

Chapter 3

Unit Pricing (Easy comparison of grocery prices) Bill 2008

Overview

3.1 The Unit Pricing (Easy comparison of grocery prices) Bill 2008 amends the *National Measurement Act 1960* to require retailers of grocery products to:

- display on the premises posters and pamphlets containing information about unit pricing, for the use of consumers;
- indicate the selling price for all grocery products that are, or may be, for sale to a consumer. Grocery products sold in bulk or advertisements for a grocery product are exempt; and
- indicate an accurate unit price for all grocery products that are, or may be, for sale to a consumer. Certain products and circumstances are exempt from this requirement.

The Bill also:

- specifies the font size of unit price information on shelf labels, its prominence in relation to other information, and the location of such labels;
- specifies the manner in which the unit price is to be calculated and the measurement units to be used; and
- outlines an enforcement regime, including: providing for the appointment of unit pricing inspectors and detailing their powers, which include search and seizure powers; providing for the issuing of infringement notices; allowing the Secretary to publicise contraventions; and prescribing civil penalties for failing to comply with the requirements set out in the Bill.

Stakeholder views

3.2 The majority of submissions to the inquiry were supportive of the policy underpinning the Bill, namely the introduction of a mandatory unit pricing scheme in Australia (with the exception of groups such as the National Association of Retail Grocers of Australia and Master Grocers Australia, who indicated a preference for a voluntary scheme¹). However, there were mixed views about what such a scheme should entail, with consumer groups largely supportive of the requirements set out in

1 See National Association of Retail Grocers of Australia, *Submission 5*, p. 2, and Master Grocers Australia, *Submission 4*, p. 2.

the Bill and industry groups calling for a less prescriptive approach. For example, Mr Aylen from Woolworths told the committee that

Our challenge as retailers is to keep our unit pricing system simple and easy to understand for the customers. We have in excess of 25,000 items in our stores, so implementing unit pricing is no easy task, and we believe that the key is flexibility. A national unit pricing scheme should be sufficiently flexible to allow retailers to implement within current store designs and technological platforms. This will enable us to introduce unit pricing quickly. If the system is too prescriptive it could be difficult, time consuming and costly to implement and hinder the benefits to our consumers.²

3.3 Both consumer and industry groups raised some concerns about specific sections of the Bill, which are discussed below.

Proposed new section 18ZZH – Interpretation

Stores to be exempt

3.4 Under proposed new sub-paragraph 18ZZK(3)(d)(i), *single premises shops* are excluded from the requirement to provide unit pricing information. Proposed new section 18ZZH defines a *single premises shop* as the shop of a retailer that operates from only that unique location and which has a relevant floor area not exceeding 200 square metres.

3.5 There appeared to be general agreement that some exemptions from mandatory unit pricing should be provided for smaller stores. For example, Mr Ashton from the Consumer Action Law Centre, in response to a question from Senator Bushby about exemptions, noted that

as a matter of common sense and in the interests of smaller businesses there do need to be exemptions. I think everybody would agree with that.³

3.6 The criteria that should be used to determine eligibility for exemptions was a matter for debate, however. Mr Cameron suggested that the exemption provisions in the Bill would help to reduce the impact of the Bill on small rural businesses, but raised concerns that in rural areas floor space is much less costly than in cities, so the ‘arbitrary’ choice of 200 square metres may ‘hinder growth of small businesses in lower floor space cost locations.’⁴

3.7 Metcash indicated that they would like to see exemptions for stores with a relevant floor area not exceeding 1,200 square metres. Metcash's Marketing and Commercial Manager, Mr McDonald, told the committee that

