



Review required by Section 115
Food Act 2001

**Review of Display of
Nutritional Information
for Food**

2017

Review Report

Acknowledgements

This publication has been prepared by the Population Health Protection and Prevention Division for the Minister for Health and Wellbeing, the ACT Legislative Assembly and the ACT community.

Part of this review report has been developed with reference to the work of the former Implementation Sub Committee's Point-of-Sale Nutrition Information Implementation Working Group. This report also references other reports prepared by state or territory governments concerning the display of nutritional information on food. Figures 1 and 2 in this report were developed by the NSW Food Authority.

The ACT Government has taken great care to ensure the information in this report is as correct and accurate as possible. Whilst the information is considered to be true and correct at the date of publication, changes in circumstances after the time of publication or collection of information may impact on the accuracy of the report. Differences in statistical methods and calculations, data updates and guidelines may impact the accuracy of the information contained in this report.

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Review of Display of Nutritional Information for Food

Preface & summary

I am pleased to deliver the ACT Government report, *Review of Display of Nutritional Information for Food*, which reviews the operation of Part 9 of the *Food Act 2001* in accordance with the requirements of section 115 of the *Food Act 2001*.

From 1 January 2013, the *Food Act 2001* was amended to require standard food outlets operating as part of a company chain or franchise to display the average energy content of their standard food items in kilojoules (kJ). The amendments were introduced principally to provide more nutritional information to customers purchasing standard foods and are commonly referred to as the 'kilojoule display laws'. The mandatory display of the energy content of standard food items has been identified as a way to promote and enable healthier food choices in the community.¹

Government and community interest in disclosing nutritional information about food products has been of emerging importance in view of increasing rates of overweight and obesity. The ACT Government remains committed to promoting and enabling healthy food and lifestyle choices in order to minimise the adverse personal and community impacts of overweight and obesity.²

The report reviews the operation and impact of the ACT kilojoule display laws and considers studies undertaken by Australian jurisdictions on requirements to display nutritional information at food outlets. In presenting these studies, the report also considers the merits of including additional nutritional information (i.e. fat, salt and carbohydrate content) on point of sale displays.

With respect to the operation of the ACT kilojoule display laws, the report found that the laws operate as intended. The report also found that a majority of affected food businesses are compliant with the legislation. With respect to the impact of the laws, the report found that there are opportunities for government to improve consumer understanding and use of the displays, as well as opportunities to work with businesses to increase awareness of kilojoule display requirements and maximise the potential benefits of the laws.

Based on the data gathered for these reviews, and studies undertaken by other jurisdictions, the report recommends that the ACT not pursue legislative changes to expand the laws to display other nutritional information at this time. The report also recommends that any change to the laws be progressed in discussion with all states and territories to ensure national consistency. The responses and actions related to each of the report's recommendations are outlined in Appendix C.

In accordance with my obligations under the *Food Act 2001*, I present this report to the ACT community and the ACT Legislative Assembly.

Meegan Fitzharris MLA
Minister for Health and Wellbeing

¹ Blewett, N., Goddard, N., Pettigrew, Reynolds, C. and Yeatman, H. (2011). *Labelling Logic: Review of Food Labelling Law and Commonwealth of Australia*. Available at: www.foodlabellingreview.gov.au. Accessed 24 February 2016.

² *Towards Zero Growth, Healthy Weight Action Plan*. ACT Government. October 2013

Introduction

In 2011, during consideration of the proposed kilojoule display laws, the ACT Government committed to undertake a review of the operation of the laws and to present a report on the review to the ACT Legislative Assembly. In accordance with section 115 of the Food Act, the responsible Minister must undertake a review of the operation of Part 9 of the Food Act (the kilojoule display laws) as soon as practicable after the end of its third year of operation. The Food Act also requires that the review report be tabled with any study or review by an Australian jurisdiction dealing with the requirement to display the salt, fat or carbohydrate content of food at food outlets. This report has been prepared in response to these requirements.

Legislation overview

The 2011 report from the COAG Independent Review of Food Labelling Law and Policy, *Labelling Logic*, recommended all states and territories consider passing laws for the mandatory display of energy content of standard food items sold by chain food service outlets proximal to the display of the food or menu.³ In making the recommendation, the report noted the association between the regular consumption of food outside the home with poorer diet quality and greater risk for obesity in children.

On 1 January 2013, the *Food (Nutritional Information) Amendment Act 2011* amended the *Food Act 2001* to introduce a requirement that standard food outlets display certain nutritional information about their standard food items. Under the Food Act, nutritional information means the average energy content of the standard food item (expressed in kilojoules [kJ]) and the reference statement '*The average adult daily energy intake is 8,700 kJ*'.

The requirements of Part 9 of the Food Act apply to standard food items that are sold by businesses in the ACT that operate as part of a larger company (under a common trading name or franchise arrangement) at seven or more places in the ACT, or 50 or more places across Australia. The Minister for Health may exempt certain food businesses from the operation of the kilojoule display laws by disallowable instrument.

The kilojoule display laws aim to provide consumers with basic nutritional information that may help them to make informed dietary choices when purchasing standard food items.

The ACT kilojoule display laws were modelled on the *Fast Choices* legislation⁴ introduced by the New South Wales (NSW) Government in 2010. The NSW Fast Choices legislation requires affected fast food outlets to display the average energy content of standard food items at point of sale locations. The ACT Government consulted with the NSW Food Authority when implementing and promoting the kilojoule display laws to ensure consistent public health messaging, inter-jurisdictional consistency and that business and community impacts were minimised.

Which outlets are captured by the laws?

The kilojoule display laws only apply to a select group of food businesses known as standard food outlets (SFOs). A SFO is an ACT food business that sells standard food items and operates as part of a larger company (under a common trading name or franchise arrangement) at seven or more places in the ACT, and/or 50 or more places across Australia.

Businesses captured by the ACT kilojoule display laws typically include supermarkets, convenience stores and larger fast food/café and bakery chains that operate as part of a larger chain of businesses.

