



**SUBMISSION ON THE EXPOSURE DRAFT OF
THE COMPETITION AND CONSUMER (INDUSTRY CODES –
UNIT PRICIG) REGULATIONS 2021**

June 2021

Submitted via – Consumerlaw@treasury.gov.au

Financial Counselling Australia (FCA) is the peak
body for financial counsellors in Australia.

About this Submission

Our submission responds to the Review of Retail Grocery Industry (Unit Pricing) Code of Conduct (the Code).

About Financial Counselling Australia (FCA)

FCA is the peak body for financial counsellors in Australia. We support financial counsellors and provide a voice on national issues. We advocate on behalf of the clients of financial counsellors for a fairer marketplace that will prevent financial problems in the first place.

What Financial Counsellors Do

Financial counsellors assist low-income and vulnerable Australians who have financial problems. These problems are often related to unemployment, illness or relationship breakdown or difficulty in making ends meet due to factors such as mental health issues or living on a low Centrelink income.

A number of financial counsellors also work predominantly with Aboriginal and Torres Strait Islander communities, including in remote and regional areas.

Community-based financial counselling is a free, independent and confidential service. Financial counsellors have knowledge of a range of areas of law and policy, including consumer credit law, debt enforcement practices, the bankruptcy regime, industry hardship policies and government concession frameworks. Financial counsellors are required to hold (or to obtain) a Diploma in Financial Counselling.

Financial counsellors also document their experiences and highlight issues that have a negative impact on their clients. Either individually, or through FCA, they consult with industry, government and other stakeholders and encourage practices that prevent financial and consumer problems.

Overview

FCA welcomes the opportunity to respond to this review of the Code. In the 12 years since the Code was introduced, unit pricing has been a great asset for many people, particularly those on low incomes, including families and pensioners.

FCA supports the continuation of compulsory unit pricing, however, we believe the Review and Exposure Draft should seize this opportunity to address inherent flaws in the existing Code as this will benefit both consumers and the wider economy.

We support the Consumers Federation of Australia's (CFA) submission and its recommendations.

We highlight the following recommendations, in addition to CFA's more substantive recommendation's below:

1) The requirements around prominence and legibility entailed in the Code should be clearly defined to promote greater understanding and access, including for people with a disability.

Unit pricing only works if people can quickly view and understand this information. However, there are issues of prominence and legibility of unit pricing that regularly arise for consumers.

Although the Code requires unit pricing information to be prominent and legible, neither term is defined. This means that retailers have interpreted the requirements in inconsistent and inadequate ways so that the full benefits of unit pricing are not being realised.

According to a survey by Choice, one of the main barriers to making unit pricing more effective is legibility, with 67% of respondents highlighting problems around font size and 64% emphasising issues including obscured provision and inconsistent units of measure. A further study, conducted in 2014 by the Queensland Consumers Association, assessed the quality of unit pricing in 25 independent supermarkets in Queensland, NSW, Victoria, and South Australia. Examples of insufficiently legible or prominent unit prices were present in each store¹.

When broken down, 25% of people say that unit pricing is difficult to read on a price label (e.g. too small or difficult-to-see font) and 24% have issues with the unit pricing being obstructed or covered (e.g. by another price label).

The prevalence of such cases means that even where present, unit prices are often too difficult for the average person to read or understand. This issue is even more pronounced for consumers with sight, mobility or intellectual disabilities.

We note that this issue has been recognised by the report on this year's review, however the proposed solution – a review and update by the ACCC of the retailer guidance material on display of unit prices – is inadequate on its own. We strongly recommend changes to the Code, including establishing clear guidelines and definitions to ensure that all unit prices displayed are prominent and legible.

2) The Code's mandate should be extended to include more retailers that sell groceries as well as some non-grocery retailers that sell products in fixed measure packages, such as hardware stores and chemists.

In its current form, the Code makes unit pricing compulsory for retailers that stock 11 types of specified grocery items and have a minimum floor area of more than 1,000 square metres (the exception being online stores). It is therefore rare for retailers that do not meet these requirements to provide unit pricing. This is problematic as there are large numbers of grocery and non-grocery stores where consumers are unable to make effective value comparisons of fixed measure package products e.g. beauty products and many packaged products at stationery stores, hardware stores and pharmacies.

¹ <https://www.choice.com.au/about-us/media-releases/2018/march/unit-pricing>

The current requirements of the Code are also problematic in that the floor area of retailers in many rural and remote communities is considerably smaller than 1,000 square metres. By this measure, access to unit pricing is limited as the application is largely voluntary. This disadvantages consumers in these locations, including Aboriginal and Torres Strait Islander communities.

The Code should be extended to include fixed measure packaged products at all retailers and revision of the stipulation that the Code only be compulsory for stores with a floor area of 1,000 sqm. These changes are necessary to ensure the benefits of unit pricing are spread fairly and more evenly.

3) Public funding should be dedicated toward better educating consumers about unit pricing and changes to unit pricing legislation.

Proper understanding of unit pricing remains limited among consumers. This can be attributed, at least in part, to the fact that there has been little consumer education around unit pricing since the Code was introduced in 2009.

In order to take full advantage of unit pricing, people must be equipped with a proper understanding of how unit pricing works, its benefits and the changes to the Code as they arise. Their ability to do so requires a government-funded education framework dedicated to providing that information.

To ensure that all people have equal access to this information, it is imperative that resources are designed so that they may be accessed by the vision impaired and those for whom English is not their first language.

4) A new or continued version of the Code should be reviewed every three years at least.

The consumer landscape has altered considerable during these past 12 years. Many of these changes happened quickly and in ways that could not be predicted – particularly considering the growing number of internet sales. Such rapid change will continue.

If unit pricing legislation is to accommodate these shifts it must be proactive. This requires regular periods of review, at a minimum, every three years. This review is further necessary to consider recommendations by the regulator as they arise.

Final Comments

FCA reaffirms the need for an updated version of the Code, one that accommodates the recommendations above, and those from CFA provided below.

Changes that address the inherent flaws in the Code would yield substantial benefits for people on low incomes, families and disadvantaged groups including pensioners, people with a disability and those living in regional and remote communities.

For these reasons, a refined version of the Code should be regarded a necessary asset for all consumers – but foremost, those from vulnerable groups.

We support the detailed recommendations made in CFA's submission:

On the draft new Code:

- 1) The draft 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 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 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 to 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 stores 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 draft 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 draft 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
 - 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 draft Code be amended to require that the unit price displayed for a grocery item is accurate.
- 13) The draft 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 new 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 new 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 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.

On the proposed review of the ACCC guidance for retailers

- 17) The ACCC should consult with all stakeholders (including consumers) during the review and that 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.
 - 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).