

# **Consultation paper: Review of fast food menu labelling schemes**

## **Introduction**

### **Background**

In December 2010 the then Legislative and Governance Forum on Food Regulation (now Australia and New Zealand Ministerial Forum on Food Regulation (the Forum)) requested the Food Regulation Standing Committee (FRSC) to provide technical regulatory advice on a nationally consistent approach to the provision of point-of-sale information in standardised fast food chains.

The Forum requested this work be undertaken in consultation with the Australian Health Ministers' Advisory Council (AHMAC) to reduce the intake of energy, saturated fat, sugar and salt from fast foods. The FRSC developed principles to facilitate national consistency if jurisdictions elect to introduce state or territory based legislation for the display of point-of-sale nutrition information in standard food outlets.

These National Principles were endorsed by the Forum in October 2011 ([Attachment 1](#)).

To date, New South Wales, South Australia, the Australian Capital Territory and Queensland have passed legislation and have implemented fast food menu labelling schemes. Victoria has also passed legislation and is due to introduce the scheme on 1 May 2018.

Smaller jurisdictions including Tasmania and the Northern Territory have assessed the impact of introducing legislation and found that few additional businesses would be captured based on the outlet threshold used in most jurisdictions. This is because legislation in other jurisdictions captures national chains that have largely chosen to implement menu labelling across all their Australian outlets.

In 2016, the Council of Australian Governments (COAG) Health Council considered actions to limit the impact of unhealthy food and drink on children. This resulted in the COAG Health Council writing to the Forum seeking their support for the FRSC to engage with the AHMAC to review the effectiveness of the fast food menu labelling schemes which have been introduced and consider implementation and emerging issues.

### **Purpose of this paper**

This paper has been prepared to facilitate stakeholder consultation with industry, public health and consumer organisations, and relevant professional associations to assist with the review of the effectiveness of the fast food menu labelling schemes which have been introduced.

Questions for stakeholders are provided at the end of each section. In providing responses to the questions, stakeholders are asked to provide evidence and references to support their statements wherever possible.

### **What is the problem?**

Around 63% of adults (about 11 million) and 27% of children (about 1 million) are overweight or obese in Australia<sup>1</sup>. Dietary risks cause 7% of the disease burden in Australia and obesity can reduce life expectancy by up to ten years.

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<sup>1</sup> Australian Bureau of Statistics. *National Health Survey – First Results, Australia 2014-15*. ABS. Canberra 2016.

The obesity problem is partly due to an increase in the availability and consumption of food and drinks which are energy dense and nutrient poor. Children in Australia today are growing up in an obesogenic environment where this type of food is readily available and widely marketed.

Increasingly consumer food choices are made in a queue, with a growing reliance on ready-to-eat meals and snacks. Australian households are now spending around 58% of the food dollar on unhealthy food and drinks such as sugar-sweetened beverages, potato chips, fast-food, cakes, biscuits and confectionery<sup>2</sup>. Foods prepared away from home typically exceed recommendations for energy, saturated fat, sodium and sugar<sup>3</sup>. The majority of consumers underestimate the kilojoule content of unhealthy foods<sup>4</sup>.

## **The prevalence of obesity**

Rates of obesity in the population have been increasing for several decades and are recognised as a major public health issue. However, in recent years there has been an apparent steadying in rates of obesity in Australian adults and children. Adult obesity increased by about 3% per year up to 2010 but since then there is no evidence of further increase. Nevertheless, the problem of high rates of obesity remains. In 2014–15, 30% of adults were obese by measurement and two-thirds were overweight or obese.

The rate of childhood overweight and obesity in Australia has stabilised with no significant difference since 2007–08. However, with population growth, the number of children with excess weight is now over 1 million compared to 736,000 in 2007–08 (a 38% increase)<sup>5</sup>.

## **The impact of obesity**

Obesity is one of the leading risk factors for ill health and death, reducing life expectancy considerably. An international study in 2016 estimated that for Australia, 1 in 6 premature deaths could be avoided if all those who were currently overweight or obese were within the healthy weight range.

Obesity increases the risk of chronic disease, particularly diabetes. In 2011–12, those Australian adults who had been measured as obese were about 7 times as likely to also have diabetes<sup>6</sup>.

The financial cost of obesity is high and was estimated in 2015 at \$8.6 billion per year in Australia. This included health system costs, tax foregone and productivity losses including absenteeism. In addition, the impact of loss of wellbeing and early death was assessed at \$47.4 billion.

The impact of the obesogenic environment on children's diets is evident with up to 41% of children's daily energy intake being sourced from unhealthy food and drinks such as sugar-sweetened beverages, potato chips, fast-food, cakes, biscuits and confectionery<sup>7</sup>.

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2 Australian Bureau of Statistics. Australian Dietary Guidelines Price Indexes feature article (catalogue number 6401.0). ABS. Canberra 2016.

3 Wellard L et al. Fries or a fruit bag? Investigating the nutritional composition of fast-food children's meals. *Appetite*, 2012; 58(1): 105-10.

4 NSW Food Authority. Evaluation of kilojoule menu labelling, 2013.

5 Australian Bureau of Statistics. National Health Survey – Summary of Results, Australia 2007-08. ABS. Canberra 2009

6 Australian Bureau of Statistics. Australian Health Survey: Biomedical Results for Chronic Diseases, 2011–12: Table 8.3 ABS Cat. No. 43640DO008\_20112012

7 Australian Bureau of Statistics. Australian Health Survey: Nutrition First Results – Food and Nutrients, 2011-12. ABS. Canberra 2014.

## Actions to prevent and manage obesity

There has been slow societal change including a greater awareness of the obesity issue than a decade ago and increasing emphasis on obesity prevention in government policies. The challenge ahead is to maintain downward pressure on obesity and to continue to invest in those programs and initiatives that are showing benefit. The success in reducing smoking is a result of sustained, multi-dimensional strategies and provides a blueprint for obesity prevention.