³ Blewett, N., Goddard, N., Pettigrew, Reynolds, C. and Yeatman, H. (2011). *Labelling Logic: Review of Food Labelling Law and Commonwealth of Australia*. Available at: www.foodlabellingreview.gov.au. Accessed 24 February 2016.

⁴ *Food Amendment Act 2010 (NSW)*.

What are the kilojoule display requirements?

The kilojoule display laws require SFOs to display:

1. the average energy content of their standard food items for sale where displayed on a menu, and
2. the reference statement 'The average adult daily energy intake is 8,700kJ' on a menu.

The average energy content displayed for each standard food item should be determined in accordance with Standard 1.2.8 – *Nutrition information requirements* of the Australia New Zealand Food Standards Code (the Food Standards Code).

For the purposes of the legislation, a menu includes any printed and electronic list that shows one or more food items for sale e.g. as a board, poster, leaflet or similar document. A menu that is available outside of the premises for sale via the internet or printed leaflet is also considered to be a menu.

The display requirements apply to ready-to-eat food and drink menu items that have been standardised for content and portion (i.e. standard food items) such as cakes, some bakery products, salads, pizza, ice-cream, etc.



Pre-packaged foods that are acquired and then sold by SFOs in the same container/wrapper are not considered standard food items and are not required to display their average kilojoule content. Such foods include packaged chocolates, potato chips, biscuits and pre-packaged sandwiches. In most cases, packaged foods of this description already detail the average energy content of their products on a Nutrition Information Panel (NIP), as required by the Food Standards Code.

To reduce the potential for consumer confusion, supermarkets may choose to display the average energy content of their standard food items in kilojoules per 100g of food (thus allowing consumers to compare the kilojoules in standard food items against the NIP on pre-packaged foods). Where supermarkets prepare packaged ready-to-eat foods on-site (e.g. cakes or bakery items) the average kilojoule content may also be displayed on a NIP. If the supermarket chooses to display the kilojoule content in this fashion, the NIP must meet the requirements set out by Standard 1.2.8 of the Food Standards Code.

Where standardised products are sold as a group (product bundling), such as meal-deals, the kilojoule content of the bundled products must also be displayed, as the bundle is considered a standard food item. However, if the product bundling is not standardised and requires further input from consumers before overall energy content can be defined, the bundle is not a standard food item (e.g. if the consumer must choose from a variety of cakes or drinks within a meal-deal, the meal-deal is not a standard food item).

A diagram representing the display of kilojoule information on menu boards is at Figure 1.

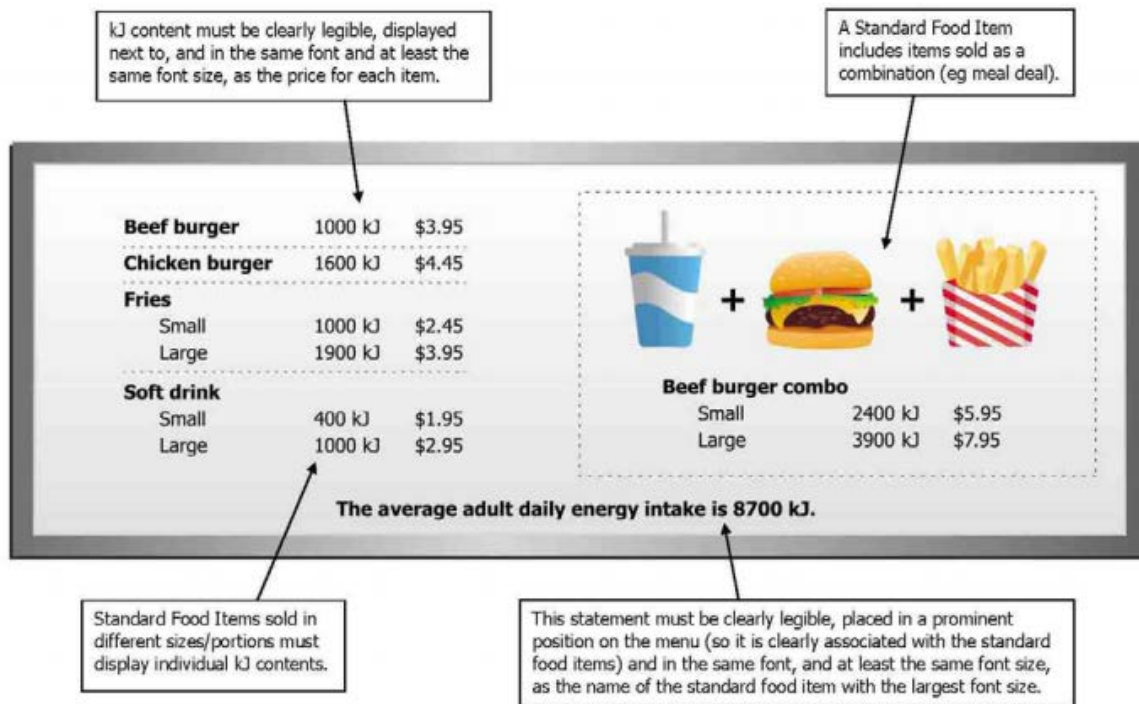


Figure 1 - Display of nutritional information on menu boards

Voluntary display

Some food businesses that are not otherwise required to display kilojoules may still choose to voluntarily display the kilojoule content of their standard food items. Food businesses that choose to display this information must do so in accordance with the requirements of the Food Act.

Exemptions

Under section 114 of the Food Act, the responsible Minister may exempt certain standard food outlets from the kilojoule display laws. Several types of businesses are currently exempt on the grounds that their capture would otherwise subject them to an unreasonable regulatory burden and may have unintended consequences. Exempt businesses include residential aged care facilities, caterers, school canteens and in-patient hospital food services.

A full list of businesses exempt from the kilojoule display laws is at [Appendix A](#).

