

Consultation Summary Report: Review of fast food menu labelling schemes in Australia

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EXECUTIVE SUMMARY

Background

Around 63% of adults (about 11 million) and 27% of children (about 1 million) are overweight or obese in Australia.¹ Dietary risks cause 7% of the disease burden in Australia and obesity can reduce life expectancy by up to ten years. The obesity problem is partly due to an increase in the availability and consumption of food and drinks which are energy dense and nutrient poor.

Increasingly, consumer food choices are made in a queue, with a growing reliance on ready-to-eat meals and snacks. Australians make 51 million visits to fast food chains each month. Australian households are now spending around 58% of the food dollar on unhealthy food and drinks.² Foods prepared away from home typically exceed recommendations for energy, saturated fat, sodium and sugar.³ The majority of consumers underestimate the kilojoule content of unhealthy foods.⁴

A multi-strategic, cross-sectorial, coordinated approach is needed to address obesity. Menu labelling schemes are one important strategy to support people to make more informed choices when eating out of the home.

In October 2011, the then Legislative and Governance Forum on Food Regulation (now Australia and New Zealand Ministerial Forum on Food Regulation (the Forum)) endorsed National Principles to facilitate national consistency for the display of point-of-sale nutrition information in standard food outlets.

State and Territory Governments have the choice to introduce legislation to mandate menu labelling in their jurisdiction. To date, New South Wales, South Australia, the Australian Capital Territory, Queensland, and most recently Victoria, have introduced legislation for fast food menu labelling schemes.

In October 2016, the Council of Australian Governments (COAG) Health Council considered actions to limit the impact of unhealthy food and drink on children. Health Ministers agreed to consult with Ministers in other portfolios to collaboratively develop joint approaches. In April 2017, the Forum identified that one of its priority areas for 2017-21 is to support public health objectives to reduce chronic disease related to overweight and obesity; and that this would include evaluating the effectiveness of existing initiatives, such as menu labelling schemes.

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

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

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

⁴ NSW Food Authority. *Evaluation of kilojoule menu labelling*. NSW Government. NSW 2013.

Methodology

A comparison between jurisdictions' menu labelling legislation demonstrated a high degree of national consistency. However, it was identified that there are some implementation issues linked to 1) the limited inconsistency between jurisdictions, 2) changing trends in the fast food industry and 3) low consumer understanding of kilojoules and difficulties interpreting the information.

To further explore these issues, FRSC facilitated public and stakeholder engagement through a Consultation paper: *Review of fast food menu labelling schemes* and two industry-only roundtables.

Key Findings

The key findings from the 28 written submissions from food industry, public health, consumer and government stakeholders and the two industry roundtables are outlined below:

- Overall, there is stakeholder support for the current menu labelling schemes, with only one industry stakeholder voicing strong opposition to regulatory approaches and in this case, menu labelling.
- Addressing the inconsistencies between jurisdictions and achieving national consistency was a recurring theme throughout submissions and across the key issues canvassed. Reviewing the National Principles was a recommended approach where an approach was discussed.
- 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.
- 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.
- Maintaining the national threshold of 50 or more outlets had overall support.
- Lowering the threshold to 10 outlets within a State or Territory was a commonly suggested approach to extending the reach of menu labelling.
- 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.
- 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.
- There was a consistent call for national consistency in prescribing voluntary display requirements.
- Public health organisations called for tighter regulation to ensure kilojoule 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.
- The majority of stakeholders recognised the importance of customer access to kilojoule 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).
- 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.

- Likewise, public health, industry and government stakeholders supported kilojoule 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.
- Most stakeholders recommended that kilojoule 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 is still lacking following the consultation.
- 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 system is not appropriate for fast food. In contrast, many public health organisations called for the adaptation of the Health Star Rating for fast food.
- 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 a number of industry stakeholders and public health organisations.
- 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.
- Monitoring, enforcement and evaluation were all seen as important components of menu labelling schemes.
- Future legislation needs to be clear and simple as it is viewed by some as currently being overly complex.

Next Steps

The results of the consultation have been provided to the Forum and the COAG Health Council. The consultation findings will inform the next steps of the menu labelling review.

The next steps will be governed by the Food Regulation Policy Framework⁵. The steps of the Framework will help ensure the most appropriate policy response for menu labelling is applied. The Framework takes account of the nature and extent of the issue or risk posed, and considers different options for response, which may include non-intervention, self-regulation, co-regulation or regulation. Further stakeholder consultation opportunities will be considered.

⁵ Available at: [Food Regulation Policy Framework](#)

INTRODUCTION

Around 63% of adults (about 11 million) and 27% of children (about 1 million) are overweight or obese in Australia.⁶ Dietary risks cause 7% of the disease burden in Australia and obesity can reduce life expectancy by up to ten years. The obesity problem is partly due to an increase in the availability and consumption of food and drinks which are energy dense and nutrient poor.

Increasingly, consumer food choices are made in a queue, with a growing reliance on ready-to-eat meals and snacks. Australians make 51 million visits to fast food chains each month. Australian households are now spending around 58% of the food dollar on unhealthy food and drinks.⁷ Foods prepared away from home typically exceed recommendations for energy, saturated fat, sodium and sugar.⁸ The majority of consumers underestimate the kilojoule content of unhealthy foods.⁹

A multi-strategic, cross-sectorial, coordinated approach is needed to address obesity. Menu labelling schemes are one important strategy to support people to make more informed choices when eating out of the home.

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

The Forum requested this work be undertaken in consultation with the Australian Health Ministers' Advisory Council (AHMAC) to reduce the intake of energy, saturated fat, sugar and salt from fast foods. FRSC developed principles to facilitate national consistency if jurisdictions elect to introduce state or territory based legislation for the display of point-of-sale nutrition information in standard food outlets. These National Principles were endorsed by the Forum in October 2011.

To date, New South Wales (in 2011), South Australia (in 2012), the Australian Capital Territory (in 2013) and Queensland (in 2016) have passed legislation and have implemented fast food menu labelling schemes. Victoria passed legislation in 2017, with the scheme being introduced on 1 May 2018. Smaller jurisdictions including Tasmania and the Northern Territory have assessed the impact of introducing legislation and found that few additional businesses would be captured based on the outlet threshold used in most jurisdictions. This is because legislation in other jurisdictions captures national chains that have largely chosen to implement menu labelling across all their Australian outlets.

New South Wales and the Australian Capital Territory have completed an evaluation of their menu labelling legislation (the Queensland evaluation is in progress). Results show that the initiative was implemented well by industry and regulators, consumers noticed the new information in outlets, there was a shift towards consumers having a better understanding of the average daily energy intake, and a significant reduction in kilojoules purchased was observed.

In October 2016, the Council of Australian Governments (COAG) Health Council considered actions to limit the impact of unhealthy food and drink on children. Health Ministers agreed to consult with Ministers in other portfolios to collaboratively develop joint approaches. In April 2017, the Forum identified that one of its priority areas for 2017-21 is to support public health objectives to reduce chronic disease related to overweight and obesity; and that this would include evaluating the effectiveness of existing initiatives, such as menu labelling schemes implemented in Australia.

⁶ Australian Bureau of Statistics. *National Health Survey – First Results, Australia 2014-15*. ABS. Canberra 2016.

⁷ Australian Bureau of Statistics. *Australian Dietary Guidelines Price Indexes feature article (catalogue 6401.0)*. ABS. Canberra 2016.

⁸ Wellard L et al. Fries or a fruit bag? Investigating the nutritional composition of fast-food children's meals. *Appetite*, 2012; 58(1):105-10.

⁹ NSW Food Authority. *Evaluation of kilojoule menu labelling*. NSW Government. NSW 2013.

METHODOLOGY

The review of menu labelling schemes commenced with a comparison of jurisdictions' legislation, which demonstrated a high degree of national consistency in key areas. However, a review of submissions to previous State Government menu labelling consultation processes and initial consultation with government officials indicated some implementation and emerging issues. These included issues linked to 1) the limited inconsistency in legislation between jurisdictions, 2) changing trends in the fast food industry and 2) low consumer understanding of kilojoules and difficulties interpreting the information.

