Joint Food Regulation System

DECISION Regulation Impact Statement:

Menu labelling in Australia and New Zealand

Policy Guidance for displaying and providing energy information for standard food items on menus and at the point-of-sale in standard food outlets

2022

Executive summary

Menu labelling refers to the provision of nutritional information about food and drinks on menus to inform purchasing and consumption decisions. For this paper, menu labelling is limited to providing information on the energy (kilojoules) content of standard food items[1] sold at standard food outlets[2] – that is, ready-to-eat food and drinks standardised for portion and content that are not required to bear a label[3] and which are sold by businesses including quick-service restaurants / fast food outlets, snack food and drink chains, bakery chains, convenience stores and supermarkets.

Menu labelling aims to facilitate informed purchase decisions by providing all Australians and New Zealanders with access to information at the point-of-sale about the energy content of ready-to-eat food and drinks. Menu labelling is also intended to support healthier food choices and contribute to the prevention of obesity and diet-related chronic diseases, thus providing a public health benefit. If consumers use menu labelling to make healthier food choices, this can lead to reduced consumption of kilojoules and associated better health outcomes.

It is important to recognise that menu labelling is just one element of a multi-strategy approach to obesity prevention – it is not intended to be a comprehensive strategy for what the food regulation system can contribute to obesity prevention. Menu labelling is a tool to support consumers to make informed decisions (whether or not it changes their decision), in the same way that nutrition information panels and health star ratings provide information to consumers on packaged foods.

Five Australian jurisdictions (New South Wales, South Australia, Australian Capital Territory, Queensland, and Victoria) have introduced mandatory menu labelling based on a set of agreed principles (the '2011 Principles'). Menu labelling has not been mandated in New Zealand, or the other three Australian state and territories. A review[4] of menu labelling identified:

1. inconsistent menu labelling legislation (for example, differences in how and when to display energy information, and differences in businesses exempt from menu labelling);
2. an uneven playing field with respect to menu labelling for businesses selling standard food items due to legislated exemptions of specific business types;
3. gaps in legislation resulting from emerging trends for promoting, offering, and selling standard food items (for example, digital panel menus and self-service kiosks; third-party food delivery platforms; build your own menu items (customised) from a range of standardised ingredients; pop-up/hover advertising, digital links to off-menu information); and
4. that the current approach to menu labelling is not achieving the greatest public health benefit.

[1] As defined in the *Principles for introducing Point-of-Sale nutrition information at standard food outlets*. 2011. https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-principles-point-of-sale-nutrition

[2] Ibid.

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

[4] This review includes an initial review of menu labeling schemes in Australia in 2017, public consultation and a subsequent co-design process with Australian stakeholders in 2018, and further public consultation in 2021 with Australian and New Zealand stakeholders (the final round of consultation was postponed from 2020 given the COVID-19 pandemic in Australia and New Zealand).

To address these concerns and achieve the desired outcomes of menu labelling, the objective is to ensure any regulatory or non-regulatory measures developed for menu labelling in Australia and New Zealand will:

- assist people to understand and use energy information to make informed, healthier food purchase choices at the point-of-sale;
- ensure that all modes of sale and types of menus enable comparison of all menu options within and across businesses that sell standard food items;[5]
- create a level playing field (with respect to menu labelling) for all businesses that sell standard food items; and
- minimise the proliferation of different menu labelling systems.

In August 2019, Food Ministers[6] agreed that nationally consistent menu labelling is desirable for the food industry, public health organisations and governments. Ministers agreed the most effective way for this to occur would be to develop a food regulatory measure under the Australia New Zealand Food Standards Code (the Food Standards Code), and that development (in line with best practice regulatory requirements) of a Ministerial Policy Guideline should be the first step.[7,8]

In line with best practice regulatory requirements, alternative regulatory and non-regulatory approaches to a food regulatory measure in the Food Standards Code were identified. The options presented in the Consultation Regulation Impact Statement (CRIS) were considered appropriate by most stakeholders. The options have been reframed in this paper to focus on the end-point. The four options are:

1. *Allow jurisdictions to choose how to implement menu labelling that is consistent with the 2011 Principles (status quo).*
2. *Encourage all jurisdictions to consistently implement menu labelling schemes in their own legislation, in accordance with amended Principles.*
3. *Develop a mandatory food regulatory measure for menu labelling in the Food Standards Code.*
4. *Encourage industry to voluntarily implement enhancements to menu labelling.*

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

Public consultation in 2021 sought stakeholders' views on which was the preferred option. There were mixed views across stakeholder groups as well as among industry stakeholders from both countries. Option 3 had the most support as the preferred option. Overall, it was the only option that addresses the identified problems. It was also considered that this option would be best for all consumers as consistent implementation across all jurisdictions would enable access to energy information and easier comparison of menu items to make informed and healthier

[5] Modes of sale include, but is not limited to, in-store, online, third-party providers; types of menus include, but is not limited to, digital menu panels, kiosks, paper menus and tags, menu boards, drive-thru menus, online menus.
[6] Ministers responsible for food regulation from the Australia Federal Government; New Zealand Government; and Australian states and territories. As of 2021, convening as the Food Ministers' Meeting.
[7] Australia and New Zealand Ministerial Forum on Food Regulation Communique 16 August 2019. https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2019-August
[8] Ministerial Policy Guidelines and the Food Standards Code apply to both Australia and New Zealand. Ministerial Policy Guidelines aim to improve outcomes by clarifying the policy principles that apply to jurisdictions and bodies making food regulations (namely Food Standards Australia New Zealand (FSANZ)). The creation of a policy guideline does not trigger regulatory action by FSANZ or changes to current food labelling. However, when FSANZ is developing or reviewing food regulatory measures, as outlined in the *FSANZ Act 1991,* FSANZ must, among other matters, have regard to any Ministerial Policy Guidelines.

choices at the point-of-sale. Stakeholders also noted that businesses would operate in a more level playing field and would experience reduced regulatory costs compared to the costs associated with implementing different regulation. More consistent enforcement and monitoring was also considered to be associated with Option 3. In implementing Option 3 it was recommended that it was essential that consumer education accompany menu labelling. While some industry stakeholders in Australia and New Zealand supported Option 2, this option was not supported by public health organisations as it is dependent on jurisdictional action and therefore of little difference to the status quo. A voluntary approach to enhancing menu labelling was strongly opposed by public health stakeholders as industry self-regulation is viewed as ineffective.

An independent economic evaluation was commissioned to compare the policy options to the status quo (Option 1). The evaluation considered business compliance costs, government administration costs, and benefits to society from a reduced burden of disease due to high body mass, to calculate a net cost or benefit for Options 2, 3 and 4. For Australia and New Zealand, all three options appeared to provide net benefits compared with the status quo.

For Australia nationally, the net benefit of Option 3 is $775.4 million over 10 years, while it is $568.4 million for Option 2 and $158.7 million for Option 4. For Australian society, progressing mandatory menu labelling via the Food Standards Code has the greatest net benefit. Similarly, for seven of eight Australian states and territories, introducing mandatory menu labelling via the Food Standards Code has the greatest net benefit. For the Australian Capital Territory, Option 4 (voluntary industry enhancement of menu labelling) has a marginally higher net benefit than Option 3 or Option 2. This is because the Australian Capital Territory already has comprehensive capture of businesses selling standard food items and it was assumed Option 4 would lead to greater voluntary implementation of menu labelling in the Australian Capital Territory.

In New Zealand, the net benefit of Option 2 and 4 is similar at $NZ25.8 million and $NZ24.9 million, respectively. The similarity is due to the underpinning assumptions that New Zealand is unlikely to introduce menu labelling legislation under Option 2, and that there will 10 per cent voluntary implementation of menu labelling under both Option 2 and 4. The net benefit of Option 3 ($NZ311.5 million) is significantly higher. As for Australian society, progressing mandatory menu labelling via the Food Standards Code has the greatest net benefit for New Zealand society.

While Option 3 involves a cost to parts of the industry, particularly New Zealand businesses and businesses currently exempt or not captured in Australia, a transition period could be included to reduce the impact on industry. The cost of overweight and obesity to the community in Australia and New Zealand is significant and is rising. Option 3 is most likely to support consumers to make healthier food and drink choices (i.e. fewer kilojoules) and contribute to the prevention of obesity and diet-related chronic diseases, thus providing a public health benefit ($828.6 million and $NZ336.4 million), which is far greater than the expected cost of menu labelling for industry and government ($53.2 million and $NZ24.9 million). Option 3 has the greatest net benefit to the community in Australia and New Zealand. It also has the most support from stakeholders in Australia and New Zealand.

It is therefore recommended that the best option to achieve the desired outcomes is ***Option 3: Develop a mandatory food regulatory measure for menu labelling in the Food Standards Code,*** in combination with comprehensive, sustained consumer education in Australia and New Zealand to support the implementation of menu labelling.

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1 Introduction

1.1 Purpose of this paper

This Decision Regulatory Impact Statement (DRIS) has been prepared to provide a recommendation to the Food Ministers' Meeting on the preferred option and implementation to enhance menu labelling in Australia and New Zealand. This DRIS is not a comprehensive strategy for what the food regulation system can contribute to obesity prevention.

This paper was prepared by the Food Regulation Standing Committee (FRSC) and is based on the *Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies* (2021).[9] A Consultation Regulation Impact Statement (CRIS) on policy guidance for menu labelling in Australia and New Zealand was released for public consultation in Australia and New Zealand. Information provided by stakeholders and a commissioned economic evaluation of the policy options informed the preparation of this DRIS.

1.2 Reliance on ready-to-eat meals and snacks in Australia and New Zealand

The 2011-12 National Nutrition and Physical Activity Survey found that 35 per cent of Australians' total energy is from consuming 'discretionary foods', such as sugar-sweetened beverages and snack foods. While discretionary food includes ready-to-eat meals that are typically considered 'fast food/takeaway', data on the amount of energy consumed from food purchased from businesses such as fast food outlets, cafes and restaurants was not reported. Similarly, the Australian Apparent Consumption of Selected Foodstuffs (2019-20) does not measure actual consumption as food purchases from fast food outlets, cafes and restaurants were not included. The New Zealand Food Price Index includes a measure of the change in the price of restaurant meals and ready-to-eat food paid by households but does not measure actual consumption or household expenditure.

The 2008-09 New Zealand Adult Nutrition Survey reported that a third of adults consumed fast food or takeaway at least weekly, with those aged 15 to 30 years more likely to have fast food or takeaway three or more times a week. Frequency of eating hot chips was assessed separately, with nearly 45 per cent of adults having hot chips at least once a week.[10]

In 2015-16, on average, Australian households spent 34 per cent of the weekly food dollar on eating out, fast food and takeaway ($80.43/week).[11,12] Australians aged 15 to 34 years spent the greatest amount (approximately $1,900 per annum) and the greatest share (41-42%) of food expenditure on eating out and fast food, while those aged 75 years and older spent considerably less.[13] More recent data is available for New Zealand, with 29 per cent of the weekly food dollar used for restaurant meals and ready-to-eat food ($67.70/week) in 2018-19.[14]

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[9] Commonwealth of Australia, Department of the Prime Minister and Cabinet. 2021. *Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies*. https://obpr.pmc.gov.au/resources/guidance-impact-analysis/regulatory-impact-analysis-guide-ministers-meetings-and-national

[10] University of Otago and Ministry of Health. 2011. *A Focus on Nutrition: Key findings of the 2008/09 New Zealand Adult Nutrition Survey*. https://www.health.govt.nz/publication/focus-nutrition-key-findings-2008-09-nz-adult-nutrition-survey (accessed 1 October 2021)

[11] Australian Bureau of Statistics. 2017. *65300DO013_201516 Household Expenditure Survey, Australia: Summary of Results, 2015-16, Table 13.9A: Household Expenditure, Detailed expenditure items, All households*. https://www.abs.gov.au/statistics/economy/finance/household-expenditure-survey-australia-summary-results/latest-release#data-download (accessed 1 October 2021)

[12] Includes meals in restaurants, hotels, clubs, fast food, takeaway, and takeaway coffee.

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

[14] Stats NZ. *Household Expenditure Statistics: Year ended June 2019*. https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2019 (accessed 1 October 2021)

It is important to note that this expenditure in Australia and New Zealand is not directly aligned with purchases from businesses where menu labelling could be required. Purchases from some businesses that would not be applicable for menu labelling could be included, and similarly other food categories in the household expenditure surveys may include food and drinks sold by businesses that would be required to implement menu labelling, such as bakery products and non-alcoholic beverages. However, it is the best estimate of national expenditure on ready-to-eat meals and snacks available in Australia and New Zealand.

In 2017-18, over 17 million (84.5%) Australians[15] and over 3.2 million (84.8%) New Zealanders[16] purchased ready-to-eat meals and snacks from major fast food outlets, independent takeaway shops, and convenience stores. In both countries, the top five most frequented businesses were McDonald's, KFC, Domino's Pizza, Hungry Jacks/Burger King and Subway. In 2019, Australians averaged 65 takeaway food transactions, totalling 1.6 billion transactions.[17] In 2018, nearly 2 million (8%) Australians, particularly those aged between 14 and 42 years, used third-party food delivery platforms.[18] Common adoption of technology such as mobile apps, convenience and being able to choose from multiple food outlets through a single platform may be drivers of increased use of third-party food delivery platforms.[19] In 2019, 45 percent of New Zealand adults (15 years and older) purchased takeaway once or twice a week, compared to one-third who ate at a restaurant or fast food chain and one in ten who used a third-party food delivery platform. Younger people (15 to 34 years) were more likely to eat out, purchase takeaway and use a third-party food delivery platform.[20]

The Australian Household Impacts of COVID-19 Survey found that during the early stages of the pandemic (April-May 2020) three in ten Australians were consuming less takeaway or delivered meals; while a further 15.5% of men and 12.2% of women were consuming more takeaway or delivered meals.[21] The latest survey results from June 2021, found that some Australians were expecting their expenditure on takeaway or delivered meals, and at cafés, restaurants, pubs, clubs or bars to increase over the next 12 months.[22] Comparable data is not available for New Zealand.

1.3 Menu labelling

Menu labelling refers to the provision of nutritional information about food and drinks on menus to inform purchasing and consumption decisions. For this paper, menu labelling is

[15] Roy Morgan. 2018. *Press Release: McDonald's, KFC & Subway most visited Aussie restaurants.* http://www.roymorgan.com/findings/7599-australian-eating-habits-eating-in-out-march-2018-201805290253
[16] Roy Morgan. 2018. *Press Release: McDonald's, KFC & Domino's Pizza most visited NZ restaurants.* http://www.roymorgan.com/findings/7613-new-zealand-eating-habits-eating-in-out-qsr-restaurants-march-2018-201805310031
[17] Future Food. 2019. *Eating Out in Australia – Takeaway on Takeaways.* https://futurefood.com.au/blog/2019/06/eating-out-in-australia-takeaways-on-takeaways
[18] Roy Morgan. 2018. *Press Release: Metrotechs and Millennials have taken to Uber Eats, Menulog, Deliveroo, Foodora and more.* http://www.roymorgan.com/findings/7602-food-delivery-services-march-2018-201805240625 NOTE: Survey included food delivery platforms that provide ready-to-eat meals, weight control meals and recipes to prepare at home.
[19] Bates et al. 2020. A narrative review of online food delivery in Australia: challenges and opportunities for public health nutrition policy. *Public Health Nutrition*, doi:10.1017/S1368980020000701
[20] Bayer and New Zealand Nutrition Foundation. 2019. *The Bayer Food Focus Project: 2019*. https://nutritionfoundation.org.nz/sites/default/files/Bayer_Survey%20Report_v10.pdf (accessed 20 December 2021)
[21] Australian Bureau of Statistics. 2021. *Household Impacts of COVID-19 Survey: April-May 2020.* https://www.abs.gov.au/statistics/people/people-and-communities/household-impacts-covid-19-survey/29-apr-4-may-2020#lifestyle-changes (accessed 1 October 2021)
[22] Australian Bureau of Statistics. 2021. *Household Impacts of COVID-19 Survey: June 2021.* https://www.abs.gov.au/statistics/people/people-and-communities/household-impacts-covid-19-survey/jun-2021#spending (accessed 1 October 2021)

limited to providing information on the energy (kilojoules) content of standard food items[23] sold at standard food outlets[24] – that is, ready-to-eat food and drinks standardised for portion and content that are not required to bear a label[25] and which are sold by businesses including quick-service restaurants / fast food outlets, snack food and drink chains, bakery chains, convenience stores and supermarkets. Labelling for other nutritional information (for example, sodium, sugar, or saturated fat content, or Health Star Rating) at the point-of-sale is out-of-scope. While important, other initiatives to improve the nutritional value of standard food items, such as reformulation and serving size control are also out-of-scope for this work, however menu labelling can lead to reformulation and serving size reductions.

The provision of information through menu labelling may be one important cost-effective mechanism which can support people to make more informed choices about the ready-to-eat foods they purchase and consume.[26,27] Menu labelling has been recommended as a key strategy by international frameworks, including:

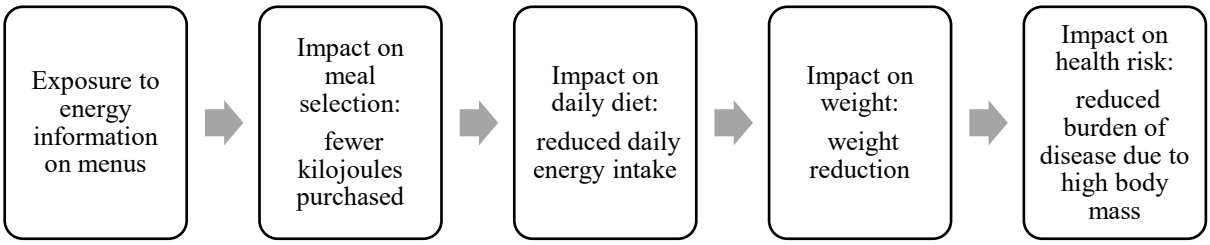
- The International Network for Food and Obesity/Non-communicable diseases Research, Monitoring and Action Support (INFORMAS) Healthy Food Environment Policy Index which recommends action on *'A consistent, single, simple, clearly visible system of labelling the menu boards of all quick-service restaurants (i.e. fast food chains) is applied by the government, which allows consumers to interpret the nutrient quality and energy content of foods and meals on sale'*.[28,29]
- The World Cancer Research Fund International's NOURISHING Framework includes *'Nutrition label standards and regulations on the use of claims and implied claims on foods',* which includes menu labelling as well as labelling on packaged products.[30]
- The Organisation of Economic Co-operation and Development (OECD) recommends policies to influence lifestyles through information and education, including food and menu labelling, to tackle obesity.[31]

If consumers use menu labelling to make healthier food choices, reduced consumption of kilojoules and associated better health outcomes could logically be expected, as shown in Figure 1 below. Cost-effectiveness modelling of national menu labelling in the United States

[23] As defined in the *Principles for introducing Point-of-Sale nutrition information at standard food outlets*. 2011. https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-principles-point-of-sale-nutrition
[24] Ibid.
[25] Under the Food Standards Code, Standard 1.2.1-6 does not require food to bear a label if it is made and packaged on the premises from which it is sold; is packaged in the presence of the purchaser; is delivered packaged, and ready for consumption, at the express order of the purchaser (other than when the food is sold from a vending machine); or is displayed in an assisted service display cabinet.
[26] Ibid
[27] McKinsey Global Institute. 2014. Overcoming obesity: an initial economic analysis. https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/how-the-world-could-better-fight-obesity (accessed 23 September 2021)
[28] Swinburn et al. 2013. Monitoring and benchmarking government policies and actions to improve the healthiness of food environments: a proposed Government Healthy Food Environment Policy Index. *Obesity Reviews*, 14(S1): 24-37.
[29] INFORMAS 2017 and 2019 assessments of food environment action by Australian governments, applauded the introduction of menu labelling by State and Territory governments; encouraged jurisdictions to enhance existing menu labelling by requiring the display of interpretive labelling (e.g. Health Star Rating); recommended that jurisdictions without menu labelling implement mandatory labelling in line with other jurisdictions; and recognised that progress had been made in developing national guidelines for nutrition information on menu. INFORMAS 2020 assessment of food environment action by the New Zealand Government was 'low level of implementation' for menu board labelling, with no change since 2017. INFORMAS did not recommend any action on menu labelling. This is in stark contrast to INFORMAS recommendations for menu labelling in Australia.
[30] Hawkes et al. 2013. A food policy package for healthy diets and the prevention of obesity and diet-related non-communicable diseases: the NOURISHING framework. *Obesity Reviews*, 14(S2): 159-168. https://www.wcrf.org/int/policy/nourishing/our-policy-framework-promote-healthy-diets-reduce-obesity (accessed 23 September 2021)
[31] OECD. 2019. *The Heavy Burden of Obesity: The Economics of Prevention*. https://www.oecd.org/health/the-heavy-burden-of-obesity-67450d67-en.htm (accessed 23 September 2021)

showed that menu labelling would reduce new cases of cardiovascular disease, diabetes and some cancers, and lead to healthcare and societal cost savings.[32,33] Similar modelling based on the impacts of the New South Wales menu labelling scheme indicated a possible national $672M saving in healthcare costs across the population's lifetime.[34]

Figure 1: Logic model for menu labelling



This logic model is linear and represents a rational response to menu labelling and is like logic models described in the evidence-base for menu labelling.[35,36] The logic model is limited to menu labelling and is neither a representation of the complex system for obesity or intended to establish causality between menu labelling and obesity. It is not necessarily reflective of the real-world environment, where many intermediate decisions and contributing factors influence the impact of menu labelling at each step in the logic model. For example, the model does not:

- consider the intervening steps of noticing and understanding the energy information before the information can be used;
- consider the motivations underlying purchasing decisions (for example, price, convenience, taste, dietary restrictions);
- examine whether there are compensatory behaviours such as consuming less or more energy at other meals during the day or doing more physical activity to counteract the food purchased;
- consider that menu labelling may induce businesses to reformulate or resize menu items so that they contain less energy or introduce new healthier menu items, leading consumers to purchase lower-energy items not based on using the energy information, but because the menu items themselves have changed; or
- include all the other interventions that may have an impact on daily energy intake and weight, such as advertising and marketing restrictions of unhealthy food and drinks, nutrition information on packaged food and drinks, mandatory policies for food and drink supply in institutional settings, pricing policies for affordable nutritious food, compositional and serving size limits of packaged food and drinks, and healthy eating education campaigns.

Due to the complexity of understanding consumer behaviour, the evidence for the effectiveness of menu labelling schemes is equivocal. Some reviews and meta-analyses indicate that consumers purchase fewer kilojoules, and that the energy content of menu items decreases when menu labelling is implemented. Other analyses and reviews suggest that menu labelling

[32] Mengxi Du et al. 2020. Cost-effectiveness of the FDA menu labeling to reduce obesity-associated cancer burden in the United States. *Current Developments in Nutrition*, 4(2): 1712. (accessed 23 September 2021)
[33] Junxiu Liu et al. 2020. Health and economic Impacts of the national menu calorie labeling law in the United States: A microsimulation study. *Circulation: Cardiovascular Quality and Outcomes*, 13: e006313. (accessed 1 October 2021)
[34] Mantilla-Herrera et al. *Menu kilojoule labelling on fast food* in Ananthapavan et al. 2018. *Assessing cost-effectiveness of obesity prevention policies in Australia 2018*. Melbourne: Deakin University. http://www.aceobesitypolicy.com.au/ (accessed 23 September 2021)
[35] Crockett et al. 2018. Nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption. *Cochrane Database of Systematic Reviews*, Issue 2. Art. No.: CD009315. https://doi.org/10.1002/14651858.CD009315.pub2
[36] Sarink et al. 2016. The impact of menu labelling across socioeconomic groups: a systematic review. *Appetite,* 99, 59-75.

has a minimal effect of food purchases and consumption. The individual studies included in the reviews and meta-analyses are a mix of real-world and laboratory/simulation studies, some are high-quality, while others are low-quality studies. The reviews and meta-analyses themselves are of different quality, measure different effects and for different populations. Appendix 2 provides a summary of reviews and analyses since 2015.

Many of the published studies analysed in these reviews and meta-analyses were focused on menu labelling in the United States, with a small number of studies from Canada, United Kingdom, and the European Union. Only four individual studies included in the reviews and meta-analyses were based on menu labelling in Australia with no studies from New Zealand. Therefore, the outcomes of the reviews and meta-analyses may not necessarily be replicated in Australia and New Zealand.

There is limited peer-review evidence for the impact of real-world menu labelling in Australia. The only real-world study of menu labelling in Australia, the 2011-2012 monitoring in New South Wales found a 15 percent (519 kilojoules) reduction in the kilojoules purchased after menu labelling was introduced.[37] This is consistent with the 2013 simulated research of how Victorian adults respond to menu labelling.[38] Whereas, another simulated study of parents and children found no effect on energy selected.[39]

In terms of secondary impacts, two other studies evaluated the impact of menu labelling on businesses' actions. Results were mixed with one study indicating that menu labelling did not lead to reformulation of menu items;[40] and a second study found that changes in the energy content of children's meals ranged from a reduction of 600 kilojoules to an increase of 345 kilojoules.[41] It should be noted that reformulation is not required for menu labelling to have a positive impact on purchasing behaviour.

It is noted that studies measuring only consumption of energy in a single meal or eating occasion do not allow an assessment of whether menu labelling has an impact on subsequent meals. That is, whether people eat less for other meals, or alternatively are more physically active. This limits the real-world applicability of such studies.

