



**Review of fast food labelling schemes
Consultation Paper**

Submission from the Obesity Policy Coalition

16 March 2018

Introduction

The Obesity Policy Coalition (OPC) is a partnership between the Cancer Council of Victoria, Diabetes Victoria and the Global Obesity Centre at Deakin University, a World Health Organisation Collaborating Centre for Obesity, with support from VicHealth. The OPC advocates for evidence-based policy interventions and research to address the high rates of overweight, obesity and unhealthy diets in Australia, particularly in children.

We are grateful for the opportunity to respond to this consultation. There is strong Australian and international evidence that kilojoule menu labelling supports consumers to make informed and healthier food choices.¹ With Australians making 51 million visits to fast food chains each month,² mandatory kilojoule labelling is an important component of any multi-strategy approach to improving food choices and reducing the problems of overweight, obesity and related chronic disease. Australia's high rates of chronic disease reflect overall poor dietary profiles.

International and Australian research shows that people are likely to substantially underestimate the energy content of restaurant food³ and that many people do not have a good understanding of their daily energy requirements.⁴ However, it is also now well established that appropriately-designed kilojoule labelling at the point of sale can effectively inform consumers about their energy requirements and the energy content of products, and can lead to a significant reduction in the energy content of meals purchased. Indeed, the evaluation of the NSW kilojoule labelling initiative was completed in 2013 and showed that the display of information, together with supporting public education, resulted in a significant decrease of the median kilojoules purchased during the evaluation period, with an overall reduction of 519 kilojoules, equivalent to a 15% decrease.⁵

There is strong public support for the display of nutrition information in fast food outlets. A Cancer Council and Heart Foundation survey found that more than eight in ten consumers surveyed want kilojoule information in fast food and snack chains. More than half (52%) of consumers surveyed, said they weren't sure how many kilojoules were in the foods and drinks they purchased from fast food and snack chains.⁶

¹ Nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption (Review). Cochrane Database of Systematic Reviews 2017, Issue 12. Art. No. CD009315; DOI: 10.1002/14651858.CD009315.pub2.

² Sophie Langley, 'Australian fast food 'emma' survey findings released, March 17, 2014, Australian Food News <http://ausfoodnews.com.au/2014/03/17/australian-fast-food-%E2%80%98emma%E2%80%99-survey-findings-released.html>

³ Wansink B, Chandon P. Meal size, not body size, explains errors in estimating the calorie content of meals. *Ann Int Med* 2006; 145: 326-332; Burton S, Creyer EH, Kees J, Huggins K. Attacking the obesity epidemic: the potential health benefits of providing nutrition information in restaurants. *Am J Pub Health* 2006; 96: 1669-1675

⁴ ABC News, 18 June 2014 'Kilojoule labelling of fast food: Most people wrong about their daily needs, survey finds' <http://www.abc.net.au/news/2014-06-18/kilojoule-labelling-of-fast-food-most-people-wrong/5532716>.

⁵ New South Wales Government, Food Authority (2013) Evaluation of kilojoule Menu Labelling CP070/1308

⁶ Heart Foundation and Cancer Council Victoria survey of 558 Victorians aged 25-49 conducted in July 2016.

The Obesity Policy Coalition would like to see fast food labelling regulation strengthened as outlined in the answers to questions posed by this consultation and legislation standardised to produce a nationally consistent approach across all jurisdictions, including Tasmania, Western Australia and the Northern Territory, which are yet to introduce legislation.

Answers to consultation questions

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

The Cochrane review of nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption was released on 27 February 2018.⁷ This systematic review evaluated the evidence to establish whether, and by how much, nutritional labels on food or non-alcoholic drinks affect the amount of food or drink people choose, buy, eat or drink. The researchers included evidence from 28 studies, of which 11 assessed the impact of nutritional labelling on purchasing and 17 assessed the impact of labelling on consumption.

