

Public Consultation – Policy Guidance for Menu Labelling in Australia and New Zealand

Overview

Introduction

The Australian Health and Food Collaboration's **review of fast food menu labelling** <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/review-fast-food-menu-labelling-schemes>> highlighted concerns with the current menu labelling regulation in Australia:

- nationally inconsistent menu labelling legislation;
- an uneven playing field with respect to menu labelling for businesses selling standard food items; and
- emerging trends for promoting, offering, and selling standard food items are not addressed by the **2011 Principles** <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-principles-point-of-sale-nutrition>> for introducing point-of-sale nutrition information at standard food outlets.

In **August 2019** <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2019-August>> the (then) **Australia and New Zealand Ministerial Forum on Food Regulation** <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/Forum>> (now referred to as Food Ministers' Meeting) agreed that the most effective way to achieve nationally consistent menu labelling would be to develop a food regulatory measure under the Australia and New Zealand Food Standards Code. The first step was to develop a policy guideline to provide strategic guidance to **Food Standards Australia New Zealand** <<https://www.foodstandards.gov.au/>> (FSANZ) about the Forum's expectations about menu labelling.

Policy guidelines <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/food-policies>> aim to improve outcomes for all by making clear and unambiguous the policy principles that apply to jurisdictions and bodies making food regulations. The creation of a policy guideline does not trigger regulatory action by FSANZ or changes to current food labelling. However, when FSANZ is developing or reviewing food regulatory measures, a written policy guideline is one of a number of matters to which it must have regard (as outlined in the **FSANZ Act 1991** <<https://www.legislation.gov.au/Series/C2004A04193>>).

It is proposed that the objectives of policy guidance for menu labelling are to:

1. minimise the proliferation of different menu labelling systems;
2. create a level playing field (with respect to menu labelling) for all businesses that sell standard food items; and

3. ensure that different modes of sale and types of menus enable comparison of menu options to assist people to make healthier food purchase choices at the point-of-sale.

The **Food Regulation Standing Committee (FRSC)**

<<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/FRSC>> has identified four policy options:

1. Maintain the status quo, allowing jurisdictions to choose how to implement menu labelling consistent with the **2011 Principles** <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-principles-point-of-sale-nutrition>> .
2. Amend the **2011 Principles** <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-principles-point-of-sale-nutrition>> and encourage all jurisdictions to consistently implement menu labelling schemes in their own legislation.
3. Develop a Ministerial Policy Guideline on menu labelling to inform the development of a proposed bi-national regulatory food measure in the **Australia and New Zealand Food Standards Code** <<https://www.foodstandards.gov.au/code/Pages/default.aspx>> (jurisdictions to repeal own legislation once regulatory measure developed).
4. Encourage industry to voluntarily implement enhancements to menu labelling.

Further information about these options is detailed in the Public Consultation Regulation Impact Statement which is available to download from the 'Related' section below.

Why we are consulting

Australia and New Zealand share a joint system for food labelling which is overseen by Food Ministers. Food Ministers are responsible for developing food regulation policy in the form of policy guidelines and to ensure stakeholder views are considered on appropriate policies.

FRSC consulted Australian stakeholders in early 2018 about the **problems** <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/review-fast-food-menu-labelling-schemes>> with the existing menu labelling regulation in Australia, and again in late 2018 about possible solutions. All views were considered and have informed the policy options. FRSC is now seeking stakeholder views to inform the development of policy guidance and an effective policy framework for consistent menu labelling. A Decision Regulatory Impact Statement will present Food Ministers with the preferred option for decision.

Responding to the consultation

1. Download and read the Public Consultation Regulation Impact Statement (available under the 'Related' section at the bottom of this page).
2. Respond to the questions in the online survey – the questions in the survey match the questions in the Public Consultation Regulation Impact Statement. A preview of the survey is

available for download under the 'Related' section at the bottom of this page.

3. Please provide evidence or examples to support your comments where possible. Comments on technical issues should be based on scientific evidence and/or supported by research where appropriate. Where possible, please provide citations to published studies or other sources.
4. It is not necessary to provide a response to all questions.
5. All submissions are subject to the ***Freedom of Information Act 1982*** <<https://www.legislation.gov.au/Details/C2018C00016>> in Australia and the **Official Information Act 1982** <<http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>> in New Zealand. If you consider that all or part of your submission should not be released, please make this clear when making your submission and indicate the grounds for withholding the information.

