

Consultation Regulation Impact Statement:

Policy Guidance: Menu labelling in Australia and New Zealand

2021

Executive summary

In October 2011, Food Ministers¹, convening as the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC), agreed to *Principles for introducing point-of-sale nutrition information at standard food outlets* (the 2011 Principles).² These principles were to assist jurisdictions to consistently implement point-of-sale nutrition information at standard food outlets ('menu labelling'). Five Australian jurisdictions (New South Wales, South Australia, Australian Capital Territory, Queensland and Victoria) have introduced menu labelling, with some variation from the 2011 Principles. The 2011 Principles have not been implemented in New Zealand.

In August 2019, in response to the Health and Food Collaboration³ review of fast food menu labelling schemes, Food Ministers agreed that nationally consistent menu labelling is desirable for the food industry, public health organisations and governments. Ministers agreed the most effective way for this to occur would be to develop a food regulatory measure under the Australia New Zealand Food Standards Code (the Food Standards Code), and that development of a Ministerial Policy Guideline should be the first step.⁴ Ministerial Policy Guidelines and Food Standards Code apply to both Australia and New Zealand.

Ministerial Policy Guidelines aim to improve outcomes by clarifying the policy principles that apply to jurisdictions and bodies making food regulations (namely Food Standards Australia New Zealand (FSANZ)). The creation of a policy guideline does not trigger regulatory action by FSANZ or changes to current food labelling. However, when FSANZ is developing or reviewing food regulatory measures, as outlined in the *FSANZ Act 1991*, FSANZ must have due regard to any Ministerial Policy Guidelines relevant to the matter.

The Food Regulation Standing Committee (FRSC) now seeks information from all stakeholders to inform the development of policy guidance and an effective policy framework for consistent menu labelling. The proposed objectives are to ensure any regulatory or non-regulatory measures developed for menu labelling:

1. minimise the proliferation of different menu labelling systems;
2. create a level playing field (with respect to menu labelling) for all businesses that sell standard food items⁵; and
3. ensure that different modes of sale and types of menus enable comparison of menu options to assist people to make healthier food purchase choices at the point-of-sale.⁶

To address these policy objectives, four options are presented in the paper:

- *Maintain the status quo, allowing jurisdictions to choose how to implement menu labelling consistent with the 2011 Principles.*

¹ Ministers responsible for food regulation from the Australia Federal Government; New Zealand Government; and Australian states and territories.

² *Principles for introducing Point-of-Sale nutrition information at standard food outlets*. 2011.

<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-principles-point-of-sale-nutrition>

³ The Health and Food Collaboration was established to progress work on identifying opportunities for the food regulation system to support obesity prevention objectives. It was a collaboration of Food Regulation Standing Committee (FRSC) and Australian Health Ministers' Advisory Committee representatives; and has now been disbanded.

⁴ Australia and New Zealand Ministerial Forum on Food Regulation Communique 16 August 2019.

<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2019-August>

⁵ Standard food items are ready-to eat food and drinks that are standardised for content and portion and are not required to bear a label (therefore do not have a nutrition information panel on the packaging).

⁶ Modes of sale include in-store, online, third-party providers; types of menus include digital menu panels, paper menus, menu boards, online menus.

- *Amend the 2011 Principles and encourage all jurisdictions to consistently implement menu labelling schemes in their own legislation.*
- *Develop a Ministerial Policy Guideline for menu labelling to inform the development of a proposed bi-national food regulatory measure in the Food Standards Code (jurisdictions to repeal own legislation once regulatory measure gazetted).*
- *Encourage industry to voluntarily implement enhancements to menu labelling.*

Consumer education about kilojoules, ready-to-eat foods, making healthier food purchase choices, and using menu labelling is proposed to complement any of the options.

Compared to the status quo, the **intent** of amending the 2011 Principles (Option 2), the proposed Policy Guideline (Option 3) and voluntary implementation of menu labelling enhancements (Option 4) is described in Table 1 below.

Table 1: Intent of Options 2, 3 and 4 compared to the status quo

Element	Option 2	Option 3	Option 4
Jurisdictions	In jurisdictions implementing the amended Principles through their own legislation.	Automatically adopted in all Australian jurisdictions and New Zealand through the Food Standards Code.	Voluntary implementation by industry. No additional regulatory mechanism by jurisdictions.
Captured Businesses	<ul style="list-style-type: none"> • All standard food outlets selling standard food items in a jurisdiction (with 50 or more outlets nationally in Australia, 20 or more outlets in a State or 7 or more outlets in a Territory, or in New Zealand with a threshold to be determined) would be required to implement menu labelling. • If all jurisdictions do not implement the amended Principles, cross-border businesses may make a business decision to implement nationally. 	<ul style="list-style-type: none"> • All standard food outlets selling standard food items in Australia (50 or more outlets nationally, 20 or more outlets in a State or 7 or more outlets in a Territory) and New Zealand (threshold to be determined) would be required to implement menu labelling. 	<ul style="list-style-type: none"> • Any business that chooses to voluntarily implement the enhancements to menu labelling.
Display of Energy Information	All standard food outlets in those jurisdictions would need to: <ul style="list-style-type: none"> • display the energy information of all available standard food items on all menus and at all physical and electronic points-of-sale; • display the energy information for combination meals including any pre-packaged items with the combination; 	All standard food outlets in Australia and New Zealand would need to: <ul style="list-style-type: none"> • display the energy information of all available standard food items on all menus and at all physical and electronic points-of-sale; • display the energy information for combination meals including any pre-packaged items with the combination; 	Any business that chooses to voluntarily implement enhancements could do one of more of the below display mechanisms: <ul style="list-style-type: none"> • display the energy information of all available standard food items on all menus and at all physical and electronic points-of-sale; • display the energy information for combination meals including any pre-packaged items with the combination;

Element	Option 2	Option 3	Option 4
	<ul style="list-style-type: none"> display the energy information for multi-serve items as the whole item and per serving; and ensure that customers have access to the energy information for standardised single ingredients and customisable menu items. 	<ul style="list-style-type: none"> display the energy information for multi-serve items as the whole item and per serving; and ensure that customers have access to the energy information for standardised single ingredients and customisable menu items. 	<ul style="list-style-type: none"> display the energy information for multi-serve items as the whole item and per serving; and ensure that customers have access to the energy information for standardised single ingredients and customisable menu items.
Supermarkets	<ul style="list-style-type: none"> Supermarkets in those jurisdictions would not be permitted to display the energy information as per 100 grams or in the same font as the unit price. 	<ul style="list-style-type: none"> Supermarkets in Australia and New Zealand would be required to display the energy information for each standard food in the same font and font size as price (i.e. there would be no flexibility for supermarkets to display kilojoules per 100 grams and in the same font and font size as the unit price, as currently permitted in Australia). 	<ul style="list-style-type: none"> Supermarkets that choose to implement the enhancements to menu labelling could display the energy information for each standard food in the same font and font size as price.
Small Businesses (Below Thresholds)	<ul style="list-style-type: none"> No change in Australian Capital Territory, New South Wales, Queensland, South Australia. In Victoria, New Zealand, Northern Territory, Tasmania and Western Australia if amended Principles are implemented: all small businesses that chose to voluntarily implement menu labelling would need to comply with the mandatory menu labelling requirements. 	<ul style="list-style-type: none"> All small businesses that chose to voluntarily implement menu labelling would need to comply with the mandatory menu labelling requirements. 	<ul style="list-style-type: none"> All small businesses that choose to voluntarily implement enhancements could do so.
Third-Party Food Delivery Platforms	<ul style="list-style-type: none"> If a business in those jurisdictions uses a third-party to facilitate the sale of standard food items, the food business would need to provide the energy information to the third-party. 	<ul style="list-style-type: none"> If any Australian or New Zealand business uses a third-party to facilitate the sale of standard food items, the food business would need to provide the energy information to the third-party. 	<ul style="list-style-type: none"> Any businesses that choose to voluntarily implement enhancements could provide the energy information to third-parties.

There are benefits and risks associated with the implementation mechanism for each of the options. These are outlined in detail in Section 5. These include:

- Option 1 has not achieved the objectives in the nine years since the 2011 Principles were endorsed. Additionally, it took seven years between the development of the 2011 Principles and menu labelling becoming effective in the most recent jurisdiction to

implement the 2011 Principles. Three Australian jurisdictions and New Zealand have not implemented the 2011 Principles to date.

- Achieving national consistency and a level playing field for all businesses that sell standard food items via Option 2 is largely dependent on all jurisdictions either changing existing legislation or introducing new legislation that aligns with the amended Principles. There is a significant risk that the current inconsistencies will remain, and additional inconsistencies may emerge if jurisdictional action does not occur in a timely (within 1-2 years) and uniform manner.
- However, Option 2 may result in most standard food outlets consistently implementing the strengthened menu labelling elements outlined in the amended Principles, even if only one jurisdiction changes their legislation. It is possible that some cross-border businesses may choose to voluntarily implement menu labelling in the same manner in all outlets in Australia and/or New Zealand. However, this would not be enforceable in jurisdictions that have not adopted the amended Principles.
- A jurisdiction's ability to amend their legislation is dependent on their work plan, competing priorities and complexity of the issues. This process is likely to involve changes in primary legislation so would take an estimated 12-18 months per jurisdiction. There is also a risk that jurisdictional legislative setting processes would result in deviations from the amended Principles.
- Option 3 would result in one consistent system for Australia and New Zealand. This is an outcome that has not been achieved in the nine years of the current menu labelling policy principles. It is estimated there could be a 20 per cent reduction in compliance costs for Australian businesses by implementing one system.
- While the proposed Policy Guideline is intended to guide FSANZ in developing a food regulatory measure, there is no guarantee that a food regulatory measure for menu labelling would align exactly with the Policy Guideline. However, the Food Ministers can ask FSANZ to review a food regulatory measure if it does not align with a Ministerial Policy Guideline. The process of developing food regulatory measures can take approximately 12-18 months, but this is dependent on FSANZ's work plan, competing priorities and the complexity of the issues.
- Option 4 lacks the mandatory onus of a regulatory arrangement. Although the regulatory burden is lower, as a voluntary mechanism, there could be less and slower industry adoption and greater inconsistencies. This would make achievement of the intended public health outcome for menu labelling less certain.

Delivering consumer education in conjunction with any of these options will likely yield a higher net benefit, as with education consumers may better understand how to use menu labelling, one tool to facilitate healthier food choices. An assessment of which option has the greatest net benefit will be undertaken following consideration of stakeholder submissions received to this paper.

This paper builds on previous consultation with Australian stakeholders (refer to Appendix 1) and seeks views from Australian and New Zealand stakeholders on all proposed options. This will assist FRSC to provide clear advice to Food Ministers about the most appropriate vehicle for addressing the inconsistencies between the current jurisdictional menu labelling regulation and the 2011 Principles. Consideration will be given to how effectively the preferred option rectifies the policy problem, achieves the objectives, its feasibility, and associated implementation costs. A Decision Regulatory Impact Statement (Decision RIS) will present Food Ministers with the preferred option for decision. It is anticipated that the Decision RIS will be presented to Food Ministers in late 2021.

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1 Introduction

1.1 Purpose of this paper

In August 2019, Food Ministers, convening as the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum), agreed that nationally consistent menu labelling is the desired outcome for the Australian food industry, public health organisations and governments. The Forum agreed that the most effective way to achieve this is to develop a food regulatory measure under the Australia and New Zealand Food Standards Code (Food Standards Code) and that as a first step a Ministerial Policy Guideline⁷ should be developed. Ministers agreed to the Food Regulation Standing Committee (FRSC) developing a Ministerial Policy Guideline, in line with best practice regulatory requirements, and ongoing consultation with Australian and New Zealand stakeholders.⁸

For this paper, menu labelling is limited to energy (kilojoules) information for standard food items⁹ sold at standard food outlets¹⁰ (i.e. standardised ready-to-eat food and drinks that are not required to bear a label¹¹). For this consultation, labelling for other nutritional information (e.g. sodium, sugar, or saturated fat content) at the point-of-sale is out-of-scope. The composition and package labelling of ready-to-eat food and drink is also out-of-scope for this consultation.

This consultation paper presents four options for consideration and feedback by Australian and New Zealand stakeholders. It has been prepared by FRSC and is based on the *Council of Australian Governments Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*.¹²

Instructions for stakeholders

- Questions for stakeholders are provided throughout the paper. You can choose to answer all, some or none of the questions.
- In providing responses to the questions, please provide evidence and references to support your statements, where possible.
- All submissions will be considered and responses to the questions will be used to develop a Decision Regulatory Impact Statement (RIS) with a preferred option to recommend to the Forum. Identifiable business information will not be included in the Decision RIS.
- Please note that all submissions are subject to the *Freedom of Information Act 1982* in Australia and the *Official Information Act 1982* in New Zealand. If you consider that all or part of your submission should not be released, please make this clear when making your submission and indicate the grounds for withholding the information.

⁷ Ministerial Policy Guidelines aim to improve outcomes by providing clear and unambiguous policy principles that apply to jurisdictions and bodies making food regulations. The creation of a policy guideline does not trigger regulatory action by FSANZ or changes to current food labelling; however, when FSANZ is developing or reviewing food regulatory measures, regard must be given to any written policy guidelines.

⁸ *Australia and New Zealand Ministerial Forum on Food Regulation Communique 16 August 2019*.

<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2019-August>

⁹ As defined in the *Principles for introducing Point-of-Sale nutrition information at standard food outlets*. 2011.

<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-principles-point-of-sale-nutrition>

¹⁰ Ibid.

¹¹ Under the Food Standards Code, Standard 1.2.1-6 does not require food to bear a label if it is made and packaged on the premises from which it is sold; is packaged in the presence of the purchaser; is delivered packaged, and ready for consumption, at the express order of the purchaser (other than when the food is sold from a vending machine); or is displayed in an assisted service display cabinet.

¹² Council of Australian Governments. 2007. *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*. https://www.pmc.gov.au/sites/default/files/publications/COAG_best_practice_guide_2007.pdf

1.2 Overweight and obesity in Australia and New Zealand

In 2017-18, two-thirds (67%) of adults (18 years and older) and one-quarter (24.9%) of children (5-17 years) were overweight or obese in Australia.¹³ In 2018-19, 71 per cent of Aboriginal and Torres Strait Islander adults (15 years and older) and more than one-third (37%) of Aboriginal and Torres Strait Islander children were overweight or obese.¹⁴ Results were similar in New Zealand with 65 per cent of adults (15 years and older) and 31 per cent of children overweight or obese in 2018-19.¹⁵ After adjusting for age and gender, Pacific and Māori adults were 1.4 times and 1.2 times more likely to be overweight or obese as non-Pacific and non-Māori, respectively.¹⁶

In Australia, high body mass index was the second leading cause of health loss and dietary risks were the third leading cause in 2017 (8.7% and 7.1% of burden, respectively).¹⁷ Dietary risk factors (8.6%) and high body mass index (8.2%) were the second and third leading causes of health loss in New Zealand in 2017.¹⁸

In 2015, PricewaterhouseCoopers (PwC) estimated the cost of obesity at \$8.6 billion (AUD) per year in Australia. This included health system costs, tax foregone and productivity losses such as absenteeism.¹⁹ The Obesity Collective calculated that this cost had grown to \$11.8 billion (AUD) in 2017-18, with \$5.4 billion in direct health costs and \$6.4 billion in indirect costs.²⁰ PwC also estimated in 2015 the annual cost of loss of wellbeing and early death at \$47.4 billion (AUD)²¹ and that if the growth of obesity does not slowdown, 2.4 million Australians would be obese by 2025, costing society \$87.7 billion (AUD).

