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# **REGULATION IMPACT STATEMENT**

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## **UNIT PRICING**

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# **REGULATION IMPACT STATEMENT: UNIT PRICING**

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# PART A INTRODUCTION AND BACKGROUND

## 1. INTRODUCTION

This regulation impact statement (RIS) addresses options for the design and the implementation of a mandatory, nationally consistent unit pricing scheme for standard retail grocery items.

On 5 August 2008 the Assistant Treasurer announced that the Government would consider the best way to implement a mandatory, nationally consistent unit pricing scheme. This announcement was part of the Government's preliminary response to the *Report of the Australian Competition and Consumer Commission (ACCC) Inquiry into the Competitiveness of Retail Prices for Standard Groceries* (the ACCC report).

In its report, the ACCC (see Attachment A) concluded that:

- Unit pricing should apply in a consistent manner to standard grocery items sold through significant supermarkets and large independent stores. Such consistency should extend to product coverage, unit of measure and display characteristics.
- Significant benefits would flow from the mandatory introduction of unit pricing through its promotion of easier price comparison to consumers.
- The administrative body responsible for introducing unit pricing should have the flexibility to make binding decisions regarding the precise application of unit pricing. Any legislative instruments should clearly delineate which supermarkets and products are included in the unit pricing regime and allow for compliance monitoring and enforcement.
- A public education campaign should accompany the introduction of unit pricing to ensure the greatest impact.
- A 6-to-12-month implementation period will sufficiently reduce costs, while ensuring that unit pricing is implemented in a timely manner.
- A cost-benefit analysis should be undertaken to determine the application of the scheme to smaller retailers.

Prior to the 1990s, the packaging of groceries was regulated such that packaged food items could only be sold in a range of standard package sizes. Since the deregulation of standardised packaging in the 1990s, packaged goods have been sold in an increasingly large array of different sizes. Goods may now be sold in similar, but not identical package sizes. While providing increased flexibility for industry and consumers, this move away from standardised sizes has made it difficult for consumers to accurately and efficiently compare value for money on a price per quantity basis in a timely way. This is particularly the case for consumers with low numeracy skills. Unit pricing is a transparency tool which empowers consumers to readily compare different sized goods by representing prices for standard units of measure, without reducing businesses' ability to package their products in the most effective and efficient way.

The extent to which consumers could benefit from unit price information is difficult to estimate, however, a number of pieces of research have been cited in submissions to Treasury<sup>1</sup>. A report by

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<sup>1</sup> Unless otherwise stated, throughout this RIS, references to stakeholder comments relate to submissions received in response to the Australian Government's Unit Pricing Issues Paper of 18 September 2008. Copies of the Issues Paper

Insight Partners and Citi Investment Research<sup>2</sup> found that, based on overseas experiences, the implementation of unit pricing could lead to savings for consumers of approximately \$810 million per year.

## **2. THE OBJECTIVE OF GOVERNMENT ACTION**

The Government aims to empower consumers to make informed decisions about their purchases of grocery items through greater price transparency.

## **3. UNIT PRICING**

Unit pricing is the display of a price of goods per unit of measure (e.g. per 100 grams, per kilogram, per litre or per item). A standard per unit price is displayed regardless of the actual volume or quantity of the good packaged to be sold.

Currently, unit pricing is usually applied to the sales of meat and fresh fruit and vegetables pursuant to state and territory trade measurement legislation which requires products sold by weight to display unit prices. The existing Commonwealth trade measurement legislation does not contain similar provisions. However, on 24 September 2008 the National Measurement Amendment Bill 2008 was introduced into Federal Parliament. The legislation introduced will establish the legal framework for a single system of weights and measures replacing the current situation across each State and Territory. The Commonwealth is currently examining which aspects of the existing UTML and Regulations will be transferred to the Commonwealth. The national trade measurement system will be administered by the Commonwealth from July 2010.

### **Benefits of unit pricing**

Unit pricing provides a convenient comparison tool for consumers. Unit pricing aids consumers who choose to compare across-brands and inter-store, or different sizes of the same brand, by providing a clear reference point on which to compare prices. Once quantity is held constant, differences in unit pricing should only reflect qualitative differences in the products.

In many markets, unit prices decline with package size, which in part represents the economics of packaging, but this relationship does not hold universally. Unit pricing would make the pricing of different sized packages within the same type and brand of product more transparent.

A nationally consistent unit pricing scheme would allow consumers to more easily compare goods between retailers. It eliminates the possibility of different systems from store to store and therefore would lower potential confusion for consumers comparing goods across retailers.

### **Unit pricing in Australia**

Voluntary unit pricing schemes currently exist in the Australian grocery market. Leading grocery retailers have unit pricing systems already in place or planned in the near future.

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and submissions received in response are available on the Treasury website at [www.treasury.gov.au](http://www.treasury.gov.au). A summary of non-confidential submissions received is at attachment C.

<sup>2</sup> Citi Investment Research and Insight Partners, *Unit Pricing in Supermarkets*, 14 July 2008.

- In November 2007 ALDI introduced unit pricing into its Australian stores. ALDI's unit pricing model generally provides prices for units of 100mL or 100g, however there is flexibility to use a different unit of measure where appropriate.
- In July 2008 NSW-based supermarket chain Franklins announced that it would introduce unit pricing into its stores in September 2008.
- Woolworths and Coles indicated in their evidence to the ACCC inquiry that they intended to introduce unit pricing and that both would prefer a mandatory scheme if the Government was to regulate.
- Coles has since indicated it will be in the position to pilot unit pricing in selected stores during March 2009. Pending the success of the pilot, Coles would introduce unit pricing into further stores over a 6-12 month period.
- On 3 November 2008 Woolworths announced it would apply unit pricing across all of its Australian stores. Woolworths stores in New Zealand have displayed unit pricing for several years.

In addition, a number of proposals for regulatory unit pricing models have been proposed recently.

- On 15 May 2008 Senator Fielding introduced into the Senate the *Unit Pricing (Easy comparison of grocery prices) Bill 2008*, which set out a regulatory scheme for introducing a unit pricing regime. On 18 June 2008, Senator Fielding's Bill was referred to the Senate Standing Committee on Economics.
  - On 1 September 2008 the Senate Economics Committee recommended that the Bill not be passed as it did not achieve the right balance between maximising the utility of the scheme for consumers and minimising costs of implementation to retailers.
- The Queensland Government has prepared a draft Regulation under the *Fair Trading Act 1989* (see Attachment B) to implement a state-based unit pricing scheme. The Queensland Government has announced that the scheme may commence in mid 2009.

### **Unit pricing internationally**

In New Zealand unit pricing is a common practice in the retail grocery industry, although it is not mandatory.

#### *European Union*

In 1998, the European Commission adopted *Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers*. This is a principles-based directive that requires member states to achieve a result — the display of unit prices by retail businesses. The directive does not prescribe the manner in which a unit pricing scheme must be designed. In practice, schemes differ between member countries.

- The Directive stipulates that the unit price must be unambiguous, easily identifiable and clearly legible. The Directive allows Member States to exempt certain small retail businesses where the obligation to indicate the unit price would entail an excessive burden.

## *United States of America*

Unit pricing was first introduced in a small number of American states in the 1970s. Unit pricing is regulated at a state level and a range of mandatory and voluntary systems currently exist.

In addition, the Uniform Unit Pricing Regulation prepared by the National Institute of Standards and Technology (NIST) provides a template national approach for States that choose to adopt unit pricing. A number of States have adopted this template with or without modification. The NIST is a non-regulatory federal agency, within the US Department of Commerce, that promotes innovation and industrial competitiveness by advancing measurement science, standards and technology.

In 1997 the National Conference on Weights and Measures (NCWM), a statutory development body, in partnership with the Office of Weights and Measures of the NIST, adopted a revised version of the regulation to permit retail stores that voluntarily provide unit pricing to present prices using various units of measure.

## **PART B HIGH-LEVEL OPTIONS FOR A UNIT PRICING SCHEME**

On 5 August 2008, the Australian Government announced its intention to consider the best way to implement a mandatory nationally consistent unit pricing scheme. This RIS examines options to implement that scheme.

To establish the context in which the unit pricing scheme will be implemented it is useful to identify and briefly discuss the three high-level options that exist in respect of the introduction of unit pricing: no action from the Commonwealth Government; implementing a Commonwealth voluntary scheme; and implementing a Commonwealth mandatory scheme.

### **4. NO COMMONWEALTH ACTION**

In the absence of Commonwealth regulation, there would be no additional requirements for retailers to display unit pricing. This would allow the status quo to continue. There are a number of key features of this approach which it is worthwhile discussing.

First, pursuant to the Uniform Trade Measurement Regulations (UTML) that exists in the states and territories, items sold by weight, including grocery items such as meat, seafood and fruit and vegetables, would continue to be subject to unit pricing regulation.

- For example, the *Trade Measurement Act 1989 – Regulations (Trade Measurement (Pre-packed Articles) Regulations 1990* applies unit pricing to certain pre-packed retail foods (other than where the package is a rigid container). Fruit, cheese and cheese products, dressed poultry, fish (including crustaceans), mushrooms, vegetables, meat and smallgoods must be marked with the total price and price per kilogram, in such a manner as to be readily seen and easily read.

Second, there is currently no regulatory restriction on retailers implementing self or industry initiated unit pricing schemes for packaged grocery items.

Third, there is no constitutional impediment to State and Territory Governments regulating in respect of unit pricing. In this regard, the Queensland Government has stated its intention to implement a mandatory unit pricing regime within that state. There is also potential for other

jurisdictions to develop their own regimes. In the context of the Productivity Commission's *Review of Australia's Consumer Policy Framework*, the Commonwealth Government and the Council of Australian Governments (COAG) have observed that overlapping and inconsistent economic regulation impedes productivity growth and reduces the competitiveness of the economy. In an increasingly national market, differences between jurisdictions increase the burden and costs for enterprises trading across state and territory borders and potentially reduce the utility of unit pricing schemes to consumers.

## **5. IMPLEMENT A COMMONWEALTH VOLUNTARY SCHEME**

Since the publication of the ACCC report, there has been a greater profile given to unit pricing within the retail grocery industry. A number of retailers have indicated a willingness to implement unit pricing voluntarily. The principle mechanism available to the Government to implement a voluntary unit pricing scheme is through a voluntary code of conduct under part IVB of the TPA.

Part IVB provides for both mandatory and voluntary codes of conduct. Mandatory codes are binding on all participants in an industry while voluntary codes are binding only on industry participants that choose to be bound.

The co-regulatory option of a voluntary scheme would allow traders to nominate whether to participate in a unit pricing scheme. This option would therefore obviate the need for Government to determine any exemption criteria for smaller retailers. Those that chose to enter the voluntary scheme would have the resources to implement unit pricing in their retail outlets and the market-driven incentives to do so.

A voluntary scheme may allow for retailers with existing unit pricing schemes to continue with their schemes without modification. This would reduce any transition and set-up costs incurred by such retailers.