It is acknowledged that the Menu Labelling consultation is open at the same time as the consultation on the Review of the Food Standards Australia New Zealand (FSANZ) Act 1991 - draft Regulatory Impact Statement. We recognise the workload for stakeholders to respond to both consultations and appreciate your contribution. Please note the menu labelling consultation will be open for an additional two weeks after the FSANZ Act review consultation closes to allow time for stakeholders to respond to both consultations if desired. If you have concerns about timeframes please email the Food Regulation Secretariat- secretariat@foodregulation.gov.au

Introductory text

This online survey contains a series of questions for stakeholders.

You may answer as many consultation questions as you like. It is not necessary to respond to all questions.

About you

A What is your name?

Name

B What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

Email

C What sector do you represent?

Drop down list about which sector the respondent represents (Required)

Please select only one item

- General public Public health Food industry Consumer organisation
 Government Other (please specify) Prefer not to say

If 'other' sector selected, please specify in the text box

D What is your organisation?

Organisation

Please select all that apply

- Not applicable- Responding as an individual

E Which country are you responding from?

Drop down list about which country the respondent represents (Required)

Please select only one item

- Australia New Zealand Trans-Tasman organisation Other
 Prefer not to say

If you selected 'other' please specify country

F An opportunity to submit any other information about your organisation you would like to provide.

An opportunity to provide any other information about your organisation.

G Do you give permission for your submission to be published?

Drop down list with options for agreeing whether submission can be published (Required)

Please select only one item

- Agree for submission (entire) to be published
- Agree for submission (partial) to be published
- Do not agree for submission to be published
- Agree submission may be published anonymously

Section 1: Introduction

Questions 1 to 3 seek further information about menu labelling in **New Zealand**.

Page 14 of the [Public Consultation Regulation Impact Statement](#) describes menu labelling in New Zealand.

Menu Labelling in New Zealand

Menu labelling is not currently regulated in New Zealand. A survey of New Zealand Food and Beverage Taskforce members found that while there was some support for voluntary menu labelling, it was not widely practised. During 2020, the New Zealand Government is testing consumer understanding, and the likely use of menu labelling including the current system outlined in the 2011 Principles. This research will also look to determine what form of presentation could optimise New Zealand consumers' use and understanding of menu labels. The research outcomes could inform approaches for menu labelling and consumer education in New Zealand and Australia.

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

Please select only one item

Yes No Do not know Not applicable

Text box to provide details

2 Does your New Zealand business sell standard food items and is it a chain (i.e. more than one outlet operated/owned under franchise arrangements or the same trading name, or owned by one parent company/central owner/corporation)?

Please select only one item

Yes No Do not know Not applicable

If so, how many outlets do you have in New Zealand?

3 Is it a problem for New Zealand consumers that energy information is not mandated at the point-of-sale?

Please select only one item

Yes No Do not know Not applicable

If so, please explain your view and/or detail the impact.

Section 2.1: Nationally inconsistent menu labelling legislation

The menu labelling legislation in five Australian jurisdictions are largely consistent with the 2011 Principles. However, jurisdictions have taken different approaches to businesses that are exempt from menu labelling, how and when to display energy information, and some definitions.

Problems associated with menu labelling

Questions 4 to 13 seek further information about the problems associated with menu labelling.

Pages 15 to 18 of the [Public Consultation Regulation Impact Statement](#) describe the problem with menu labelling in Australia. This includes:

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

4 Do these differences between states and territories create problems for Australian businesses?

Please select only one item

Yes No Do not know Not applicable

If so, please detail the impact

5 Do these differences impact Australian consumers?

Please select only one item

Yes No Do not know Not applicable

If so, please detail the impact

Section 2.2: An uneven playing field with respect to menu labelling for businesses selling standard food items

While standard food items (i.e. food and drinks standardised for portion and content) are typically sold by fast food and takeaway chains, a broad range of other business types may sell standard food items, for example convenience stores, service stations (fuel retailers), cinemas, caterers, pubs and clubs, and dine-in restaurants (refer to Appendix 3 in the [Public Consultation Regulation Impact Statement](#)). However, not all these business types are required to display energy information due to exemptions in jurisdictional legislation.

Problems associated with menu labelling

Questions 4 to 13 seek further information about the problems associated with menu labelling.