Comparable data on the cost of obesity in New Zealand is not available. However, in 2006, New Zealand healthcare costs due to the treatment of overweight and obesity-related conditions were estimated at \$624 million (NZD). Given increased obesity rates since then, costs in New Zealand are now likely to be substantially higher.²²

1.3 Reliance on ready-to-eat meals and snacks

Overweight and obesity is a complex problem with multiple causes. The supply and availability of ready-to-eat food and drinks which are energy dense and nutrient poor is one of the key drivers of overweight and obesity.²³

¹³ Australian Bureau of Statistics. 2018. *National Health Survey – First Results, Australia 2017-18*.

<https://www.abs.gov.au/ausstats/abs@.nsf/PrimaryMainFeatures/4364.0.55.001?OpenDocument>

¹⁴ Australian Bureau of Statistics. 2019. National Aboriginal and Torres Strait Islander Health Survey, 2018-19.

<https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4715.0Main+Features12018-19?OpenDocument>

¹⁵ Ministry of Health. 2019. *2018/19: New Zealand Health Survey*. <https://www.health.govt.nz/nz-health-statistics/health-statistics-and-data-sets/obesity-statistics>

¹⁶ Ibid.

¹⁷ Institute for Health Metrics and Evaluation. 2020. *GBD 2017*. Available from <https://vizhub.healthdata.org/gbd-compare/>.

¹⁸ Ministry of Health. 2020. *Longer Healthier Lives: New Zealand's Health 1990-2017*.

<https://www.health.govt.nz/system/files/documents/publications/longer-healthier-lives-new-zealands-health-1990-2017.pdf>

¹⁹ PricewaterhouseCoopers and Obesity Australia. 2015. *Weighing the cost of obesity: A case for action*.

<https://www.pwc.com.au/pdf/weighing-the-cost-of-obesity-final.pdf>

²⁰ The Collective for Action on Obesity. *Weighing In: Australia's growing obesity epidemic*.

<http://www.obesityaustralia.org/points-of-view>

²¹ PricewaterhouseCoopers and Obesity Australia. 2015. *Weighing the cost of obesity: A case for action*.

<https://www.pwc.com.au/pdf/weighing-the-cost-of-obesity-final.pdf>

²² Ministry of Health. 2013. *Health Loss in New Zealand: A report from the New Zealand Burden of Diseases, Injuries and Risk Factors Study, 2006-2016*.

[http://www.moh.govt.nz/notebook/nbbooks.nsf/0/F85C39E4495B9684CC257BD3006F6299/\\$file/health-loss-in-new-zealand-final.pdf](http://www.moh.govt.nz/notebook/nbbooks.nsf/0/F85C39E4495B9684CC257BD3006F6299/$file/health-loss-in-new-zealand-final.pdf)

²³ Swinburn et al. 2011. The global obesity pandemic: shaped by global drivers and local environments. *The Lancet*, 378(9793): 804-14.

Increasingly, consumers are making food choices in a queue or on a device, rather than preparing food at home. In 2017-18, over 17 million (84.5%) Australians²⁴ and over 3.2 million (84.8%) New Zealanders²⁵ purchased ready-to-eat meals and snacks from major fast food outlets, independent takeaway shops, and convenience stores. In both countries, the top five most frequented businesses were McDonald's, KFC, Domino's Pizza, Hungry Jacks/Burger King and Subway. In 2019, Australians averaged 65 takeaway food transactions, totalling 1.6 billion transactions.²⁶ In 2018, nearly 2 million (8%) Australians, particularly those aged between 14 and 42 years, used third-party food delivery platforms.²⁷

In 2015-16, Australian households spent 34 per cent of the food dollar on eating out, fast food and takeaway; with a greater proportion of expenditure as household income rose. Australians aged 15 to 34 years spent the greatest amount (approximately \$1,900 per annum) and the greatest share (41-42%) of food expenditure on eating out and fast food, while those aged 75 years and older spent considerably less.²⁸

In 2015-16, half of New Zealand households ate out at least weekly, with more than a quarter (\$61) of the weekly food dollar spent on restaurant meals and ready-to-eat food. This was 25 per cent higher than 2012-13, although, in part, could reflect increased restaurant prices.²⁹

1.4 Menu labelling schemes

A range of factors influence consumer behaviour and dietary intakes. The provision of information through menu labelling may be one important cost-effective mechanism which can support people to make more informed choices about the ready-to-eat foods they purchase and consume.^{30,31,32,33} Menu labelling alone will not reduce overall kilojoule intake, overweight and obesity or diet-related chronic disease. It is an important part of a multi-strategy approach to supporting behaviour change. If consumers use menu labelling to make healthier food choices, reduced consumption of kilojoules and associated better health outcomes could logically be expected. However, due to the complexity of understanding consumer behaviour, the evidence for the effectiveness of menu labelling schemes is equivocal. For example, some meta-analyses indicate that consumers purchase fewer kilojoules and that the energy content of menu items decreases when menu labelling is implemented. Other analyses and systematic reviews suggest

²⁴ Roy Morgan. 2018. *Press Release: McDonald's, KFC & Subway most visited Aussie restaurants.*

<http://www.roymorgan.com/findings/7599-australian-eating-habits-eating-in-out-march-2018-201805290253>

²⁵ Roy Morgan. 2018. *Press Release: McDonald's, KFC & Domino's Pizza most visited NZ restaurants.*

<http://www.roymorgan.com/findings/7613-new-zealand-eating-habits-eating-in-out-qsr-restaurants-march-2018-201805310031>

²⁶ Future Food. 2019. *Eating Out in Australia – Takeaway on Takeaways.* <https://futurefood.com.au/blog/2019/06/eating-out-in-australia-takeaways-on-takeaways>

²⁷ Roy Morgan. 2018. *Press Release: Metrotechs and Millennials have taken to Uber Eats, Menulog, Deliveroo, Foodora and more.* <http://www.roymorgan.com/findings/7602-food-delivery-services-march-2018-201805240625> NOTE: Survey included food delivery platforms that provide ready-to-eat meals, weight control meals and recipes to prepare at home.

²⁸ Department of Agriculture and Water Resources. 2018. *Food demand in Australia: trends and issues 2018.*

http://data.daff.gov.au/data/warehouse/9aat/2018/fdati9aat20180822/FoodDemandInAustralia_20180822_v1.0.0.pdf

²⁹ Stats NZ. *Household Expenditure Statistics: Year ended June 2016.* <https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2016>

³⁰ Hawkes et al. 2013. A food policy package for healthy diets and the prevention of obesity and diet-related non-communicable diseases: the NOURISHING framework. *Obesity Reviews*, 14(S2): 159-168.

<https://www.wcrf.org/int/policy/nourishing/our-policy-framework-promote-healthy-diets-reduce-obesity>

³¹ Swinburn et al. 2013. Monitoring and benchmarking government policies and actions to improve the healthiness of food environments: a proposed Government Healthy Food Environment Policy Index. *Obesity Reviews*, 14(S1): 24-37.

³² Mantilla-Herrera et al. *Menu kilojoule labelling on fast food* in Ananthapavan et al. 2018. *Assessing cost-effectiveness of obesity prevention policies in Australia 2018.* Melbourne: Deakin University. <http://www.aceobesitypolicy.com.au/>

³³ McKinsey Global Institute. 2014. *Overcoming obesity: an initial economic analysis.*

<https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/how-the-world-could-better-fight-obesity>

that menu labelling has a minimal effect of food purchases and consumption. Refer to Appendix 2 for a summary of evidence.

Labelling can only be effective when it is firstly noticed by the consumer. Then, followed by an understanding of the information being communicated, it can be used in a meaningful manner according to consumer needs and wants.³⁴ The content, format and context of food labels all influence how useful they are for consumers.³⁵ Consumers also need to be motivated to use the provided information to choose healthier foods. The impact of menu labelling may also be influenced by an individual's socioeconomic status, gender, body weight, taste preferences, emotional response to menu labelling and whether they are restricting energy intake, as well as by price and convenience on purchasing decisions.^{36,37,38,39,40}

1.5 Current menu labelling principles, policy, and regulation

In December 2010, Food Ministers agreed that Australians should have the opportunity when purchasing food from chain fast food outlets to know more about the nutritional content of foods prepared and served away from home. Principles to guide the consistent implementation of menu labelling schemes were subsequently developed,⁴¹ and endorsed by Ministers in October 2011.

The 2011 Principles⁴² are that menu labelling 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 point-of-sale (POS) nutrition information at standard food outlets should:
 - i. Use the guideline definitions and explanation of terms agreed by the ANZFRMC.
 - 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).

³⁴ Mercer et al. 2013. *Literature review on the impact of label format on consumers' attention and comprehension for mandated label elements*. Report prepared for Food Standards Australia New Zealand by Instinct and Reason, Canberra, Australia. <https://www.foodstandards.gov.au/publications/Documents/Literature%20review%20on%20label%20format%20-%20commissioned%20report%202013.pdf>

³⁵ Rayner et al. 2013. Monitoring the health-related labelling on foods and non-alcoholic beverages in retail settings. *Obesity Reviews*, 14(S1): 70-81.

³⁶ Crockett et al. 2018. Nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption. *Cochrane Database of Systematic Reviews*, Issue 2. Art. No.: CD009315. <https://doi.org/10.1002/14651858.CD009315.pub2>

³⁷ Zlatevska et al. 2017. Mandatory calorie disclosure: a comprehensive analysis of its effect on consumers and retailers. *Journal of Retailing*, 94(1), 89-101.

³⁸ Littlewood et al. 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.

³⁹ Cantu-Jungles et al. 2017. A Meta-Analysis to Determine the Impact of Restaurant Menu Labeling on Calories and Nutrients (Ordered or Consumed) in U.S. Adults. *Nutrients*, 9(10), 1088.

⁴⁰ Thunstrom. 2019. Welfare effects of nudges: the emotional tax of calorie menu labelling. *Judgement and Decision Making*, 14(1):11-25.

⁴¹ Ministers agreed that FRSC should work with AHMAC to develop advice on a national approach by mid-2011 that could guide the display of nutrition information in standard fast food chain restaurants. This decision followed action in different Australian states to improve public awareness of the nutrition content of takeaway food by providing this information at the point-of-sale. The Food Ministers' decision did not specifically refer to menu labelling in New Zealand. A FRSC Point-of-Sale Nutrition Information Working Group (led by the Australian Department of Health and Ageing, with membership from all state and territory governments (excluding the Northern Territory), New Zealand Government and FSANZ) developed principles to facilitate consistency if jurisdictions elected to introduce legislation for the display of point-of-sale nutrition information in standard food outlet.

⁴² *Principles for introducing Point-of-Sale nutrition information at standard food outlets*. 2011. <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-principles-point-of-sale-nutrition>

- 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.
 - v. 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.

To support the principles, a set of definitions and explanation of terms were developed to inform the drafting of jurisdictional legislation. The definitions include menu; ready-to-eat food; pre-packaged food; standard food outlet; standard food item; nutrition information; energy content and voluntary display.

The Food Standards Code does not currently regulate menu labelling.

1.6 Implementation of menu labelling in Australia

Since 2011, five Australian jurisdictions have introduced menu labelling legislation (see Table 2 below). Although, Western Australia, Tasmania, and Northern Territory have not implemented menu labelling, many businesses have voluntarily implemented menu labelling in all their Australian outlets. As of June 2020, it is estimated that approximately 75 chain businesses with over 13,750 outlets are implementing or are required to implement menu labelling in Australia.

It is important to note that the food industry is dynamic and subject to changing consumer demands and economic climate. Therefore, the number of businesses and outlets that are required to implement menu labelling frequently changes over time. Additionally, the long-term impact of the COVID-19 pandemic and the physical distancing restrictions is unknown. There could be a considerable reduction in the size of the overall industry, and the size of individual businesses.

Table 2: Australian legislation for menu labelling

Jurisdiction	Primary Legislation	Subordinate Legislation	Effective Date
New South Wales	<i>Food Act 2003</i> : Part 8, Division 4 – Requirements for display of nutritional information	<i>Food Regulation 2015</i> : Part 5 – Requirements for display of nutritional information	1 February 2011
South Australia	<i>Food Act 2001</i> : Part 11 – Miscellaneous	<i>Food Regulation 2017</i> : Part 4 – Miscellaneous	23 February 2012
Australian Capital Territory	<i>Food Act 2001</i> : Part 9 – Display of nutritional information for food	<i>Food Regulation 2002</i> : Part 4 – Display of nutritional information for food	1 January 2013
Queensland	<i>Food Act 2006</i> : Chapter 6A – Display of nutritional information for food	<i>Food Regulation 2016</i> : Part 4 – Nutritional information for food	26 March 2016
Victoria	<i>Food Act 1984</i> : Part IIA – Kilojoule labelling scheme	Not applicable	1 May 2018

If consumers do not understand kilojoules, their ability to use menu labelling optimally is impacted. To improve the effectiveness of its menu labelling legislation, New South Wales has implemented and maintained the 8700kJ app and website as an ongoing means of consumer self-education since 2011.⁴³ Queensland delivered ‘straight answers’ and ‘kilojoules on the menu’ campaigns in 2016-2017, and some resources remain available online.⁴⁴ And most recently, ‘kilojoules on the menu’ was added to Victoria’s Better Health Channel website.⁴⁵

1.7 Menu Labelling in New Zealand

Menu labelling is not currently regulated in New Zealand. A survey of food and beverage companies in 2018 by the New Zealand Food and Beverage Taskforce⁴⁶ found that while there was some support for voluntary menu labelling, it was not widely practised. During 2020, the New Zealand Government commissioned research to test consumer understanding, and the potential impact of menu labelling including the current system used in Australia (as outlined in the 2011 Principles). In a fast food restaurant setting, the research found that menu labelling had the desired impact on respondents who eat for reasons of convenience, connection and taste. Menu labelling was found to be more effective when combined with consumer education.

Consultation question 1: Is your business voluntarily displaying energy information in **New Zealand**? Please provide details, where possible.

Consultation question 2: Does your **New Zealand** business sell standard food items and is it a chain (i.e. more than one outlet operated/owned under franchise arrangements or the same trading name, or owned by one parent company/central owner/corporation)? If so, how many outlets do you have in New Zealand?

Consultation question 3: Is it a problem for **New Zealand consumers** that energy information is not mandated at the point-of-sale? If so, please explain your view and/or detail the impact.