To further explore these issues, FRSC facilitated public and stakeholder engagement with industry, public health and consumer organisations, and relevant professional associations through a consultation paper and two roundtables for key industry stakeholders.

The issues raised by stakeholders in written submissions and at the roundtables were summarised and presented in this report. While it has been the intention to present as many key points made in the submissions as possible, it is acknowledged that it is a summary and not an exact account of all submissions. Additionally, the report does not provide any commentary on the accuracy of the evidence or issues presented in submissions, nor on the feasibility of the suggested approaches to improve menu labelling schemes in Australia. The next steps in the menu labelling review process will provide further opportunities to consider the suggested approaches.

Consultation Paper

The Food Regulation Secretariat invited stakeholders representing food industry, public health, consumers and State and Territory governments to provide a written submission to 19 questions (see Appendix 1). The consultation paper sought stakeholders' views on:

- inconsistency in legislation between jurisdictions: exempt businesses and number of outlets, voluntary display and legibility;
- changing trends in the fast food industry: menu customisation, rolling menus boards, online ordering and web-based platforms and combination meals with pre-packaged food; and
- difficulties of interpretation: additional and interpretative information and kilojoule display variations.

The consultation paper was made available on 6 February 2018 with submissions accepted until 16 March 2018. Two late submissions were accepted on 19 March 2018 and were included in the analysis.

Twenty-eight written submissions were received with 13 from public health organisations, 10 from industry representatives, four from State and Territory governments and one from a consumer organisation. In some cases, both public health and industry organisations made multiple submissions by submitting separately as a state branch and/or as members of peak bodies or coalitions.

Table 1 below describes the number of responses to each question by stakeholder group. Some submissions provided a summary versus responding to specific questions, so when the submissions were collated, the key points of these summaries were allocated to the relevant questions.

Table 1: Number of responses to questions

Questions		Response from industry	Response from public health	Response from consumers	Response from gov.
1	Are you aware of any other pending or completed evaluations that have relevance to the Australian experience? If yes, please provide results and references with your response where possible.	3	11	0	3
2	Are there any other issues in relation to exempt businesses that should be considered?	7	13	0	4
3	What could be done to ensure kilojoule information is available in as many outlets as possible? What are the pros and cons of your suggested approach?	6	13	0	4
4	Are there any other issues in relation to legibility that should be considered?	8	11	1	3
5	What can be done to ensure kilojoule information is as easy to use as possible by the consumer?	4	13	0	3
6	What can be done to facilitate businesses to address legibility issues? What are the pros and cons of your suggested approach?	3	7	0	3
7	Are there any other issues in relation to menu customisation that should be considered?	3	7	0	0
8	What could be done to enable healthier choices when customising menu items? What are the pros and cons of your suggested approach?	3	10	0	1
9	Are there any other issues in relation to rolling menu boards that should be considered?	3	7	0	2
10	What could be done to ensure kilojoule information is easy to access and that consumers can compare products easily? What are the pros and cons of your suggested approach?	3	9	0	1
11	Are there any other issues in relation to on-line ordering that should be considered?	3	10	0	0
12	What could be done to ensure kilojoule information is included on all web-based ordering platforms? What are the pros and cons of your suggested approach?	3	10	0	2

13	Are there any other issues in relation to combination meals that should be considered?	3	6	0	1
14	What could be done to ensure kilojoule information is provided for the whole meal? What are the pros and cons of your suggested approach?	3	6	0	2
15	Are there any other issues in relation to additional and interpretive information that should be considered?	4	8	0	1
16	What could be done to ensure kilojoule information is as easy to interpret as possible? What are the pros and cons of your suggested approach	3	10	0	2
17	Are there any other issues in relation to kilojoule display that should be considered?	4	5	0	0
18	What could be done to ensure kilojoule information is as easy to use and interpret as possible? What are the pros and cons of your suggested approach?	4	7	0	1
19	Are there any other issues with current menu labelling schemes that should be considered during this review? Please provide information to support your response.	2	9	0	3

Industry Roundtables

A range of food businesses were identified (n=83) as potential stakeholders who had been affected by menu labelling legislation or may be affected in the future. Businesses were contacted by phone, email and/or LinkedIn and invited to participate in a roundtable meeting. Two roundtables were organised in accordance with availability, and held on 16 February and 16 March 2018.

The purpose of the roundtables was to listen to, discuss and understand views and experiences from industry stakeholders who are, or may be, affected by fast food menu labelling legislation in Australia. The roundtables were facilitated by two experienced members of FRSC and supported by the Food Regulation Secretariat and Queensland Department of Health. Queensland is the lead jurisdiction for the work agreed by the COAG Health Council to limit the impact of unhealthy food and drinks on children. Facilitators fostered a collaborative and cooperative meeting environment, making it clear there was no need for consensus and that all views would be recorded.

Those who attended a roundtable included: quick service restaurants (n=9), peak food industry bodies / associations (n=3), supermarkets (n=2), a bakery chain and a convenience store chain. Of these attendees, two quick service restaurants, one supermarket chain, a convenience store chain, a bakery chain and three peak bodies also made a written submission to the consultation paper.

DETAILED FINDINGS: CONSULTATION PAPER

There are a range of key findings from analysing the written submissions to the Consultation Paper.

- Overall, there is stakeholder support for the current menu labelling schemes, with only one industry stakeholder voicing strong opposition to menu labelling.
- Addressing the inconsistencies between jurisdictions and achieving national consistency was a recurring theme throughout submissions and across the key issues canvassed. Reviewing the National Principles was a commonly recommended approach.
- 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.
- 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.
- Lowering the threshold to 10 outlets within a State or Territory, while maintaining the national threshold of 50 or more outlets was a commonly suggested approach to extending the reach of menu labelling.
- There was a consistent call for national consistency in prescribing voluntary display requirements.
- Public health organisations called for tighter regulation to ensure kilojoule information is legible, while industry called for less prescriptive legibility requirements.
- The majority of stakeholders recognised the importance of customer access to kilojoule information for customised menu items. Industry stakeholders believed this information should be provided online; and public health and government stakeholders wanted to see this information at the point-of-sale (i.e. in-store and online).
- There was consistent support for rolling menu boards to comply with menu labelling requirements, with adoption of Queensland's simultaneous display provisions supported by public health organisations.
- Likewise, public health, industry and government stakeholders supported kilojoule 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.
- Most stakeholders recommended that kilojoule 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 is still lacking following the consultation.
- 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 system is not appropriate for fast food. In contrast, many public health organisations called for the adaptation of the Health Star Rating for fast food.
- 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 a number of industry stakeholders and public health organisations.
- A preference for all standard food outlets (including supermarkets) to display kilojoules 'per serve' was strongly indicated in submissions.
- Monitoring, enforcement and evaluation were all seen as important components of menu labelling schemes.

A collated response to each of the 19 consultation questions follows, and are reported here without analysis or comment as to their validity or applicability.

Other evaluations

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

In the 28 submissions received, 22 evaluations were provided or referenced to inform the evidence base of the review. All references have been obtained and will be quality checked and considered as part of the next steps for this review process.