Continued investment is needed to promote the benefits of maintaining a healthy weight, and to support people within their homes and communities to prevent weight gain and to lose weight through healthy food choices and greater physical activity.

The recently endorsed [National Strategic Framework for Chronic Conditions](#) (the Framework) establishes the policy context and priorities for effective prevention and management of chronic conditions. This Framework recognises that a diverse range of factors influence the health and wellbeing of Australians including:

Factor	Example	Interventions
Behavioural risk factors	<ul style="list-style-type: none"> <li>- Smoking</li> <li>- poor diet</li> <li>- physical inactivity</li> </ul>	<ul style="list-style-type: none"> <li>- awareness campaigns</li> <li>- personal skill development</li> </ul>
Biomedical risk factors	<ul style="list-style-type: none"> <li>- high blood pressure</li> <li>- high cholesterol</li> <li>- glucose intolerance</li> </ul>	<ul style="list-style-type: none"> <li>- primary health care</li> <li>- individual advice</li> <li>- medication</li> </ul>
Physical environment determinants	<ul style="list-style-type: none"> <li>- UV exposure</li> <li>- air pollution</li> <li>- walkability</li> <li>- food availability</li> <li>- access &amp; advertising</li> </ul>	<ul style="list-style-type: none"> <li>- environmental standards</li> <li>- urban planning regulations</li> <li>- infrastructure provision</li> </ul>
Social and economic determinants	<ul style="list-style-type: none"> <li>- education and employment status</li> </ul>	<ul style="list-style-type: none"> <li>- school retention</li> <li>- return to work programs</li> <li>- re-training</li> </ul>

It recognises that health is influenced positively or negatively by the environments in which people live, learn, work and play. Actions to limit the impact of unhealthy food and drinks on people are consistent with the prevention focus of the Framework and targeted opportunities to improve health at critical life stages, including childhood and adolescence.

The [World Health Organization \(WHO\) Commission on Ending Childhood Obesity](#) released a landmark report in January 2016 which reflects the most recent international evidence and expert thinking to prevent child and adolescent obesity. It recommends actions are taken to implement programs that promote the intake of healthy foods and reduce the intake of unhealthy food and sugar-sweetened drinks, promote physical activity and reduce sedentary behaviours, strengthen obesity prevention guidance during preconception and antenatal care, provide guidance and support for healthy lifestyles in early childhood, promote healthy eating and physical activity in schools and provide family-based weight management services for children and young people who are obese.

Informed by the recommendations of the WHO Commission on Ending Childhood Obesity, actions to limit the impact of unhealthy food and drinks on children can be progressed across four action areas:

- a. Improving children's settings to encourage and support the intake of healthy foods and reduce unhealthy foods.
- b. Creating healthy food environments where children, adolescents and parents and carers play, shop and visit.
- c. Empowering parents and carers to provide healthier diets for their children.
- d. Ensuring routine health service delivery encourages and supports healthier eating.

Further information about the four action areas and current jurisdiction initiatives are included in Attachment 2.

All Australian jurisdictions are addressing these risk factors through a coordinated suite of interventions. The complexity and diversity of the factors mean that the prevention of chronic conditions benefits from activities across a wide range of sectors. The greatest impact will come from a broad range of actions which occur across multiple and different settings and sectors.

Menu labelling schemes are an example of a contribution from the food sector which has improved diet and the availability of healthier food options.

The food industry is playing its part in the comprehensive mix of initiatives required to address obesity by responding to a demand for and expectation of healthy food choices and by providing consumer information. Fast food menu labelling schemes make an important contribution by supporting people to make more informed choices when eating out of the home.

## **The Review**

In summary, five jurisdictions have introduced legislation that requires larger businesses selling fast food to provide consumers with the average kilojoule content of standard food items.

One jurisdiction has completed an evaluation of its kilojoule menu labelling legislation (two others are in progress). Results show that the initiative was implemented well by industry and regulators, consumers noticed the new information in outlets, there was a shift towards consumers having a better understanding of the average daily energy intake, and a significant reduction in kilojoules purchased was observed.

Comparison between legislations has demonstrated a high degree of national consistency in key areas of the various legislations. However, a review of submissions to menu labelling consultation processes and initial consultation with government officials indicates some implementation and emerging issues linked to the limited inconsistency in legislation between jurisdictions, to changing trends in the fast food industry and to low consumer understanding of kilojoules and difficulties interpreting the information.

These issues are outlined in this paper and are grouped together under the following headings:

Inconsistency in legislation between jurisdictions – Part A

Changing trends in the fast food industry – Part B

Difficulties of interpretation – Part C

This consultation paper seeks views on these issues, provides the opportunity to identify other issues and invites a contribution to what could be done to address the issues.

## Evaluation

New South Wales was the first jurisdiction to pass menu labelling legislation. Following its introduction in 2010, an evaluation to assessing the impacts and the appropriateness of kilojoule menu labelling was undertaken. The research design of the evaluation involved a mixture of consumer interviews, an online survey and compliance checks conducted three times over a twelve month period in 2011-12.

The New South Wales evaluation of kilojoule menu labelling legislation shows that the initiative was implemented well by industry and regulators, consumers noticed the new information in outlets, there was a shift towards consumers having a better understanding of the average daily energy intake, and a significant reduction in kilojoules purchased was observed.

Highlights of the results included:

- Around 40% of consumers noticed the kilojoule information.
- Around 40% of the participants indicated that the labelling influenced their choice of food, either at the time of purchase or into the future.
- For those indicating the labelling would influence their choice, over 70% indicated they would choose items with lower kilojoule content and 30% would eat less often at that chain.
- The median kilojoules purchased decreased by 15% during the evaluation period. In the context of overconsumption and the rates of overweight and obesity, this represents an improvement in dietary choice.
- The number of customers underestimating the kilojoule content of food fell by nearly 25%.
- There was a significant increase over the evaluation period in consumers nominating the correct range of the average daily energy intake (8700kJ).
- Of the 150 random outlets that were checked onsite for compliance, only minor issues were identified (with one exception) and these were resolved within defined timeframes.