2 Statement of the Problem

Six years after the development of the 2011 Principles, the Health and Food Collaboration undertook a review of fast food menu labelling. The review highlighted three key concerns with menu labelling in Australia (the status quo):

1. nationally inconsistent menu labelling legislation;
2. an uneven playing field with respect to menu labelling for businesses selling standard food items; and
3. emerging trends for promoting, offering, and selling standard food items are not addressed by the 2011 Principles.

Consultation in early 2018 with key Australian industry, public health and consumer organisations identified that there was strong support for national consistency and that new ways of promoting, offering, and selling food needed to be considered within menu labelling schemes. Refer to Appendix 1 for details about the consultation to-date.

⁴³ NSW Health. *8700: Find your ideal figure*. <https://www.8700.com.au/>

⁴⁴ Queensland Health. *Healthier. Happier*. <https://www.healthier.qld.gov.au/>

⁴⁵ Victoria State Government. *Kilojoules*. <https://www.betterhealth.vic.gov.au/campaigns/kilojoules-on-the-menu>

⁴⁶ In 2018, leading New Zealand food and beverage industry members formed a Taskforce on Addressing Factors Contributing to Obesity, at the request of Ministers of Health and Food Safety. The Taskforce is no longer formally meeting.

2.1 Nationally inconsistent menu labelling legislation

The menu labelling legislation in five Australian jurisdictions are largely consistent with the 2011 Principles. There is consistency in definitions of a menu, standard food item and ready-to-eat food; information that must be displayed; prescribed method for calculating energy content; and places on a menu where information must be displayed.

However, jurisdictions have taken different approaches to businesses that are exempt from menu labelling (see Table 3 below). Most jurisdictions specify between five and nine business types that are exempt from menu labelling. There is not one business type that is specifically exempt in all jurisdictions. Stakeholders have identified that these exemptions do not align with the intent of the 2011 Principles (noting that exemptions are not specified in the 2011 Principles); resulting in inconsistency for Australian businesses, and inequitable access to energy information at the point-of-sale for Australian consumers.⁴⁷

Table 3: Business types (X) specifically exempt in Australian jurisdictions' legislation

Business Type	NSW	SA	ACT	QLD	VIC
Supermarkets		X			
Convenience Stores	X	X		X	
Service Stations	X			X	X
Cinemas				X	X
Dine-In Restaurants	X	X		X	
Mobile Vendors				X	X
Caterers	X	X	X	X	
Vending Machines					X
Temporary Food Premises					X
Not-For-Profit Home Delivery of Meals		X	X	X	X
Health Care Facilities	X		X	X	
Aged Care Facilities, Hospices, Respite Care Facilities and Crisis Accommodation			X		
Not-For-Profit Food Businesses Operated by Schools, Sports Clubs, Workplace Social Clubs				X	
Charitable Organisations			X		
Schools and Childcare Centres			X		

There are also some differences with respect to how and when to display energy information, as well as some definitions, including:

- only Queensland has a requirement relating to font colour, in addition to font type and size;

⁴⁷ Food Regulation Standing Committee. 2018. *Consultation Summary Report: Review of fast food menu labelling schemes*. Available at: <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/review-fast-food-menu-labelling-schemes>

- Queensland specifically legislates simultaneous display of kilojoules with name or price on menus (noting that some jurisdictions interpret their legislation to provide for this already);
- only Australian Capital Territory does not exempt businesses from displaying energy information for menu items sold on a trial basis;
- only Victoria does not specify requirements for the voluntary display of energy information;
- South Australia uses the term ‘multiple-site businesses’ (operating at five or more separate locations), Victoria uses the term ‘chain food premises’, and the other jurisdictions use ‘standard food outlets’ to include businesses selling at least one standard food item at other premises or as a chain (including under franchise arrangements, same trading name/brand, common ownership/control);
- New South Wales and Victoria include a retail floor space threshold (1000m²) in the definition of supermarkets, South Australia (noting supermarkets are exempt) and Australian Capital Territory focus only on the products sold, and Queensland does not define supermarkets;
- only Victoria specifically exempts alcoholic beverages from the definition of a standard food item; and
- only Victoria allows the energy information for combination meals containing pre-packaged products to not include the energy from any pre-packaged products.

The impact of these differences between jurisdictions is likely to be greatest on cross-border businesses and parent companies with both captured and exempt outlets, and/or outlets with different requirements, as they may experience unnecessary complexities, uncertainty, and increased costs and regulatory burden. Some of these costs could include interpretational/legal costs to review multiple legislative instruments; and higher costs to design different menus and train staff if implemented on a jurisdictional basis (rather than nationally). Smaller businesses may incur a more significant and administrative burden to comply with different menu labelling requirements compared to larger businesses which may have greater resources and capacity to absorb regulatory costs.

The differences in jurisdictional requirements may also impact consumers; for example:

- some consumers may have difficulty in noticing the kilojoules, where the same font colour requirement can make the energy information indistinguishable from the price; and
- some consumers may receive confusing information if the kilojoules displayed are inconsistent with product image promoted (e.g. if a combination meal of burger, chips and can of soft drink is displayed, but the kilojoules are calculated without the soft drink).

Although there is consistency in requirements among the four jurisdictions which capture supermarkets, the flexibility afforded to supermarkets in displaying energy information is not an element of the 2011 Principles. The state and territory regulations allow supermarkets to display energy information for standard food items differently to all other standard food outlets. Supermarkets are permitted to display energy information for standard food items as ‘per 100 grams’ on menus (including price labels/tags), while other businesses must display the information as the energy ‘per item’. This could make it more difficult for consumers wishing to compare the same item across business types (e.g. hot cross buns sold by a supermarket versus a bakery chain). Supermarkets are also permitted to display energy information in the same font size as the unit price, which is typically in smaller font than the price of the item, and this may reduce the visibility of the energy information on the price label/tag.

Consultation question 4: Do these differences between states and territories create problems for **Australian businesses**? If so, please detail the impact.

Consultation question 5: Do these differences impact **Australian consumers**? If so, please detail the impact.

2.2 An uneven playing field for businesses selling standard food items

While standard food items (i.e. food and drinks standardised for portion and content) are typically sold by fast food and takeaway chains, a broad range of other business types may sell standard food items, for example convenience stores, service stations (fuel retailers), cinemas, caterers, pubs and clubs, and dine-in restaurants (refer to Appendix 3). However, not all these business types are required to display energy information due to exemptions in jurisdictional legislation (refer to Table 3 above). This leads to an uneven playing field with respect to menu labelling regulatory requirements across businesses that sell standard food items. Some stakeholders have indicated that these differences in coverage contribute to an anti-competitive market as only some business types are required to display energy information.

Consultation question 6: Is the uneven playing field with respect to menu labelling requirements a problem for **standard food outlets in Australia**? If so, please detail the impact. *Please indicate if your business is currently captured by state or territory legislation, and/or whether your business is exempt in one or more jurisdictions.*

Consultation question 7: Is it a problem for **Australian consumers** that energy information is not at the point-of-sale in all businesses selling standard food items? If so, please detail the impact.

Consultation question 8: Are there other business types (not already listed in Appendix 3) that are selling standard food items in **Australia or New Zealand**? If so, please detail.

2.3 Emerging trends for promoting, offering, and selling standard food items

The food industry is a dynamic environment with sophisticated stakeholders that is continually evolving with new products and new ways of promoting, offering, and selling products. Since the 2011 Principles were developed the methods of displaying standard food items for sale have changed, for example some businesses:

- no longer use traditional ‘menu boards’, and have instead introduced digital panel menus;
- are using third-party food delivery platforms to supplement existing customer base;
- now actively promote build your own menu items from a range of standardised ingredients; and
- are offering contactless ordering, payment and/or delivery through mobile apps or other digital platforms (linked to the COVID-19 pandemic and physical distancing restrictions in place).

Without the 2011 Principles and jurisdiction legislation specifically referring to these approaches, businesses may not be required to display energy information on all menu infrastructure and platforms or for all standard food items. As such, the availability of energy information at the point-of-sale may be inconsistent and this could impact consumers’ ability to compare products and make fully informed purchasing decisions.

Future technological advancements may increase the number of creative approaches that businesses use to promote, offer, and sell standard food items. Consequently, the 2011 Principles and jurisdictional legislation are unlikely to capture all new approaches within existing definitions and provisions/principles.

Consultation question 9: What, if any, other new ways of promoting, offering, and selling standard food items have emerged since 2011, or are likely to emerge in the future, and are not covered in this document?

Consultation question 10: Is it a problem for **consumers** when energy information is not available for all menu items and/or on all ordering platforms and menu infrastructure? If so, please detail the problem and its impact.

Consultation question 11: Has the increased use of different menu infrastructure and online platforms changed the cost of implementing menu labelling in **Australia**?

Consultation question 12: Do you agree with the overall statement of the problem presented (section 2, 2.1-2.3)? If so, why? If you do not agree with this statement, please provide your reasons.

Consultation question 13: Do you agree that this problem (section 2, 2.1-2.3) requires government intervention? If so, why? If not, please provide your reasons.

3 Objectives

Section 2 outlines three concerns with menu labelling in Australia:

1. nationally inconsistent menu labelling legislation;
2. an uneven playing field with respect to menu labelling for businesses selling standard food items; and
3. emerging trends for promoting, offering, and selling standard food items are not addressed by the 2011 Principles.

To address these concerns identified, the objective of the policy guidance and framework is to ensure any regulatory or non-regulatory measures developed for menu labelling:

- minimise the proliferation of different menu labelling systems;
- create a level playing field (with respect to menu labelling) for all businesses that sell standard food items; and
- ensure that different modes of sale and types of menus enable comparison of menu options to assist people to make healthier food purchase choices at the point-of-sale.⁴⁸

Consultation question 14: Do you agree with the objectives proposed above? If not, please suggest alternate objectives and provide your reasons.

4 Options

Options to address the problem and achieve the three objectives have been identified. To minimise the proliferation of different menu labelling systems (and therefore reduce costs and regulatory burden), alternative approaches to the status quo are to mandate menu labelling in

⁴⁸ Modes of sale include in-store, online, third-party providers; types of menus include digital menu panels, paper menus, menu boards, online menus.

the Food Standards Code or to encourage all jurisdictions to consistently implement menu labelling in a uniformly and timely manner.

To create a level playing field for all businesses that sell standard food items, jurisdictions could either continue to exempt specific businesses (as per the status quo) or remove all or some exemptions. Alternatively, all businesses that meet the definition of a standard food outlet could be mandated to implement menu labelling. Businesses that are not required to implement menu labelling could voluntarily do so (as per the status quo).

Supporting people to make healthier food purchases choices at the point-of-sale requires all modes of sale and types of menus to enable comparison of menu options. Approaches to address this are to maintain the current policy guidance on what constitutes a menu, broaden the definitions of menu and point-of-sale/modes of sale to capture more ways of promoting, offering, and selling standard food items, or allow industry interpretation of a menu and the sale of food to capture future trends. Complementary consumer education and promotional strategies would further support people to make healthier choices.

These approaches to addressing the three objectives have been translated into four options:

- *Option 1: Maintain the status quo, allowing jurisdictions to choose how to implement menu labelling consistent with the 2011 Principles.*
- *Option 2: Amend the 2011 Principles and encourage all jurisdictions to consistently implement menu labelling schemes in their own legislation.*
- *Option 3: Develop a Ministerial Policy Guideline for menu labelling to inform the development of a proposed bi-national food regulatory measure in the Food Standards Code (jurisdictions to repeal own legislation once regulatory measure developed).*
- *Option 4: Encourage industry to voluntarily implement enhancements to menu labelling.*

4.1 Option 1

Under Option 1, the 2011 Principles would remain as the only statement concerning menu labelling in Australia, noting they are not reflective of current industry trends and practices, and do not specifically apply to New Zealand. Jurisdictions could choose to amend their legislation to address the identified issues of business coverage and emerging trends (noting that this could further increase jurisdictional inconsistency). Australian jurisdictions could continue to choose to deliver a range of consumer education strategies and provide support to businesses to complement their legislation.

4.2 Option 2

This option involves amending the 2011 Principles to have a policy statement for menu labelling for Australia and New Zealand, which all jurisdictions could choose to voluntarily implement in their own legislation. A draft of the amended Principles is provided at Appendix 5. The amended Principles address the identified issues of business coverage and emerging trends and provide direction on a consistent approach to address the current jurisdictional inconsistencies. The implementation mechanism for Option 2 is the same as the status quo. If jurisdictions chose to amend their legislation, they would most likely be required to prepare a RIS. This option would become a regulatory approach to enhancing menu labelling if the amended Principles are implemented by jurisdictions; but would not if jurisdictions chose not to implement the amended Principles.

4.3 Option 3

This option involves developing a *Ministerial Policy Guideline on Menu Labelling: Displaying energy information for standard food items at the point-of-sale in standard food outlets* (the Policy Guideline). A draft Policy Guideline is provided at Appendix 4. The intent is that menu labelling would be mandatory for all businesses that meet the definition of a standard food outlet; and that all types of menus and points-of-sale/modes of sale would be captured.

To achieve a bi-nationally consistent approach to menu labelling, the Policy Guideline would be referred to FSANZ to inform development of a food regulatory measure⁴⁹ under the Food Standards Code that applies to standard food outlets in Australia and New Zealand. In developing a food regulatory measure, FSANZ would have to have regard to whether costs of the food regulatory measure outweigh the benefits to the community, industry, and government; and whether any other measures would be more cost-effective than a food regulatory measure. Five Australian jurisdictions would be expected to repeal menu labelling legislation once a food regulatory measure was in place to ensure there was only one system.

4.4 Option 4

This option involves maintaining the existing regulatory framework (the status quo) and encouraging businesses in Australia and New Zealand to voluntarily implement a range of enhancements to menu labelling. Enhancements to menu labelling include displaying energy information for combination meals (inclusive of pre-packaged drinks) and standardised ingredients for customised menu items and increasing the availability of energy information at all points-of-sale, including third-party food delivery platforms. The mechanism for operationalising this option could include the provision of support by peak industry bodies. This option is a non-regulatory approach to enhancing menu labelling.

4.5 Complementary strategies

Regardless of the preferred option, it is proposed that an education strategy be developed to increase consumer awareness and understanding of kilojoules, energy density, energy needs, making healthier food choices, and how to use menu labelling at the point-of-sale. Pending agreement, Governments would fund and manage the development, implementation, and evaluation of all education activities. Governments may liaise with food businesses' communications and marketing experts in developing an education strategy. In developing the strategy, consideration would need to be given to the modes of education and key messages needed; however, it is proposed that a multi-media strategy that achieves the desired reach and sustained effectiveness would be required. Education activities would be tailored separately for Australian and New Zealand consumers, and for different sub-population groups within each country. Consideration could be given to an overarching consumer education strategy about food labelling, healthy eating, and nutrition literacy to manage the costs and to encompass future labelling changes on packaged food.

Consultation question 15: Are the proposed options appropriate to address the stated problem and achieve the proposed objectives? If not, please suggest variations or alternative options. Please justify variations / alternatives and describe their costs and benefits.

