



# Trade Practices (Industry Codes — Unit Pricing) Regulations 2009<sup>1</sup>

**Select Legislative Instrument 2009 No. 152**

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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 24 June 2009

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

CRAIG EMERSON  
Minister for Competition Policy and Consumer Affairs

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

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

*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.

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

**online grocery retailer** means a person that sells, on a website, the 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 the minimum range of food-based grocery items to consumers; and
- (b) voluntarily displays a unit price (other than in an advertisement of a kind mentioned in clause 9) for 1 or more grocery items sold by the person (other than exempt grocery items under clause 7); and
- (c) is not required to display the unit price for the grocery item under a law of the Commonwealth, or a law of a State or Territory.

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

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

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

**sell** includes offer for sale.

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

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

- (a) that have more than 1 000 square metres of floor space dedicated to the display of grocery items; and

- (b) that are used primarily for the sale of food-based grocery items.

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

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

#### **4 Application**

- (1) 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 a unit price at the time this code commences — 6 months after this code commences; or
  - (b) if the retailer does not display a unit price at the time this code commences — 6 months after the retailer first commences to display unit prices for grocery items sold by the retailer.

- (3) If, at any time, the participating grocery retailer ceases to display unit prices for all grocery items to which this code applies (other than unit prices for grocery items that the retailer is required to display under a law of the Commonwealth, or a law of a State or Territory), the retailer ceases at that time to be a participating grocery retailer for the purposes of this code.

**5 Consistency with other Commonwealth legislation**

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

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## **Part 2 Requirements to display unit prices**

### **6 Display of unit prices**

- (1) Unless subclause (3) or 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.
- (3) If a selling price is displayed in such a way that it applies to more than 1 grocery item, the prescribed grocery retailer is not required to display a unit price in relation to the selling price.

### **7 Exempt grocery items**

- (1) 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
    - (iii) the grocery item is a discontinued grocery item; or
  - (b) is a bundle of different grocery items offered for sale for a single price; or
  - (c) is in a grocery category mentioned in clause 10.
- (2) If a prescribed grocery retailer chooses to display a unit price for a grocery item mentioned in subclause (1), the retailer is not required to comply with this code in relation to the display of the unit price for the grocery item.

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

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

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

- (2) For subclause (1), the most relevant unit of measurement for a grocery item is:
  - (a) if there is 1 unit of measurement displayed on the packaging of the grocery item as the unit of measurement by which the grocery item is supplied — the unit of measurement displayed on that packaging; or
  - (b) if there is more than 1 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:
  - (a) advertises a grocery item:
    - (i) in print media (including catalogues and newspapers); or
    - (ii) on a website (other than video or audio files similar in nature to television or radio advertisements); and
  - (b) displays a selling price for the grocery item in the advertisement;  
the retailer must display a unit price for the grocery item in the advertisement in accordance with this code.
- (2) If a prescribed grocery retailer uses television, radio or other electronic media (other than a website) 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 (other than batteries and light bulbs);
- (e) garden tools, and items for garden or pool maintenance or for garden or pool decoration;
- (f) flowers, including fresh, dried and imitation flowers;
- (g) furniture;
- (h) hardware items;
- (i) manchester;
- (j) computer equipment;
- (k) audio-visual equipment;
- (l) telecommunications items or equipment;
- (m) items for motor vehicle maintenance or repair;
- (n) sports and camping equipment;
- (o) toys;
- (p) household appliances and kitchen and bathroom utensils;
- (q) clothing, jewellery and other fashion items (other than make-up);
- (r) services, and goods supplied as part of providing a service, including mobile phone recharges;
- (s) goods for hire;
- (t) cigarettes and other tobacco products, including nicotine replacement products;
- (u) alcoholic beverages;

- (v) haberdashery;
- (w) items sold from vending machines;
- (x) meals prepared at the retail premises for immediate consumption.

## 11 Alternative units of measurement

- (1) 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	Make-up	(a) per item included; or (b) if supplied by weight — per 10 grams; or (c) if supplied by volume — per 10 millilitres
6	Powdered sauce and stock	per 10 grams
7	Meat	(a) per item included; or (b) if supplied by weight — per kilogram
8	Fruit and vegetables (including mushrooms)	(a) per item included; or (b) if supplied by weight — per kilogram
9	Cheese	per kilogram
10	Beverages (including beverage concentrates)	per litre
11	Air fresheners	(a) per item included; or (b) if supplied by volume — per 10 millilitres

Item	Grocery category	Unit of measurement
12	Products supplied on a roll (including toilet paper)	(a) if supplied by continuous length — per metre; or (b) if there are 40 or fewer items (including sheets) on the roll — per item included; or (c) if there are 41 or more items (including sheets) on the roll — per 100 items
13	Products supplied by number in packages of 41 or more items	per 100 items
14	Packaged eggs	per 100 grams
15	Ice	per kilogram
16	Flour	per kilogram
17	Laundry supplies (including washing powders and liquids, fabric softeners and fabric bleach)	(a) per item included; or (b) if supplied by weight — per kilogram; or (c) if supplied by volume — per litre
18	Pet products (other than pet food)	(a) per item included; or (b) if supplied by weight — per kilogram; or (c) if supplied by volume — per litre

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

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

(2) If:

- (a) a prescribed grocery retailer supplies more than 1 grocery item from a grocery category mentioned in the table in subclause (1); and
- (b) the grocery items are supplied by number or on a roll; and

- (c) this code requires the unit prices for the grocery items to be displayed using different units of measurement;  
the retailer may use, for all of the grocery items mentioned in paragraph (a), the unit of measurement that the retailer is most often required by this code to use in relation to unit prices for grocery items in that grocery category.

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**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>.