Use of digital panel menus and self-service kiosks rather than traditional static menu boards, the emergence of more third-party food delivery platforms, and more opportunities for consumers to customise menu items are now the norm in the Australian and New Zealand food environments. Digital menus, whether in-store or on a mobile app or website, may only display a segment of all menu items rather than display all menu items at the same time. This may result in the availability of energy information at the point-of-sale being inconsistent within and across businesses. However, the digital nature may improve the consistency of nutrition information as changes may be able to be made virtually to all menus at the same time. As some of the evidence of the impact of menu labelling pre-dates these industry innovations, the impact of these trends on consumers' purchasing habits may not necessarily be reflected in the current

[37] *Fast Choices: An evaluation of energy purchased and consumer education – Findings from Waves 1,2 & 3*. Prepared for NSW Food Authority and NSW Health. https://www.foodauthority.nsw.gov.au/sites/default/files/_Documents/scienceandtechnical/fast_choices_TNS_report.pdf

[38] Morley et al. 2013. What types of nutrition menu labelling lead consumers to select less energy-dense fast food? An experimental study. *Appetite*, 67: 8–15.

[39] Dodds et al. 2014. The effect of energy and traffic light labelling on parent and child fast food selection: a randomised controlled trial. *Appetite*, 73: 23–30.

[40] Wellard-Cole et al. 2018. 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*, 21: 1194–1199.

[41] Wellard-Cole et al. 2019. Nutrient composition of Australian fast-food and fast-casual children's meals available in 2016 and changes in fast-food meals between 2010 and 2016. *Public Health Nutrition*, 22: 2981–2988.

evidence. Whether these trends lead to fewer kilojoules being purchased is not known at this time. The impacts on the number of kilojoules purchased from changing what energy information must be displayed on digital menus at the point-of-sale, as proposed by the policy options, on consumers' ability to undertake a comparison of *all* menu items, as was possible with static menu boards, is also unknown. Further real-world research in Australia and New Zealand is required.

Furthermore, labelling can only be effective when it is firstly noticed by the consumer. Then, followed by an understanding of the information being communicated, it can be used in a meaningful manner according to consumer needs and wants.[42] The content, format and context of food labels all influence how useful they are for consumers.[43] Consumers also need to be motivated to use the provided information to choose healthier foods. The impact of menu labelling may also be influenced by an individual's socioeconomic status, gender, body weight, taste preferences, emotional response to menu labelling and whether they are restricting energy intake, as well as by price and convenience on purchasing decisions.[44,45,46,47,48]

Despite these limiting factors of the current evidence-base, menu labelling is a tool to support consumers to make informed decisions (whether or not it changes their decision), in the same way that nutrition information panels and health star ratings provide information to consumers on packaged foods. Menu labelling increases the availability and timeliness of information to help inform consumer choices. Menu labelling does not limit choice or compel a specific response from consumers, and any consumer decisions reflect free choice. As such, menu labelling alone will not reduce overall kilojoule intake, overweight and obesity or diet-related chronic disease. It is an important part of a multi-strategy approach to supporting behaviour change. Other policy areas to support the purchase and consumption of healthier food and drinks in retail and out-of-home settings are outlined in Appendix 3, along with national-level example actions underway in Australia and New Zealand.

1.4 Current menu labelling policy, regulation and education in Australia and New Zealand

Australia and New Zealand share a joint system for food labelling. In December 2010, Food Ministers (convening as the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC)) agreed that Australians should have the opportunity when purchasing food from chain fast food outlets to know more about the nutritional content of foods prepared and served away from home. Principles to guide the consistent implementation of menu labelling schemes

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

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

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

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

[46] Littlewood et al. 2015. Menu labelling is effective in reducing energy ordered and consumed: a systematic review and meta-analysis of recent studies, *Public Health Nutrition,* 19(12), 2106-2121.

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

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

were subsequently developed,[49] and endorsed by Ministers in October 2011 (identified as the 2011 Principles in this paper).

The 2011 Principles[50] outlined that menu labelling should:

1. Recognise that any change should contribute to improving public health outcomes.
2. Be consistent with the nationally agreed approach outlined below: Any jurisdiction that chooses to introduce point-of-sale (POS) nutrition information at standard food outlets should:
    i. Use the guideline definitions and explanation of terms agreed by the ANZFRMC.
    ii. Require the disclosure of energy content at POS by placing the average kilojoule (kJ) content of each standard food item on each menu:
        a. adjacent to the name of the standard food item, and
        b. in text at least at the same size as the price for each item (or at least the same size as the food name if there is no price listed).
    iii. Require that where standard food items have a range of portion sizes available (e.g. large, medium, or small) there needs to be a statement of the energy content (kJ content) for each portion size.
    iv. Require that a statement advising of the average daily kJ intake for adults (8,700 kJ) be placed prominently on the menu so that consumers have a point of reference to make informed choices.
    v. Provide at least a 12-month transition/ compliance period for industry.
3. Be supported by a communication strategy that engages and informs appropriate stakeholders.
4. Include an evaluation strategy to assess the impacts of any POS approach introduced.
5. Not preclude jurisdictions from expanding POS nutrition information at a later date to also include disclosure of other information such as sugar, sodium and fat content.

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

Australia

Since 2011, five Australian jurisdictions have introduced menu labelling legislation (see Table 1 below). Although, Western Australia, Tasmania, and Northern Territory have not implemented menu labelling, many businesses have voluntarily implemented menu labelling in all their Australian outlets.

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

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

[50] *Principles for introducing Point-of-Sale nutrition information at standard food outlets*. 2011. https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-principles-point-of-sale-nutrition (accessed 17 September 2021)

where information must be displayed. There are some elements in the existing legislation that were not covered by the 2011 Principles: business size threshold; different information display permissions for supermarkets; and exemptions from menu labelling. Despite a degree of consistency, harmonisation of implementation between jurisdictions has not been possible since the 2011 Principles were first endorsed by Food Ministers as most jurisdictions have implemented systems that deviate from the 2011 Principles to some degree. Refer to Sections 2.1 and 2.2 for more information.

If consumers do not understand kilojoules, their ability to use menu labelling optimally is impacted. To improve the effectiveness of its menu labelling legislation:

- New South Wales implemented the 8700kJ app and website as an ongoing means of consumer self-education.[51]
- Queensland delivered 'Straight Answers' and 'Kilojoules on the Menu' campaigns in 2016-2017, and some resources remain available online.[52]
- Australian Capital Territory delivered a four-week 'kilojoules on the menu' campaign (including a dedicated webpage on the ACT Health website (now inactive), social media and out-of-home signage) in June 2018.[53]
- Victoria ran a 'Kilojoules on the menu – check before you choose' consumer campaign (including radio, social media, and out-of-home signage) in May-June 2018. This also included a dedicated webpage on the Better Health Channel website with supporting information, videos (in multiple languages), and energy calculators.[54]

Table 1: Australian legislation for menu labelling

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

[51] NSW Health. *Healthy Eating Active Living: Kilojoules and calories.* https://www.healthyliving.nsw.gov.au/Pages/kilojoules-calories.aspx (accessed 1 October 2021)
Note: The original website https://www.8700.com.au/ no longer exists. The 8700 app remains available.
[52] Queensland Health. *Healthier. Happier.* https://www.healthier.qld.gov.au/
[53] Baker, E. (2018) 'New campaign rolls out to help Canberrans understand kilojoules'. *The Canberra Times,* 24 June 2018. https://www.canberratimes.com.au/story/6015736/new-campaign-rolls-out-to-help-canberrans-understand-kilojoules/ (accessed 9 November 2021)
[54] Victoria State Government. *Kilojoules.* https://www.betterhealth.vic.gov.au/campaigns/kilojoules-on-the-menu) (accessed 1 October 2021)

New Zealand

Menu labelling legislation has not been introduced in New Zealand. A survey of food and beverage companies in 2018 by the New Zealand Food Industry Taskforce[55] found that a small number of companies used menu labelling and would use menu labelling as a mechanism to address obesity. This was confirmed by stakeholders in 2021, with submissions from food industry organisations in New Zealand and Australia indicating that large New Zealand national (and/or international chains operating in New Zealand and Australia) typically display kilojoule and nutrition information on websites and apps, but not on menus. New Zealand stakeholders suggested alternative approaches to menu labelling including nutrition labelling on food packages, offering healthy options, providing advice about healthy options if requested by customers, and nutrition guidelines.

The New Zealand Food Industry Taskforce made 51 recommendations to the New Zealand Government to address factors contributing to obesity. The areas of action considered to be the highest priority for industry were reformulation targets, increased uptake of the Health Star Rating labelling system complemented by consumer education, and education to support understanding of nutrition and kilojoules. Recommendations relevant to menu labelling were:

1. Recommendation 47: Ministry of Primary Industries and industry to review the regulatory provisions for menu labelling in various Australian States and Territories with a view to voluntary application of the best elements in New Zealand. This review to be complete for implementation end 2019.
2. Recommendation 48: Fast food outlets to agree a voluntary approach to provide customers with guidance on healthier eating options (both on menus and if asked) and nutrition information by December 2019. Evidence of this might include reference in frontline training.
3. Recommendation 49: Companies/associations to voluntarily add nutrition information to recipes they publish on-line. A baseline survey is necessary to assess progress in this over time.

In 2019, the New Zealand Government's response to the Food Industry Taskforce recommendations with respect to menu labelling, was for the Taskforce to prioritise recommendations 47 and 48.[56] The New Zealand Government proposed establishing a joint work program with industry and identified four priorities for addressing obesity:

- limiting advertising, marketing and sponsorship of energy-dense, nutrient poor food and beverages;
- improving reformulation and labelling of food and beverages;
- creating healthier retail environments; and
- government-led monitoring and evaluation.

Australia New Zealand Food Standards Code

The provision of adequate information relating to food to enable consumers to make informed choices is the second priority objective of Food Standards Australia New Zealand (FSANZ) when developing or reviewing food regulatory measures and variations of food regulatory measures.[57] The Food Standards Code does not regulate menu labelling.

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

[56] Minister for Health and Minister for Food Safety. 2019. *Government response to the Food Industry Taskforce's report.* https://www.health.govt.nz/system/files/documents/pages/govt-reponse-to-food-industry-taskforce-report.pdf (accessed 1 October 2021)

[57] *Food Standards Australia New Zealand (FSANZ) Act 1991, Part 2, Division 2, Section 18(1).* https://www.legislation.gov.au/Details/C2018C00243 (accessed 1 October 2021)

Under the Food Standards Code, Standard 1.2.1, ready-to-eat food and drinks are not required to bear a label if they are (1) made and packaged on the premises from which it is sold; (2) packaged in the presence of the purchaser; or (3) delivered packaged and ready for consumption at the express order of the purchaser.[58] For foods not required to bear a label, some information is required to be either displayed in connection with the display of food or provided to the purchaser on request. However, the information relates primarily to food safety information, and not energy or nutrient information (unless a nutrition or health claim is made).

Food Regulation System – Ministerial Policy Guidelines
In August 2019, Food Ministers (convening as the Australia and New Zealand Ministerial Forum on Food Regulation), agreed that nationally consistent menu labelling is the desired outcome for the Australian food industry, public health organisations and governments. The Food Ministers agreed that the most effective way to achieve this is to develop a food regulatory measure under the Food Standards Code and that as a first step a Ministerial Policy Guideline should be developed. Ministers agreed to FRSC developing a Ministerial Policy Guideline, in line with best practice regulatory requirements, and ongoing consultation with Australian and New Zealand stakeholders.[59]

To support the development of nutritional labelling including added sugar labelling and energy labelling on alcoholic beverages, the *Ministerial Policy Guideline on Food Labelling to Support Consumers Make Informed Healthy Choices* was endorsed in August 2020.[60] While focused on food labels on packaging, this policy guideline should also be considered in developing off-pack labelling, including menu labelling. It is expected that information on food labels is in a format that:

- is easily accessed and understood by consumers;
- supports consumers to manage energy intakes to assist with achieving and maintaining a healthy body weight;
- supports consumers to compare foods;
- does not promote consumption of foods inconsistent with Dietary Guidelines (such as those high in saturated fat, added sugars, added salt and or foods with little or no nutritional value); and
- takes into account the nutritional content of the whole food, particularly risk nutrients identified in the Dietary Guidelines, so as not to mislead the consumer.

2 Statement of the problem

A 2017 review[61] of fast food menu labelling in Australia identified nationally inconsistent menu labelling legislation; an uneven playing field with respect to menu labelling for businesses selling standard food items; and gaps in legislation from emerging trends for promoting, offering, and selling standard food items. These concerns were confirmed during public consultation with key Australian industry, public health and consumer organisations in 2018. The consultation identified that there was strong support for national consistency and that new

[58] FSANZ. 2021. Australia New Zealand Food Standards Code – Standard 1.2.1 – Requirements to have labels or otherwise provide information. https://www.legislation.gov.au/Series/F2015L00386 (accessed 1 October 2021)
[59] *Australia and New Zealand Ministerial Forum on Food Regulation Communique 16 August 2019.* https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2019-August (accessed 1 October 2021)
[60] Australia and New Zealand Ministerial Forum on Food Regulation. 2020. *Policy Guideline on food labelling to support consumers to make informed healthy food choices.* https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/Policy-Guideline-on-Food-Labelling-to-Support-Consumers-Make-Informed-Healthy-Choices (accessed 1 October 2021)
[61] This review was undertaken by the Health and Food Collaboration which was established to progress work on identifying opportunities for the food regulation system to support obesity prevention objectives. It was a collaboration of Food Regulation Standing Committee (FRSC) and Australian Health Ministers' Advisory Committee representatives; and has now been disbanded. The review formed the basis of the 2018 consultation paper.

ways of promoting, offering, and selling food needed to be considered within menu labelling schemes.[62]

It is important to note that as menu labelling was not being implemented in New Zealand in 2017-2018, the review and subsequent consultation did not consider what was happening in New Zealand. Further public consultation with Australian and New Zealand stakeholders occurred between April and June 2021, and the findings from the 2021 consultation have further refined the statement of the problem.[63] In response to stakeholder views, a fourth concern has been added: that the current approach to menu labelling is not achieving the greatest public health benefit.

2.1 Nationally inconsistent menu labelling legislation

The five Australian jurisdictions that introduced menu labelling legislation took different approaches to businesses that are exempt from menu labelling (see Table 2 below). Most jurisdictions specify between five and nine business types that are exempt from menu labelling. Only businesses providing catering services are specifically exempt in all jurisdictions. Stakeholders have noted that these exemptions do not align with the intent of the 2011 Principles (noting that the 2011 Principles is silent on exemptions); resulting in inconsistency for Australian businesses, and inequitable access to energy information at the point-of-sale for Australian consumers.[64]

Table 2: Business types (X) specifically exempt in Australian jurisdictions' legislation

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

[62] Food Regulation Standing Committee. 2018. *Consultation Summary Report: Review of fast food menu labelling schemes.* Available at: https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/review-fast-food-menu-labelling-schemes
[63] Refer to section 6 and Appendix 7 for further details about the 2021 consultation process and outcomes.
[64] Food Regulation Standing Committee. 2018. *Consultation Summary Report: Review of fast food menu labelling schemes.* Available at: https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/review-fast-food-menu-labelling-schemes

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

- only Queensland has a requirement relating to font colour, in addition to font type and size;
- Queensland specifically legislates simultaneous display of kilojoules with name or price on menus (noting that some jurisdictions interpret their legislation to provide for this already);
- only Australian Capital Territory does not exempt businesses from displaying energy information for menu items sold on a trial basis;
- only Victoria does not specify requirements for the voluntary display of energy information;
- South Australia uses the term 'multiple-site businesses' (operating at five or more separate locations), Victoria uses the term 'chain food premises', and the other jurisdictions use 'standard food outlets' to include businesses selling at least one standard food item at other premises or as a chain (including under franchise arrangements, same trading name/brand, common ownership/control);
- New South Wales and Victoria include a retail floor space threshold ($1000m^2$) in the definition of supermarkets, South Australia (noting supermarkets are exempt) and Australian Capital Territory focus only on the products sold, and Queensland does not define supermarkets (but defines convenience stores as not being a supermarket);
- only Victoria specifically exempts alcoholic beverages from the definition of a standard food item; and
- only Victoria specifically allows the energy information for combination meals containing pre-packaged products to not include the energy from any pre-packaged products.

Although there is consistency in requirements among the four jurisdictions which capture supermarkets, the flexibility afforded to supermarkets in displaying energy information is not an element of the 2011 Principles. The state and territory regulations allow supermarkets to display energy information for standard food items differently to all other standard food outlets. Supermarkets are permitted to display energy information for standard food items as 'per 100 grams' on menus (including price labels/tags), while other businesses must display the information as the energy 'per item'. Supermarkets are also permitted to display energy information in the same font size as the unit price, which is typically in smaller font than the price of the item.

The impact of the differences between jurisdictions is likely to be greatest on cross-border businesses and parent companies with both captured and exempt outlets, and/or outlets with different requirements, as they may experience unnecessary complexities, uncertainty, and increased costs and regulatory burden. Some of these costs include interpretational/legal costs to review multiple legislative instruments; higher costs to design different menus and train staff if implemented on a jurisdictional basis (rather than nationally); and additional time and resources to meet different requirements.

Additionally, there may be some confusion about which legislation to follow. Some stakeholders in 2021, questioned whether businesses should follow menu labelling requirements based on where its head office is located, or the jurisdiction with the strictest legislative requirements. There is also some confusion within the grocery sector, about which businesses are in or out-of-scope of the existing legislation, based on business type or business model. Smaller businesses may incur a more significant and administrative burden to comply

with different menu labelling requirements compared to larger businesses which may have greater resources and capacity to absorb regulatory costs.

Differences in jurisdictional requirements may also impact consumers, for example:

- some consumers may not have access to nutrition information for all food and drinks on all menus (Australian stakeholders noted differences in provisions for combination meals, alcohol and online/digital menus were of concern);
- some consumers may have difficulty in noticing the kilojoules (for example, the same font colour requirement can make the energy information indistinguishable from the price, and permitting kilojoules to be in the same font size as unit price may reduce the visibility of the energy information on the price label/tag);
- some consumers wishing to compare the same item across business types may find it more difficult (for example, hot cross buns sold by a supermarket may have energy information displayed per 100 grams, while a bakery chain displays the energy as per serving/pack).
- some consumers may receive confusing information if the kilojoules displayed are inconsistent with product image promoted (for example, if a combination meal of burger, chips and can of soft drink is displayed, but the kilojoules are calculated without the soft drink); and
- some consumers may experience confusion if menu labelling differs across locations; noting, there were some mixed views among stakeholders, with most indicating that consumers may experience confusion when travelling across states and territories with different menu labelling. However, there was also the view that this was a lesser problem as consumers would not be comparing menus across different jurisdictions.

The extent that consumer education is delivered to support the understanding of energy content and use of menu labelling, and whether jurisdictions require menu labelling may also impact consumers. Some consumers, including people with low literacy or numeracy skills, First Nations Australians people, and people where English is not a first language, may experience barriers in understanding of energy content. Consumers may also have difficulty in knowing how to use menu labelling or estimate energy content when it is not displayed.

While the issue of inconsistency has been focused on menu labelling in Australia, there are mixed stakeholder views about the applicability of this issue to New Zealand. One view is that national inconsistency is an issue as there is no agreed framework for menu labelling in New Zealand. Another view is that national inconsistency is only an issue for Australia. As Australia and New Zealand operate within a shared food regulation system, it could also be said that there is inconsistency with respect to menu labelling, as one party has mandatory menu labelling in some parts of the country, and the other party does not have mandatory menu labelling.

2.2 An uneven playing field for businesses selling standard food items

While standard food items (i.e. food and drinks standardised for portion and content) are typically sold by fast food and takeaway chains, a broad range of other business types may sell standard food items, for example convenience stores, service stations, cinemas, caterers, pubs and clubs, dine-in restaurants, entertainment and recreation venues, mobile vendors, vending machines and home delivery services (refer to Appendix 4). However, not all these business types are required to display energy information due to either specific exemptions in jurisdictional legislation (as per Section 2.1) or due to not currently meeting the business size threshold. Under the current regulation in Australian States and Territories, only food

businesses that meet the threshold of 50 or more outlets nationally, 20 or more outlets in a State, or 7 or more outlets in a Territory are required to display energy information.

The exemptions and the business size threshold lead to an uneven playing field with respect to menu labelling regulatory requirements across businesses that sell standard food items. Some businesses exempt from menu labelling are increasingly selling standard food items. The differences in coverage may contribute to an anti-competitive market as only some business types are required to display energy information. This inconsistency has been particularly noted by stakeholders in food courts and on third-party food delivery platforms, with some businesses captured by menu labelling legislation, and others not captured despite selling similar energy-dense menu items.

There is a stakeholder view that stronger growth in independent outlets and third-party food delivery platforms may mean that the focus of menu labelling on medium and large chains is disproportionate. It was also noted during the consultation that as businesses providing catering are exempt from menu labelling, this could provide a loophole for otherwise captured businesses to sell standard food items as "catering" without the need to display energy information. This is considered unlikely as it could limit sales. A possible scenario is that a business offering exclusive dine-in operations in jurisdictions where menu labelling does not apply or capture dine-in restaurants, may quietly offer take-away food operations at the same time and then not display energy information.

Apart from inconsistencies for businesses, an uneven playing field may also be an issue for consumers. Difficulty in comparing menu items within and between businesses and making informed choices are the main concerns of stakeholders that energy information is not at the point-of-sale in all businesses selling standard food items. Consumers may think that menu items without kilojoule information on display may be healthier, which is particularly a problem for consumers who do not know the energy content of a food without a label.

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

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

- no longer use traditional 'menu boards', and have instead introduced digital panel menus and self-service kiosks;
- use third-party food delivery platforms to supplement existing customer base;
- offer 24/7 home delivery;
- focus on selling home delivered meal packages for home-based preparation;
- now actively promote build your own menu items (customised) from a range of standardised ingredients;
- use technology such as pop-up/hover advertising, QR codes (digital links to off-menu information), purchase history recognition on online platforms;
- use marketing approaches such as apps and games targeting children and discount offers via social media apps, to complement traditional advertising (i.e. buses, bus stops, television, radio) and
- offer contactless ordering, payment and/or delivery through mobile apps or other digital platforms.

Future technological advancements may increase the number of creative approaches that businesses use to promote, offer, and sell standard food items. Consequently, the 2011 Principles and jurisdictional legislation are unlikely to capture all new approaches within existing definitions and provisions/principles. While it may be technically feasible to use new technologies to display energy information, without the 2011 Principles and jurisdiction legislation specifically referring to these and future approaches, businesses may not be required to display energy information on all menu infrastructure and platforms or for all standard food items. As such, the availability of energy information at the point-of-sale may be inconsistent and this could impact consumers' ability to compare products and make fully informed purchasing decisions. Consumers may also underestimate the impact of their food and drink purchases on daily energy intake. Conversely, it is also important to note that consumers may make purchasing decisions without reference to a menu, and that declining numeracy levels and a lack of awareness of menu labelling may minimise the issue that energy information is not universally available at the point-of-sale.

2.4 Current approach to menu labelling is not achieving the greatest public health benefit

There is a need to address overweight and obesity in both Australia and New Zealand, as it affects most of the population, is a leading risk factor for chronic diseases and has an economic cost for government and society.

- In 2017-18, two-thirds (67%) of adults (18 years and older) and one-quarter (24.9%) of children (5-17 years) were overweight or obese in Australia.[65] In 2018-19, 71 per cent of Aboriginal and Torres Strait Islander adults (15 years and older) and more than one-third (37%) of Aboriginal and Torres Strait Islander children were overweight or obese.[66]
- Results were similar in New Zealand with 66.2 per cent of adults (15 years and older) and 29.6 per cent of children overweight or obese in 2019-20.[67] After adjusting for age and gender, Pacific and Māori adults were 2.3 times and 1.8 times more likely to be overweight or obese as non-Pacific and non-Māori, respectively.[68]
- In Australia and New Zealand, high body mass index was the second leading cause of health loss (8.36% and 8.15%, respectively) and combined dietary risks were the fourth leading cause of health loss (6.27% and 7.41%, respectively) in 2019.[69]
- In 2015, PricewaterhouseCoopers (PwC) estimated the cost of obesity at $8.6 billion (AUD) per year in Australia. This included health system costs, tax foregone and productivity losses such as absenteeism.[70] The Obesity Collective calculated that this cost had grown to $11.8 billion (AUD) in 2017-18, with $5.4 billion in direct health costs and $6.4 billion in indirect costs.[71] PwC also estimated in 2015 the annual cost of loss of wellbeing and early death at $47.4 billion (AUD)[72] and that if the growth of

[65] Australian Bureau of Statistics. 2018. *National Health Survey – First Results, Australia 2017-18.* https://www.abs.gov.au/ausstats/abs@.nsf/PrimaryMainFeatures/4364.0.55.001?OpenDocument (accessed 17 September 2021)
[66] Australian Bureau of Statistics. 2019. *National Aboriginal and Torres Strait Islander Health Survey, 2018-19.* https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4715.0Main+Features12018-19?OpenDocument (accessed 17 September 2021)
[67] Ministry of Health. 2020. *2019/20: New Zealand Health Survey*. https://minhealthnz.shinyapps.io/nz-health-survey-2019-20-annual-data-explorer/_w_6fcb44c5/#!/home (accessed 17 September 2021)
[68] Ibid.
[69] Institute for Health Metrics and Evaluation. 2020. *GBD 2019.* Available from https://vizhub.healthdata.org/gbd-compare/.
[70] PricewaterhouseCoopers and Obesity Australia. 2015. *Weighing the cost of obesity: A case for action.* https://www.pwc.com.au/pdf/weighing-the-cost-of-obesity-final.pdf
[71] The Collective for Action on Obesity. *Weighing In: Australia's growing obesity epidemic.* http://www.obesityaustralia.org/points-of-view
[72] PricewaterhouseCoopers and Obesity Australia. 2015. *Weighing the cost of obesity: A case for action.* https://www.pwc.com.au/pdf/weighing-the-cost-of-obesity-final.pdf

obesity does not slow down, 2.4 million Australians would be obese by 2025, costing society $87.7 billion (AUD).