A disadvantage of a voluntary scheme is that it would be difficult to compel retailers who choose to adopt their own unit pricing schemes to comply with the industry-agreed arrangements. In this context, there may not be a nationally consistent approach to unit pricing, especially given a large number of retailers do not operate in multiple jurisdictions. This could lead to divergent and different unit pricing schemes. In addition, there is potential for the usefulness of unit pricing to consumers to be undermined by poor unit pricing practices. For example, retailers who are not covered by the mandatory scheme could engage in selective unit pricing, whereby they only display unit prices for items for which they are competitive, and give an overall impression that all items they sell are relatively cheap.

## **6. IMPLEMENT A COMMONWEALTH MANDATORY SCHEME**

This is the approach that has been announced by the Government. In its report the ACCC recommended a national mandatory unit pricing scheme. The Assistant Treasurer announced on 5 August 2008 that the Government would consider the best way to implement a mandatory, nationally consistent unit pricing scheme.

A mandatory unit pricing scheme would be binding on all industry participants covered by the scheme. This approach would clearly best facilitate customer understanding by creating a single nationally consistent system that is recognised from store to store.

Many consumer, government and industry stakeholders favour a mandatory unit pricing scheme. Consumer advocate groups CHOICE, the Consumer Action Law Centre and the Queensland

Consumers' Association have campaigned for unit pricing over an extended period and expressed strong support for a mandatory scheme throughout the ACCC's and subsequent inquiry processes.

The two largest industry stakeholders, Coles and Woolworths, indicated a preference for a mandatory scheme during hearings of the ACCC inquiry into the grocery sector, if the Government was to regulate in this area. The Australian National Retailers Association, which represents large retailers, indicated in its submission that all retailers should be included in the scheme.

A mandatory national scheme would provide certainty for consumers and industry. While estimates of the total compliance cost impact of implementing unit pricing vary, there appears to be general consensus among stakeholders that operational costs will likely be low following initial set-up costs. Set-up costs can be reduced by providing a longer initial implementation period, which takes into account a period in which retailers would usually replace existing price signage.

The implementation and ongoing compliance costs to retailers clearly are sensitive to the decisions made about the detailed design elements of the unit pricing scheme. The principal categories of costs have been identified by stakeholders as:

- additional wages for manual information entry and re-labelling/re-stripping existing labels;
- any necessary changes to shelf stripping, electronic shelf labels and store layouts; and
- IT systems costs — back office software system upgrades and vendor solutions, including;
  - file format changes and integration;
  - upgrading product catalogue file management; and
  - any necessary changes to hardware, such as label printers.

In submissions received by Treasury, retailers and their representatives have given estimates of the costs involved, with the caveat that these are subject to the final scope and form of the scheme. These estimates are summarised in Table 1.

TABLE 1: Compliance cost estimates.

| Retailer | Implementation Costs                    | Description  |
|----------|---|--|
| Coles    | \$10 million<br><br>(6-12 month period) | <p>Coles indicated that the implementation cost estimate would be subject to the scope of the scheme and time frame for implementation — a shorter implementation period would increase the cost estimate.</p> <p>If the scheme requires changes to the entire shelf edged pricing strips in all stores, the total implementation cost would increase to \$17 million. The most likely trigger for these additional costs would be highly prescriptive unit price display requirements.</p> <p>This estimate does not included ongoing compliance costs.</p> <p><i>ACCC inquiry</i><sup>1</sup></p> <p>Coles estimated the costs of introduction would be around</p> |



|                         |                                       |   |
|-------------------------|---------------------------------------|---|
|                         |                                       | \$20 million if immediate implementation was required. This estimate would decrease to between \$5 million and \$10 million if a 12-18 month timeframe was allowed.   |
| Metcash                 | \$10 million<br><br>(12 month period) | <p>Metcash based their estimate on implementation of a mandatory scheme with no change to shelf stripping required. If shelf stripping is to be changed, the implementation cost could rise to \$23.8m.</p> <p><i>ACCC inquiry</i><sup>1</sup></p> <p>Metcash estimated that the costs of a unit pricing regime would be at least \$9.9 million. This was comprised of:</p> <ul style="list-style-type: none"> <li>• changes to the IT systems used in price calculation and label printing activities (\$1.2 million);</li> <li>• one-off change to all price labels involving labour costs of \$8.8 million; and</li> <li>• ongoing costs associated with additional data entry for unit pricing requirements are estimated at \$0.4 million annually.</li> </ul> |
| Woolworths <sup>2</sup> | \$4-5 million<br><br>(immediate)      | <p>Woolworths indicated an estimate of wages alone, if a unit pricing was required to be rolled out immediately.</p> <p><i>ACCC inquiry</i><sup>1</sup></p> <p>At the ACCC inquiry Woolworths anticipated the cost of implementation would be around \$4 million. The cost was largely dependant on the timeframe permitted for the introduction and the scope of the regime. If Woolworths was required to change its 'shelf-stripping' to accommodate mandated font size, the capital costs would be around \$6 to \$7 million.</p>   |

<sup>1</sup> Coles, Metcash and Woolworths also provided initial cost estimates to the ACCC Grocery Inquiry.

<sup>2</sup> This information was provided by Woolworths on 6 August 2008 to the Senate Standing Committee on Economics' inquiry into Senator Fielding's Unit Pricing (Easy comparison of grocery prices) Bill 2008.

A nationally consistent scheme would entail lower compliance costs than equivalent, but different, schemes applying in some states and territories for retailers that operate in more than one jurisdiction. The benefits of the scheme, which would accrue to consumers, are also difficult to quantify a priori. As such, it is not possible to undertake a detailed cost-benefit calculation prior to implementation of a scheme. However, the likely compliance cost impacts of the specific design approaches are discussed where relevant in Part C — Implementation Options.

## **PART C IMPLEMENTATION OPTIONS**

This section considers the impact of feasible options for specific design elements of a mandatory national unit pricing scheme. Where relevant and material, the impacts on consumers, businesses and government administration are discussed.

## **7. FORM OF THE SCHEME**

A mandatory national unit pricing regime could be implemented either via specific legislation or via an industry code prescribed under Part IVB of the TPA.

### **Legislative scheme or mandatory industry code**

The choice of a legislative scheme or industry code would not have a material compliance cost impact on business and would not impact on consumers' use of unit pricing information.

If the scheme was to be enacted under primary legislation, it would be appropriate that a legislative unit pricing scheme would be enacted under the TPA. The TPA is the primary consumer protection legislation that exists at the Commonwealth level. Alternatively, these amendments could be included under the *Trade Measurement Act 1989* or a stand-alone Act. However, given the extensive consumer law enforcement infrastructure already established under the TPA and the non-technical nature of a unit pricing scheme, the TPA would be most appropriate.

In general, principal legislation can be less flexible than an industry code (which would be a Regulation under the TPA) should minor or technical changes be required to the scheme in future. This would be a particularly relevant consideration in the context of a unit pricing scheme in the event that minor changes to the design of the scheme (such as the categories of included products) are required in future as retailers' capabilities change or new products enter the market.

Given industry support for unit pricing amongst the larger retailers, an industry code of conduct under Part IVB of the TPA is a viable option. Mandatory industry codes currently exist under the TPA in respect of the wholesale oil industry, franchising industry and wholesale trade in horticulture produce.

## **8. SCOPE OF THE SCHEME**

There are a wide range of retail businesses that sell grocery items, ranging from large 'full service' supermarkets to small retailers specialising in a single category of grocery item, such as bakeries. Grocery items also are often sold by retailers who predominantly provide non-grocery items. In addition, there is no standard definition of 'grocery items' used in Commonwealth regulation.

This section discusses the considerations involved in determining the appropriate scope of the unit pricing regime in terms of both the types of retailers it will apply to; and the range of grocery items for which unit price information must be displayed.

### **SCOPE OF RETAILERS**

#### **Application to store-based retailers**

Traditional grocery retailers, with a 'bricks and mortar' retail shopfront range from small corner-store businesses that are independently owned, to large multiple-outlet supermarket chains that operate nationally. Submissions received by the Treasury in response to the Government's Issues Paper of 12 September 2008 indicate that compliance costs could vary significantly between retailers due to factors such as:

- existing IT capabilities and methods of shelf price display;
- the ease with which shelf labels can be replaced; and
- individual businesses' ability to absorb compliance costs in the short term.

The benefit of unit pricing to consumers will vary depending on the likelihood that consumers will use this information. While price is generally a factor in all purchasing decisions, the importance of price, or the ability of consumers to use unit pricing information, will vary depending on the context in which they are shopping. If a consumer is shopping purely for convenience to purchase a small number of items it is unlikely that price will be as relevant as other factors such as store location. However, if a consumer is shopping for a large number of grocery items to fill their household requirements for a period of a week or fortnight, it is more likely that price will be a primary consideration.

The Australian National Retailers Association (ANRA) suggests in its submission that in smaller stores (such as those with a floor space below 200m<sup>2</sup>), there is unlikely to be a sufficiently broad range of products for consumers to make meaningful use of unit pricing.

In its report, the ACCC estimated that the share of packaged groceries sold by the two largest supermarket chains (Coles and Woolworths) is around 70 per cent. This indicates that the majority of consumers' grocery purchases are made at larger retail supermarkets, which also stock a wide range of products. The ACCC suggested that it may be desirable to limit the application of a mandatory unit pricing regime to significant supermarkets due to the relatively higher implementation costs that could be borne by smaller grocery retailers if the scheme were applied to all grocery retailers. In addition, the structure of the grocery retail industry in Australia indicates smaller grocery retailers do not have a large share of the market and the consumer benefit from unit pricing at smaller retailers would be commensurately smaller.

#### *The retail grocery market structure*

The Australian retail grocery market is characterised by two major supermarket chains, two smaller supermarket chains, independent supermarkets affiliated with large wholesale operations and speciality retailers (such as bakeries, butchers, fishmongers, greengrocers, markets and pharmacists). In total, there are approximately 4,500 supermarkets operating in Australia. In addition there are around 22,000 specialty grocery retailers.

While Australian consumers may purchase their entire weekly grocery needs from a range of retailers, the ACCC found that consumers tend to do a major grocery purchase weekly in the one location with additional smaller 'top-ups' during the week. The ACCC also found that 81 per cent of the 'one-stop' shoppers ranked price as very important and currently compare certain key value items on price.

Coles and Woolworths are Australia's two major supermarket chains. They account for approximately 87 per cent of stores above 2000m<sup>2</sup> and around 96 per cent of stores above 3000m<sup>2</sup>. The Nielsen Company's ScanTrack data and data from Coles and Woolworths suggest that they account for between 60-78 per cent of national sales in packaged groceries.

ALDI and Franklins are the two smaller vertically integrated supermarket chains. The majority of independent supermarkets in Australia are provided marketing and wholesale services by Metcash. Although not a retailer, Metcash maintains an ownership share in a number of retailer businesses.