1. ABC News, [Kilojoule labelling of fast food: Most people wrong about their daily needs, survey finds](#), 18 June 2014.
2. Bleich, SN, Economos, CD, Spiker, ML, Vercammen, KA, VanEpps, EM, Block, JP, Elbel, B, Story, M & Roberto, CA 2017, 'A Systematic Review of Calorie Labeling and Modified Calorie Labeling Interventions: Impact on Consumer and Restaurant Behavior', *Obesity*, vol. 25, no. 12, pp. 2018-44.
3. Bleich, SN, Moran, AJ, Jarlenski, MP & Wolfson, JA 2018, 'Higher-Calorie Menu Items Eliminated in Large Chain Restaurants', *American Journal of Preventive Medicine*, vol. 54, no. 2, pp. 214-20.
4. Burton, S, Creyer, EH, Kees, J & Huggins, K 2006, 'Attacking the Obesity Epidemic: The Potential Health Benefits of Providing Nutrition Information in Restaurants', *American Journal of Public Health*, vol. 96, no. 9, pp. 1669-75.
5. Cancer Council Western Australia and Heart Foundation 2016, Investigation into kilojoule menu labelling in Victorian chain food outlets, viewed 26 March 2018, [You shouldn't need to be a detective to find out what's in your food](#).
6. Cantu-Jungles, T, McCormack, L, Slaven, J, Slobodnik, M & Eicher-Miller, H 2017, 'A Meta-Analysis to Determine the Impact of Restaurant Menu Labeling on Calories and Nutrients (Ordered or Consumed) in U.S. Adults', *Nutrients*, vol. 9, no. 10, pp. 1088.
7. Carins J, PB, Knox K, Wilmott T, Storr R, Robertson D, et. al. 2017, *International food service initiatives: an Evidence Check rapid review*.
8. Crockett, RA, King, SE, Marteau, TM, Prevost, AT, Bignardi, G, Roberts, NW, Stubbs, B, Hollands, GJ & Jebb, SA 2018, 'Nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption', *Cochrane Database of Systematic Reviews*, no. 2.
9. Dunford, EK, Wu, JHY, Wellard-Cole, L, Watson, W, Crino, M, Petersen, K & Neal, B 2017, 'A comparison of the Health Star Rating system when used for restaurant fast foods and packaged foods', *Appetite*, vol. 117, pp. 1-8.
10. Fernandes, AC, Oliveira, RC, Proença, RPC, Curioni, CC, Rodrigues, VM & Fiates, GMR 2016, 'Influence of menu labeling on food choices in real-life settings: a systematic review', *Nutrition Reviews*, vol. 74, no. 8, pp. 534-48.
11. Hector, D 2016, *Effectiveness of numeric energy menu labeling and potential alternative formats and/or content. An evidence review*, Physical Activity Nutrition and Obesity Research Group, Sydney.
12. Hill, JO, Wyatt, HR, Reed, GW & Peters, JC 2003, 'Obesity and the environment: where do we go from here? (viewpoint)', *Science*, vol. 299, pp. 853-55.
13. Langley, S 2014, [Australian fast food 'emma' survey findings released](#), Australian Food News, viewed 26 March 2018.
14. Littlewood, JA, Lourenço, S., Iversen, C. L., & Hansen, G. L. 2016, 'Menu labelling is effective in reducing energy ordered and consumed: A systematic review and meta-analysis of recent studies', *Public Health Nutrition*, vol. 19, no. 12, pp. 2106-21.

15. Morley, B, Scully, M, Martin, J, Niven, P, Dixon, H & Wakefield, M 2013, 'What types of nutrition menu labelling lead consumers to select less energy-dense fast food? An experimental study', *Appetite*, vol. 67, pp. 8-15.
16. Obesity Policy Coalition, *Policy Brief: Menu kilojoule labelling in chain food outlets in Australia*, 2018.
17. Sacco, J, Lillico, HG, Chen, E & Hobin, E 2017, 'The influence of menu labelling on food choices among children and adolescents: a systematic review of the literature', *Perspectives in Public Health*, vol. 137, no. 3, pp. 173-81.
18. Sarink, D, Peeters, A, Freak-Poli, R, Beauchamp, A, Woods, J, Ball, K & Backholer, K 2016, 'The impact of menu energy labelling across socioeconomic groups: A systematic review', *Appetite*, vol. 99, pp. 59-75.
19. Wellard, L, Havill, M, Hughes, C, Watson, WL & Chapman, K 2015, 'The availability and accessibility of nutrition information in fast food outlets in five states post-menu labelling legislation in New South Wales', *Australian and New Zealand Journal of Public Health*, vol. 39, no. 6, pp. 546-9.
20. Wellard-Cole, L, Goldsbury, D, Havill, M, Hughes, C, Watson, WL, Dunford, EK & Chapman, K 2017, 'Monitoring the changes to the nutrient composition of fast foods following the introduction of menu labelling in New South Wales, Australia: an observational study', *Public Health Nutrition*, vol. 21, no. 6, pp. 1194-9.
21. Zlatevska, N, Neumann, N & Dubelaar, C 2018, 'Mandatory Calorie Disclosure: A Comprehensive Analysis of Its Effect on Consumers and Retailers', *Journal of Retailing*, vol. 94, no. 1, pp. 89-101.
22. Zorn, D 2017, [Comments on the Food and Drug Administration's Regulatory Impact Analysis and Cost Estimate for the menu labelling final rule.](#)

Exempt businesses and number of outlets

The Consultation Paper noted that inconsistencies between jurisdictions' legislation was primarily related to exempt businesses. Businesses that are exempt from menu labelling in one or more jurisdictions are cinemas, convenience stores, service stations, dine-in restaurants and mobile vendors. Health care facilities, schools, childcare centres and not-for-profit organisations are also either exempt or not specified in current legislation. The Paper highlights that reasons for removing exemptions include 'a level playing field' for businesses, public health outcomes and food-based inclusion versus business type. The Paper also noted that further consideration of capturing vending machines is warranted.

Other issues highlighted were (1) the definition of convenience stores and supermarkets; (2) changing national and state thresholds for outlet number and the impact on small business; and (3) inconsistencies with voluntary display provisions.

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

The majority of submissions across public health organisations and industry supported the removal of business exemptions for cinemas, convenience stores, service stations, dine-in restaurants and mobile vendors by all jurisdictions. Key reasons given for removing exemptions included:

- equitable access to kilojoule information regardless of where consumers purchase food or reside in Australia;
- greater support for consumers, especially those at higher risk of chronic disease, to make informed food choices;
- national consistency and alignment with the intent of the National Principles;
- creation of a level playing field for businesses that sell similar ready-to-eat, standardised food;
- large chains that are currently exempt have a significant retail presence and have the capacity and resources to implement menu labelling;
- parent companies for some exempt businesses, operate businesses that are already required to display kilojoule information; and
- suppliers of food/ingredients and drinks are typically consistent across large chains, and manufacturers must provide nutrition information.

The three submissions that opposed this position were from industry peak bodies that represent businesses that may be captured in the event the current exemptions were removed. A number of reasons were offered for these views:

- there would be a significant financial and administrative burden on small business to implement menu labelling;
- it would reduce the ability of convenience stores to compete with supermarkets; and reduce the point of difference, that is, convenience stores offer convenience to customers;
- most businesses do not meet the business size threshold as are either operated under franchise schemes or employ fewer than 20 people;
- unpackaged food and drinks are not the focus of some of the exempt businesses;
- food and drinks offered by some exempt businesses do not meet the definition of standardised food items;
- menu labelling would negatively impact customers' experience in cafés and restaurants; and
- the benefits from menu labelling do not outweigh the business costs, potential job losses and sustainability risks; particularly as the evidence of health benefit is negligible.

Another industry stakeholder identified that removing the exemption for convenience stores, yet retaining the definition of supermarkets as being more than 1000m² retail floor space, would mean that small supermarkets would be exempt from menu labelling and would create an anomaly.

One government submission was also opposed to extending menu labelling to as many outlets as possible, with concerns that this could eventually result in very small businesses such as a local fish and chip shop being captured. It was proposed that an alternate strategy to encourage healthy eating in these businesses may be to encourage the use of seasonal and local produce.

Most submissions were silent on exemptions related to health care facilities, schools, childcare centres and not-for-profit organisations. One public health organisation highlighted that a consequence of exempting healthcare facilities was that a number of fast food businesses located on hospital grounds do not display kilojoules in these outlets. This submission also inferred that the healthcare exemption was based on jurisdictions having healthy food guidelines for hospitals; however, this assumption was not confirmed during the consultation process. One industry group suggested that institutional facilities remain exempt but be allowed to voluntarily display kilojoules.

Particular attention was paid by many public health submissions on ensuring vending machines were captured. The reasons for their inclusion were the international precedent set by the USA; ease of obtaining kilojoule information as most vending products include a nutrition information panel; that most vending products are high in energy; and that it would complement other jurisdictional vending machine initiatives.

A government submission highlighted an error in the Consultation Paper with respect to South Australia's exemptions. It was clarified that multi-site mobile vendors are required to comply with menu labelling legislation; however currently there are no businesses that meet the state or national threshold.