⁴⁹ Meaning a Standard or a Code of Practice - as defined by the *FSANZ Act 1991*, Part 1, section 4, and further described in Part 2, Division 2, sections 16 and 17.

5 Impact analysis

In determining which option has the greatest net benefit, it is important to consider how well the options could achieve the policy objectives as well as the costs and benefits of the options (in comparison to the status quo) for the groups in the community that would be most affected by each option. This section discusses the predicted qualitative and where possible, quantitative costs and benefits of each option, as well as the anticipated changes for industry. The costs and benefits draw on information provided by Australian stakeholders during the consultations in 2018. Any data provided by stakeholders through this process will be taken into consideration as part of the development of the Decision RIS. Identifiable business information will not be included in the Decision RIS.

5.1 Affected parties

Parties that have been identified as potentially being affected include:

- Australian and New Zealand food industries, specifically businesses involved in the selling of standard food items; and
- Australian and New Zealand individuals that purchase and consume standard food items.

For the purposes of the RIS, the expected benefits and costs to government for each proposed option have not been included in the impact analysis.

5.2 Option 1

This option means that:

- Businesses with standard food outlets⁵⁰ in the Australian Capital Territory, New South Wales, Queensland, South Australia and Victoria would need to continue to comply with the legislation in those jurisdictions; and may continue to face higher regulatory burden and costs due to national inconsistency.
- Businesses exempted by a jurisdiction would not need to comply with the legislation in that jurisdiction.
- Australian supermarkets would be allowed to display energy information as per 100 grams or per standard food item, and in the same font as the unit price.
- Menu labelling would be optional for smaller businesses to implement. Smaller businesses in Australian Capital Territory, New South Wales, Queensland, and South Australia would need to comply with the mandatory requirements.
- Businesses would not need to comply with menu labelling requirements for any new ways of promoting, offering, or selling standard food items, if not covered by existing legislation, or if not captured by jurisdictions newly introducing menu labelling.
- Businesses would continue to receive support from jurisdictions to implement the legislation, albeit limited to the scope of the jurisdictions' capacity noting that many chains operate across jurisdictional borders.
- Australian consumers, in most jurisdictions, will continue to have access to energy information at the point-of-sale in many businesses that sell standard food items.

The primary risk associated with this option is that the problems outlined in section 2 of this paper would continue. Further inconsistency may also result if any jurisdiction seeks to capture emerging trends (e.g. digital menus), address changes in industry practice (e.g. enhanced customisation options) or remove or introduce exemptions for different business types.

⁵⁰ As defined by each jurisdiction in their legislation.

The estimated cost to implement menu labelling is \$1,585 (AUD) per standard food outlet in start-up costs, and a further \$560 (AUD) per outlet in ongoing annual maintenance costs.⁵¹ As of June 2020, it was estimated that approximately 75 chain businesses with over 13,750 outlets were implementing or were required to implement menu labelling in Australia. As noted in section 1.6, the number of businesses and outlets required to implement menu labelling frequently changes over time. The number of businesses voluntarily implementing menu labelling in Australia and New Zealand is unknown.

5.3 Option 2

5.3.1 Impacts on Australian and New Zealand Food Industries

The potential impact of this option on businesses is dependent on five jurisdictions⁵² changing existing legislation to align exactly with the amended Principles, and four jurisdictions⁵³ introducing menu labelling legislation that also aligns exactly with the amended Principles. As uptake of Option 2 would be voluntary for jurisdictions, it is difficult to accurately determine the benefits, costs, and impacts. To determine the impact on industry, individual jurisdictions would need to determine which and how many businesses are captured by changing legislation or introducing new legislation.

If **one or more jurisdictions** changed legislation to implement the amended Principles, it would mean that compared to the status quo, under Option 2:

- All standard food outlets **in that jurisdiction** would need to:
 - display the energy information of all available standard food items on all menus and at all physical and electronic points-of-sale;
 - display the energy information for combination meals including any pre-packaged items with the combination;
 - display the energy information for multi-serve items as the whole item and per serving; and
 - ensure that customers have access to the energy information for standardised single ingredients and customisable menu items.
- Supermarkets **in that jurisdiction** would not be permitted to display the energy information as per 100 grams or in the same font as the unit price.
- If a business **in that jurisdiction** uses a third-party to facilitate the sale of standard food items, the food business would need to provide the energy information to the third-party.

Should one or more jurisdictions strengthen their legislation, it is possible that cross-border businesses (i.e. businesses with a national head office and national reach, and/or bi-national businesses with outlets in Australia and New Zealand) may choose to voluntarily implement menu labelling in the same manner in all outlets (if would remain compliant with existing legislation in other jurisdictions). This would be a business decision that could not be enforced beyond the jurisdictions that chose to strengthen their legislation. Therefore, it is possible that Option 2 may result in standard food outlets consistently implementing the strengthened menu labelling elements outlined in the amended Principles.

⁵¹ Based on data from the New South Wales Food Authority, which estimated in 2012 (using industry-provided data) that for the industry the start-up cost was \$5.4M (AUD) (\$1,390 per outlet) and the ongoing cost was \$1.9M (AUD) (\$490 per outlet) per annum. Reported in NSW Government. 2012. *Review of Fast-food Labelling Requirements ("Fast Choices")*.

<https://www.parliament.nsw.gov.au/tp/files/8934/Section%20106R%20Review%20of%20Food%20Act%202003.pdf>

The Australian Bureau of Statistics Consumer Price Index Inflation Calculator was used to convert these 2012 costs to 2019.

⁵² Australian Capital Territory, New South Wales, Queensland, South Australia, and Victoria

⁵³ New Zealand, Northern Territory, Tasmania, and Western Australia

However, these cross-border businesses would continue to:

- be required to interpret and analyse legal and policy issues associated with maintaining a jurisdictional legislative approach; and
- to incur the on-going costs associated with re-visiting the implementation of menu labelling legislation in all outlets nationally each time a jurisdiction commenced a policy and legal process to amend its legislation.

These costs and the disruption to a national approach to trading would likely continue as changes may require debate and agreement by each jurisdiction's parliament to adopt into law.

For Option 2, anticipated benefits (compared to the status quo) for Australian and/or New Zealand food industries (if one or more jurisdictions change legislation to exactly mirror the amended Principles) include:

- Businesses would be more likely to be participating in a level playing field **within one or more jurisdictions**, possibly removing the anti-competitive disadvantage experienced by some businesses being exempt from menu labelling.
- Confusion about the definition of supermarkets versus convenience stores **within one or more jurisdictions** would be resolved, as capture by the regulation would be based on outlet number and food sold, not on square meterage of retail floor space.

For Option 2, anticipated costs (compared to the status quo) for Australian and/or New Zealand food industries (if one or more jurisdictions change legislation to exactly mirror the amended Principles) include:

- Businesses **within an Australian jurisdiction that do not already implement menu labelling** would incur estimated start-up costs of \$1,585 (AUD) start-up per outlet; and \$560 (AUD) per annum ongoing costs per outlet.⁵⁴ These costs may include nutritional analysis of menu items (noting lower cost option of using the freely-available FSANZ Nutrition Panel Calculator or higher cost option of laboratory testing); design and production of menus, associated materials and infrastructure (e.g. changes to IT systems); and staff training about menu labelling.
- Australian businesses **that already implement menu labelling** may incur costs for the re-design and production of menus and associated materials and infrastructure; however, these costs may be covered by the \$560 (AUD) per annum ongoing costs per outlet, already incurred under Option 1.
- As New Zealand does not have menu labelling regulation, the compliance costs for New Zealand businesses are yet to be determined but are assumed to be like Australian businesses that are required to introduce menu labelling.
- Some Australian businesses may lose some competitive advantage or a point-of-difference **within one or more jurisdictions** by no longer being exempt from menu labelling.
- Incurred costs may negatively impact the sustainability of businesses that are not already required to implement menu labelling.

Consultation question 16: Would your business incur higher implementation costs if legislative changes were not timely and uniform across all jurisdictions? If so, please describe.

5.3.2 Impacts on Australian and New Zealand Consumers

The potential impacts on consumers is dependent on jurisdictions amending existing legislation. Under Option 2, for consumers living in jurisdictions that chose to implement menu labelling,

⁵⁴ As per the status quo costs outlined in section 5.2.

they would have accessible, clear, legible, easy-to-read, easy-to-interpret and easy-to-compare energy information for food and drinks at the point-of-sale for all larger businesses selling standard food items.

For Option 2, anticipated benefits (compared to the status quo) for consumers (if one or more jurisdictions change legislation to exactly mirror the amended Principles) include:

- More consumers **within one or more jurisdictions** would have access to energy information at the point-of-sale in more businesses that sell standard food items; and energy information for more food and drinks.
- Easier comparison of menu choices within a business, and across different businesses on third-party food delivery platforms operating **within one or more jurisdictions**.
- Greater equity among consumers **within one or more jurisdictions** as information would be available at standard food outlets regardless of which business standard food items are purchased.
- More opportunities to use menu labelling to make healthier eating decisions could contribute to more individuals reducing their daily energy intake and body weight, thus reducing the risk of obesity and other chronic diseases. (Noting healthcare cost savings would be less than as described in section 5.3.2 above, as would only see savings at a jurisdictional level.)

For Option 2, anticipated costs (compared to the status quo) for consumers (if one or more jurisdictions change legislation to exactly mirror the amended Principles) include:

- Additional information on menus and at the point-of-sale may reduce usability for some consumers **within one or more jurisdictions**.
- Difficulty in calculating the energy content for customised menu items (where the energy information is not provided for the final item) for consumers **within a jurisdiction** (noting that under the status quo, this could already be a cost for consumers in the five jurisdictions with menu labelling legislation).
- Consumers in **New Zealand, Northern Territory, Tasmania, and Western Australia** (which do not implement menu labelling under the status quo) may not be able to make informed purchasing decisions if energy information is not displayed at the point-of-sale.
- Emotional cost (e.g. guilt/anxiety) for those individuals who want to avoid knowing the energy content of menu choices, and/or those who want to avoid eating high kilojoule menu choices, but purchase, nonetheless.

5.3.3 Benefits and risks associated with implementation mechanism

If all nine Australian jurisdictions and New Zealand changed their legislation to align exactly with the amended Principles, this mechanism is likely to prevent the proliferation of different menu labelling systems. Similarly, a more level playing field with respect to menu labelling could be created by Option 2 if five jurisdictions removed the existing exemptions identically.

However, this harmonisation of implementation between jurisdictions has not been possible since the Principles were endorsed by Food Ministers in 2011 as most jurisdictions have implemented systems that deviate from the 2011 Principles to some degree. There is a likelihood that future jurisdictional legislative setting processes would result in deviations from the amended Principles. No guarantees can be offered that jurisdictions could implement modified or new legislation that identically mirrors the amended Principles.

Additionally, there is a risk that the current inconsistencies will remain, and additional inconsistencies may emerge if jurisdictional action does not occur in a timely (within 1-2 years) and uniform manner. A jurisdiction's ability to amend their legislation is dependent on their work plan, competing priorities, complexity of the issues and parliamentary debate. Since the 2011 Principles were created, only five jurisdictions have implemented menu labelling legislation, with the most recent scheme becoming effective seven years after the 2011 Principles were developed.

Should one or more jurisdictions strengthen their legislation, it is possible that cross-border businesses (i.e. businesses with a national head office and national reach) may choose to voluntarily implement menu labelling in the same manner nationally (if would remain compliant with existing legislation in other jurisdictions). This would be a business decision that could not be enforced beyond the jurisdictions that chose to strengthen their legislation. Therefore, it is possible that Option 2 may result in standard food outlets consistently implementing the strengthened menu labelling elements outlined in the amended Principles.

5.4 Option 3

5.4.1 Impacts on Australian and New Zealand Food Industries

The potential impact on businesses is dependent on FSANZ developing a food regulatory measure that exactly aligns with the intent of the proposed Policy Guideline; and then on all jurisdictions repealing their menu labelling legislation. FSANZ would need to determine the number of businesses that would be required to implement menu labelling in Australia and New Zealand.

On the basis that a food regulatory measure under the Food Standards Code aligns with the proposed Policy Guideline, compared to the status quo, the changes for all affected businesses in Australia and New Zealand from Option 3 would include:

- All businesses in Australia and New Zealand that meet the proposed definition of a standard food outlet⁵⁵ would be required to implement the same menu labelling requirements.
- All standard food outlets in Australia and New Zealand would need to (in the same manner):
 - display the energy information of all available standard food items on all menus and at all physical and electronic points-of-sale;
 - display the energy information for combination meals including any pre-packaged items with the combination;
 - display the energy information for multi-serve items as the whole item and per serving; and
 - ensure that customers have access to the energy information for standardised single ingredients and customisable menu items.
- Supermarkets in Australia and New Zealand would be required to display kilojoules for each standard food in the same font and font size as price (i.e. no flexibility to display kilojoules per 100 grams or in the same font/font size as the unit price, as currently permitted in Australia).
- All smaller businesses that voluntarily choose to implement menu labelling would need to comply with any menu labelling regulation developed.

⁵⁵ Standard food outlet: a food business that sells standard food items at 50 or more outlets in Australia, or 20 or more outlets in an Australian State or 7 or more in an Australian Territory. (Note: the threshold for New Zealand is to be determined). Food businesses include those owned/operated under franchise arrangements; outlets operated under the same trading name; and outlets owned by the one parent company/central owner/corporation.

- If a business uses a third-party to facilitate the sale of standard food items, the food business would need to provide the energy information to the third-party.

For Option 3, anticipated benefits (compared to the status quo) for Australian and New Zealand food industries include:

- A potential cost saving for **Australian businesses** created by a single regulatory mechanism (in lieu of multiple jurisdictional schemes and the need to review menu labelling implementation each time a new scheme is introduced).⁵⁶
- All businesses selling standard food items would have assurance that
 - **all Australian and New Zealand jurisdictions** have consistent requirements, a consistent approach to compliance, consistent interpretation of legislative provisions and clear expectations for menu labelling;
 - under the *FSANZ Act 1991* there are legislated processes (e.g. public consultation, application to FSANZ) to review and change the regulatory measure in the future.
- **Australian businesses** would be more likely to be participating in a level playing field, removing the anti-competitive disadvantage experienced by some businesses being exempt from menu labelling.
- Confusion about the definition of supermarkets versus convenience stores in **Australia** for menu labelling schemes would be resolved, as capture by the regulation would be based on outlet number and food sold, not on square meterage of retail floor space.

