



NSW Food Authority

safer food, clearer choices

# Better Regulation Statement

Provision of nutritional information at point of sale in standard retail menu food outlets

October 2010

NSW/FA/CP044/1010

# 1. Executive summary

This assessment considers three options to regulate the provision of nutritional information at point of sale in standard menu retail food outlets in NSW against better regulation principles. It provides Cabinet with sufficient information to conduct a detailed assessment of the proposed option in relation to the principles of better regulation. This analysis also meets the requirements of Schedule 2 of the Subordinate Legislation Act 1989.

This assessment is somewhat unique given the context in which the three options have emerged. The background and development of the regulatory proposal are such that industry approached the NSW government with a self-regulatory proposal. This industry-supported model forms the basis of the regulatory intervention now preferred.

In determining the preferred option, the NSW Food Authority (the Authority) applied the same principles of better regulation to both the quasi-regulatory self-regulation approach and the regulatory intervention. The costs of the two options are presumed to be equivalent as the obligations placed on business are identical. In the analysis, it is the aspects of control, consistency, uptake and likelihood of successfully achieving the public health objective that clearly lead to identification of Option 3 as the preferred option.

Options to be analysed:

## ***Option 1: Do nothing***

Under this option, we would maintain the status quo.

## ***Option 2: Adopt an industry-led "code of practice" model (a self-regulatory approach)***

In partnership with the Australian Food and Grocery Council (AFGC), the NSW Government would develop an industry "Code of Practice" for the provision of nutritional information in standard menu retail food businesses. The NSW Food Authority (the Authority) and NSW Health would conduct an independent evaluation of the initiative. This approach would be endorsed by industry associations but is unlikely to be supported by public health professionals, academics and consumer advocates.

## ***Option 3: Implement mandatory requirements for the provision of nutritional information at point of sale***

The Authority would introduce a requirement for standard menu retail food businesses to provide certain nutritional information at point of sale. The requirements would cover matters such as the type of information to be provided, the form in which it must be provided and the scope of retail food businesses who must comply. The compliance and enforcement framework would be designed so that it is an extension of the existing arrangements between local councils and the Authority.

Option 3 is preferred on public health and economic efficiency grounds. By focusing on energy dense foods generally, rather than limiting the intervention to a narrow segment of industry, Option 3 provides the greatest opportunity for increased consumer understanding and subsequent behaviour change.

Industry supports provision of nutritional information at point of sale in standard menu retail food businesses, however the AFGC has indicated a preference for Option 2. This view is not shared by public health professionals and consumer advocates as the success of industry self-regulatory initiatives in similar fields has been variable. For example, recent research indicates that the industry code on responsible marketing to children has had limited success due to lack of uptake by food companies. Additionally, there is significant concern that the industry's proposed approach is not evidence based and could lead to increased consumer confusion and lack of clarity.

The NSW proposal aligns with the recent decision in Victoria to mandate the provision of kilojoule information at point of sale. It is also consistent with current national consideration of the policy drivers and prioritisation of mandatory labelling information.

Implementing mandatory disclosure of nutritional information at point of sale in standard menu retail food businesses is the preferred regulatory option to enable informed and healthier nutritional choices by consumers. The concept of a clear, consistent and simple message combined with supporting government educational initiatives would achieve a good balance between raising the knowledge of all consumers in NSW whilst placing a minimal impost on the quick service restaurant industry.

Finally, overseas experience shows that the long term benefits of a regulatory intervention similar to Option 3 are significant. For example, in some jurisdictions industry has rapidly moved toward reformulating products to healthier options once nutritional information disclosure requirements have come into effect. For this reason, it is anticipated that Option 3 will act not only as an information source but also as a driver to encourage industry to undertake reformulation of unhealthy products at a faster rate than is currently being achieved.

## **2. Need for government action**

Government and community interest in the disclosure of nutritional information at point of sale in standard menu retail food businesses has been growing for some time both locally and internationally. Public health professionals and academics advise that behaviour change in consumers, particularly around food consumption is inherently complex and requires action on multiple levels to have effect. Some of these are attributable to the individual, others relate to the environment in which that individual interacts. Food labelling forms part of that environmental context that supports individuals to make healthier choices which itself can drive nutritional improvements in the food supply, even if consumers are not fully cognizant of it.