- Comparable data on the cost of obesity in New Zealand is not available. However, in 2006, New Zealand healthcare costs due to the treatment of overweight and obesity-related conditions were estimated at $624 million (NZD). Given increased obesity rates since then, costs in New Zealand are now likely to be substantially higher.[73]
- For OECD countries, which includes Australia and New Zealand, it was estimated that 8.4% of health expenditure would be spent on the treatment of overweight and related conditions between 2020 and 2050.[74]

Overweight and obesity is a complex problem with multiple causes. The supply and availability of ready-to-eat food and drinks which are energy dense and nutrient poor is one of the key drivers of overweight and obesity.[75] The logic underpinning menu labelling (refer to Figure 1) is that being aware of and understanding the energy content of food and drinks will encourage consumers to make healthier choices, and lead to a reduction in energy intake. Over time a reduction in daily energy intake should contribute to a healthier body weight and reduce the risk and prevalence of chronic diseases related to high body mass (for example, cardiovascular disease, diabetes and kidney diseases, and some cancers). At a population-level, the result would be improved public health outcomes.

The 2011 Principles explicitly stated that 'menu labelling should recognise that any change should contribute to improving public health outcomes'. While the current approach to menu labelling may be contributing to improved public health outcomes, public health stakeholders considered it is not having the greatest possible public health benefit. Without sufficient evidence of the impact of mandatory menu labelling in Australia on public health outcomes it is difficult to say whether menu labelling is having the desired effect.

To be effective, repeated exposure to menu labelling may support consumer awareness and understanding.[76] The combination of menu labelling not being implemented in all jurisdictions, exemptions for businesses selling standard food items, and lack of energy information on some menus and at some points-of-sale, reduces consumer's exposure to menu labelling. Without energy information universally available, it is more difficult to make an informed choice. If a lack of information leads to no reduction of the amount of energy purchased, the longer term public health benefits associated with decreased energy consumption and body weight reduction may not be realised.

3 Objectives for government intervention

The desired outcome of menu labelling is that all Australians and New Zealanders have access to information at the point-of-sale about the energy content of ready-to-eat food and drinks to help make informed purchasing decisions. The secondary desired outcome is that menu

[73] Ministry of Health. 2013. *Health Loss in New Zealand: A report from the New Zealand Burden of Diseases, Injuries and Risk Factors Study, 2006-2016*. http://www.moh.govt.nz/notebook/nbbooks.nsf/0/F85C39E4495B9684CC257BD3006F6299/$file/health-loss-in-new-zealand-final.pdf

[74] OECD. 2019. *The Heavy Burden of Obesity: The Economics of Prevention*. https://www.oecd.org/health/the-heavy-burden-of-obesity-67450d67-en.htm (accessed 23 September 2021)

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

[76] Littlewood et al. 2015. Menu labelling is effective in reducing energy ordered and consumed: a systematic review and meta-analysis of recent studies. *Public Health Nutrition,* 19(12), 2106-2121.

labelling supports healthier food choices and contributes to the prevention of obesity and diet-related chronic diseases, thus providing a public health benefit.

The key barriers preventing the desired outcomes being achieved are outlined in Section 2 above. Menu labelling that is not consistently implemented across Australia and New Zealand at the point-of-sale in all businesses that sell standardised ready-to-eat food and drink, cannot achieve the greatest possible public health benefit. Another important barrier to successful menu labelling is if consumers lack the knowledge and skills to understand kilojoules, energy density and energy needs, which are fundamental to be able to use menu labelling to make healthier food choices.

Although maintaining the government's current approach of menu labelling in Australia and New Zealand is one option, it does not address the problem. There was broad support from most stakeholder submissions in 2021 for further government intervention to improve and strengthen the current approach. The primary reasons given was that the 2011 Principles and jurisdictional implementation of menu labelling legislation has not achieved consistent menu labelling. Stakeholders, particularly from public health and consumer organisations, highlighted that a mandatory approach to menu labelling is required, and consider that the alternative of voluntary action by industry is ineffective in improving health outcomes. Five state and territory governments have implemented menu labelling legislation in existing Food Acts, and there is a robust food regulation system operating in Australia and New Zealand. Given this, it is considered within the government's capacity to successfully intervene to improve and strengthen menu labelling.

To address the stated problem and achieve the desired outcomes of menu labelling, the objectives[77] are to ensure any regulatory or non-regulatory measures developed for menu labelling in Australia and New Zealand will:

- assist people to understand and use energy information to make informed, healthier food purchase choices at the point-of-sale;
- ensure that all modes of sale and types of menus enable comparison of all menu options within and across businesses that sell standard food items;[78]
- create a level playing field (with respect to menu labelling) for all businesses that sell standard food items; and
- minimise the proliferation of different menu labelling systems.

In recognition that the review of menu labelling schemes commenced in 2017 the timeframe for achieving these objectives is as expeditious as is possible. Given the increase in consumption of ready-to-eat foods purchased out of the home, providing energy information on these foods to enable consumers to make informed choice and protect public health is important. Furthermore, food businesses deserve clarity about governments' expectations for menu labelling. Measuring the achievement of these objectives is further described in Section 8.

It is important to note that while there was broad support from stakeholders for the objectives proposed in the CRIS, there was one food industry organisation in New Zealand that did not support the objectives. The lack of support was because New Zealand does not have menu

[77] These objectives are of equal importance, and not weighted. It is expected that any regulatory or non-regulatory measures are designed to achieve all four objectives.
[78] Modes of sale include, but is not limited to, in-store, online, third-party providers; types of menus include, but is not limited to, digital menu panels, kiosks, paper menus and tags, menu boards, drive-thru menus, online menus.

labelling and addressing the problem was not applicable to New Zealand. The other six submissions from New Zealand food industry and public health organisations supported the objectives.

4 Options

To address the problem and achieve the objectives described above, several regulatory and non-regulatory options were considered. Four viable options were identified following stakeholder consultation in 2018 and further discussion among government stakeholders. Further stakeholder views on each option were sought in 2021.

The option to remove current menu labelling regulation was not considered a viable option. This was because all Australian states have some menu labelling (whether mandatory or voluntary), and significant regulatory and business changes would be required to remove it. Additionally, with packaged food, there is a recognition of the importance of providing information to enable informed choice, such as via the nutrition information panel (NIP). Given the increase in consumption of ready-to-eat foods purchased out of the home, providing some energy information for these foods to enable informed choice and protect public health is equally as important. Consumer education in the absence of menu labelling was also not considered to be an appropriate option as it could not address the problem and achieve the objectives.

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

4.1 Option 1

Under Option 1, the 2011 Principles would remain as the only statement concerning menu labelling in Australia, noting they are not reflective of current industry trends and practices. While applicability of the Principles to New Zealand is not made explicit in the 2011 Principles, the Principles do not specifically exclude New Zealand or indicate that are for Australia only.

The five Australian state and territory governments with menu labelling legislation would continue to enforce their legislation. The remaining three Australian state and territory governments and the New Zealand government could choose to introduce menu labelling provisions within their respective Food Acts in response to the 2011 Principles. Jurisdictions could continue (or commence) to deliver a range of consumer education strategies and provide support to businesses to complement their legislation.

4.2 Option 2

The first step for this option involved amending the 2011 Principles to have a policy statement for menu labelling for Australia and New Zealand (drafted amended Principles available at Appendix 5). The second step is encouraging all jurisdictions (excluding the Australian Government) to choose to voluntarily implement menu labelling in their own legislation (Food Acts), in accordance with the amended Principles.

The amended Principles address the identified issues of business coverage and emerging trends and provide direction on a consistent approach to address the current jurisdictional inconsistencies. The intent is that within a jurisdiction that amended or adopted menu labelling:

- menu labelling would be mandatory for all businesses that sell standard food items (50 or more outlets in Australia, 20 or more outlets in an Australian State or 7 or more outlets in an Australian Territory, 20 or more outlets in New Zealand);
- all standard food outlets would need to:
  - display the energy information of all available standard food items on all menus and at all physical and electronic points-of-sale;
  - display the energy information for combination meals including any pre-packaged items with the combination;
  - display the energy information for multi-serve items as the whole item and per serving; and
  - ensure that customers have access to the energy information for standardised single ingredients and customisable menu items
- supermarkets would be required to display the energy information for each standard food in the same font and font size as price
- businesses that are not required to implement menu labelling could voluntarily do so but would need to comply with the mandatory menu labelling requirements
- if any business uses a third-party to facilitate the sale of standard food items, the food business would need to provide the energy information to the third-party.

The implementation mechanism for Option 2 is the same as the status quo, i.e. jurisdictions can choose to amend or adopt menu labelling via jurisdictional Food Acts. If jurisdictions choose to amend their legislation, they would most likely be required to prepare a RIS and determine the impact on industry and consumers by assessing which and how many businesses are captured by changing legislation or introducing new legislation. It is likely that public consultation would also need to be undertaken. This option becomes a regulatory approach to enhancing menu labelling if the amended Principles are implemented by jurisdictions; but is not a regulatory approach in jurisdictions that choose not to implement the amended Principles.

If not all jurisdictions implemented this option, cross-border businesses (i.e. businesses with a national/international head office and national/international reach) may choose to voluntarily implement menu labelling in the same manner nationally or internationally (if would remain compliant with existing legislation in other jurisdictions). This would be a business decision that could not be enforced beyond the jurisdictions that chose to strengthen their legislation.

During the 2021 consultation, Option 2 was supported by some food industry stakeholders as it was a consistent approach. However, it was not supported by public health organisations based on it being dependent on voluntary jurisdictional action and therefore having minimal difference to the status quo.

4.3 Option 3

The first step for this option involved developing a *Ministerial Policy Guideline on Menu Labelling: Displaying energy information for standard food items on menus and at the point-of-sale in standard food outlets* (the Policy Guideline – at Appendix 1). The intent is that:

- menu labelling would be mandatory for all Australian and New Zealand businesses that sell standard food items (50 or more outlets in Australia, 20 or more outlets in an Australian State or 7 or more outlets in an Australian Territory, 20 or more outlets in New Zealand);
- all standard food outlets in Australia and New Zealand would need to:
  - display the energy information of all available standard food items on all menus and at all physical and electronic points-of-sale;
  - display the energy information for combination meals including any pre-packaged items with the combination;
  - display the energy information for multi-serve items as the whole item and per serving; and
  - ensure that customers have access to the energy information for standardised single ingredients and customisable menu items;
- supermarkets would be required to display the energy information for each standard food in the same font and font size as prize; and
- if any business uses a third-party to facilitate the sale of standard food items, the food business would need to provide the energy information to the third-party.

Additionally, the intent is that businesses that are not required to implement menu labelling could voluntarily do so but would need to comply with the mandatory menu labelling requirements. This is a form of quasi-regulation, as is a mandatory-voluntary approach. The rationale behind voluntary implementation following the same approach as mandatory implementation is to prevent voluntary implementation adopting a self-select approach on what menu items to label, that is, a marketing driver to label *some* menu items, rather than a consumer information/comparison driver of labelling *all* menu items.

To achieve a bi-nationally consistent approach to menu labelling, the second step is to develop a mandatory food regulatory measure[79] for menu labelling under the Food Standards Code. As outlined in the *FSANZ Act 1991*, in developing a food regulatory measure FSANZ must, among other matters, have regard to policy guidelines, whether costs of the food regulatory measure outweigh the benefits to the community, industry, and government (Section 5 provides details of costs and benefits); and whether any other measures would be more cost-effective than a food regulatory measure. The food regulatory measure would require FSANZ Board approval and Food Minister approval. The intent is that the food regulatory measure would be automatically adopted in all Australian jurisdictions and New Zealand through their Food Acts.

The third step is for five Australian jurisdictions to repeal menu labelling legislation once a food regulatory measure was in place to ensure there was only one menu labelling system across

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

Australia and New Zealand. Repealing legislation is expected to be a less resource-intensive process and of shorter duration, compared to changing legislation to align with the amended Principles (Option 2). This is due to the repealing action on the states and territories being de-regulatory in nature, therefore avoiding the need for a RIS and extensive public consultation periods. It is important to note that one issue that may need to be retained in jurisdictional legislation is voluntary use of menu labelling if this cannot be regulated by the Food Standards Code. All jurisdictions would then need to amend their legislation to ensure that voluntary use was done in accordance with the Food Standards Code to ensure a consistent, single menu labelling system was in place.

It is also important to note that a jurisdiction could decide to not repeal their legislation and not adopt the food regulatory measure. For some jurisdictions, their legislation may take precedent if there is a conflict with a requirement in the Food Standards Code, or where their legislation specifically states a partial or full Standard does not apply.[80] However, the Food Regulation Agreement (FRA)[81] provides an obligation on all jurisdictions to implement regulatory measures of the Food Standards Code. Furthermore, the FRA exclusively provides that in the absence of an identified health and safety risk, no state or territory shall amend the Food Standards Code in giving it effect within constitutional boundaries.

During the 2021 consultation, this option was supported by some food industry stakeholders as it was a consistent, compulsory approach; and all public health and consumer organisations and two Australian state governments supported it as it was best for consumers and best for businesses.

4.4 Option 4

This option involves maintaining the existing regulatory framework (the status quo) and encouraging businesses in Australia and New Zealand to voluntarily implement a range of enhancements to menu labelling. Enhancements to menu labelling include displaying energy information for combination meals (inclusive of pre-packaged drinks) and standardised ingredients for customised menu items and increasing the availability of energy information at all points-of-sale, including third-party food delivery platforms.

Any business that chooses to voluntarily implement enhancements could:

- display the energy information of all available standard food items on all menus and at all physical and electronic points-of-sale;
- display the energy information for combination meals including any pre-packaged items with the combination;
- display the energy information for multi-serve items as the whole item and per serving;
- ensure that customers have access to the energy information for standardised single ingredients and customisable menu items;
- provide the energy information to third-parties.

Additionally, supermarkets that choose to implement the enhancements to menu labelling could display the energy information for each standard food in the same font and font size as price. All small businesses that choose to voluntarily implement enhancements could do so.

[80] For example, this is the situation with *Standard 3.3.1: Food Safety Programs for Food Service to Vulnerable Persons* which does not apply in Victoria as the Victorian class 1 declaration overrides the Food Standards Code requirements; and does not apply in Queensland as the Queensland Food Act specifically excludes the adoption of the Standard.
[81] *Food Regulation Agreement*. 2010. https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/480670060E89F438CA257CED001BF485/$File/Food%20Regulation%20Agreement%206%20July%202010.pdf (accessed 17 December 2021)

There is not an existing well-resourced, co-ordinated approach for governments to work with industry and encourage businesses to implement enhancements to menu labelling. The mechanism for operationalising this option could include the provision of support to individual businesses by peak industry bodies or have one peak body responsible for oversight and governance, with individual businesses informing decisions through a voting system. This option is a non-regulatory approach to enhancing menu labelling.

The industry peak bodies that responded to the 2021 consultation did not indicate interest in this option, nor did they provide views on implementation matters. One New Zealand food industry peak body indicated that this option could be viable for New Zealand, however had concerns (not specified) about this option for New Zealand businesses. One Australian food industry organisation supported this option as it allows industry to decide how menu labelling is implemented. This option was strongly opposed by all Australian public health organisations, one Australian state government and one member of the public, with the view that voluntary action is inadequate and would not achieve the objectives of menu labelling.

4.5 Complementary strategies

Regardless of the preferred option, it is proposed that an education strategy be developed to increase consumer awareness and understanding of kilojoules, energy density, energy needs, making healthier food choices, and how to use menu labelling (including the energy reference statement) at the point-of-sale. Pending agreement, Governments would fund and manage the development, implementation, and evaluation of all education activities. Governments may liaise with food businesses' communications and marketing experts in developing an education strategy.

In developing the strategy, consideration would need to be given to the modes of education and key messages needed; however, it is proposed that a comprehensive multi-media strategy that achieves the desired reach and sustained effectiveness would be required. Education activities would be tailored separately for Australian and New Zealand consumers, and for different sub-population groups (such as Pacific and Māori adults, First Nation Australians, culturally and linguistically diverse groups, vulnerable groups with lower literacy/numeracy skills) within each country. Working with different population groups and undertaking consumer testing are critical steps in developing a multi-media strategy. Consideration could be given to an overarching consumer education strategy about food labelling, healthy eating, and nutrition literacy to manage the costs and to encompass future labelling changes on packaged food. Alternatively, the consumer education for menu labelling previously or currently delivered by jurisdictions could be adapted to manage costs.

There was strong support for consumer education to accompany menu labelling. Consumer education in the absence of menu labelling was not considered to be an appropriate option as it could not achieve the objectives. This view was supported by Australian public health and consumer organisations during the 2021 consultation.

4.6 Other possible options

Another option would be to amend the Food Standards Code and require all ready-to-eat meals and snacks to bear a label (those that are currently exempt). However, this was not considered viable as customers would not be able to access the energy information before making a purchasing decision. Many ready-to-eat meals and snacks are made directly following a customer's order, rather than being pre-made, and not all meals and snacks are given to the customer in some form of packaging.

During the 2021 consultation, there were some suggested alternative options, including restrictions on unhealthy ingredients, and serving sizes. Composition and package labelling of ready-to-eat food and drink; and other strategies to support healthier food choices eating when eating ready-to-eat meals and snacks were out-of-scope of this process as they are being addressed through other mechanisms (refer to Appendix 3).

5 Impact analysis

An impact analysis helps to determine the preferred option. For this paper, the analysis included consideration of how well the options could rectify the problem and achieve the objectives; and the costs and benefits of each option for the groups most likely to be affected. The analysis draws on stakeholder views and a commissioned economic evaluation of the options.[82]

The economic evaluation involved comparing the costs and benefits of the three options (Options 2, 3, 4) to the status quo (Option 1). No estimate of the costs and benefits associated with Option 1 was calculated. Rather the economic evaluation considered the additional costs and benefits associated with the proposed options compared to the status quo. The estimated costs and benefits included in the evaluation are described below in Section 5.3, 5.4 and 5.5. The costs and benefits were monetised and compared to calculate net benefit (benefits minus costs). A positive net benefit typically signifies a positive outcome resulting from the policy option. However, this does not necessarily mean that the policy option should be adopted, as alternative options could yield higher net benefits. Sensitivity tests and risk analysis were conducted to highlight critical success factors and the level of confidence in the cost-benefit estimates. The overall results of the economic evaluation are described in Section 5.6. Full details of the economic evaluation including the sensitivity tests and risk analysis for each jurisdiction are described elsewhere.[83] Possible limitations associated with the economic evaluation and changes to some estimates are noted within the relevant sections below.[84]

5.1 Groups most likely to be affected by options for menu labelling

The groups most likely to either bear a cost or receive a benefit from the menu labelling options are:

- Australian and New Zealand individuals that are customers at standard food outlets who will potentially be influenced by exposure to menu labelling and subsequently reduce energy intake and lead to reduced body weight and health risks.
- Other Australian and New Zealand individuals, specifically friends, family, acquaintances who will potentially benefit from health benefits accruing to standard food outlet customers.
- Australian and New Zealand businesses who must comply with menu labelling regulations will face compliance costs. These may include quick service restaurants, cafés, coffee shops and restaurants, supermarkets and convenience stores, bread and cake retailers, fuel retailers selling standard food items, cinemas, catering services, pubs, and clubs.
- Australian and New Zealand taxpayers who will have to fund the administration costs associated with the development, implementation, and enforcement of the options. Taxpayers are also potential beneficiaries of the policies, for example lower weight-related health risks will free up public health resources to address other public issues.

[82] Allen and Clarke Consulting. 2021. Final Report Menu Labelling Economic Evaluation. www.foodregulation.gov.au
[83] Ibid.
[84] The limitations and changes to some cost estimates were identified by the Priority 2 Advisory Group and the Ad-hoc jurisdictional menu labelling working group after the completion of the independent economic evaluation. The limitations and changes have been noted to ensure transparency and to aid decision-making.

5.2 How effectively options could achieve the objectives

All options

As consumer education is intended to complement any of the policy options, it should maximise the effectiveness of menu labelling in supporting consumer choice. Therefore, all options implemented in conjunction with consumer education are likely to achieve the objective: *Assist people to understand and use energy information to make informed, healthier food purchase choices at the point-of-sale.* Providing consumers with a tool (i.e. menu labelling) and the means to understand how to use that tool to make healthier food choice can help in addressing the health system impacts. Consumers may have:

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

Option 1

Option 1 has not achieved the objectives in the decade since the 2011 Principles were endorsed. Additionally, it took seven years between the development of the 2011 Principles and menu labelling becoming effective in the most recent jurisdiction to implement the 2011 Principles. Three Australian jurisdictions and New Zealand have not implemented the 2011 Principles to date, and this is unlikely to change.

Option 2

Achieving the objectives through Option 2 is dependent on whether all jurisdictions implement the amended Principles and would require all eight Australian jurisdictions to change their legislation (Food Acts) to align exactly with the amended Principles. As the objectives are for Australia and New Zealand, it would also require New Zealand to change its legislation. There is no indication that all jurisdictions would change their legislation in a timely or identical manner. No effect is given to the amended Principles until jurisdictions amend their legislation.

However, Option 2 may result in most standard food outlets consistently implementing the strengthened menu labelling elements outlined in the amended Principles, even if only one jurisdiction changes their legislation. It is possible that some cross-border businesses may choose to voluntarily implement menu labelling in the same manner in all outlets in Australia and/or New Zealand. However, this would not be enforceable in jurisdictions that have not adopted the amended Principles, and it could lead to businesses being non-compliant with existing legislation.

Under Option 2, there is a likelihood that future jurisdictional legislative setting processes would result in deviations from the amended Principles. No guarantees can be offered that jurisdictions could implement modified or new legislation that identically mirrors the amended Principles. Therefore, there is a risk that the current inconsistencies will remain, and additional inconsistencies may emerge if jurisdictional action does not occur in a timely (within 1-2 years) and uniform manner. A jurisdiction's ability to amend their legislation is dependent on their work plan, competing priorities, complexity of the issues and parliamentary debate. Since the 2011 Principles were created, only five jurisdictions have implemented menu labelling legislation, with the most recent scheme becoming effective seven years after the 2011 Principles were developed.

Option 3

Option 3 would result in one consistent menu labelling system for Australia and New Zealand. This is an outcome that has not been achieved in the decade of the current menu labelling policy principles. The mechanism of a food regulatory measure under the Food Standards Code has the benefit of generating a uniform set of menu labelling requirements and having applicability in all Australian states and territories and New Zealand, through automatic adoption in jurisdictional legislation (i.e. Food Acts). Therefore, it would be most likely to ensure that all modes of sale and types of menus enable comparison of all menu options within and across businesses and to create a level playing field for all businesses across Australia and New Zealand that sell standard food items.

While the proposed Policy Guideline is intended to guide FSANZ in developing a food regulatory measure, there is no guarantee that a food regulatory measure for menu labelling would align exactly with the Policy Guideline. Should the food regulatory measure deviate from the proposed Policy Guideline, the regulatory requirements will still be carried uniformly across all jurisdictions at the same time, creating bi-nationally consistent requirements for menu labelling as an outcome. However, there is a risk that some of the progress made by jurisdictional legislation could be lost. The legislated FSANZ standards setting process would provide the opportunity to test all elements proposed to be incorporated in a food regulatory measure for menu labelling. If there are pertinent additional factors to consider in the future, Food Ministers can request that FSANZ review an existing food regulatory measure.

Option 4

Option 4 lacks the mandatory onus of a regulatory arrangement, so it is likely there would be less adoption and take longer to adopt the enhancements to the menu labelling system (i.e. improvements to energy information on all modes of sale and types of menus) by industry participants compared to what can be achieved under a regulatory arrangement. The current inconsistencies would remain, and additional inconsistencies could emerge depending on how businesses implement any enhancements, leading to a proliferation of different menu labelling systems.

Having the choice to voluntarily enhance menu labelling in their outlets, provides a level playing field for businesses on one hand. However, as not all businesses are likely to make this choice, it would still mean that some businesses are displaying energy information and others not, despite selling similar food and drinks, or being co-located (for example, in food courts), or using the same third-party food delivery platforms.

Businesses voluntarily implementing the menu labelling enhancements could support their customers to make healthier choices. As Option 4 relies on a voluntary approach to increasing consistency of menu labelling, it is uncertain that businesses would provide consumers with enough information on menus and at the point-of-sale to support use of energy information to make healthier choices at the point-of-sale. For example, businesses could display energy information for only some menu items, namely the healthier choices, but consumers could choose the less healthy options as a lack of information may be perceived as a menu item being a healthier choice.

5.3 Business compliance costs

Under the status quo, the estimated cost to implement menu labelling is $1,585 (AUD) per Australian standard food outlet in start-up costs, and a further $560 (AUD) per outlet in ongoing

annual maintenance costs.[85] These compliance costs may cover menu design and production[86], nutritional analysis[87], staff training, professional services for external marketing and legal counsel, and record keeping. Since menu labelling legislation was first introduced and these costs were estimated, one of the most significant changes in how food businesses display and sell menu items has been a shift from physical static menu boards to digital platforms in-store and online. The use of digital platforms and infrastructure allows for lower-cost changes to menus as changes can be made virtually and then displayed on a screen.

