

# Food Regulation 2016

Explanatory notes for SL 2016 No. 122

made under the

*Food Act 2006*

## General Outline

### Short title

*Food Regulation 2016*

### Authorising law

Section 278 of the *Food Act 2006*

### Policy objectives and the reasons for them

Under section 54(1) of the *Statutory Instruments Act 1992*, the *Food Regulation 2006* (the 2006 Regulation) will automatically expire on 1 September 2016. The *Food Regulation 2016* (the Regulation) replaces the 2006 Regulation, prescribing certain matters to support the *Food Act 2006* (the Food Act) including the operational details of the menu labelling scheme.

The purposes of the Food Act are to ensure food for sale is safe and suitable for human consumption, to prevent misleading conduct relating to the sale of food, and to apply the *Australia New Zealand Food Standards Code* (the Food Standards Code). These purposes are achieved primarily by providing for the licensing of particular food businesses, through the development, implementation and audit of food safety programs for high risk food businesses, and the monitoring and enforcement of compliance with the Food Act and the Food Standards Code.

The *Health Legislation Amendment Act 2016* (the Amendment Act) amended the Food Act to provide for the display of nutritional information for food. The menu labelling scheme in chapter 6A of the Food Act requires certain food businesses that sell ready-to-eat food to display on their menus, both in-store and where distributed electronically and in print, the average kilojoule content of each standard food or drink item that they sell, and an average energy intake statement for adults. The menu labelling scheme is designed to assist consumers to make informed and healthier fast-food choices by providing them with easily understood nutrition information at the point-of-sale, whether that is in a queue in-store, at home ordering over the phone or internet, or when on-the-go and ordering via a mobile application.

## **Achievement of policy objectives**

The Regulation replaces the 2006 Regulation, prescribing matters necessary to support the Food Act. The Regulation prescribes:

- items that may be sold by a food business without the business becoming a licensable food business
- details of the licence to be displayed on mobile premises
- food businesses that are exempt from the requirement to have an accredited food safety program and food businesses that must have an accredited food safety program
- contaminants and foods for the purposes of provisions requiring notice to be given of isolation of contaminants, and
- fees for applications made by auditors under the Food Act.

To implement the menu labelling scheme, part 4 of the Regulation prescribes the operational details of the scheme for the purposes of chapter 6A of the Food Act. In particular, the Regulation prescribes:

- ready-to-eat food that is prepackaged
- how the average energy content of a standard food item must be worked out
- the way to display nutritional information for a standard food item both for supermarkets and other standard food outlets
- the places for displaying nutritional information, including where the average energy intake statement for a standard food item must be displayed on menus, at drive-through facilities and display cabinets,
- the average energy intake statement that must be displayed, and
- businesses that are required to display nutritional information and those that are exempt from the scheme.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the policy objectives of the Food Act.

## **Inconsistency with policy objectives of other legislation**

No inconsistencies with the policy objectives of other legislation have been identified.

## **Alternative ways of achieving policy objectives**

The Regulation is the only effective means of achieving the policy objectives.

## **Benefits and costs of implementation**

Aside from the menu labelling component, the Regulation is consistent with the 2006 Regulation and accordingly imposes no additional costs on persons or organisations.

The menu labelling component of the Regulation will provide consumers with easily understood and readily accessible information about the energy content of fast-food to inform consumption choices. Approximately 2.5 million Queensland adults and children are overweight or obese. In 2015, overweight and obesity were estimated to cost Queensland

\$1.72B in productivity losses and health system costs. The loss of healthy life, that is, the disease burden, results in an additional cost of \$9.5B, bringing the total cost to \$11.2B. This equates to nearly \$5,000 for each overweight or obese person in Queensland.

Compliance costs for industry may include the nutritional analysis of food and drink items to determine kilojoule content; design and production costs for new compliant menus and associated materials; and costs to train employees so that they can respond to customer queries about menu labelling and kilojoule content. In a submission to the 2011 Australian National Labelling Review, the Australian Food & Grocery Council (AFGC) indicated that menu labelling would cost an estimated \$3,500-\$4,500 per outlet. Based on the upper range of the AFGC estimate this equates to a total cost of less than \$5.2M for the approximately 1,150 outlets currently not displaying any form of kilojoule labelling in Queensland. For the more than 2,300 outlets already displaying some form of kilojoule labelling, the costs to fully comply with the Queensland legislation are expected to be minimal.

Implementation costs to Government associated with the menu labelling scheme will be met from within existing budget allocations. Costs will include a consumer industry and awareness campaign, business support mechanisms, ongoing monitoring and enforcement and evaluation and review.

