



Supermarkets Taskforce
The Treasury
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By email: supermarketstaskforce@treasury.gov.au

To whom it may concern

Thank you for the opportunity to provide feedback on options to strengthen the Unit Pricing Code (the Code). The NSW Small Business Commission (the Commission) is an independent statutory office of the NSW Government, providing strategic advice, advocacy and dispute resolution services to support a thriving small business sector. The Commission supports efforts to enhance price transparency and consumer empowerment through accessible and consistent unit pricing.

Expanding the scope of the Code

While the Commission supports the policy objective of improving price transparency and assisting consumers to compare value, the proposed reforms must guard against imposing undue compliance or financial burdens on small supermarket retailers, which often operate on tight margins and limited resources. The Commission notes the considerations within the consultation paper propose expanding the scope of the Code by reforming the existing floor space threshold and minimum range of food-based grocery items. The Commission recommends the exploration of alternative thresholds that are less likely to unintentionally capture smaller retailers, such as annual turnover, number of full-time equivalent employees, Stock Keeping Unit (SKU) count or number of grocery items stocked, or a hybrid model that combines multiple thresholds, such as floor space and turnover.

Expanding the scope of the Code without careful consideration of small business capacity could result in:

1. Unintended inclusion of small independent retailers

- Reducing the floor space threshold to less than 1,000 square metres, or removing the threshold entirely, may result in small grocery stores or specialty stores exceeding the proposed floor space or product category thresholds, while lacking the systems and staff capacity of large retailers.
- Many small retailers may operate manually, with limited automation for pricing and labelling.
- Small retailers in regional areas, where space is more available and affordable on a relative basis, may be operating in a larger floor space but not necessarily stocking a larger range of products.
- Capturing these businesses under a one-size-fits-all regulatory approach can impose disproportionate compliance burdens.

2. Regulatory disparity between independent and franchise/chain retailers

- Some smaller-format retailers, for example, IGA franchises, may appear small in footprint but are part of larger networks.

- While the code defines a *prescribed grocery retailer*, *store-based grocery retailer*, *online grocery retailer* and a *participating grocery retailer*, it may be beneficial to acknowledge instances of large grocery retailer groups to mitigate the risk of unfairly including small-format stores with limited operational autonomy simply because of their ownership structure, regardless of their actual capabilities. Defining large grocery groups should exclude independently operated franchises unless systems are centrally managed.

3. Chilling effect on voluntary compliance

- Some small retailers currently voluntarily adopt unit pricing to meet customer expectations or compete on transparency.
- If the scope expands to mandatory coverage with penalties and strict requirements, these smaller retailers may choose to opt out entirely rather than face the risk and cost of non-compliance.

Phased implementation

As a number of the policy considerations noted in the consultation paper would result in a greater number of smaller retailers being included in the Code, it is crucial to ensure the implementation of any new requirements take into account the unique needs and challenges of small businesses. While larger and major supermarkets have already been subjected to the Code since its inception, this is new territory for smaller retailers, especially if they had not previously opted in to the Code voluntarily. If changes are mandated too quickly without sufficient transition time, small retailers are more likely to struggle. Therefore, a phased approach to implementation would be required to ensure small retailers have more time to adapt without the fear of being unfairly penalised.

Support and subsidies for smaller retailers

The introduction of more prescriptive requirements would significantly disadvantage smaller retailers, particularly those who do not utilise electronic shelf tags, as they often have limited resourcing. The Commission encourages the exploration of various support measures for smaller retailers to ensure any additional compliance requirements do not result in disproportionate impacts.

Without appropriate support, there may be an unintended competitive disadvantage. Larger and major supermarkets are more likely able to absorb new compliance costs, invest in new systems and enforce supplier contracts. Small retailers may be forced to increase prices to cover additional or increased compliance costs, making them less competitive.

For example, a tiered approach to prescriptive requirements and obligations generally could involve smaller retailers only having basic display obligations for top selling products or the products contained in the minimum range of food-based grocery items list. Similarly, for instances of shrinkflation, smaller retailers may struggle to track supplier changes, update their system and label accordingly, therefore, a tiered approach to shrinkflation notification requirements and clear requirements for supplier notifications of product changes to retailers, regardless of their size would also be practical.

Small retailers would benefit from access to government-provided tools or assistance, such as signage templates, software and training, or even grants and tax incentives, to help meet any new display or shrinkflation requirements.

Penalty design

Penalties should be designed in a way that ensures small retailers are not disproportionately disadvantaged. The Commission recommends utilising a tiered approach during penalty design with caps for small retailers, to avoid penalising minor or inadvertent breaches disproportionately. For example, smaller penalties or warnings for first breaches, then escalating for repeated or more severe instances of non-compliance.

As noted by the consultation paper, careful consideration is also required to ensure those retailers that do voluntarily opt-in to the Code are not unfairly penalised or burdened, and that voluntary participation rates do not reduce significantly.

Rightsizing regulation for small businesses

The Commission published its [Rightsizing Regulation final report](#) in October 2024 which examined the experiences of small businesses as a key stakeholder group within the regulatory policy development process. The review intended to inform actions to improve small business policy and reduce red tape and other pain points.

A frequently raised concern was the issue of unrealistic consultation timeframes that do not take into consideration the challenges for small businesses. The NSW Government¹ and Australian Government² propose minimum consultation periods between 3-4 weeks with longer periods recommended for significant or complex proposals. Furthermore, these guides advocate for consultation processes to be accessible, transparent, and not burdensome. Adopting these principles for proposed changes to the Code would ensure smaller retailers have adequate time to participate.

It is also critical that consultation be inclusive. Many multicultural grocers serving immigrant communities or customers seeking ingredients for global cuisines are run by culturally and linguistically diverse (CALD) owners, often with English as a second language. Proactively seeking their views and directly engaging affected retailers will ensure their experiences shape the policy process. The Commission's *Rightsizing Regulation* report found small businesses prefer easily accessible options to provide their feedback such as online surveys or questionnaires. However, using a mix of methods will better support diverse participation and deliver a more representative evidence base for reform.

The Commission recommends using a Small Business Impact Statement (SBIS) to assess how draft regulations affect small businesses, accounting for scale, compliance capability, and sector-specific constraints. Further work is needed to strengthen the evidence base through data collection and cost-benefit analysis. Government cost estimates should explicitly include small retailers to highlight differential impacts and ensure compliance costs do not drive up prices or undermine the viability of smaller operators..

Thank you for the opportunity to make a submission. If you require further information, please contact my Executive Officer, at either commission@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Catherine Ellis
Acting Commissioner
NSW Small Business Commission

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¹ The [NSW Government Guide to Better Regulation](#) states consultation periods be a minimum 28 day.

² The [Australian Government Guide to Policy Impact Analysis](#), notes consultation periods should not be less than 30 days.