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

To increase the reach of menu labelling, there were three key approaches highlighted in the submissions: (1) lower the outlet number threshold; (2) adopt a food-based approach; and (3) nationally- consistent prescriptions for voluntary display.

Changing thresholds

A variety of alternative thresholds were suggested, with maintaining the national threshold of 50 outlets, yet lowering the state threshold to 10 outlets the most common suggestion by public health organisations. The suggestion to lower to 10 outlets was based on the growth in the number of chains with 10 to 20 outlets within a jurisdiction; and that businesses with 10 or more outlets in one jurisdiction would be unlikely to meet the Australian Bureau of Statistics (ABS) small business definition of less than 20 employees, and therefore would have a lower burden to implement menu labelling.

Other thresholds suggested were:

- 50 outlets nationally and either 5 or 7 outlets in a state or territory;
- 20 outlets nationally and 10 outlets in a state or territory;
- jurisdiction-determined threshold to suit local content;
- more than 20 employees within a business (that is, all non-small businesses); and
- turnover or market share or customer number delineations.

It was acknowledged that while a lowering of the outlet threshold would extend the reach of menu labelling, align with the policy intent to provide consumers with nutritional information, and support healthier choices; it was still important to consider that this would result in cost implications for smaller businesses and increased compliance monitoring for enforcement agencies.

A government submission noted that lower thresholds could be discriminatory for businesses operating in smaller jurisdictions. It was noted by another government submission that thresholds based on business number had the advantage of simplicity, whereas thresholds based on a range of business characteristics would be more complex.

Food-based approach

Basing the requirement to comply with menu labelling on the type of food sold by a business was suggested by a number of public health, industry and government submissions; with it noted that such an approach would effectively remove the current exemptions. Such an approach would also capture other businesses not currently included in jurisdictions' legislation. There was some support to extend menu labelling to sporting venues; stadiums hosting large sporting and cultural events; retail outlets and catering in Government settings (e.g. schools, hospitals), airline menus (when food is available for sale), food vans, catering companies and vending machines.

Most submissions did not specify how to determine the food type; however, it was suggested by one public health organisation that if businesses sold food and drinks that meet the Australian Dietary Guidelines/ABS definition of discretionary foods then they would be required to implement menu labelling. Likewise, an industry submission suggested that if businesses sold products that contributed significantly to risk-associated nutrients as identified by the *2011-12 Australian Health Survey*, they should be required to display kilojoule information.

The benefits of this food-based approach that were noted included creating a level playing field for businesses, future-proofing menu labelling schemes, and providing all consumers with kilojoule information regardless of where they purchase ready-to-eat food.

Some submissions provided details on how to implement this approach, such as legislative amendments to remove exemptions; changing the definition of a standard food outlet to capture all businesses, not only food businesses; reviewing the National Principles; or a standard in the Food Standards Code. One industry submission called for a minimum 12 month transition period for newly captured businesses.

Voluntary display

All submissions that highlighted the issue of voluntary display called for a consistent, prescribed approach, with key reasons being to avoid a proliferation of systems, minimise regulatory burden, prevent consumer confusion if different information is provided (for example, calories rather than kilojoules) and allow consumers to compare kilojoule content across different businesses. Legislative amendments or adaptations of user guides were suggested approaches on how to achieve national consistency.

Other suggestions

Suggested strategies, made by public health organisations and industry, to support smaller businesses implement menu labelling (either voluntarily or if captured by a threshold change) included online education, workshops, resources, recognition programs, subsidising businesses, menu labelling style guides, best practice / "how to" guides, help-lines, and less prescriptive legibility requirements.

One public health organisation suggested that taxation incentives for smaller businesses could encourage uptake of menu labelling.

One government submission suggested that if exemptions were to be maintained, changing the definitions of convenience stores and supermarkets to capture smaller stores (such as those with more than 200m² retail floor space) could be considered.

Legibility

The Consultation Paper highlighted the consistency in information that must be displayed on menus across jurisdictions. Legislation in all jurisdictions states kilojoules must be displayed in the same size and font as the price or name of the item; however, Queensland has also specified display in the same font colour as the price or name. However, the paper raises concerns regarding legibility including use of bolding, capitalization, background colours that are used on menus and can diminish the impact of kilojoule information.

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

The majority of submissions supported the need for menu labelling to be very easy to see and read ‘at-a-glance’, with a nationally consistent approach preferred by both public health organisations and industry.

A number of submissions from public health organisations provided examples of menu boards where the kilojoules were illegible. More research was suggested to determine legibility requirements from a customer perspective. Further, submissions suggested some consideration should be given to legibility for population sub-groups, with options to assist people with visual impairment. A variety of approaches were suggested to improve legibility:

- consider prescribing for font, font size, colour, font weight, background contrast and hue;
- display kilojoules in the same size as the largest price on posters, menu boards and online;
- adopting the legislation provision from the United States:
*“In the same color, or a color at least as conspicuous as that used for the name of the associated standard menu item; and
With the same contrasting background or a background at least as contrasting as that used for the name of the associated standard menu item”*
- requesting rolling menu boards have a pause to allow customers to read menu item, price and kilojoule information;
- supermarket labelling to be the same font size as the price rather than the unit pricing (which is often too small);
- in supermarkets, kilojoule information needs to be placed as close to the unpackaged food item as possible; and
- learning from businesses already implementing menu labelling.

Overall, public health organisations called for tighter regulation, with many submissions supporting the Queensland prescription for font colour. In contrast, industry submissions called for less regulation and a preference for a “clearly legible” audit and assessment requirement, with one submission supporting the New South Wales prescriptions.

Limited menu space and potential for information overload on menu boards were raised as issues by industry and a public health organisation. One industry submission also raised concern about current requirements, pointing out that the colour and font requirements can confuse customers as the numerals are undifferentiated and can appear as a string of numbers.

One public health submission included a call for national consumer education campaigns and for the campaigns to be well funded, sustained, evaluated and reported with reference to the NSW 8700 campaign as the best Australian example.

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

Four key themes emerged from submission responses to this question. There was an overall theme of a call for national consistency.

Submissions from both industry and public health organisations highlighted the need for a publicly funded, targeted, sustained, evaluated (and reported) consumer education and awareness campaign to occur in conjunction with menu labelling. Submissions provided references to highlight that menu labelling in isolation of other supporting strategies, is ineffective. Specifically campaigns should include education to improve nutrition literacy overall, the understanding of kilojoules, concepts of energy density, further information on different energy needs for various sub groups (particularly children and adolescents) and visual tools to enhance understanding including for people with lower literacy and culturally and linguistically diverse groups.

Websites, social media, media campaigns, leaflets and Apps were suggested as mechanisms to communicate this information, and one submission suggested government campaigns could be extended through company websites. One industry submission suggested the Healthy Food Partnership Portion Size Working Group terminology be adopted for communications.

The need for further research to better understand the cognitive steps consumers undergo when purchasing from a menu was highlighted as a way to facilitate a targeted call to action and development of appropriate, relevant evaluation measures. The menu labelling strategy needs much clearer targeting about what behaviour change is desired with menu labelling and by whom.

A public health submission supported the provision of kilojoules per product on the customer receipt to allow customer reflection and investigation of kilojoule content at a later time.

There was a strong call from industry and public health organisations to remove the allowance for supermarkets to display kilojoules per 100 grams. Submissions detailed examples of the current provisions creating consumer confusion; preventing quick and easy comparisons across products and providing misleading representation of healthier choices. There was strong support for kilojoules to be labelled for each standard serve item.

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

Public health organisations, industry and government submissions all detailed the need for a nationally consistent standard that reflects the intent of the legislation – that menu labelling is legible. Solutions proposed included:

- development of a style guide that is developed in consultation with all stakeholders and aims to ensure kilojoule information is consistent, accessible, legible and recognisable nationally;
- prescribing kilojoules be displayed in the same size, colour and font as the price or name of the menu item;
- less prescription with a supported collaborative process where businesses can seek advice regarding issues or concerns regarding clear legibility when developing or changing menu boards; and
- consistency of enforcement compliance across jurisdictions.