There is also evidence that businesses have reformulated products to reduce their kilojoule content. One global food group stated menu labelling initiatives have been a “catalyst for reformulation”.

The full results of the New South Wales evaluation are available here:

[http://www.foodauthority.nsw.gov.au/Documents/scienceandtechnical/fastchoices\\_evaluation\\_report.pdf](http://www.foodauthority.nsw.gov.au/Documents/scienceandtechnical/fastchoices_evaluation_report.pdf).

International studies reinforce these results. A meta-analysis of fifteen peer-reviewed studies published in 2016 shows that energy consumed was reduced by an average of 420kJ per sale<sup>8</sup>.

International studies also suggest that the outcomes of menu labelling initiatives build over time and this is part of the reason for ongoing evaluation efforts in New South Wales and other jurisdictions. The Australian Capital Territory has completed an evaluation and an evaluation is in progress in Queensland.

**Consultation question 1:** Are you aware of any other pending or completed evaluations that have relevance to the Australian experience? If yes, please provide results and references with your response where possible.

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<sup>8</sup> Jodie Anne Littlewood, Sofia Lourenço, Cecilie Lauberg Iversen and Gitte Laub Hansen (2015) Menu labelling is effective in reducing energy ordered and consumed: a systematic review and meta-analysis of recent studies, *Public Health Nutrition*: 19(12), 2106–2121.

## Legislation consistency

Legislation introduced in each jurisdiction (New South Wales, South Australia, Australian Capital Territory, Queensland and Victoria) is consistent with the nationally agreed approach. There is consistency in:

- Definitions of a standard food item and ready-to-eat food.
- Places where information must be displayed (on each menu/tag/label that includes the standardised food, at drive-throughs).
- Information that must be displayed (average energy content of each standard food item, the statement: The average adult daily energy intake is 8700kJ).
- Prescribed method for calculating energy content (in accordance with Food Standards Code).
- How information must be displayed (clearly legible, in numerals with kJ abbreviation, same font size as price or name).
- The national outlet threshold (50).

## PART A - INCONSISTENCY IN LEGISLATION BETWEEN JURISDICTIONS

As we outlined above, the adoption of fast food menu labelling schemes is a decision for the individual jurisdictions. The five jurisdictions that have commenced had to pass their own state/territory legislation to implement the schemes. All of the legislations passed are consistent with the nationally agreed approach. However, slightly different approaches have been taken in the way that the provisions are worded and structured. The provisions with the most variation relate to exempt businesses.

### Exempt businesses

Food businesses are exempt from legislation on two grounds – the nature of their business and the number of outlets. Cinemas, convenience stores and service stations are contentious exemptions with both food industry bodies and public health organisations. Dine-in chains that sell similar types of food but are exempt because they do not provide take-away have also been raised (legislation in the Australian Capital Territory and Victoria captures dine-in chains).

**Table 1** – Exempt businesses (X) in each jurisdiction with menu labelling legislation

	NSW	SA	ACT	QLD	VIC
Supermarkets		X			
Convenience stores	X	X		X	
Service stations	X			X	X
Cinemas				X	X
Dine-in	X	X		X	
Mobile vendors				X	X
Not-for-profit		X	X	X	X
Health care facilities	X		X	X	
Schools			X		
Childcare Centres			X		

Multiple submissions received from food industry bodies during state-based consultation on legislation suggest many of these exemptions should be removed on grounds of ‘a level playing field’ for businesses. Public health organisations support this position on the grounds of public health outcome and the intent of the legislation being about the type of food not the type of business. Removal of some of these exemptions would also seem to support the government

policy objective in most jurisdictions which is focussed on informed and healthier fast food choices regardless of where they occur. For these same reasons, consideration could also be given to application of the legislation to vending machine businesses. This has been done in other international jurisdictions.

If convenience stores are to continue to be exempt, then the definition of a convenience store and supermarket could be further examined in light of the intent of the legislations (i.e. when does a convenience store become a supermarket?). Convenience stores are currently defined with reference to a supermarket (i.e. convenience store does not include a supermarket). Supermarkets are defined (in all jurisdictions with legislation except South Australia) as having more than 1000 metres square of floor area for retail sale of at least 11 common grocery items. These definitions mean that significant suppliers of ready- to-eat food in regional and rural communities are likely to be exempt due to their smaller size (e.g. IGA, Foodworks). This poses a problem for achieving the policy objective of more informed and healthier fast food choices in an equitable way given most of our regional and rural communities experience worse health status.

### Number of outlets

Exemption based on the number of outlets was included in the legislation to minimise the impact on small business. The thresholds of 20 outlets within the state and 50 outlets nationally were established by the New South Wales legislation following consultation with industry. Smaller states have used these same thresholds (the Australian Capital Territory has a threshold of seven outlets within the Territory).

In order to achieve a more level playing field between businesses and improved health outcomes, consideration may need to be given to the appropriate thresholds that could be set while minimising additional impact on small business.

Many regulators have adopted the definition of small business used by the Australian Bureau of Statistics, which is a business that employs fewer than 20 people. Using this definition, businesses with more than 10 outlets are unlikely to be classified as small. That said, many stores within chains are individually franchised businesses. Consideration of greater flexibility in thresholds could also better enable the varying sizes of states to be appropriately managed in line with the legislations' intent. Many of the businesses captured by any lowering of thresholds in smaller states would likely be already captured by legislation in New South Wales or Victoria.