2 Mr Aylen, *Proof Committee Hansard*, 6 August 2008, p. 2.

3 Mr Ashton, *Proof Committee Hansard*, 6 August 2008, p. 10.

4 Mr Cameron, *Submission 1*, p. 1

The reason for choosing 1,200 square metres is that we have different tiers within our distribution system so that the large or first tier is what you might see around as our super IGA supermarkets... [these] supermarkets in many cases form part of the main shop or the primary shop per week, and they certainly compete against the chains for customers' businesses. Below that we get into different branding, and the different branding is an IGA—it used to be called IGA Everyday—or certainly IGA Express and smaller stores. Those stores tend not to compete...directly against major supermarket chains in that competitive environment...the cost impost on our smaller retailers who fit below that super channel is a lot higher. They do not have the manpower and, in general, the resources...I guess the exclusion from mandatory legislation is something that we would like for those smaller stores.⁵

3.8 The ACCC acknowledged that floor space is one means of estimating the size of a store, but noted that turnover is generally a good measure of the size of a business and, along with other indicators, might provide an appropriate means of identifying smaller stores where the cost of implementing unit pricing may eclipse any benefits.

Floor size is just an indicator. Turnover and the size of the business are generally good indicators of their ability to do some of these things and to minimise the costs and to spread especially some of the fixed costs that you might incur with the IT system over a greater range of products and revenue. So turnover is generally a good size that you would start from, and floor size is an indicator of—⁶

3.9 Mr Jarrett advised the committee that various criteria are used to provide exemptions from unit pricing overseas. For example, the Irish system exempts stores that do not have the technology to automatically produce shelf labels.⁷ While the Consumer Action Law Centre advised that the European Union provides exemptions for stores with less than 280 square metres of floor space.⁸

Stores to be included

3.10 Proposed new section 18ZZK requires that a *retailer* who indicates that any grocery product is or may be for sale to a customer must indicate the unit price of that grocery product (with some specified exemptions). Proposed new section 18ZZH defines *grocery products* as

products sold by any retail grocery store and include but are not limited to staple foods such as meats, fruit and vegetable produce, baked goods and dairy products, canned and packaged goods, snacks and confectionary, non-alcoholic beverages, household goods (tissues, paper towels, food

5 Mr McDonald, *Proof Committee Hansard*, 6 August 2008, p. 16.

6 Mr Dimasi, *Proof Committee Hansard*, 11 August 2008, p. 14.

7 Mr Jarrett, *Proof Committee Hansard*, 11 August 2008, p. 9.

8 Ms Rich, *Proof Committee Hansard*, 6 August 2008, p. 13.

wraps, bin liners, light bulbs, batteries, and similar products), pharmaceutical products, cosmetic products, make-up products, toiletries, baby supplies such as nappies, haberdashery, tobacco and tobacco products, household cleaning products, pet supplies and other household supplies, and alcoholic beverages when such beverages are sold by a retailer of grocery products but exclude clothing, newspapers, magazines, greetings cards, compact discs, video and audio tapes, toys, plants, flowers, electrical appliances, kitchen hardware, gardening equipment and books and **grocery product** means any one of them.

3.11 In their submission, Woolworths suggested that, as currently drafted, the Bill would apply to stores such as Big W, Dan Murphys and some of Woolworths' petrol outlets, as well as to their supermarkets,⁹ as all of these stores sell some of the goods included in the definition of *grocery products*.

3.12 The Queensland Consumers Association also raised this issue, indicating that it was unclear whether the Bill was meant to apply only to those retailers who sell a range of grocery products, or to retailers who sell any grocery product.¹⁰ For example, the list of items considered to be *grocery products* includes pet supplies and cosmetic and pharmaceutical products, so the Bill may be interpreted as applying to pet shops and pharmacies, who also sell these products. The Association drew the committee's attention to a provision in the Regulatory Impact Statement for the proposed Queensland unit pricing legislation, suggesting that a similar provision should be included in this Bill. The provision states that

...retailers of grocery products will only be captured by the unit pricing scheme if they sell a range of the items identified above, but part of the range must include staple foods. It is not intended to extend the unit pricing scheme to specialty stores such as hardware, pharmacies and pet stores.¹¹

Units of measure

3.13 Proposed new section 18ZZH defines *unit price* as meaning:

the final price, including GST and all other taxes, for one kilogram, one litre, one metre, one square metre or one cubic metre of a grocery product except in respect of grocery products sold by number, where unit price means the final price including GST and all other taxes for an individual item of the grocery product.