Compliance framework

Since the commencement of ACT's kilojoule display laws, ACT Health has undertaken a range of activities to assist affected businesses in meeting their obligations to display the average kilojoule content of their standard food items. This has included ongoing discussions with standard food outlets during routine compliance activities and distributing ACT-specific information to support local standard food outlets (e.g. the [Kilojoule Display User Guide for ACT Food Businesses](#)).

ACT Health has responsibility for assessing food business compliance with the Food Act, including compliance with the kilojoule display laws.

Kilojoule display laws in other states and territories

All states and territories in Australia adopt the Food Standards Code under jurisdictional legislation to assist with the regulation of food safety, as well as food production, labelling and transport. Each jurisdiction is responsible for enforcing compliance with the Food Standards Code within their state or territory.

The requirement for businesses to display the average energy content of standardised food for sale is not a requirement under the Food Standards Code. This means that any decision to mandate the display of kilojoule information on food menus is at the discretion of individual state and territory governments. To date, the ACT, SA, NSW, VIC and QLD have introduced, or committed to introduce, kilojoule display requirements to varying degrees.

As a result of the unique business, community and government requirements of each jurisdiction, there are notable differences between jurisdictions in the operation of the kilojoule display laws. These include the types of businesses impacted, potential penalties and business exemptions. While jurisdictional legislation operates differently in implementing this requirement, the presentation of kilojoule information for consumers is broadly consistent across jurisdictions and is aimed at achieving the same outcome.

Any future work to harmonise the display of nutritional information on menu products could also be considered by national government bodies such as the Council of Australian Governments Health Council or the Australia and New Zealand Ministerial Forum on Food Regulation. All jurisdictions have representation on these groups and as such they could be used to guide any national discussions around regulatory consistency.

Review of the ACT kilojoule display laws

It is good practice for governments to regularly review policy and legislation. Reviewing legislation provides an opportunity to examine its relevance, assess whether it addresses stakeholder needs and assess how it is applied in practice. Such reviews are also important to ensure legislation is achieving its purpose and to identify areas for improvement.

This review of the ACT kilojoule display laws was undertaken in two parts:

1. A review of the operation of the ACT kilojoule display laws.
2. A review of the impact of the ACT kilojoule display laws.

1. Operational review

ACT Health commenced the review of the operation of the laws in June 2016. To ensure a breadth of the operation of the kilojoule display laws was assessed, the project sought to fulfil the following objectives:

1. Determine business compliance with the kilojoule display laws.
2. Assess regulation of the kilojoule display laws.
3. Identify potential improvements to the operation of the kilojoule display laws.

The review principally focused on the display of the average energy content of standard food items for sale (in kilojoules) and the display of the reference statement for the average adult daily energy requirement. These two components formed ACT Health's compliance criteria for the purposes of the review of the operation of the laws.

Operational review findings

Onsite menu compliance

To meet the review objectives outlined above, public health officers undertook 67 compliance inspections. This included at least one outlet from each of the identified 47 standard food outlet 'chains' captured by the kilojoule display laws in the ACT. The inspections included reviewing multiple types of menu boards present in the businesses, including display cabinet labels, drive-in facilities, dine-in menus, and behind-the-counter menu boards and posters. Outlets for inspection were selected at random using data from ACT Health's food business registration database.

On initial inspection 32 of the 47 standard food outlet chains displayed menu items that were compliant with the kilojoule display laws. A further 11 of the standard food outlet chains recorded only minor non-compliances. Minor non-compliances are issues that can be easily rectified by the business at short notice. The most commonly identified minor non-compliances included:

- The average kilojoule content information was displayed in an incorrect size and/or font.
- The average kilojoule content information was displayed for some, but not all, displayed standard food items.
- The required reference statement was not correctly displayed where required.

Four of the 67 inspected businesses were found to be displaying very limited or no kilojoule information or reference statement on menus where required. ACT Health is working with businesses that recorded non-compliances to ensure that kilojoule information is correctly displayed.

Compliance inspections identified that minor non-compliances were most commonly found with menus that were prepared or altered by individual businesses, as opposed to professionally printed menus distributed by a central head office. A majority of these non-compliances were found in tags and labels used in transparent temperature controlled display cabinets, such as deli cabinets, bain-maries and fridges. An example of a compliant cabinet display is portrayed in Figure 2.

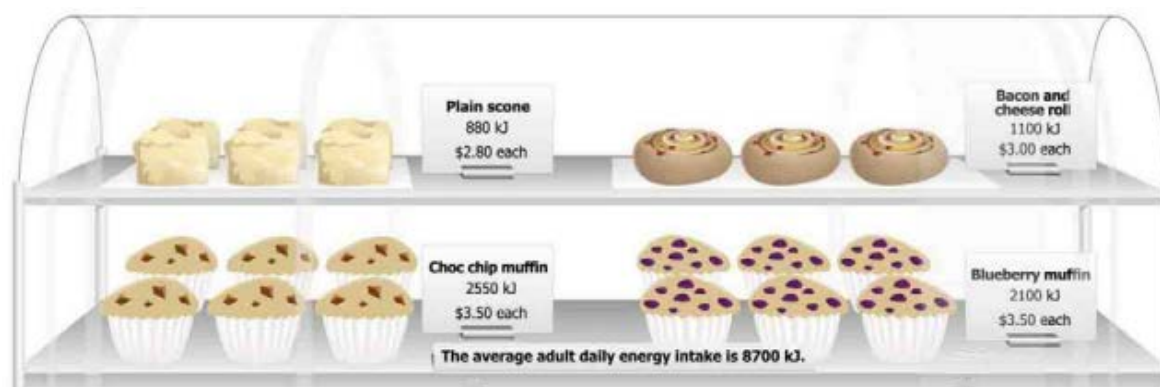


Figure 2 - Nutritional information in display cabinet

Remote / online menu compliance

Under the kilojoule display laws, nutritional information must be displayed on menus that are distributed outside the premises and from which a customer can place an order (e.g. printed leaflets or internet menus). Remote ordering services (e.g. websites or applications) enable consumers to place orders for, and purchase standard food items from, multiple sites of a 'chain' food business. Such menus, which allow for the remote sale of food, were assessed separately from the 67 onsite business inspections discussed above.

