

# EXPOSURE DRAFT



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## Competition and Consumer (Industry Codes— Unit Pricing) Regulations 2021

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2021

David Hurley  
Governor-General

By His Excellency's Command

Michael Sukkar [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and  
Community Housing

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# EXPOSURE DRAFT

## 1 Name

This instrument is the *Competition and Consumer (Industry Codes—Unit Pricing) Regulations 2021*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2021.	1 October 2021

Note: This table relates only to the provisions of instrument as originally made. It will not be amended to deal with any later amendments of instrument.

- (2) Any information in column 3 of the table is not part of instrument. Information may be inserted in this column, or information in it may be edited, in any published version of instrument.

## 3 Authority

This instrument is made under section 51AE of the *Competition and Consumer Act 2010*.

## 4 Code of conduct

For the purposes of section 51AE of the *Competition and Consumer Act 2010*, the industry code set out in Schedule 1:

- (a) is prescribed for the purposes of Part IVB of that Act; and
- (b) is declared to be a mandatory industry code.

## 5 Schedule 2

Each instrument that is specified in Schedule 2 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

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Schedule 1 Retail Grocery Industry (Unit Pricing) Code of Conduct

Part 1 Preliminary

Clause 1

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## Schedule 1—Retail Grocery Industry (Unit Pricing) Code of Conduct

Note: See section 4.

### Part 1—Preliminary

#### 1 Name of code

This code is the Retail Grocery Industry (Unit Pricing) Code of Conduct.

#### 2 Purpose of code

The purpose of this code is to require certain grocery retailers to use unit pricing when selling particular grocery items to consumers.

#### 3 Definitions

Note: A number of expressions used in this code are defined in the *Competition and Consumer Act 2010*, including consumer.

(1) In this code:

**floor space**, in relation to retail premises, means the continuous internal floor area of the premises, but does not include any floor space provided for the consumption of food-based grocery items at the premises.

**food-based grocery item** means an item that:

- (a) is intended for human consumption by the manufacturer or producer of the item; and
- (b) is sold for human consumption by a prescribed grocery retailer to a consumer; and
- (c) is not meant for consumption at the retail premises at which it is sold to the consumer.

**grocery category** means a category of product to which grocery items belong.

Example 1: Meat is a grocery category, but a packet of sausages is a grocery item.

Example 2: Fresh fruit and vegetables are a grocery category, but a prepackaged bag of potatoes is a grocery item.

**grocery item** means any item sold by a prescribed grocery retailer, including a food-based grocery item.

**online grocery retailer** means a person that sells, using the internet, the minimum range of food-based grocery items to consumers.

**participating grocery retailer** means a person (other than a store-based grocery retailer or an online grocery retailer) that:

- (a) sells the minimum range of food-based grocery items to consumers; and

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Retail Grocery Industry (Unit Pricing) Code of Conduct **Schedule 1**  
Preliminary **Part 1**

Clause 4

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- (b) voluntarily displays a unit price (other than in an advertisement of a kind mentioned in clause 12) for one or more grocery items sold by the person (other than grocery items that are exempt under clause 8); and
- (c) is not required to display the unit price for the grocery item under a law of the Commonwealth, or a law of a State or Territory.

**prescribed grocery retailer** means any of the following:

- (a) a store-based grocery retailer;
- (b) an online grocery retailer;
- (c) a participating grocery retailer.

**retail premises** means premises in which grocery items are displayed for retail sale to consumers.

**sell** includes offer for sale.

**selling price**, in relation to a grocery item, means the final price (including GST) at which the grocery item is sold by a prescribed grocery retailer to a consumer.

**store-based grocery retailer** means a person that sells the minimum range of food-based grocery items to consumers in retail premises:

- (a) that have more than 1,000 square metres of floor space dedicated to the display of grocery items; and
- (b) that are used primarily for the sale of food-based grocery items.

**unit price** means the price (including GST) for a grocery item per unit of measurement.

- (2) In this code, the **minimum range of food-based grocery items** means food-based grocery items from all of the following grocery categories:
  - (a) bread;
  - (b) breakfast cereal;
  - (c) butter;
  - (d) eggs;
  - (e) flour;
  - (f) fresh fruit and vegetables;
  - (g) fresh milk;
  - (h) meat;
  - (i) rice;
  - (j) sugar;
  - (k) packaged food, other than food mentioned in paragraphs (a) to (j).