3.14 ALDI, who have already implemented unit pricing in its Australian stores, indicated that they believe that a unit of measure smaller than that proposed in the Bill is likely to be more practicable and easier to understand for consumers. They indicated that many grocery items are less than the unit descriptions proposed and that, in these

9 Woolworths, *Submission 8*, p. 3.

10 Queensland Consumers Association, *Submission 2*, p. 6.

11 Cited in Queensland Consumers Association, *Submission 2*, p. 6.

cases, the unit price would be more effectively displayed as price per 100 grams or per 100 ml. ALDI provided an example of a 5 gram pack of herbs, where the unit price per kilogram would be extremely large and fairly meaningless to customers. In this instance, they suggested a unit price per 10 grams would be a more appropriate measure.¹²

3.15 As outlined by ALDI's Group Buying Director, Mr Davis, at the Melbourne hearing, ALDI's current unit pricing system is based on the UK model, with graduated unit prices according to the size of the product.

The UK model currently is the model that we have based all ours on, and that is 10 grams as an exception on things like herbs and spices, 100 grams on most of the packaged goods, and one kilogram on obvious products like cheese, fruit and vegetables, meat and those types of things.¹³

3.16 Similarly, Woolworths recommended that unit pricing be per 100ml or 100 grams, which they state is consistent with nutritional information and is therefore familiar to consumers. They too gave an example of saffron, which would have a per kg price of \$133,000 for a 0.1 gram package.¹⁴

3.17 In contrast Consumer groups were highly supportive of the unit price information being presented per kilogram or per litre, arguing that larger units of measure are preferable as:

- price per kilogram is the measure currently used for items such as meat and cheese sold in random weight packages, and is therefore familiar to consumers; and
- they maximise price differentials between products and therefore provide more meaningful information to consumers. For example, a consumer is more likely to take note of a price differential of \$2.34 per kg rather than one of 23.4 cents per 100 grams.¹⁵

3.18 The Consumer Action Law Centre noted that

In overseas jurisdictions you tend to see where they have gone through this process that, when they have said, 'Yes, we will do unit pricing', the retailers have pushed for the adoption of smaller units of measurement as the base units. The reason for that is reasonably clear. The smaller the units, the smaller the price difference between different products or different sizes and the less it looks like there is a saving to be made to the consumer and the less it drives the consumer to make a decision based on that information. The bigger the units, the clearer the price differences are and

12 ALDI, *Submission 6*, p. 2.

13 Mr Davis, *Proof Committee Hansard*, 6 August 2008, Melbourne, p. 21.

14 Woolworths, *Submission 8*, p. 6.

15 Mr Jarratt, *Proof Committee Hansard*, 11 August 2008, Canberra, p. 8.

the clearer the consumers can see quickly that there is a difference in price and can make a decision based on that.¹⁶

3.19 The Queensland Consumers Association did, however, raise concerns that the unit price for products sold by count should not be for an individual item of the product, as specified in the Bill. Rather, because the number of items in a pack may vary greatly, they stated a preference for unit prices to be calculated on a sliding scale depending on the number of items in a pack. For example for 1 to 9 items in the pack the unit could be per each, for 10 to 99 the unit could be per 10 and for 100 and over the unit could be per 100.¹⁷

3.20 The ACCC did not express a set view on what units of measure would be the most appropriate for a unit pricing scheme in Australia, noting only that the units chosen should be appropriate to the products, and that there should be some scope to adjust the scheme as it is rolled out so that it is responsive to any emerging problems.¹⁸

Proposed new section 18ZZJ – display of selling price

3.21 Subsection 18ZZJ(1) requires retailers of grocery products to indicate the selling price for all grocery products that are, or may be, for sale to a consumer. Grocery products sold in bulk or advertisements for a grocery product are exempt.