ACT Health public health officers assessed ten business menus that facilitated the sale of food offsite from the registered trading address (e.g. a website menu that facilitated the online purchase of pizza). Five of the ten business menus reviewed were found to be fully compliant with the kilojoule display laws. A further two business menus recorded only minor non-compliances due to not having nutritional information correctly displayed at the consumer's point of purchase. Three business menus did not display any nutritional information where required.



Since passage of the kilojoule displays laws in 2011, the sale of standard food items via electronic menus that are not (or cannot be) assessed during routine compliance inspections has vastly increased (e.g. foods purchased using smart-phone applications). As these menus are often not controlled by standard food outlets (e.g. operated by a third-party) and created/hosted outside the ACT, these electronic menus may not reflect an individual standard food outlet's in-store compliance with the laws. As such, these menus were not included in the review.

Further work regarding the application and regulation of the kilojoule display laws across online/remote menu services may be required. Due to the reach of online menu services, the regulation of kilojoule displays across this format would be best dealt with at a national level to ensure inter-jurisdictional consistency.

Findings against operational review objectives

As noted above, the kilojoule display laws ultimately seek to provide consumers with nutritional information to enable them to make more informed food choices.

This part of the review focused on gathering evidence to assess the operation of the laws, with the prospect of identifying areas requiring improvement and opportunities to support the objectives of the legislation. The objectives and outcomes of this part of the review are summarised below:

Review Objective: Assess business compliance with the kilojoule display laws

Key findings: The review identified a high level of compliance with the kilojoule display laws, with only four of the 67 standard food outlets audited failing to provide any nutritional information as required.

Non-compliances with the kilojoule display laws are investigated by ACT Health. Public health officers are working with businesses that recorded non-compliances to ensure that kilojoule information is correctly displayed.

Review Objective: Assess the management of the kilojoule display laws

Key findings: Compliance inspections identified areas where management and compliance with the laws could be improved, including kilojoule labelling in transparent temperature controlled display cabinets.

Public health officers are working with businesses that recorded non-compliances to ensure that kilojoule information is correctly displayed.

Online menus were not included in the review data, however some general issues with such menus have been noted in the report. With respect to online menus, this is a complex issue that evolved after the kilojoule display laws were passed. As such, this matter would be best dealt with at a national level to ensure inter-jurisdictional consistency.

2. Impact review

To complement the review of the operation of the laws, ACT Health contracted Garner Willisson in June 2016 to review the impacts of the kilojoule display laws on consumers and businesses in the ACT. The overarching objective of the impact review was to assess whether the laws are achieving their aims to promote and enable healthier food and drink choices. In undertaking the review, the following issues were explored:

- the frequency of purchasing from standard food outlets;
- ACT consumer knowledge and understanding of kilojoule displays and awareness of the average daily energy intake level (8700kJ reference statement);
- the extent to which ACT consumers notice and read kilojoule information when purchasing food and drink items from qualifying food outlets;
- the extent to which ACT consumers are influenced by kilojoule information and find it useful;
- business responses to the kilojoule display laws; and
- whether eligible businesses have witnessed changes in consumer knowledge and behaviours in response to kilojoule displays or have amended their practices, including through changes to product offerings.

The impacts of the ACT's kilojoule display laws were evaluated over a four month period, from November 2016 to February 2017, through:

1. A short survey of 288 consumers aged 16 years and older, who were purchasing from ACT food outlets between November and December 2016. The short survey, which was conducted on-site at three ACT food courts, aimed to assess consumer knowledge and understanding of kilojoule displays and the extent to which consumers consider kilojoule displays when purchasing from standard food outlets. In completing the survey, consumers were also asked how often they purchase food and drinks from standard food outlets, reasons for their most recent purchase and knowledge of kilojoules. Limited demographic information was also collected.
2. Focus groups with 35 consumers conducted between November and December 2016. The focus groups were used to explore whether consumers value kilojoule displays, if and how consumers modify their purchasing decisions and daily energy intakes on the basis of kilojoule display information, and strategies to support the use of kilojoule displays in guiding healthier (lower kilojoule) choices.

Focus group participants were drawn from five different demographic groups:

- i. young people aged 18-25 years;
 - ii. parents of infants and primary school-aged children;
 - iii. parents of teenagers;
 - iv. adults aged 25 to 54 years without children living at home; and
 - v. older adults aged 55+ years without children living at home.
3. Interviews with 15 business operators of ACT standard food outlets captured by the kilojoule display laws, covering standard (fast) food outlets, cafes and coffee shops, bakeries and supermarkets. The interviews explored how businesses have responded to the kilojoule display laws, and what they have observed about the influence of kilojoule displays on consumer

behaviours in store. The interviews, which were conducted over three months to February 2017, involved staff from national head offices as well as local business operators.

The design and methods used in completing the impact review drew upon the evaluation framework developed for the NSW Fast Choices Study (2013, at [Appendix B](#)). A search of academic and grey literature reviews on the impact of kilojoule displays and other nutrition labelling initiatives in Australia and overseas was undertaken to inform the review. The review obtained low risk ethics approval from the ACT Health, Human Research Ethics Committee in November 2016.

Impact review findings

Consumers

The following section presents key findings from the consumer research undertaken as part of the impact review. The quantitative results have been drawn from the short consumer survey which was administered in person in ACT food courts and had 288 respondents. The quantitative survey results are presented with the exploratory qualitative findings from focus groups with 35 consumers.

Review Objective: Assess the frequency of purchasing from standard food outlets

Key findings: The survey asked how often consumers purchase ready-to-eat food and drink items from standard food outlets. Over half (55%) of respondents reported purchasing items from these outlets at least once a week and 85% reported purchasing from standard food outlets at least once a month.

