

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

GLOBE submission

Submitted 10 June 2021

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

N/A

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

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

Yes

If so, please detail the impact.

These differences create an uneven playing field for businesses that are multi-state/territory compared with those operating in a single state. It creates unnecessary extra work and costs for businesses to meet the different requirements for each jurisdiction.

5. Do these differences impact Australian consumers?

Yes

If so, please detail the impact.

The difference in menu labelling systems in Australian states means that consumers in some states have inadequate access to nutritional information relative to those in other states. In addition, the differences in implementation for those states that do display menu labelling creates confusion for consumers as they travel between states. Evidence shows that the impact of fast food menu labelling strengthens over time,¹ therefore leaving consumers in the states with no menu labelling scheme falling behind in terms of the health benefits.

Further, due to the national nature of many chains, consumers in states and territories without mandated menu labelling are exposed to different schemes between the chains, as some chains have adopted one state's menu labelling laws, while others have adopted different state's. This has meant that consumers in these states are exposed to a patchwork of different schemes and this may be confusing when choosing between chains. This is particularly problematic when considering the differences in the way combination meals containing pre-packaged items are treated in the different states. This all leads to unnecessary confusion for consumers when choosing foods.

Another area of inconsistency that is of public health concern is that in some jurisdictions, alcohol products that are standard menu items are included in menu labelling whereas others they are not. Alcohol products can contain large amounts of kilojoules,² and therefore if they are standard menu items in a chain, they should be included in any national scheme. By excluding these products, as is done in Victoria, consumers are uninformed of the energy content of these products and therefore provided incomplete information when making purchase decisions.

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

N/A

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.

We will not answer this question.

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

Yes

If so, please detail the impact.

The lack of energy information in some point-of-sale businesses selling standard food items means that in some settings (e.g. food courts), consumers may not be able to access enough information from various chains to allow them to compare between the chains when making food choices. It also means that in other venues selling ready to eat foods, such as supermarkets, convenience stores and cinemas, consumers may not have access to information to allow them to make informed decisions. This is particularly problematic in venues selling large portion sizes or multi-serve items (e.g. soft drinks and popcorn in cinemas).

Consistent and comprehensive uptake of labelling also helps with consumer awareness as the more places that consumers see this information, the more likely they are to recognise it and understand the information it provides. A comprehensive uptake also supports any education campaigns.

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

Yes

If so, please detail.

There has been a trend towards mobile 'outlets' of bigger chains – e.g. Muffin Break had a coffee and muffin cart at Sydney's Redfern train station. Other mobile outlets, such as food trucks and "pop-up" outlets may extend from these outlets in the future. This will be an important

trend to monitor for the future, to ensure these mobile outlets are covered by the same regulations as static, bricks-and-mortar shops.

Also 'entertainment' venue chains such as indoor trampolining venues, indoor rock climbing or bowling alleys do not currently have enough locations to be covered under the various menu labeling schemes, but as they expand should be included in the regulations. This is particularly important as many of the food offerings at such venues are energy-dense, nutrient-poor and of large portion sizes. They often serve alcoholic beverages as well.

Emerging business types should be evaluated on a regular basis to ensure that if they are selling standard food items they are included in the regulations.

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?

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Of particular concern is the rise in online delivery services. Demand for these services grew by over 70% in the five years to 2019.³ These food delivery platforms are particularly important as Australian research has shown that the menu items available on them are overwhelmingly energy-dense and nutrient poor.^{4, 5} Further, foods considered discretionary (contributing little nutritional value but higher levels of energy and nutrients of public health concern⁶) are the most popular foods on these platforms, as well as the most heavily marketed, promoting their selection.⁵ Their exclusion from current systems is at odds with the public health objectives of menu labelling to provide nutrition information at point-of-sale. In addition, use of these technologies is more prevalent in specific groups within the population, some of which are at an increased risk of poor health, including young people, culturally and linguistically diverse and people with higher Body Mass Indexes.^{7, 8} Therefore it is imperative that these innovations be closely monitored to ensure that innovations in this sector, are consistently covered by menu labelling regulations.

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?

Yes

If so, please detail the problem and its impact.

Without access to all available information, consumers cannot make fully informed choices. Foods and beverages eaten out are often higher in energy than people estimate.⁹ Further, people underestimate higher-energy fast foods to a greater extent than lower-energy alternatives.¹⁰ Therefore, consumers may underestimate the impact foods eaten out have on their daily intakes if they cannot access the information at the point-of-sale. Given large portion sizes and poor nutrient compositions of many chain menu items,^{11, 12} consumers need this information.

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

Do not know

We strongly suggest that the cost of such infrastructure should not come at the expense of public health objectives, and therefore it is critical to ensure that energy information is presented at all points of sale, whether they are digital or physical. Kilojoules could be added to digital/online menus for little cost, or incorporated into regular website updates.

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

Yes

If so why?

We believe this section satisfactorily sets out the problems with the current approaches to menu labelling.

13. Do you agree that this problem requires government intervention?

Yes

If so why?

There is a clear need for menu labelling in Australia. The majority of states and territories have already adopted it and industry has implemented it without significant issues.

However, despite the principles being in place since 2011, there is no consistency between the jurisdictions that have implemented menu labelling. Additionally, the lag in some states and territories in adopting menu labelling has resulted in inconsistency across Australia. This is particularly problematic in states and territories without menu labelling legislation, where consumers are exposed to a patchwork of different menu labelling as different chains have adopted different state's labelling laws.