TABLE 2: Market structure

| AUSTRALIAN GROCERY MARKET STRUCTURE |                    |                        |   |
|-------------------------------------|--------------------|------------------------|---|
| Retailer                            |                    | Number of supermarkets | Average floor size                              |
| Woolworths / Safeway                |                    | 780                    | Greater than 2000m <sup>2</sup>                 |
| Coles / Bi-Lo                       |                    | 750                    | Greater than 2000m <sup>2</sup>                 |
| ALDI                                |                    | 170                    | 850 m <sup>2</sup>                              |
| Franklins                           |                    | 74 owned, 6 franchised | Between 1000m <sup>2</sup> - 2000m <sup>2</sup> |
| Metcash affiliated independants     | Supa IGA           | 416                    | 1400 m <sup>2</sup>                             |
|                                     | IGA (top-up shops) | 719                    | 600 m <sup>2</sup>                              |

The administrative costs on Government associated with enforcement of the unit pricing scheme will also vary proportionately with the number of retailers included.

*Should small retail businesses be exempted from mandatory unit pricing?*

Larger retail businesses have provided a range of estimates of the compliance costs of implementing a unit pricing scheme. These estimates vary from \$4m to \$10m with a 6-18 month implementation lead time, with higher costs for immediate implementation. Metcash was the only grocery retailer to submit a compliance cost estimate on behalf of small retailers, suggesting that its independent sector would incur costs of around \$10m with a 12-month implementation timeframe. Smaller retailers within the range of stores associated with Metcash are also much less likely to be able to easily bear the costs of compliance in the short term than larger stores. Metcash has previously indicated in its submission to the ACCC grocery inquiry that there are three types of stores associated with the IGA brand with the smallest (IGA Express) having an average floor space of 220m<sup>2</sup>.

Many small retailers either use older, more inflexible labelling software which may not allow for unit pricing or they use hand-labelling where prices are affixed to the actual product. In both those cases the costs of upgrading to a new system which would allow them to provide the unit price would be high.

Some retail businesses which provide goods that can be considered grocery items may offer a small selection of grocery items. Such businesses may specialise a small range of items, such as health food stores, butcheries or greengrocers, or their primary business line may be non-grocery items—such as department stores. The overall benefits for consumers from unit pricing would likely be less in the case of very small retailers or in stores which offer only a small range of grocery items. While consumers may in some cases value a unit price in those circumstances, consumer benefits are likely to be significantly lower than at a large supermarket with a wider product range to compare.

In the absence of clear evidence of the benefits of unit pricing in circumstances where consumers are not purchasing a large range of grocery items (which would constitute a large proportion of household grocery budgets), the application of unit pricing should be limited to larger supermarkets, rather than specialist retailers or small supermarkets.

*How could an appropriate exemption for small grocery retailers be framed?*

Limiting the scheme to larger supermarkets could be done in a number of ways, for example by excluding businesses that have a turnover, physical size or product range below a prescribed threshold.

Submissions received by Treasury generally supported the use of floor space as a measure on which to judge the size of a retail businesses. However, it would be appropriate to apply a floor space threshold only insofar as the floor space used for the retail display of grocery products. Doing so would ensure storage areas are not considered as well as ensuring that large general retailers which only offer a small selection of groceries for convenience are not included.

The ACCC did not examine this issue in detail in its report. It did however note that the largest supermarket retailers, Coles and Woolworths, accounted for more than 60 per cent of the 2400 stores with a floor space of more than 1000m<sup>2</sup>. There have been a wide range of views from stakeholders on the appropriate amount of floor space that should warrant inclusion in a mandatory unit pricing scheme.

- In its consideration of Senate Fielding's Bill, the Senate Economics Committee concluded that a unit pricing scheme should be limited to stores with a retail floor space greater than 1200m<sup>2</sup>. By contrast, the regulatory model proposed by the Queensland Government would apply to stores larger than 200m<sup>2</sup>.
- Submissions from larger retailers have tended to favour either applying the scheme to all retailers (with or without additional transitional arrangements for smaller retailers), or making the floor space threshold relatively low. Groups representing smaller retailers have suggested that floor space thresholds should be used to exclude smaller retailers and their suggested thresholds are usually targeted at stores that compete directly in terms of product range or price with the large supermarket chains.
- ANRA suggests that the 200m<sup>2</sup> floor space limit proposed in the Queensland regulation is too low as such stores are unlikely to have a sufficient range of products for consumers to make use of unit pricing. ANRA also contends that 1200m<sup>2</sup> is too large and would exclude around two-thirds of supermarkets. ANRA suggests that 500m<sup>2</sup> would be an appropriate threshold.
- The National Association of Retail Grocers of Australia (NARGA) suggests that 1500m<sup>2</sup> would be the appropriate threshold, on the grounds that in rural areas, large independent supermarket stores may meet a lower floor space criteria despite being small businesses in terms of their capacity to absorb implementation costs. In this context, there does not appear to be any inherent justification for treating larger rural retailers and rural consumers differently, particularly as the primary benefits of unit pricing will most likely be in facilitating competition between brands within a single supermarket, rather than competition between supermarkets.

Clearly, the use of floor space dedicated to grocery sales as a criteria for inclusion in a unit pricing scheme is generally considered by stakeholders to be the most appropriate measure. However, to avoid unintended consequences, such as a fresh produce retailer that also sells a small amount of other grocery items being included in the scheme, it would be appropriate to limit the scheme's application through a secondary factor.

### *Other measures of retailer size*

Limiting the application of the scheme to those retailers that supply a range of grocery products would ensure that large retailers with a limited grocery product range would not be required to comply with the scheme. The scheme is intended to make unit pricing available to retailers where consumers would buy the bulk of their staple goods – primarily food items. However, other non-food items may be covered by the scheme if they are sold in that store. This is the approach that has been taken by the Queensland Government in its draft unit pricing regulation.

This could lead to situations where certain products must be displayed with unit prices if they are sold in supermarkets but not at specialty stores such as chemists or variety stores.

Other measures of business size, such as sales volume or revenue or ownership structure would be impractical because they are more likely to change over time and would require detailed investigations by regulatory authorities to determine compliance with the scheme. This would impose compliance costs on businesses and administrative costs on government and industry.

### *Recommended option for store-based retailers*

To ensure that both small grocery retailers and larger retailers with a small offering of grocery products are excluded from the scheme, it would be necessary to limit the application of the scheme both by floor space used for the display groceries and grocery product range. Neither consideration by itself would necessarily exclude both types of retailers.

Given evidence provided to the Treasury, the appropriate level of floor space to be covered by the scheme should be sufficient to cover those supermarkets that supply a large proportion of consumers' grocery needs. That is those with a floor space in excess of 1000m<sup>2</sup> and that offer for sale at least a certain range of food-based grocery products. The size and range criteria could be refined following more detailed consultation with stakeholders on a draft industry code. Application of the scheme based on these criteria would have three principle advantages:

- they are most likely to cover those stores that consumers use for the bulk of their grocery purchases;
- they are readily understandable and would not be complex to enforce (ie they can be ascertained via simple store inspection); and
- they have been favoured in other proposed Australian regulatory approaches.

### **Application to online retailers**

The ACCC noted in its report that while the proportion of consumers purchasing from online retailers was low, the popularity of this method of shopping is increasing.

In respect of online grocery retailers, a definition based on floor space is clearly not applicable. However, in general, it is reasonable to expect that the compliance costs for online retailers would not be as significant as a store-based retailer, since no physical changes to shelf pricing displays would be required. Compliance costs for online retailers would be limited to the costs of altering existing web pages to provide a unit price in addition to a selling price. Consequently, the compliance costs faced by online retailers would not vary in proportion to the size of the business.

It is, however, still appropriate to apply the second test — that the retailer sells a range of food-based grocery items. This will ensure that supermarkets that offer an online service must comply, but if a small company sells only a few grocery items online they would not be required to comply.

## **Voluntary application of the mandatory scheme**

In the event that a retailer not covered by the scheme voluntarily applies unit pricing to some or all grocery products in their range, the question arises as to whether they should be required to comply with the mandatory scheme or whether they could apply their own scheme.

A retailer could be thought to have voluntarily adopted unit pricing when they display a unit price for any grocery product that is included in the mandatory scheme and under circumstances that are covered by the scheme.

Not requiring voluntary adopters to comply with the mandatory requirements of the scheme may encourage voluntary take-up but would undermine consistency in approach. It may also give some retailers the ability to apply unit pricing only to items with which they are most competitive on price and hence give the impression that their entire range is cheaper than their competitors.

By contrast, applying the full requirements of the mandatory scheme to retailers that voluntarily adopt unit pricing would ensure that consumers could be confident that any unit pricing of grocery products throughout Australian retailers would be compliant with the scheme. However, this may also be a disincentive to voluntary unit pricing as the requirement to fully comply with the scheme may increase the retailers' costs.

The Consumer Action Law Centre (CALC) and CHOICE both support the application of the scheme to otherwise exempt retailers which voluntarily provide unit pricing. Other submissions to Treasury did not comment on this issue.

Overall, the application of the mandatory scheme to voluntary unit pricing would provide certainty to consumers about the requirements that apply in respect of unit pricing and would provide a level playing field for businesses subject to the mandatory scheme.

To ensure that voluntary unit pricing is not discouraged there should be a transitional period, similar to the initial transitional arrangements for mandatory adopters, to allow an otherwise exempt supermarket to manage their adoption of the mandatory scheme.

## **SCOPE OF PRODUCTS**

To ensure maximum consumer benefit it would be appropriate to apply the scheme to all 'grocery items' where unit pricing will be practical and useful to consumers. As there is no universally understood definition of grocery items it is relevant to consider whether the scheme should be positively limited to a defined category of products, or to all products supplied by grocery retailers unless they are goods subject to a specific exclusion. The latter approach is used in the draft Queensland regulation.

The ACCC developed a working definition of groceries for the purposes of its inquiry but did not attempt an exhaustive definition. The ACCC has considered that standard groceries are generally non-durable, purchased frequently and not consumed at the retail site. The broad categories of standard groceries that the ACCC has generally used are dairy, fruit and vegetables, meat and seafood, bread and grain-based products, other foods and household non-food items, such as cleaning products, nappies, toilet paper and personal items.

### *Goods currently subject to the requirements of the Uniform Trade Measurement Legislation*

The UTML already requires that prices per weight (unit prices) be stated for unpackaged goods sold by weight, such as meat and fresh fruit and vegetables. In addition, the UTML requires that for certain pre-packaged goods, including meats, vegetables and cheeses, the price per unit of measure

must be stated in addition to the selling price. There is no evidence that the current unit pricing regulation in respect of those goods is inadequate and accordingly it is not intended that the unit pricing scheme should interfere with those requirements. Subject to the continued operation of the relevant provisions of the UTML once it is transferred to the Commonwealth, the unit pricing scheme could be limited to operate only to the extent that it is not inconsistent with relevant trade measurement legislation.