The 2021 consultation sought views on the accuracy of these costs. While some Australian industry stakeholders questioned whether the costs were too low, the costs provided by these stakeholders suggest that the compliance costs assumed within the CRIS were more likely to err on the higher side. One industry organisation noted that each change costs $30,000 across the business. Further analysis indicated that this equates to $62.50 per outlet for that business, which is significantly less than the annual compliance cost of $560 per outlet included in this paper. Australian public health and consumer organisations while not aware of the costs incurred by business, were of the view that costs for menu labelling are low, particularly in comparison to cost savings from dietary improvements and reduced diet-related chronic disease, and that compliance costs should not be a reason to not display energy information on menus.

Business compliance costs for Options 2, 3 and 4 were calculated based on the increase in coverage (compared to the status quo) associated with each option. It was assumed that the start-up and annual maintenance costs would be the same as for the status quo. A 20 per cent reduction ($120 per outlet) in annual compliance costs associated with a single regulatory mechanism provided by Option 3 was assumed. In 2012, most cross-border businesses indicated that it was more cost-effective to produce menus nationally, rather than produce different menus for each jurisdiction's requirements.[88] Costs for New Zealand outlets were assumed to be the same as for Australia but translated into New Zealand prices.[89]

As of June 2020, it was estimated that approximately 75 chain businesses with over 13,750 outlets were implementing or were required to implement menu labelling in Australia.[90] As many businesses chose to implement menu labelling in all their outlets, even in the absence of a legislated requirement (Tasmania, Western Australia and Northern Territory), the estimation of outlet numbers is based on the total number of outlets a business has in Australia. This may be an over-estimation of the number of businesses currently implementing menu labelling, and therefore, may contribute to an over-estimation of the likely benefits of menu labelling. From this baseline, the potential increase in coverage for each option was estimated. The assumptions underpinning these estimations are described in Table 3 below.

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[85] Based on data from the New South Wales Food Authority, which estimated in 2012 (using industry-provided data) that for the industry the start-up cost was $5.4M (AUD) ($1,390 per outlet) and the ongoing cost was $1.9M (AUD) ($490 per outlet) per annum. Reported in NSW Government. 2012. *Review of Fast-food Labelling Requirements ("Fast Choices").* https://www.parliament.nsw.gov.au/tp/files/8934/Section%20106R%20Review%20of%20Food%20Act%202003.pdf
The Australian Bureau of Statistics Consumer Price Index Inflation Calculator was used to convert these 2012 costs to 2019.

[86] Variable cost depending on type of menu (e.g. paper menus, static menu boards, digital panels, online menus, apps). The costs may be overinflated, as the emergence of more electronic menus may have reduced costs associated with changing static menu boards.

[87] There is a lower cost option of using the freely available FSANZ Nutrition Panel Calculator or higher cost option of laboratory testing).

[88] Reported in NSW Government. 2012. *Review of Fast-food Labelling Requirements ("Fast Choices").* https://www.parliament.nsw.gov.au/tp/files/8934/Section%20106R%20Review%20of%20Food%20Act%202003.pdf

[89] Note: A New Zealand/Australian exchange rate of 0.934, which is the average rate prevailing in the year to March 2021, was used.

[90] This was done by a manual count of food outlets for each business if provided on the business website. There may be some inaccuracies as not all businesses provide a list of outlets. If a business uses a postcode map locater for its outlets, it is difficult to ensure all outlets were captured.

Table 3: Assumptions underpinning increased coverage under each option

Option	Assumptions Underpinning Analysis of Outlet numbers
Option 2	• There will be a widening and conformity in coverage in jurisdictions that already enforce menu labelling regulations. It is assumed that all jurisdictions with menu labelling regulation will update their regulation to align with the amended Principles. However, it is noted that there has not been a commitment from any jurisdiction at this time. • It is assumed that the coverage of menu labelling in the Australian Capital Territory is already consistent with Option 2, so no further expansion in coverage is expected. • No introduction of menu labelling by Western Australia, Tasmania, Northern Territory or New Zealand, based on not introducing menu labelling legislation since 2011 Principles. • There will be limited (10%), voluntary-type expansion of coverage in jurisdictions that do not introduce menu labelling regulations, based on the assumption that national businesses roll out menu labelling across all standard food outlets.
Option 3	• There will be a widening and conformity in coverage in jurisdictions that already enforce menu labelling regulations, as per Option 2. • It is assumed that the coverage of menu labelling in the Australian Capital Territory is already consistent with Option 3, so no further expansion in coverage is expected. • There will be an increase to similar levels of coverage in the jurisdictions that have not already introduced menu labelling regulations. Increase in coverage in these jurisdictions is estimated by applying the proportion of coverage expected under Option 2 for jurisdictions with regulation to industry business count data. • The proportion of outlets qualifying for menu labelling under Option 3 will be equivalent in all jurisdictions. There is a risk that this assumption might overstate the impact of Option 3, as the proportion of qualifying outlets might be smaller in lower population jurisdictions.
Option 4	• The coverage of voluntary menu labelling will expand relative to the status quo by a factor equivalent to 10% of what is expected in Option 3. Sensitivity analysis also considered 5% and 20%. • Consumer education will raise awareness of menu labelling and may induce some businesses to introduce menu labelling

Under Option 2, the potential increase in outlets captured by menu labelling regulations is 4,910, with 2,060 in New South Wales, 1,000 in Victoria, 1,380 in Queensland and 470 in South Australia. The expansion of menu labelling in these jurisdictions is expected to be in convenience stores, fuel retailers and dine-in restaurants, as well as supermarkets in South Australia, which are either specifically exempt from or not intended to be captured by one of more of the existing menu labelling regulations. These numbers could be an over-estimation as not all businesses may sell standard food items, or some businesses may choose to not sell standard food items in the future.

In addition to the increase in outlets under Option 2, a further 2,550 Australian outlets (1,840 in Western Australia, 480 in Tasmania and 230 in Northern Territory) and 3,050 New Zealand

outlets may be captured under Option 3 (10,510 outlets in total). These estimations include quick service and dine-in restaurants, cafes, supermarkets, convenience stores, and service stations. It is important to note that these estimations are based on what businesses would be required to implement menu labelling, and do not take into consideration the number of businesses which have rolled out menu labelling nationally in Australia because of legislation in other jurisdictions. Therefore, the expected number of businesses which would need to introduce menu labelling for the first time, is anticipated to be lower.

The number of businesses voluntarily implementing menu labelling in Australia and New Zealand as of June 2020 was not known. Responses to the 2021 consultation did not provide data to clarify this situation. The numbers above for Option 2 and 3 do not include the potential for voluntary expansions in menu labelling. While account is made for potential benefits resulting from increases in customers' exposure to voluntary increases in menu labelling, it is presumed, that any voluntary actions do not bear any compliance costs.[91] This does not mean that the voluntary introduction of menu labelling is costless, but that their voluntary basis means that these costs should not be included as compliance costs.

As the food industry is a dynamic one and subject to changing consumer demands and economic climate, the number of businesses and outlets that may be required to implement menu labelling would be expected to change over time. Additionally, the long-term impact of the COVID-19 pandemic on business remains unknown. There could be a considerable reduction in the size of the overall industry, and the size of individual businesses. However, for the purposes of this paper, compliance costs were based on the outlet numbers described above. The compliance costs are described in Table 4.

[91] Note: Under the New South Wales, South Australia, Australian Capital Territory and Queensland menu labelling regulations, any voluntary menu labelling must be compliant with the legislative provisions. The compliance costs for businesses that voluntarily choose to implement menu labelling under Options 2 and 3 have not been explicitly included, as they were assumed to be within the margin of error for the overall compliance costs associated with mandatory menu labelling. In practice, compliance monitoring of voluntary implementation is focused on ensuring all menu items and not just the 'healthier' items have energy information displayed.

Table 4: Total Compliance Cost over 10-year period – central estimation[92]

Jurisdiction	Compliance cost of Option 2	Compliance cost of Option 3[93]	Compliance cost of Option 4[94]
New South Wales	10.1M	5.3M	0.4M
Victoria	4.9M	0.5M	0.4M
Queensland	6.8M	4.1M	0.4M
South Australia	2.3M	1.3M	0.4M
Australian Capital Territory	0	-0.2M	0.4M
Western Australia	0	7.6M	0
Tasmania	0	2.0M	0
Northern Territory	0	0.9M	0
Australia	24.0M	21.7M	3.7M
New Zealand	0	16.0M	1.0M

Other potential costs for businesses that were identified (but not included in the compliance costs above as are less tangible, qualitative costs):

- As businesses would be more likely to be participating in a level playing field with respect to menu labelling, some Australian businesses may lose some competitive advantage or a point-of-difference by no longer being exempt from menu labelling. For other businesses, a level playing field may remove the anti-competitive disadvantage experienced by some businesses being exempt from menu labelling.
- Businesses may experience reduced revenue if consumers' purchasing patterns change because of consumer education raising awareness of menu labelling and healthier choices. On the other hand, businesses may experience changes in consumer demand and therefore revenue growth if sales of healthier choices rise.
- Incurred costs may negatively impact the sustainability of businesses that are not already required to implement menu labelling, this is particularly important to note, as some businesses have already been negatively impacted by the COVID-19 pandemic and associated restrictions on trade.
- Without a consistent approach, cross-border businesses may experience a disruption to trading each time a jurisdiction amends and/or adopts menu labelling.
- Under Option 4, there is unlikely to be implementation support from government, so businesses and/or peak industry bodies may incur additional costs to support implementation.

Offsetting these costs by benefits potentially realised for businesses were also not included in the calculation of compliance costs. Potential benefits include:

- Businesses located in jurisdictions that chose to implement menu labelling would be more likely to be participating in a level playing field, especially if all five jurisdictions removed existing exemptions in the same way. (Option 2)

[92] Presented in present value terms, based on calculations over a ten-year period discounted into present values using a 7% discount rate.

[93] For Option 3, the lower amounts for NSW, Victoria, Queensland, and South Australia reflect the 20% cost saving from a binational approach. It appears to be a lower than expected compliance cost for Victoria in comparison to the other jurisdictions. The economic evaluation calculations indicate a negative compliance cost for years 2 to 10 in Victoria, which is not the case for the other three jurisdictions.

[94] The compliance costs for businesses that voluntarily choose to implement menu labelling under Option 4 were estimated proportionally to the scale of consumer education; and were included to demonstrate that compliance costs would not fall to zero despite the voluntary nature of the option.

- All businesses selling standard food items would have assurance that all Australian and New Zealand jurisdictions have consistent requirements, a consistent approach to compliance, consistent interpretation of legislative provisions and clear expectations for menu labelling. (Option 3)
- Australian businesses would be more likely to be participating in a level playing field, removing the anti-competitive disadvantage experienced by some businesses being exempt from menu labelling. (Option 3)
- Businesses would have the autonomy/ownership for decision to implement enhancements to menu labelling. (Option 4)

5.4 Government administration costs

Four types of administration costs were estimated in terms of the amount of full-time equivalent (FTE) years expected to be needed over a ten-year period by each jurisdiction[95]:

1. *Policy change and consultation costs* – public sector costs associated with redrafting policy, consulting with interested parties and advising public sector decision makers, amending and/or repealing menu labelling regulation over 18 months. Also included in this category are the specific costs for FSANZ to raise a Proposal to develop a new regulatory measure under the Food Standards Code (option 3 only).
    - *Estimated 0.2-0.75FTE for the provision of advice, 1FTE to repeal existing legislation, 1.5FTE to amend legislation, 0.5-3FTE for responding to FSANZ processes over 18 months.*
    - *$200,000 for FSANZ to raise a Proposal.*[96]

2. *Consumer education* – the public sector costs associated with developing and delivering national-level education messages over three years to support consumers to understand and use menu labelling.
    - *Estimated 6FTE for New Zealand to 12FTE for Commonwealth government agencies over three years.*
    - *As well as $6 million over three years for Australia and $3 million over three years for New Zealand.*

3. *Public notification* – the costs of notifying the public and affected industry of regulatory requirements.
    - *Estimated 0.5FTE across different options and jurisdictions.*
4. *Monitoring* – the costs with expanding monitoring and enforcement operations over 10 years.
    - *Estimated 5FTE for jurisdictions with existing menu labelling to 20FTE for jurisdictions without existing menu labelling over 10 years.*[97]

[95] For more details refer to the economic evaluation report. www.foodregulation.gov.au

[96] Based on FSANZ cost recovery fees for a major procedure for an Application (1050 hours) in 2018-19 - https://www.foodstandards.gov.au/code/applications/Pages/Cost-recovery-arrangements.aspx
Note: since the economic evaluation was conducted, it has been advised that based on similar work, the cost to FSANZ would more realistically be estimated at around $450,000. This higher cost relates to a greater number of estimated hours and the expertise required to undertake the work. Therefore, the government administration costs for Option 3 would be more than was estimated. The higher estimate of administration costs assumed in the economic evaluation is more in line with the predicted true cost to FSANZ. As this change in cost is within the range of estimations, the economic evaluation has not been re-calculated.

[97] Note: since the economic evaluation was conducted, it has been advised that for the Northern Territory, 0.5FTE per annum or 5FTE over 10 years is a more realistic estimate based on actual resources available. Therefore, the administration cost would be less than was estimated.

The value of government administration inputs is $A249,500 per Australian public sector fulltime equivalent (FTE) year, and $NZ228,000 per New Zealand public sector FTE year.[98] The total administration cost was calculated over a 10-year period (refer to Table 5 below). The costs for Commonwealth government agencies (Australia) and New Zealand are higher than State and Territory jurisdictions largely due to costs associated with consumer education. For the purposes of the economic evaluation, it was assumed that the Australian Government would bear all the costs for a national Australian consumer education strategy, although it is noted that State and Territory governments are likely to be asked to contribute to the cost of consumer education, based on the Health Chief Executives' Forum cost-share formula, as was the case for the Health Star Rating consumer education.

Table 5: Total Administration Cost over 10-year period – central estimation[99]

Jurisdiction	Administration cost of Option 2	Administration cost of Option 3	Administration cost of Option 4
Australian jurisdictions already with menu labelling	1.6M	1.5M	0.5M
Australian jurisdictions without menu labelling	0.1M	4.5M	0.1M
Commonwealth government agencies: Australia	18.3M	31.5M	12.2M
New Zealand	4.8M	9.0M	4.7M

5.5 Benefits to society

Compared to the status quo, it is anticipated that consumers living in jurisdictions where menu labelling is implemented:

- would have accessible, clear, legible, easy-to-read, easy-to-interpret and easy-to-compare energy information for more food and drinks at the point-of-sale in more businesses that sell standard food items;
- could make easier comparisons of menu choices within a business, and across different businesses on third-party food delivery platforms; and
- would have more opportunities to use menu labelling to make healthier eating decisions which could contribute to more individuals reducing their daily energy intake and body weight, thus reducing the risk of obesity and other chronic diseases.

The degree to which this could occur is dependent on the policy option. For Option 2, it applies to consumers living in jurisdictions that chose to implement menu labelling legislation. For Option 3, it applies to all Australian and New Zealand consumers. For Option 4, it applies to consumers visiting businesses that voluntarily implement menu labelling enhancements.

It is also anticipated that for jurisdictions implementing menu labelling legislation (Option 2) and for a bi-national approach (Option 3), there would be greater equity among consumers as information would be available at standard food outlets regardless of which business standard

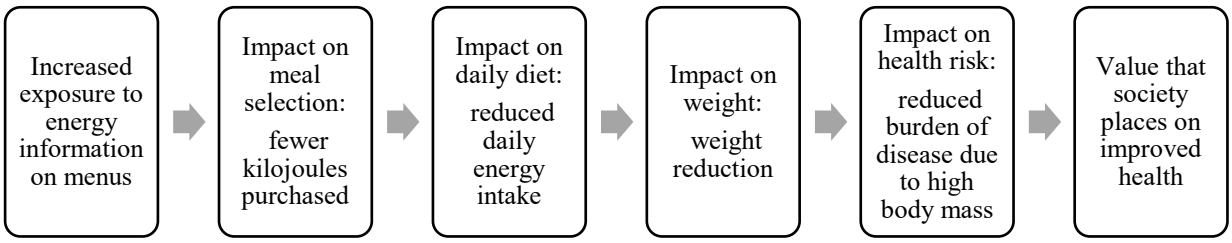
[98] Costs based on New Zealand Treasury. 2015. *Policy Measurement Report 2014/15.* https://www.treasury.govt.nz/sites/default/files/2016-09/policy-measurement-report-14-15.pdf and adjusted for 2021 prices, and for Australia, adjusted by the NZ/AUS exchange rate and the premium that Australian public sector workers have over New Zealand public sector workers. Costs include employee wages, management overheads, ancillary services (e.g. accounts, IT support, HR). No adjustment was made for potential pay rate differences between jurisdictions.

[99] Presented in present value terms, based on calculations over a ten-year period discounted into present values using a 7% discount rate.

food items are purchased. This would not necessarily be the case for Option 4, given its voluntary nature.

Determining the likely benefits to society centres on the potential of menu labelling to encourage consumers to make healthier food purchasing decisions and the subsequent impact of these decisions on health outcomes. This involves a complex and uncertain pathway as shown below in Figure 2, and the extent to which each of the impacts will be realised.[100]

Figure 2: Extended logic model for menu labelling options



Pathway Element	Assumptions Underpinning Analysis
Increased exposure to energy information on menus	• Exposure is based on the expected increase in outlets that must implement menu labelling under each option. • There is the potential for increases in voluntary menu labelling. • Any change in the number of menus displaying energy information (for example, expanding requirements to menus on third-party food delivery platforms) was excluded. • The impact of menu labelling is instantaneous and has a sustained impact on eating habits.
Impact on meal selection	• Average reduction of 217 kilojoules purchased per visit to a standard food outlet.[101] • Any impact from reformulation of menu items was excluded.
Impact on daily diet	• Decline in energy intake proportional to household expenditure on fast food as a percentage of expenditure on food and alcohol. Ratio of fast food expenditure to total food expenditure equals ratio of energy intake from fast food to daily energy intake.[102] • Australia – 25 kilojoule reduction in daily energy intake.[103] • New Zealand – 22.4kJ kilojoule reduction in daily energy intake.
Impact on weight	• Weight reduction of 0.25kg in Australia and 0.224kg in New Zealand within 3 years.[104]

[100] As previously noted in Section 1.3, it is important to note that this is a logic model for menu labelling. It is not a representation of the complex system for obesity, nor does it establish causality between menu labelling and obesity, as there are many intermediate decisions and contributing factors not included. The purpose of this paper is to improve and strengthen menu labelling – it is not intended to be a comprehensive strategy for what the food regulation system can contribute to obesity prevention.

[101] Based on Crockett et al (2018) (a systematic review of 28 studies), Littlewood et al (2016) (a systematic review and meta-analysis of 15 studies), Shangguan et al (2019) (a meta-analysis of 60 studies), Lui et al (2020) (an economic evaluation of the United States menu labelling). See Appendix 2 and section 5.7 for further details.

[102] Note: The relative cheapness may mean that energy intake from fast food is higher than its proportion of food expenditure.

[103] Note: this is consistent with modelling of the impacts of the New South Wales menu labelling legislation as reported by Mantilla-Herrera et al. *Menu kilojoule labelling on fast food* in Ananthapavan et al. 2018. *Assessing cost-effectiveness of obesity prevention policies in Australia 2018*. Melbourne: Deakin University. http://www.aceobesitypolicy.com.au/

[104] Based on sustained decline of 100 kilojoule per day leads to a 1kg weight loss after 3 years, with half of weight reduction in the first year in Hall et al. 2011. Quantification of the Effect of Energy Imbalance on Bodyweight. *Lancet,* 378 (9793): 826–37. https://doi.org/10.1016/S0140-6736(11)60812-X

Pathway Element	Assumptions Underpinning Analysis
	• Represents 0.32% decline in average Australian adult weight and 0.28% decline in average New Zealand adult weight.[105]
Impact on health risk *(See Table 6 below)*	• For every 100,000 Australians, high body mass imposes a health burden equivalent to 2,137 disability adjusted life years (DALYs).[106] • For every 100,000 New Zealanders, high body mass imposes a health burden equivalent to 2,199 disability adjusted life years (DALYs).[107] • Decline in average weight (%) is equivalent to reduction in health burden imposed by high body mass. • Calculation of reduced health risk is dependent on proportion of population likely to have increased exposure to menu labelling under each option.
Valuing health impact *(See Table 7 below)*	• Australia – Value of statistical life year estimate is $217,000.[108] $5M over a 40-year period using a 3% discount rate. • New Zealand – Value of statistical life year estimate is $NZ197,000. $NZ4.56M over a 40-year period using a 3% discount rate. • Value of statistical life is an estimate of the financial value society places on reducing the average number of deaths by one. Value of statistical life year, is an estimate of the value society places on reducing the risk of premature death, expressed in terms of saving a statistical life year. • Statistical life measures are a whole-of-society perspective and incorporate all the indirect and intangible values associated with life and health, without the need for explicit estimates of the contributing factors such as the gain to individuals, the increased contribution to the economy and society, reduced burdens on the health sector and other public services, and so on.

[105] Based on average Australian adult weight of 79.2kg (2017-18 National Health Survey) and average New Zealand adult weight of 80.5kg (2019-20 National Health Survey).
[106] Based on Institute for Health Metrics and Evaluation's Global Burden of Disease (GBD) Study which provides comparable data for Australia and New Zealand. Methodology and results from the GBD 2019 are available at: https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30925-9/fulltext. The data is from the visualisations available at: https://vizhub.healthdata.org/gbd-compare/.
[107] Ibid.
[108] Office of Best Practice Regulation. 2020. *Best Practice Regulation Guidance Note: Value of Statistical Life.* https://obpr.pmc.gov.au/sites/default/files/2021-06/value-of-statistical-life-guidance-note-2.pdf (accessed 15 November 2021)

Table 6: DALY averted after three years[109]

Jurisdiction	DALY averted for Option 2	DALY averted for Option 3	DALY averted for Option 4
New South Wales	170.8	170.8	41.2
Victoria	87.8	87.8	32.7
Queensland	128.8	128.8	26.7
South Australia	38.7	38.7	8.3
Australian Capital Territory	2.1	2.1	2.1
Western Australia	12.3	135.1	12.3
Tasmania	2.5	27.8	2.5
Northern Territory	1.0	11.4	1.0
Australia	440.0	595.3	127.0
New Zealand	24.5	269.1	24.5

Table 7: Benefits (monetised) over 10-year period[110]

Jurisdiction	Benefit of Option 2	Benefit of Option 3	Benefit of Option 4
New South Wales	234.9M	234.9M	56.7M
Victoria	120.8M	120.8M	45.0M
Queensland	177.1M	177.1M	36.8M
South Australia	53.3M	53.3M	11.5M
Australian Capital Territory	2.9M	2.9M	2.9M
Western Australia	16.9M	185.7M	16.9M
Tasmania	3.5M	38.2M	3.5M
Northern Territory	1.4M	15.7M	1.4M
Australia	610.7M	828.6M	174.6M
New Zealand	30.6M	336.4M	30.6M

Possible limitations associated with the calculation of benefits to society have been identified.

- The estimated kilojoule reduction was not based on the totality of the evidence. The evidence used in the economic evaluation was based on pragmatic considerations that the results were presented in a similar way which could be easily translated into a change in menu selection measured on an energy basis (calories or kilojoules). The evidence also provided low/high estimates which were used in the Monte Carlo risk analysis.[111] Although the totality of evidence was not included in the economic evaluation, it is not considered that there is an intentional bias as there are other studies demonstrating a positive effect of menu labelling (as described in Appendix 2) that were not included in estimating the average kilojoule reduction. Many of the individual studies are included in more than one review or meta-analysis. As far as it is known, there is not an analysis or review that has considered every individual study about the impact of menu labelling to the present day. One analysis undertaken by Australian researchers and published in

[109] Presented in present value terms, based on calculations over a ten-year period discounted into present values using a 7% discount rate.
[110] Presented in present value terms, based on calculations over a ten-year period discounted into present values using a 7% discount rate.
[111] For more details of the Monte Carlo analysis, refer to the economic evaluation report. www.foodregulation.gov.au

2018, considered 186 individual studies and concluded that menu labelling led to consumers purchasing 115 fewer kilojoules, which is within the range of low to high estimates within the economic evaluation.[112]

- It was assumed that a decrease of energy at one meal translates to an overall decrease in daily energy intake; however, this is not necessarily the case. It is acknowledged that the calculation of the impact of menu labelling on daily energy intake does not consider compensatory behaviours such as consuming less or more energy at other meals during the day or doing more physical activity to counteract the food purchased. As there is not a strong evidence-base for the impact of menu labelling on daily energy intake, more research is needed. This issue could be considered when the Ministerial Policy Guideline is reviewed in the future.
- Using household expenditure to calculate the decline in energy intake does not take into consideration that many businesses already have menu labelling and not all food businesses are standard food outlets. It is acknowledged that standard food outlets may only be a subset of businesses where people purchase fast food, and that this may have affected the calculated reduction of daily energy intake. The household expenditure data does not indicate at which businesses consumers purchase food making it impossible to assign an expenditure to only the potential increase of outlets captured by each option.
- The use of statistical life measures to value the health impact is not the only methodology that can be used to consider the impacts on society. A different methodology could have led to a different overall benefit. Statistical life measures are a valid methodology accepted by the Australian Government Office of Best Practice Regulation.
- Other limitations with the evidence-base and the logic model are described at Section 1.3.