**Table 2** – Other variations related to implementation and emerging issues

Provision	Mode	Variation
Outlet threshold	20 state or 50 national	SA – at least 5 of national in SA ACT – 7 territory or 50 national
Voluntary display of kJ information	In accordance with legislation	VIC – not required to comply with legislation
Legible display of kJ information	Same size and font as price or name	QLD – same size, font & colour as price or name
Simultaneous display of kJ information	No requirements	QLD – display at same time and for same period as name or price



## Voluntary display

Another exemption relates to voluntary display. Because a standard food outlet is one operating in a chain, an individual outlet that chooses to voluntarily display kilojoule information is not necessarily required to do so in a prescribed way. Recent Victorian legislation exempts businesses below the outlet number threshold from displaying in a prescribed way. This means, for example, that energy information could be displayed in calories, rather than kilojoules. The definition of a standard food outlet includes only those operating in a chain to avoid imposing requirements on smaller businesses. However, the businesses are imposing these requirements on themselves.

**Consultation question 2:** Are there any other issues in relation to exempt businesses that should be considered?

**Consultation question 3:** What could be done to ensure kilojoule information is available in as many outlets as possible? What are the pros and cons of your suggested approach?

## Legibility

New South Wales also legislated that the average energy content had to be displayed in the same size and font as the price or name for the item (and other jurisdictions included the same provision). This was to help ensure that the kilojoule information was legible. The Queensland legislation responded to concerns about legibility (e.g. grey on white being used) by also specifying the same colour as the price or name had to be used. Other jurisdictions have also encountered legibility issues including the use of bolding and capitalization of name and price that diminishes the impact of kilojoule information. Some businesses have raised concerns regarding stifled creativity with the addition of a colour requirement and suggested a contrast ratio may work better. Such an approach may be difficult to enforce.

**Consultation question 4:** Are there any other issues in relation to legibility that should be considered?

**Consultation question 5:** What can be done to ensure kilojoule information is as easy to use as possible by the consumer?

**Consultation question 6:** What can be done to facilitate businesses to address legibility issues? What are the pros and cons of your suggested approach?

## PART B - CHANGING TRENDS IN THE FAST FOOD INDUSTRY

The fast food industry is a dynamic environment with sophisticated stakeholders that is continually evolving. Operational flexibility is required to enable governments to respond to emerging issues that may impact on the integrity and effectiveness of schemes, such as new products or ways of marketing and packaging products, in a timely manner.

Since the development of the National Principles and the introduction of schemes by some jurisdictions, a number of emerging issues have been identified that warrant further consideration.

The issues that relate to industry trends identified in the letter from COAG Health Council to the Forum relate to:

- menu customisation (e.g. build your own, added ingredients to standard food item),
- rolling menu boards,
- online ordering,
- additional interpretive information, and
- combination meals with pre-packaged drinks.

## **Menu customisation**

As more fast food businesses alter their menu to cater to the 'fresh' and 'personalised' concept, menus are being introduced that allow the consumer to customise the product to their individual preference. 'Build your own' meals are where a customer can select a number of individual ingredients to prepare a customised food item such as a burger or sandwich. Due to the customisation, the final product may not be considered a standard food item by the definitions provided as part of the National Principles. Although most outlets captured by menu labelling legislation are still operating to a set menu, customisation is a fast growing approach.

There are two components to this issue: where the customer may choose to add an additional serve of an ingredient (e.g. cheese or bacon) to their standard food item; or, where the customer creates their own food item with much greater flexibility either from scratch or a common base product (e.g. meat pattie). While the final product may not be standardised across stores and therefore thought of as a standard food item, further discussion is warranted to consider whether single ingredients (e.g. single meat pattie, slice of cheese etc.) are standardised across the business and therefore should be included in the display of nutritional information.

While food businesses may suggest that ingredients are not standardised, in order to calculate the total nutritional information for the product the business will have information available for individual ingredients which they can utilise. It is also understood that to ensure brand consistency across stores, ingredients are added to food products in standard serving sizes.

It is acknowledged that it may not be practical to include nutritional information for single ingredients on a display board menu due to limited space. However, especially where the ordering is done via a self-service display unit or other electronic device, then further consideration of the display of nutritional information for ingredients when offered individually is warranted. The use of computer generated systems in self-serve displays which can be altered, make it easier for businesses to display the kilojoule content of these individual items. This would automatically provide a final count, allowing the consumer to select a healthier option should they so choose and assisting the consumer to build the healthiest option available to them.

While the total amount cannot be calculated easily for static menus (e.g. boards, paper), making the information available to the consumer for the individual ingredients will assist the consumer to choose the healthier option within a range (e.g. type of cheese).

The demand for consumers to personalise their product has also led to an increase in self-service outlets. These outlets make available ingredients that are standardised for content but the portion is controlled by the consumer.

**Consultation question 7:** Are there any other issues in relation to menu customisation that should be considered?

**Consultation question 8:** What could be done to enable healthier choices when customising menu items? What are the pros and cons of your suggested approach?

## Rolling menu boards

The National Principles specify the 'where' and 'how' energy content at the point of sale must be displayed (i.e. adjacent to the name of the item and the required size), but not 'when'. The issue of rolling menus arose following the release of a new style of menu display where the nutritional information was not always displayed at the same time as the name or price of the item. This has caused some confusion for consumers making the information more difficult to access, interpret and apply.

The more recently introduced Queensland scheme specifically addresses this aspect by also requiring the nutritional information to be displayed simultaneously with the price and/or name of the food item. However, this is the only scheme currently in place which legislates this requirement in this way. In New South Wales, because the legislation does not give a time-based exemption from menu labelling, when a standard food item is displayed, it should also display the kilojoule information.

Rolling menus also compromise the policy intent of assisting consumers to make informed and healthier fast food choices because they make it more difficult for comparisons to be made. For example, the kilojoule content of one burger may not be displayed at the same time as the kilojoule content for other burgers. The Queensland and New South Wales legislation does not deal with this issue.

There is a similar issue with online menus which, while providing the kilojoule information, require several 'clicks' by the consumer to reach the information. The increase in the number of captured food businesses who are now offering home delivery via an online ordering system makes this a more significant issue. Queensland's simultaneous display provisions and New South Wales lack of time-based exemption may address this issue.