This review suggests that if kilojoule labels were added to menus or put next to food in restaurants, coffee shops and cafeterias, this would reduce kilojoules purchased by on average about 8% per meal. This is based on combining the results of three studies conducted in real world settings. Evidence from eight studies carried out in artificial or laboratory settings suggests that such matters would have a similar impact on calories consumed, again by an average of around 8% per meal.

Cancer Council Victoria and the Heart Foundation surveyed the point of purchase kilojoule menu labelling practices at 59 fast food outlets, from nine fast food and snack chains across metropolitan and regional Victoria, noting that the state did not have mandatory labelling regulations in place at this time. The survey compared their labelling practices to the best practice guidelines implemented in New South Wales.⁸ The survey found that only two of the nine (22%) chains, consistently displayed kilojoule information in line with the requirements in New South Wales, although all businesses surveyed had some kilojoule information in store. Less than half (47%) met the New South Wales standards for font, size and position of the kilojoule information

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

The Obesity Policy Coalition supports the removal of exemptions to menu labelling requirements for standard food outlets. This would ensure the requirements apply consistently across the different jurisdictions and give effect to the policy objective of providing empowering information to consumers to assist them to make healthier choices.

⁷ Nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption (Review). Cochrane Database of Systematic Reviews 2018, Issue 12. Art. No. CD009315; DOI: 10.1002/14651858.CD009315.pub2.

⁸ Cancer Council and Heart Foundation, Investigation into kilojoule menu labelling in Victorian chain food outlets, January 2016, <https://livelighter.com.au/You-shouldnt-need-to-be-a-detective-to-find-out-whats-in-your-food>

In each of the instances discussed below, standard food items are likely to be provided by the same suppliers across all or the majority of chains. These products are likely to be high in energy, fat, sugar and salt. These types of outlets are widely represented across Australia, and excluding any of them from labelling requirements detracts from the consistency and efficacy of the scheme. To ensure the greatest population benefit of menu labelling, such outlets should not be exempt.

Dine-in restaurants

We support the application of the legislation in all jurisdictions to outlets that only offer dine-in meals with no take away service, as set out in the Victorian legislation. The OPC's position is that customers of all large chain outlets selling ready to eat standardised food should be presented with information about the energy content of food items before they make a decision to purchase. We see no reason to make a distinction between outlets that offer take away and dine-in services and those that offer dine-in only.

Small supermarkets, convenience store and service stations

The OPC recommends the removal of exclusions for small supermarkets, convenience stores and service stations as these chain outlets represent a significant source of ready to eat standardised food items in Australia and offer products that are often likely to be high in energy, such as slushies, donuts, pies, sausage rolls and some sandwiches. We are concerned that excluding these chains from the legislation will reduce the impact of the labelling requirements as significant numbers of consumers will be purchasing ready to eat food items without information about energy content. This is an important area to consider as service stations and convenience stores have a significant retail presence in Australia, and small supermarket numbers are increasing, making these store types a key provider of ready to eat food.

On a practical level, barriers to implementing legislation by these chains are likely to be low, or no greater than at any other business covered by labelling requirements. As legislation only applies to larger chains, those businesses within its scope have sufficient resources to implement the requirements. We also note that standardised ready to eat food items are likely to be provided by the same suppliers across all or the majority of outlets of these chains. The chains that are excluded in different jurisdictions include chains such as 7-11 and Coles Express, both large chains with a significant retail presence. For example, according to their websites, Coles Express operates approximately 685 outlets in Australia and 7-11 operates more than 620 outlets. The reach of these businesses is significant; particularly when one considers that they are open 24 hours. We consider that chains of this size should fall within the scope of the legislation.

Additionally many of the service stations, convenience and small supermarket parent companies, such as Wesfarmers (Coles) and Woolworths Limited are already covered by the legislation for their other store types and will be familiar with the requirements.