Menu Customisation

The Consultation Paper identified that menu customisation is more prevalent as businesses cater to the ‘fresh’ and ‘personalised’ concept. There are two key customisation scenarios – (1) ‘build your own’ where a number of individual ingredients can be chosen to prepare a customised food item such as a burger or sandwich and (2) adding ingredients to a standard food item, such as adding a slice of cheese to a burger.

It was noted in the Consultation Paper that:

- customisation may result in a final food item not being considered a ‘standard food item’ as defined by the National Principles;
- businesses would have access to kilojoule information for single ingredients in order to calculate the kilojoule content for standard food items; and that single ingredients are standardised by content and portion across stores to ensure brand consistency;
- limited space on menus may make it difficult to display kilojoule information for single ingredients;
- computer-generated menu systems make it easier for businesses to display kilojoule information, particularly as a final kilojoule total for a customised item could be provided; and
- there has been an increase in self-service outlets where the portion is controlled by the customer.

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

The majority of submissions identified that it is important for businesses to provide kilojoule information for customised menu items, both for the entire customised item and single ingredients. However, one industry submission called for the government focus to remain on ensuring compliance with the current menu labelling requirements, while another industry submission voiced that customisable items need to be treated differently from standard food items.

A key issue identified by multiple submissions was that the current definition of ‘standard food item’ in jurisdictions’ legislation is not being interpreted to include single ingredients despite typically being standardised by portion and content.

As identified in the Consultation Paper, both public health organisations and industry submissions identified that space restrictions on menus (particularly static menus) was a barrier to providing kilojoule information for customisable items; however, it was acknowledged that computer-generated menu systems and online applications could more easily display kilojoule information for customised menu items. Some industry submissions identified that businesses’ online ordering websites and mobile applications do not have the capacity to display kilojoules for non-standard food items, and that there was a cost and administrative burden to businesses to establish and implement business-operated online solutions.

Public health organisations believed that businesses have ready access to kilojoule information for single ingredients as this information is needed to calculate kilojoule content for standard food items. One business which has implemented menu labelling voiced that it was difficult to administer when a customer changes an item and near impossible to calculate the kilojoule content for every customisable item.

One public health submission raised that customised menus do not only apply to single ingredients, but also when the side dish accompanying a main meal can be selected by customers.

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

Industry submissions largely called for kilojoule information for single ingredients and total food items to be provided *online* to assist consumers assess the impact of the total kilojoule value. It was noted that consideration of how and how many customers would use kilojoule information for single ingredients was important. The disadvantages identified with providing information on customisable items included increased cost for kilojoule testing, greater complexity for business and consumers, and depending where on a business website the information was located, that the information may not be available at the point-of-sale.

In contrast, public health organisations tended to focus on approaches to assist consumers make healthier choices at the point-of-sale *in-store*. Suggestions focused on infrastructure including ordering systems, onsite calculators and self-service screens to assist to tally kilojoules for customised items; and written materials (e.g. posters, brochures) outlining kilojoule contents for individual items (noting that as customers would need to manually calculate the total kilojoules, ease-of-use and likelihood of use would be reduced). Some public health submissions also identified the importance of ‘choice architecture’; that is, locating healthier items in prime position, colour coding to distinguish lower energy and higher energy ingredients, and listing menu items in ascending order of kilojoules or in low/medium/high kilojoule groupings.

Additionally, two public health submissions identified that kilojoule totals on customer receipts after the point-of-sale would be useful. As some businesses are already voluntarily displaying kilojoule information for customised menu items, a public health submission recommended further consultation with these businesses to inform implementation strategies.

From a legislative perspective, some public health submissions and one government submission called for the ‘standard food item’ definition to be broadly interpreted to capture single ingredients standardised by portion and content. Reviewing the National Principles was also identified as a strategy.

There was a limited focus on self-service outlets in the submissions, with some public health submissions suggesting further exploration on how to provide kilojoule content (e.g. standardised containers; by unit weight); and a government submission identifying that working with self-service businesses may be a useful first step or that additional legislative provisions specific to these businesses be drafted in the future (versus changing the definition of standard food item). One public health organisation identified that menu labelling in self-service outlets would enable businesses to experiment with menu layouts, for example, displaying the kilojoules for the healthier options as the default option.

Public health submissions also recommended a number of strategies to increase the availability of healthier choices, including:

- minimum number of vegetable-based items in customised menu lists;
- discretionary food and drinks to be in smaller serve sizes as the default option in meal deals;
- default options to be the healthiest, e.g. water as a drink;
- price differentials to encourage addition of healthier ingredients;
- introduction of healthier menu items; and
- systematic reformulation to reduce energy, saturated fat, salt and sugar content across menu items.

Rolling menu boards

The Consultation Paper raises the issue of rolling menu boards as a new style of menu display. Whilst the National Principles specify ‘where’ and ‘how’ kilojoules should be labelled, the lack of ‘when’ has meant that kilojoule information is not always displayed at the same time as the name or price of the item. This compromises the policy intent of assisting consumers to make informed and healthier choices because it is more difficult for comparisons to be made. Similar issues have been identified with online menus, where the kilojoule information is provided, but is often several ‘clicks’ away from the menu item. Queensland’s simultaneous display provisions and New South Wales’ lack of time-based exemption may address these issues.

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

All industry and public health organisation submissions provided support for rolling menu boards to comply with the same kilojoule information display requirements as static menu boards, consistent with the intent to assist customers to make informed decisions and comparisons. Examples inconsistent with this intent were raised by public health organisations and related to brief display of kilojoule information or display not adjacent to the standard food item. Public health submissions suggested adopting Queensland prescriptions (i.e. kilojoules to be displayed at the same time as name/price of menu item) nationally to address these concerns.

However, it was noted in both public health organisation submissions and industry submissions that not all products are advertised on rolling menus and it is usually a mix of core and promotion items that are advertised. Even with kilojoules displayed at the same time as the name and/or price of the menu item, consumers do not have the opportunity to compare the energy content of different menu items to make a healthier choice. Suggestions to overcome this concern included requirements for complete menus to be available at all times either on static menu boards, posters, or placemats.

One submission noted that as online ordering becomes more commonplace there would be strong public health benefit from ensuring these issues are considered to ensure consumers can compare products on a variety of platforms and make a healthier choice.

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

Public health submissions and some industry submissions noted that enabling comparison between similar products is a key component of the scheme and this should be enabled in-store, online and via third-party ordering platforms.

Providing kilojoule information in separate locations does not enable comparisons and limits usefulness when ordering. Suggestions to ensure easy access include prominent display of kilojoule information at the point-of-sale for all menu items, total value for meal packages, customised menu items and combination meals. Additional considerations to facilitate easy access to kilojoule information and product comparison are provided below:

- presenting kilojoule information in order of energy content may improve selection of lower kilojoule items;
- utilising technology options (online or via self-service kiosks) such as pop up boxes when you hover over an item (to avoid clicking through);
- using a symbol to identify the lowest kilojoule item or a coding system to identify energy density of items; and
- using computerised registers to display the kilojoules of the customer’s order along with the price, noting the need for a mechanism to note individual orders versus orders for multiple people.

An industry submission reiterated the importance of further research to identify key points in consumer cognition to enable clear identification of values consumers need to make a healthier choice.

Online ordering and web based platforms

The Consultation Paper identifies the growth of third-party delivery agents and online catalogues as methods to order standardised food items and have them delivered. As third-party delivery agents are not food businesses, they are currently exempt from complying with menu labelling legislation and many jurisdictional user guides specifically exclude catalogues as menus. The Paper raises these as issues for future exploration.

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

Public health and government submissions supported capturing all forms of online ordering in future legislation changes to maintain the integrity of the legislation that kilojoule information should be available, alongside the menu item and price, at the point-of-sale. This includes third-party delivery websites, online catalogues and Apps. Some submissions argued that electronic menus provide even more feasibility to provide kilojoule information. At a minimum, submissions highlighted that currently captured businesses should be required to provide kilojoule information to third-party delivery websites for display.

Some public health and industry submissions also supported encouraging smaller businesses using third-party delivery websites to also provide kilojoules on a voluntary basis, suggesting government support could be provided to facilitate this.