Review Objective: Assess knowledge and understanding of kilojoule displays and awareness of the 8700kJ reference statement

Key findings: More than one third (37%) of survey respondents said that they “think in kilojoules”; 26% “think in calories”; and 37% understand neither kilojoules nor calories. Focus groups revealed that, for some consumers, the existence of the two measures of energy is confusing. Fat, sugar and salt were identified by some focus group participants as having higher salience than kilojoules as measures of nutritional quality.

In terms of consumer awareness of the average adult daily energy intake level, 27% of survey respondents knew the “ballpark” figure of 8700kJ. However, the majority of respondents found the 8700kJ reference statement difficult to interpret for themselves and their family members. Some consumers are aware that this number is only relevant to some adults as energy requirements differ for a variety of reasons, such as a person’s age, sex, weight and activity level.

Review Objective: Assess the extent to which consumers notice and read kilojoule information

Key findings: Of the 288 consumers surveyed in ACT food courts, 204 (71%) had recently purchased food and/or drinks from a standard food outlet displaying kilojoule information.

Almost one third (31%) of these 204 respondents remembered **noticing** kilojoule displays at the time of purchase, and 56% of these respondents went on to **read** the information. Factors that influenced whether people noticed kilojoule displays at their most recent visit were explored, but there were no trends identified by age, sex, level of education or frequency of eating at fast food outlets.

Review Objective: Assess the influence of kilojoule display information on consumers

Key findings: Overall, 15% of survey respondents who had recently purchased food from a standard food outlet displaying kilojoule information reported being influenced “a little” or “a lot” by kilojoule display information. The survey findings indicate that kilojoule displays are used as intended by a small proportion of consumers. This signals an opportunity for this proportion to be increased.

Review Objective: Discuss the usefulness of kilojoule display information

Key findings: Among those who value kilojoule displays, focus groups indicated that this information is of particular use for people who are looking to control or reduce their weight, athletes, and people who make an effort to choose healthier options.

Some focus group participants questioned the rationale behind the application of the kilojoule display laws to some, but not all outlets operating in ACT food courts. Some suggested that the laws should be extended to all food court outlets, and to clubs, pubs and other establishments where food items are standardised. Some felt that kilojoule labelling would be useful when making online orders. However, it was also recognised that while consumer information is important, the viability of small businesses should be considered.

Focus group participants who did not value kilojoule displays raised the following issues:

- Some felt kilojoule information was not personally relevant to them or they knew they were purchasing food as a ‘treat’ and not as something they would eat on a regular basis.
- Some suggested kilojoules alone were not sufficient to indicate nutritional quality. Others noted kilojoule information is more easily interpreted when it reflects the energy content of a single serve food or drink item and that it can be difficult to interpret kilojoule information when presented on a per 100 gram basis.
- The level of “mathematical reasoning” required by consumers to relate the kilojoule content of a standard food item to the daily intake statement was identified as a barrier to using the information.

Other influencers of food and drink choices

Key findings: Other than kilojoules, various factors were cited by consumers as influencing their choice of food and drinks purchased from standard food outlets. Concepts of health and nutrition were identified by 37% of survey respondents as a factor in influencing their decision. Taste (54% of respondents), convenience (26%) and price (25%) were also cited as important factors.

Businesses

Interviews were conducted with 15 business operators of ACT standard food outlets captured by the kilojoule display laws, comprising nine local business operators and six head office executives. The businesses they represented were standard (fast) food outlets (seven participants), cafés/coffee shops (four participants), bakeries (three participants) and supermarkets (one participant).

Review Objective: Assess the response by businesses to the ACT's kilojoule display laws

Key findings: Business participants were broadly supportive of kilojoule displays as a public policy initiative and acknowledged the level of consumer interest in nutrition information. The positive response of participants to the introduction of the ACT's kilojoule display laws was influenced strongly by their perception of increasing consumer demand for nutrition information and healthier options.

Business participants reported having no difficulty in implementing the ACT's kilojoule display laws and this was attributed largely to the earlier introduction (in 2010) of the NSW Fast Choices legislation, and the high level of consistency between the NSW and ACT display laws. Both local and head office participants reported that ACT businesses rely exclusively on head office support to implement kilojoule display laws, making inter-jurisdictional consistency a priority.

Businesses further 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.

Review Objective: Assess the impact of kilojoule display laws on consumer behaviour

Key findings: Local business operators reported a range of views about their customers' responses to kilojoule displays. Generally they felt their customers had an expectation that kilojoule information would be provided, while noting that some customers had little interest in or understanding about kilojoules. They reported that some customers sought further information about healthier (lower kilojoule) options.

None of the business participants reported a reduction in overall sales due to kilojoule displays and some business operators reported that kilojoule displays had delivered a positive impact on sales mix, including an increase in demand for lower kilojoule meal combinations, side orders and drinks.

Review Objective: Assess the impact of kilojoule display laws on reformulation and menu changes

Key findings: A number of business participants attributed the influence of kilojoule display laws, coupled with increased consumer demand for healthier options, to some product reformulation and resizing. This included the addition of lower kilojoule offerings to menus and an increased availability of healthier options, including meal combinations, side orders and drinks.

The only negative impact reported was a degree of menu inflexibility resulting from the kilojoule display requirements. Two participants, a local business operator and head office executive, noted that the requirement to display kilojoule information limited the ability of some operators to adjust the standard items on their menus in response to local conditions or trial new products.

Reports by other jurisdictions

In addition to requiring a report on the review of the operation of the kilojoule display laws, s115 of the Food Act requires that the Minister presents with the report any study or review prepared by the Commonwealth or a State that deals with the requirement to display certain nutritional information at food outlets.