#### *Items that are covered by specific legislation*

To ensure regulatory consistency and preclude regulatory overlap it will be necessary to have regard to any relevant provisions from existing regulations in respect of the pricing of food (FSANZ), over-the-counter and complimentary medicines (TGA) or any other goods sold by grocery retailers. A unit pricing code could be expressed to apply only in the absence of other regulation concerning the display of prices for those goods. Alternatively, where existing regulation is identified, such goods could be explicitly excluded from the operation of the unit pricing scheme.

Alcohol and tobacco are not subject to specific pricing regulation, and while some submissions have suggested that these products should be excluded from the scheme, there does not appear to be a clear rationale for doing so. Both products are often sold in supermarkets and unit pricing could easily be applied. The ACCC did not consider these products in its report. While alcohol and tobacco would not be considered as a possible part of the 'range' of groceries when determining the application of the scheme, there is no reason to exclude those products from the scheme when offered for sale in a grocery retailer subject to the scheme.

#### *Specific products where unit pricing is not appropriate or practical*

There are a range of products typically sold by supermarkets, for which the application of unit pricing would not provide additional or relevant information to consumers. For example, goods that are not generally sold by measure or number such as books, CDs or clothing.

The Queensland Government's draft regulation sets out a list of goods such as books, magazines and others for which unit pricing would not be required. This listing is a good starting point for the consideration of such exemptions. More specific consultation will be undertaken with retailers to ascertain for which types of products an exemption might be appropriate. Under the Queensland approach, in the event that a product or category of products are found to be incompatible with unit pricing the Minister or other decision maker could add these to a list of excluded products. This would mean that new products or categories of products offered for sale by retailers covered by the scheme are automatically required to have a unit price if they were offered in a retailer subject to the scheme unless the Minister or other decision makers determines it is inappropriate.

An alternative to the Queensland approach would be to prescribe the categories of products to which unit pricing is to apply and then allow unit pricing on a voluntary basis in respect of any other goods. This approach would be unlikely to provide additional regulatory certainty to businesses but could jeopardise the national consistency of approaches to unit pricing.

#### *Specials*

Regular product 'specials' are generally offered by grocery retailers on different products. In the case of store-based retailers these are normally computerised tickets placed on the shelf over the existing price label.

There does not appear to be any justification for excluding regular specials as consumers should still be able to compare that product's unit price to similar products that are not on special.



### *Damaged goods and last minute mark-downs*

In addition to specials applied to a particular brand of product from time to time, goods may also be marked-down due to damage or an imminent use-by date. Unlike regular ‘specials’, such marked-down goods are not directly comparable to undamaged goods of the same type. As such the unit price is less relevant as consumers.

There may also be significant compliance costs of providing a unit price as most damaged products would be of a small quantity and may often be hand-marked with the new price, over a short period of time.

Because of the low likelihood of unit pricing providing consumer benefits in respect of marked-down damaged products and those approaching their use-by date, as well as the compliance burden on business, such products should be excluded from a mandatory unit pricing scheme.

### *Mixed bundles*

Intuitively, unit pricing can only be applied easily to products whose price can be divided into a single unit of measure. In the case of goods sold in mixed bundles, the unit price would not be easily comparable to the unit prices of the individual products that bundle may contain. As such the unit price should not be required for products of this type.

Where an item contains more than one type of product, for instance a taco ‘kit’ which includes products such as tacos, salsa and seasoning, it may not be appropriate to require a unit price to be displayed. This would not mean that any product that had multiple ingredients should be excluded, rather those containing individually packaged quantities of different products – as opposed to a mixture.

### *Advertising*

In addition to in-store price labels, supermarkets often advertise prices in other mediums, such as by distributing specials catalogues or in-store advertising on posters or through television or radio advertisements. In its report, the ACCC recommended that unit prices should be displayed in print advertising.

Limiting unit pricing to print advertising only would be consistent with the objectives of unit pricing, which is to allow consumers to compare like products between brands, or even different sized offerings of the same brand of product.

In the case of television/radio (non-store) advertising, usually only a small number of items are listed. Television and radio advertisements are also extremely short in length (average time is 30 seconds) and therefore it is arguable if requiring unit pricing in these mediums would be of any comparative use to consumers.

Printed advertising material is more likely to be used by consumers to compare prices. Printed catalogues of weekly or monthly specials are often distributed to consumers or made available in store. The durable nature of these advertisements allows consumers to compare the catalogues of alternative retailers. In addition, printed advertisements can also be stored, which allows consumers to compare unit prices over time. The ACCC found that consumers often react to changes in prices over time when deciding which stores are giving the best value. Unit pricing in advertising material may be an effective marketing tool for certain products, and also help drive further price competition as it also communicates pricing levels to other retailers.

In addition, unit pricing in print advertising could help to raise awareness of unit pricing among consumers. The unit price being displayed prominently in catalogues and other print advertising would remind consumers that unit pricing is available at those stores and can be used to help them save money on their grocery bills.

## **9. NATURE OF DISCLOSURE**

The requirements of the scheme setting out the form of the unit price disclosure can have a significant impact on compliance costs for business. How the unit price is disclosed can also have an effect on how useful it is for consumers.

### **Form and size of the unit price**

To be useful, unit price displays must be unambiguous, legible and in close proximity to the selling price. These types of broad objectives are accepted by both retailers and consumer groups as a prerequisite for a functional unit pricing scheme.

The draft Queensland regulation suggests that the unit price should have a height of 10mm or 50 per cent the size of the selling price, whichever is larger. Some submissions to Treasury have argued that a minimum size or other prominence requirements should be specified for unit price displays:

- The Queensland Consumers Association supports the Queensland approach for prescribing the size.
- CHOICE suggested that the Queensland legislation is ‘a good starting point although ... there are other ways to ensure the prominence of the unit price’.

Larger-sized unit price may be more obvious to consumers, however the unit price should not be so large that it can be mistaken for the selling price. This would be particularly likely to happen if the selling price and unit price were similar – for example where the unit price was per litre and the item was 950ml.

Similarly, the marginal consumer benefits of requiring a 5mm or 10mm high unit price over a 3mm high unit price, which might be a likely result of not prescribing the size, are likely to be incredibly small.

Prescription of a minimum size requirement for shelf price displays appear to be one of the key determinants of the compliance cost impact on businesses. Larger minimum size requirements may mean that not only do shelf labels have to be altered for the unit pricing scheme, but the edges of the shelves themselves may need to be changed. This has been identified by retailers as a major driver of compliance costs. Increased compliance costs for business would in turn be passed on to consumers in the form of higher prices. A number of retailers have suggested that if a minimum size is prescribed this would result in a very large increase in costs, which would be passed on through higher prices:

- Metcash suggested that such a requirement would ‘dramatically increase the cost of implementation and compliance’.
- ALDI asserted that ‘overly-prescribing the presentation runs the risk of imposing substantial additional costs on retailers which, in turn, could be passed on to consumers in the form of higher prices’.
- A confidential submission from a retailer which preferred no prescription of the size, suggested that if the size were prescribed that 5mm would be acceptable.

In the absence of evidence as to the benefits of prescriptive font requirements, a principles-based approach with prominence requirements but no minimum size would appear to be more appropriate. It is most likely that retailers will provide clear unit prices, if for no other reason than to ensure consumers are not annoyed by that retailer's system. However, if experience indicates that unit prices are displayed in an unusable manner, the regulation could be amended in future.

## **Units of measure**

A critical component of achieving national consistency in unit pricing is to prescribe standardised units of measure that are to be applied. In its report, the ACCC noted that the most appropriate unit of measure may vary between different types of products however, if it were to vary between retailers in relation to the same products this would greatly diminish consumers' ability to compare prices across stores.

Two approaches are possible: to prescribe one unit of measure for each type of measurement (volume, weight, length, area, count) with variations from this general rule to be explicitly prescribed for classes of products; or prescribe sliding scales for each type of measurement, to be applied to products on the basis of size or price thresholds. The latter approach is adopted in the draft Queensland regulation, but there have been a range of views raised in submissions.

- CHOICE and the Queensland Consumers' Association support Queensland's sliding-scale approach to the unit of measure.
- A confidential submission suggested that where the products in a range are typically: less than 100ml/g the unit of measure should be per 10ml/g; between 100ml/g and 1L/Kg the unit of measure should be per 100ml/g; and more than 1L/Kg the unit of measure should be per L/Kg.
- ALDI currently provides unit pricing using the general rule of 100ml/100g, with exceptions for very small or very large products. ALDI also contends that this is supported by the fact that the vast majority of packaged grocery items are sold in formats between 100g and 500g.
- Metcash suggested that 'standard measures such as the kilogram and litre should be adopted as with the EU legislation'.
  - The EU Directive states that 'unit price shall mean the final price, including VAT and all other taxes, for one kilogram, one litre, one metre, one square metre or one cubic metre or a different unit of a single unit of quantity which is widely or customarily used in the Member State concerned in the marketing of specific products'.
- ANRA recommends that apart from some category-specific exceptions, the units of measure should be 100ml/100g/metre/each. It also suggests that model suggested in the Queensland draft regulation could be 'unduly complex' in certain circumstances.

To be of use unit pricing information should meet at least two criteria:

- it should be expressed at least in whole cents, as this would be readily understood by consumers; and
- the unit price provided as a result of the scheme should be an amount which is useful and meaningful for comparative purposes.

Using a single unit of measure depending on the nature of the product, for example per 100g for items measured by weight, would be the simplest measure, delivering benefits both in terms of less

prescriptive drafting of the provision and also for subsequent business compliance. However, a potential drawback of using non-graduated units of measure is that for some very expensive products the unit price could end up being quite high and for some large products the unit price could be quite low.

One confidential submission from a retailer noted that certain outlying examples might provide excessively large unit prices. It gave the examples of how a 100g standard would provide odd unit prices such as saffron selling at \$6.57 for 0.5g giving a unit price of \$1314 per 100g, or 4g of lip balm selling for \$9.95 having a unit price of \$249 per 100g. However, in the case of a 10Kg bag of rice with a selling price of \$21.00 the unit price would still be \$0.21 per 100g. This is still a reasonable and useable unit price, suggesting that very low unit prices are less of a concern.

A sliding scale of units of measure would mean that when a certain size was reached, or the unit price was higher than a certain value, the next unit of measure would be used. For instance if a product is generally sold in quantities less than 1Kg the unit price would be per 100g but if it is generally sold in quantities greater than 1Kg the unit price would be per kg. Alternatively the units used could be per kg unless the unit price was greater than \$99, in which case it would be 100g. This is the method used in the Queensland Government's proposed Regulation.

The difficulty with this sort of sliding scale is one of thresholds. Such a scale could mean that for one brand of a particular product the smaller sizes would be unit priced per 100g and the larger sizes per kg. While the mathematics required to compare them is not difficult, multiplying or dividing by a factor of ten, the result of a sliding scale is that these threshold issues will occur and may be confusing for the consumer.