We are particularly concerned that excluding small supermarkets, convenience stores and service stations will create inconsistency that will negatively affect both consumers and businesses. We believe that consistent application of the labelling requirements across all large chains where ready to eat standardised food items are available is of fundamental importance. This is because it is important that the effect of legislations is maximised by covering as many chains as possible, but

also because a central purpose of the scheme is to enable consumers to compare the energy content of food products and to make informed, healthier choices. Where a significant part of the market is not required to comply with the labelling requirements, consumers cannot effectively make comparisons between products and choose healthier options. For example, a consumer who purchases a muffin each week may be able to choose between several chains including a large bakery chain, a convenience store and a service station. Under legislation in most jurisdictions, this consumer would not be able to compare the energy content of the muffins available at any of the three chains and would not have the information needed to make an informed choice about which snack food to purchase.

We also note the argument that has already been raised by industry representatives, that as well as having a negative effect on the consumer's ability to compare products and make healthier choices, the inconsistent application of the labelling requirements creates an uneven playing field between businesses and serve to unfairly penalise businesses that are covered by the labelling requirements.

Cinemas

The OPC supports the inclusion of cinemas across the jurisdictions. Cinemas remain a popular destination for children and adults. It is well known that many of the standard food items they sell, such as soft drinks and popcorn, are energy dense and nutrient poor and often sold in large serving sizes. Kilojoule information would assist consumers when making choices within and across food categories (including choosing serving sizes), and would also assist consumers to understand the extra kilojoules they will be consuming if they accept an offer to 'up size' their food choice and/or sugary drink.

Recommendation- Remove exemptions in all jurisdictions particularly for dine-in restaurants, small supermarkets, convenience stores, service stations and cinemas.

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?

Number of outlets

We contend that the threshold for the number of businesses in a chain for the scheme to apply should be lowered from 20 within a state and 50 nationally, (which is the minimum threshold in New South Wales, Queensland and Victoria) to 10 outlets within a state and 50 nationally. The OPC acknowledges that the thresholds were adopted to minimise the impact on small businesses, but argue that the definition of small business adopted by the Bureau of Statistics as employing less than 20 people⁹ should be followed. This definition would cover businesses with significantly fewer outlets than 20 within a state, for instance Crispy Crème Donuts and Oliver's. We note that the ACT set the minimum number of businesses for the scheme to apply at 7 within the territory. The OPC considers that chains with 10 outlets would be an appropriate number to adopt, as it is unlikely that businesses with 10 outlets would have less than 20 employees.

⁹ ABS

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Quick_Guides/Data
Accessed Feb 2018.

This definition is even more important and appropriate given the proliferation of chains with between 10 and 20 outlets within a state. Moreover, many of these chains use online ordering and it is clear that the market for online ordering of fast food is firmly established, with the estimated revenue from online take away estimated at \$1,608 million for 2018 and this is predicted to increase by 17.6% annually.¹⁰ Delivery agents such as Uber Eats and Deliveroo are not covered by the legislation in any of the states as they do not fall under the definition of a ‘food business.’ While some of the businesses with in excess of 20 outlets in a state or 50 outlets nationally, utilise delivery agents, significant numbers of businesses that have between 10 and 20 outlets use delivery agents. These include businesses such as the Pancake Parlour with 13 outlets and Mad Mex with 11 outlets. Whilst it would have a significant impact on very small businesses if all businesses using delivery agents were required to comply with fast food labelling requirements, if the threshold number of businesses was dropped to 10, many of the businesses using delivery agents would be captured.

The Government must weigh the burden of implementation relative to the importance of the policy objective of providing consistent information to improve diets and health. We suggest that labelling requirements should apply to outlets with more than 10 stores within a state as the potential gain to diets and health outweighs the burden of implementation to medium sized businesses.

Recommendation: Reduce the threshold number of businesses in a chain to 10 within a state or territory and 50 nationally.