For Option 3, anticipated costs (compared to the status quo) for Australian and New Zealand food industries include:

- Australian businesses **that do not already implement menu labelling** would incur estimated start-up costs of \$1,585 (AUD) start-up per outlet; and \$560 (AUD) per annum ongoing costs per outlet.⁵⁷ These costs may include nutritional analysis of menu items (noting lower cost option of using the freely-available FSANZ Nutrition Panel Calculator or higher cost option of laboratory testing); design and production of menus, associated materials and infrastructure (e.g. changes to IT systems); and staff training about menu labelling.
- Australian businesses **that already implement menu labelling** may incur costs for the re-design and production of menus and associated materials and infrastructure; however, these costs may be covered by the \$560 (AUD) per annum ongoing costs per outlet, already incurred under Option 1.
- As New Zealand does not have menu labelling regulation, the compliance costs for **New Zealand businesses** are yet to be determined but are assumed to be like Australian businesses also required to introduce menu labelling.
- Some **Australian businesses** may lose some competitive advantage or a point-of-difference by no longer being exempt from menu labelling.
- Incurred costs may negatively impact the sustainability of businesses that are not already required to implement menu labelling.

5.4.2 Impacts on Australian and New Zealand Consumers

Compared to the status quo, under Option 3 all Australian and New Zealand consumers would have accessible, clear, legible, easy-to-read, easy-to-interpret and easy-to-compare energy

⁵⁶ Most cross-border businesses indicated in 2012 that it was more cost effective to produce menus nationally, rather than different menus for each jurisdiction.

⁵⁷ As per the status quo costs outlined in section 5.2.

information for food and drinks at the point-of-sale for all larger businesses selling standard food items.

For Option 3, anticipated benefits (compared to the status quo) for consumers include:

- More consumers in **Australia and New Zealand** would have access to energy information at the point-of-sale in more businesses that sell standard food items; and access to energy information for more food and drinks.
- Easier comparison of menu choices within a business, and across different businesses on third-party food delivery platforms.
- Greater equity among **Australian and New Zealand** consumers as information would be available at standard food outlets regardless of which business standard food items are purchased.
- More opportunities to use menu labelling to make healthier eating decisions could contribute to more **Australian and New Zealand** consumers reducing their daily energy intake and body weight, thus reducing the risk of obesity and other chronic diseases.⁵⁸

For Option 3, anticipated costs (compared to the status quo) for consumers include:

- Some **Australian and New Zealand consumers** may find that the additional information on menus and at the point-of-sale reduces usability.
- Difficulty in calculating the energy content for customised menu items (where the energy information is not provided for the final item) for **some Australian and New Zealand consumers** (noting that under the status quo, this could already be a cost for consumers in the five jurisdictions with menu labelling legislation).
- Emotional cost (e.g. guilt/anxiety) for those individuals who want to avoid knowing the energy content of menu choices, and/or those who want to avoid eating high kilojoule menu choices, but purchase, nonetheless.

5.4.3 Benefits and risks associated with implementation mechanism

The mechanism of a food regulatory measure under the Food Standards Code has the benefits of generating a uniform set of menu labelling requirements and having applicability in all Australian states and territories and New Zealand, through automatic adoption in jurisdictional legislation (i.e. Food Acts). Therefore, Option 3 would prevent the proliferation of different menu labelling systems as it would result in one consistent system for Australia and New Zealand.

As a mandatory option, Option 3 could create a level playing field for all businesses across Australia and New Zealand that sell standard food items. Option 3 could also support people to make healthier choices as it would ensure that more consumers are able to access energy information at more places where standard food items are sold. The policy principles for achieving these elements are outlined in the proposed Policy Guideline. As outlined in the *FSANZ Act 1991*, FSANZ must have due regard to policy guidelines in developing food regulatory measures.

However, FSANZ is also legislated to undertake an assessment process, including stakeholder consultation, in developing a food regulatory measure. Additionally, the draft food regulatory

⁵⁸ Noting that the impacts of the menu labelling in New South Wales indicated an average reduction in daily energy intake of 25kJ; with further modelling finding that this energy reduction could result in an average body weight loss of 0.2kg in a year, leading to a potential \$672 million (AUD) saving in healthcare costs over the lifetime of the Australian population. As reported in: Mantilla-Herrera et al. *Menu kilojoule labelling on fast food* in Ananthapavan et al. 2018. *Assessing cost-effectiveness of obesity prevention policies in Australia 2018*. Melbourne: Deakin University.
<http://www.aceobesitypolicy.com.au/>

measure will require FSANZ Board approval. Therefore, there is a risk that any food regulatory measure for menu labelling will not match all elements of the proposed Policy Guideline and some of the progress made by jurisdictional legislation could be lost. This risk can be reduced as the Food Ministers can ask FSANZ to review a food regulatory measure if it does not align with a Ministerial Policy Guideline.

Should the FSANZ development of a food regulatory measure process deviate from the proposed Policy Guideline, the regulatory requirements will be still be carried uniformly across all jurisdictions at the same time, creating nationally consistent requirements for menu labelling as an outcome.

While the process of developing food regulatory measures can take approximately 12-18 months, this is dependent on FSANZ's work plan, competing priorities and the complexity of the issues. With FRSC undertaking this Consultation RIS and subsequent Decision RIS, there may be a reduction in the amount of work that FSANZ would need to complete. However, there remains a risk that developing a food regulatory measure for menu labelling could take considerably longer than 12-18 months.

Five Australian jurisdictions would be expected to repeal menu labelling legislation once a food regulatory measure was in place to ensure there was only one system. Repealing the legislation is expected to be a less resource-intensive process and of shorter duration, compared to changing legislation to align with the amended principles (Option 2).

5.5 Option 4

5.5.1 Impacts on Australian and New Zealand Food Industries

The potential impact of Option 4 on businesses is dependent on whether businesses voluntarily implement any of the recommended enhancements to menu labelling.

Compared to the status quo, the recommended enhancements to menu labelling include:

- Displaying the energy information for:
 - all available standard food items on all menus and at all physical and electronic points-of-sale;
 - combination meals including any pre-packaged items with the combination; and
 - multi-serve items as the whole item and per serving.
- Ensuring that customers have access to the energy information for standardised single ingredients and customisable menu items.
- Supermarkets displaying the energy information as per whole item and in the same font as the largest size of the price.
- Providing the energy information to any third-party used to facilitate the sale of standard food items.
- Voluntarily implementing menu labelling if currently exempt in one or more jurisdiction.

For Option 4, an anticipated benefit (compared to the status quo) for Australian and/or New Zealand food industries includes autonomy/ownership for decision to implement enhancements to menu labelling (compared to being regulated). An anticipated cost of Option 4 (compared to the status quo) for Australian and/or New Zealand food industries includes that some businesses may incur costs for the re-design and production of menus and associated materials and for nutritional analysis.

5.5.2 Impacts on Australian and New Zealand Consumers

The potential impact on consumers is dependent on whether businesses voluntarily implement any of the recommended enhancements to menu labelling.

For Option 4, anticipated benefits (compared to the status quo) for consumers include:

- **New Zealand consumers** may have access to energy information at the point-of-sale.
- **Australian consumers** may have access to energy information at the point-of-sale in more businesses that sell standard food items; and access to energy information for more food and drinks.

For Option 4, an anticipated cost (compared to the status quo) for consumers includes increased confusion about energy information if any enhancements are implemented inconsistently.

5.5.3 Benefits and risks associated with implementation mechanism

Businesses voluntarily implementing the menu labelling enhancements could support their customers to make healthier choices. However, as a voluntary mechanism, it is uncertain that businesses would provide consumers with enough information to allow them to make healthier choices at the point-of-sale.

Option 4 lacks the mandatory onus of a regulatory arrangement. As a voluntary mechanism, there are risks such as:

- less adoption and longer to adopt the enhancements to the menu labelling system by industry participants compared to what can be achieved under a regulatory arrangement;
- the current inconsistencies remaining, and additional inconsistencies emerging depending on how businesses implement any enhancements, leading to proliferation of different menu labelling system;
- no creation of a level playing field for businesses selling standard food items;
- some businesses implementing an amended arrangement that favours labelling for less energy-dense products, rather than all menu items, leading to reduced transparency of information about standard food items communicated to consumers.

Without a bi-national, or state and territory-based regulatory framework, there is not an existing well-resourced, co-ordinated approach to work with industry and encourage businesses to implement enhancements to menu labelling. There is unlikely to be implementation support from government.

5.6 Complementary strategies

Consumer education is required to maximise the effectiveness of menu labelling in supporting consumer choice. Providing consumers with a tool (i.e. menu labelling) and the means to understand how to use that tool to make healthier food choice can help in addressing the health system impacts and costs noted above.

5.6.1 Impacts on Australian and New Zealand Food Industries

An anticipated benefit (compared to the status quo) of consumer education for food industries is that businesses may experience changes in consumer demand and therefore revenue growth if sales of healthier choices rise because of education. Conversely, an anticipated cost (compared to the status quo) of consumer education for food industries is that businesses may experience reduced revenue if consumers' purchasing patterns change because of education.

5.6.2 Impacts on Australian and New Zealand Consumers

Anticipated benefits (compared to the status quo) of consumer education for consumers include:

- Consumers may have an improved understanding of kilojoules and the 8700kJ average daily intake; greater opportunities to learn how many kilojoules they require; a greater awareness of healthier ready-to-eat food choices; and support to make healthier food purchasing decisions.
- Consumers may have a better awareness of menu labelling; and an improved understanding how to interpret and use energy information to make healthier food choices.

No costs of consumer education for consumers have been anticipated.

Consultation question 17: Are the benefits and costs associated with the four proposed options and the complementary strategies accurate and are there any other benefits, costs or unintended consequences which have not been identified above? If so, please describe?

An assessment of which option has the greatest net benefit will be undertaken following consideration of stakeholder submissions received to this paper.

5.7 Estimated compliance costs and number of affected businesses

This consultation paper presents the estimated change in compliance costs (compared to the status quo) for each option in Table 4 below. As the total number of businesses and outlets that would be affected by Options 2 to 4 is not known, the change in compliance cost has been presented as cost per standard food outlet. FRSC seeks views from industry on the estimated start-up and ongoing maintenance costs for menu labelling, and the number of potentially affected businesses.

The following assumptions underpin the cost estimations in Table 4:

- Based on previously reported industry data⁵⁹, it is estimated that the status quo (Option 1) on average costs an Australian standard food outlet \$1,585 (AUD) in start-up costs and a further \$560 per annum in maintenance costs. These compliance costs may cover menu design and printing, nutritional analysis, staff training, professional services for external marketing and legal counsel, and record keeping.
- Over a 10-year period, these start-up and annual maintenance costs average out to \$705 (AUD) per year (converted to \$740 (NZD)). A two per cent annual inflation rate was applied to the annual maintenance costs in years two to 10.
- For Australian businesses already required to implement menu labelling, compliance costs do not include the \$1,585 in start-up costs as these have already been incurred (therefore, average \$602 (AUD) per year over 10 years). Any costs associated with re-designing and reproducing menus and making changes to point-of-sale infrastructure would be covered by the annual maintenance costs.
- When there is a nationally consistent system in place (Option 3), there is an estimated 20 per cent reduction in compliance costs for Australian businesses. This equates to a cost saving of \$120 per outlet for Australian businesses with menu labelling, or a cost saving of

⁵⁹ Based on data from the New South Wales Food Authority, which estimated in 2012 (using industry-provided data) that for the industry the start-up cost was \$5.4M (AUD) (\$1,390 per outlet) and the ongoing cost was \$1.9M (AUD) (\$490 per outlet) per annum. Reported in NSW Government. 2012. *Review of Fast-food Labelling Requirements ("Fast Choices")*. <https://www.parliament.nsw.gov.au/tp/files/8934/Section%20106R%20Review%20of%20Food%20Act%202003.pdf>

\$141 (and therefore, a cost of \$564) for Australian businesses without menu labelling currently in place.

- Start-up and maintenance costs will be similar in New Zealand to those in Australia.
- Start-up and maintenance costs will be the same across business types and individual businesses.
- Costs for Option 2 are conditional on Australian jurisdictions and New Zealand changing or introducing menu labelling.
- Costs for Option 4 are conditional on Australian and/or New Zealand businesses voluntarily implementing enhancements to menu labelling. While businesses required to implement menu labelling under the status quo are more likely to implement the enhancements, than those businesses not required to implement menu labelling, a cost of voluntarily implementing the menu enhancements has been estimated for all businesses.
- Industry peak bodies have been considered a community organisation for the purposes of calculating the regulatory burden estimate. In the absence of government implementation support for implementing menu labelling enhancements under Option 4, industry peak bodies may need to provide implementation support to businesses. This has been estimated as an average one hour of support per outlet at a cost of \$50 per hour.

Table 4: Estimated change in annual compliance costs

Option	Australian Businesses with Menu Labelling *	Australian Businesses without Menu Labelling *	New Zealand Businesses *	Community Organisations	Individuals	Total Change (Average Per Outlet)
Option 1	\$602 (AUD)	\$0	\$0	\$0	\$0	n/a
Option 2 <i>Change in costs from status quo</i>	\$0	\$705 (AUD)	\$740 (NZD)	\$0	\$0	\$705 (AUD) / \$740 (NZD)
Option 3 <i>Change in costs from status quo</i>	-\$120 (AUD)	\$564 (AUD)	\$740 (NZD)	\$0	\$0	-\$120 to 564 (AUD) / \$740 (NZD)
Option 4 <i>Change in costs from status quo</i>	\$0 (AUD)	\$705 (AUD)	\$740 (NZD)	\$50 per outlet (AUD)	\$0	\$755 (AUD) / \$790 (NZD)

* Per standard food outlet

Consultation question 18: Are the average annual compliance costs representative of the costs incurred/likely to be incurred by your business? Please provide your reasons.

Consultation question 19: If the regulatory costs outlined above do not represent the costs incurred / likely to be incurred by your business, what are / would be the costs per year to comply with the proposed changes to menu labelling regulation?

Please indicate if costs are for initial implementation or for ongoing maintenance, the type of costs (e.g. administrative, menu design and printing, nutritional analysis) and which jurisdiction/s your business operates in. For businesses already implementing menu labelling, please only provide the additional costs associated with implementing the proposed changes to the regulation. Please only provide the cost of providing energy information, and do not include business-as-usual costs that would be incurred in the absence of menu labelling regulation.

As of June 2020, approximately 75 chain businesses (more than 13,750 outlets) are already required to comply with menu labelling in one or more Australian jurisdictions. As the food industry is a dynamic one and subject to changing consumer demands and economic climate, the number of businesses and outlets that may be required to implement menu labelling would be expected to change over time. The number of Australian and New Zealand businesses that may be affected by Options 2, 3 or 4 is uncertain at this time.

Consultation question 20: Would your **Australian** business be likely to meet the proposed definition of a standard food outlet⁶⁰? If so, how many outlets do you have in each jurisdiction? If not, is the reason because you do not sell standard food items, do not meet the business size threshold, or do not operate as a chain?

Note: For New Zealand businesses, this information is sought at Question 2.

6 Consultation

A summary of the findings from this consultation paper will be presented in the Decision RIS.

7 Preferred Option

Submissions received in response to this Consultation RIS will be used to prepare the Decision RIS which will recommend a preferred option to the Forum. The option recommended to the Forum will be the one likely to have the highest estimated net benefit. Consideration will be given to how effectively it rectifies the policy problem, achieves the objectives, feasibility, and associated implementation costs. A primary factor in determining the highest net benefit is the change in the number of outlets/businesses and consumers affected, rather than a reliance on the cost per outlet/business estimates. Depending on the volume and complexity of submissions received, it is expected that the Decision RIS will be presented to the Forum in late 2021.