Pages 15 to 18 of the [Public Consultation Regulation Impact Statement](#) describe the problem with menu labelling in Australia. This includes:

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

6 Is the uneven playing field with respect to menu labelling requirements a problem for standard food outlets in Australia?

Please select only one item

Yes No Do not know Not applicable

If so, please detail the impact. Please indicate if your business is currently captured by state or territory legislation, and/or whether your business is exempt in one or more jurisdictions.

7 Is it a problem for Australian consumers that energy information is not at the point-of-sale in all businesses selling standard food items?

Please select only one item

Yes No Do not know Not applicable

If so, please detail the impact.

8 Are there other business types (not already listed in Appendix 3) that are selling standard food items in Australia or New Zealand?

Please select only one item

Yes No Do not know Not applicable

If so, please detail.

Section 2.3: Emerging trends for promoting, offering, and selling standard food items are not addressed by the 2011 Principles

Since the 2011 Principles were developed, some businesses:

- have introduced digital panel menus,
- are actively promoting build your own menu items (customisation),
- are using third-party food delivery platforms, or
- are offering contactless ordering, payment and/or delivery.

Problems associated with menu labelling

Questions 4 to 13 seek further information about the problems associated with menu labelling.

Pages 15 to 18 of the [Public Consultation Regulation Impact Statement](#) describe the problem with menu labelling in Australia. This includes:

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

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

10 Is it a problem for consumers when energy information is not available for all menu items and/or on all ordering platforms and menu infrastructure?

Please select only one item

Yes No Do not know Not applicable

If so, please detail the problem and its impact

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

Please select only one item

- Yes No Do not know Not applicable

12 Do you agree with the overall statement of the problem presented (section 2, 2.1-2.3)?

Please select only one item

- Yes No Do not know Not applicable

If so why?

If you do not agree with this statement, please provide reasons

13 Do you agree that this problem requires government intervention?

Please select only one item

Yes No Do not know Not applicable

If so, why?

If not, please provide your reasons

Section 3: Objectives

The objective of the policy guidance is to:

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

14 Do you agree with the proposed objectives?

Please select only one item

Yes No Do not know Not applicable

If not, please suggest alternate objectives and provide your reasons

Section 4: Options

Four options are presented on pages 19 to 21 of the [Public Consultation Regulation Impact Statement](#). To complement the preferred option, it is proposed that an education strategy be developed to increase consumer awareness and understanding of kilojoules, energy density, energy needs, making healthier food choices, and how to use menu labelling at the point-of-sale.

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

15 Are the proposed options appropriate to address the stated problem and achieve the proposed objectives?

Please select only one item

- Yes No Do not know Not applicable

If not, please suggest variations or alternative options. Please justify variations / alternatives and describe their costs and benefits.

Section 5: Impact analysis

Pages 21 to 33 of the [Public Consultation Regulation Impact Statement](#) discuss the predicted qualitative and where possible, quantitative costs and benefits of each option, the anticipated changes for industry, and the estimated change in compliance costs.

16 Would your business incur higher implementation costs if legislative changes were not timely and uniform across all jurisdictions?

Please select only one item

- Yes No Do not know Not applicable

If so, please describe.

17a Are the benefits and costs associated with the four proposed options and the complementary strategies accurate?

Please select only one item

Yes No Do not know Not applicable

Provide detail

17b Are there any other benefits, costs or unintended consequences which have not been identified above?

Drop down list about whether there are other benefits, costs or unintended consequences

Please select only one item

Yes No Do not know Not applicable

If so, please describe

18 Are the average annual regulatory costs representative of the costs incurred/likely to be incurred by your business?

Please select only one item

Yes No Do not know Not applicable

Please provide your reasons

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

Provide detail

20a Would your Australian business be likely to meet the proposed definition of a standard food outlet?

Please select only one item

Yes No Do not know Not applicable

If so, how many outlets do you have in each jurisdiction?

20b If not, is the reason because you do not sell standard food items, do not meet the business size threshold, or do not operate as a chain? Note for New Zealand businesses, this information is sought at Question 2.

Please select only one item

Do not sell standard food items Do not meet the business size threshold
 Do not operate as a chain Do not know Not applicable

Section 7: Preferred option

21 What is your preferred option and why?

Please select only one item

Option 1 Option 2 Option 3 Option 4

Comment box

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

Provide detail