**Consultation question 9:** Are there any other issues in relation to rolling menu boards that should be considered?

**Consultation question 10:** What could be done to ensure kilojoule information is easy to access and that consumers can compare products easily? What are the pros and cons of your suggested approach?

## Online ordering

Some food businesses captured by the kilojoule labelling requirements are now involved with third party delivery agents such as Deliveroo or Uber Eats where consumers are able to order directly from delivery websites. Deliveroo recently reported that it is growing 30 per cent every week.

As the delivery agent is not a food business they are not required to comply with the kilojoule labelling requirements and largely do not display kilojoule content information. While further investigation is warranted, it appears that the licensed food business provides the information to the delivery agent when they partner with the service.

Another innovation in the sale of food is the ability to order directly from an electronic catalogue. That is, the catalogue has become a menu. Explanatory notes and guides in various jurisdictions specifically exclude catalogues as menus, but to achieve the intent of the legislations, this may need to be explored further.

**Consultation question 11:** Are there any other issues in relation to on-line ordering that should be considered?

**Consultation question 12:** What could be done to ensure kilojoule information is included on all web-based ordering platforms? What are the pros and cons of your suggested approach?

## Combination meals with pre-packaged food

This emerging issue poses two concerns. Firstly, some food businesses are not including information regarding pre-packaged items such as drinks in their advertised meal combinations. Secondly, a scan of online menus reveals food businesses are not displaying information for known meal deal combinations online.

The Guideline Definitions (see [Attachment 1](#)) state that “If a number of Standard Food Items are shown or displayed for sale as a combination, the combination is to be treated as a single Standard Food Item” and that “the intention is to provide consumers with nutrition information that relates to the meal as a whole. This will assist consumer understanding and obviate the need to make a calculation based on the components of the meal.” This suggests there may be a conflict between the definition and the intent.

Jurisdictions are interpreting legislation both by the definition and the intent. For example, industry user guides in NSW make it clear that pre-packaged drinks (with a Nutrition Information Panel) that are sold as part of a meal deal are required to be included as part of the average kilojoule content for the whole meal deal. Other jurisdictions are not expecting pre-packaged drinks to be included in a meal deal calculation as they are not standard food items.

This leads to consumer confusion and difficulty in comparing meals between food businesses. Not displaying meal deals’ kilojoule content requires the consumer to individually look at separate items and add the total kilojoule content. This makes menu selection a difficult process where the consumer is unlikely to look at individual components of the meal before ordering, particularly if the drink is in a fridge not accessible to the customer.

It should be noted that some businesses include nutritional information of packaged drinks included in meal deals (using a default drink) as well as presenting the information clearly for the entire meal in one location. One business includes nutritional information for individual servings of ingredients and condiments, however, does not include any information regarding post mix drinks or meal combinations.

Most major chains captured by the provisions are either not displaying kilojoule information relating to packaged foods sold as part of the meal deal, or are not advertising known meal deals on their online systems.

**Consultation question 13:** Are there any other issues in relation to combination meals that should be considered?

**Consultation question 14:** What could be done to ensure kilojoule information is provided for the whole meal? What are the pros and cons of your suggested approach?

## PART C – DIFFICULTIES OF INTERPRETATION

Though improving, consumer understanding of kilojoules remains limited. There is limited knowledge and understanding about the kilojoule content of foods and daily kilojoule intake.

Greater understanding of kilojoules is required to support behaviour change. The effort of calculating kilojoules can be regarded as too hard, meaning kilojoules are not considered when making food choices. The situation is further complicated by the fact that many people still think in calories which is reinforced by many programs, tools and health professionals.

Kilojoule labelling must be simple, unambiguous and meaningful in order to resonate and make an impact with consumers.

### Additional and interpretive information

Some studies and market research has shown that the impact of kilojoule labelling may be improved with the use of additional and/or interpretive information<sup>9 10</sup>. As an example, this information might include the level of salt in the item or the walking distance required to burn the kilojoules. The National Aboriginal and Torres Strait Islander Health Standing Committee

suggests that clear information on sugar content should be considered as part of efforts to close the gap given the rates of sugar consumption are higher in all age groups for Indigenous compared to non-Indigenous Australians.

**Consultation question 15:** Are there any other issues in relation to additional and interpretive information that should be considered?

**Consultation question 16:** What could be done to ensure kilojoule information is as easy to interpret as possible? What are the pros and cons of your suggested approach?

### Kilojoule display variations

When New South Wales introduced its legislation, it allowed supermarkets (only) to display the average energy content per 100 grams. This exception has been perpetuated through all subsequent legislation that includes supermarkets. The rationale for this exception was to allow consumers to compare the kilojoule content per 100 grams across both packaged and unpackaged items on a like-for-like basis, particularly in relation to the significant degree of variation in product type and size in a supermarket setting, for example the number of serves in a whole barbeque chicken. The majority of products in a supermarket are packaged and therefore contain a Nutrition Information Panel (NIP). However, the NIP also contains the kilojoule content of the whole food item. Using the whole food item would allow comparison with other supermarket items and food from other Standard Food Outlets which are not able to display per 100 grams.

The use of energy content per 100 grams could be seen as adding complexity to an area not well understood by consumers. Although knowledge is improving as a result of this legislation and associated education campaigns, consumer understanding of kilojoules is still limited. This

<sup>9</sup> Sunaina Dowray, Jonas J. Swartz, Danielle Braxton, Anthony J. Viera (2013) Potential effect of physical activity based menu labels on the calorie content of selected fast food meals, *Appetite*: 62, 173-181.

<sup>10</sup> Ashlei James, Beverley Adams-Huet, Meena Shah (2015) Menu Labels Displaying the Kilocalorie Content or the Exercise Equivalent: Effects on Energy Ordered and Consumed in Young Adults, *American Journal of Health Promotion*: 29 (5).

exception means that further calculations are required to ascertain the kilojoule content of the whole item which may be a single serve. It also hampers comparability of items when only some are labelled this way.