Another issue is that unit prices are likely to be more intuitive if they are determined with reference to the physical quantities usually associated with a product, rather than monetary amounts. This would reduce the need to revisit the regulation over time to reflect changes in general price levels generally. It would also tie the threshold to a characteristic with universal application to a class of product and minimise threshold issues arising between brands of the same product.

While the threshold issues associated with the sliding scales are not large, they are perhaps just as confusing or even more so than the occasional high or low unit prices that could result from a standard unit of measure.

As the costs and benefits of either system are not significant, using a standard unit of measure for all like goods remains the simpler option and for both consumer information and business compliance, the simpler option of pricing all products per count, 100mL or 100g is likely to be the most appropriate measure for a range of products.

As more grocery products are sold at or below 1Kg and 1L than significantly above that amount, 100g or 100mL would be a more appropriate standard unit of measure and would avoid very small unit prices for the majority of products which are provided in smaller sizes.

While a base measure is to be preferred for simplicity, there may need to be some exceptions made for products which the base measure is truly inappropriate and would provide irrelevant or confusing unit prices. In these cases the scheme may need to allow a different unit of measure may need to be used. For example, herbs and spices are relatively expensive by measure and are often sold in quantities of less than 10g.

## **10. EDUCATION AND INFORMATION**

A nationally consistent unit pricing system will benefit from a nationally consistent education program. Implementing a unit pricing scheme under the TPA would allow the ACCC to oversee the introduction of the scheme along with its broader responsibilities for educating consumers and supermarket retailers about the consumer law.

While there is already significant support for unit pricing from consumer advocates, the effective use of unit pricing information by different groups of consumers may vary. Information and education campaigns to support the introduction of unit pricing would assist to ensure that unit pricing information is useful to as wide a range of consumers as possible.

Education initiatives should include announcement of the unit pricing regime, information on what unit pricing is, how it operates and how it can be of benefit to consumers in their supermarket shopping. Education and information initiatives could include printed material such as brochures and posters, including sample price labels with appropriate explanations, and print and television advertisements. The Government would take primary responsibility for consumer and retailer education initiatives, in consultation with consumer and industry representatives.

## **11. ENFORCEMENT AND PENALTIES**

A benefit of implementing unit pricing through an industry code under the TPA is that there is a well established enforcement regime that would apply in the event of a breach.

Breaches of a prescribed code of conduct are breaches of the TPA and subject to court enforceable civil remedies (including corrective advertising and injunctions). There is no criminal sanction for a breach of an applicable industry code. However, criminal prosecution would be unlikely to be appropriate for a breach of a unit pricing regulation.

## **12. SUMMARY OF IMPACT ANALYSIS**

The costs and benefits of each of the elements of the proposed unit pricing scheme are presented as qualitative arguments in the table below.

The potential benefits of the scheme cannot be quantified at this stage. Clearly, the benefits are sensitive to how consumers use unit pricing information. A report by Insight Partners and Citi Investment Research<sup>3</sup> found that the implementation of unit pricing could lead to savings for consumers of approximately \$810 million per year. The report cited past overseas research, which had established that consumers, on average, reduce their spending by one per cent in the presence of unit price information. This equates to a saving of approximately \$100 for an average Australian family per year. These estimates are indicative only, however savings of this magnitude would imply that unit pricing can provide a net benefit to Australian consumers.

The costs of initial implementation for the major retailers collectively are significantly lower than the amount to be gained by consumers even in the introductory year. After the introduction period costs of maintaining a unit pricing system for retailers decreases significantly. Cost estimates provided during the ACCC inquiry by Metcash show the annual ongoing costs to be roughly 4 per cent of the initial implementation cost. When viewed over a long-term period the net gains provided by a unit pricing scheme would increase after the first year of implementation.

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<sup>3</sup> Citi Investment Research and Insight Partners, *Unit Pricing in Supermarkets*, 14 July 2008.

## SUMMARY TABLE OF COST-BENEFIT ANALYSIS

| ELEMENT  | BENEFITS   | COSTS  |
|--|--|--|
| Mandatory industry code under Part IVB of the TPA.                       | <p>Creates a nationally consistent unit pricing regime.</p> <p>Would be flexible enough to allow technical amendments in future. Hence, would be more responsive to any changes in the grocery retail industry.</p> <p>Mitigates chance of future inconsistent unit pricing regulation between Australian jurisdictions.</p> <p>Allows for exempt stores to voluntarily operate within the code's requirement.</p> | <p>Enforcement and education costs to be borne by government.</p> <p>Initial mandatory business implementation costs and ongoing compliance costs.</p>   |
| Store-size threshold of 1000m <sup>2</sup> .                             | <p>Captures the majority of packaged goods transactions.</p> <p>No compliance costs for smaller retailers.</p>   | <p>May capture single stores with small turnover but large floor size (due to cheaper rent) in rural and regional areas.</p> <p>Creates an artificial cost barrier in the retail grocery market (although impact on competition would be negligible as larger retailers can easily absorb compliance costs).</p> <p>Consumers cannot utilise unit pricing in all supermarkets.</p> |
| Application to online retailers.   | Applies unit pricing regulation in a technology neutral way.   |  |
| Principles-based presentation requirements for unit pricing information. | <p>Reduces compliance costs by allowing retailers some flexibility in how the scheme will be applied.</p> <p>Caters for changes in technology and industry practice with respect to in-store price displays.</p>   | Creates potential for differences in presentation of unit pricing information between retailers. This may reduce consumer use of unit price information.   |
| Units of measure: general rule with prescribed exceptions.               | <p>Units of measure are intuitive to consumers if expressed in terms in terms of sizes of the same magnitude that the good would usually be sold in.</p> <p>Avoids uncertainty about the appropriate treatment where goods</p>   | List of prescribed exemptions must be maintained over time to accommodate new products.  |

|   |   |  |
|---|---|--|
|   | are sold across a wide range of package sizes.  |  |
| Government sponsored consumer education campaign. | Ensures consistent educational measures are provided to consumers.<br><br>Encourages greater usage of unit pricing by consumers.  | Imposes additional financial and resource burden on the government.<br><br>Retailers will incur compliance costs in having to cooperate with government education initiatives (ie by making copies of educational materials available in-store). |
| Application to print advertising only             | Promotes the provision of unit pricing information in all situations where it would be useful to consumers.   | Imposes additional compliance costs on affected retailers.   |
| Excluded goods                                    | Reduces compliance burdens on retailers by ensuring that unit price information does not have to be applied to ad hoc price changes (such as goods on sale due to their perishable nature).<br><br>Ensures that consumers are not misled by confusing or irrelevant unit price information (such as mixed bundles). | Increases regulatory complexity compared to universal application of unit pricing information.   |

## PART D CONSULTATION

Following its announcement of 5 August 2008, the Government released an issues paper on 12 September 2008 calling for comment on the design of a unit pricing scheme. To date, Treasury has received 19 submissions from a range of industry, consumer groups and governmental stakeholders. Submissions are available on the Treasury website.

In addition, unit pricing has been subject to a number of public consultation processes recently, commencing with the ACCC grocery inquiry, which reported in July 2008. This Regulation Impact Statement draws on the public comments made to those various inquiry processes, as well as the reports of those inquiry processes.

### *Previous consultation processes*

On 22 January 2008 the Assistant Treasurer directed the ACCC to hold a public inquiry into the competitiveness of retail prices for standard groceries. The ACCC conducted the inquiry between January and July 2008. The ACCC's first round of consultation drew 118 submissions in total, of which 27 submissions addressed the practice of unit pricing. A second round of consultation received 66 submissions, of which 13 raised unit pricing.

- Arguments in favour of unit pricing submitted to the ACCC included: ease for consumers to make purchasing comparison; aiding consumers with low financial and numeracy skills; and

the fact that consumers have some experience with unit pricing concepts in meat, fruit and vegetables and therefore mandatory measures could simply be extended into more product categories.

- Arguments against unit pricing submitted to the ACCC included: regulation of unit pricing may increase prices for consumers; enforcement and education costs; and similar practices already exist, such as the voluntary introduction of unit pricing at Aldi, and the trialling of the practice at Woolworths-Safeway.

On 26 July 2008, the Queensland Government released Regulation Impact Statement seeking comment on the implementation of a unit pricing regime in that state. Queensland subsequently prepared a draft Regulation to implement a unit pricing scheme.

On 17 June 2008, the Senate referred a private Member's Bill, Unit Pricing (Easy comparison of grocery prices) Bill 2008, introduced by Senator Fielding, to the Senate Standing Committee on Economics for inquiry and report by 2 September 2008. The Committee invited written submissions and held two public hearings. The Committee received 12 submissions including those from ALDI, Woolworths, the National Association of Retail Grocers of Australia, Metcash, CHOICE, the Consumer Action Law Centre and the Queensland Consumers Association.

## **PART E CONCLUSION AND RECOMMENDED OPTION**

Based on the analysis contained in Part C and the analysis undertaken by the ACCC in its report, a mandatory nationally consistent unit pricing scheme should have the following characteristics:

- It should be a mandatory code of conduct under Part IVB of the TPA. Future minor or technical amendments would be able to be made more easily and quickly than would be the case with a new principal legislative provision.
- The scheme will apply to all food and non-food grocery items sold by store-based and online supermarket retailers operating in Australia.
- To ensure the compliance costs for small business are minimised while providing benefits for consumers, it is appropriate to limit the scheme's application in a number of ways:
  - In respect of store-based retailers, limiting the application to supermarkets with floor space used for the retail display of groceries that exceeds 1000m<sup>2</sup>, provided they offer for sale at least a certain range of food grocery products.
  - In respect of online retailers, those that offer for sale at least a certain range of food grocery products.
  - Should an otherwise exempt retailer choose to provide unit prices for some or all of its grocery products, it must comply with the mandatory scheme following an appropriate transition period.
- The unit pricing scheme will require the display of unit prices for all grocery products sold by a retailer that is covered by the scheme, for which a selling price is displayed, unless the product is part of a class of products that is prescribed to be excluded or application of unit pricing would be inconsistent with other specific Commonwealth legislation.



- Unit pricing must be displayed in printed advertising material where selling prices are quoted, but need not be included in non-print advertising.
- Unit prices must be clearly identified as unit prices and displayed prominently and in a legible manner.
- In general, unit prices shall be displayed as a price, rounded to the nearest whole cent, per 100g, 100ml, 1m, 1m<sup>2</sup>, or (where sold by count) 1 unit of a product. Alternative unit of measure may be prescribed for certain classes of product.
- The ACCC, in consultation with industry, will provide information and guidance to consumers and retailers about the use of unit pricing.

## **PART F IMPLEMENTATION AND REVIEW**

Subject to further consultation with industry, a 6-12 month lead time would be appropriate for implementation of a national unit pricing scheme.