## 4 Application

- (1) This code applies to a store-based grocery retailer and an online grocery retailer on and after 1 October 2021.
- (2) This code applies to a participating grocery retailer:

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**Schedule 1** Retail Grocery Industry (Unit Pricing) Code of Conduct

**Part 1** Preliminary

Clause 5

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- (a) if the retailer displayed a unit price before 1 April 2021 and displays a unit price on 1 October 2021—on and after 1 October 2021; or
  - (b) if the retailer displayed a unit price on or after, but not before, 1 April 2021 and displays a unit price on 1 October 2021—6 months after the retailer first starts displaying a unit price for a grocery item sold by the retailer; or
  - (c) if the retailer has not displayed a unit price before or on 1 October 2021—6 months after the retailer first starts to display a unit price for a grocery item sold by the retailer.
- (3) If, at any time, the participating grocery retailer ceases to display unit prices for all grocery items to which this code applies (other than unit prices for grocery items that the retailer is required to display under a law of the Commonwealth, or a law of a State or Territory), the retailer ceases at that time to be a participating grocery retailer for the purposes of this code.

## **5 Consistency with other Commonwealth legislation**

This code has effect only to the extent to which it is not inconsistent with a law of the Commonwealth.



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Retail Grocery Industry (Unit Pricing) Code of Conduct **Schedule 1**

Requirements about unit prices **Part 2**

Requirement to display unit prices **Division 1**

Clause 6

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## Part 2—Requirements about unit prices

### Division 1—Requirement to display unit prices

#### 6 Display of unit prices

- (1) A prescribed grocery retailer must display a unit price for each grocery item sold by the retailer for which a selling price is displayed, unless the grocery item is exempt under clause 7, 8 or 9.
- (2) The retailer must ensure that the unit price for a grocery item:
  - (a) is displayed prominently and in close proximity to the selling price for the grocery item; and
  - (b) is legible and unambiguous.
- (3) If a prescribed grocery retailer chooses to display a unit price for a grocery item that is exempt under clause 7, 8 or 9, the retailer is not required to comply with this code in relation to the display of the unit price for the grocery item.

#### 7 Exemption—selling prices that apply to more than one grocery item

A grocery item is exempt if:

- (a) a selling price is displayed in such a way that it applies to more than one grocery item; and
- (b) the grocery item is one of those grocery items.

#### 8 Exemption—marked down or bundled grocery items

A grocery item is exempt if:

- (a) the grocery item is sold at a price that has been marked down from the selling price for which the retailer would usually sell the grocery item, because:
  - (i) the grocery item or the grocery item's packaging is damaged; or
  - (ii) the grocery item is a perishable item that may deteriorate if it is not used by a particular date; or
  - (iii) the grocery item is a discontinued grocery item; or
- (b) the grocery item is a bundle of different grocery items offered for sale for a single price.

#### 9 Exemption—particular grocery categories

A grocery item is exempt if the item is in any of the following grocery categories:

- (a) books, magazines and stationery;
- (b) optical discs and magnetic storage devices used for computing, sound reproduction or video, whether or not they are pre-loaded with content;

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**Part 2** Requirements about unit prices

**Division 1** Requirement to display unit prices

Clause 9

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- (c) photography items and equipment;
- (d) electrical items (other than batteries and light bulbs);
- (e) garden tools, and items for garden or pool maintenance or for garden or pool decoration;
- (f) flowers, including fresh, dried and imitation flowers;
- (g) furniture;
- (h) hardware items;
- (i) manchester;
- (j) computer equipment;
- (k) audio-visual equipment;
- (l) telecommunications items or equipment;
- (m) items for motor vehicle maintenance or repair;
- (n) sports and camping equipment;
- (o) toys;
- (p) household appliances and kitchen and bathroom utensils;
- (q) clothing, jewellery and other fashion items (other than make-up);
- (r) services, and goods supplied as part of providing a service, including mobile phone recharges;
- (s) goods for hire;
- (t) cigarettes and other tobacco products, including nicotine replacement products;
- (u) alcoholic beverages;
- (v) haberdashery;
- (w) items sold from vending machines;
- (x) meals prepared at the retail premises for immediate consumption.

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Retail Grocery Industry (Unit Pricing) Code of Conduct **Schedule 1**

Requirements about unit prices **Part 2**

How to display unit prices **Division 2**

Clause 10

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## Division 2—How to display unit prices

### 10 Units of measurement and form of unit price

- (1) Subject to clause 11, if a prescribed grocery retailer is required to display a unit price for a grocery item under clause 6, the prescribed grocery retailer must display the unit price using the most relevant of the following units of measurement:

- (a) for a grocery item supplied by volume—per 100 millilitres;
- (b) for a grocery item supplied by weight—per 100 grams;
- (c) for a grocery item supplied by length—per metre;
- (d) for a grocery item supplied by area—per square metre;
- (e) for a grocery item supplied by number—per item included.

Note 1: If a grocery item is usually supplied as a pair, such as a pair of gloves or a pair of shoes, the pair is one item for the purposes of this code.

Note 2: If a grocery item is supplied by number and this code requires a “per item” type of unit of measurement to be used in the unit price for the grocery item, the kind of grocery item to which the unit price relates may be referred to in the unit price eg “per nappy” or “per 100 nappies”.

