly require retailers to provide accurate unit prices. It is very common with some overseas systems for unit prices to be inaccurate even though the calculations are invariably done by computer. Such inaccuracies reduce consumer confidence in, and ability to use, unit prices. A well-run store should have very few such inaccuracies.

- **use standard units of measure being per 100ml/100g/metre/m2/1 unit (where sold by count) with other measures for prescribed categories of goods;**

We continue to advocate as best practice that per kilogram and per litre be used as the standard units of measure for products sold by mass or volume. Smaller units make prices too small and price comparisons difficult, and are not consistent with other existing trade measurement legislation. Per kg and per litre measures are also used intuitively by consumers.

However, if per 100g and per 100ml are to be the standard units under the Code for products sold by weight and volume, it is important to list appropriate other measures for prescribed categories of goods and to only allow one standard unit of measure for unit pricing of any such category, such as only per kg for flour and only per litre for soft drinks, regardless of the package size. Permitting varying standard units for the same product type sold in different sized packaging will not allow consumers to compare value across product sizes, undermining one of the most important benefits of unit pricing.

Regarding prescribed categories of goods, unit pricing per kg should be required for constant weight packages of goods which by law, if sold by weight, must be priced per kg when sold from bulk or when packed in random weight packages. Such products include



cheese, bacon, salami, nuts, fruit and vegetables. This will enable the use of unit prices to compare the same or similar products in a variety of packaging types and product forms, such as fresh and frozen vegetables.

In addition, for any packaged product whose size range includes a package equal to or greater than 0.5 kg or 0.5 litres, the Government should consider prescribing the product and the standard unit of measure for the product as per kg and per litre.

Furthermore, there is a need to ensure the most useful standard unit of measure is required for unit pricing of products sold by length or by count, such as aluminium foil, toilet paper or batteries. Overseas experience shows that problems often arise if an inappropriate standard unit is chosen for such products and there are already problems with some non mass/volume unit price measures used by Australian supermarkets, for example, toilet paper unit priced per roll even though the number of sheets per roll varies greatly, facial tissues unit priced per tissue, and aluminium foil unit priced per metre and per 100 metres in the same store.

- operate only to the extent that it is not inconsistent with any other Commonwealth legislation.

We support this objective but note also that at least until 1 July 2010 relevant state and territory trade measurement legislation will also operate. As discussed above, it will be important that the Code is consistent with and complementary to such legislation and that this continues after 1 July 2010.

## **OTHER RELEVANT ISSUES**

The Government has announced that the ACCC will provide industry and consumers with educative measures and be the agency responsible for the enforcement of the code.

### **Education**

Unit pricing is designed to make it easier for consumers to save money by comparing prices. Many families are currently struggling to make ends meet, particularly due to the current financial crisis. Grocery shopping represents one of the largest weekly costs for a family, and any system that facilitates savings in this area is crucial.

However, unit pricing is largely new to Australian grocery shopping practices thus, to be effective, consumers must learn how to understand and use unit prices. This will only occur effectively if an education campaign about unit pricing coincides with its introduction into stores. This education campaign should have as its goal the transmission of knowledge regarding what unit pricing is and how it can be used. Simply introducing unit pricing without an education campaign will mean that many shoppers are not aware of, fail to understand and do not use the new system.

It is most important that this education campaign be provided in-store, such as through the display of posters and the distribution of pamphlets explaining the new unit pricing system. The ACCC should separately provide appropriate consumer information on its website and a

short-term government information campaign through the media might also be helpful, but in-store information will remain the most effective means to inform shoppers about unit pricing.

For this reason, it is imperative that the Code require retailers to provide in-store education materials. This should include a requirement permanently to display posters informing consumers that unit prices are provided in the store and to display pamphlets for at least six months after the start of unit pricing in the store and have them available to consumers on request after that time.

If the ACCC will provide educative materials about unit pricing, we consider that whenever possible these should also be used by retailers. This will promote consistency in the type and quality of information provided to consumers. Retailers may wish to provide consumers with their own educational materials rather than use the ACCC's but it must be consistent with any ACCC material.

### **Code review**

Once the Code is implemented, there should be an opportunity to test the success of the new regime with regular reviews. Such reviews can determine which areas of the Code work effectively and which do not, to allow for any necessary amendments to ensure the regime continues to operate efficiently and to the benefit of consumers.

### **Code monitoring**

The ACCC should establish a Code monitoring committee with industry and consumer representation to test and review consumer research and testing into the regime's operation.

Queensland Consumers Association and Consumer Action Law Centre look forward to providing further input into the Government's consultation on the proposed new unit pricing Code over the coming months.

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