



14 June 2021

Submission on the Exposure Draft of the Competition and Consumer (Industry Codes – Unit Pricing) Regulations 2021

BACKGROUND

The Queensland Consumers' Association (QCA) is a non-profit organisation established in 1976 to advance the interests of Queensland consumers. QCA's members work in a voluntary capacity and specialise in particular policy areas.

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

Both organisations have a very strong interest in unit pricing and have participated in several consultations on it, including on the 2018 Discussion Paper which preceded the release of the Exposure Draft of a new Regulation.

Therefore, we welcome the opportunity to make this joint submission.

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COMMENTS

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

Like CFA, we disagree strongly with the conclusions of the review of the current Code and with the proposed new Code's provisions, which are virtually identical to those of the current Code.

In addition to the reasons given by CFA for this position, we wish to emphasise the following:

1. There is broad and diverse stakeholder support for improving the Code

Comments/suggestions for changes to the Code made by CFA and other consumer groups in submissions on the 2018 Discussion Paper were also made in submissions by other types of stakeholders.

For example, the ACCC (the Code regulator) submission said:

...through stakeholder engagement and feedback, the ACCC considers that some consumers have difficulty understanding unit prices due to the way it is displayed by many retailers.

..the ACCC supports the inclusion of more prescriptive requirements to improve the legibility of unit prices.

We further recommend that the Code be amended to ensure more consistent display requirements for retailers which have an online presence. While the Code currently requires online retailers to have a legible unit price for grocery items, there are disparities on how this is displayed.

We also support further reviews of the Code occurring at reasonable intervals if the Code is remade. The food and grocery market has undergone significant change in the years since the original code was made, and further review will be necessary to account for new developments in the sector.

The Australian Retailers Association's submission said:

We are advocating for online-only retailers, especially marketplaces which sell grocery lines, but not staples, to be brought under the requirements of the Code, should the regulations be remade.

Coles' submission said:

To ensure that the Code captures all major retailers, it is suggested that the 'minimum range of food-based grocery items' be updated to capture retailers once they range at least 50% of the items...

...it is Coles' position that some minor alterations to the Code could remove current areas of misunderstanding for customers. It is Coles' experience that the current 'Alternative Units of Measure' used in the Code for some products can lead to confusion for both customers and retailers.

2. Unsatisfactory provision of unit prices

The results of the consumer survey (completed by almost 4,000 consumers) conducted by Treasury as part of the consultation confirmed the results of surveys by CHOICE and the Queensland Consumers Association (detailed in their submissions on the Discussion Paper) that while many consumers use grocery unit pricing and find it very helpful, many also have problems with the lack of prominence or legibility of unit prices. For example, in the Treasury survey 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, clearly the current display of unit pricing is not satisfactory for consumers and this is recognised in the report on the review. However, we strongly believe that 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.

It needs to be accompanied by changes to the Code. Without such changes, we consider that it will be very difficult/impossible for the ACCC to achieve significant improvements in the display of unit prices by retailers.

We also emphasise that other changes are needed to improve the quality of the unit pricing provided by retailers, including when and where unit prices must be displayed and the units of measure that must be used. We consider that since these are specified in the Code, significant improvement is possible only if the Code is appropriately changed.

3. Requirements of consumers with disability

High proportions of consumers indicate in surveys that they have problems with the prominence and legibility of much of the unit pricing currently provided by retailers. Therefore, even higher proportions of consumers with disability, such as impaired vision or reduced mobility, are likely to be experiencing these, and other, problems.

The number of consumers with disability is already substantial and given the ageing population it is likely to increase. Consequently, the unit pricing provided by retailers needs to meet the needs of all consumers, including those with disability. This is important not only for equity, but also because of the requirements of Australian discrimination legislation to not discriminate on the basis of disability or age in the supply of goods or services.

In this regard, we note that the UK regulator's guidance¹ 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.

4. Benefits and costs of Code changes

We are concerned that, unlike the 2012 post implementation RIS, the report on the outcomes of the review did not fully consider and report on the benefits and costs of unit pricing.