## **Consistency with fundamental legislative principles**

The Regulation is consistent with the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*.

## **Consultation**

The Office of Best Practice Regulation was consulted in relation to the Regulation and advised that a Regulatory Impact Statement is not required.

The Department of Health conducted targeted consultation with a wide range of stakeholders on the menu labelling scheme component of the Regulation. Stakeholders generally supported the proposed menu labelling scheme, noting the importance of a nationally consistent scheme. This feedback was incorporated into the Regulation. The menu labelling amendments to the Regulation were also considered by the former Health and Ambulance Services Committee (the Committee) during its enquiry into the Health Legislation Amendment Bill 2015. The Committee made no recommendations regarding the Regulation.

Local government has been advised of the remake of the 2006 Regulation and no concerns were raised.

There was no other external consultation on the Regulation as it is consistent with the 2006 Regulation.

# Notes on provisions

## Part 1 Preliminary

### Short title

*Clause 1* provides that the short title is the *Food Regulation 2016*.

### Definition

*Clause 2* defines the term *supermarket* for the purposes of the Regulation.

## Part 2 Licensable food businesses

### Sale of prescribed food—Act, s 48

*Clause 3* provides that certain foods are prescribed for the purposes of section 48(2)(k) of the Food Act. Section 48(2)(k) provides that a food business may sell certain foods without becoming a licensable food business for the purposes of the Food Act. The foods prescribed are those in part 1 of schedule 1 (food other than snack food), and meals sold by a non-profit organisation if: the organisation is a surf lifesaving club, a member of the club is involved in the preparation of the meal, and the meal is sold to a member of the club for a nominal amount.

Subsection (2) provides that food mentioned in part 1 of schedule 1 is not prescribed if the food is in a form that makes it potentially hazardous, such as couscous in a salad or pasta that is cooked.

Subsection (3) prescribes, for the purposes of section 48(3)(d) of the Act, that *snack food* includes the food listed in schedule 1, part 2 of the Regulation. The effect of this provision is that these types of snack food may be sold by a food business without it becoming a licensable food business for the purposes of the Food Act.

### Display of licence details by mobile premises—Act, s 69

*Clause 4* prescribes that the details of a licence to be displayed on a mobile premises are:

- the name and telephone number of the local government that issued the licence
- the number of the licence as issued by the local government
- the expiry date of the licence
- the licensee's full name
- if the mobile premises are a vehicle that is required to be registered under the *Transport Operations (Road Use Management) Act 1995*, the registration number of the vehicle, and
- if the premises are a food vending machine, the serial number for the food vending machine or another unique identifying number or mark for the food vending machine.

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## Part 3 Accredited food safety program

### Prescribed food business—Act s, 99

*Clause 5* provides that the following types of food businesses must have an accredited food safety program:

- a relevant facility that processes potentially hazardous food for at least six persons in the facility's care at a time (for example, a residential aged care facility)
- a relevant facility that serves potentially hazardous food to at least six persons in the facility's care at a time (for example, a residential aged care facility that serves meals, prepared by an off-site supplier, to persons in its care)
- a ready-for-consumption food business processing ready-for-consumption food that includes potentially hazardous food and is for service to at least six persons at a time (for example, a cook-chill facility that processes food for service to patients in a private hospital), and
- a food business whose principal activity is processing ready-for-consumption food for delivery by a delivered meals organisation if the food includes potentially hazardous food and is for delivery to at least six persons at a time (for example, a Meals on Wheels branch that cooks meals for delivery to frail or aged persons).

Clause 5 also prescribes a number of definitions for the Regulation, including *ready-for-consumption food* and *ready-for-consumption food business*. These definitions are consistent with the definitions in the 2006 Regulation. The term *ready-to-eat* is replaced by *ready-for-consumption* to avoid confusion with references to *ready-to-eat food* in part 4 of the Regulation, which relates to the menu labelling scheme.

### Exemption from requirement for accredited food safety program—Act, s 99

*Clause 6* provides that a licensee is exempt from the requirement to have an accredited food safety program if on-site catering is provided at part of a premises on not more than 11 occasions in any 12-month period and for not more than 199 persons on each occasion.

## Part 4 Nutritional information for food

### Prepackaged food—Act, s 164C

*Clause 7* provides that an item of ready-to-eat food is prepackaged, and therefore not a standard food item, if the food:

- arrives at the standard food outlet in a container or wrapper, whether or not the food is also in an outer container or wrapper that contains multiple units of food
- is not removed from the container or wrapper, other than the outer container or wrapper, before it is sold, and
- has a nutritional information panel that is easily visible.