- (2) For the purposes of subclause (1), the most relevant unit of measurement for a grocery item is:
- (a) if there is one unit of measurement displayed on the packaging of the grocery item as the unit of measurement by which the grocery item is supplied—the unit of measurement displayed on that packaging; or
  - (b) if there is more than one unit of measurement displayed on the packaging of the grocery item as the units of measurement by which the grocery item is supplied—the unit of measurement by which that grocery category is most often supplied.
- (3) If a unit price is at least \$1.00, the unit price must be displayed in dollars and whole cents.
- (4) If a unit price is less than \$1.00, the unit price must be displayed either:
- (a) in dollars and whole cents; or
  - (b) in whole cents.
- (5) The unit price is to be worked out to the nearest 1 cent (rounding 0.5 cents upwards).

### 11 Alternative units of measurement

- (1) If:
- (a) a prescribed grocery retailer is required to display a unit price for a grocery item under clause 6; and
  - (b) the grocery item is in a grocery category mentioned in column 1 of an item in the following table;

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the prescribed grocery retailer must display the unit price using the unit of measurement mentioned in column 2 of the item.

## Alternative units of measurement

Item	Column 1 Grocery category	Column 2 Unit of measurement
1	Herbs	per 10 grams
2	Spices	per 10 grams
3	Flavouring essences	per 10 millilitres
4	Food colouring	per 10 millilitres
5	Make-up	(a) per item included; or (b) if supplied by weight—per 10 grams; or (c) if supplied by volume—per 10 millilitres
6	Powdered sauce and stock	per 10 grams
7	Meat	(a) per item included; or (b) if supplied by weight—per kilogram
8	Fruit and vegetables (including mushrooms)	(a) per item included; or (b) if supplied by weight—per kilogram
9	Cheese	per kilogram
10	Beverages (including beverage concentrates)	per litre
11	Air fresheners	(a) per item included; or (b) if supplied by volume—per 10 millilitres
12	Products supplied on a roll (including toilet paper)	(a) if supplied by continuous length—per metre; or (b) if there are 40 or fewer items (including sheets) on the roll—per item included; or (c) if there are 41 or more items (including sheets) on the roll—per 100 items
13	Products supplied by number in packages of 41 or more items	per 100 items
14	Packaged eggs	per 100 grams
15	Ice	per kilogram
16	Flour	per kilogram
17	Laundry supplies (including washing powders and liquids, fabric softeners and fabric bleach)	(a) per item included; or (b) if supplied by weight—per kilogram; or (c) if supplied by volume—per litre
18	Pet products (other than pet food)	(a) per item included; or (b) if supplied by weight—per kilogram; or (c) if supplied by volume—per litre

Note 1: For item 7 of the table, the reference to meat includes any meat, regardless of whether it is fresh, frozen, dried, canned or otherwise pre-packaged, and includes dressed poultry, seafood and smallgoods.

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Requirements about unit prices **Part 2**

How to display unit prices **Division 2**

Clause 11

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Note 2: For item 8 of the table, the reference to fruit and vegetables (including mushrooms) includes any fruit, vegetable or mushroom, regardless of whether it is fresh, frozen, dried, canned or otherwise pre-packaged.

(2) If:

- (a) a prescribed grocery retailer supplies more than one grocery item from a grocery category mentioned in the table in subclause (1); and
- (b) the grocery items are supplied by number or on a roll; and
- (c) this code requires the unit prices for the grocery items to be displayed using different units of measurement;

the retailer may use, for all of the grocery items mentioned in paragraph (a), the unit of measurement that the retailer is most often required by this code to use in relation to unit prices for grocery items in that grocery category.

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**Schedule 1** Retail Grocery Industry (Unit Pricing) Code of Conduct

**Part 2** Requirements about unit prices

**Division 3** Display of unit prices in advertising

Clause 12

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## **Division 3—Display of unit prices in advertising**

### **12 Display of unit prices in advertising**

- (1) If a prescribed grocery retailer:
  - (a) advertises a grocery item:
    - (i) in print media (including catalogues and newspapers); or
    - (ii) using the internet (other than video or audio files similar in nature to television or radio advertisements); and
  - (b) displays a selling price for the grocery item in the advertisement; and
  - (c) the grocery item is not exempt under clause 7, 8 or 9;the retailer must display a unit price for the grocery item in the advertisement in accordance with this code.
- (2) If a prescribed grocery retailer uses television or radio, or a video or audio file on the internet that is similar in nature to a television or radio advertisement, to advertise grocery items, the retailer is not required to display or advertise the unit price for the grocery item in the advertisement.

## **Schedule 2—Repeals**

### *Trade Practices (Industry Codes—Unit Pricing) Regulations 2009*

#### **1 The whole of the instrument**

Repeal the instrument.