



Trade Practices (Industry Codes — Unit Pricing) Regulations 2009¹

Select Legislative Instrument 2009 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Trade Practices Act 1974*.

Dated 2009

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]
Minister for Competition Policy and Consumer Affairs

CONSULTATION DRAFT ONLY

1 Name of Regulations

These Regulations are the *Trade Practices (Industry Codes — Unit Pricing) Regulations 2009*.

2 Commencement

These Regulations commence on 1 July 2009.

3 Code of Conduct

For section 51AE of the *Trade Practices Act 1974*, the code set out in Schedule 1:

- (a) is prescribed; and
- (b) is declared to be a mandatory industry code.

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

(regulation 3)

Part 1 Preliminary

1 Name of code

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

2 Purpose of code

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

3 Definitions

- (1) In this code:

floor space, in relation to retail premises, means the continuous internal floor area of the premises but does not include any

floor space provided for the consumption of food-based grocery items at the premises.

food-based grocery item means an item that:

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

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

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

Examples

- 1 Meat is a grocery category, but a packet of sausages is a grocery item.
- 2 Fresh fruit and vegetables are a grocery category, but a prepackaged bag of potatoes is a grocery item.

online grocery retailer means a person that sells, on a website, a minimum range of food-based grocery items to consumers.

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

- (a) sells a minimum range of food-based grocery items to consumers; and
- (b) voluntarily displays a unit price for one or more grocery items sold by the person.

prescribed grocery retailer means any of the following:

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

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

sell includes offer for sale.

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

store-based grocery retailer means a person that sells a minimum range of food-based grocery items to consumers in retail premises that have more than 1 000 square metres of floor space dedicated to the display of groceries.

unit price means the price (including GST) for a grocery item per unit of measurement in accordance with clause 8.

- (2) In this code, a *minimum range of food-based grocery items* means food-based grocery items from at least 7 of the following grocery categories:
- (a) bread;
 - (b) breakfast cereal;
 - (c) butter;
 - (d) eggs;
 - (e) flour;
 - (f) fresh fruit and vegetables;
 - (g) fresh milk;
 - (h) meat;
 - (i) rice;
 - (j) sugar;
 - (k) packaged food, other than food mentioned in paragraphs (a) to (j).

4 Application

- (1) Parts 2 and 3 apply to a store-based grocery retailer and an online grocery retailer on and after 1 December 2009.
- (2) Parts 2 and 3 apply to a participating grocery retailer:
- (a) if the retailer displays unit prices at the time this code commences — 6 months after the code commences; or
 - (b) if the retailer does not display unit prices at the time this code commences — 6 months after the retailer first commences to display unit prices for grocery items sold by the retailer.

5 Consistency with other Commonwealth legislation

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

Part 2 Requirements to display unit prices

6 Display of unit prices

- (1) Unless clause 7 applies, a prescribed grocery retailer must display a unit price for all grocery items sold by the retailer for which a selling price is displayed.
- (2) The retailer must ensure that the unit price for a grocery item:
 - (a) is displayed prominently and in close proximity to the selling price for the grocery item; and
 - (b) is legible and unambiguous.

7 Exempt grocery items

A prescribed grocery retailer is not required to display a unit price for a grocery item that:

- (a) is sold at a price that has been marked down from the selling price for which the retailer would usually sell the grocery item because:
 - (i) the grocery item or the grocery item's packaging is damaged; or
 - (ii) the grocery item is a perishable item that may deteriorate if it is not used by a particular date; or
- (b) is a bundle of different grocery items packaged together and offered for sale for a single price; or
- (c) is in a grocery category mentioned in clause 10.

8 Units of measurement and form of unit price

- (1) Unless clause 11 applies, a prescribed grocery retailer must display the unit price for a grocery item using the most relevant of the following units of measurement:
 - (a) for a grocery item supplied by volume — per 100 millilitres;

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- (b) for a grocery item supplied by weight — per 100 grams;
 - (c) for a grocery item supplied by length — per metre;
 - (d) for a grocery item supplied by area — per square metre;
 - (e) for a grocery item supplied by number and the number of items does not exceed 4 — per item included.
- (2) For subclause (1), the most relevant unit of measurement for a grocery item is:
- (a) if there is one unit of measurement displayed on the packaging of the grocery item as the unit of measurement by which the grocery item is supplied — the unit of measurement displayed on the packaging; or
 - (b) if there is more than one unit of measurement displayed on the packaging of the grocery item as the units of measurement by which the grocery item is supplied — the unit of measurement by which that grocery category is most often supplied.
- (3) If a unit price is at least \$1.00, the unit price must be displayed in dollars and whole cents.
- (4) If a unit price is less than \$1.00, the unit price must be displayed either:
- (a) in dollars and whole cents; or
 - (b) in whole cents.
- (5) The unit price is to be worked out to the nearest 1 cent (rounding 0.5 cents upwards).

9 Advertising

- (1) If a prescribed grocery retailer advertises grocery items:
- (a) in print media, including catalogues and newspapers; or
 - (b) on a website (other than video or audio files similar in nature to radio or television advertisements);
- the retailer must display a unit price for the grocery item in the advertisement in accordance with subclause 6 (2).

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- (2) If a prescribed grocery retailer uses television, radio or other electronic media (other than websites) to advertise grocery items, the retailer is not required to display or advertise the unit price for the grocery item in the advertisement.

Part 3 Exempt grocery categories and alternative units of measurement

10 Grocery categories exempt from unit pricing

A prescribed grocery retailer is not required to display a unit price for any of the following:

- (a) books, magazines and stationery;
- (b) optical discs and magnetic storage devices used for computing, sound reproduction or video, whether or not they are pre-loaded with content;
- (c) photography items and equipment;
- (d) electrical items, except for batteries;
- (e) garden tools, and items for garden or pool maintenance or decoration;
- (f) flowers, including fresh, dried and imitation flowers;
- (g) furniture;
- (h) hardware items;
- (i) manchester;
- (j) computer equipment;
- (k) audio-visual equipment;
- (l) telecommunications items or equipment;
- (m) items for motor vehicle maintenance or repair, other than consumable liquids;
- (n) sports and camping equipment;
- (o) toys;
- (p) household appliances and kitchen and bathroom utensils;
- (q) clothing, jewellery and other fashion items (other than cosmetics);
- (r) services, and goods supplied as part of providing a service, including mobile phone recharges;

(s) goods for hire.

11 Alternative units of measurement

A prescribed grocery retailer must display the unit price for a grocery item that is in a grocery category mentioned in column 2 of an item in the following table by using the unit of measurement mentioned in column 3 of the item.

Item	Grocery category	Unit of measurement
1	Herbs	per 10 grams
2	Spices	per 10 grams
3	Flavouring essences	per 10 millilitres
4	Food colouring	per 10 millilitres
5	Cosmetics	(a) each; or (b) if sold by weight — per 10 grams; or (c) if sold by volume — per 10 millilitres
6	Powdered sauce and stock	per 10 grams
7	Fresh meat	per kilogram
8	Fresh vegetables and fruit	per kilogram
9	Cheese	per kilogram
10	Milk (including flavoured milk), soft drinks and juices	per litre
11	Air fresheners	(a) each; or (b) per 10 millilitres
12	Products supplied on a roll (including toilet paper)	(a) if supplied by sheets — per 100 sheets; or (b) if not supplied by sheets — per metre
13	Products (other than batteries) supplied by number in packages of 5 or more items	per 10 items

14 Batteries each

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.