Airlines

The OPC recommends that legislation across the jurisdictions either be interpreted to include airlines as standard food outlets or specifically extended to include airlines, to ensure that the sale of inflight food is covered by the requirements. The rationale for this recommendation is that domestic airlines provide ready to eat food that is standardised in size and content and is for sale at multiple outlets, being planes. The food options are detailed in written menus with prices. It is well known that many of the standard food items sold by airlines in-flight are energy dense and nutrient poor. The manner in which airlines supply ready to eat food aligns with the definition of a standard food outlet providing standard food items as defined in the national principles developed by Food Regulation Standing Committee in 2011.¹¹

Vending machines

The Obesity Policy Coalition also supports expanding the legislation to include vending machines, which often provide nutrient poor, energy dense foods and beverages with limited access to nutrition information on packaging through the machine. In the United States, vending machine operators of more than 20 machines will be required to display nutrition information from July 2018 if the on-pack label is not visible.¹²

Recommendation: Sale of ready to eat inflight food by airlines and vending machines to be covered by labelling requirements.

¹⁰ Statista, The Statistics Portal, <https://www.statista.com/outlook/374/107/food-delivery/australia>

¹¹ Food Regulation Standing Committee, Principles for Introducing Point-of-Sale Nutrition Information in Standard Food Outlets, October 2011.

¹² WCRF <https://www.wcrf.org/int/policy/nourishing-framework> Accessed Feb 2018

Voluntary display of kilojoule information

We support businesses that choose to provide their customers with information about the energy content of their food, even where not legally required to do so. We consider, however, that it is important to ensure that these businesses are providing consumers with information that is consistent, both in content and in the manner and location of display, with information provided by larger businesses operating under the kilojoule menu labelling schemes. This is because consumers should be provided with consistent information regardless of where they purchase standard food items and should be able to confidently assess and compare information provided at one business with information provided at another.

Recommendation- Voluntary display of kilojoule information must comply with requirements of legislation.

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

Presentation requirements

The legislation in the different jurisdictions should specify that the kilojoule content and the reference statement must be identical to the presentation of the price. The provisions in the New South Wales legislation (same size and font) and in Queensland (same size, font and colour) as price or name have not been sufficient to ensure the legibility of the kilojoule content. Different hues of the same colour, or application of a different background have been used with to diminish legibility of the kilojoule content relative to the price. It may be that the legislation would need to specify all design elements are to be identical. For example, that the text of the kilojoule content must be the same font, size, colour, hue, weight and have the same background contrast as the comparison text. We recommend that these requirements extend to the reference statement that sets out the recommended daily energy intake.

In the event that the price is displayed more than once on a menu, we recommend that that the font size for the kilojoule content and the reference statement must be the same size (or larger than) the largest price displayed. This is to avoid a situation where a business displays, for example, a poster showing a food item with two prices – one small and one large – with the kilojoule content and reference statement being displayed in the smaller text.

We recommend that supermarkets be required to display the kilojoule content at the same size as the price rather than the unit price of the item. This is because unit pricing may be in very small text. This would ensure that supermarkets are subject to the same requirements as other food outlets.

Recommendation: The presentation of the kilojoule content and reference statement must be identical to the presentation of the price.

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

Kilojoule information in supermarkets per 100g

The OPC is concerned that allowing supermarkets to display energy content per 100g of the product could be misleading and confusing as it is likely to result in products appearing to have less energy than those displayed per serve.

By way of example a 43g caramel slice could have 808kJ per serve and 1880kJ per 100g, while a 120g iced donut could have 2030kJ per serve but only 1690kJ per 100g, unintentionally making the donut look like the lower kilojoule option of the two products, which it is not.

In our view, there is no practical reason why a supermarket cannot display the energy content for each standard food item. The legislation in the various jurisdictions applies only to ready to eat food that is standardised for content and portion. This means the supermarket must know the size of each food item and could easily display the information on a per item basis.

We recommend that the legislation require supermarkets to display the same information as all other businesses, being the kilojoule content of each standard food item. We do not consider there is any justification for allowing supermarkets to provide different information. As with the proposal to altogether exclude particular types of businesses, this inconsistency means consumers cannot effectively compare energy information provided by different chains and creates an uneven playing field for business.