Despite the benefits of menu labelling for Australian and New Zealand consumers, there are potential negative consequences for some consumers such as:

- Some consumers may find that energy information on menus and at the point-of-sale reduces usability.
- Some consumers may have difficulty in calculating the energy content for customised menus items if the energy information is not provided for the final item.
- Emotional cost (for example, guilt/anxiety) for those individuals who want to avoid knowing the energy content of menu choices, and/or those who want to avoid eating high kilojoule menu choices, but purchase, nonetheless based on other drivers such as convenience, time or cost.
- Increased confusion about energy information if menu labelling is implemented inconsistently or if any business favours labelling for less-energy dense items, rather than all menu items.

These are already possible consequences of existing menu labelling in Australia. It is not known the extent that consumers experience any of these potential consequences of current menu labelling. It is the desired outcome that all Australians and New Zealanders have access to information at the point-of-sale about the energy content of ready-to-eat food and drinks to help make informed purchasing decisions. Therefore, it is important to acknowledge that some of these consequences may be experienced by a higher number of consumers.

[112] Zlatevska et al. 2018. Mandatory calorie disclosure: a comprehensive analysis of its effect on consumers and retailers. *Journal of Retailing*, 94(1), 89-101.

5.6 Net benefit

For Australia and New Zealand, all options appear to provide net benefits compared with the status quo. Option 3 generates higher net benefits than both Option 2 and Option 4 for all Australian and New Zealand jurisdictions (except for the Australian Capital Territory). The scale of net benefits for jurisdictions appears to relate to population size. This appears to be due to benefits from menu labelling being largely population based, while costs, particularly administration costs, are less related to jurisdiction population size. Refer to Table 8 for the net benefit for each jurisdiction.

For Australia nationally, the net benefit of Option 3 is $775.4 million over 10 years, while it is $568.4 million for Option 2 and $158.7 million for Option 4. For the Australian society, progressing mandatory menu labelling via the Food Standards Code has the greatest net benefit. Similarly, for seven of eight Australian states and territories, introducing mandatory menu labelling via the Food Standards Code has the greatest net benefit.

The scale of difference between Options 2 and 3 is not very large for New South Wales, South Australia, Queensland, and Victoria, as these jurisdictions already have menu labelling. The economic evaluation assumed that these jurisdictions would make changes to their legislation aligned with the amended Principles (Option 2) which mirror the Ministerial Policy Guideline intended to inform the development of menu labelling provisions in the Food Standards Code (Option 3). However, if any jurisdiction did not make changes under Option 2, the net benefit would be like Option 4, based on the assumption that there will 10 per cent voluntary implementation of enhanced menu labelling under both options. The Australian Capital Territory differs from other jurisdictions with menu labelling, as it has both a relatively small population and reasonably comprehensive menu labelling regulations in place. The implication is that the net benefit of each option is small, and Option 4 (voluntary industry action to enhance menu labelling) has the greatest net benefit in the Australian Capital Territory.

In New Zealand, the net benefit of Option 2 and 4 is similar at $NZ25.8 million and $NZ24.9 million, respectively. The similarity is due to the underpinning assumptions that New Zealand is unlikely to introduce menu labelling legislation under Option 2, and that there will 10 per cent voluntary implementation of menu labelling under both Option 2 and 4. The net benefit of Option 3 ($NZ311.5 million) in significantly higher. As for Australian society, progressing mandatory menu labelling via the Food Standards Code has the greatest net benefit for New Zealand society.

Table 8: Net benefit of options for menu labelling in all jurisdictions[113]

Jurisdiction	Net benefit of Option 2	Net Benefit of Option 3	Net Benefit of Option 4
New South Wales	223.1M	**228.1M**	55.9M
Victoria	114.2M	**118.7M**	44.2M
Queensland	168.7M	**171.5M**	35.9M
South Australia	49.3M	**50.4M**	16.8M
Australian Capital Territory	1.2M	1.6M	**2.0M**
Western Australia	16.8M	**173.6M**	16.8M
Tasmania	3.4M	**31.7M**	3.4M
Northern Territory	1.4M	**10.3M**	1.4M
Australia	568.4M	**775.4M**	158.7M
New Zealand	25.8M	**311.5M**	24.9M

There is uncertainty in many of the health assessment measures for menu labelling, so to assess the robustness of the economic evaluation and its findings, a sensitivity analysis and Monte Carlo simulation analysis was undertaken. The sensitivity analysis indicated that the market coverage of menu labelling and the clarity of the labelling in informing menu selections are likely to be critical success factors for the menu labelling options. The cost factors (for example, business compliance costs, government administration costs) do not appear to have a big impact on the potential of success. Full details of the sensitivity tests are available in the economic evaluation report.[114]

Changes in the impact of menu labelling on the amount of energy purchased per visit to a standard food outlet, predominantly have the greatest impact on the net benefit at the country or state and territory level. Even if the impact of menu labelling on the energy purchased per visit is low (63.2 kilojoule reduction), the sensitivity tests still demonstrate a net benefit for menu labelling – net benefit of Option 3 of $187.5M for Australia and $NZ72.8M for New Zealand. Where the impact on the energy purchased is high (508.6 kilojoule reduction), there is a $1884.2M net benefit for Australia and a $NZ761.6M net benefit for New Zealand.

Without undertaking comprehensive monitoring of Australian and New Zealand consumers purchases before and after menu labelling changes, it is challenging to know the extent of the impact of menu labelling on purchases. The 2011-2012 monitoring in New South Wales found a 15 percent (519 kilojoules) reduction in the kilojoules purchased after menu labelling was introduced.[115] This corresponds with the high estimate used in the economic evaluation. However, it is not known whether enhancing menu labelling in jurisdictions where it already exists will further encourage consumers to reduce the number of kilojoules purchased if they have already made changes to their food purchasing habits since menu labelling was first introduced.

The Monte Carlo simulation analysis determined that the central estimations are robust. The overall risk of a negative net benefit for Option 3 is very low, slightly more for Option 2 and higher still for Option 4. At the jurisdictional level, there is a high risk of a negative net benefit

[113] Net Benefit = Benefit less Government Administration costs and Business Compliance costs
[114] Allen and Clarke Consulting. 2021. Final Report Menu Labelling Economic Evaluation. www.foodregulation.gov.au
[115] *Fast Choices: An evaluation of energy purchased and consumer education – Findings from Waves 1,2 & 3*. Prepared for NSW Food Authority and NSW Health.
https://www.foodauthority.nsw.gov.au/sites/default/files/_Documents/scienceandtechnical/fast_choices_TNS_report.pdf

associated with Option 4 and Option 2 for Australian Capital Territory, Northern Territory, Tasmania, and New Zealand. Full details of the Monte Carlo simulation are available in the economic evaluation report.[116]

5.7 Comparison with international menu labelling schemes

Since 2008 when New York City was the first jurisdiction to pass menu labelling legislation[117], different types of menu labelling schemes have been introduced across the globe.[118] Some schemes are underpinned by mandatory regulation at the national-level (United States[119], England[120], South Korea[121]) – as proposed by Option 3; the state-level (Ontario[122] in Canada) – as per the status quo and proposed under Option 2; or city-level (Philadelphia[123] in the United States). Other schemes are voluntary national initiatives (Singapore[124], Ireland[125]) – like what is proposed by Option 4. Ireland has been considering mandating its scheme since 2015, with the latest public consultation on the issue undertaken in 2020.[126]

As is the case under the status quo, and is proposed to continue under all the options, many international schemes are centred around displaying energy information and a contextual statement (United States, Ontario, England, Ireland). Other schemes focus on sodium warning statements (Philadelphia), 'healthy' logos (Singapore) or energy in combination with other nutrients (South Korea). Although some stakeholders have advocated for use of the Health Star Rating as part of menu labelling, adopting this system within menu labelling is not proposed at this time.

International schemes also differ in which menu items are captured and which businesses (type and size) are captured. In the United States and Ontario standard menu items, including standardised ingredients (for example, toppings to create your own pizza) and some alcoholic beverages must display energy information, but temporary menu items or customised orders are exempt from menu labelling. These two schemes also capture chain businesses selling 'restaurant-type food' in a standardised way at 20 or more outlets, such as quick-service and dine-in restaurants, grocery and convenience stores, cinemas, cafés, and bakeries.

England has one of the only schemes to capture third-party food delivery platforms (limited to food businesses that meet the threshold criteria). Its other point of difference is that it captures businesses based on the number of employees (250 or more) rather than the number of outlets.

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[116] Allen and Clarke Consulting. 2021. Final Report Menu Labelling Economic Evaluation. www.foodregulation.gov.au
[117] Department of Health and Mental Hygiene Board of Health. 2008. *Notice of adoption of a resolution to repeal and re-enact 81.50 of the New York City Health Code.* https://www1.nyc.gov/assets/doh/downloads/pdf/public/notice-adoption-hc-art81-50-0108.pdf (accessed 23 September 2021)
[118] World Cancer Research Fund International. *NOURISHING Policy Database: Calorie and nutrient labelling on menus and displays in out-of-home venues.* https://policydatabase.wcrf.org/nourishing-moving-search (accessed 23 September 2021)
[119] US Food & Drug Administration. 2020. *Menu Labeling Requirements*. www.fda.gov/food/food-labeling-nutrition/menu-labeling-requirements (accessed 23 September 2021)
[120] United Kingdom Government. 2021. *The Calorie Labelling (Out of Home Sector) (England) Regulations 2021.* https://www.legislation.gov.uk/uksi/2021/909/contents/made (accessed 23 September 2021)
[121] Republic of Korea. Ministry of Food and Drug Safety. 2013. *Special Act on Safety Control of Children's Dietary Life.* https://www.mfds.go.kr/eng/brd/m_15/view.do?seq=70002&srchFr=&srchTo=&srchWord=&srchTp=&itm_seq_1=0&itm_seq_2=0&multi_itm_seq=0&company_cd=&company_nm=&page=3
[122] Government of Ontario. 2019. *Guide to menu-labelling requirements*. https://www.ontario.ca/document/guide-menu-labelling-requirements (accessed 23 September 2021)
[123] City of Philadelphia. 2018. *Bill No. 180001-A: An Ordinance*. http://www.amlegal.com/pdffiles/Philadelphia/180001-A.pdf (accessed 23 September 2021)
[124] Healthier Dining Programme. 2021. https://www.hpb.gov.sg/healthy-living/food-beverage/healthier-dining-programme (accessed 23 September 2021)
[125] Food Safety Authority of Ireland. 2012. *Calories on menus in Ireland: report on a national consultation.* https://www.fsai.ie/details.aspx?id=11418 (accessed 23 September 2021)
[126] Government of Ireland, Department of Health. 2020. *Consultation with Food Businesses on the Introduction of Mandatory Calorie Posting on Menus*. https://www.gov.ie/en/consultation/d9bfcc-consultation-with-food-businesses-on-the-introduction-of-mandatory-c/ (accessed 23 September 2021)

Menu labelling in England does not extend to temporary menu items, customised items, or alcoholic beverages. The voluntary scheme in Ireland can be implemented by businesses of any size, and encourages energy information for standardised food items, with the display of energy content for alcoholic beverages at the discretion of the business.

It is not proposed that Australia and New Zealand adopt any of the existing schemes. However, it is intended that Option 3 would bring Australia and New Zealand in line with the United States in terms of information for standardised ingredients and business coverage; and in line with England for third-party food delivery platforms. It is proposed that Australia maintain the business threshold of 50 nationally or 20 in an Australian State or 7 in an Australian Territory, rather than adopt the lower threshold of 20 outlets in the United States. It is proposed that New Zealand adopt a threshold of 20 or more outlets nationally – based on population size comparison to Australian States. Nor is it proposed to change the threshold to an employee number as used in England.

A 2020 economic evaluation of the national regulation in the United States showed that implementation of the regulation would prevent over 31,000 new cases of cancer and a further 18,700 deaths from cancer. It also showed that the net benefit was $US3.5 billion.[127] This evaluation's methodology was like the economic evaluation undertaken for Australia and New Zealand, and supports that national menu labelling is a cost-effective, beneficial policy. A second 2020 economic evaluation of the United States menu labelling also found it be a cost-effective approach.[128] This evaluation indicated that over 14,500 new cases of cardiovascular disease and over 21,000 new cases of type 2 diabetes could be prevented, leading to $US10.42B in healthcare savings and a further $12.71B in savings from a societal perspective. This modelling informed the economic evaluation of the policy options for Australia and New Zealand described above.

6 Consultation

6.1 Consultation process

During 2018, two rounds of consultation with Australian food industry, public health organisations and consumer representatives were undertaken. New Zealand stakeholders were not consulted as menu labelling had not been mandated, nor was voluntary implementation being actively encouraged. The outcomes from these rounds of consultation shaped the options in this paper. How these stakeholder views were considered and incorporated in the options is described in Appendix 6.

A subsequent public consultation process was undertaken for eight weeks from 8 April to 3 June 2021. Australian and New Zealand stakeholders were invited to respond via the Australian Government Consultation Hub to 22 questions in the CRIS to inform the development of policy guidance and an effective policy framework for consistent menu labelling. The consultation opportunity was promoted to Australian and New Zealand stakeholders via an email from the Food Regulation Secretariat; and via the government food regulation website.[129] The New Zealand Ministry of Primary Industries also promoted the consultation specifically to New Zealand stakeholders.

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[127] Mengxi Du et al. 2020. Cost-effectiveness of the FDA menu labeling to reduce obesity-associated cancer burden in the United States. *Current Developments in Nutrition*, 4(2): 1712.
[128] Junxiu Liu et al. 2020. Health and economic Impacts of the national menu calorie labeling law in the United States: A microsimulation study. *Circulation: Cardiovascular Quality and Outcomes*, 13: e006313. (Accessed 1 October 2021)
[129] Commonwealth of Australia. 2021. *Policy Guidance for Menu Labelling in Australia and New Zealand* https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/Policy-Guidance-for-Menu-Labelling-in-Australia-and-New-Zealand

A one-week extension to 10 June 2021 was granted to 10 organisations (most requests for an extension were due to the FSANZ Act Review consultation overlapping with the menu labelling consultation). A total of 26 submissions were received:

- Food industry in Australia: 7 submissions
- Food industry in New Zealand: 4 submissions
- Public health and consumer organisations in Australia: 8 submissions
- Public health organisations in New Zealand: 3 submissions
- Australian community members: 2 submissions
- Australian state governments: 2 submissions.

It is important to note, that not all business types that may be required to implement menu labelling made a submission to the public CRIS. However, if any of the proposed options were progressed, it is likely that further public and/or targeted consultation may be undertaken on how the option will be implemented. For example, under Option 3, FSANZ must abide by legislated processes to develop food regulatory measures. These processes include stakeholder consultation. Therefore, other business types would have another opportunity to inform menu labelling. The timing of any consultation is unknown.

Submissions were analysed by officers from the Queensland Department of Health, Australian Government Department of Health, Tasmanian Department of Health and New Zealand Ministry of Primary Industries. Each officer analysed the responses for four to eight questions each and drafted an overall summary of the responses for each question (refer to Appendix 7). The officer from Queensland Department of Health also read all submissions to ensure that all views were captured by the response summaries; and incorporated the stakeholder views when drafting this paper. Officers from all Australian and New Zealand jurisdictions and the Food Regulation System Priority 2 Advisory Group were invited to provide feedback on the draft DRIS, with feedback received from all jurisdictions.

6.2 Overall stakeholder views in 2021

The CRIS formed the basis of this paper, with sections of the CRIS revised to reflect the evidence received through the consultation process. Responses to the consultation are incorporated in the relevant sections above. Outlined below are overall stakeholder views on each option.

Views of industry

There were mixed views among industry stakeholders (11 submissions) about what was the best option to address menu labelling in Australia and New Zealand. Five industry organisations across Australia and New Zealand (two quick service chains, two advertising peak bodies, one retail peak body) supported Option 2, with some indicating their support for a consistent approach by jurisdictions, and some noting that adopting the New South Wales menu labelling regulation would be most efficient. Four of these five industry stakeholders were supportive of a national, consistent approach. A further three organisations in Australia and New Zealand (one quick service chain, one grocery chain, one peak body) supported Option 3, noting it would mean menu labelling was consistent and compulsory, increasing likelihood of all jurisdictions implementing menu labelling.

Maintaining the status quo was preferred by one New Zealand food industry organisation (a peak body), which noted that the consultation process was focused on Australian problems and did not consider alternative approaches for addressing healthy options in quick service restaurants. Option 4 had support from one Australian food industry organisation (a quick

service chain implementing menu labelling) as it allows industry to decide how menu labelling is implemented. One Australian food industry organisation (a quick service chain) did not have a firm view but suggested that the government could either set a standard all jurisdictions follow or allow businesses to decide how to best display energy information.

Views of public health and consumer organisations, community members and Australian state governments

All submissions from 10 public health and consumer organisations in Australia and New Zealand, two Australian state governments (noting other jurisdictions did not make submissions) and one member of the Australian public considered that regulating via the Food Standards Code (Option 3) was the preferred option as it was the only one that could address the identified problems. It was also considered that this option would be best for all consumers as consistent implementation across all jurisdictions would enable access to energy information and easier comparison of menu items to make informed and healthier choices at the point-of-sale. Stakeholders also noted that businesses would operate in a more level playing field and would experience reduced regulatory costs compared to the costs associated with implementing different regulation. More consistent enforcement and monitoring was also considered to be associated with Option 3. In implementing Option 3 it was recommended that it was essential that consumer education accompany menu labelling. Australian and New Zealand public health organisations indicated that only this option addressed the stated problem and would be of benefit to public health outcomes. Consumer education in the absence of menu labelling was not considered to be an appropriate option as it could not achieve the objectives.

Option 2 was not supported by public health organisations based on it being dependent on jurisdictional action and therefore minimal difference to the status quo. A voluntary approach to enhancing menu labelling (Option 4) was strongly opposed as industry self-regulation is ineffective.

6.3 Consideration of stakeholder views

Issues raised	Response
Regulation of menu labelling must prioritise/consider public health.	This issue relates to the fourth concern added to the statement of the problem section following consultation, about the current approach to menu labelling not achieving the greatest net benefit. The key intent of menu labelling has always been to support informed decision making at the point-of-sale, leading to healthier purchasing choices. Menu labelling is a key tool in the approach to obesity prevention and improved public health outcomes. The objectives section of this paper was strengthened to make this clear. However, a change was not made to the Ministerial Policy Guideline or amended Principles as these already stated that: Menu labelling should: • Contribute to improving public health outcomes, and reducing chronic disease related to overweight and obesity. • Guide consumer choice towards healthier food options consistent with the Australian and New Zealand dietary guidelines.

Issues raised	Response
The problems with menu labelling are specific to Australia, and not applicable to New Zealand – no research to indicate is a problem for New Zealand consumers. Solutions should be focused on Australia only.	Although, some of the identified issues with menu labelling are based on Australian implementation, it is considered policy guidance for menu labelling is relevant to New Zealand as: • New Zealand has similar rates of obesity and expenditure on fast food and eating out as Australia. • Providing energy information for ready-to-eat food and drinks to enable informed choices is just as important for New Zealand consumers as for Australian consumers. • Some businesses implementing menu labelling in Australia are part of multi-national companies with outlets in New Zealand. • The New Zealand Government supported voluntary action on menu labelling in 2019. • New Zealand and Australia operate within a bi-national food regulation system, and existing nutrition labelling on packaged food applies to both countries. It is appropriate that solutions are focused on both countries.
Evidence for the impact/effectiveness of menu labelling is limited, and more consumer research to guide menu labelling is needed.	Appendix 2 provides a snapshot of international evidence, both supporting menu labelling and questioning its impact. As noted under section 1.3, much of the evidence is based on menu labelling in United States, with few peer-reviewed studies for menu labelling in Australia (and none for New Zealand). An evaluation of the New South Wales menu labelling legislation found a 15% (519kJ) reduction in median kilojoules purchased 12 months after legislation was introduced. While the international evidence is mixed, menu labelling is a tool to support consumers to make informed decisions (whether it changes their decision), in the same way that nutrition information panels and health star ratings provide information to consumers on packaged foods.
The changing environment (for example, COVID-19) and emerging trends in ordering platforms decreases the relevance of menu labelling.	The CRIS highlighted several emerging trends and noted that future technological advancements may increase the number of creative approaches that businesses use to promote, offer, and sell food. By incorporating broad definitions of menus and points-of-sale in the amended Principles and Ministerial Policy Guideline it is anticipated that emerging and future trends will be included within any regulatory measure for menu labelling. While menu labelling may become unnecessary in the future, it is an important tool to provide energy information to consumers.
Alternative options to menu labelling should be considered / are of higher priority to support healthy eating, for example, reformulation, serving size restrictions, marketing restrictions, Health Star Rating, taxation on sugary	It is agreed that a suite of approaches is needed to support healthy eating and address the high rates of obesity in Australia and New Zealand. This paper focuses on menu labelling, and other approaches are being considered through other mechanisms. Refer to Appendix 3 for example actions underway.

Issues raised	Response
drinks, NIPs on all food and drinks.	
Consumer education must accompany menu labelling, be sustained; be tailored to priority groups; and focus on using reference value to understand energy content on menus.	Agreed and supporting consumers to use menu labelling is part of the proposed consumed education.
Health literacy and numeracy skills are needed to use menu labelling / interpret energy values. Increasing health inequities would be a negative outcome of menu labelling changes.	Agreed and considering how to support all consumers is part of the proposed consumed education.
Threshold to capture businesses requires further clarification for independently-owned businesses operating under a single brand.	The intent is to capture businesses operating under the same brand (c.f. to a franchise model). This is reflected in the terms 'standard food outlet' and standard food item in the policy guidance. The Ministerial Policy Guideline (Option 3) and Amended Principles (Option 2) were updated. It is also noted as an issue for implementation with legal advice possibly required.
The focus on medium/large businesses does not recognise the growth in independent outlets (including in food courts and those using third-party food delivery platforms) that also offer energy-dense menu items.	It is acknowledged that it would be ideal if customers of smaller chains and independent businesses also had access to energy information of all menu items. These businesses are already able to voluntarily choose to display energy information on their menus. The definition of a standard food outlet has not been amended to capture all businesses regardless of size. It is noted as an implementation issue for further consideration by industry peak bodies, public health organisations and government agencies, on the support that could be provided to smaller chains and independent businesses to voluntarily display energy information on their menus.
Ongoing monitoring of business types that may meet the standard food outlet definition is required.	The intent is that any business type that meets the definition of a standard food outlet is captured. Ensuring that businesses are aware of and comply with the requirements is an issue for implementation.
Standard food items do not generally exist in New Zealand as items such as a scoop of chips are not standardised across businesses and customers can customise items.	Items that are standardised for portion and content and sold at one or more outlets are considered standard food items. Items that are not standardised across outlets are not captured by menu labelling. Based on the Australian experience, it would be expected that medium and large chains have standardised menus in New Zealand.

Issues raised	Response
The exclusion of alcohol from menu labelling does not support consumers being informed of energy content.	Energy labelling on packaged alcoholic beverages is being considered by FSANZ. Non-packaged alcoholic beverages are out-of-scope for the FSANZ work. If non-packaged alcoholic beverages meet the definition of a standard food item, then could be captured by menu labelling. Some businesses implementing menu labelling in Australia already display the energy content of some alcoholic beverages (for example, glass of wine) on menus. This would be an issue for implementation.
The draft Ministerial Policy Guide should be strengthened to ensure that there are no exemptions for specific businesses (other than based on size) or menu items.	The draft Ministerial Policy Guideline presented in the CRIS, did not provide any exemptions for menu items. Trial items / temporary items are currently exempted in four jurisdictions; however, it is the intention that they are captured and required to display energy information. The definition of a standard food item has been amended to make this explicit. Similarly, if a business meets the definition of a standard food outlet, the Ministerial Policy Guideline intends compliance with menu labelling. No exemptions have been proposed unless they do not meet the standard food outlet definition. These businesses could be encouraged to voluntarily display energy information.
The draft Ministerial Policy Guide should be strengthened with respect to customised menu items, with energy content of standardised ingredients and total item be displayed.	It is noted that there is a difference in the objectives of the Ministerial Policy Guideline for standard food items ('provide energy information') and customised items ('enable consumers to access energy information). The provision of energy information for all customised items presented diverse views among stakeholders in 2018, and subsequent discussion among government jurisdictions. There are implementation issues associated with displaying the energy information for all standardised ingredients and all customised menu items on all menus and at all points-of-sale. A pragmatic approach has been taken to allow for some variation. While it is ideal for all businesses with standardised ingredients to display the energy information on all menus and at all point-of-sale, ensuring consumers can access this information at the time of purchase, through alternative methods (for example, digital links to off-menu information) or on some, but not all, menus (for example, in-store poster, kiosks), is what is intended to be required from standard food outlets. It is noted as an implementation issue that clear guidance is likely to be required.
Menu labelling must: • extend to combination meals and condiments • use per 100g and per serve • use interpretive labelling	As presented in the CRIS, menu labelling already includes combination meals and the intent is to ensure all combination meals display energy information. Condiments may be considered a standardised ingredient and the approach is discussed above. In 2018, market research (more than 4,000 Australian adults) was undertaken as part of the co-design process with industry and public health representatives (research funded by Queensland Health) to assess displaying energy information per

Issues raised	Response
• include nutrition information other than energy • use consistent font and font size requirements • include allowances for differences in displayed and actual content if due to external factors (for example, energy content of fresh produce changes with seasonality).	100g vs per serving vs per item for multi-serve items (for example, whole pizza, six-pack of muffins). The research found that kilojoules per serving was the easiest for consumers to understand. Kilojoules per 100g generated confusion as the weight of the item is unknown and what 100g looks like was difficult for consumers to understand. When the Ministerial Policy Guideline is reviewed in the future, it is recommended that a review assess whether displaying nutrition information such as the amount of added sugars, sodium, saturated fat, alcohol, and/or other nutrients, would assist people to make healthier choices. Currently, the focus is on energy content due to the link to overweight and obesity. In the future, other options could be explored, such as requiring a nutrition information panel on foods that are not required to bear a label. Consumers can already ask for nutritional information to be provided by a business at the point-of-sale to inform their purchasing decision. Issues regarding font have been noted in the implementation section.
Menu labelling is considered a form of advertising and must comply with the AANA Food and Beverages Advertising Code.	This may have implications that will need to be worked through during the implementation phase.
A threshold of 7 outlets in a Territory would be too high if applied to New Zealand	It was anticipated the 2021 consultation would provide an indication of an appropriate threshold for New Zealand businesses. Apart from this feedback about 7 outlets in a Territory, other feedback on a threshold in New Zealand was not received. It is proposed that a threshold of 20 or more outlets in New Zealand be used. This is consistent with the state threshold of 20 or more outlets in Australia. New Zealand has a population of approximately 4.8M. The average population of Australian states is 4.1M (0.5M to 8.2M). Based on the business data from six quick service restaurant chains that was provided during the consultation, a threshold of 20 outlets would capture 4 of these chains, with a fifth chain approaching the threshold.
Monitoring is needed – annual compliance monitoring, online publication of outcomes, reformulation outcomes, consumer behaviour change and impact of consumer education.	Agreed and included in implementation section.
Further stakeholder consultation is recommended	There were two rounds of consultation in 2018 (public and targeted), with additional public consultation in 2021. Regardless of which option is progressed, it is anticipated that

Issues raised	Response
	further public consultation would occur. Further consultation is not planned before the DRIS is presented to the Food Ministers.