Pending development of a draft code of conduct early in 2008, a final code could be prescribed in the first half of 2009, with the substantive obligations of the code to commence at the start of 2010. This transition period would allow retailers to make the transition to the new system as part of their regular price updating processes. This would also allow for technical issues, such as the categories of products to be exempted or non-standard units of measure, to be finalised. The ACCC would also use this time to commence its industry and consumer education programs.

As an industry code of conduct, the operation of the unit pricing scheme would be kept under constant review by the ACCC, in collaboration with industry representatives. Key indicators that the scheme may need to be reviewed would be if there are unusually high rates of non-compliance observed by the ACCC or reported by consumers.

More formally, longer term review of the scheme after a five year period should be undertaken by an independent body or eminent persons. Particular areas for attention of this review would be:

- Exemption criteria
  - Technology may have progressed and cheapened sufficiently enough to include all retailers in the scheme.
- Changes in the Market
  - Any changes in the structure of the market may need to be addressed through the scheme details, i.e. a greater concentration of online retailers. The general size of stores or the amount of stock keeping units available may have also changed over time as retailers adapt to consumers buying behaviour.
- Awareness and education campaigns
  - It may be necessary to run new campaigns for a new generation of consumers and immigrant populations. The review will also allow the opportunity to rate the effectiveness of previous campaigns and analyse whether they have been effective in reaching target audiences. Niche target groups of consumers may be identified to tailor any education programmes and create more effective reach and impact.

- Enforcement
  - An enforcement review should examine whether additional or different powers are needed to address non-compliance or act as a deterrent and remain in proportion to the offences.

## ATTACHMENT A

### **Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries**

#### Overview - Unit pricing

As part of the inquiry, the ACCC was asked to investigate the representation of grocery prices to consumers. Unit pricing is the practice of displaying the price by unit of measure (for example, per litre or kilogram) along with the total sale price for each item. Unit pricing can assist consumers by enabling them to readily compare prices between different sizes of the same product, between different branded products and also between stores.

The ACCC recommends that a mandatory, nationally-consistent unit pricing regime be introduced for standard grocery items both on in-store price labels and in print advertising.

The ACCC recommends that the unit pricing regime apply to significant supermarkets, including Coles, Woolworths, ALDI and large independent supermarkets. Smaller supermarkets will face higher implementation costs relative to turnover compared to larger supermarkets. The ACCC therefore considers that before unit pricing is introduced a detailed cost–benefit analysis should be undertaken to determine which supermarkets mandatory unit pricing should apply to.<sup>4</sup> Grocery outlets not required to comply with the unit pricing regime should be allowed to display unit prices on a voluntary basis. If they choose to do so, they should be required to comply with the mandatory requirements.

The ACCC has heard evidence that implementation costs of unit pricing will vary depending on the time allowed for implementation. The ACCC considers that a six- to 12-month implementation period will sufficiently reduce costs, while ensuring that unit pricing is implemented in a timely manner. The ACCC recommends that the relevant administrative body, or the Australian Government, consult with industry participants and examine how costs will vary depending on the implementation timeframe.

The ACCC recommends that any legislative mechanisms implemented should also be sufficiently flexible to enable the agency responsible for the unit pricing regime to issue legislative instruments. These legislative instruments should clearly delineate which supermarkets and products are included in the unit pricing regime and allow for appropriate compliance monitoring and enforcement.

The ACCC also recommends that a public education campaign be established to ensure that unit pricing is fully understood by consumers and has the greatest possible impact.

#### *Recommendation*

The ACCC recommends that a mandatory, nationally-consistent unit pricing regime be introduced for standard grocery items both on in-store price labels and in print advertising, for significant supermarket stores.

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<sup>4</sup> Further, an assessment of the extent to which unit pricing should apply to non-print advertising and internet retailers that do not have a physical retail store should be conducted.

## ATTACHMENT B

Queensland

# Fair Trading Amendment Regulation (No...) 2008

Subordinate Legislation 2008 No. ...

made under the

*Fair Trading Act 1989*

### 1 Short title

This regulation may be cited as the *Fair Trading Amendment Regulation (No. ..) 2008*.

### 2 Commencement

This regulation commences on 1 July 2009.

### 3 Regulation amended

This regulation amends the *Fair Trading Regulation 2001*.

### 4 Insertion of new pt 2, div 1 hdg

After part 2, heading—

*insert—*

**‘Division 1 Information standards for specified kinds of goods’.**

### 5 Insertion of new pt 2, div 2 hdg

After section 8—

*insert—*

**‘Division 2 Commonwealth consumer product information standards’.**

### 6 Insertion of new pt 2, div 3

Part 2, after section 9—

*insert—*

**‘Division 3 Information standard for supply of grocery products**

#### **‘Subdivision 1 Preliminary**

##### **‘9AA Definitions for div 3**

‘In this division—

***character*** includes a letter, figure and symbol.

***consumer*** includes prospective consumer.

***damaged product*** means a grocery product that is supplied to consumers by a grocery retailer with a selling price that is less than the selling price at which the product is ordinarily supplied by the grocery retailer because the product or any package containing the product is damaged.

*Example*—a can of baked beans that is dented

***excluded product*** means—

- (a) a product mentioned in schedule 3A; or
- (b) a damaged product; or
- (b) a last-minute markdown; or
- (c) a mixed pack; or
- (d) a multi-buy discount offer; or
- (e) a product sold in bulk.

**final price**, of a grocery product, means the price at which the product is supplied by a grocery retailer to consumers including GST and all other taxes.

**grocery product** means any product, other than an excluded product, supplied by a grocery retailer to consumers.

*Examples—*

- food, including, for example, bread, breakfast cereals, butter, confectionary, eggs, flour, fresh fruit and vegetables, meat, milk, non-alcoholic beverages, packaged foods, snacks and sugar
- baby supplies, including, for example, nappies and baby wipes
- cosmetic products and toiletries
- haberdashery
- household cleaning products
- household goods, including, for example, batteries, bin liners, food wraps, light bulbs, paper towels, pet supplies and tissues
- pharmaceutical products

**grocery retailer** see section 9AB.

**in-store retailer** see section 9AB(a).

**last-minute markdown** means a product that is supplied to consumers by a grocery retailer with a selling price that is less than the selling price at which the product is ordinarily supplied by the grocery retailer because the product is likely to deteriorate if it is not used before a particular date.

*Example—* milk supplied at a lower selling price the day before its use-by date

**mixed pack** means a pack—

- (a) containing 2 or more products of different classes each of which is separately packed in its own package; and
- (b) that is supplied to consumers with 1 selling price.

*Examples—*

- a Christmas hamper
- a pack containing a coffee maker and a promotional package of ground coffee

**multi-buy discount offer** means 2 or more products of the same kind that are supplied to consumers with 1 selling price if the products are not packed together in a single package and the unit price for 1 of the products is less than the unit price for 1 of the products when supplied as a single item.

*Example—*

3 cans of baked beans supplied with 1 selling price if the 3 cans are not packed together in a single package and the unit price for 1 can of baked beans is less than the unit price for 1 can of baked beans supplied as a single item

**online retailer** see section 9AB(b).

**online shop**, of an online retailer, means a website or websites by which the online retailer supplies to consumers a range of grocery products.

**price sign**, for a grocery product, means a sign that displays information about the selling price of the product including a shelf label for the product, but not including a price label attached to, or a price marking made on, the product or any package containing the product.

**product sold in bulk** means a product that is not pre-packaged and ordinarily weighed or measured at the request, and in the presence of, the consumer of the product.

**range**, of grocery products, means at least 7 of the following grocery products—

- (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).

**retail premises** means—

- (a) premises that have a contiguous internal floor area of at least 200m<sup>2</sup> that is used for the display of grocery products for supply to consumers in a way that includes the use of computerised shelf labels and barcode scanners at the checkout; or
- (b) premises that are used for the display of grocery products for supply to consumers in a way that shows to consumers the unit price of more than half of the grocery products displayed in the premises.

**selling price**, of a grocery product, means the final price for 1 unit of the product, or for a particular quantity of the product.

**supply** includes offer for supply.

**unit price** means—

- (a) for a grocery product supplied by number to consumers—
  - (i) if the product is supplied in lots of 1 to 9 units—the final price for 1 unit of the product; or
  - (ii) if the product is supplied in lots of 10 to 99 units—the final price for 10 units of the product; or
  - (iii) if the product is supplied in lots of 100 or more units—the final price for 100 units of the product; or

*Examples of grocery products supplied by number—* batteries supplied in lots of 3  
toilet paper supplied in lots of 100 sheets

- (b) for a grocery product supplied by mass or volume to consumers—
  - (i) generally—the final price for each 1kg or 1L of the product; or
  - (ii) if the final price for each 1kg or 1L of the product is more than \$99—the final price for each 100g or 100ml of the product; or
  - (iii) if the final price for each 100g or 100ml of the product is more than \$99—the final price for each 10g or 10ml of the product; or
  - (iv) if the final price for each 10g or 10ml of the product is more than \$99—the final price for each 1g or 1ml of the grocery product; or

*Examples of grocery products supplied by mass or volume—* apples supplied in bags of 1.35 kg  
fruit juice supplied in containers of 675ml  
potato chips supplied in packages of 25g

- (c) for a grocery product supplied by linear or cubic measurement to consumers—the final price for 1m, 1m<sup>2</sup> or 1m<sup>3</sup> of the product.

### **‘9AB Who is a grocery retailer**

A **grocery retailer** is—

- (a) a person (an **in-store retailer**) who supplies to consumers, in retail premises, a range of grocery products; or
- (b) a person (an **online retailer**) who supplies to consumers, by an online shop, a range of grocery products.

## **‘Subdivision 2**

### **Requirements to provide information in retail premises and on online shops**

#### **‘9AC Requirement to provide information about unit pricing**

‘A grocery retailer must give consumers information about unit pricing by—

- (a) for an in-store retailer—displaying posters and pamphlets about unit pricing in its retail premises in compliance with sections 9AG and 9AH; or
- (b) for an online retailer—displaying information about unit pricing on its online shop in compliance with section 9AI.

### **‘9AD Requirement to display selling price**

‘A grocery retailer must show the selling price of a grocery product supplied by the grocery retailer to consumers by—

- (a) for an in-store retailer—displaying the selling price in its retail premises in compliance with section 9AJ; or
- (b) for an online retailer—displaying the selling price on its online shop in compliance with section 9AJ.

### **‘9AE Requirement to display unit price**

‘(1) A grocery retailer must show the unit price of a grocery product supplied by the grocery retailer to consumers by—

- (a) for an in-store retailer—displaying the unit price on any price sign for the grocery product in compliance with sections 9AJ and 9AK; or
- (b) for an online retailer—displaying the unit price on its online shop in compliance with sections 9AJ and 9AK.

‘(2) Subsection (1) does not apply if the grocery product is a single unit supplied by the grocery retailer to consumers by number.