Government regulation is needed to ensure that menu labelling is available and consistent in all states and territories. This consistency would benefit consumers and reduce the burden on food businesses.

As stated in the consultation document, the presence of national Principles does not guarantee that states will implement them as intended. Therefore, updating the Principles is not enough (option 2). Similarly, allowing voluntary action by industry (option 4) may see the number of chains dial back their participation in menu labelling and result in less information being available for consumers.

There are also concerns about inconsistent presentation of energy labels between the states. For example, the Queensland legislation has requirements about contrast and background colour that should be included as a minimum. Reviewing the accessibility requirements for signage as set out in the National Construction Code¹³ and including such provisions in a national scheme would ensure best-practice is implemented and usability is improved for all customers.

There is strong community support for menu labelling. The Shape of Australia Survey 2019 found that 76% of adults supported menu labelling. Other Australian research has consistently found public support for menu labelling is above 70%.^{14, 15} Introduction of nationally consistent menu labelling is likely to be strongly supported by the Australian public.

Government intervention will create an even playing field for food businesses, and ensure consumers' needs for information are being met.

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?

No

If not, please suggest alternate objectives and provide your reasons.

While we do not object to the three proposed objectives, we do believe there should be a fourth objective added. That is, that public health is considered in all regulatory aspects of menu labelling to ensure that any economic benefits for industry are not prioritised at the expense of public health.

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

Yes

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

We believe option 3 is appropriate to address the stated problem. Anything less than that will not achieve the aims for public health, consumers or food businesses.

In addition, we strongly support the complementary strategies. As highlighted in the literature, menu labelling in the absence of other supportive strategies, such as education or labelling to also include nutrients, will be less likely to result in meaningful changes to nutrient composition or healthier menus.¹⁶ Introducing supportive strategies will improve the effectiveness of menu labelling as well as facilitate other changes to make it easier for consumers to make healthy choices when eating out. We strongly recommend that any complementary education campaigns are thoroughly consumer-tested to ensure they are useful, well understood and empower consumers to use the energy information provided.

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

N/A

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

No

Provide detail.

Although we are not able to comment on the costs and benefits to industry, we argue that large chains are constantly refreshing their menu boards regardless, so the costs associated with changes to menu labelling would likely be absorbed by regular updating costs.

Given that menu labelling is inherently a public health measure, it is reasonable to expect that economic and health costs and benefits, such as reduction of healthcare costs, are included. Although these are briefly discussed in the background material, they have not been stated when considering options themselves.

Aside from the benefits already outlined for consumers and businesses, there are a range of wider-reaching benefits in the recent published literature that have not been included in the consultation document. In fact, in an analysis of the economic, social and health costs of overweight and obesity in the 52 OECD countries and the cost benefits of associated policy

options, menu labelling interventions were evaluated as one of the two most effective interventions.¹⁷

Economic modelling in the US shows that menu labelling legislation was estimated to prevent 31,300 new cancer cases and 18,700 cancer deaths, resulting in an increase of 134,000 quality-adjusted life years (QALYs) over a lifetime.¹⁸ An analysis conducted by the OECD also reported an avoidance of 1,900 new cancer cases each year in each country included in the modelling (of which Australia was included).¹⁷ Similar figures were noted for other chronic diseases: prevention of 135,781 new cardiovascular disease cases 99,736 type 2 diabetes cases, and gaining 367,450 additional QALYs.¹⁹ When considering the cost effectiveness (adjusted for implementation and healthcare costs), implementing menu labelling had a net \$1.74 billion USD cost saving.¹⁸ Another study estimated that menu labelling represented a lifetime cost saving of \$10.42 billion USD on healthcare alone.¹⁹

It is imperative that seeking to minimise any economic costs to businesses should not be prioritised at the expense public health.

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

Yes

If so, please describe.

Refer to response 17a which outlines the economic, social and health costs, and cost benefit of the proposed options.

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

N/A

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.

N/A

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

N/A

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.

N/A

21. What is your preferred option and why?

Option 3

Comment box

We strongly support Option 3.

Option 3 will ensure the best outcomes for consumers and public health. Importantly, this option provides a consistent, mandated approach and will ensure that kilojoules are available for all standard items in all chains, regardless of location. Further, it will eliminate potentially confusing differences between states and territories and streamline the implementation process for businesses. Including menu labelling in the Food Standards Code produces a level playing field for industry. Standardisation reduces chains having to double up on costs to change menu boards for multiple jurisdictions. Introducing menu labelling into the Food Standards Code means there are consistent and appropriate consequences for non-compliance.

Option 1 is inconsistent across Australia to the detriment of consumers and businesses. For instance, in WA, a recommendation to come out of the 2017 Preventive Health Summit was to implement a menu labelling scheme, however progress has stalled while WA waits on the outcome of the National consultation.

Option 2, while we are supportive of updating the Principles, in effect it is no different to the status quo as jurisdictions can still choose to disregard them. This will have minimal impact on consumers' abilities to make informed choices when eating out, and places no responsibility on chains to comply, or provide information in a consistent manner.

Option 4 is strongly opposed as this will not increase the information available to consumers. It has been demonstrated that voluntary actions in this setting are not sufficient to be cost-effective, or to ensure accountability.¹⁶

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

Provide detail.

As previously mentioned, we are strongly opposed to voluntary implementation.

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