



**A non-profit, volunteer organisation, advocating to advance the interests of consumers in Queensland**

26 April 2012

**SUBMISSION ON PRODUCTIVITY COMMISSION'S ISSUES**  
**PAPER ON REGULATORY IMPACT ANALYSIS:**  
**BENCHMARKING**

**BACKGROUND**

The Queensland Consumers' Association (the Association) is a non-profit organisation which exists to advance the interests of Queensland consumers. The Association's members work in a voluntary capacity and specialise in particular topics. The Association is a member of the Consumers' Federation of Australia, the peak body for Australian consumer groups, and a member of the Association is a member of the Federation's executive committee.

The Association only has the resources to make this brief submission.

**CASE STUDY: THE DEVELOPMENT OF THE FEDERAL TRADE PRACTICES (INDUSTRY CODES – UNIT PRICING) REGULATIONS 2009 (SLI 2009 NO 152)**

These Regulations contain the Retail Grocery Industry (Unit Pricing) Code of Conduct which makes the provision of unit prices compulsory for certain grocery retailers.

The Association was greatly involved in the development of these Regulations and the process included the preparation of a Regulatory Impact Statement by Treasury.

The process preceding the adoption of the Regulations was:

- In July 2008 the ACCC Inquiry into the competitiveness of retail prices for standard groceries recommended that a mandatory, nationally consistent unit pricing regime be introduced for standard grocery items sold in bricks and mortar stores or by internet retailers, and promoted in printed advertisements.
- On 5 August 2008, the government's preliminary response to the ACCC report included a commitment to implement a mandatory unit pricing scheme.
- On 15 September 2008, the government released an Issues Paper and invited public comment on it. Non confidential submissions were put on the government's website.
- On 8 January 2009, the government announced the key features of the scheme and on 23 March released a consultation draft on the Code.
- On 16 April 2009, the government held a stakeholder conference on the draft code. Written submissions were also sought and non confidential submissions were put on the government's website.

- The final Regulations were made on 24 June 2009 and on 26 June 2009 the Regulations, an explanatory statement and a Regulation Impact Statement (Unit Pricing OBPR Ref No. 9806 - dated 27 November 2008) were registered and released.
- The Regulations were tabled in the House of Representatives and the Senate on 11 August 2009 and the mandatory provision requirements came into effect on 1 December 2009

#### *Comments*

The RIS produced related only to the ideas and information in the Issues Paper dated 11 September 2008 and in submissions on it.

This RIS was only made public on 26 June 2009 when the final version of the Regulations was made public.

This meant that there was no opportunity for stakeholders to comment on the RIS after it was prepared and before the draft and final regulations were released. Also, the RIS did not deal with some significant changes in the government's policy position on some issues during the consultation process. An example is the treatment of alcohol and tobacco products. The RIS said "there is no reason the exclude these products from the scheme when offered for sale by a grocery retailer subject to the scheme" and in the Draft Regulations they were not listed as exempt products, but were so listed in the Final Regulations.

Also, the RIS contained several factual errors and some statements which consumer advocates would like to have challenged. For example on the critically important issue of ensuring the unit prices are sufficiently legible and prominent for consumers, p 18 of the RIS said "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." It was not clear how this conclusion was reached and in the Association's view indicated a misunderstanding of the issue.

Many subsequent submissions from consumer organisations emphasised the need for consumers to be able to easily notice and read unit prices and recommended that the Regulations should specify a minimum print size. However, this was not done in either the draft or final Regulations.

As a result, and as implied/predicted by the RIS and confirmed by the results of a recent national survey<sup>1</sup> of around 1000 consumers, in practice many unit prices on shelf labels in the many supermarkets are not easy enough for most shoppers (around 60% of those surveyed) to notice and read. The percentage was even higher among some groups of consumers, for example those aged over 55 and those on incomes under \$52000 pa.

In a submission dated 20 April 2009 on the Draft Regulations, the Association indicated the need for a RIS on the final version of the Regulations as follows:

*"In this regard, we note no information on implementation costs etc is available from the two main supermarket chains on the government website containing submissions made on the consultation paper released in 2008. We also note that the estimates of implementation costs given by industry to the ACCC grocery inquiry varied enormously and some were based on debatable assumptions.*

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<sup>1</sup> The 6 page report on the survey of shoppers at Coles and Woolworths supermarkets can be accessed via: <http://www.choice.com.au/media-and-news/media-releases/2011%20media%20releases/supermarket-pricing-system-needs-birthday-boost.aspx>

*Therefore, it is essential for the Regulatory Impact Statement on the final version of the Regulations to deal comprehensively, objectively and accurately with the costs and benefits of the proposed system and alternative systems.”*

#### *Conclusions*

The Association considers that: this process would have been much more effective and the Final Regulations would have been more beneficial for the community if:

- the RIS dated 27 November 2008 had been released for comment with the draft Regulations on 23 March 2009, and
- a revised RIS had been prepared to accompany the final Regulations which were made on 24 June 2009.

### **OTHER COMMENTS**

#### **Objective evidence**

The Association notes that although the RIS process is heavily dependent on objective evidence about likely costs and benefits, consumer organisations often do not have enough resources to be able to provide such evidence whereas industries, trade associations etc. generally do.

#### *Conclusion*

The Association considers that government agencies need to be prepared to either provide funding for consumer organisations to obtain such evidence or to themselves obtain such information.

#### **Complaints data**

The Association considers that complaints data should be used very cautiously as indicators of the extent or importance of consumer problems or possible detriment caused by many such problems.

#### *Conclusion*

Surveys of consumers are often the only way to satisfactorily and objectively measure these problems and assess possible solutions. The benefits of obtaining information in this way are shown clearly by the results of the Australian Consumer Survey 2011 commissioned by the federal government. For the first time ever, the Survey provided detailed national information about many important consumer issues, including the extent of consumer problems with goods and services purchased, the extent to which consumers took action to resolve problems, and the cost of resolving problems.