Consultation question 21: What is your preferred option and why?

Consultation question 22: If Option 4 is your preferred option, how do you see it being implemented and operationalised?

8 Implementation and review

Implementation and other technical issues will be considered by the appropriate entities following the Forum's decision. Any information related to implementation or technical issues identified by stakeholders will be collated and provided as appropriate.

Monitoring and evaluation were identified by Australian stakeholders as important components of menu labelling regulation. Both the proposed Policy Guideline (Option 3) and the Amended Principles (Option 2) recommend a coordinated, collaborative, bi-national evaluation approach to ensure consistency and maximum limited government resources. Possible indicators to include in an evaluation include the level of and cost of business compliance; impacts on consumer knowledge, understanding, food purchasing behaviours and food consumption; and changes in nutritional profile of available food and drinks.

⁶⁰ Standard food outlet: a food business that sells standard food items at 50 or more outlets in Australia, or 20 or more outlets in an Australian State or 7 or more in an Australian Territory. (Note: the threshold for New Zealand is to be determined). Food businesses include those owned/operated under franchise arrangements; outlets operated under the same trading name; and outlets owned by the one parent company/central owner/corporation.

Appendix 1: Consideration of stakeholder views in option development

During 2018, two rounds of consultation with Australian food industry, public health organisations and consumer representatives were undertaken. New Zealand stakeholders were not consulted as menu labelling had not been mandated.

During the first round of consultation in February and March 2018, stakeholders were consulted about the issues with menu labelling schemes; specifically, inconsistencies between jurisdictions' menu labelling legislation; emerging trends in the food industry sector; and difficulties faced by consumers in using energy information. There were two industry-specific roundtables to which 16 organisations attended from the 83 Australian-based organisations invited. Additionally, a consultation paper⁶¹ was released on the Food Regulation website (www.foodregulation.gov.au) for a six-week period. Written submissions were received from 13 public health organisations, 10 industry representatives (including one from New Zealand), four Australian State and Territory governments, and one consumer organisation. A summary of the consultation outcomes from this first round is available online.⁶²

A second round of consultation was held between October and December 2018 to work with stakeholders on possible solutions for five key issues: legibility; business coverage and equity; electronic menus; combination meals; multiple serve items. This involved two co-design roundtables attended by representatives from 14 industry groups and four public health organisations (55 organisations were invited). Subsequently, three time-limited working groups were established with a total of 21 members from across 11 industry groups and four public health organisations.

The outcomes from these previous rounds of consultation shaped the options described in this consultation paper. How these stakeholder views have been considered and incorporated in these options is described below.

Consultation Outcomes	How Outcomes Considered by Options
Round 1: Addressing the inconsistencies between jurisdictions and achieving national consistency was a recurring theme throughout submissions and across the key issues canvassed. Reviewing the principles was a recommended approach where an approach was discussed.	This feedback was noted and has shaped the decision to continue working on achieving consistent menu labelling schemes. Options 2 and 3 are the result of reviewing the Principles.
Round 1: There was support among industry, public health, and government stakeholders that menu labelling be based on the type of food sold, not the type of business that sells it. These stakeholders supported the removal of exemptions for cinemas, convenience stores, service stations, dine-in restaurants, and mobile vendors. Round 2: Standard food outlets should include convenience stores and cinemas.	Options 2 and 3 include a change to the definition of a standard food outlet and the inclusion of the policy principle focused on business equity across standard food outlets. This results in menu labelling being food-based rather than business-based.
Round 1: There was a dissenting position from three industry stakeholders currently exempt from menu labelling, that the scope should not be broadened to capture convenience stores, restaurants, and cafés.	This feedback was noted; however, there was significant support for nationally consistent treatment of all food businesses that meet the definition of a standard food outlet. The intent of Options 2 and 3 is that convenience stores,

⁶¹ Food Regulation Standing Committee. 2018. *Consultation Paper: Review of fast food menu labelling schemes*. Available at: <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/review-fast-food-menu-labelling-schemes>

⁶² Food Regulation Standing Committee. 2018. *Consultation Summary Report: Review of fast food menu labelling schemes*. Available at: <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/review-fast-food-menu-labelling-schemes>

Consultation Outcomes

How Outcomes Considered by Options

	restaurants and cafes are captured if meet the definition of a standard food outlet.
Round 1: Maintaining the national threshold of 50 or more outlets had overall support.	Options 2 and 3 specifies that a food business is a standard food outlet if meeting the Australian threshold of 50 or more outlets.
Round 1: Lowering the threshold to 10 outlets within a state or territory was a commonly suggested approach to extending the reach of menu labelling. Round 2: Jurisdictions are encouraged to assess the appropriate state level threshold for outlet numbers; support businesses to comply as they approach the threshold; and ensure new businesses are given a transition period.	This feedback was noted. In developing Options 2 and 3, jurisdictions considered appropriate thresholds. It was determined that the Australian State threshold of 20 or more outlets, or the Australian Territory threshold of 7 or more outlets, be maintained. Support for businesses and transition period would be part of the implementation phase.
Round 1: There was acknowledgment from industry that whilst larger businesses may have greater capacity to absorb the costs of implementing regulation, they should not be disadvantaged and constrained by regulation.	Options 2 and 3 include the principle that “Menu labelling should promote equity for regulatory requirements across standard food outlets”.
Round 1: There was a request from industry to consider the realities of franchise/group business models in that many are operated as small businesses despite being part of a chain.	This finding was noted. Any additional support for businesses to implement menu labelling would be considered during the implementation phase.
Round 1: There was a consistent call for national consistency in prescribing voluntary display requirements.	Options 2 and 3 include the principle: “Enable other businesses to voluntarily display energy information in a manner consistent with the requirements for standard food outlets”.
Round 1: Public health organisations called for tighter regulation to ensure energy information is legible, while industry called for less prescriptive legibility requirements. Industry agreed legibility is important, but regulations should not stifle creativity in menu board design. There was industry support for a co-creation approach to ensure the intent is met but some flexibility is built in. Round 2: a set of legibility principles and a style guide outlining how the principles could be achieved for different forms of menu labelling.	The round 1 feedback was further considered by the Legibility Working Group (round two consultation). Options 2 and 3 include the principle: “Menu labelling should facilitate the utility of energy information by consumers, by ensuring that energy information is available, clear, legible, and easy-to-read and interpret at-a-glance”. Achieving this policy principle would be considered during the development of a food regulatory measure. It is intended that the outcomes from the legibility working group and all consultation outcomes would be provided to FSANZ or governments.
Round 1: most stakeholders recognised the importance of customer access to energy information for customised menu items but noted it is only possible using an IT solution which is currently not widely in use (due to cost). Thus, industry stakeholders believed this information should be provided online; public health and government stakeholders wanted to see this information at the point-of-sale (i.e. In-store and online).	Options 2 and 3 include the principle: “Menu labelling should enable consumers to access energy information for menu items that can be customised with standardised ingredients”. The decision about whether energy information for customised menu items and/or standardised ingredients is displayed at all points of sale, or only online would be made during the development of any food regulatory measure.
Round 1: there was consistent support for rolling menu boards to comply with menu labelling requirements, with adoption of Queensland’s simultaneous display provisions proposed by public health organisations as one way to address this. Round 2: for online menus and digital panel menus: kilojoules should be displayed with an item whenever it is displayed on a menu; kilojoules should be easy to compare at the point of sale; and businesses should be encouraged to enable comparison (e.g. Across categories, between	Options 2 and 3 include the principle: “Menu labelling should provide consumers of the energy content of all standard food items, combination meals and multi-serve items shown on menus and at points-of-sale; and for dietary context, provide the average daily energy intake at the point-of-sale”. The definition of menu was expanded to specify digital menu panels, business websites and mobile applications; and a new definition of point-of-sale has been developed which includes all places where customers order and purchase ready-to-eat food.

Consultation Outcomes

How Outcomes Considered by Options

categories, sizes) through user guides with examples and options of how to compare items.

Round 1: public health, industry and government stakeholders supported energy information on third-party ordering platforms. The two approaches identified to achieve this were requiring chain businesses to provide the information to third-party delivery services, or alternatively capturing third-party delivery services in legislation. I.e. The responsibilities of the third-party agent need clarification.

Round 2: the obligation of third-party platforms should only be to provide the capability to display the kilojoules and to not impede display of kilojoules; and the food business should be obligated to provide energy information to the third-party.

Round 1: Most stakeholders recommended that energy information for combination meals should include all components, including pre-packaged products, with an emphasis in submissions on drinks. Clarity on which pre-packaged product should be the default for calculating total kilojoules was still lacking following the consultation.

Round 2: Pre-packaged drinks to be included in the kilojoules displayed for combination meals. The default drink used to calculate the total kilojoules for the combination meal is the drink with the highest kilojoule content.

Round 1: Overall, industry submissions did not support additional and interpretative information as a part of menu labelling schemes; with specific mention that the health star rating (HSR) system is not appropriate for fast food. In contrast, many public health organisations called for the adaptation of HSR for fast food.

Round 1: Education to help consumers understand and use kilojoules to make healthier choices, which is government-funded, nationally consistent, multi-phased, and sustained, was called for by some industry stakeholders and public health organisations.

Round 1: Kilojoule display per 100 grams was noted to be confusing and not consistent with policy intent. A preference for all standard food outlets (including supermarkets) to display kilojoules 'per serve' was strongly indicated in submissions.

Round 1: Monitoring, enforcement and evaluation were all seen as important components of menu labelling schemes.

Options 2 and 3 include the principle: "Menu labelling should provide consumers of the energy content of all standard food items, combination meals and multi-serve items shown on menus and at points-of-sale; and for dietary context, provide the average daily energy intake at the point-of-sale". The definition of menu was expanded to specify third-party food delivery platforms; and a new definition of point-of-sale has been developed which includes all electronic sales points where customers order and purchase ready-to-eat food.

The intent of the policy guidance is that regulatory requirements apply to standard food outlets, which are defined as food businesses selling standard food items at 50 or more outlets in Australia, or 20 or more outlets in an Australian State, or 7 or more outlets in an Australian Territory. Third-party food delivery platforms do not meet this definition and therefore it would be the responsibility of standard food outlets to provide the appropriate information to the third-party for display on its platform.

A definition of combination meals has been included in Options 2 and 3. The intent of the policy guidance is that the energy content displayed for combination meals includes all components of the meal, including pre-packaged drinks and other pre-packaged items.

The policy guidance does not include the specific technical requirements which would need to be considered as part of the development of any food regulatory measure. In developing a regulatory measure, options for the default drink or other pre-packaged product would need to be considered.

This feedback was noted, and while Options 2 and 3 include principles that menu labelling should enable comparisons between menu items and that energy information should be able to be interpreted at a glance, consideration of how these principles are reflected in a regulatory measure would be undertaken.

Stakeholder views shaped the complementary consumer education strategy. Any additional information and views provided by stakeholders in this round of consultation will be used to further develop a consumer education strategy.

Options 2 and 3 include a definition of energy information, being the "average energy content of standard food items (expressed as kilojoules per item)". This coupled with the principle that menu labelling should promote equity for regulatory requirements across standard food businesses, addresses the concern about inconsistency in kilojoule display.

This feedback has been noted and depending on the preferred option would be considered in the implementation phase.

Consultation Outcomes	How Outcomes Considered by Options
Round 1: Future legislation needs to be clear and simple as it is viewed by some as currently being overly complex.	This feedback has been noted and depending on the preferred option would be considered in the implementation phase.
Round 2: Standard food items should display kilojoules when a customer can make a purchase from the online catalogue. A transition period may be required to allow businesses to enhance it systems' capability to display energy information.	Options 2 and 3 include the principle: "Menu labelling should provide consumers of the energy content of all standard food items, combination meals and multi-serve items shown on menus and at points-of-sale; and for dietary context, provide the average daily energy intake at the point-of-sale". Additionally, the definition of menu was expanded to specify online catalogues. Transition periods would be considered in the development of any regulatory measure.
Round 2: Businesses can elect to display kilojoules for multiple serve items either for the whole item (as required in the current legislation) or per serving, allowing for different labelling options. Regardless of whether businesses chose to display kilojoules per serving or per whole item, they must ensure consumers are able to access information on the kilojoules per serving at the point of purchase, either online or instore. A national resource providing guidance on recommended serving sizes for various item types (e.g. Pull-apart) and sizes (e.g. 500g, 750g) be made available to businesses.	Options 2 and 3 include principles that menu labelling should provide consumers with the energy content of all multi-serve items and enable consumers to make comparisons between standard food items. These principles provide for the energy content to be displayed for the whole item, as well as per serving to enable comparison with single serve standard food items. Any resource development would be part of the implementation phase, noting that there is a Healthy Food Partnership working group tasked with developing an industry best practice guide to support businesses to consider nutrition as a key driver of labelling decisions regarding the size of servings and the size of food and drinks offered.

Appendix 2: Summary of evidence for the effectiveness of menu labelling

The below table outlines a selection of systematic reviews and meta-analyses on menu labelling since 2015. Individual studies are not included.

Meta-Analysis or Systematic Review	Studies	Results / Conclusions
Bleich et al. 2017. A systematic review of calorie labeling and modified calorie labeling interventions: impact on consumer and restaurant behavior. <i>Obesity</i> , 25(12), 2018-2044.	53 studies – 27 in restaurants / cafeterias and 21 in experimental settings	<ul style="list-style-type: none"> Limited evidence that menu labelling affects calories purchased at fast-food restaurants. Some evidence demonstrates that menu labelling lowers calories purchased at certain types of restaurants and in cafeteria settings.
Cantu-jungles et al. 2017. A meta-analysis to determine the impact of restaurant menu labeling on calories and nutrients (ordered or consumed) in U.S. adults. <i>Nutrients</i> , 9(10), 1088.	14 studies – USA; 9 in real-world settings, 5 in experimental settings	<ul style="list-style-type: none"> Menu labelling in away-from-home settings did not result in a change in quantity or quality of calories ordered or consumed among U.S. adults. In experimental settings, there was a decrease of 115 calories (460kJ). Did not consider the effect that displaying energy requirements as well as energy content of menu items would have on ordering or consumption.
Crockett et al. 2018. Nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption. <i>Cochrane Database of Systematic</i>	28 studies – 21 in USA; 19 in university settings; 3 in restaurants /	<ul style="list-style-type: none"> Nutritional labelling on menus could reduce kilojoules purchased by eight per cent in restaurants (based on three low-quality randomised-control trials).