The *Principles for Introducing Point-of-Sale Nutrition Information in Standard Food Outlets* (the National Principles) endorsed by the former Australia and New Zealand Food Regulation Ministerial Council make clear that menu labelling schemes introduced by jurisdictions are not intended to apply to items of food that have a nutritional information panel.

**Prescribed way of working out nutritional information—Act, ss 164E and 164F**

*Clause 8* provides that the average energy content of a standard food item must be worked out in accordance with the way the average energy content under the Food Standards Code is calculated. The Regulation provides for necessary adjustments to be made to ensure the calculation is for the whole food item, rather than per 100 grams of the food item. It also notes that the number of kilojoules may be rounded to the nearest 10 kilojoules.

**Prescribed way of displaying nutritional information—Act, ss 164E and 164F**

*Clause 9* prescribes the way of displaying nutritional information. It requires that nutritional information be clearly legible, and in specified font, font size and colour based on other information on the menu or display. The average energy content of a standard food item must be displayed at the same time and for the same period as the name and/or price of the item. Supermarkets can display the average energy content of a standard food item either for the whole of the item or 100g of the item. For a standard food outlet that is not a supermarket, the average energy content of a standard food item must be displayed for the whole of the item. The abbreviation kJ must be used for kilojoules. The average daily energy intake statement must be displayed at the same time as the nutritional information for standard food items is displayed.

**Prescribed places for displaying nutritional information—Act, ss 164E and 164F**

*Clause 10* prescribes the places that nutritional information must be displayed. This includes requirements regarding the proximity of the nutritional information with respect to other information about the food item.

**Average energy intake statement—Act, s 164E**

*Clause 11* provides that the *average energy intake statement* is ‘The average adult daily energy intake is 8700kJ’. This is in line with the National Principles.

**Prescribed licensable food business—Act, s 164E**

*Clause 12* provides that a prescribed licensable food business is a licensable food business that sells standard food items by retail at 20 or more places in Queensland or at 50 or more places in Australia, including as part of a chain of businesses.

However, a prescribed licensable food business does not include:

- a cinema, convenience store or service station
- a licensable food business that primarily involves off-site catering or on-site catering, as defined by sections 17 and 18 of the Food Act respectively
- a licensable food business that is carried on from mobile premises that are a vehicle
- a licensable food business that is carried on by a non-profit organisation, such as Meals on Wheels or a sporting club
- a licensable food business that primarily provides food services to patients of a health service facility, or

- a licensable food business that only sells food that is intended to be consumed on the premises at which it is sold.

Food businesses that are not licenced but fall into the categories above will not be captured by the scheme as the mandatory display provisions in the Food Act apply only to licensable food businesses (section 164E of the Food Act). However, if a food business of the type listed above or a food business that is not licensable chooses to voluntarily display nutritional information, the food business will be required to comply with the requirements for mandatory display (section 164F of the Food Act).

Clause 12 also excludes a licensable food business in relation to a standard food item for a period of not more than 60 consecutive days during which the item is sold on a trial basis, provided the item is only sold at five or less standard food outlets during the trial period, and the item has not previously been sold by the food business at any of the trial outlets.

## **Part 5                    Miscellaneous**

### **Prescribed contaminants—Act, s 269**

*Clause 13* provides that, for section 269 of the Food Act, the contaminants listed in schedule 2 are prescribed contaminants.

### **Prescribed food—Act, s 270**

*Clause 14* prescribes that, for the purposes of section 270 of the Food Act, food other than raw meat is prescribed. Subsection (2) provides that raw meat does not include cured, dried or smoked meat or uncooked fermented meat.

### **Fees**

*Clause 15* provides that the fees payable under the Act are stated in schedule 3.

## **Part 6                    Repeal**

### **Repeal**

*Clause 16* provides that the *Food Regulation 2006*, SL No. 147 is repealed.

## **Schedule 1            Prescribed food**

### **Part 1                Food other than snack food**

Part 1 of schedule 1 prescribes food other than snack food for the purposes of section 48(2)(k) of the Food Act.

### **Part 2                Snack food**

Part 2 of schedule 1 prescribes snack food for the purposes of section 48(3)(d) of the Food Act.

## **Schedule 2      Prescribed contaminants**

Schedule 2 lists the prescribed contaminants for the purposes of section 269 of the Food Act.

## **Schedule 3      Fees**

Schedule 3 prescribes the fees payable under the Act for:

- approval as an auditor
- renewal of approval as an auditor, for each year of the approval
- amendment of the conditions of an approval as an auditor, and
- replacement of a damaged, destroyed, lost or stolen auditor's approval.

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