Industry submissions supported the display of kilojoule information on third-party delivery websites but took two different approaches to achieve this. One approach aligned with current provisions of included businesses and required an included business to provide the energy content to the third-party delivery website. However, noted that the food business have little ability to influence or vary the structure and functionality of the third-party website so suggested greater flexibility in terms of display requirements be allowed. The other approach was to capture third-party delivery website businesses in the legislation and thus require them to provide kilojoules for all standard food items they sell.

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

Suggestions provided across submissions were to:

- consult with businesses and web developers to see what is possible to ensure information is displayed;
- ensure any web-based ordering that is captured in future changes are also monitored and enforced;
- change the definition in the legislation so that it relates to food that is sold, not the business it is sold from. i.e. “a business at which standard food items are sold”;
- broaden the definition of menu to include catalogues and other formats such as websites, mobile apps, ordering services;
- provide sufficient lead in time for any changes; and
- recognise that captured businesses may not have influence over the design and functionality of third-party ordering websites, so allow greater flexibility in this area.

Combination meals with pre-packaged food

The Consultation Paper identified two concerns associated with combination meals – (1) for advertised meal combinations, some businesses are not including information on pre-packaged drinks; (2) some businesses do not provide kilojoule information for known meal deal combinations in online menus.

It was noted in the Consultation Paper that there may be a disconnect between the definition of a standard food item and the intent to provide consumers with nutrition information that relates to the meal as a whole. Additionally, there is some discrepancy between legislation and user guides about the treatment of pre-packaged items in meals deals.

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

The majority of submissions recommended that the kilojoule information for combination meals should include all components, including when pre-packaged products with nutrition information panels are used. It was noted that there is currently inconsistency between jurisdictions in this area.

Across the submissions a variety of issues were highlighted, including:

- it is misleading for consumers to exclude pre-packaged products;
- some businesses only provide kilojoule information for combination meals and not individual items, making comparison across products difficult;
- consumers are unlikely to manually calculate the total energy content of combination meals from separate components;
- the nutrition information panel supports consumer choice;
- the components of the combination meals dictate how kilojoules are displayed;
- drinks and sides may be higher in kilojoules than the ‘main meal’ and make a significant contribution to the energy content of combination meals;
- concern over which drink would be the default in calculating the kilojoule content of combination meals, for example water would lower the overall kilojoules, but sugar-sweetened soft drinks may be the best sellers, and therefore would be more accurate;
- post-mix beverages should not be exempt from information for combination meals;
- businesses are able to provide kilojoules for combination meals as they already have information for the individual components; and
- it may be useful for consumers to know the kilojoule content of the separate components of the combination.

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

To facilitate providing kilojoule information for the entire contents of combination meals, it was suggested that the National Principles and the definition of a ‘standard food item’ be reviewed to ensure the intent of menu labelling is maintained. National consistency of interpretation was a common theme.

A variety of actions for jurisdictions were suggested:

- within the legislation, remove the exemption to not provide kilojoule information for pre-packaged products when part of a combination meal; or expand the definition of standard food item to specifically include combination meals with pre-packaged products; or prescribe combination meals as ‘meals as consumed by the consumer’;
- amend user guides to achieve consistency;

- adopt the NSW industry user guide and/or incorporating into jurisdictions' user guides the information provided in the NSW guide to provide clarity on combination meals which include pre-packaged products must display kilojoules for the entire meal';
- work with businesses to ensure the information is provided online and in-store;
- communicating decisions on clarification to businesses; and
- inform consumers that there may be gaps in kilojoule information for combination meals in some businesses if the status-quo is maintained.

Few submissions referred to how to calculate and display kilojoules for combination meals that contain drinks. One suggestion was to use the highest selling drink as the default; while two other submissions noted that water would be the ideal default drink in combination meals.

One public health submission raised the issue that businesses may incur costs to make changes to combination meals and that if there was a transition period, then any changes may not be seen immediately.

Consideration of additional and interpretive information

The Consultation Paper highlights that consumer understanding of kilojoules remains limited and greater understanding is required to support behaviour change. Some studies and market research has shown that the impact of menu labelling may be improved with the use of additional and/or interpretive information.

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

Overall, submissions from industry did not support additional and interpretative information being considered as part of menu labelling initiatives. Whilst industry agreed that kilojoules were poorly understood, submissions reiterated that menu labelling was not intended as an isolated strategy and needed to be supported by consumer education campaigns such as the 8700 campaign in New South Wales. Additionally, the majority of industry submissions provided specific mention of the Health Star Rating system, stating it is not an appropriate labelling scheme for fast food, due to the scheme using 100 grams and not per serve as the basis for ratings. It was highlighted that using the Health Star Rating for fast foods would bring the entire system into disrepute as it wasn't designed for a situation where the consumer chooses from a single menu or single counter.

Industry submissions argued that menu labelling initiatives essentially target portion size and that smaller portions resulted in fewer kilojoules and often fat, sugar and salt, so there was no need to label these per se.

A submission from government highlighted the need to consider food literacy before any other nutrients are added.

Submissions from public health organisations focused on three key themes: (1) adaptation of the Health Star Rating to fast foods, (2) greater investment in consumer education and (3) provision of other nutrition information. Submissions in favour of adaptation of the Health Star Rating highlighted:

- consumers are already familiar with Health Star Rating;
- a consistent approach across packaged items and standardized food items would assist with consumer understanding;
- potential for cross sector support as the scheme was collaboratively developed with industry;
- early research by The George Institute demonstrated potential for Health Star Rating application to this sector, although further research is required;
- Health Star Rating provided a better assessment of the overall nutrition quality of the food item;

- could encourage reformulation;
- inclusion of added sugars into the health star criteria and removing protein points on the basis of adequate protein intakes in Australia;
- the opportunity to support ‘Close the Gap’ initiatives with inclusion of sugar;
- the current Health Star Rating review provides an opportune time to consider expansion of the scheme to other areas;
- its use would be consistent with the 2011 Labelling Logic Report which recommended a single interpretive scheme for front of pack and fast food menu boards;
- pragmatic response within space constraints;
- use of Health Star Rating and kilojoules together provides the most complete information, thus enhancing impact of menu labelling;
- provides efficiencies for government in the design and delivery of supporting education and communication materials; and
- will place Australia at the forefront of international trends to provide consumers with more information at the point-of-sale, noting New South Wales’ Fast Choices program was hailed as a leading example globally.

If further investigation of Health Star Rating is to proceed, submissions highlighted this should not impede or delay implementation of existing labelling legislation.

Not all public health submissions proposed use of the Health Star Rating. One public health organisation dismissed the use of the Health Star Rating on fast foods due to concerns it may encourage misuse and further confusion, such as comparison across categories. The submission highlighted it was important that the simplicity of menu labelling is not lost. Another submission suggested further research was required on potential Health Star Rating adaptability and another suggested research into simplification of menu labelling to improve consumer understanding e.g. rounding kilojoule calculations.

Consistent with submissions from industry groups, public health groups called for implementation of a government funded, nationally consistent, multi-phased, sustained and evaluation consumer education campaign on menu labelling and how to use kilojoules to choose healthier foods.

Some submissions also noted the apparent reduction in available nutrition information since the introduction of menu labelling schemes. It was suggested that under menu labelling legislation, food businesses be legislated to provide more extensive nutrition information including saturated fat, sodium and added sugar on company web sites and on in-store brochures.

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

All submissions that addressed this question reiterated the importance of a comprehensive consumer education campaign and strategies suggested have been discussed below. Some submissions (from across public health, government and industry) highlighted the importance of investing in further research and/or consumer consultation to inform the way forward, including:

- likely impact of interpretive information, should it be considered;
- timeliness of introduction of additional information – is it too soon given kilojoules are poorly understood;
- what factors or icons/non-numeric visuals would give the greatest clarity for accurate interpretation of the key message of the initiative;
- clarification of a clear call to action/target behaviours underpinning this initiative; and
- consideration of the regulatory burden from any increase in labelling requirements.

Note that additional areas for research have also been raised under responses to other questions.