7 Preferred option

Determining the best option for improving and strengthening menu labelling in Australia and New Zealand was undertaken by considering how likely it achieves the objectives and calculating the estimated net benefit.

It is recommended that the best option to achieve the desired outcomes is ***Option 3: Develop a mandatory food regulatory measure for menu labelling in the Food Standards Code,*** in combination with comprehensive, sustained consumer education in Australia and New Zealand to support the implementation of menu labelling.

Regulating menu labelling via the Food Standards Code would result in one consistent menu labelling system for Australia and New Zealand. For both countries, it is the option most likely to:

- assist people to understand and use energy information to make informed, healthier food purchase choices at the point-of-sale;
- ensure that all modes of sale and types of menus enable comparison of menu options within and across businesses;[130]
- create a level playing field (with respect to menu labelling) for all businesses that sell standard food items; and
- minimise the proliferation of different menu labelling systems.

For Australia overall and New Zealand, Option 3 has the greatest net benefit and the most support from stakeholders. The cost-benefit analysis assumed that the five jurisdictions with existing menu labelling would amend their legislation under Option 2, however, it is uncertain whether all or any of these jurisdictions would do so. Additionally, Option 2 does not have the same level of support from all stakeholder groups.

While Option 3 involves a cost to parts of the industry, particularly New Zealand businesses and businesses currently exempt or not captured in Australia, a transition period could be included in developing the food regulatory measure to reduce the impact on industry. The cost of obesity to the community in Australia and New Zealand is significant. Option 3 is most likely to support healthier food choices and contribute to the prevention of obesity and diet-related chronic diseases, thus providing a public health benefit ($828.6 million and $NZ336.4 million), which is far greater than the expected cost of menu labelling for industry and government ($53.2 million and $NZ24.9 million). Option 3 has the greatest net benefit to the community in Australia and New Zealand.

8 Implementation and review

Implementing the preferred option involves the Food Ministers, 1) approving the Ministerial Policy Guideline on *Menu Labelling: displaying and providing energy information for standard*

[130] Modes of sale include, but is not limited to, in-store, online, third-party providers; types of menus include, but is not limited to, digital menu panels, kiosks, paper menus and tags, menu boards, drive-thru menus, online menus.

food items on menus and at the point-of-sale in standard food outlets (Appendix 1), 2) requesting FSANZ develop a food regulatory measure for menu labelling in the Food Standards Code, and 3) agreeing to comprehensive, sustained consumer education and monitoring and evaluation to complement the implementation of menu labelling regulation..

Pending approval by the Food Ministers, the Ministerial Policy Guideline would be published at www.foodregulation.gov.au.

The primary aspect of implementing the preferred option relates to the development of a bi-national food regulatory measure in the Food Standards Code. This will follow the legislated processes set out in the *FSANZ Act 1991*. While the process of developing food regulatory measures can take approximately 12-18 months, this is dependent on FSANZ's work plan, competing priorities and the complexity of the issues. With FRSC undertaking this RIS process, there may be a reduction in the amount of work that FSANZ would need to complete. However, with FSANZ's current workload and resources, there remains a risk that developing a food regulatory measure for menu labelling could take considerably longer than 12-18 months.

Part of the legislated process is that FSANZ must, among other matters, have regard to the Ministerial Policy Guideline. The Ministerial Policy Guideline includes policy principles and policy guidance. The intent of each principle and guidance, as well as recommendations for FSANZ and/or FRSC are described below.

Principle: Menu labelling should enable consumers to make comparisons between standard food items (including within and between categories) and therefore make informed choices at the point-of-sale.

It is intended that menu labelling supports consumers to make comparison of different menu items, which means that energy information is intended to be displayed for all standard food items. This includes comparing menu items within a category (for example, burgers) and across categories (for example, burgers versus sandwiches). It also includes comparing menu items of different sizes, and it is intended that energy information is displayed for all sizes (for example, small, medium, and large). Being able to make comparisons of menu items across businesses (for example, when using third-party food delivery platforms) is also the intention. To support consumers, make comparisons and informed choices, guides with examples and options of how to compare items could be developed.

Principle: Menu labelling should provide consumers with energy information for all standard food items, combination meals and multi-serve items on menus and/or at the point-of-sale; and for dietary context, provide the average adult daily energy intake at the point-of-sale.

It is intended that all standard food outlets:

- display the energy information of all available standard food items on all menus and at all physical and electronic points-of-sale
    - Defining both menu and point-of-sale in the Ministerial Policy Guideline is to ensure that energy information is displayed at all points-of-sale, even in the absence of a menu, or when only some available menu items are shown on a menu.
    - The definition of standard food items includes trial or temporary items. Although exempt from menu labelling in four jurisdictions, it is the intention that they are captured and required to display energy information. Further

consideration may be needed on how to enforce this requirement, particularly if trial items are available for a very limited time.

- display the energy information for combination meals including any pre-packaged items with the combination
  - The co-design process in 2018 recommended that when different types of drinks (for example, water, juice, soft drink, diet soft drink) can be selected in the combination, that the default drink used to calculate the total kilojoules for the combination meal is the drink with the highest kilojoule content. If this is the chosen approach, it will be important to ensure that the kilojoule content of all other drinks (including pre-packaged drinks) is available to enable consumers to make an informed choice for an alternate option.

- display the energy information for multi-serve items as the whole item and per serving
  - To support businesses, the co-design process in 2018 recommended a national resource providing guidance on recommended serving sizes for various multi-serve item types (for example, pull-apart) and sizes (for example, 500g, 750g) be made available. As noted in Appendix 3, the Australian Healthy Food Partnership is developing guidance to help food companies promote and provide healthier serving sizes for a broad range of food and drink categories in retail and out-of-home settings. If this resource does not include all multi-serve items sold by standard food outlets, a complementary resource could be developed.

It is also intended that if any Australian or New Zealand standard food outlet uses a third-party to facilitate the sale of standard food items, the food business provides the energy information to the third-party for display on all electronic menus at the point-of-sale (for example, food delivery platforms and third-party websites). For third party food delivery platforms, it is intended that the obligation of third parties is only to provide the capability to display the kilojoules on menus and at the points-of-sale and to not impede the display of kilojoules.

Principle: Menu labelling should ensure that energy information provided is available, clear, legible, and easy-to-read and understand at-a-glance.

The co-design process between industry, public health, and government in 2018 determined some guidelines on legibility of energy information on menus. It is recommended that FSANZ consider these guidelines in addressing this principle:

- Kilojoules should be displayed in the same font style as the item price or name (as per current requirements).
- Kilojoules should be displayed in the same font size and weight[131] as price or name.
- Where the kilojoules and price are not adjacent, the same font weight should be used for both the kilojoules and the price.
- Displaying kilojoules adjacent to or near the item price or name is sufficient (as per current requirements).
- The daily intake statement can be 75% font size of the price or name on menus that are A4 size and larger.
- The colour of the font and background to the font should be the same for the kilojoule display as for the item price or name. It is important to note that there are some views that rather than require the colour be the same, that the requirement focus on sufficient contrast between the font and background for kilojoule information (for example pale

[131] Font weight is defined as the thinness or thickness of a font; and the range is 100 to 900. Normal is 400, bold is 700.

grey font on a white background is not considered sufficient contrast). However, 'sufficient contrast' is subjective and difficult to regulate.

Principle: Menu labelling should enable consumers to readily access energy information for standardised ingredients (which can be used to customise standard food items or can be combined to make customised menu items), and for pre-packaged items at the point-of-sale to assist with purchasing decisions.

It is recommended that FSANZ carefully consider the issue of customised menu items and standardised ingredients. A pragmatic approach has been taken to allow for some variation. While it is ideal for all businesses with standardised ingredients to display the energy information on all menus and at all point-of-sale, ensuring consumers can readily access this information at the time of purchase, through alternative methods (for example, digital links to off-menu information) or on some, but not all, menus (for example, in-store poster, kiosks), is what is intended to be required from standard food outlets. Clear guidance for businesses is likely to be required.

Pre-packaged items are ready-to-eat food and drinks required to bear a label and therefore energy information is available on the package. It is intended that consumers can access the energy information on pre-packaged items before purchasing. Businesses can facilitate this by having pre-packaged items available for self-service (for example, drinks fridges). If a business does not have pre-packaged items accessible to consumers prior to purchase, then the intention is for the energy information of these items to be available on menus or at the point-of-sale.

Principle: Menu labelling regulation should promote equity for regulatory requirements across standard food outlets.

It is the intended that all standard food outlets selling standard food items in Australia (50 or more outlets nationally, 20 or more outlets in a State or 7 or more outlets in a Territory) and New Zealand (20 or more outlets nationally) implement menu labelling. It is noted that these different thresholds may be difficult for FSANZ to navigate in developing a food regulatory measure. However, these thresholds have been achieved in State and Territory legislation and are intended to capture medium and large businesses selling standard food items, while recognising the different geographical and population sizes of jurisdictions.

It is also intended that all supermarkets display the energy information for each standard food in the same font and font size as price, rather than having the option to display energy information in the same font and font size as unit price which is typically smaller.

A suite of definitions underpins the policy principles in the Policy Guideline. It is recommended that FSANZ consider how best to apply these definitions within the context of the Food Standards Code, including whether there are existing definitions in the Food Standards Code that can be utilised. A key definition is that of a standard food outlet. Beyond the business size element, the definition also states that 'Food businesses are those owned/operated under franchise arrangements; outlets operated under the same trading name; and outlets owned by the one parent company/central owner/corporation.' It is recommended that FSANZ consider whether this definition will capture all the businesses intended to display energy information, and whether any businesses are unintentionally captured. FSANZ may wish to seek legal advice on this matter.

Principle: Menu labelling regulation should enable other businesses to voluntarily display energy information in a manner consistent with the requirements for standard food outlets.

It is intended that all small businesses that choose to voluntarily implement menu labelling comply with the mandatory menu labelling requirements, as is already the case in four Australian jurisdictions' menu labelling legislation. The rationale behind voluntary implementation following the same approach as mandatory implementation is to prevent voluntary implementation adopting a self-select approach on what menu items to label, that is, a marketing driver to label *some* menu items, rather than a consumer information/comparison driver of labelling *all* menu items.

Under the Food Standards Code, there are examples where businesses can voluntarily choose to display specific elements on food labels (for example, health claims and nutrient content claims); however, it must be done in accordance with the relevant standard. This is the same intent for menu labelling for smaller businesses that choose to display energy information on menus and at the point-of-sale. It is recommended that FSANZ carefully consider the best approach to ensure that the objectives to minimise the proliferation of different menu labelling systems and create a level playing field (with respect to menu labelling) for all businesses that sell standard food items are achieved. The preferred approach is to capture voluntary implementation of menu labelling in the Food Standards Code. An alternative option could be to use a code of practice for those businesses not required to display energy information, but which choose to display the information. The key risk with a code of practice is that non-compliance is not a breach of the Food Standards Code and is therefore not enforceable by jurisdictions. A voluntary code of practice would need to be coupled with the creation of an industry complaints resolution body. However, there have been criticisms of other industry complaints bodies, and this approach is unlikely to be supported by public health and consumer organisations.

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

This guidance is to help reduce compliance costs for businesses. It is recommended that FSANZ consider whether the existing Nutrition Panel Calculator is the most appropriate tool, or whether an alternative tool, specific to menu labelling is required. The costs for developing and maintaining a new alternative tool have not been determined, and FSANZ may require additional resources. FSANZ in collaboration with enforcement agencies may wish to consider further support to businesses to facilitate compliance with menu labelling requirements. Industry peak bodies, public health organisations and government agencies may wish to consider supporting smaller chains and independent businesses to voluntarily display energy information on their menus, ensuring that it is consistent with mandatory requirements.

Further, it is recommended FSANZ consider an appropriate transition period that balances the cost implications for industry with prioritising public health outcomes from menu labelling. Support for businesses to comply with a food regulatory measure as they approach the threshold for mandatory menu labelling; and ensuring impacted businesses are given a transition period to comply with the requirements are important elements to be considered in developing and implementing a food regulatory measure.

FSANZ has extensive experience in drafting labelling regulation, however, less experience in the implementation of menu labelling and with some of the stakeholders involved. Given the significant contribution that jurisdictions have made to menu labelling regulation over many years, it is recommended that FSANZ consult early and often with government representatives.

FRSC may wish to consider establishing a time-limited implementation working group to operate concurrently to the development of the food regulatory measure. This working group could help ensure that the intent of the policy guideline is met by the food regulatory measure being developed. It could also consider implementation and enforcement issues.

Pending the development and gazettal of a food regulatory measure for menu labelling, New South Wales, Australian Capital Territory, South Australia, Queensland, and Victoria would need to repeal their menu labelling legislation to ensure there was only one menu labelling system across Australia. This would be done in accordance with the processes in the respective jurisdictions. As noted earlier, jurisdictions can choose to not adopt a food regulatory measure, either in part or entirely. It will be important that any jurisdictions raise this possibility with other jurisdictions, so that it can be managed appropriately.

To maximise the effectiveness of menu labelling, it is recommended that comprehensive, sustained consumer education in Australia and New Zealand be undertaken. It is recommended that the matter is referred to FRSC. FRSC may wish to establish a jurisdictional advisory/working group co-chaired by the Australian Government and New Zealand Government to determine the parameters for consumer education. Pending the scoping phase, consideration of how to resource the development, implementation and evaluation of consumer education would be required.

The economic evaluation assumed an annual cost of $2 million in Australia and $1 million in New Zealand for a three-year consumer education program. Actual costs will be dependent on a range of factors such as the duration of the campaign; the promotional mediums used, with some mediums, such as television advertising, having a significantly higher cost than other mediums, such as social media communications; and the degree of consumer testing during the development phase. To avoid a limited reach and a lack of sustained effectiveness, the campaign would need to be funded appropriately over an extended period.

It is recommended that a coordinated, collaborative, bi-national evaluation be undertaken to determine whether the desired outcome has been achieved. Monitoring and evaluation could occur during the transition period and repeated three to five years after the preferred option becomes operational. Possible indicators to include in an evaluation of menu labelling include:

- level of and cost of business compliance;
- impacts on consumer knowledge and understanding;
- impacts on food purchasing behaviours;
- impacts on frequency of purchasing from standard food outlets;
- impacts on food consumption; and
- changes in nutritional profile of available food and drinks.

It is recommended FRSC consider how best to undertake this element.

In addition to an evaluation of menu labelling impacts, it is also recommended that FRSC review and update the Policy Guideline as required. Any review should:

- Assess whether the Policy Guideline continues to reflect the food environment, dietary patterns, and dietary guidelines.
- Assess whether displaying nutrition information such as the amount of added sugars, sodium, saturated fat, alcohol, and/or other nutrients, would assist people to make healthier choices.

- Consider the impacts of any promotional approaches on consumer behaviour and health outcomes.
- Be informed by emerging evidence of the impacts of menu labelling in Australia and New Zealand as well as the regulation of menu labelling in other jurisdictions.
- Be informed by consultation with stakeholders.

Appendix 1: Ministerial Policy Guideline on menu labelling

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

CONTEXT

How a food is labelled may influence choice, with food labelling providing useful information to support consumers in making dietary (e.g. what or how much to eat) or shopping-based (e.g. comparing products) decisions.[1] A food label's content, format and context contributes to its usefulness.[1]

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

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

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

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

AIM

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

1. assists people to understand and use energy information to make informed, healthier food purchase choices at the point-of-sale;
2. ensures that all modes of sale and types of menus enable comparison of all menu options within and across businesses;[2]
3. creates a level playing field (with respect to menu labelling) for all businesses that sell standard food items; and
4. minimises the proliferation of different menu labelling systems.

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

SCOPE

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

Out-of-scope for this Policy Guideline is energy labelling on the product packaging of standard food items, and the composition of standard food items. Pre-packaged items which have a nutrition information panel are also out-of-scope, unless sold as part of a combination meal or the information on the label is not readily accessible by consumers prior to purchase.

HIGH ORDER POLICY PRINCIPLES

Menu labelling should:

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

The *Food Standards Australia New Zealand Act 1991* (the Act) establishes three objectives for FSANZ in developing or reviewing food regulatory measures and variations of food regulatory measures:

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

The Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System; [4] and Australian and New Zealand Governments guidelines for regulatory action [5-6] are also relevant to the development of any food regulatory measure for menu labelling.

SPECIFIC POLICY PRINCIPLES

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

2. Menu labelling regulation should:
    - Promote equity for regulatory requirements across standard food outlets.

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

ADDITIONAL POLICY GUIDANCE

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

DEFINITIONS

For this Policy Guideline:

- **Menu labelling**: energy information for standard food items on menus at the point-of-sale.
- **Energy information**: the average energy content of standard food items (expressed as kilojoules per item).
- **Average daily energy intake**: a reference statement expressed as *the average adult daily energy intake is 8700kJ*.[7]
- **Point-of-sale**: the place where a customer orders and purchases ready-to-eat food, (places including, but not limited to, checkouts, drive-through facilities and self-service devices (e.g. kiosks) within physical premises; and electronic sales point via business websites and mobile applications and third-party food delivery platforms).
- **Category**: a type or group of standard food items, for example burgers, sandwiches, beverages, sides, desserts.
- **Menu**: a list or similar that shows one or more standard food items available for sale, in printed or electronic form (including, but not limited to, menu boards, posters, leaflets, price/food/identifying tags or labels, digital menu panels, business websites, mobile applications, third-party food delivery platforms, printed and online catalogues).
- **Standard food item**: ready-to-eat food[8] that is sold in servings that are standardised for portion and content, and which is not required to bear a label[8]; includes items available in different serving sizes (e.g. small, medium, large), but not items sold by weight (e.g. salads from a deli) as not standardised by portion. Includes all standardised items, including trial/promotional menu items.
- **Combination meal**: a combination of two or more standard food items (e.g. cheeseburger and hot chips); or a combination of standard food items and pre-packaged food (e.g. salad sandwich and a can of drink).
- **Multi-serve item**: a standard food item that provides more than one serving and is not intended to be consumed by one person (e.g. whole cake, pizza). Energy information to be displayed for the whole item as well as per serving to enable comparison with single-serve items.
- **Pre-packaged item**: a ready-to-eat food required to bear a label.
- **Standardised ingredient**: ingredient that is standardised for portion and content (e.g. bacon, slice of cheese) which can be added by customers to standard food items (e.g. burger); or combined with other standardised ingredients to make a customised menu item (e.g. tortilla, beef filling and guacamole).
- **Standard food outlet**: a food business that sells standard food items at 50 or more outlets in Australia, or 20 or more outlets in an Australian State or 7 or more in an Australian Territory or 20 or more outlets in New Zealand. Food businesses are those owned/operated under franchise arrangements; outlets operated under the same trading name, the same trademark, or the same brand; and outlets owned or controlled by the one parent company/central owner/corporation.

REVIEWS AND UPDATES

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

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

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

2. Modes of sale include, but is not limited to, in-store, online, third-party providers; types of menus include, but is not limited to, digital menu panels, kiosks, paper menus and tags, menu boards, drive-thru menus, online menus.

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

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

5. Commonwealth of Australia, Department of the Prime Minister and Cabinet. 2021. *Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies*. https://obpr.pmc.gov.au/resources/guidance-impact-analysis/regulatory-impact-analysis-guide-ministers-meetings-and-national

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

7. 8700kJ is the reference value for energy as defined in the Australia New Zealand Food Standards Code – Standard 1.2.8—8 – Percentage daily intake information.

8. 'Ready-to-eat food' and 'bear a label' as defined in the Australia New Zealand Food Standards Code – Standard 1.1.2 – Definitions used through the Code.

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

The below table outlines a selection of systematic reviews, meta-analyses and evidence reviews on menu labelling since 2015. Individual studies are not included, as have been captured within the systematic reviews or meta-analyses.

Citation	Included studies[132]	Location and setting	Intervention / outcome measured	Results / Conclusions
Bleich et al. 2017. A systematic review of calorie labeling and modified calorie labeling interventions: impact on consumer and restaurant behavior. *Obesity*, 25(12), 2018-2044.	53 studies: – 1 RCTs – 2 Q-RCTs – 7 NE – 16 P/P – 2 CS – 21 L/S – 4 others Studies to October 2016	USA (45), Canada (4), **Australia (2),** UK (2). Real world (27) and experimental settings (21) Menu analysis pre-national regulation and post-local regulation (5) ** *Studies in Australia were simulated*	Impact of energy information (calories, modified calories, nutrition symbols) displayed on menus on calories ordered, consumed or available for purchase on restaurant menus.	• Limited evidence that menu labelling affects calories purchased at fast-food restaurants. • Some evidence demonstrates that menu labelling lowers calories purchased at full-service chain restaurants and in cafeteria settings. • The sample size for the 1 include RCT was too small to detect an effect. • The 2 quasi-RCTs indicated a decrease of 61-63 calories (255-263kJ) ordered. • Of 4 well-designed studies, only one reported a decrease of 15 calories (63kJ), with the other 3 reporting no effect of energy information.
Cantu-Jungles et al. 2017. A meta-analysis to determine the impact of restaurant menu labeling on calories and nutrients (ordered or consumed) in U.S. adults. *Nutrients*, 9(10), 1088.	14 studies: – 1 RCTs – 3 Q-RCTs – 1 ITS – 7 CBA – 2 CS Studies to 2014	USA (14) Real world (9) and experimental settings (5)	Quantitative calorie information at point of purchase in full-service restaurants, fast food restaurants, or simulated settings. Impact on energy, carbohydrate, fat, saturated fat and/or sodium purchased or consumed.	• Menu labelling in away-from-home settings did not result in a change in quantity or quality of calories ordered or consumed among U.S. adults. • In experimental settings, there was a decrease of 115 calories (481kJ). • Did not consider the effect that displaying energy requirements as well as energy content of menu items would have on ordering or consumption.

[132] Note: RCTs = randomized controlled trials, Q-RCTs = quasi randomized controlled trials, NE = natural experiments, P/P = pre/post design, CBA = controlled before and after, CS = cross-sectional, L/S = laboratory/simulation, ITS = interrupted time series studies, Obs (L) = longitudinal observational, CC = case-controlled, Exp = experimental, Q-Exp = quasi-experimental

Citation	Included studies[132]	Location and setting	Intervention / outcome measured	Results / Conclusions
Crockett et al. 2018. Nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption. *Cochrane Database of Systematic Reviews*, issue 2. Art. No.: cd009315.	28 studies: – 17 RCTs – 5 Q-RCTs – 6 ITS Studies to April 2017	USA (21), Canada (4), UK (2), Netherlands (1) Real world (11) and experimental settings (17)	Impact of labelling on food and drinks purchased or consumed. Impact of labelling on menus, menu boards or tags where chose from a range of items: 20 studies (8 in laboratory setting). Impact of labelling a single item on amount consumed: 8 studies (6 in laboratory setting).	• Nutritional labelling on menus could decrease purchases by 47 calories (196kJ) or 8% based on the average 600 calorie meal (based on three low-quality randomised-control trials). • In experimental settings, there was not a conclusive reduction in calories consumed. • Nutritional labelling on menus did not unintentionally increase the amount of energy purchased or consumed. • Nutrition labelling on restaurant menus could form part of a suite of measures to address obesity, with further monitoring and research required in real-world settings.
Fernandes et al. 2016. Influence of menu labeling on food choices in real-life settings: a systematic review. *Nutrition Reviews*, 74(8), 534-548.	38 studies – observational Studies to June 2015	USA (32), UK (2), EU (4) Real world settings (38)	Influence of menu labelling on food choices in fast food restaurants, sit-down restaurants, and cafeterias.	• Analysis suggested that the effect of menu labelling was mixed. • Menu labelling was more effective in cafeteria settings than in fast food and sit-down restaurants. • Qualitative information, such as healthy food symbols and traffic-light labelling, was most effective in promoting healthy eating. • Calorie labelling on menus is not effective to promote healthier food choices.
Littlewood et al. 2015. Menu labelling is effective in reducing energy ordered and consumed: a systematic review and meta-analysis of recent studies. *Public Health Nutrition*, 19(12), 2106-2121.	15 studies (3 studies excluded from meta-analysis due to lack of data) Studies 2012 to 2014	USA (10), Canada (3), **Australia (2)** Real world (7) and experimental settings (8) *** Studies in Australia were simulated*	Impact of menu labelling on energy consumed, ordered, or selected.	• Overall estimated effect of menu labelling – energy consumed was reduced by an average of 420kJ. • In real-world settings, an average 325 fewer kilojoules were ordered per sale for that eating occasion. • Nine studies showed statistically significant reductions in energy consumed, ordered, or selected – reductions of 96 to 648kJ. • Three studies reported no effect of menu labelling. • Menu labelling can effectively reduce energy ordered and consumed in the away-from-home food environment.