**Consultation questions 17:** Are there any other issues in relation to kilojoule display that should be considered?

**Consultation question 18:** What could be done to ensure kilojoule information is as easy to use and interpret as possible? What are the pros and cons of your suggested approach?

### **Other issues**

*Consultation for this review has thus far been limited to government stakeholders. The only views of non-government stakeholders considered have been those expressed through previous menu labelling consultation processes.*

*There may be other implementation and emerging issues that have not been highlighted and this consultation paper is an opportunity for stakeholders to raise these. If you do so, please provide as much detail and evidence as possible to enable a full consideration of the issue.*

**Consultation question 19:** Are there any other issues with current menu labelling schemes that should be considered during this review? Please provide information to support your response.

## Submissions

The Food Regulation Standing Committee is inviting submissions from identified stakeholders, including industry, public health and consumer organisations, which express a view on the discussion presented above.

Information provided in submissions will be used to inform potential policy recommendations for the consideration of the Forum on Food Regulation and COAG Health Council in the first half of 2018. Information that could inform the costs and savings associated with the suggested approaches and that describes how we will know if it achieves the desired outcome would be valuable.

Please provide your submissions by **16 March 2018**. Electronic submissions are preferred and should be sent to the e-mail address below:

**Title:** Consultation - Menu labelling

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## **Principles for Introducing Point-of-Sale Nutrition Information in Standard Food Outlets**

The following set of principles is to provide general direction to assist jurisdictions who may wish to introduce Point-of Sale (POS) nutrition information at standard food outlets to do so in a consistent manner.

Any change to the existing approach in a jurisdiction for POS nutrition information should:

1. Recognise that any change should contribute to improving public health outcomes.
2. Be consistent with the nationally agreed approach outlined below:  
Any jurisdiction that chooses to introduce POS nutrition information at standard food outlets should:
  - i. Use the guideline definitions and explanation of terms agreed by the ANZFRMC (see next page)
  - ii. Require the disclosure of energy content at POS by placing the average kilojoule (kJ) content of each standard food item on each menu:
    - a) adjacent to the name of the standard food item, and
    - b) in text at least at the same size as the price for each item (or at least the same size as the food name if there is no price listed).
  - iii. Require that where standard food items have a range of portion sizes available (e.g. large, medium or small) there needs to be a statement of the energy content (kJ content) for each portion size.
  - iv. Require that a statement advising of the average daily kJ intake for adults (8,700 kJ) be placed prominently on the menu so that consumers have a point of reference to make informed choices.

Provide at least a 12 month transition/ compliance period for industry.

3. Be supported by a communication strategy that engages and informs appropriate stakeholders.
4. Include an evaluation strategy to assess the impacts of any POS approach introduced.
5. Not preclude jurisdictions from expanding POS nutrition information at a later date to also include disclosure of other information such as sugar, sodium and fat content.



## Draft Guideline Definitions

**Explanatory Note:** These guideline definitions and explanation of terms have been developed with the intent of being used to inform the drafting of legislation by any jurisdiction planning to introduce a Point-of-Sale nutrition information display initiative and to enable a nationally consistent approach to be taken.

Suggested Definition	Explanation of Terms
<p><b>Menu:</b></p> <p>A list of food items, in printed or electronic form (including internet menus), that lists or otherwise shows one or more items of food, and that:</p> <p>is on a board, poster, leaflet, food tag or the like at the premises from which the item or items of food in the menu are sold, or</p> <p>is distributed or available outside of the premises (including drive-through facilities) from which the item or items of food in the menu are sold.</p> <p>Where a supermarket is a standard food outlet, advertising material (e.g. catalogues) are not considered to be a menu in this context.</p>	<p>To ensure that all prescribed forms of menu are included in the nutrition information display requirements.</p> <p>This initiative aims to provide nutrition information to consumers at the time that they make decisions about their food purchase.</p> <p>Menu has been defined broadly so that this information is available at various points of purchase, including if purchased via the internet or at drive-through facilities, as well as in-store; however, does not mean to capture unintended advertising material that is not a “menu”.</p> <p>Food tags have also been included as not all outlets have menus or menu boards and purchase decisions are made on the basis of information provided on tags displayed with the food.</p>
<p><b>Ready-to-eat Food:</b></p> <p>Food that is in a state in which it is ordinarily consumed, but does not include nuts in the shell or raw fruit or vegetables that are intended to be hulled, peeled or washed by the consumer.</p>	<p>To clarify the targeted food items of the nutrition information initiative – that is traditional ‘quick service’ standard food items that are offered for sale ready-to-eat direct to the consumer., e.g. burgers, hot chips, donuts, bakery products, hot chicken, ice cream, juices and pizzas.</p> <p>Exemptions are provided to limit application to target foods.</p>
<p><b>Pre-packaged Food:</b></p> <p>A food which arrives at the premises from which it is sold in a container or wrapper in or by which the food is wholly encased, enclosed, contained or packaged (whether or not the food is also in an outer container or wrapper that encases, encloses, contains or packages multiple units of the food), and is not removed from its container or wrapper (other than any such outer container or wrapper) before its sale at those premises.</p>	<p>To clarify that the standard food outlet must carry out at least some of the preparation of the food for sale at the premises where the food is offered for sale.</p> <p>Further, as the initiative intends to provide nutrition information at the time when purchasing decisions are being made, it is not necessary to include those foods that already carry a nutrition information panel that can be read before the purchase decision is made. These foods are defined as pre-packaged and are exempted from the requirements under ‘Standard Food Item’ below.</p>