This should have occurred for the three proposals made by several types of stakeholders for changes to the Code discussed in the report i.e. to increase prominence and legibility, and to extend mandatory requirements to other grocery retailers and to non-grocery retailers.

Also, in the report the focus appears to be only on any possible (but often unquantified) negative implications for industry and there is almost no account taken of the potential benefits for consumers, retailers, and the economy (including increased competition between retailers and between producers)

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

We recognise the challenges that can occur in estimating the impacts of policies on consumers and that it is often much easier to estimate impacts on industry, especially cost effects. However, the task is not impossible. For example the 2012 post implementation RIS took the simple approach of estimating industry provision costs and then considering what benefits consumers would have to achieve to equal the industry costs. And, not unexpectedly given the large numbers of consumers who use unit pricing, and the large amounts of money and time consumers spend on grocery products concluded that only very small and easily achievable benefits for consumers would be needed to equal industry costs.

We consider that a similar approach could, and should, have been taken by the review and that the three Code changes mentioned above would result in very positive benefit cost ratios.

It is also important to recognise that the provision of effective unit pricing (i.e. unit pricing that is easy for consumers to notice, read and use) can provide significant benefits for retailers. For example, a recent German study² found that customer satisfaction, and repatronage intentions, increased when consistent units of measure were used for unit pricing.

Furthermore, consumer use of unit pricing to make more informed decisions may not result in reduced total expenditure on groceries. For example, a recent Australian study³ found that educating consumers about unit pricing may not lead to less money being spent in the store. (This study also found, that participants used unit prices not to just buy products with the lowest unit price.)

These matters must be taken into account when considering the benefits and costs of changing the present unit pricing system and legislation to increase the effectiveness and scope of unit pricing provision.

5. Provision of unit pricing by non-grocery retailers

We consider that considerable benefits for consumers and the economy can be achieved by requiring some non-grocery retailers (e.g. hardware stores, chemists – for non-prescription items, pet supply retailers, etc.) to provide unit prices. To illustrate how useful the provision of unit pricing information would be in hardware stores, an example is in the table below of the unit prices (calculated by the consumer) for various sizes of cans of a brand of interior paint,.

² Fetcher, Robbert, A.T. and Roth, S. (2020), *Unit Price Measures in Retailing: Consistency Effects on Product Choice and Store Evaluations*, Journal of Consumer Policy 2020 Vol 43. Issue 3.

³ Mortimer, G. and Weeks, C. (2019) *How unit price awareness and usage encourages grocery brand switching and expenditure*. Journal of Retailing and Consumer Services, 49, pp. 346-356.

Interior Paint - Brand A		
can size	price	unit price
(litres)	(\$)	(\$ per litre)
0.5	20.70	41.40
1	38.50	38.50
2	51.00	25.50
6	64.90	10.82
10	138.00	13.80
15	165.50	11.03

As shown in the table, the unit price range was very large (\$10.82 to \$41.40 per litre), and contrary to consumer expectations of the normal relationship of unit price to container size, the unit price of the 6 litre can was lower than that of the 10 and 15 litre cans.

Clearly, if the retailer had provided the unit price of each of the sizes of this brand, and of other brands, it would have been much easier for the consumer to make a well-informed decision between the various sizes and brands.

Therefore, we strongly agree with CFA that that:

- **The provisions of a new Code should be substantially different to those in the current Code and should address the following recommendations for improvements.**
- **Implementation of the proposed new Code in its present form will be a great waste of a long overdue opportunity for consumers and the economy (including retailers) to gain even more benefits from grocery, and other relevant, retailers providing effective unit pricing.**

RECOMMENDATIONS

On the draft new Code:

1. The proposed new 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 proposed 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 proposed 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 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 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 proposed 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 proposed 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, and
 - 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 proposed Code be amended to require that the unit price displayed for a grocery item is accurate.
13. The proposed 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 proposed 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 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 proposed 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 which should cover more than just display of unit prices and 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; and
 - 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).