We would see no problem if products displayed the per 100g energy content in addition to the energy content for the entire product, which would bring it into line with NIP requirements. It would also allow comparison between similar products in their entirety and between different types of product per 100g.

Recommendation- Supermarkets to display the kilojoule content of each standard food item.

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?

Where customers make selections and add individual components to customize their meal, information kilojoule information about each component should be available to assist the consumer to compare products and make healthier choices. The kilojoule information should be available in the same way that kilojoule information is required for standard menu items as most components would be in standardised form. An exception may be needed where customers select their portion size, for instance self-serve yoghurt. Where there are limited choices for customization, for example a burger with or without cheese, the total kilojoule content for these options should be shown.

Recommendation- The kilojoule information for individual components in customized meals must be available in the same way that kilojoule information is required for other menu items.

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

We recommend that all the jurisdictions adopt the provision in the Queensland legislation¹³ which requires the kilojoule content and the reference statement to remain permanently visible. This would prevent businesses introducing rolling digital menu boards that do not continually display kilojoule information and require consumers to wait before the kilojoule information is briefly displayed. The absence of kilojoule information adjacent to all standard food items makes it particularly difficult for consumers to compare the kilojoule content of food items and make informed and healthier choices.

Recommendation: Adopt the provision from the Queensland legislation which requires simultaneous display of product and kilojoule content.

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

The potential for businesses to avoid providing kilojoule labelling for certain items if they are not listed on the menu as defined in legislation, is particularly significant in relation to online ordering. We believe it is crucial for online menus to display clearly visible kilojoule content next to each item, at the point of ordering, so that it is consistent with other methods of ordering. There must be unambiguous inclusion of online menus under the different legislative schemes.

We believe it is important to present consumers with the energy content of food items at the time they are making a decision about which items to order. This requires the simultaneous display of kilojoule information in multiple locations including both in-store and online. This is particularly important online as often the nutritional information and kilojoule content are not displayed together, but several clicks away.

Recommendation: Require simultaneous display of product and kilojoule content in online menus

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?

As noted in answer to question 3, the market for online ordering of fast food is firmly established and it is important that the fast food labelling requirements are extended to web-based ordering platforms. Delivery agents such as Uber Eats and Deliveroo are not covered by the legislation in any of the states as they do not fall under the definition of a 'food business.' The application of the requirements to delivery agents themselves, rather than the food businesses that they are delivering for could be very onerous for small businesses. However if the threshold number of outlets were lowered as discussed in the response to question 3, many businesses utilizing the delivery agents would be required to comply with the requirements of legislation that extends to web-based ordering platforms.

¹³ *Food Regulation 2016*, (Qld), regulation 9(e).

Recommendation: Extend labelling requirements to menus used on web-based ordering platforms

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

Combination meals, often promoted as ‘meal deals’ or ‘combos’ are commonly offered at large chains that are covered by the different legislative schemes. We consider it is important that consumers are presented with the total energy content for these types of meals as consumers may not otherwise calculate the total energy provided by the meal.

We note that there has been some confusion about meal deals that include products that are pre-packaged and display a nutrition information panel (NIP). In some jurisdictions, products that display a NIP are not regarded a standard food items and are therefore exempted from displaying kilojoule information.¹⁴ This has created a situation where the kilojoule component of products, such as pre-packaged drinks, are excluded from the total kilojoule information that is provided. We believe that this is potentially misleading for consumers and suggest the exemption from providing kilojoule information for products carrying a NIP be removed if they are part of a combination meal.

Recommendation: Remove the exemption from providing kilojoule information for products carrying a NIP if they are part of a combination meal.

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?

Importance of social marketing and education

There is considerable evidence that food labelling is more effective when accompanied by education and information programs.¹⁵ We therefore encourage a community and industry awareness and education campaign once any outcomes of the review are implemented. With appropriate education campaigns and materials, consumers will understand that kilojoule information provided by relevant standard food outlets has been mandated by government, and that this is information that they can rely on. Consumers will also become accustomed to looking at kilojoule information when assessing and comparing products in supermarkets, at home and in other contexts.