<p><b>Standard Food Outlet:</b></p> <p>A food business at which Standard Food Items are sold if:</p> <ul style="list-style-type: none"> <li>- the food business sells Standard Food Items at other premises or while operating in a chain of food businesses that sell standard food items, and at least one of the Standard Food Items that are sold at the premises has been standardised for portion and content so as to be substantially the same as standard food items of that type sold at those other premises or by the other food businesses in the chain.</li> <li>- A food business is operating in a chain of food businesses that sell Standard Food Items if:</li> <li>- it is operating as one of a group of food businesses that sell standard food items under franchise arrangements with a parent business or under common ownership or control, or</li> <li>- it sells standard food items under the same trading name as a group of other food businesses that sell Standard Food Items.</li> </ul>	<p>To clarify which type of food businesses are targeted in the scheme.</p> <p>The definition is intended to ensure that only those businesses selling standard food items (as defined below) that operate as a chain or franchise arrangement are captured.</p>
<p><b>Standard Food Item:</b></p> <p>An item of ready-to-eat food for sale at Standard Food Outlets in servings that are standardised for portion and content and that:</p> <ul style="list-style-type: none"> <li>- is sold at more than one location, and</li> <li>- is listed or otherwise shown on a menu, or</li> <li>- is displayed for sale with a price tag or label or an identifying tag or label, and includes any item of ready-to-eat food.</li> <li>- If a number of Standard Food Items are shown or displayed for sale as a combination, the combination is to be treated as a single Standard Food Item.</li> <li>- If an item of food is shown or displayed for sale in different standard sizes or portions (for example, small, medium or large), each standard size or portion of the item of food is to be treated as a separate Standard Food Item.</li> <li>- Pre-packaged foods are not considered to be Standard Food Items.</li> <li>- Where a supermarket is a standard food outlet, those food items that are accessible to the consumer and bear a nutrition information panel are exempt from point-of-sale nutrition information requirements.</li> </ul>	<p>To provide clarity as to what constitutes a standard food item for sale from a standard food outlet.</p> <p>The foods targeted by the initiative are those that are substantially the same when purchased at multiple sites of a food business. To clarify this, the definition refers to foods that are standardised for portion and content.</p> <p>Where foods are sold as combination meals the intention is to provide consumers with nutrition information that relates to the meal as a whole. This will assist consumer understanding and obviate the need to make a calculation based on the components of the meal.</p> <p>To enable consumers to easily identify the impact of purchasing different sizes of the same food or meal, the nutrition information is to be displayed for each size or portion.</p> <p>Pre-packaged foods are not standard food items, as the standard food outlet has not carried out any of the preparation on site at the premises where the food is sold.</p>

<p><b>Nutrition Information:</b></p> <p>Information regarding the nutritional composition of the Standard Food Item that is not limited to sugar, fat, salt and energy content.</p> <p>Nutrition information must be displayed in the same font, and at least the same font size, as the price displayed for the Standard Food Item concerned or, if no price is displayed, the same size as the name displayed for the Standard Food Item.</p>	<p>To provide context in which this initiative operates and clarity regarding the nature and form of nutritional information to be displayed.</p>
<p><b>Energy Content:</b></p> <p>The average kilojoule (kJ) content of the Standard Food Item.</p> <p>The method of determining the average energy content of each Standard Food Item should be in accordance with Standard 1.2.8 of the Food Standards Code, making necessary adjustments to ensure that the calculation is done in relation to the whole of the food item rather than per 100g.</p> <p>The energy content on display should be rounded to the nearest 10kJ.</p>	<p>To ensure consistency in how kilojoule (kJ) is expressed and how it is measured.</p>
<p><b>Voluntary Display:</b></p> <p>Food Outlets that choose to voluntarily display nutrition information must comply with any legislated requirements for Standard Food Outlets (in relation to the display of nutrition information) within that jurisdiction.</p>	<p>To ensure food outlets that are not captured by the initiative but choose to provide nutrition information voluntarily, do so in a consistent manner to ensure ease of understanding by consumers and providing equity across food businesses and preventing a proliferation of different systems.</p>

## **Summary of jurisdiction initiatives to limit the impact of unhealthy food and drinks on children**

Actions to address childhood obesity by limiting the impact of unhealthy food and drinks on children can be progressed across four action areas:

- a. Improve children's settings to encourage and support the intake of healthy food and drinks and reduce unhealthy foods and drink
- b. Create healthy food environments where children, adolescents and parents and carers play, shop and visit
- c. Empower parents and carers to provide healthier diets for their children
- d. Routine health service delivery encourages and supports healthier eating and drinking

The four action areas and strategies are based on the NSW Premier's priority to tackle childhood obesity, the report of the WHO Commission on Ending Childhood Obesity and the WHO Global non-Communicable Disease Action Plan.

### **A. Improve children's settings to encourage and support the intake of healthy food and drinks and reduce unhealthy food and drinks.**

Children's settings include schools, outside school hours care, early childhood services and junior sporting and recreation clubs. These settings can encourage and support healthier eating by:

- Improving the supply of healthy food and drinks
- Supporting teachers in early childhood education and care and schools to achieve intended outcomes in the food and nutrition curriculum
- Providing other support programs in educational, sport and recreation settings

### **Current initiatives in children's settings**

State and territories are transitioning to a new Australian Curriculum that includes food and nutrition learning in the Health and Physical Education and Design and Technologies Learning Areas. Professional development and resources to support teaching food and nutrition content in these learning areas have been developed and implemented in some jurisdictions.

All jurisdictions have invested in improving food and drink supply in school canteens and embedding healthy eating across the whole school environment, such as vending machine actions, sport days, classroom activities, breakfast clubs and gardening programs.

Early Childhood Education and Care services must comply with national regulations and national quality standards for foods provided by the service and to encourage parents to bring healthy foods from home. Professional development and resources are available to support educators and to assist services plan healthy menus in many jurisdictions.

Several jurisdictions are working with junior sporting clubs to improve the supply and promotion of healthy food and drinks and reduce the intake of sugar-sweetened drinks.

## **B. Create healthy food environments where children, adolescents and parents and carers play, shop and visit.**

The food and drink actions available for purchase, their nutrient content and information available for consumers to make healthier choices, marketing and promotion practices and price all influence the context in which food and drink choices are made.