Overall, there was a strong call for a much greater investment in consumer education and social marketing campaigns, once the outcomes of the review are implemented. There is strong evidence that menu labelling is more effective when supported by education and information and submissions highlighted the need for such investment to be sustained, evaluated and evidence-based. Suggested strategies include:

- inform consumers of the availability of kilojoule information;
- multi-level approaches;
- a target of changing eating behaviours;
- addressing and considering low health and nutrition literacy;
- including understanding of kilojoules, daily energy needs of different individuals and family members – including children and adolescents;
- targeted materials particularly aimed at low SES/education and culturally and linguistically diverse groups;
- improve general understanding of the importance of eating a healthy diet; and
- simple, engaging and memorable key messages and meaningful images.

Other points raised in submissions to assist interpretation of kilojoule information include:

- consideration of implementing an interpretive system such as the Health Star Rating to the fast food sector, facilitating achievement of a single standardised signposting system for healthiness across grocery and fast food sectors;
- adapting the algorithm underpinning the Health Star Rating system to enhance application for the fast food sector. Nutrients raised for review in submissions included added sugars, fruit/vegetable content and protein;
- consideration of Health Star Rating alongside kilojoules;
- requiring full nutrition information to be available for consumers in-store (e.g. on brochures) and on websites; and
- keep menu labelling simple and consistent.

Public health organisations also raised concerns over the use of 8700 kJ as the reference statement, requesting it be reviewed as it is too high for most women, many men and all children.

Kilojoule display variations

In all state menu labelling legislation, supermarkets (only) are allowed to display energy content per 100 grams. The rationale was to allow consumers to compare the kilojoule content per 100 grams across both packaged and unpackaged items on a like-for-like basis. However, the use of energy content per 100 grams could be seen as adding complexity to an area not well understood by consumers and comments were invited on this and other potential display variations in the Consultation Paper.

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

Of the submissions that responded directly to this question, there was overall preference to provide kilojoule information per serve for ready-to-eat standard food items in supermarkets and not per 100 grams. Multi-serve products such as whole cakes also need to be displayed per serve. However, one industry submission suggested that per serve or per 100 grams be allowed; however, with menu space real estate also highlighted a prescribed approach is likely to be preferred by the majority of stakeholders.

One public health submission recommended clarification of ‘serve size’ on nutrition information panels using the recommendations of the Health Food Partnership Portion Size Working Group, prior to any changes on kilojoule display variations. Another submission recommended consideration of the negative consequences of menu labelling on people with eating disorders be considered in the review.

Concerns regarding low levels of numeracy and health literacy amongst consumers were raised as issues and targeted consumer education was recommended to address these limitations.

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

Submissions reiterated points made elsewhere:

- ensuring that menu labelling is clearly legible for the consumer;
- ensuring consumer education is delivered alongside menu labelling, with consideration of an additional icon or symbol;
- having a nationally consistent approach with national education that is ongoing, supported, evaluated and addresses varying energy needs of different population groups and energy balance;
- adding interpretative information with strong support for the health star rating alongside a kilojoule label;
- clarifying that energy content for packaged items included in meal deals be included in the total energy displayed for that meal;
- promote the use of kilojoules (vs calories) in Australia to all businesses as the ongoing use of calories by some businesses perpetuates customer confusion;
- ensure any voluntary display of energy on menus is prescribed to be consistent with mandatory labelling; and
- for whole food items such as fruit loaf or cake, allow kilojoules per serve.

Other issues

The Consultation Paper noted that the review is an opportunity for non-government stakeholders to highlight other implementation and emerging issues related to menu labelling schemes.

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

Public health organisations called for:

- a nationally consistent approach with all jurisdictions introducing legislation;
- culturally appropriate public education that improves understanding of kilojoules and daily energy needs, and empowers all consumers to make healthier choices;
- ongoing, funded monitoring and evaluation that considers business compliance, the impact of menu labelling on consumer behaviour and food reformulation, as well as the impact of education campaigns; and
- a commitment to refine menu labelling schemes to improve effectiveness.

Collaboration opportunities with the Healthy Food Partnership were seen as important by industry and public health organisations. Reformulation and portion size reductions were identified as priorities.

Other issues related to menu labelling schemes raised by public health, industry and government submissions included:

- consideration of whether menu labelling extends to alcohol should occur after the outcomes of the policy review on energy labelling on alcoholic products are known;

- consideration of a business recognition scheme to award compliance and manage compliance breaches;
- national adoption of the NSW penalties including higher penalties for corporations and intentional breaches;
- consideration of how businesses comply with both traffic light food classification systems and menu labelling requirements in specific settings such as hospitals;
- consideration of extending menu labelling to include country of origin labelling to support consumers being informed about the food they purchase and align fast food labelling with food and drinks sold in other food retail sectors;
- concerns that if smaller chains increasingly standardise foods rather than relying on seasonal and local produce, there may be unintended consequences for health;
- consideration of perceived loopholes in existing legislation that have the potential to undermine the intent of menu labelling;
- a stepped approach within a defined timeframe may be more appropriate to address issues with menu labelling; with review of completed and pending evaluations, amendments to National Principles, and changes to jurisdictions' legislation and user guides, the key steps identified; and
- menu labelling schemes may be more efficient if progressed nationally and captured under the Model Food Act with jurisdictions adopting by reference.

Some public health and government submissions also called for action on other initiatives, such as:

- a National Nutrition Policy;
- limits on the number of fast food outlets, particularly in disadvantaged areas;
- improving access and availability of healthier food choices; and
- a national code for vending machines (kilojoule information and healthier choices).

A number of submissions reiterated information and recommendations related to issues covered by previous consultation questions. These points have not been included again under this question.

In addition to the points raised by stakeholders under each of the 19 questions, other issues raised included:

- it is important to clearly distinguish menu labelling schemes in Australia from the joint Australia-New Zealand food system arrangements;
- public support for menu labelling is strong as evidenced by a number of Cancer Council and Heart Foundation surveys which indicated between 69 and 91 percent of consumers want kilojoule information in fast food and snack chains;
- industry should be recognised for their implementation and willingness to contribute to the success of menu labelling schemes;
- research on how menu labelling influences customers decisions is needed; and
- onerous labelling requirements may have an unintended consequence of reducing the availability of unpackaged products which have food quality and environmental benefits.

Only one industry submission voiced strong opposition to menu labelling, on the basis there is no clear evidence to support the impact on obesity rates. Further, based on experience with other regulation such as plain packaging of tobacco, enforcement for non-compliance is not sufficient to be a deterrent for unscrupulous retailers.

FINDINGS: INDUSTRY ROUNDTABLES

Industry representatives in attendance raised issues and provided an industry perspective. The following summary points are organised to be consistent with the Consultation Paper.

Exempt businesses and number of outlets

- The threshold of 50 national businesses has general support.
- There is general support to review the current exemptions.
- In reviewing the exemptions:
 - consider impact on business and not just larger business; some franchisees operate as small businesses and the onus is just as big on them as it would be on a small business owner;
 - included businesses should not be disadvantaged through regulation compliance. The market is changing with smaller businesses competing for larger businesses in niche areas such as health; and
 - consider the availability of food from a consumer perspective; where do they purchase standardised food items and how often? Consider food provision that doesn't have a traditional shopfront such as large catering companies (that provide standardised food sporting stadiums, mine sites etc.), dine-in restaurants. The type of business may not be relevant; it is the type of food that is important.
- Just focusing on larger businesses means the effect of menu labelling is diminished as many similar foods are available from smaller businesses or exempt businesses.
- Larger businesses have more capacity to absorb the additional costs of applying regulation.
- Consider a multi-pronged approach to include businesses such as number of national outlets, employees, frequency by which people eat from certain places, annual turnover and market share.
- Strong opposition from some industry present was voiced (independent supermarkets and convenience stores) to remain exempt.

Legibility

- The intent of the legislation is clear to all – to enable the customer to easily read the kilojoules on the menu.
- Having one state that is different from the others creates challenges (i.e. Queensland includes font of the same colour as part of the prescriptions for kilojoule information).
- Current requirements for font can make the kilojoules actually harder to read, as the lack of differentiation means that the display can appear as a string of numbers with energy and price listed together.
- Current legislation stifles creativity for menu board displays.
- Poor or non-complaint examples had been noted by businesses who called for tighter compliance monitoring to support the schemes.
- Electronic menu boards make displays and changing displays much easier and cheaper. However, only a few businesses currently use electronic menu boards.
- A ratio of font size name:price:kilojoules may enable more creativity, with a minimum font size set for various displays.
- Greater flexibility in menu design is requested.
- A co-creation approach would be welcomed by industry to ensure legibility but allow for individual brand design principles, noting the need for a system to address compliance.