Meta-Analysis or Systematic Review	Studies	Results / Conclusions
<i>Reviews</i> , issue 2. Art. No.: cd009315.	cafeterias / coffee shops.	<ul style="list-style-type: none"> • Nutritional labelling on menus did not unintentionally increase the amount of energy purchased or consumed. • Nutrition labelling on restaurant menus could form part of a suite of measures to address obesity, with further monitoring and research required in real-world settings.
Fernandes et al. 2016. Influence of menu labeling on food choices in real-life settings: a systematic review. <i>Nutrition Reviews</i> , 74(8), 534-548.	38 studies – 32 in USA, 6 in UK and EU	<ul style="list-style-type: none"> • Analysis suggested that the effect of menu labelling was mixed. • Menu labelling was more effective in cafeteria settings than in fast food and dine-in restaurants. • Qualitative information, such as healthy food symbols and traffic-light labelling, was most effective in promoting healthy eating. • Calorie labelling in menus is not effective to promote healthier food choices.
Littlewood et al. 2015. Menu labelling is effective in reducing energy ordered and consumed: a systematic review and meta-analysis of recent studies. <i>Public Health Nutrition</i> , 19(12), 2106-2121.	15 studies – 2 in Australia; 13 in USA / Canada; 7 in real-world settings, 8 in experimental settings. 12 of 15 used for meta-analysis.	<ul style="list-style-type: none"> • Overall estimated effect of menu labelling – energy consumed was reduced by an average of 420kJ. • In real-world settings, an average 325 fewer kilojoules were ordered per sale for that eating occasion. • Menu labelling can effectively reduce energy ordered and consumed in the away-from-home food environment.
Sarink et al. 2016. The impact of menu labelling across socioeconomic groups: a systematic review. <i>Appetite</i> , 99, 59-75.	14 studies (18 papers) – 10 in real-world settings in USA, 4 in experimental settings	<ul style="list-style-type: none"> • Current evidence of impact of menu labelling within or across socioeconomic position is limited.
Zlatevska et al. 2017. Mandatory calorie disclosure: a comprehensive analysis of its effect on consumers and retailers. <i>Journal of Retailing</i> , 94(1), 89-101.	186 studies in meta-analysis of effect on calories selected by consumers 41 studies in meta-analysis of effect on calories offered by retailers	<ul style="list-style-type: none"> • Consumers purchased 27 fewer calories (115kJ) when menu labelling was implemented. • The energy content of menu items decreased by 15 calories (60kJ) on average, following the introduction of mandatory menu labelling.

As many of the published studies analysed in the above reviews and meta-analyses were focused on menu labelling in the United States, United Kingdom and European Union, the outcomes may not necessarily be replicated in Australia and New Zealand. It should also be noted that studies measuring only consumption of energy in a single meal do not allow an assessment of whether menu labelling has an impact on subsequent meals, that is, whether people eat less for other meals, or alternatively are more physically active. This limits the real-world applicability of such studies.

In Australia, evaluations and reviews of current menu labelling schemes have considered the impact of menu labelling legislation and consumer education. However, the results across jurisdictions are not directly comparable as consumer education activities and evaluation methods varied.

Data Collection in New South Wales ⁶³	Results
Online surveys of 500 people and 200 young adults (18-24 yr)	<ul style="list-style-type: none"> • Twelve months after the legislation commenced and six months after consumer education had launched: <ul style="list-style-type: none"> – awareness of 8700kJ reference statement had increased to 9% from 3% (19% from 8% among young adults) – proportion noticing energy information on menus increased from 46 to 52%, and 59% to 63% among young adults.
Pre and post customer-intercept surveys of 800 people in September 2011 and September 2012, immediately following a food or drink purchase from one of 10 different chains.	<ul style="list-style-type: none"> • Following consumer education, the proportion of New South Wales consumers noticing energy information rose from 15% to 40%, falling to 36% six-months after education first launched. • A comparison of sales receipts found a 15% (519kJ) reduction in median kilojoules purchased 12 months after legislation was introduced in New South Wales.
Cost-effectiveness analysis / modelling ⁶⁴	<ul style="list-style-type: none"> • A possible \$672 million (AUD) national saving of healthcare costs over the population’s lifetime in Australia. This based on modelling which looked at the impact of introducing mandatory menu labelling across Australia. • The New South Wales evaluation found that menu labelling can lead to an average reduction of daily energy intake from fast food of approximately 25kJ. • The modelling found that this 25kJ reduction in energy intake, although small, would result in an average body weight decrease of 0.2kg across the Australian adult population. It was further estimated that over 63,000 health-adjusted life years would be gained.

Data Collection in Australian Capital Territory ⁶⁵	Results
Customer-intercept survey of 288 people in November to December 2016, following a food or drink purchase from one of three food courts	<ul style="list-style-type: none"> • Without consumer education, more than a third of consumers did not understand kilojoules or calories; and 27% knew the average adult intake is 8700kJ, yet many found it difficult to interpret. • Three in ten consumers noticed the energy information, and half went on to read the information. • 15% of consumers were influenced a little or a lot by menu labelling.
Focus groups with 35 consumers	<ul style="list-style-type: none"> • For some consumers, the existence of the two measures of energy is confusing. Fat, sugar and salt were identified as alternative measures of nutritional quality. • Suggestions to extend laws to all food court outlets, clubs, pubs, online orders. • The viability of small businesses should be considered.
Interviews with 15 businesses	<ul style="list-style-type: none"> • Reported there was no reduction in overall sales resulting from displaying kilojoules; and that menu labelling increased demand for lower kilojoule varieties of combination meals, side orders and drinks. • Expressed strong support for a nationally consistent approach to any changes in the future, noting that differences in display requirements between states and territories had the potential to drive uncertainty, increase the cost of compliance for businesses

⁶³ *Fast Choices: An evaluation of energy purchased and consumer education – Findings from Waves 1,2 & 3.* Prepared for NSW Food Authority and NSW Health.

https://www.foodauthority.nsw.gov.au/sites/default/files/Documents/scienceandtechnical/fast_choices_TNS_report.pdf

⁶⁴ Mantilla-Herrera et al. *Menu kilojoule labelling on fast food* in Ananthapavan et al. 2018. *Assessing cost-effectiveness of obesity prevention policies in Australia 2018.* Melbourne: Deakin University. <http://www.aceobesitypolicy.com.au/>

⁶⁵ ACT Health. 2017. *Review of display of nutritional information for food.*

<https://www.health.act.gov.au/sites/default/files/2018-09/Review%20of%20Display%20of%20Nutritional%20Information%20for%20Food%20Report%202017.pdf>

Data Collection in Australian Capital Territory⁶⁵

Results

	<p>that operate in more than one jurisdiction, and stifle investment in new technologies, such as digitised kilojoule displays.</p> <ul style="list-style-type: none">• Menu labelling and consumer demand for healthier options contributed to reformulation and changes to portion size.
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Data Collection in Queensland⁶⁶

Results

Online survey of 750 people in June 2018	<ul style="list-style-type: none">• More than a year after the end of an education campaign, half of Queenslanders knew that kilojoules measured energy, yet less than 10% knew that the average adult intake is 8700kJ.
Customer-intercept survey of 787 people in June 2018, immediately following a food or drink purchase from one of 11 different chains.	<ul style="list-style-type: none">• Six in ten Queensland consumers believed having energy information displayed gave them confidence to make a healthy choice.• Most (79%) consumers would not change the frequency of visiting a fast food outlet because of knowing the kilojoule content of menu items.• Only 6% of consumers considered that energy information influenced their purchase, with most of these consumers swapping to a healthier alternative or reducing the serving size purchased.

⁶⁶ Reported in Queensland Health. 2018. *Health and Wellbeing Strategic Framework 2017 to 2016. Performance Review 2017-18*. https://www.health.qld.gov.au/_data/assets/pdf_file/0030/813972/health-wellbeing-performance-review-2017-18.pdf

Appendix 3: Business types that may sell standard food items⁶⁷

Business Type	Industry Definition (As defined by IBISWorld)	Businesses in Australia	Businesses in New Zealand
Fast Food and Takeaway Food Services	Primarily provide fast food, such as burgers, pizza, sandwiches and sushi, and takeaway for immediate consumption. Customers order or select items and pay before eating. Food is usually provided in takeaway containers or packaging, and is consumed on the premises, taken away or delivered. The industry also includes fast food sold in food halls and food courts.	<ul style="list-style-type: none"> Over 37,500 establishments Market size: \$20bn Biggest companies: McDonald's Australia Holdings Pty Ltd; Competitive Foods Australia Pty Ltd, Yum! Restaurants Australia Pty Ltd; Domino's Pizza Enterprises Ltd 	<ul style="list-style-type: none"> Over 6,800 establishments Market size: \$3bn Biggest companies: McDonald's Restaurants (New Zealand) Ltd; Restaurant Brands New Zealand Ltd; Tango Holdings NZ; Domino's Pizza Enterprises Ltd
Cafés, Coffee Shops and Restaurants⁶⁸	Mainly serve food and beverages for consumption on the premises. Customers generally order and are served while seated and pay after eating. The industry includes cafes and coffee shops, and licensed, unlicensed and BYO restaurants.	<ul style="list-style-type: none"> Over 47,000 establishments Market size: \$29bn No companies with dominant market share 	<ul style="list-style-type: none"> Over 8,900 establishments Market size: \$6bn No companies with dominant market share
Supermarkets and Grocery Stores	Retail a range of groceries and food products, including fruit and vegetables, bread, cigarettes, canned goods, toiletries, dairy goods, delicatessen items and cleaning goods. In New Zealand: includes full-service supermarkets, grocery stores and convenience stores.	<ul style="list-style-type: none"> Over 6,600 establishments Market size: \$108bn Biggest companies: Woolworths Group Ltd; Coles Group Ltd; Aldi Stores; Metcash Ltd 	<ul style="list-style-type: none"> Over 3,800 establishments Market size: \$21bn Biggest companies: Foodstuffs (NZ) Ltd, Woolworths New Zealand Group Ltd
Convenience Stores	Sell a range of products including cigarettes, beverages, confectionery, snack foods, ready-to-eat foods, mobile phones and accessories, magazines, newspapers, and general merchandise. Includes milk bars and corner stores.	<ul style="list-style-type: none"> Over 8,900 establishments Market size: \$5bn Biggest companies: 7-Eleven Stores Pty Ltd 	<ul style="list-style-type: none"> Not applicable – see Supermarkets and grocery stores above
Bread and Cake Retailing	Sell a range of baked goods including bread, cakes, pastries and biscuits. Industry players can operate independently or as part of a franchise network. Products are made off-premises, purchased from wholesalers or supplied by franchise parent companies.	<ul style="list-style-type: none"> Over 1,800 establishments Market size: \$776m Biggest companies: Retail Food Group Ltd 	<ul style="list-style-type: none"> Business numbers and companies unknown as included in a broader 'specialised grocery retailing' business type in New Zealand

⁶⁷ Note: Information sourced from IBISWorld's publicly available information at <https://www.ibisworld.com.au/industry-trends/market-research-reports/> and <https://www.ibisworld.com.au/industry-trends/nz-market-research-reports/>. Number of establishments refers to the number of outlets / premises / locations. The number of establishments per business/enterprise is not currently available. Biggest companies are those with the largest market share calculated by the company's revenue as a percentage of the industry's revenue. Businesses include large chains, smaller businesses, and sole traders.

⁶⁸ Note: this business type has been combined whereas IBISWorld separates into cafes and coffee shops, and restaurants in Australia.

Business Type	Industry Definition (As defined by IBISWorld)	Businesses in Australia	Businesses in New Zealand
Fuel Retailing	Mainly retail automotive fuel or lubricating oils, typically at a service station. Participants also retail convenience store goods and provide services such as car washing as a supplement to fuel sales.	<ul style="list-style-type: none"> • Over 6,500 establishments • Market size: \$38bn • Biggest companies: Coles Group Ltd; Caltex Australia Ltd; Woolworths Group; 7-Eleven Stores Pty Ltd; BP Australia Investments Pty Ltd 	<ul style="list-style-type: none"> • Over 1,100 establishments • Market size: \$8bn • Biggest companies: Z Energy Ltd, BP New Zealand Holdings Ltd, Exxon Mobile New Zealand Holdings Ltd, Boran NZ Ltd
Cinemas	Includes companies that are involved in screening commercial motion pictures from film or videotape. The industry includes independent and chain operators, and single-screen and multi-screen multiplexes.	<ul style="list-style-type: none"> • Over 500 establishments • Market size: \$2bn • Biggest companies: Event Hospitality & Entertainment Ltd; Auholdco1 Pty Ltd; Village Roadshow Ltd; Reading Entertainment Australia Pty Ltd 	<ul style="list-style-type: none"> • Over 100 establishments • Market size: \$255m • Biggest companies: Amalgamated Cinema Holdings Ltd; HCH Bidco (NZ) Ltd; Reading New Zealand Ltd
Catering Services	Primarily provide catering services at specified locations or events. Meals and snacks may be transported or prepared and served on or off the premises, as required by the client.	<ul style="list-style-type: none"> • Over 3,900 establishments • Market size: \$8bn • Biggest companies: Spotless Group Holdings Ltd; Compass Group (Australia) Pty Ltd; Sodexo Australia Pty Ltd 	<ul style="list-style-type: none"> • Over 800 establishments • Market size: \$788m • Biggest companies: LSG Sky Chefs New Zealand Ltd, Spotless Holdings (NZ) Ltd, Compass Group New Zealand Ltd
Pubs, Bars, Nightclubs	Operators sell alcoholic beverages for consumption either on the premises (e.g. bars) or off the premises (e.g. drive-through bottle shops). Venues sometimes also provide food service, live entertainment, and gaming and betting facilities.	<ul style="list-style-type: none"> • Over 7,400 establishments • Market size: \$18bn • Biggest companies: Woolworths Group Ltd 	<ul style="list-style-type: none"> • Over 1,500 establishments • Market size: \$2bn • No companies with dominant market share
Social Clubs	Includes gambling, sporting, recreational and social (such as RSL) clubs or associations that generate income predominantly from hospitality services. Clubs that mainly provide sporting services, including racing clubs, are not included in the industry. The industry covers both licensed and unlicensed clubs, and clubs with gambling licences.	<ul style="list-style-type: none"> • Over 6,100 establishments • Market size: \$13bn • No companies with dominant market share 	<ul style="list-style-type: none"> • Business numbers and market size unavailable • No companies with dominant market share

Appendix 4: Draft Amended Principles for menu labelling (Option 2)

PRINCIPLES FOR DISPLAYING AND PROVIDING ENERGY INFORMATION FOR STANDARD FOOD ITEMS AT THE POINT-OF-SALE IN STANDARD FOOD OUTLETS ('MENU LABELLING')

These principles provide direction to assist **Australian state and territory governments and the New Zealand Government** to introduce (or update) regulation for menu labelling.

This guidance replaces the Principles endorsed by the then Australia and New Zealand Food Regulation Ministerial Council in 2011; and was informed by a review of existing menu labelling schemes in Australia, and consultative processes with food industry and public health organisations.