*Example*— a single light bulb

## **‘Subdivision 3**

### **Requirement to provide information in printed advertisements**

#### **‘9AF Requirement to display unit price in particular printed advertisements**

‘If a person who supplies to consumers a range of grocery products publishes a printed advertisement for a grocery product that displays the selling price of the product, the person must also display the unit price for the product in the advertisement in compliance with sections 9AJ and 9AK.

## **‘Subdivision 4**

### **Ways of providing information**

#### **‘9AG Providing information in posters**

‘A poster about unit pricing must—

- (a) state that—
  - (i) unit prices are displayed for grocery products supplied in the retail premises; and
  - (ii) a pamphlet is available in the retail premises containing information about unit pricing; and
- (b) be printed in a way that—
  - (i) provides a distinct contrast between the colour of the characters on the poster and the colour of the background of the poster; and
  - (ii) is unambiguous, easily identifiable and clearly legible to consumers; and
- (c) be displayed—
  - (i) in 3 or more prominent locations in the retail premises, including at or near each public entrance of the retail premises; and
  - (ii) in a way that makes the characters on the poster clearly legible from a distance of 4.5m away from the poster.

#### **‘9AH Providing information in pamphlets**

‘A pamphlet about unit pricing must—

- (a) state—
  - (i) the general purpose and function of unit pricing; and
  - (ii) how the unit price of a grocery product relates to the selling price of the grocery product; and
  - (iii) how consumers can use unit pricing to compare the price per unit of different brands, grocery products and sizes; and

- (iv) how consumers can use unit pricing to consider value for money; and
- (v) that the information is for the guidance of consumers only; and
- (b) be printed in a way that is unambiguous, easily identifiable and clearly legible to consumers.

#### **‘9AI Providing information on websites**

‘Information about unit pricing on an online shop must—

- (a) include the information mentioned in section 9AH(a); and
- (b) be displayed—
  - (i) on the home page, or on a page prominently linked to the home page, of the on-line shop; and
  - (ii) in a way that is unambiguous, easily identifiable and clearly legible to consumers.

#### **‘9AJ Displaying selling prices and unit prices**

‘A selling price or unit price for a grocery product must be displayed—

- (a) in a form in which any unit of measurement is expressed in the way it is ordinarily written in the English language; and
- (b) in a way that is unambiguous, easily identifiable and clearly legible to consumers.

#### **‘9AK Displaying unit prices**

‘A unit price for a grocery product must be displayed—

- (a) in a form in which the price is preceded by a dollar sign; and
- (b) if the unit price has a decimal sub-multiple—in a form in which the price is preceded by a zero or other numeral; and
- (c) in a form in which any unit of measurement is preceded by the word ‘per’; and

*Example of unit price for paragraphs (a) to (c)— \$0.76 per kg*

- (d) in characters of a height that is—
  - (i) for a unit price for a grocery product displayed on a price sign—the greater of 10mm or 50% of the height of the characters of any selling price displayed for the grocery product on the price sign; or
  - (ii) for a unit price for a grocery product displayed on an on-line shop or in a printed advertisement—at least 50% of the height of the characters of any selling price displayed for the grocery product on the on-line shop or in the printed advertisement; and
- (e) in close proximity to any display of the selling price for the grocery product.

### **‘Subdivision 5 Miscellaneous**

#### **‘9AL Working out and rounding of unit prices**

‘The unit price of a grocery product must be worked out to the nearest 1 cent (rounding 0.5 cent upwards).

*Example—* If the approximate unit price of a grocery product is 94.7c, the unit price is 95c.

#### **‘9AM Interaction with trade measurement legislation**

‘(1) This division applies in addition to the *Trade Measurement (Prepacked Articles) Regulation 1991*.

‘(2) If there is an inconsistency between this division and the *Trade Measurement (Prepacked Articles) Regulation 1991*, this division prevails to the extent of the inconsistency.’

### **7 Insertion of new sch 3A**

After schedule 3—

*insert—*

## **‘Schedule 3A Excluded products**

section 9AA



audio tapes  
books  
clothing  
compact discs  
electrical appliances  
flowers  
gardening equipment  
greeting cards  
kitchen hardware  
magazines  
newspapers  
plants  
tobacco and tobacco products  
toys  
video tapes’.

## 8 Amendment of sch 6 (Dictionary)

Schedule 6—

*insert—*

*‘character*, for part 2, divison 3, see section 9AA.

*consumer*, for part 2, divison 3, see section 9AA.

*damaged product*, for part 2, divison 3, see section 9AA.

*excluded product*, for part 2, divison 3, see section 9AA.

*final price*, for part 2, divison 3, see section 9AA.

*grocery product*, for part 2, divison 3, see section 9AA.

*grocery retailer*, for part 2, divison 3, see section 9AB.

*in-store retailer*, for part 2, divison 3, see section 9AB.

*last-minute markdown*, for part 2, divison 3, see section 9AA.

*mixed pack*, for part 2, divison 3, see section 9AA.

*multi-buy discount offer*, for part 2, divison 3, see section 9AA.

*online retailer*, for part 2, divison 3, see section 9AB.

*online shop*, for part 2, divison 3, see section 9AA.

*price sign*, for part 2, divison 3, see section 9AA.

*product sold in bulk*, for part 2, divison 3, see section 9AA.

*range*, for part 2, divison 3, see section 9AA.

*retail premises*, for part 2, divison 3, see section 9AA.

*selling price*, for part 2, divison 3, see section 9AA.

*supply*, for part 2, divison 3, see section 9AA.

*unit price*, for part 2, divison 3, see section 9AA.’.

## ENDNOTES

1 Made by the Governor in Council on . . .

2 Notified in the gazette on . . .

3 Laid before the Legislative Assembly on . . .

4 The administering agency is the Department of Justice and Attorney-General.

**ATTACHMENT C**

| <b>SUMMARY TABLE OF ISSUES PAPER SUBMISSIONS</b> |  |   |
|--|--|---|
| <b>No.</b>                                       | <b>Participant</b>   | <b>Key points</b>   |
| 1.   | ACCORD - Advocate for the Consumer, Cosmetic, Hygiene and Speciality Products Industry | <ul style="list-style-type: none"> <li>• Supports efficient regulation that is set at a minimum effective level of intervention.</li> <li>• Recommends a self regulated approach such as a voluntary code.</li> <li>• A code could outline general principles of good practice and not place additional compliance burden or act as a detriment to product innovation.</li> </ul>   |
| 2.   | ALDI Stores  | <ul style="list-style-type: none"> <li>• Strongly contends a mandatory regime must preserve sufficient flexibility to recognise the diversity in grocery retail models.</li> <li>• Flexibility in pricing display formats are important for efficiency and cost reasons.</li> <li>• Supports a national system administered by the Australian Government, rather than competing State administered regimes.</li> <li>• Educative information could be maximised through a combination of government and industry communication and incorporated on the GROCERYchoice website.</li> <li>• ALDI uses 100ml/100g as its basic measure and allows for the use of kg or litre where appropriate (based on UK model).</li> <li>• Boundaries on value, size and items of unit priced products should not be considered.</li> <li>• Smaller retailers should not be exempt due to the widespread use of product pricing information in computerised formats.</li> </ul> |
| 3.   | Australian Food and Grocery Council  | <ul style="list-style-type: none"> <li>• Supports the imposition of regulation only to ensure that minimum necessary standards are maintained and to avoid market failure.</li> <li>• Codes of Practice could be developed under co-regulatory models and jointly administered</li> </ul>   |

|    |  |   |
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|    |  | <p>with industry and regulators.</p> <ul style="list-style-type: none"> <li>• Limit the mandatory application to large retail supermarkets, or retail businesses with an annual turnover of more than \$5 million.</li> <li>• Standardised measure should be based on unit appropriate to the size of the package.</li> <li>• Mandatory shelf displays should be limited to certain categories of products where the consumer is likely to gain most benefits, such as standardised packaged foods.</li> <li>• Consumer education campaigns need to address unintended outcomes of encouraging over-consumption and increased wastage.</li> </ul>   |
| 4. | ANRA - Australian National Retailers Association | <ul style="list-style-type: none"> <li>• The scheme should apply to all major retailers and be consistent across jurisdictions.</li> <li>• Supports an industry code underpinned by the TPA, provided all retailers participate.</li> <li>• The scope should be similar to the European Union model and the details developed by a government-industry working group, including small and large retailers.</li> <li>• Clear exemptions for products where unit pricing would not assist consumers or would involve disproportional costs.</li> <li>• A reasonable transition period would allow retailers to utilise their usual cycle of store upgrades. 1 July 2010 would be a reasonable timeframe.</li> </ul> |
| 5. | ASMI - Australian Self-Medication Industry       | <ul style="list-style-type: none"> <li>• The Therapeutic Goods Act, regulations and a large number of subordinate instruments regulate many aspects of the production, distribution, advertising, labelling and sale of medicines, including non-prescription goods for general sale in supermarkets.</li> <li>• Determining an adequate unit of measure requires careful consideration, 'per dose' is different for adults and children, 'per gm' does not capture the important differences between products.</li> <li>• Believes therapeutic goods should be exempted from any unit pricing scheme.</li> </ul>   |

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| 6. | Australasian Associated Brewers                     | <ul style="list-style-type: none"> <li>Alcohol products were expressly excluded from consideration as standard grocery products during the ACCC inquiry, given that the competitive dynamic for such products is quite different to other grocery items.</li> </ul>   |
| 7. | CHOICE  | <ul style="list-style-type: none"> <li>Supports the Queensland Government's proposal for the unit of measure.</li> <li>Recommends the prescribing of minimum size and format of the presentation of the unit price.</li> <li>All advertisements showing a selling price should be required to display the unit price.</li> <li>Small grocery retailers should be exempt, but if unit pricing is voluntarily introduced it must be in accordance with the scheme.</li> <li>An implementation period of up to 12 months.</li> <li>A requirement for the in-store provision of information material on unit pricing.</li> </ul>  |
| 8. | Colorado State University                           | <ul style="list-style-type: none"> <li>Without a comprehensive consumer education program, the majority of consumers will not benefit from the scheme. A sustained information program is needed for new consumers (young adults and immigrants).</li> <li>Small differences in formatting and presentation can result in large differences in consumers' awareness, understanding and usage.</li> <li>Presentation should be in a consistent and prominent fashion, sufficiently large and easily readable font, and include a common background colour.</li> <li>It is prudent to consider emerging technologies, such as electronic shelf labelling, when designing the new scheme.</li> </ul> |
| 9. | CHC - Complementary Healthcare Council of Australia | <ul style="list-style-type: none"> <li>Senator Fielding's Bill did not clearly articulate the scope of the application of the legislation and placed an onerous burden on many retailers.</li> <li>Recommends that complementary medicines (regulated as therapeutical goods under the</li> </ul>   |