NSW was the first Australian jurisdiction to introduce the mandatory display of kilojoule information through its 'Fast Choices' legislation. The legislation came into effect on 1 February 2011 with a 12 month implementation period. The NSW Food Authority completed a review of the legislation in 2012 and a separate evaluation in 2013. TNS Social Research was commissioned to complete complementary consumer research to inform the evaluation. Findings from the review and evaluation have been published in three documents:

1. The NSW Food Authority's *Review of Fast-food Labelling Requirements ("Fast Choices")*, 2012
2. The NSW Food Authority's *Evaluation of kilojoule menu labelling*, 2013
3. TNS Social Research's *Fast Choices: An evaluation of energy purchased and consumer information* (commissioned by the NSW Food Authority), 2013.

These documents are at [Appendix B](#).

Comparable with the ACT experience, findings from the NSW review and evaluation indicated a high level of understanding and compliance with kilojoule display requirements among affected businesses. Where non-compliances were identified, these were resolved quickly in consultation with head offices. Enforcement action due to non-compliance was minimal.

The NSW evaluation also found evidence of effectiveness of kilojoule information in guiding consumer decision-making towards lower kilojoule choices. The evaluation collected evidence through consumer surveys undertaken between 2011 and 2013 of the food and drinks purchased from qualifying outlets. The evaluation reported a 15% reduction in the median kilojoule value of a meal purchased over the survey period.

While noting that kilojoule labelling was increasingly being used to aid food purchasing decisions, the TNS *Fast Choices* report acknowledged that consumer understanding of kilojoules was 'mixed' and often inaccurate. As such, the report recommended further public education to empower consumers to effectively use kilojoule displays.

Display of other nutritional information

As part of this review, the value of requiring the display of other nutritional information (i.e. salt, fat and carbohydrate content) on menu boards containing standardised foods has been considered. Studies and reports prepared by other Australian jurisdictions have been assessed to determine whether there is evidence to support the expansion of kilojoule displays to include additional nutrition information. Consideration has also been given to findings from a recent study that compared the national Health Star Rating system when used for fast food menu items and packaged foods.⁵

⁵ Dunford, E. K. et al (2017) A comparison of the Health Star Rating system when used for restaurant fast foods and packaged foods, *Appetite*, vol 117, pp 1-8

From a population health perspective, it is valid to consider expanding kilojoule display requirements to include other nutrition information. In addition to kilojoules, food and drinks purchased from standard food outlets are important contributors to dietary salt, fat and added sugar intakes. Consuming these nutrients in excess is associated with an increased risk of chronic disease and obesity-related illness.

However, while reducing population intakes of these nutrients can support positive health outcomes, evidence on the behavioural impacts of displaying salt, fat and carbohydrate content in standard food outlets is limited, and would need to be assessed against the additional compliance burden that would be imposed on businesses if the kilojoule display laws were expanded. As more data becomes available and the evidence base is better informed, the ACT will be in a stronger position to assess the value of expanding kilojoule displays to include additional nutrition information.

Given the complexity of the food regulatory system, and existence of the national Health Star Rating system, if a future option to expand the ACT laws is pursued, it is suggested that jurisdictions work together toward a uniform national approach. The NSW Food Authority review reached a similar conclusion, recommending that any expansion of the 'Fast Choices' legislation to include additional nutrition information be undertaken as part of the national food regulatory system.

Review Objective: Present and consider any study or review prepared by an Australian jurisdiction that deals with the requirement to display additional information (i.e. fat, salt or carbohydrate content)

Key findings: There is some evidence that supports the efficacy of kilojoule information in helping consumers to make informed dietary choices. However, there is currently insufficient information available to support changes to the kilojoule display laws to require the display of fat, salt, or carbohydrate content for standard food items.

In the interest of achieving greater national consistency, the ACT Government should consider future proposals for change in collaboration with other jurisdictions and with due consideration to all food labelling initiatives.

Discussion of findings

This review of the ACT's kilojoule display laws focused on gathering evidence to assess the operation and impact of the laws, with the prospect of identifying areas for improvement and opportunities to further support the legislation.

The review found evidence that the kilojoule display laws are operating as intended, with a high level of business compliance, and that this is having some impact on the dietary choices of people in the ACT. The review also found scope to increase the impact of the laws by addressing gaps in consumer knowledge and awareness, and continuing to work with businesses to support implementation.

Of the 67 standard food outlets inspected as part of the operational component of the review, only four were found to be displaying very limited or no kilojoule information or reference statement on menus where required.

Interviews with business operators uncovered broad acceptance and support for the ACT's kilojoule display laws as a public policy initiative. Some businesses reported changes to menu items and a positive impact on sales mix as a result of kilojoule displays. None of the businesses reported a reduction in overall sales. There were, however, strong calls from businesses for greater national consistency in the application of kilojoule display requirements. Differences in kilojoule display laws between jurisdictions were identified as contributing to industry uncertainty and increased compliance costs for businesses operating in more than one jurisdiction.

Since the introduction of the ACT's kilojoule display laws, new products and ways of marketing have emerged across standard food outlets, including the emergence of online/remote ordering services. Specific responses to such issues may be required over time. This would be best dealt with at a national level to ensure inter-jurisdictional consistency.

Overall, the review found that consumers are supportive of kilojoule display laws however there are various consumer knowledge gaps that prevent effective utilisation of the available nutritional information.

About one third of adult consumers notice kilojoule displays when they purchase food and drinks from standard food outlets. However, only a small proportion currently demonstrates the level of understanding required to use kilojoule display information effectively. Key among the gaps identified by the review that may be amenable to consumer education were the large proportion of consumers who:

- are not aware of kilojoules (energy) as a measure by which to assess the 'healthiness' of food and drinks; and
- do not know the average adult daily kilojoule intake (8700kJ reference statement).; and
- have difficulty in understanding and interpreting kilojoule information when presented on a per 100 gram (rather than per item) basis.