3.22 In their submission to the inquiry, NARGA indicated that this provision ‘is the first time such a requirement has been introduced into Australian law’ and asserts that the requirement is particularly difficult for very small retailers, who currently do not price label all of their goods and are not required to do so. In evidence to the inquiry, Mr Ashton of the Consumer Action Law Centre also noted that

...apparently there is no legal requirement, certainly in Victoria, to put any shelf label size or even put a price on shelves.¹⁹

3.23 While the Bill provides an exemption from providing unit price information for single premise shops, no such exemption is provided for the requirement to indicate the selling price.

Proposed new section 18ZZL

Labelling requirements

3.24 Proposed new subsection 18ZZL(2) requires a retailer to:

16 Ms Rich, *Proof Committee Hansard*, 6 August 2008, p. 9.

17 Queensland Consumers Association, *Submission 2*, p. 6.

18 Mr Dimasi, *Proof Committee Hansard*, 11 August 2008, p. 15.

19 Mr Ashton, *Proof Committee Hansard*, 6 August 2008, p. 9.

ensure that the font of the indication of the unit price on shelf labels of a grocery product offered by the retailer to consumers or to prospective consumers is the greater of:

- (a) 10 millimetres; or
- (b) 50 per cent of the size of the font of the indication of the selling price.

3.25 This provision caused considerable consternation among witnesses from the grocery industry. ALDI indicated that, in their view, a requirement that unit price information be 50 per cent of the selling price was impractical and would result in cluttered and confusing price tags.²⁰ To meet this requirement, ALDI indicates that it would have to undergo a ‘full re-design of its price displays incurring considerable and in our view, unnecessary cost.’ They propose that the Bill instead prescribe a minimum size unit price, allowing retailers the flexibility to manage price displays in line with current practices.

The current 50 per cent of the greater of 10 millimetres or 50 per cent of the retail price we believe would start to become a little confusing for customers... We have been working to try to make that unit price a little bit larger. We do not have the capability to make it any larger as of tomorrow, but we are working to make it slightly larger and I think we have recommended a 10 millilitre (sic) minimum as a size that we could consider. I think even that on the smaller price cards will start to look very large.²¹

3.26 Similarly, Woolworths indicated that the current size of their supermarket labels accommodate sale price font sizes of between 5mm and 23mm. Meeting the unit price font size obligations in the Bill would require them to reduce the size of other items on the label, such as the product description, unit of measure and the price of the product, possibly leading to confusion for customers and taking considerable time and effort. For example, they indicate that reconfiguring labels for the unit pricing trial that they are currently undertaking has taken four months. Woolworths also asserted that a regulated font size of a minimum 10mm

...will also cause issues for shelf displays and could ultimately reduce shelf sizes and product ranges. This may have the unintended impact of driving customers to private label or generic branded products, significantly impacting manufacturers of branded products.²²

3.27 In addition, Woolworths notes that there is other legislation which specifies font size for labelling etc, which may be inconsistent with this Bill, namely obligations under the Food Standards Code and under tobacco regulations.

20 ALDI, *Submission 6*, p. 2.

21 Mr Davis, *Proof Committee Hansard*, 6 August 2008, p. 21.

22 Woolworths, *Submission 8*, p. 4.

3.28 In contrast to the industry groups, consumer groups were strongly supportive of the font size specifications in the Bill, arguing that prominently displayed unit pricing information was essential to the success and uptake of the system. For example, the Consumer Action Law Centre told the committee that font size

is one of the factors that will make the difference between an effective unit pricing scheme and a non-effective unit pricing scheme... It is not going to be effective if it is too difficult for consumers to see, read or understand the marking of the unit price. Certainly there is research overseas in jurisdictions that have unit pricing that says the way in which the unit pricing is displayed, how prominently it is displayed and so on does impact on the use of unit pricing information by consumers. It is very important.²³

3.29 The Queensland Consumers Association also advised the committee that it is common practice for legislation in Australia to prescribe minimum sizes for the presentation of consumer information.