|     |                                   |  |
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|     |                                   | <p><i>Therapeutic Goods Act 1989</i>) be exempted from the definition of grocery items.</p> <ul style="list-style-type: none"> <li>• Exemptions to the scheme should not be limited to single premise shops as the issues faced by a single store can also apply to a business with multiple stores.</li> <li>• Concerned that health food/supplement stores may be captured in the proposed mandatory scheme.</li> </ul>  |
| 10. | CALC - Consumer Action Law Centre | <ul style="list-style-type: none"> <li>• Support a national, uniform and mandatory regime for grocery items covering both in-store and print advertising.</li> <li>• The ACCC is the most appropriate regulator to administer and enforce the regime.</li> <li>• A mandatory code under Part IVB of the TPA would provide some basis for appropriate enforcement of unit pricing provisions.</li> <li>• However, the ACCC cannot apply for an adverse publicity order in relation to breaches of industry codes under Part IVB, but only where a civil pecuniary penalty has been ordered or a Part VC consumer protection offence has been made out.</li> <li>• Infringement notices for minor breaches are likely to be an important tool in relation to unit pricing and are not currently available under the TPA.</li> <li>• Supports the prescription of minimum font sizes of at least 10mm or 50% of the size of the displayed sale price, whichever is greater.</li> <li>• Recommends that the location or placement requirements in particular, and also the use of colour backgrounds, be prescribed.</li> <li>• Standard units of per kilogram and per litre, as higher units of measure, clearly illustrate price differences. When unit prices become excessively large, CALC supports the Queensland Government approach of flexibility in the cases that the unit price per standard measure exceeds \$99.</li> <li>• The consumer education campaign should seek to inform as many consumers as possible</li> </ul> |

|     |                       |  |
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|     |                       | <p>about how unit pricing works and include in-store initiatives. The simplicity of any education campaign could be substantially reduced if multiple units of measure are allowed under the regime.</p> <ul style="list-style-type: none"> <li>• Exemptions for smaller stores and businesses could be subject to a five year review or sunset clause, as advances in technology, electronic labelling and logistics will make it increasingly easy for all stores to unit price over time.</li> <li>• Exempt retailers who voluntarily introduce unit pricing must do so in accordance with the requirements of the regime.</li> </ul>   |
| 11. | Growcom               | <ul style="list-style-type: none"> <li>• Supports a nationally consistent framework.</li> <li>• Strongly supports a detailed cost-benefit analysis to determine the scope of the scheme and include impacts on all participants in the supply chain.</li> <li>• Mandatory unit pricing would not have a large impact on the Queensland horticulture industry, according to Growcom’s preliminary investigations. However, many processed and value-added horticultural products are likely to be impacted upon.</li> </ul>   |
| 12. | Kaub, Jon and Gillian | <ul style="list-style-type: none"> <li>• The Queensland Government draft bill, with some modifications (regarding presentation and the exemption for multi-buys), should be used as the template for a national system.</li> <li>• The scheme should cover internet selling, as well as in-store, given the growth in this form of retailing.</li> <li>• Supports the presentation provisions in the draft Queensland bill, with three modifications. The modifications would specify that presentation would include: <ul style="list-style-type: none"> <li>– the use of coloured backgrounds for the unit pricing information on shelf labels and other in-store price signs;</li> <li>– the unit price would be located in a specific position; and</li> </ul> </li> </ul> |

|     |                         |   |
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|     |                         | <ul style="list-style-type: none"> <li>– accompanied by the words “unit price”.</li> <li>• Supports the units of measurement in the draft Queensland bill.</li> <li>• Proposes the Federal Government should commission independent research to investigate on different approaches that will have major impacts on consumer awareness and usage of unit pricing.</li> <li>• A wider range of penalties for non compliance should be available including: administrative fines and enforceable undertakings.</li> <li>• A publicly funded education campaign to the mass market, plus in-store provision of information by retailers, is needed. The timing of the campaign is important and should be related to the implementation period.</li> <li>• The national system should be contained in and be implemented via specific trade measurement legislation, such as the new National Measurement Act.</li> </ul>                          |
| 13. | Metcash Trading Limited | <ul style="list-style-type: none"> <li>• Supports a nationally consistent scheme.</li> <li>• The grocery industry should adopt and implement Unit Pricing as a voluntary code indefinitely, similar to the Scanning Code of Practice.</li> <li>• The competitive position of independent retailers may be undermined by the introduction of a unit pricing regime which imposes disproportionately higher compliance costs.</li> <li>• Considerations of the independent retailing industry should include diverse I.T. systems, stores that do not operate software or scanning checkouts, different shelf edge labels and the relatively difficulties for independent store owners in managing cash flow to fund one-off compliance costs.</li> <li>• Stores below 1,200 m<sup>2</sup> should be excluded from any mandatory legislation.</li> <li>• Timeframes allowing for an extended period before compulsory compliance would</li> </ul> |

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|     |   | dramatically reduce costs to all parties in the independent sector.   |
| 14. | National Association of Retail Grocers of Australia | <ul style="list-style-type: none"> <li>• NARGA members believe that there is no general public demand for unit pricing.</li> <li>• Supports a cost-benefit assessment to examine the implementation and management cost differential between larger and smaller stores and the resulting impact on competitiveness, as well whether the costs associated are proportionate to the perceived benefits.</li> <li>• Stores with less than 1500 m<sup>2</sup> of retail space assigned to standard groceries is the simplest means of determining an exemption.</li> <li>• Unit pricing should be introduced on a voluntary basis as some stores already display unit prices and, due to commercial benefits, others have expressed an intention to do so.</li> <li>• This suggests that in excess of 90% of grocery sales will soon be covered and avoids potential downsides of a regulated scheme – including decisions relating to exemptions and shelf labelling formats.</li> <li>• Private label brands already signal lower prices to price-conscious consumers and result in larger savings than the much smaller differences likely to be found between the unit prices of different pack sizes of the same branded product.</li> </ul> |
| 15. | Queensland Consumers' Association                   | <ul style="list-style-type: none"> <li>• The Queensland Government draft bill, with some modifications (regarding presentation and the exemption for multi-buys), should be used as the template for a national system.</li> <li>• The scheme should cover internet selling, as well as in-store, given the growth in this form of retailing.</li> <li>• Supports the presentation provisions in the draft Queensland bill, with three modifications. The modifications would specify that presentation would include: <ul style="list-style-type: none"> <li>– the use of coloured backgrounds for the unit pricing information on shelf labels and other in-store price signs;</li> </ul> </li> </ul>   |



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|     |  | <ul style="list-style-type: none"> <li>– the unit price would be located in a specific position; and</li> <li>– accompanied by the words “unit price”.</li> <li>• Supports the units of measurement in the draft Queensland bill.</li> <li>• Proposes the Federal Government should commission independent research to investigate on different approaches that will have major impacts on consumer awareness and usage of unit pricing.</li> <li>• A wider range of penalties for non compliance should be available including: administrative fines and enforceable undertakings.</li> <li>• A publicly funded education campaign to the mass market, plus in-store provision of information by retailers, is needed. The timing of the campaign is important and should be related to the implementation period.</li> <li>• The national system should be contained in and be implemented via specific trade measurement legislation, such as the new National Measurement Act.</li> </ul> |
| 16. | RTAWA - Retail Traders' Association of Western Australia | <ul style="list-style-type: none"> <li>• Expressed strong reservations about the need for government legislation and regulation of unit pricing.</li> <li>• Strongly recommends the Government to consider developing a voluntary code of practice.</li> <li>• Small to medium enterprises (SME) greatly outnumber the larger chain outlets in Australia and the proposed scheme seems to be aimed at major or national corporations.</li> <li>• Legislation could negatively impact on the SME sector.</li> <li>• Concerned about the functionality and practicality of unit pricing.</li> <li>• Concerned that compliance costs for businesses, especially those in the SME category, will be significant, as will the requirement to invest in both technology and manpower.</li> </ul>  |

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| 17. | Seafood Services Australia | <ul style="list-style-type: none"> <li>• If the scheme is too prescriptive and lacks flexibility, the cost to retail establishments of implementing unit pricing is likely to be unnecessarily burdensome on small retailers.</li> <li>• The vast majority of packaged seafood product forms (including boxed, frozen and canned) is retailed through the larger grocery chains and growing trend through smaller, seafood outlets.</li> <li>• Designers of the scheme need to recognise that unit pricing is, in general, already widespread with existing conventions. <ul style="list-style-type: none"> <li>– The “per dozen” pricing regime currently applies to seafood products such as oysters, not per unit.</li> </ul> </li> <li>• Supports the implementation of an appropriately designed scheme as a Code of Conduct under Part IVB of the TPA, which will provide for greater flexibility and responsiveness than cannot be provided under prescriptive legislation.</li> <li>• The Code should identify criteria that the retail establishment should meet to enable consumers to readily compare the price per unit of complimentary product. Retail establishments should be able to decide the units of measure, provided the unit chosen achieves the desired outcomes of the scheme.</li> </ul> |
| 18. | NSW Office of Fair Trading | <ul style="list-style-type: none"> <li>• Supports in principle consumers having access to product unit cost or comparative pricing information and notes a nationally consistent scheme would be more effective than state-based scheme.</li> <li>• Expressed concern of the possibility of over-regulation when developing a mandatory scheme and the likely impact on small business of any such scheme.</li> <li>• The term ‘unit pricing’ is potentially confusing and a more accurate term would be ‘product unit cost information’ or ‘product unit cost statement’.</li> <li>• The likely impact of rounding would be considered when determining units of measure.</li> <li>• A well-planned education campaign is essential for the successful introduction of the scheme (including consideration for the general and business population with limited or no English</li> </ul>   |

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|     |  | <p>language skills).</p> <ul style="list-style-type: none"> <li>• Mandatory product cost information scheme should not be so prescriptive that it may stifle innovation in the area of innovative product information systems being developed by retailers.</li> <li>• Supports consideration of small retailers being exempted from any scheme.</li> <li>• An implementation period of 6-12 months should commence only after a decision has been made on the details of the model to be adopted and there will need to be an effective mechanism for making changes, as required, to ensure the scheme remains suitably flexible.</li> </ul>   |
| 19. | WA Department of Agriculture and Food – Food and Trade Development Directorate | <ul style="list-style-type: none"> <li>• For DAFWA’s industry development perspective, the implementation of a mandatory unit pricing scheme is not supported. DAFWA’s preferred option is a voluntary scheme.</li> <li>• Compliance costs are likely to be carried by those players within the food chain with the least market power and transferred to consumers.</li> <li>• As unit pricing does not capture quality differences and focuses on lowest unit cost, it has the potential to disadvantage local manufacturers and suppliers who are frequently not the lowest cost producers and trade on other differentiating attributes.</li> <li>• If adopted, a nationally standardised format would be preferred to ensure standard units of measure as recommended for packaged food under the Australian and New Zealand Food Standards Code for nutritional panel labelling.</li> <li>• If adopted, an industry code under Part IV of the TPA is recommended.</li> </ul> |