Some consumers identified fat, sugar and salt as having higher salience than kilojoules as measures of nutritional quality. However, a broader assessment of available evidence completed as part of this review failed to uncover sufficient information to support an expansion of kilojoule displays to include additional nutrition information at this time. If a future option to expand the ACT's kilojoule display laws is pursued, this should be undertaken through engagement and discussion at national fora on food and health.

Recommendations

The below recommendations are based on the findings of both the operation and impact reviews of Part 9 of the *Food Act 2001*.

Recommendation 1:

That the existing requirements under the Food Act 2001 for the display of kilojoule information for standard food items be maintained.

Rationale:

The review found that the laws operate as intended. That is, there is a high level of industry compliance with the display requirements, and the displays serve the purpose of providing information to consumers to enable informed dietary choices.

Businesses are widely supportive of the laws as a public policy initiative, and there is no evidence of a disproportionate burden on affected businesses.

Recommendation 2:

To support the current laws, the ACT Government should implement consumer awareness-raising and education activities to promote more widespread understanding and use of kilojoule displays in guiding purchase decisions.

Rationale:

While kilojoule displays appear to be used by about 15% of consumers who purchase from standard food outlets, the review found various consumer awareness and knowledge gaps that may prevent the effective utilisation of kilojoule display information. In particular, the review findings support the need for consumer education to:

- build awareness about the availability of kilojoule information in standard food outlets;
- raise community awareness of kilojoules as a measure of energy, and the average Australian adult daily energy intake of 8700kJ; and
- encourage ACT consumers to link what they learn from the education campaign to the kilojoule values displayed in-store to inform healthier food and drink choices.

Recommendation 3:

That the ACT Government work with businesses to increase awareness about consumer preferences for healthier options and continue to support the implementation of kilojoule display requirements.

Rationale:

Findings from the review show a growing demand for healthier options at standard food outlets and food businesses generally, and that consumers want access to information that enables them to make informed dietary decisions. This suggests a role for the ACT Government to engage with businesses to reinforce the high level of consumer interest in nutritional information, and continue to support the implementation of kilojoule display requirements.

This work should be undertaken with consideration to Recommendation 2 to ensure a complementary approach is taken to consumer education and business engagement.

Recommendation 4:

That the ACT Government work with all Australian jurisdictions to encourage nationally consistent kilojoule display laws and consistency in public messaging around kilojoule displays.

Rationale:

National consistency should be pursued as a priority, meaning that jurisdictions that do not currently have menu labelling legislation in place should be strongly encouraged to introduce consistent laws.

The review found that inconsistency in the application of kilojoule display requirements between jurisdictions creates an uneven playing field for food businesses and can create compliance issues. It may also present a source of consumer confusion.

National consistency would benefit consumers, industry and regulators. As such, any changes to the ACT's kilojoule labelling laws, if required, should be progressed through engagement and discussion at national fora on food and health, and supported by a robust policy process including cost-benefit analysis.

Recommendation 5:

That any future changes to the ACT's kilojoule display laws be considered in consultation with other jurisdictions to achieve greater national consistency and minimise any potentially negative consumer and/or industry impacts.

Rationale:

While the review found that some consumers identify fat, sugar and salt as important markers of nutritional quality, a broader assessment of available evidence failed to support an expansion of the ACT's kilojoule display laws to include such additional nutritional information at this time. In accordance with Recommendation 2, it is suggested that opportunities to improve the effectiveness of the ACT's existing kilojoule display requirements in guiding consumer decision-making are pursued in the first instance.

If a future option to expand the ACT's kilojoule display laws is pursued, this should be undertaken through engagement and discussion at national fora on food and health and supported by a robust policy process including cost-benefit analysis.

Food (Nutritional Information Displays) Exemption 2012 (No 1)*

Disallowable instrument DI2012-192

made under the

Food Act 2001, s 114 (Exemptions from pt 9)

1 Name of Instrument

This instrument is the *Food (Nutritional Information Displays) Exemption 2012 (No 1)*.

2 Commencement

This instrument commences on 1 January 2013.

3 Exemptions

The following are exempt from Part 9 of the *Food Act 2001*:

- (i) nursing homes for the aged and low care aged care establishments (as defined in the Schedule to Standard 3.3.1 of the Australia New Zealand Food Standards Code);
- (ii) hospital food services for patients;
- (iii) hospices (as defined in the Schedule to Standard 3.3.1 of the Australia New Zealand Food Standards Code);
- (iv) respite care facilities;
- (v) charitable organisations that are charity endorsed under subdivision 50-B of the *Income Tax Assessment Act 1997* (Cwlth);
- (vi) crisis accommodation providers declared under the *Residential Tenancies Act 1997*;
- (vii) pre-schools, primary schools, high schools or secondary colleges; or
- (viii) childcare centres that are licensed as a childcare service under the *Children and Young People Act 2008*.

4 Reason for Exemptions

It is not the intent of Part 9 of the *Food Act 2001* to capture the entities listed in section 3. Requiring these entities to comply with Part 9 would place upon them an unreasonable regulatory burden and may have unintended consequences.

Katy Gallagher MLA
Minister for Health
30 July 2012

*Name amended under Legislation Act, s 60

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

NB: The image of the Food (Nutritional Information Displays) Exemption 2012 pictured above has been spliced together for readability purposes so it can appear on one page. The details of the exemption have not been altered.

Appendix B – Government reports on nutritional information displays

1. *Review of Fast-food Labelling Requirements (“Fast Choices”)*. Prepared by the NSW Government Food Authority. November 2012. Available at:
<https://www.parliament.nsw.gov.au/la/papers/DBAssets/taledpaper/webAttachments/8934/Section%20106R%20Review%20of%20Food%20Act%202003.pdf>.
2. *Evaluation of kilojoule menu labelling*. Prepared by the NSW Government Food Authority (CP070/1308). July 2013. Available at:
http://www.foodauthority.nsw.gov.au/Documents/scienceandtechnical/fastchoices_evaluation_report.pdf.
3. *Fast Choices: An evaluation of energy purchased and consumer information*. Prepared for the NSW Government Food Authority by TNS Social Research Consultants. January 2013. Available at:
http://www.foodauthority.nsw.gov.au/Documents/scienceandtechnical/fast_choices_TNS_report.pdf

Appendix C – Government response to the kilojoule display laws review report

The below table shows the recommendations from the report *Review of Display of Nutritional Information for Food* and the ACT response and actions for each recommendation.