For example, 3mm is the minimum size font for the presentation of unit price information on the labels on random weight packages of meat and some other foods. If the unit price is shown on a label not attached to the package, for example on a shelf label, the minimum size font is 10mm. Also, the Food Standards Code specifies minimum font sizes for the presentation of warning and country of origin information on any type of label.²⁴

3.30 While supportive of the provisions specifying font size for unit pricing information, the Consumer Action Law Centre advised that the 'size of print is only one of several presentational issues of critical importance to consumers' and called on the federal government to commission

independent practical research with consumers to inform the basis of the minimum standards of information presentation for a national unit pricing system.²⁵

Products packed in liquid

3.31 Proposed new subsection 18ZZL(4) requires that:

In the case of a pre-packaged solid food grocery product presented in a liquid medium, the unit price refers to the net drained weight of the grocery product. Where a unit price is also given with reference to the net weight of the grocery product, it must be clearly indicated which unit price relates to net drained weight and which to net weight.

3.32 In their submissions to the inquiry, ALDI and Woolworths both claimed that this subsection introduces entirely new criteria for product weight, as no grocery

23 Ms Rich, *Proof Committee Hansard*, 6 August 2008, p. 8.

24 Queensland Consumers Association, *Supplementary Submission*, 13 August 2008, p. 1.

25 Consumer Action Law Centre, *Submission 7*, p. 3.

products in Australia currently display weight in this manner.²⁶ According to Woolworths

If this becomes necessary, manufacturing process may be significantly impacted to provide a consistent drained weight and include this information on labels so retailers can calculate the unit price.²⁷

3.33 In addition, both ALDI and Woolworths believe that this approach will result in confusion for customers, who are not used to seeing product weight expressed in this way.

Proposed new section 18ZZM

3.34 This section requires retailers, in calculating unit prices, to express the unit price to the nearest 0.1 cent if the unit price is below \$1 and to the nearest cent or 0.1 cent if the unit price is above \$1. It also provides rules for rounding up or down in specified circumstances.

3.35 Woolworths' submission indicated that the rounding provisions have the potential to conflict with the Trade Practices Act and also with proposed new subsection 18ZZK(2) of this bill, which requires that the unit price indicated by the retailer must be accurate.²⁸

3.36 The Queensland Consumers Association recommended that rounding both above and below \$1 should only be to the nearest cent, as rounding to the nearest 0.1 cents is not consumer-friendly and will be difficult to read.²⁹

Proposed new section 18ZZI

3.37 The Queensland Consumers Association noted that this section appeared to require all retailers to provide consumers with information about unit pricing. They recommended that such a requirement only apply to retailers who are implementing unit pricing in their store (whether voluntarily or as part of a mandatory scheme).³⁰

National Measurements Act

3.38 In addition to the above mentioned concerns about specific provisions of the Bill, the National Association of Retail Grocers of Australia queried the appropriateness of seeking to introduce unit pricing through amendments to the *National Measurements Act 1960*, suggesting that pricing is outside the scope of the Act and that, as the Act appears to apply to the measurement of products, it is unsuited

26 Woolworths, *Submission 8*, p. 5 and ALDI, *Submission 6*, p. 3.

27 Woolworths, *Submission 8*, p. 5.

28 Woolworths, *Submission 8*, p. 5.

29 Queensland Consumers Association, *Submission 2*, p. 7.

30 Queensland Consumers Association, *Submission 2*, p. 7.

to a requirement that relates to the provision of information not attached to the product.³¹

3.39 Similar concerns were not raised by other witnesses. For example, when asked by Senator Fielding whether the Bill provided a reasonable basis for moving forward with a unit pricing system in Australia, Ms Rich from the Consumer Action Law Centre replied

Yes, certainly. We think it is a sound basis. It is not dissimilar to the legislation that is being proposed in Queensland. So it is certainly a basis that we could work off for a national, uniform, mandatory scheme.³²

31 National Association of Retail Grocers of Australia, *Submission 5*, p. 2.

32 Ms Rich, *Proof Committee Hansard*, 6 August 2008, p. 13.