A diverse range of education materials will of course be required for consumers to ensure that the widest range of the Australian population is reached. Consideration should be given to the use of a social marketing campaign, and targeted materials and campaigns particularly aimed at informing low SES/education and culturally and linguistically diverse groups. Most importantly, the targeted materials should aim to:

- Inform consumers of the availability of kilojoule information in chain food outlets;
- Clearly explain what kilojoule information is and how consumers may use it to choose healthier products;

¹⁴ *Food Amendment (Kilojoule Labelling Scheme and Other Matters) Act 2017* (Vic), section 18(2)(c).

¹⁵ WCRF and AICR. Policy and Action for Cancer Prevention - Food, Nutrition, and Physical Activity: a Global Perspective. 2009. p.61 – 63; NSW Food Authority. Evaluation of Kilojoule Menu Labelling. NSW Government, 2013

- Inform consumers of the different kilojoule needs of different groups of consumers, and the consequences of under- and over-consuming kilojoules; and
- Improve consumers' general understanding of the importance of eating a healthy diet

Recommendation-Provide a diverse range of education materials for consumers to ensure that the widest range of the Australian population is reached.

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

Penalties

We note that penalties for breaching the legislation vary between the states. The Victorian scheme has much lower penalties than New South Wales and Queensland. Victorian penalties currently equate to \$3109.20 for an individual and \$15 546 for a corporation. This contrasts to the New South Wales scheme's penalties of \$55 000 (individual) and \$275 000 (corporation) for an intentional contravention and \$11 000 (individual) and \$55 000 (corporation) for an unintentional contravention. The Queensland legislation also has much higher penalties, \$60 600 for an intentional contravention (no distinction between individual and corporation) and \$12 120 for an unintentional contravention. The Obesity Policy Coalition supports the penalties that apply for breaches of the New South Wales scheme and recommend that this approach be adopted in all jurisdictions. In particular, we support the application of higher penalties to corporations as a measure to encourage compliance by large corporations and to deter engagement in tactics that undermine the objectives of the labelling requirements.

Recommendation: Standardise the penalty provisions across Australia by adopting the penalty provisions that apply in New South Wales.

Conclusion

We congratulate the Government on its undertaking and offer our support and assistance through the process of review. The OPC believes that labelling is an important measure in the suite of measures to tackle overweight and obesity in Australia and accordingly stresses the importance of implementing changes recommended herein together, with those recommended by the OPC, to the Health Star Rating system review. We would be glad to provide further comment if required.

Summary of Recommendations

- 1. Remove exemptions in all jurisdictions particularly for dine-in restaurants, small supermarkets, convenience stores, service stations and cinemas.**
- 2. Reduce the threshold number of businesses in a chain to 10 within a state or territory and 50 nationally.**
- 3. Sale of ready to eat inflight food by airlines and vending machines to be covered by labelling requirements.**
- 4. Voluntary display of kilojoule information must comply with requirements of legislation.**
- 5. The presentation of the kilojoule content and reference statement must be identical to the presentation of the price.**
- 6. Require supermarkets to display the kilojoule content of each standard food item.**
- 7. The kilojoule information for individual components in customized meals must be available in the same way that kilojoule information is required for other menu items.**
- 8. Adopt the provision from the Queensland legislation which requires simultaneous display of product and kilojoule content.**
- 9. Require simultaneous display of product and kilojoule content in online menus.**
- 10. Extend labelling requirements to menus used on web-based ordering platforms.**
- 11. Remove the exemption from providing kilojoule information for products carrying a NIP if they are part of a combination meal.**
- 12. Provide a diverse range of education materials for consumers to ensure that the widest range of the Australian population is reached.**
- 13. Standardise the penalty provisions across Australia by adopting the penalty provisions that apply in New South Wales**