Recommendation 1: <i>That the existing requirements under the Food Act 2001 for the display of kilojoule information for standard food items be maintained.</i>	Rationale	Response and Actions
Recommendation 2: <i>To support the current laws, the ACT Government should implement consumer awareness-raising and education activities to promote more widespread understanding and use of kilojoule displays in guiding purchase decisions.</i>	Rationale While kilojoule displays appear to be used by about 15% of consumers who purchase from standard food outlets, the review found various consumer awareness and knowledge gaps that may prevent the effective utilisation of kilojoule display information. In particular, the review findings support the need for consumer education to: <ul style="list-style-type: none"> • build awareness about the availability of kilojoule information in standard food outlets; • raise community awareness of kilojoules as a measure of energy, and the average Australian adult daily energy intake of 8700kJ; and • encourage ACT consumers to link what they learn from the education campaign to the kilojoule values displayed in-store to inform healthier food and drink choices. 	Response and Actions No action required. The laws will continue to function as per the status quo. The Minister for Health and Wellbeing, Meegan Fitzharris MLA, already announced on 8 September 2016 a range of actions on food and drink marketing to help keep Canberrans healthy. This included the roll out of marketing and communications activities to motivate consumers towards healthier food and drink choices. Efforts are underway to implement this action. Consumer awareness-raising and education on kilojoule labelling will be delivered as part of the above marketing and communications activities. Kilojoule labelling represents one important tool that Canberra consumers can use to choose healthier, lower kilojoule options when purchasing food and drinks from fast food outlets. Both the New South Wales and Queensland Governments have implemented consumer awareness and education activities in support of their

		<p>kilojoule labelling schemes. New South Wales has the <i>8700 – Find Your Ideal Figure</i> campaign (available at www.8700.com.au), while Queensland's campaign is known as <i>Kilojoules on the menu</i> (hosted at www.healthier.qld.gov.au). ACT Health will explore opportunities to leverage these existing approaches.</p>
<p>Recommendation 3:</p> <p><i>That the ACT Government work with businesses to increase awareness about consumer preferences for healthier options and continue to support the implementation of kilojoule display requirements.</i></p>	<p style="text-align: center;">Rationale</p> <p>Findings from the review show a growing demand for healthier options at standard food outlets and food businesses generally, and that consumers want access to information that enables them to make informed dietary decisions. This suggests a role for the ACT Government to engage with businesses to reinforce the high level of consumer interest in nutritional information, and continue to support the implementation of kilojoule display requirements.</p> <p>This work should be undertaken with consideration to Recommendation 2 to ensure a complementary approach is taken to consumer education and business engagement.</p>	<p style="text-align: center;">Response and Actions</p> <p>On 8 September 2016, in addition to the above mentioned actions at Recommendation 2, the Minister for Health and Wellbeing announced an initiative to work with businesses across Canberra to provide and promote healthier food and drink choices. Efforts are underway to implement this action.</p> <p>Efforts to increase awareness among standard food outlets about consumer preferences for healthier options will be undertaken as part of the above business engagement initiative.</p> <p>With respect to continuing to support implementation of the laws, Public Health Officers consider the need for kilojoule displays as part of the food business inspection process. Public Health Officers undertake their role based on the 'engage, educate, enforce' compliance model. This means that engaging with businesses and educating them on how to comply with the laws is, and will continue to be, a priority for ACT Health.</p>

Recommendation 4:	Rationale	Response and Actions
<p><i>That the ACT Government work with all Australian jurisdictions to encourage nationally consistent kilojoule display laws and consistency in public messaging around kilojoule displays.</i></p>	<p>National consistency should be pursued as a priority, meaning that jurisdictions that do not currently have menu labelling legislation in place should be strongly encouraged to introduce consistent laws.</p> <p>The review found that inconsistency in the application of kilojoule display requirements between jurisdictions creates an uneven playing field for food businesses and can create compliance issues. It may also present a source of consumer confusion.</p> <p>National consistency would benefit consumers, industry and regulators. As such, any changes to the ACT's kilojoule labelling laws, if required, should be progressed through engagement and discussion at national fora on food and health, and supported by a robust policy process including cost-benefit analysis.</p>	<p>The ACT Government will continue to work through its representatives on various national food regulation and health fora to encourage nationally consistent kilojoule display laws and consistency in public messaging around kilojoule displays.</p> <p>These fora include the Australia and New Zealand Ministerial Forum on Food Regulation, the Council of Australian Governments Health Council, and their subcommittees (such as the Food Regulation Standing Committee and the Australian Health Ministers' Advisory Council).</p>
<p>Recommendation 5:</p> <p><i>That any future changes to the ACT's kilojoule display laws be considered in consultation with other jurisdictions to achieve greater national consistency and minimise any potentially negative consumer and/or industry impacts.</i></p>	<p>While the review found that some consumers identify fat, sugar and salt as important markers of nutritional quality, a broader assessment of available evidence failed to support an expansion of the ACT's kilojoule display laws to include such additional nutritional information at this time. In accordance with Recommendation 2, it is suggested that opportunities to improve the effectiveness of the ACT's existing kilojoule display requirements in guiding consumer decision-making are pursued in the first instance.</p> <p>If a future option to expand the ACT's kilojoule display laws is pursued, this should be undertaken through engagement and discussion at national fora on food and health and supported by a robust policy process including cost-benefit analysis.</p>	<p>Response and Actions</p> <p>This recommendation does not require action at present. However, if changes were to be considered to relevant ACT legislation, other jurisdictions would be consulted as per Recommendation 4.</p>