Citation	Included studies[132]	Location and setting	Intervention / outcome measured	Results / Conclusions
Long et al. 2015. Systematic review and meta-analysis of the impact of restaurant menu calorie labeling. *American Journal of Public Health*, 105(5): e11-e24.	19 studies – 11 RCT – 8 NE Studies to October 2013	USA (18), **Australia (1)** - menu labelling formats consistent with federal menu labelling laws Restaurant settings (9) and non-restaurant settings (10) *** Study in Australia was simulated*	Impact of menu calorie labelling compared to no labelling. Change in calories purchased during a single meal.	• Overall, menu labeling is associated with a reduction of 18 calories (75kJ) per meal ordered. • In restaurant settings – reduction of 8 calories (33kJ). • In non-restaurant settings – reduction of 58 calories (242kJ) per meal ordered. • Menu labelling in fast food, coffee shops and other restaurant settings did not result in a significant reduction in energy purchased. • Even small reductions in calorie purchased could have a substantial health benefit as adults consume 25% of daily energy from fast food and other restaurants.
Rincon-Gallardo Patino et al. 2020. Effects of menu labeling policies on transnational restaurant chains to promote a healthy diet: a scoping review to inform policy and research**.** *Nutrients,* 12 (1544).	15 studies – 12 Obs (L) – 1 CS – 1 CC – 1 Q-Exp Studies to February 2020	USA (11), **Australia (2)**, Canada (1), UK (1) Transnational QSRs, dine-in restaurants and convenience stores (15) *** Studies in Australia were menu assessments (energy content before and after labelling)*	Impact on enacted menu labelling policies on product reformulation and serving size reduction	• Mixed results of effect of menu labelling on reformulation or the introduction of healthier menu items. • Positive effect in USA only (8 studies) – energy content of menu items reduced by 57 to 285 calories (238 to 1,191 kJ). • Mixed results in 4 studies (2 USA, 1 UK, 1 Australia). • No effect in 3 studies (1 USA, 1 Canada, 1 Australia)
Sarink et al. 2016. The impact of menu labelling across socioeconomic groups: a systematic review. *Appetite,* 99, 59-75.	14 studies represented by 18 papers – 4 Exp – 10 NE Studies to September 2015	USA (14), **Australia (2)** Real world (10) and experimental settings (4) *** Studies in Australia were simulated*	Awareness and understanding of menu labelling Self-reported use of menu labelling and intended purchase outcomes Calories purchased and consumed	• Current evidence of impact of menu labelling within or across socioeconomic position is limited. • Impact of menu labelling on purchases by low socioeconomic position population – 5 studies no effect, 1 study positive effect with 37-57 fewer calories (155-238kJ) purchased in coffee chains • Impact of menu labelling on purchases across socioeconomic groups - 3 studies no effect, 2 studies positive effect on purchases by higher socioeconomic groups
Shangguan et al. 2019. A meta-analysis of food labeling effects on	60 studies – menu labelling (23) and other studies were other	US (18), EU (2), Canada (2), UK (1)	Effect of menu labelling on calories consumed by consumers, response	• Food labelling overall decreased consumer energy intake by 6.6%.

Citation	Included studies[132]	Location and setting	Intervention / outcome measured	Results / Conclusions
consumer diet behaviours and industry practices. *American Journal of Preventive Medicine*, 56(2): 300-314.	labelling placement types Studies to May 2015	Real-world (22) and experimental settings (1)	from retailers and diet-related health measures.	• No difference in the effect by label type – numeric vs interpretive.
VanEpps et al. 2016. Restaurant menu labeling policy: review of evidence and controversies. *Current Obesity Reports*, 5(1): 72-80.	16 studies: – 2 RCTs – 6 P/P – 1 CS – 7 CBA Studies to November 2015	USA (16) Real-world (16)	Impact of USA menu labelling laws on food purchases.	• Menu labelling effects is mixed – labelling may reduce the energy content of food purchased in some contexts but has little effect in other contexts. • Positive effect on adult purchases in 3 studies – ranged from 100 to 151 fewer calories (418-613 kJ) purchased, or a 6% decrease in energy content per transaction. • Mixed effects on adult purchase in 3 studies – ranged from no change to 113 fewer calories (472kJ) purchased across different restaurant types / chains. • No effect on adult purchases in 7 studies, and no effect on children's/parents' purchases in 3 studies. • More data on long-term consumption habits is needed to understand impact of USA menu labelling laws on diet at population level.
Zlatevska et al. 2018. Mandatory calorie disclosure: a comprehensive analysis of its effect on consumers and retailers. Journal of Retailing, 94(1), 89-101.	186 studies (meta-analysis 1) 41 studies (meta-analysis 2) Date of studies or search not specified	Real world (116) and experimental settings (70) *Paper doesn't provide sufficient details to describe the locations, or the setting for meta-analysis 2*	Effect of menu labelling on calories selected by consumers and on calories offered by retailers.	• Meta-analysis of 41 studies represented 33,029 menu items, meta-analysis of 186 studies represented nearly 1.7M consumption choices. • Consumers purchased 27 fewer calories (115kJ) when menu labelling was implemented. • The energy content of menu items decreased by 15 calories (60kJ) on average, following the introduction of mandatory menu labelling.

During 2020, the New Zealand Government commissioned research to test consumer understanding, and the potential impact of menu labelling including the current system used in Australia (as outlined in the 2011 Principles). The research included a literature review of seven studies published between 2011 and 2019, looking at the effects of menu labelling in the United States and Canada, and market research with approximately 2,100 New Zealand adolescents and adults. In a fast food restaurant setting, the research found that menu labelling had the desired impact on respondents who eat for reasons of convenience, connection, and taste. Menu labelling was found to be more effective when combined with consumer education.[133] As noted previously in this paper, the food environment is changing. This research was predominantly based on the provision of energy information on static menu boards, and as such may not apply to situations where consumers select items before product information is seen.

There is limited peer-reviewed published literature about the impact of menu labelling in Australia. The below studies based on real-world Australian menu labelling or simulated menu selections, were included in some of the systematic reviews and meta-analyses described above.[134]

Study	Description	Results
Dodds et al. (2014) The effect of energy and traffic light labelling on parent and child fast food selection: a randomised controlled trial. *Appetite,* 73: 23–30.	Telephone survey of 329 parent/child pairs, simulated selection from three menus.	• No effect of menu labelling on energy selected.
Morley et al. (2013) What types of nutrition menu labelling lead consumers to select less energy-dense fast food? An experimental study. *Appetite*, 67: 8–15.	Online survey of 1294 Victorian adults (18-49 years), simulated selection from a restricted menu.	• Significant reduction of kilojoules (500kJ) selected from display of energy or energy plus traffic light symbol.
Wellard-Cole et al. (2018) 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,* 21: 1194–1199	Assessment of 552 menu items from 5 QSR chains, before and after menu labelling in NSW.	• No effect of menu labelling on product reformulation.
Wellard-Cole et al. (2019) Nutrient composition of Australian fast-food and fast-casual children's meals available in 2016 and changes in fast-food meals between 2010 and 2016. *Public Health Nutrition*, 22: 2981–2988.	Assessment of 289 children's meals.	• Mixed effect of menu labelling on product reformulation – ranging from reduction of 600kJ to increase of 345KJ per serving.

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

[133] Note: New Zealand provided the research for the purchase of this paper, but it is yet to be published.
[134] The two Australian studies included in Shangguan et al (2019) assessed nutritional labelling on packaged foods, rather than menu labelling, so have not been described here.

Data Collection in New South Wales[135]	Results
Online surveys of 500 people and 200 young adults (18-24 yr)	• Twelve months after the legislation commenced and six months after consumer education had launched: 1. awareness of 8700kJ reference statement had increased to 9% from 3% (19% from 8% among young adults) 2. proportion noticing energy information on menus increased from 46 to 52%, and 59% to 63% among young adults.
Pre and post customer-intercept surveys of 800 people in September 2011 and September 2012, immediately following a food or drink purchase from one of 10 different chains.	• Following consumer education, the proportion of New South Wales consumers noticing energy information rose from 15% to 40%, falling to 36% six-months after education first launched. • A comparison of sales receipts found a 15% (519kJ) reduction in median kilojoules purchased 12 months after legislation was introduced in New South Wales.
Cost-effectiveness analysis / modelling[136]	• A possible $672 million (AUD) national saving of healthcare costs over the population's lifetime in Australia. This based on modelling which looked at the impact of introducing mandatory menu labelling across Australia. • The New South Wales evaluation found that menu labelling can lead to an average reduction of daily energy intake from fast food of approximately 25kJ. • The modelling found that this 25kJ reduction in energy intake, although small, would result in an average body weight decrease of 0.2kg across the Australian adult population. It was further estimated that over 63,000 health-adjusted life years would be gained.

Data Collection in Queensland[137]	Results
Online survey of 750 people in June 2018	• More than a year after the end of an education campaign, half of Queenslanders knew that kilojoules measured energy, yet less than 10% knew that the average adult intake is 8700kJ.
Customer-intercept survey of 787 people in June 2018, immediately following a food or drink purchase from one of 11 different chains.	• Six in ten Queensland consumers believed having energy information displayed gave them confidence to make a healthy choice. • Most (79%) consumers would not change the frequency of visiting a fast food outlet because of knowing the kilojoule content of menu items. • Only 6% of consumers considered that energy information influenced their purchase, with most of these consumers swapping to a healthier alternative or reducing the serving size purchased.

[135] *Fast Choices: An evaluation of energy purchased and consumer education – Findings from Waves 1,2 & 3*. Prepared for NSW Food Authority and NSW Health. https://www.foodauthority.nsw.gov.au/sites/default/files/_Documents/scienceandtechnical/fast_choices_TNS_report.pdf

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

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

Data Collection in Australian Capital Territory[138]	Results
Customer-intercept survey of 288 people in November to December 2016, following a food or drink purchase from one of three food courts	• Without consumer education, more than a third of consumers did not understand kilojoules or calories; and 27% knew the average adult intake is 8700kJ, yet many found it difficult to interpret. • Three in ten consumers noticed the energy information, and half went on to read the information. • 15% of consumers were influenced a little or a lot by menu labelling.
Focus groups with 35 consumers	• For some consumers, the existence of the two measures of energy is confusing. Fat, sugar, and salt were identified as alternative measures of nutritional quality. • Suggestions to extend laws to all food court outlets, clubs, pubs, online orders. • The viability of small businesses should be considered.
Interviews with 15 businesses	• Reported there was no reduction in overall sales resulting from displaying kilojoules; and that menu labelling increased demand for lower kilojoule varieties of combination meals, side orders and drinks. • Expressed strong support for a nationally consistent approach to any changes in the future, noting that differences in display requirements between states and territories had the potential to drive uncertainty, increase the cost of compliance for businesses that operate in more than one jurisdiction, and stifle investment in new technologies, such as digitised kilojoule displays. • Menu labelling and consumer demand for healthier options contributed to reformulation and changes to portion size.

[138]ACT Health. 2017. *Review of display of nutritional information for food.* https://www.health.act.gov.au/sites/default/files/2018-09/Review%20of%20Display%20of%20Nutritional%20Information%20for%20Food%20Report%202017.pdf

Appendix 3: Example national-level actions already underway in Australia and New Zealand to support purchasing and consumption of healthier ready-to-eat food and drinks (including 'restaurant/takeaway' and pre-packaged items) in retail and out-of-home settings[139]

POLICY AREA	ACTION
Restrictions on unhealthy food and drink advertising and marketing	• The Australian Government Department of Health is leading work on behalf of the Food Ministers' Meeting to explore options to strengthen restrictions on advertising of unhealthy foods and drinks to children. For more information: https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/current-activities • The Australian Association of National Advertisers released an updated Food and Beverages Advertising Code in May 2021. For more information: https://aana.com.au/self-regulation/codes-guidelines/food-and-beverages-code/ • The Advertising Standards Authority in New Zealand released the Children and Young People Advertising Code that includes provisions about food and beverages in 2017. This is an industry self-regulatory system. For more information: https://www.asa.co.nz/codes/codes/children-and-young-people/
Reformulation targets / compositional limits to reduce energy, saturated fat, added sugar or sodium content	• The Australian Government Department of Health and New Zealand Ministry for Primary Industries are leading work on behalf of the Food Ministers' Meeting to explore options to improve the composition and healthiness of the food supply in Australia and New Zealand. For more information: https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/current-activities • The Australian Healthy Food Partnership's reformulation program has set targets for reducing saturated fat, sodium and/or sugar in 18 food and drink categories. For more information: https://www.health.gov.au/initiatives-and-programs/healthy-food-partnership/partnership-reformulation-program • The New Zealand Ministry of Health funds the Heart Foundation's Food Reformulation Programme to reduce sodium and total sugar in processed foods. For more information: • The New Zealand food industry Chip Group sets industry standards for deep-fried chips in foodservice settings. For more information: https://thechipgroup.co.nz/
Serving size reductions	• The Australian Healthy Food Partnership is developing guidance to help food companies promote and provide healthier serving sizes for a broad range of food and drink categories in retail and out-of-home settings. For more information: https://www.health.gov.au/committees-and-groups/healthy-food-partnership-industry-best-practice-guide-working-group
Nutrition information on packaged food and drinks	• Implementation of the voluntary Health Star Rating front-of-pack labelling system continues in Australia and New Zealand. For more information: http://www.healthstarrating.gov.au/internet/healthstarrating/publishing.nsf/content/home and https://www.mpi.govt.nz/food-safety-home/how-health-star-ratings-work/ • The Australia New Zealand Food Standards Code requires most packaged food and drinks to be labelled with nutrition information, including a nutrition information panel (NIP) and ingredients list. • Food Standards Australia New Zealand is reviewing added sugars labelling. A proposal will be prepared to consider amending the Food Standards Code about added sugars labelling information in the NIP. For more information: https://www.foodstandards.gov.au/consumer/labelling/Pages/Sugar-labelling.aspx • Food Standards Australia New Zealand is reviewing energy labelling of alcoholic beverages as well as carbohydrate and sugar claims on alcoholic beverages. For more information: https://www.foodstandards.gov.au/consumer/labelling/Pages/Labelling-of-alcoholic-beverages.aspx • The Ministerial Policy Guideline on food labelling to support consumers make informed healthy choices was endorsed in August 2020. The review or development of food regulatory measures must include having regard to this Policy Guideline. For more information: https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/Policy-Guideline-on-Food-Labelling-to-Support-Consumers-Make-Informed-Healthy-Choices

[139] This is not a comprehensive list and there are other policy areas and actions to support healthier food and drink purchasing and consumption, including at the State and Territory-level, and industry-initiated actions, which are not in the table.

Appendix 4: Business types that may sell standard food items[140]

Business Type[141]	Australian and New Zealand Standard Industrial Classification (ANZSIC)[142]	
Fast food and quick-service restaurants (includes mobile vendors / food trucks)	H451200: Takeaway Food Services	Mainly engaged in providing food services ready to be taken away for immediate consumption. Customers order or select items and pay before eating. Items are usually provided in takeaway containers or packaging. Food is either consumed on the premises in limited seating facilities, taken away by the customer or delivered. Also includes supplying food services in food halls and food courts. Primary activities: • Juice bar operation • Mobile food van operation • Takeaway food operation
Cafés, coffee shops and dine-in restaurants	H451100: Cafés and Restaurants	Mainly engaged in providing food and beverage serving services for consumption on the premises. Customers generally order and are served while seated and pay after eating. Primary activities: • Café operation • Restaurant operation
Catering services (includes airlines, institutional canteens / cafeterias)	H451300: Catering Services	Mainly engaged in providing catering services at specified locations or events such as airline catering. Meals and snacks may be transported and/or prepared and served on or off the premises, as required by the customer. Primary activities: • Airline food catering service • Catering service operation
Pubs, taverns, nightclubs, and bars	H452000: Pubs, Taverns and Bars	Mainly engaged in serving alcoholic beverages for consumption on the premises, or in selling alcoholic beverages both for consumption on and off the premises. These units may also provide food services and/or present live entertainment. Primary activities: • Bar operation • Hotel bar operation • Night club operation • Pub operation • Tavern operation • Wine bar operation
Social clubs	H453000: Clubs (Hospitality)	Mainly engaged in providing hospitality services to members. These hospitality services include gambling, sporting or other social or entertainment facilities. Primary activities: • Hospitality club operation
Supermarkets, grocery stores and convenience stores	G411000: Supermarkets and Grocery Stores	Mainly engaged in retailing groceries or non-specialised food lines (including convenience stores), whether or not the selling is organised on a self-service basis. Primary activities:

[140] Note: This is not a definitive list of which businesses sell standard food items, or which would meet the definition of a standard food outlet. Ongoing monitoring of business types that may sell standard food items is necessary to account for changes and innovations in the Australian and New Zealand food supply.

[141] Note: Some businesses undertake multiple activities and are classified by the predominant activity. For example, a service station may predominantly engage in fuel retailing, while also engaging in the sale of takeaway food. Therefore, while the predominant activity isn't selling standard food items, a component of the business activity involves the sale of standard food items.

[142] Australian Bureau of Statistics and Statistics New Zealand. 2013. *Australian and New Zealand Standard Industrial Classification 2006*. https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/1292.02006%20(Revision%201.0)?OpenDocument (accessed 23 September 2021)

Business Type[141]	Australian and New Zealand Standard Industrial Classification (ANZSIC)[142]	
		• Convenience store operation • Grocery retailing • Grocery supermarket operation
Other food retailing (includes bakeries and cake stores)	G412900: Specialised Food Retailing	Mainly engaged in retailing specialised food lines (not manufactured on the same premises) Primary activities: • Biscuit retailing • Bread retailing • Bread vendor • Cake retailing • Confectionery retailing • Non-alcoholic drinks retailing • Pastry retailing • Smallgoods retailing
Vending machines and online food platforms	G431000: Non-store Retailing	Mainly engaged in retailing goods without the use of a shopfront or physical store presence. Primary activities: • Internet retailing • Milk vending • Mobile food retailing (excluding takeaway food) • Vending machine operation
Service stations	G400000: Fuel Retailing	Mainly engaged in retailing fuels, including petrol, LPG, or lubricating oils. Primary activities: • Automotive CNG retailing • Diesel oil retailing • Distillate retailing • Engine oil retailing • Kerosene retailing • LPG, automotive, retailing • Lubricating oil or grease retailing • Petrol retailing • **Service station operation** (mainly petrol retailing)
Food home delivery services (includes third-party food delivery platforms and meal kit services)	I510200: Courier Pick-up and Delivery Services	Mainly engaged in the door to door pick-up (i.e. from the customer's residence or place of business), transport and delivery of letters, documents, parcels, and other items weighing less than 30 kgs. Primary activities: • Customised express pick-up and delivery service • **Grocery delivery service** • **Home delivery service** • Messenger service
Cinemas	J551300: Motion Picture Exhibition	Mainly engaged in screening motion pictures using a variety of visual media. Included are screening productions at festivals and other similar events. Primary activities: • Cinema operation • Drive-in theatre operation • Festival operation (exhibition of motion pictures) • Motion picture screening • Motion picture theatre operation
Entertainment Venues	R900100: Performing Arts Operation	Mainly engaged in providing or producing live theatrical or musical presentations or performances. Not usually involved in the creation of original artistic or cultural works. Primary activities: • Circus operation

Business Type[141]	Australian and New Zealand Standard Industrial Classification (ANZSIC)[142]	
		• Dance and ballet company operation • Musical comedy company operation • Musical productions • Opera company operation • Orchestra operation • Theatre restaurant operation (mainly entertainment facility) • Theatrical company operation
	R900300: Performing Arts Venue Operations	Mainly engaged in operating venues for the presentation and rehearsal of performing arts. Primary activities: • Concert hall operation • Entertainment centre operation • Music bowl operation • Opera house operation • Playhouse operation • Theatre operation (except motion picture theatre)
Recreation Venues	R911300: Sports and Physical Recreation Venues, Grounds and Facilities Operation	Mainly engaged in operating indoor or outdoor sports and physical recreation venues, grounds, and facilities (except health and fitness centres and gymnasia). Primary activities: • Athletics field or stadium operation • Basketball court or stadium operation • Billiard, snooker, or pool hall operation • Bowling alley, tenpin, operation • Bowling green operation • Boxing stadium operation • Cricket ground operation • Football field or stadium operation • Golf course or practice range operation • Ice or roller skating rink operation • Motor racing track or speedway operation • Netball court or stadium operation • Other sports ground, stadium, or venue operation • Squash court operation • Swimming pool operation • Tennis court operation
Amusement Parks	R913100: Amusement Parks and Centres Operation	Mainly engaged in providing amusement and recreation services in the form of amusement parks, arcades, or centres. Includes fixed or permanent sites and selected mobile amusement operators. Primary activities: • Amusement arcade or centre operation • Amusement machine or ride operation (including concession operators) • Amusement park operation • Go-kart venue operation • Indoor climbing operation • Merry-go-round operation • Mini-golf centre operation • Theme park operation • Water park operation
Casinos	R920100: Casino Operations	Mainly engaged in operating facilities with a range of gambling services such as table wagering games and poker/gaming machines. Primary activities: • Casino operation

Appendix 5: Amended Principles for menu labelling (Option 2)

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

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

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

Context:
How a food is labelled may influence choice, with food labelling providing useful information to support consumers in making dietary (e.g. what or how much to eat) or shopping-based (e.g. comparing products) decisions.[1] A food label's content, format and context contributes to its usefulness.[1]

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

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

1. assist people to understand and use energy information to make informed, healthier food purchase choices at the point-of-sale;
2. ensure that all modes of sale (e.g. in-store, online, third-party providers) and types of menus (e.g. digital menu panels, paper menus, menu boards, online menus) enable comparison of menu options within and across businesses.
3. create a level playing field (with respect to menu labelling) for all businesses that sell standard food items; and
4. minimise the proliferation of different menu labelling systems.

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

Out-of-scope: Energy labelling on the product packaging of standard food items, and the composition of standard food items. Pre-packaged items which have a nutritional information panel, unless sold as part of a combination meal or the information on the label is not readily accessible by consumers prior to purchase.

Guiding principles:

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

2. Menu labelling regulation should:
    - Promote equity for regulatory requirements across standard food outlets.
    - Enable other businesses to voluntarily display energy information in a manner consistent with the requirements for standard food outlets.
    - Be complemented by promotional strategies that increase consumer understanding of kilojoules and how to use menu labelling within the broader context of healthy eating and energy balance; and encourage consumers to make healthier ready-to-eat food choices.

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

Definitions:

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

- **Menu labelling**: energy information for standard food items on menus at the point-of-sale.
- **Energy information**: the average energy content of standard food items (expressed as kilojoules per item).
- **Average daily energy intake**: a reference statement expressed as *the average adult daily energy intake is 8700kJ*.[2]
- **Point-of-sale**: the place where a customer orders and purchases ready-to-eat food, (places including, but not limited to, checkouts, drive-through facilities and self-service devices within physical premises; and electronic sales point via business websites and mobile applications and third-party food delivery platforms).

- **Category**: a type or group of standard food items, for example burgers, sandwiches, beverages, sides, desserts.
- **Menu**: a list or similar that shows one or more standard food items available for sale, in printed or electronic form (including, but not limited to, menu boards, posters, leaflets, price/food/identifying tags or labels, digital menu panels, business websites, mobile applications, third-party food delivery platforms, printed and online catalogues).
- **Standard food item**: ready-to-eat food[3] that is sold in servings that are standardised for portion and content, and which is not required to bear a label[3]; includes items available in different serving sizes (e.g. small, medium, large), but not items sold by weight (e.g. salads from a deli) as not standardised by portion. Includes all standardised items, including trial/promotional menu items.
- **Combination meal**: a combination of two or more standard food items (e.g. cheeseburger and hot chips); or a combination of standard food items and pre-packaged food (e.g. salad sandwich and a can of drink).
- **Multi-serve item**: a standard food item that provides more than one serving and is not intended to be consumed by one person (e.g. whole cake, pizza). Energy information to be displayed for the whole item as well as per serving to enable comparison with single-serve items.
- **Pre-packaged item**: a ready-to-eat food required to bear a label.
- **Standardised ingredient**: ingredient that is standardised for portion and content (e.g. bacon, slice of cheese) which can be added by customers to standard food items (e.g. burger); or combined with other standardised ingredients to make a customised menu item (e.g. tortilla, beef filling and guacamole).
- **Standard food outlet:** a food business that sells standard food items at 50 or more outlets in Australia, or 20 or more outlets in an Australian State or 7 or more in an Australian Territory or 20 or more outlets in New Zealand. Food businesses are those owned/operated under franchise arrangements; outlets operated under the same trading name, the same trademark, or the same brand; and outlets owned or controlled by the one parent company/central owner/corporation.