- Requirement for reference statement in same size font as the food name is ridiculous in some instances such as posters.
- Need clarity around placement of the 8700 kJ statement on online menus and websites.

Menu customisation

- Customisation, including customisation of Standard Food Items or make your own, is a growing trend in ready-to-eat food industry.
- From a volume perspective in quick service restaurants, not that many people choose to customise. It's actually a small niche market.
- Providing information to customers on what effect their customisation choices have on the energy of the final item could only be done with a technological solution. The IT systems to do this are extremely complex systems and not all businesses have this capability or the finances to develop it.
- Customisation must be provided on customer request, but business can't cover every variation in kilojoule labelling. It is just not possible.
- Could frame offering kilojoule adjustment information in a positive frame to the customer. i.e. we offer the flexibility to tailor to taste and energy requirements; we are a business that supports healthier choices and motivates customers to create something healthier. However, industry noted they are not in the business of making people feel guilty about eating their products.
- Consider an outcome based statement such as "customers must be able to readily access the information of all the customisation choices they make". This could be provided on a website or a brochure; this approach acknowledges it may not affect the current choice but may affect future choices.

Rolling menu boards

- Rolling menus present information in a range of ways and usually take advantage of advertising current promotions.
- Displaying products to allow comparison across a range of products is what industry usually try and do. However, often only the core part of the menu is displayed at regular intervals, and some foods aren't displayed at all.

Online ordering and web based platforms

- Participating businesses had experience in using third-party online ordering websites.
- Use of third-party online delivery agents is a growing trend, including restaurants using to supplement existing customer base.
- Approximately one third of Restaurant and Catering Association members use a third-party online delivery agent, despite the large costs involved.
- Many small businesses reluctantly use third-party online ordering websites to maintain market share, and had found use of these systems to carry minimal profit due to high commission charged by the third-party. These commissions are upwards of 30 -35%.
- Businesses with experience using third-party online ordering websites reported that they provided the energy information to the third-party to place on the third-party website.
- Do businesses that typically sell non-standardised products in effect standardise products for their online menus/customers? It was acknowledged that more information is required.
- Businesses can specify what goes on the menu on the third-party website but at a cost to the business.

- We need to future proof this legislation and ensure kilojoules are displayed on third-party websites.
- The roles and responsibility of the third-party agent needs to be clarified.

Combination meals with pre-packaged food

- If you are selling a standard meal you need to choose to display and label the whole meal. Drinks should not be excluded.
- In some situations, drinks are self-service from a fridge so the customer can choose based on the nutrition information panel if that is important to them.
- In a bundle meal, we tend to use the kilojoules for the drink that is being promoted in the visual.
- Examples of inconsistent application were discussed:
 - in some instances, water is used for the total energy value (e.g. in a kids meal) yet water is rarely chosen. This is an example of businesses trying to do the right thing, yet customers don't listen; and
 - some businesses use a low kilojoule beverage as part of their meal combinations so that the kilojoules remain low.
- Agreement that there needs to be clarity in definitions and what drink should be included in a meal deal combination (e.g. water, sugar sweetened beverages or low kilojoule/sugar option).

Consideration of additional and interpretive information

- There was overall agreement that customers do not understand kilojoules (although some opinion it was improving) and we need to work to improve this situation.
- There was also general agreement that many customers aren't good at maths, so expecting people to add or subtract will create confusion.
- Concern was raised over the 8700 kilojoule reference statement which is intended to assist with interpretation. As it is not correct for everybody we could be sending the wrong message to consumers.
- A very clear call to action is required with this policy – be explicit about what we want consumers to do.
- A public education campaign needs to support this legislation such as NSW's 8700 campaign. This campaign needs to address understanding of kilojoules as well.
- There was no industry support for utilising different ways of interpreting kilojoules such as walking time or Health Star Rating.
- There is only so much room on a menu or a price/food tag and this must be considered at all times.
- Need to consider all the regulatory requirements, subsequent cost implications, logistical and practical difficulties involved from a business perspective in complying – e.g. menus may be required to do kilojoule labelling, country of origin labelling, seafood labelling and then may need to do allergy labelling (e.g. gluten) for customers. Menus could end up being impractical for customers to use due to over disclosure of information.

Kilojoule display variations

- Kilojoule display per 100 grams was discussed. Most food serving sizes are different to 100 grams (greater or less) and therefore providing kilojoules/100 grams is not useful for the customer. If they eat the whole serving the kilojoules consumed must be multiplied up or down to calculate the kilojoules for the serve size/portion eaten. This problem would be solved if kilojoules were provided for the whole food item or per serving and not per 100 grams.
- Agreement that people don't know what 100 grams of food is.
- Kilojoule display should be the same no matter where you go.
- Discussion that not including voluntary display in legislation adds to customer confusion.
- The threshold for number of stores for trials is too low. Perhaps use a percentage of stores.
- Supermarkets like the Health Star Rating.

Other issues raised in discussion

- There was a strong call for national consistency.
- There was a strong call for clear and simple legislation with current legislation across the jurisdictions considered overly complex.
- Industry had overall preference for a co-creation approach as it enables consideration of the practicalities of implementation and a greater understanding of the nature of the food (service) industry and how dynamic it is.
- Concern raised over the lack of public education or awareness activities about the schemes.
- Food industry doesn't drive customer desires. Industry finds out what customers want and tries to match their products to those wants. This is a more successful industry proposition and usually more cost effective.
- Any legislation and interpretation guides need to consider that some users (many smaller businesses or franchisees) speak English as a second language.

Industry representatives appreciated the opportunity to discuss the challenges they have had with implementing menu labelling and were keen to be involved in future discussions as the review progressed.

NEXT STEPS

The results of the consultation have been provided to the Forum and the COAG Health Council for consideration as part of the menu labelling review.

The next steps of the menu labelling review will be governed by the Food Regulation Policy Framework¹⁰. The steps of the Framework will help ensure the most appropriate policy response for menu labelling is applied. The Framework takes account of the nature and extent of the issue or risk posed, and considers different options for response, which may include non-intervention, self-regulation, co-regulation or regulation.

¹⁰ Available at: [Food Regulation Policy Framework](#)

APPENDICES

Appendix 1: Consultation questions

1. Are you aware of any other pending or completed evaluations that have relevance to the Australian experience? If yes, please provide results and references with your response where possible.
2. Are there any other issues in relation to exempt businesses that should be considered?
3. What could be done to ensure kilojoule information is available in as many outlets as possible? What are the pros and cons of your suggested approach?
4. Are there any other issues in relation to legibility that should be considered?
5. What can be done to ensure kilojoule information is as easy to use as possible by the consumer?
6. What can be done to facilitate businesses to address legibility issues? What are the pros and cons of your suggested approach?
7. Are there any other issues in relation to menu customisation that should be considered?
8. What could be done to enable healthier choices when customising menu items? What are the pros and cons of your suggested approach?
9. Are there any other issues in relation to rolling menu boards that should be considered?
10. What could be done to ensure kilojoule information is easy to access and that consumers can compare products easily? What are the pros and cons of your suggested approach?
11. Are there any other issues in relation to on-line ordering that should be considered?
12. What could be done to ensure kilojoule information is included on all web-based ordering platforms? What are the pros and cons of your suggested approach?
13. Are there any other issues in relation to combination meals that should be considered?
14. What could be done to ensure kilojoule information is provided for the whole meal? What are the pros and cons of your suggested approach?
15. Are there any other issues in relation to additional and interpretive information that should be considered?
16. What could be done to ensure kilojoule information is as easy to interpret as possible? What are the pros and cons of your suggested approach?
17. Are there any other issues in relation to kilojoule display that should be considered?
18. What could be done to ensure kilojoule information is as easy to use and interpret as possible? What are the pros and cons of your suggested approach?
19. Are there any other issues with current menu labelling schemes that should be considered during this review? Please provide information to support your response.