Context:

Increasingly, people are choosing ready-to-eat meals and snacks, rather than choosing food prepared at home.¹⁻³ How a food is labelled may influence choice, with food labelling providing useful information to support consumers in making dietary (e.g. what or how much to eat) or shopping-based (e.g. comparing products) decisions.⁴ A food label's content, format and context contributes to its usefulness.⁴

Information on the energy contribution of ready-to-eat food may support people to make more informed purchasing decisions. Information about the overall daily energy intake is also necessary so that consumers have a point of reference to help understand the contribution of individual food items to overall energy intake. Many ready-to-eat meals and snacks are not required to bear a food label, and therefore lack information about energy content. Menu labelling is one approach for providing energy information to consumers for these foods.

Aim:

The intent of these principles is to enable a consistent approach to menu labelling and:

1. prevent the proliferation of different menu labelling systems;
2. creates a level playing field (with respect to menu labelling) for all standard food outlets that sell standard food items; and
3. ensures that different modes of sale (e.g. in-store, online, third-party providers) and types of menus (e.g. digital menu panels, paper menus, menu boards, online menus) enable comparison of menu options to assist people to make healthier food purchase choices at the point-of-sale.

Scope:

In scope: Information about the energy content for standardised ready-to-eat food and drinks (i.e. products not already required to bear a label by the Food Standards Code) on menus at the point-of-sale to allow consumers to compare the energy value of menu items before committing to a purchase.

Out-of-scope: Energy labelling on the product packaging of standard food items, and the composition of standard food items. Pre-packaged items which have a nutritional information panel, unless sold as part of a combination meal.

Guiding principles:

1. Menu labelling should:

- Enable consumers to make comparisons between standard food items (including within and between categories) and therefore make informed choices at the point-of-sale.
 - Provide consumers with energy information for all standard food items, combination meals and multi-serve items on menus and/or at the point-of-sale; and for dietary context, provide the average adult daily energy intake at the point-of-sale.
 - Ensure that energy information provided is available, clear, legible, and easy-to-read and understand at-a-glance.
 - Enable consumers to access energy information for standardised ingredients which can be used to customise standard food items or can be combined to make customised menu items.
2. Menu labelling regulation should:
- Promote equity for regulatory requirements across standard food outlets.
 - Enable other businesses to voluntarily display energy information in a manner consistent with the requirements for standard food outlets.
 - Be complemented by promotional strategies that increase consumer understanding of kilojoules and how to use menu labelling within the broader context of healthy eating and energy balance; and encourage consumers to make healthier ready-to-eat food choices.
3. Menu labelling initiatives should be evaluated. Any evaluation should:
- Assess whether displaying nutrition information such as the amount of added sugars, sodium, saturated fat, alcohol, and/or other nutrients, would assist people to make healthier choices.
 - Consider the impacts of any promotional approaches on consumer behaviour and health outcomes.
 - Be informed by emerging evidence of the impacts of menu labelling in Australia and New Zealand as well as the regulation of menu labelling in other jurisdictions.
 - Use a coordinated, collaborative bi-national approach to evaluation for consistency and to maximise the outputs from limited resources.
 - Be informed by consultation with stakeholders.

Definitions:

Definitions have been developed to inform the drafting of jurisdictional legislation to enable a nationally consistent approach.

- **Menu labelling:** energy information for standard food items on menus at the point-of-sale.
- **Energy information:** the average energy content of standard food items (expressed as kilojoules per item).
- **Average daily energy intake:** a reference statement expressed as *the average adult daily energy intake is 8700kJ*.⁵
- **Point-of-sale:** the place where a customer orders and purchases ready-to-eat food, (places include checkouts, drive-through facilities and self-service devices within physical premises; and electronic sales point via business websites and mobile applications and third-party food delivery platforms).
- **Category:** a type or group of standard food items, for example burgers, sandwiches, beverages, sides, desserts.

- **Menu:** a list or similar that shows one or more standard food items available for sale, in printed or electronic form (including, but not limited to, menu boards, posters, leaflets, price/food/identifying tags or labels, digital menu panels, business websites, mobile applications, third-party food delivery platforms, printed and online catalogues).
- **Standard food item:** ready-to-eat food² that is sold in servings that are standardised for portion and content, and which is not required to bear a label⁶; includes items available in different serving sizes (e.g. small, medium, large), but not items sold by weight (e.g. salads from a deli) as not standardised by portion.
- **Combination meal:** a combination of two or more standard food items (e.g. cheeseburger and hot chips); or a combination of standard food items and pre-packaged food (e.g. salad sandwich and a can of drink).
- **Multi-serve item:** a standard food item that provides more than one serving and is not intended to be consumed by one person (e.g. whole cake, pizza). Energy information to be displayed for the whole item as well as per serving to enable comparison with single-serve items.
- **Standardised ingredient:** ingredient that is standardised for portion and content (e.g. bacon, slice of cheese) which can be added by customers to standard food items (e.g. burger); or combined with other standardised ingredients to make a customised menu item (e.g. tortilla, beef filling and guacamole).
- **Standard food outlet:** a food business that sells standard food items at 50 or more outlets in Australia, or 20 or more outlets in an Australian State or 7 or more in an Australian Territory. (Note: the threshold for New Zealand is to be determined following consultation). Food businesses are those owned/operated under franchise arrangements; outlets operated under the same trading name; and outlets owned by the one parent company/central owner/corporation.

1 Enhanced Media Metrics Australia. 2014. *Industry Report: Out of Home Dining*. https://www.emma.com.au/wp-content/uploads/2014/03/emma-Industry-Report_Out-of-Home-Dining_website-version.pdf

2 Department of Agriculture and Water Resources. 2018. *Food demand in Australia: trends and issues 2018*. http://data.daff.gov.au/data/warehouse/9aat/2018/fdati9aat20180822/FoodDemandInAustralia_20180822_v1.0.0.pdf

3 Stats NZ. *Household Expenditure Statistics: Year ended June 2016*. <https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2016>

4 Rayner M et al. 2013. Monitoring the health-related labelling on foods and non-alcoholic beverages in retail settings. *Obesity Reviews*, 14(S1): 70-81.

5. 8700kJ is the reference value for energy as defined in the Australia New Zealand Food Standards Code – Standard 1.2.8—8 – Percentage daily intake information.

6. As defined in the Australia New Zealand Food Standards Code – Standard 1.1.2 – Definitions used through the Code.

Appendix 5: Draft Policy Guideline on menu labelling (Option 3)

POLICY GUIDELINE ON MENU LABELLING: DISPLAYING AND PROVIDING ENERGY INFORMATION FOR STANDARD FOOD ITEMS AT THE POINT-OF-SALE IN STANDARD FOOD OUTLETS

CONTEXT

Increasingly, people are choosing ready-to-eat meals and snacks, rather than choosing food prepared at home.¹⁻³ How a food is labelled may influence choice, with food labelling providing useful information to support consumers in making dietary (e.g. what or how much to eat) or shopping-based (e.g. comparing products) decisions.⁴ A food label's content, format and context contributes to its usefulness.⁴

Information on the energy contribution of ready-to-eat food may support people to make more informed purchasing decisions. Information about the overall daily energy intake is also necessary so that consumers have a point of reference to help understand the contribution of individual food items to overall energy intake.

Many ready-to-eat meals and snacks are not required to bear a food label, and therefore lack information about energy content. Menu labelling is one approach for providing energy information to consumers for these foods.

Menu labelling should be complemented by promotional strategies that increase consumer understanding of kilojoules and how to use menu labelling within the broader context of healthy eating and energy balance; and encourage consumers to make healthier ready-to-eat food choices.

Between 2011 and 2017, mandatory menu labelling schemes were introduced by five Australian jurisdictions. Variations between these schemes relate to captured businesses, and how and when to display energy information. During this time, the food industry has continually evolved with new products and new ways of promoting, offering, and selling food and drinks.

AIM

The intent of this Policy Guideline is to ensure any food regulatory measure developed for menu labelling:

1. prevents the proliferation of different menu labelling systems;
2. creates a level playing field (with respect to menu labelling) for all standard food outlets that sell standard food items; and
3. ensures that different modes of sale (e.g. in-store, online, third-party providers) and types of menus (e.g. digital menu panels, paper menus, menu boards, online menus) enable comparison of menu options to assist people to make healthier food purchase choices at the point-of-sale.

This Policy Guideline provides guidance for Food Standards Australia New Zealand (FSANZ) in developing a food regulatory measure under the *Australia and New Zealand Food Standards Code* for the provision and display of energy information for standard food items at the point-of-sale (i.e. menu labelling).

SCOPE

The scope for this Policy Guideline is information about the energy content for standardised ready-to-eat food and drinks (i.e. products not already required to bear a label by the Food Standards Code) on menus at the point-of-sale to allow consumers to compare the energy value of menu items before committing to a purchase.

Out-of-scope for this Policy Guideline is energy labelling on the product packaging of standard food items, and the composition of standard food items. Pre-packaged items which have a nutritional information panel are also out-of-scope, unless sold as part of a combination meal.

HIGH ORDER POLICY PRINCIPLES

Menu labelling should:

- Contribute to improving public health outcomes, and reducing chronic disease related to overweight and obesity.
- Guide consumer choice towards healthier food options consistent with the Australian and New Zealand dietary guidelines.

The *Food Standards Australia New Zealand Act 1991* (the Act) establishes three objectives for FSANZ in developing or reviewing food standards:

1. the protection of public health and safety;
2. the provision of adequate information relating to food to enable consumers to make informed choices; and
3. the prevention of misleading or deceptive conduct.⁵

The Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System;⁶ and Australian and New Zealand Governments guidelines for regulatory action⁷⁻⁸ are also relevant to the development of any food regulatory measure for menu labelling.

SPECIFIC POLICY PRINCIPLES

1. Menu labelling should:

- Enable consumers to make comparisons between standard food items (including within and between categories) and therefore make informed choices at the point-of-sale.
- Provide consumers with energy information for all standard food items, combination meals and multi-serve items on menus and/or at the point-of-sale; and for dietary context, provide the average adult daily energy intake at the point-of-sale.
- Ensure that energy information provided is available, clear, legible, and easy-to-read and understand at-a-glance.
- Enable consumers to access energy information for standardised ingredients which can be used to customise standard food items or can be combined to make customised menu items.

2. Menu labelling regulation should:

- Promote equity for regulatory requirements across standard food outlets.
- Enable other businesses to voluntarily display energy information in a manner consistent with the requirements for standard food outlets.

ADDITIONAL POLICY GUIDANCE

- Tools should be freely provided to support businesses to calculate the energy content of standard food items.

DEFINITIONS⁹

For this Policy Guideline:

- **Menu labelling:** energy information for standard food items on menus at the point-of-sale.
- **Energy information:** the average energy content of standard food items (expressed as kilojoules per item).
- **Average daily energy intake:** a reference statement expressed as *the average adult daily energy intake is 8700kJ*.¹⁰
- **Point-of-sale:** the place where a customer orders and purchases ready-to-eat food, (places include checkouts, drive-through facilities and self-service devices within physical premises; and electronic sales point via business websites and mobile applications and third-party food delivery platforms).
- **Category:** a type or group of standard food items, for example burgers, sandwiches, beverages, sides, desserts.
- **Menu:** a list or similar that shows one or more standard food items available for sale, in printed or electronic form (including, but not limited to, menu boards, posters, leaflets, price/food/identifying tags or labels, digital menu panels, business websites, mobile applications, third-party food delivery platforms, printed and online catalogues).
- **Standard food item:** ready-to-eat food¹¹ that is sold in servings that are standardised for portion and content, and which is not required to bear a label¹¹; includes items available in different serving sizes (e.g. small, medium, large), but not items sold by weight (e.g. salads from a deli) as not standardised by portion.
- **Combination meal:** a combination of two or more standard food items (e.g. cheeseburger and hot chips); or a combination of standard food items and pre-packaged food (e.g. salad sandwich and a can of drink).
- **Multi-serve item:** a standard food item that provides more than one serving and is not intended to be consumed by one person (e.g. whole cake, pizza). Energy information to be displayed for the whole item as well as per serving to enable comparison with single-serve items.
- **Standardised ingredient:** ingredient that is standardised for portion and content (e.g. bacon, slice of cheese) which can be added by customers to standard food items (e.g. burger); or combined with other standardised ingredients to make a customised menu item (e.g. tortilla, beef filling and guacamole).
- **Standard food outlet:** a food business that sells standard food items at 50 or more outlets in Australia, or 20 or more outlets in an Australian State or 7 or more in an Australian Territory. (*Note: the threshold for New Zealand is to be determined following consultation*). Food businesses are those owned/operated under franchise arrangements; outlets operated under the same trading name; and outlets owned by the one parent company/central owner/corporation.
- **Food regulatory measure:** means a food standard developed by Food Standards Australia New Zealand under the *Food Standards Australia New Zealand Act 1991*.

REVIEWS AND UPDATES

This Policy Guideline should be reviewed and updated as required. Any review should:

- Assess whether the Policy Guideline continues to reflect the food environment, dietary patterns, and dietary guidelines.

- Assess whether displaying nutrition information such as the amount of added sugars, sodium, saturated fat, alcohol, and/or other nutrients, would assist people to make healthier choices.
- Consider the impacts of any promotional approaches on consumer behaviour and health outcomes.
- Be informed by emerging evidence of the impacts of menu labelling in Australia and New Zealand as well as the regulation of menu labelling in other jurisdictions.
- Use a coordinated, collaborative bi-national approach to evaluation for consistency and to maximise the outputs from limited resources.
- Be informed by consultation with stakeholders.

1 Enhanced Media Metrics Australia. 2014. *Industry Report: Out of Home Dining*. https://www.emma.com.au/wp-content/uploads/2014/03/emma-Industry-Report_Out-of-Home-Dining_website-version.pdf

2 Department of Agriculture and Water Resources. 2018. *Food demand in Australia: trends and issues 2018*. http://data.daff.gov.au/data/warehouse/9aat/2018/fdati9aat20180822/FoodDemandInAustralia_20180822_v1.0.0.pdf

3 Stats NZ. *Household Expenditure Statistics: Year ended June 2016*. <https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2016>

4 Rayner M et al. 2013. Monitoring the health-related labelling on foods and non-alcoholic beverages in retail settings. *Obesity Reviews*, 14(S1): 70-81.

5 *Food Standards Australia New Zealand (FSANZ) Act 1991, Part 2, Division 2, Section 18(1)*

6 Available at: <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/key-system-documents>

7 Council of Australian Government. 2007. *Best Practice Regulation: A guide for ministerial councils and national standard setting bodies*. <https://www.pmc.gov.au/resource-centre/regulation/best-practice-regulation-guide-ministerial-councils-and-national-standard-setting-bodies>

8 Government of New Zealand. 2017. *Government Expectations for Good Regulatory Practice*. <https://treasury.govt.nz/publications/guide/government-expectations-good-regulatory-practice>

9 Note: Some terms defined in the Policy Guideline are already defined in the Australia New Zealand Food Standards Code. It is acknowledged that in developing a food regulatory measure for menu labelling, FSANZ will need to consider the interaction with existing definitions.

10 8700kJ is the reference value for energy as defined in the Australia New Zealand Food Standards Code – Standard 1.2.8—8 – Percentage daily intake information.

11 As defined in the Australia New Zealand Food Standards Code – Standard 1.1.2 – Definitions used through the Code.