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

2. 8700kJ is the reference value for energy as defined in the Australia New Zealand Food Standards Code – Standard 1.2.8—8 – Percentage daily intake information.

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

Appendix 6: Consideration of 2018 stakeholder views in option development

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

During the first round of consultation in February and March 2018, stakeholders were consulted about the issues with menu labelling schemes; specifically, inconsistencies between jurisdictions' menu labelling legislation; emerging trends in the food industry sector; and difficulties faced by consumers in using energy information. There were two industry-specific roundtables to which 16 organisations attended from the 83 Australian-based organisations invited. Additionally, a consultation paper[143] was released on the Food Regulation website (www.foodregulation.gov.au) for a six-week period. Written submissions were received from 13 public health organisations, 10 industry representatives (including one from New Zealand), four Australian State and Territory governments, and one consumer organisation. A summary of the consultation outcomes from this first round is available online.[144]

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

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

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

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

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

Consultation Outcomes	How Outcomes Considered by Options
categories, sizes) through user guides with examples and options of how to compare items.	
Round 1: public health, industry and government stakeholders supported energy information on third-party ordering platforms. The two approaches identified to achieve this were requiring chain businesses to provide the information to third-party delivery services, or alternatively capturing third-party delivery services in legislation. I.e. The responsibilities of the third-party agent need clarification. Round 2: the obligation of third-party platforms should only be to provide the capability to display the kilojoules and to not impede display of kilojoules; and the food business should be obligated to provide energy information to the third-party.	Options 2 and 3 include the principle: "Menu labelling should provide consumers of the energy content of all standard food items, combination meals and multi-serve items shown on menus and at points-of-sale; and for dietary context, provide the average daily energy intake at the point-of-sale". The definition of menu was expanded to specify third-party food delivery platforms; and a new definition of point-of-sale has been developed which includes all electronic sales points where customers order and purchase ready-to-eat food. The intent of the policy guidance is that regulatory requirements apply to standard food outlets, which are defined as food businesses selling standard food items at 50 or more outlets in Australia, or 20 or more outlets in an Australian State, or 7 or more outlets in an Australian Territory. Third-party food delivery platforms do not meet this definition and therefore it would be the responsibility of standard food outlets to provide the appropriate information to the third-party for display on its platform.
Round 1: Most stakeholders recommended that energy information for combination meals should include all components, including pre-packaged products, with an emphasis in submissions on drinks. Clarity on which pre-packaged product should be the default for calculating total kilojoules was still lacking following the consultation. Round 2: Pre-packaged drinks to be included in the kilojoules displayed for combination meals. The default drink used to calculate the total kilojoules for the combination meal is the drink with the highest kilojoule content.	A definition of combination meals has been included in Options 2 and 3. The intent of the policy guidance is that the energy content displayed for combination meals includes all components of the meal, including pre-packaged drinks and other pre-packaged items. The policy guidance does not include the specific technical requirements which would need to be considered as part of the development of any food regulatory measure. In developing a regulatory measure, options for the default drink or other pre-packaged product would need to be considered.
Round 1: Overall, industry submissions did not support additional and interpretative information as a part of menu labelling schemes; with specific mention that the health star rating (HSR) system is not appropriate for fast food. In contrast, many public health organisations called for the adaptation of HSR for fast food.	This feedback was noted, and while Options 2 and 3 include principles that menu labelling should enable comparisons between menu items and that energy information should be able to be interpreted at a glance, consideration of how these principles are reflected in a regulatory measure would be undertaken.
Round 1: Education to help consumers understand and use kilojoules to make healthier choices, which is government-funded, nationally consistent, multi-phased, and sustained, was called for by some industry stakeholders and public health organisations.	Stakeholder views shaped the complementary consumer education strategy. Any additional information and views provided by stakeholders in this round of consultation will be used to further develop a consumer education strategy.
Round 1: Kilojoule display per 100 grams was noted to be confusing and not consistent with policy intent. A preference for all standard food outlets (including supermarkets) to display kilojoules 'per serve' was strongly indicated in submissions.	Options 2 and 3 include a definition of energy information, being the "average energy content of standard food items (expressed as kilojoules per item)". This coupled with the principle that menu labelling should promote equity for regulatory requirements across standard food businesses, addresses the concern about inconsistency in kilojoule display.
Round 1: Monitoring, enforcement and evaluation were all seen as important components of menu labelling schemes.	This feedback has been noted and depending on the preferred option would be considered in the implementation phase.

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

Appendix 7: Summary of submission analysis from 2021 consultation

1: Is your business voluntarily displaying energy information in New Zealand? Please provide details, where possible.
Submissions to this question were from the food industry in New Zealand and Australia. Large New Zealand national (an/or international chains operating in New Zealand and Australia) typically display kilojoule and nutrition information on websites and apps, but not on menus. There is some support for voluntary menu labelling (as recommended in 2018 by the Food Industry Taskforce). One food industry submitter noted were open to energy information on menus if a consistent approach was used across all outlets selling standard food items.

2: Does your New Zealand business sell standard food items and is it a chain (i.e. more than one outlet operated/owned under franchise arrangements or the same trading name, or owned by one parent company/central owner/corporation)? If so, how many outlets do you have in New Zealand?
Market information was provided for 6 chain quick service restaurants:

- McDonalds: 168 outlets
- Hell's Pizza: 76 outlets
- Taco Bell: 5 outlets
- KFC NZ: 103 outlets with a further 5 outlets operated by independent franchise partners
- Pizza Hut: 105 outlets owned/operated by independent franchisees; with 8 outlets operated under master franchise.
- Carl's Junior: 17 outlets

One organisation did not think standard food items exist.

3: Is it a problem for New Zealand consumers that energy information is not mandated at the point-of-sale? If so, please explain your view and/or detail the impact.
Submissions to this question were from the food industry in New Zealand (4 submissions) and Australia (2 submissions), and New Zealand public health organisations (3 submissions). Overall, there are mixed views from submitters about whether it is a problem for New Zealand consumers that energy information is not mandated at the point-of-sale.

All (3) New Zealand public health organisations making submissions did not know whether it is a problem. These organisations noted that there is no research about whether a problem for New Zealand consumers. One organisation questioned the meaningfulness of a single energy number. However, these submitters also acknowledged that there is a knowledge gap for consumers regarding nutritional content of ready-to-eat food (compared to packaged food), and expenditure on this type of food is increasing. Therefore, consumers should know nutrition information at the point-of-sale as it can encourage healthier choices and industry reformulation. One organisation recommended that if menu labelling is mandated, consumer education should be designed in partnership with Māori people to address equity effects.

Three food industry organisations (one from New Zealand and two Australian) believed it is a problem and support consistent menu labelling across all food outlets and Australia and New Zealand to improve consumer health. In contrast, three New Zealand food industry organisations believed it wasn't a problem, with two organisations noting that there was little evidence of public demand for energy information at point-of-sale, or effectiveness of menu labelling on purchasing choices. Despite this, one of these organisations supports consistent, comparable, and easily understood menu labelling. A third organisation did not think menu labelling was relevant as forecasts indicate eating out will be predominantly in independent outlets in New Zealand. This organisation also had concerns that declining numeracy skills and health literacy would affect consumer interpretation of energy information.

4: Do these differences between states and territories create problems for Australian businesses?
Submissions to this question were from all stakeholder groups in Australia. New Zealand stakeholders noted this question as not applicable to them. Most Australian organisations agree that the differences between States and Territories are a problem for Australian businesses. Stakeholders indicate that it is confusing for businesses to know which legislation to follow, particularly for national chains (e.g. is it determined by head office location or strictest requirements), and that it also requires additional time and resources to meet different requirements. An uneven playing field across businesses and jurisdictions was noted. For the grocery sector, there is some confusion whether are in or out-of-scope of the legislation, due to business type or business model. Only one Australian industry organisation (a peak body) didn't believe the differences between jurisdictions were a problem for Australian businesses.

5: Do these differences impact Australian consumers?
Submissions to this question were from all stakeholder groups in Australia. New Zealand stakeholders noted this question as not applicable to them. Most Australian organisations agree that the differences between States and Territories impact Australian consumers. Confusion, particularly for consumers travelling across S/T, access to nutrition information and lack of understanding of energy content were commonly noted problems. However, there was also the view that it was a lesser problem as consumers wouldn't be comparing across states and territories. Differences in how combination meals, alcohol and online/digital menus are treated were highlighted as concerns. It was noted that the differences impact the effect of menu labelling and associated health outcomes. Only one Australian industry organisation (a peak body) didn't believe the differences between jurisdictions had an impact on Australian consumers. Another Australian industry organisation (a chain business) wasn't sure if there was an impact on consumers as they hadn't received any feedback from their customers.

6: Is the uneven playing field with respect to menu labelling requirements a problem for standard food outlets in Australia? If so, please detail the impact. ***Please indicate if your business is currently captured by state or territory legislation, and/or whether your business is exempt in one or more jurisdictions.***
Seven submissions (five Australian food industry organisations, one member of the public, one Australian state government) indicated that an uneven playing field was a problem for standard food outlets in Australia. A lack of consistency across businesses selling standard food items was the key issue noted, especially as some businesses (including grocery and convenience stores) exempt from menu labelling are increasingly selling standard food items. One New Zealand food industry organisation indicated that the question was not applicable to them but did note that the focus of menu labelling regulation on medium-large chains was disproportionate as there was stronger growth in independent outlets and third-party systems. It was also noted that there was inconsistency in food courts with some venues captured by menu labelling, and others not captured despite selling energy-dense menu items.

Although this question was seeking views on problems for standard food outlets, some submissions noted that an uneven playing field is a problem for consumers. Difficulty in comparing menu items and making informed choices were the main concerns. As an alternative to menu labelling, one member of the public suggested displaying generic information about the energy, sodium, fat, and sugar content of typical menu items.

One Australian food industry organisation didn't think the uneven playing field was an issue for businesses or consumers. While one New Zealand industry organisation queried the definition of a standard food outlet. Public health and consumer organisations in Australia and

New Zealand did not provide any views about whether an uneven playing field was a problem for standard food outlets in Australia.

7: Is it a problem for Australian consumers that energy information is not at the point-of-sale in all businesses selling standard food items? If so, please detail the impact.
Most submissions from across all Australian stakeholder groups (16 of 18 responses) indicated that it was a problem for Australian consumers that energy information was not at the point-of-sale in all businesses selling standard food items. The key issue of not having access to energy information was the inability to make an informed choice or compare menu items within and between businesses. It was noted that consumers may think that menu items without kilojoule information on display are healthier; and don't know the nutrition content of food without a label.

Submissions also noted that consistent menu labelling across business types supports consumers to understand and use energy information and reinforces healthy eating education activities. Additionally, one Australian food industry organisation noted that providing information to consumers supports the Australian Dietary Guidelines and the draft National Obesity Strategy. Only two Australian food industry organisations did not agree that it was an issue for consumers. One submission recommended that regulators provide more consumer resources as consumers were unaware of the impact of energy content. Public health and food industry organisations in New Zealand did not provide any views about the impact on Australian consumers.

8: Are there other business types that are selling standard food items in Australia or New Zealand? If so, please detail.

Submissions to this question were from all sectors: food industry in Australia and New Zealand; public health organisations in Australia and New Zealand; as well as a consumer organisation, members of the public and one Australian state government. Other types of business types selling standard food outlets that were suggested included:

- Meal kit / pre-packaged home delivery services which include ready-to-heat, ready-to-eat, and ready-to-prepare options. It was noted that some voluntarily provide nutrition info on websites; and most would include nutritional information on packaging.
- Third-party delivery platforms.
- Mobile outlets e.g. food trucks, pop-up carts.
- Sport & recreation / entertainment venues e.g. play centres, indoor rock-climbing, trampolining, bowling alleys and gyms.
- Airlines.
- Vending machines.
- Drive-thrus as not all items listed.
- School canteens as some offer standardised meals.

It was noted that consistency across products is important. There were recommendations to undertake ongoing monitoring of business types and to future-proof the approach to menu labelling to account for innovation to the food supply. Four food industry organisations (3 in Australia, and 1 in New Zealand) did not think there were any other business types selling standard food items. One New Zealand industry organisation reiterated their query of the definition of a standard food outlet. While a member of the public queried the outlet threshold as fast food is high in energy regardless of the number of outlets owned/operated by a business.

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?

Submissions to this question were from all sectors: food industry in Australia and New Zealand; public health organisations in Australia and New Zealand; as well as a consumer organisation, members of the public and one Australian state government. The consultation RIS noted that digital panel menus, third-party delivery platforms, build your own menu items and contactless ordering / payment / delivery via apps and other digital platforms were new technologies and trends that had emerged since the 2011 Principles were developed. Many submissions agreed, with online delivery services, both by food businesses and third-party operators, frequently noted. Some Australian public health organisations indicated that 'build your own' menu items were not standard food items and suggested that regulation require the energy content of standardised components and total item be displayed.

Other ways of promoting, offering, or selling standard food items that were suggested included:

- the increase in home delivered meal packages for home-based preparation;
- the availability of large serving sizes;
- menu infrastructure and technology such as online pop-ups for upselling, QR codes, kiosks, and apps that recognise past purchases;
- the availability of 24/7 home delivery; and
- marketing approaches used such as apps and games targeting children, discount offers via social media maps, and traditional advertising (i.e. buses, bus stops, radio).

Submissions also reiterated the types of businesses selling standard food items that were identified at Q8. Catering was also mentioned by one Australian food industry organisation, noting it provided a form of exemption from menu labelling. It was noted by one New Zealand food industry organisation that purchases were made without reference to the menu, so menu labelling was less influential.

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

Most submissions (18 of 25) agree it is a problem for consumers when energy information is not available for all menu items and/or on all ordering platforms and menu infrastructure. Without energy information available, it was noted consumers would underestimate the impact on daily energy intake. The increased use of online platforms and availability of customised menu choices were key contributors to an increasing problem.

Four organisations didn't agree it was a problem for consumers. One Australian food industry organisation indicated more information could be provided online compared to a menu. While another Australian food industry organisation noted that until there was increased consumer awareness of menu labelling, it wouldn't be a problem that information wasn't universally available. Both a public health and food industry organisation in New Zealand indicated the issue was interpreting the energy information, with declining numeracy levels a factor. The public health organisation recommended interpretative labelling such as star ratings and information about ingredients. The food industry organisation reiterated views that other approaches such as reformulation be considered, as the evidence indicates menu labelling has no or mixed impact. A further three organisations didn't know if it was a problem for consumers. However, two public health organisations in New Zealand reiterated that consumers have a right to information about food and that it should be at the point-of-sale on all platforms.

11: Has the increased use of different menu infrastructure and online platforms changed the cost of implementing menu labelling in Australia?
Five Australian and one New Zealand food industry thought costs had changed. The time needed to update different infrastructure and platforms was one factor. Other elements were the cost of menu design and determining the energy content. *However, it should be noted that these costs are associated with menu labelling regardless of the type of menu used, and so aren't necessarily additional costs.* One Australian public health and one food industry organisation didn't think there had been a change in costs, noting changes to online platforms were low and changes to websites and menus could be done during regular updates and were no different to adding a product photo or name.

Ten submissions didn't know if the cost of menu labelling implementation had changed. However Australian public health and consumer organisations highlighted that the costs would be low, especially when compared to cost savings from dietary improvements and reduced diet-related chronic disease. These organisations also strongly recommended that costs must be assessed against public health benefits and that health must be the core consideration. It was noted that costs to businesses shouldn't be a reason for not displaying energy information. Most New Zealand organisations did not respond to this question.

12: Do you agree with the overall statement of the problem presented (section 2, 2.1-2.3)?
Most (23 of 26) submissions agree with the overall statement of the problem presented in the RIS. Three Australian public health organisations in Australia highlighted that there is an additional problem. It is believed that menu labelling is not achieving the highest possible health impact due to business exemptions and limited application. There were mixed views among New Zealand food industry organisations. One organisation agreed that national inconsistency is also an issue for New Zealand as there is no agreed framework for menu labelling in New Zealand. In contrast, another organisation's view is that national inconsistency is only an issue for Australia. Some submissions raised specific issues with menu labelling provisions, including businesses captured, display of information, and calculation of energy information.

13: Do you agree that this problem requires government intervention?
Most (24 of 26) submissions agree that government intervention is required to address the problem. The key reason government intervention is needed are that previous attempts (2011 Principles and jurisdictional implementation) have not achieved national consistency. Many submissions also provide views on the type of intervention required (mostly recommend mandatory action preferred over voluntary) and intervention design issues.

14. Do you agree with the objectives proposed? If not, please suggest alternate objectives and provide your reasons.
Most submissions (25 of 26) across all stakeholder groups either agree or conditionally agree with the three objectives. All submissions from Australian public health and consumer organisations recommend a fourth objective, to ensure that public health is considered / prioritised in all regulatory aspects of menu labelling. Some of these organisations also recommended that the primary objective focus on supporting consumers to make healthier choices at the point-of-sale in all settings, and for all modes of sale, all types of menus and menu items. (i.e. would elevate and expand the proposed objective 3). One New Zealand food industry organisation proposed that "healthier choices" be replaced with "informed choices" in objective 3 as menu items can be consumed occasionally as part of a balanced diet.

Only one New Zealand food industry peak body did not agree with the objectives. The key reason was lack of applicability to New Zealand, with it noted that it wasn't necessary to

minimise the proliferation of different menu labelling schemes or create a level of playing field for businesses selling standard food items. This was because New Zealand has no menu labelling system and therefore there is already a level playing field, as well as the view that standard food items don't exist. This organisation also had concerns about the ability to meet objective 3 cost-effectively, and whether it was intended to apply within or across businesses.

Some submissions highlight other issues including that:

- more consumer research is needed to guide the approach for menu labelling;
- interpretative labelling (such as the Health Star Rating) be considered to assist consumers make food choices;
- consumer education accompanies menu labelling; and
- menu labelling regulation should exceed the strongest provisions already in place.

It is important to note that recoding was done for the responses to some of the submissions to this question as there was a mismatch between the YES/NO option and the written comments.

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

Some (12 of 25) submissions across Australian and New Zealand food industry, consumer organisations, the Australian public and government agree that the proposed options are appropriate to address the problem. While a further nine submissions from Australian and New Zealand public health organisations agreed that the options were appropriate, all organisations indicated that only Option 3 would address the problem and be of benefit to public health outcomes. It was noted by New Zealand public health organisations that menu labelling was not considered a priority action by public health experts in New Zealand. Action focused on food marketing, taxation on sugary drinks, school food initiatives, front of pack labelling, and reformulation were considered more important to prioritise. Australian public health and consumer organisations strongly supported consumer education that complements menu labelling, stressing that consumer education should not be implemented instead of menu labelling.

Two food industry organisations (one Australian quick service chain and one New Zealand peak body) do not agree the options are appropriate. The Australian chain noted its support for Option 2 and its disagreement with menu labelling in the Food Standards Code. The New Zealand organisation reiterated that the problems are in Australia and therefore the solutions need to be focused on Australia only. It was also noted that only Option 4 was viable for New Zealand, however there were still concerns about this option for New Zealand businesses. Additionally, a member of the public didn't agree the options for the problem, and recommended action focus on restrictions for unhealthy ingredients and portion sizes.

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

Australian industry submission (5 of 7) indicated there would be higher implementation costs if legislative changes were not timely and uniform across jurisdictions. These included costs associated with menu design, resource development including on-line information, nutritional analysis, staff training, and administrative costs when there is a centralised system. A cost of $30,000 to make changes to menus across a business was provided by one business. Further analysis indicates that this equates to $62.50 per outlet for that business. It was noted that businesses require 12 to 18 months to comply with major policy changes.

17a. Are the benefits and costs associated with the four proposed options and the complementary strategies accurate? 17b. Are there any other benefits, costs or unintended consequences which have not been identified above?
Most Australian public health stakeholders (6 of 7) and one consumer organisation indicated the costs and benefits were not accurate. The costs saved in healthcare due to a decrease in diet-related diseases and increase in quality adjusted life-years (QALY) were underestimated and not considered comprehensively in the analysis. While updating menus was overestimated as businesses regularly update their menus and the costs for menu labelling could be absorbed as part of routine updates. The submissions from all Australian public health organisations (7) highlighted that menu labelling is considered one of the two most cost-effective interventions to reduce the economic, social and health costs of overweight and obesity. However, one NZ public health organisation indicated that whilst labelling may benefit some individuals, for others it may increase inequity, with cost being the main driver for consumers who are food insecure or have limited money.

Only one Australian industry organisation (a quick service restaurant chain) indicated the costs and benefits were inaccurate, however no further details were provided. Additionally, one New Zealand industry organisation (a peak body) indicated that Option 2 was not relevant to New Zealand and so there would be no costs, costs for Option 3 were underestimated and that Option 3 was ill-timed post-COVID-19. Two Australian industry stakeholders (a quick service chain and a peak body) indicated that restrictive design requirements can reduce usability, and impact consumers ability to make informed choices. Further, it was noted that smaller menu boards are more difficult to comply with restrictive requirements. Another Australian industry organisation (a quick service chain) was concerned with the costs associated with changing signage to account for naturally occurring energy differences in Australian farmed produce (e.g. fruit and vegetables, milk). There were also concerns that there were inadequate in-depth instructions to implement menu labelling for businesses that cater or have websites.

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

One Australian and one New Zealand industry stakeholders indicated that the average regulatory costs were representative of the costs likely to be incurred by their businesses. In contrast, two Australian industry organisations (both quick service chains) indicated that the average annual regulatory costs were too low. One organisation noted that changes cost $30,000 for one simple change to menu boards across the business each time a change is required. Further analysis indicates that this equates to $62.50 per outlet for that business. Another organisation noted there would be costs for nutritional analysis and menu design and printing, and that this would be in the range of $000's. It was also noted that administrative burden from implementing menu labelling impact the resources available for campaigns, resulting in an overall decrease in profits. It was noted by one New Zealand industry stakeholder (a peak body) that they were not aware of the costing models used by Australian businesses for these proposals. Additionally, one government stakeholder indicated that there would be additional costs for governments associated with repealing existing legislation and increased costs associated with compliance monitoring if the number of businesses captured by menu labelling increased.

20a. Would your Australian business be likely to meet the proposed definition of a standard food outlet? 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?
Four Australian food industry stakeholders indicated their business would meet the proposed definition of a standard food outlet. Market information was provided for two chain quick service restaurants:

- KFC: 642 outlets, with 232 in New South Wales, 179 in Victoria, 158 in Queensland, 58 in Western Australia, 9 in Australian Capital Territory, and 6 in Northern Territory.
- Top Juice: 59 outlets, with 47 in New South Wales, 7 in Victoria, 3 in Australian Capital Territory and 2 in Queensland.

21: What is your preferred option and why?
Many (65%) submissions supported 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).* There was support from 10 public health organisations across Australia and New Zealand, three food industry organisations across Australia and New Zealand (one quick service chain, one grocery chain and one peak body), one consumer organisation and one member of the public, as well as two Australian state governments. The key reasons that Option 3 was preferred were it:

- addresses the problems outlined in the RIS;
- is the best option for consumers due to consistent approach which enables access to kilojoule information and easier comparison of menu items to make informed and healthier choices;
- provides a more level playing field for businesses and reduces regulatory costs compared to different systems; and
- more consistent enforcement and monitoring.

In implementing Option 3, it was recommended that

- consumer education must accompany menu labelling;
- business threshold and chain definition be further clarified; and
- the policy guideline be strengthened with respect to customised menu items and ensuring no exemptions for specific businesses or menu items.

Option 2 - *Amend the 2011 Principles and encourage all jurisdictions to consistently implement menu labelling schemes in their own legislation* – had support from five industry organisations across Australia and New Zealand (two quick service chains, two advertising peak bodies, one retail peak body). These organisations supported a consistent approach by jurisdictions, and some noted that adopting the NSW menu labelling regulation would be most efficient.
(Analyst note: the responses seem to assume that (1) Option 2 will lead to all jurisdictions implementing menu labelling, when this is unlikely to be the case; and (2) that the current NSW legislation is aligned with the amended Principles, which it is not). Option 2 was not supported by public health organisations as is dependent on jurisdictional action and therefore there is little difference to the status quo.

Maintaining the status quo (Option 1) was only preferred by one New Zealand food industry organisation (a peak body), which noted this process was focused on Australian problems and didn't consider alternative approaches for addressing healthy options in quick service restaurants. Option 4 to encourage industry to voluntarily implement enhancements to menu labelling had support from one Australian food industry organisation (a quick service chain implementing menu labelling). This was on the basis that industry knows what is best for business and considers public health as part of food provision. Interestingly, one Australian

food industry organisation (a quick service chain implementing menu labelling) proposed that either Option 3 or Option 4 be progressed – these options would be considered opposite ends of the regulatory spectrum within this context.

To complement menu labelling, some submissions across Australian and New Zealand organisations recommended that other strategies such as reformulation and standardised serving sizes be explored for improving the availability of healthy options and the nutritional status of consumers. It was noted that menu labelling alone won't be effective to improve public health, and a coordinated approach to improving nutrition outcomes is needed.

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

Only one Australian food industry organisation preferred Option 4. It was suggested that industry action could be governed by one body, with decisions made on a voting system. Open discussion and idea contribution from each business were noted as important. In contrast, Option 4 was opposed by all Australian public health organisations, one Australian state government and one member of the public.