Creating healthy food environments can improve children's diets without requiring behaviour change and make the context in which food and drink choices are made more supportive of healthy eating. Healthy food environments can be created by:

- Product reformulation to reduce saturated fat, salt and added sugar and increase fruit, vegetables and wholegrain content
- Providing nutrition information on the front of packaged foods and drinks and at point of sale for ready to eat meals and meal components
- Reducing the impact of unhealthy food and drink marketing on children
- Improving the availability, affordability and acceptability of healthier food and drink choices in the commercial food service sector and reduce the availability of unhealthy choices
- Improving food and drink supply in community venues and places frequented by children such as healthcare facilities, public transport and community recreational venues
- Increasing free water availability at public places
- Developing pricing policies to incentivise healthier choices that could include taxes and subsidies
- Product placement in retail settings such as end-of-aisle display and shelf location
- Reducing the size of processed packaged food and drinks stocked in retail outlets and produced by manufacturers
- Town planning laws

### **Current initiatives to create healthy food environments**

Voluntary action on food and drink reformulation is being considered under the Healthy Food Partnership established by the Australian Government. Food reformulation is encouraged through a range of other commonwealth, state and territory initiatives including the front-of-pack Health Star Rating (HSR) system, displaying nutrition information on fast food outlet menus and food and drink supply guidelines for settings such as schools and hospitals. Victoria is working with partners on a salt reduction partnership that includes working with industry to find solutions to lower salt in foods.

To provide consumers with nutrition information to make healthier choices at the point of purchase the Australia and New Zealand Ministerial Forum on Food Regulation has endorsed a set of Principles for Introducing Point-of-Sale Nutrition Information at Standard Food Outlets. Many jurisdictions have introduced or are progressing mandatory schemes for displaying nutrition information on fast food outlets, cafes and supermarkets in-store and online menus. Another initiative is the Health Star Rating (HSR) system which assigns from

½ to 5 stars on the front of packaged foods and provides a quick and easy way for consumers to compare similar products at a retail level.

Australia has a mix of regulatory and self-regulatory frameworks on the marketing and advertising of food and drinks to children on television and other media. Other approaches are to restrict unhealthy food and drink marketing and advertising in schools, in third party sponsorships with agencies receiving government funding and on public buses.

A range of other initiatives are being implemented by states and territories to create healthy food environments including strategies to improve food and drink supply in public healthcare facilities, installing water refill stations in schools and public places, improving the availability and promotion of healthier choices at major sporting venues, inserting requirements into government contracts for providers to ensure healthy food and drinks are available at funded activities and working with commercial food services to improve the range of healthy menu options.

### **C. Empower parents and carers to provide healthier diets for their children.**

Parents and carers are responsible for providing children with the food and drinks needed for healthy growth and development. Adolescents can have more freedom with food choices, but parents and carers still have an important role to play. Empowering parents and families with the knowledge, positive attitudes and skills required to eat healthier diets and live healthy lives is an important strategy to tackle childhood obesity. Public education can also influence community norms consistent with healthy lifestyles. Initiatives to empower parents, carers and families to eat healthier diets include:

- Mass media and social marketing campaigns
- Education and skill development programs

#### **Current initiatives to empower parents and carers**

The HSR campaign targets consumers aged 18 years and older and promotes the HSR system as a way to compare similar packaged food and choose the healthier option as part of a total nutritious diet. Most jurisdictions are incorporating HSR messages into public education approaches to support the national campaign.

The Healthy Food Partnership work program will focus on consumer messaging and education.

All states and territories are investing in public education that may include mass media and/or social marketing campaigns and skill development programs. Although the branding and mix of strategies is different, there is consistency in messages around making small simple changes, choosing water instead of sugary drinks, eating more fruit and vegetables, watching portion sizes and being more active and less sedentary every day.

Current mass media and social marketing campaigns do not directly target children, however, some jurisdictions are moving towards expanding current approaches to reach parents and carers of children and young people or adolescents directly. Online and print materials are available to support public education campaigns.

Community education and skill development programs focus on building more extensive food and nutrition knowledge compared to mass media campaigns and on developing skills such as food preparation.

### **D. Routine health service delivery encourages and supports healthier eating and drinking.**

Health professionals require appropriate training and access to resources on nutrition and diet and the risk factors for developing obesity. Integrating evidence-based advice and support into routine service delivery at all levels of the health system will increase the reach and impact of strategies and support families to make changes to live healthier lives. Health services can encourage and support healthy eating in children by providing:

- Tools, resources and training for health professionals
- Support for parents and carers
- Weight management services for children and adolescents who are overweight or obese

## **Current initiatives to integrate and strengthen healthy eating guidance into routine health service delivery**

Clinical Practice Guidelines for the Management of Overweight and Obesity for Adults, Adolescents and Children in Australia have been published by the Australian Government. The guidelines are intended for use by general practitioners, primary health care nurses, primary health care professionals and allied health professionals. Guidance is included on developing healthy eating plans, increasing physical activity and behavioural modification to help patients manage obesity.

The scientific basis for integrating healthy eating guidance into routine health service delivery is in the Australian Dietary Guidelines and the Australian Guide to Healthy Eating.

States and Territories provide nutrition and obesity related tools, resources and training for health professionals that focus on maternity and early life and on assessing and managing overweight and obesity in children. Online training modules, face to face training and online and print resource formats are available.

All jurisdictions support parents and carers to improve children's diets and manage weight in a range of forms including 24 hour telephone helplines, education workshops, universal child health checks from birth to preschool years and online and print resources.

Some jurisdictions provide family-based healthy lifestyle programs in the community for families with overweight or obese children whilst others have access to limited tertiary-care based services that require referral by a GP or specialist.

Developmental work in NSW is progressing policy and information systems to integrate routine capture of child weight, raising the issue of weight status and lifestyle and referral to support programs in inpatient and outpatient services.