Australians now spend an estimated 42 cents in every food dollar eating out of home, 15 cents of which is spent on fast food alone. Traditionally when eating out sizes are larger and in most cases the meals will contain more saturated fat and salt than the meals prepared at home. This lack of knowledge and understanding of the nutritional value of foods prepared and served away from home means that many Australians who eat out regularly do not consider the impact this may have on their overall diet and long term disease risk.

### **2.1 The case in New South Wales**

#### ***NSW policy development***

On 18 August 2010, the Premier convened a QSR Forum to engage with industry, public health professionals and consumer stakeholders on the issue of the provision of nutritional information at point of sale in standard menu retail food businesses. At the conclusion of the forum, the Premier announced her intention to proceed rapidly with the development of policy options for NSW. To this end the QSR Labelling Reference Group was established, chaired by the NSW Food Authority (the Authority). The work of the Reference Group to date has primarily been to develop a trial model for implementation in standard menu retail food businesses, designed to provide an evidence base for a state-wide or national approach to any potential intervention.

#### ***The current food labelling laws in NSW***

Currently, all food businesses in NSW that provide food for sale are required to comply with various requirements specified within the national *Food Standards Code* (Standards 3.2.2 and 3.2.3).

From a regulatory perspective the Authority, in partnership with local councils, administers and enforces the national *Food Standards Code* (the Code) in NSW. Generally, local councils administer and enforce the Code in standard menu retail food businesses.

Restaurant food, including fast food is not currently required to be labelled under the Code, however retail outlets do need to supply information on allergenic ingredients upon request or where a particular content claim is made with respect to the food.

The proposed nutritional information disclosure initiative would mandate the provision of nutritional information in standard menu retail food businesses. Standard menu retail food businesses would be required to place the kilojoule content of each food product on the menu board, adjacent to and in text at least as clear and legible as the price for each item. In addition, a statement advising of the recommended daily kilojoule intake (8700kJ) would be required to be placed prominently on the menu board.

The requirements would apply to standard menu retail food businesses with 20 or more sites in NSW (or 50 sites nationally) which sell standard production food items.

The proposed initiative will increase consumer knowledge and understanding of nutritional information in the standard menu retail food context and is expected to have a long-term effect on public health outcomes.

## **2.2 Additional intervention in the standard menu retail food sector is needed**

Results from the 2009 NSW Population Health Survey show that 52.5% of NSW adults (16 years and over) were overweight or obese, which represents a significant increase from 41.8% in 1997. In 2009, a significantly higher proportion of males (59.5%) than females (45.4%) were overweight or obese. Adults living in rural areas, adults from lower socioeconomic groups and Aboriginal adults are more likely to be overweight or obese compared to the state average.

Obesity and associated chronic disease pose a huge financial burden for government and individuals. Access Economics estimated the national cost of obesity (excluding overweight) in 2008 at over \$8 billion. The net cost of lost wellbeing adds an additional \$50 billion, bringing the total cost of obesity in Australia in 2008 to over \$58 billion. **The NSW component of the total obesity cost is \$19 billion.**

Reducing rates of overweight and obesity will require a long term commitment to social change, through multiple strategies, by all tiers of government, a broad range of government agencies, the private and not for profit sectors and the NSW community.

An intervention of the nature proposed in standard menu retail food businesses is justified due to the sheer volume of food purchases made at these outlets. BIS Shrapnel<sup>i</sup> estimate that 30 per cent of the money spent by consumers on food is spent at restaurants and fast food outlets; and nearly half of this is spent on fast food. This 15% figure matches the figure cited and relied upon by the Dietitians Association of Australia.

These proportions appear to have been relatively stable in recent years, despite increasing public interest in health and fitness generally. Both the 1999 and 2003-04 census results indicate that Australian households spent approximately 27% of their weekly food budget on "meals out" (incorporating restaurant and fast food outlets).

ABS Census 2003-04 provides further insight into consumption habits. In 2003-04 urban NSW had the highest average expenditure on food and non-alcoholic beverages at \$173 per week. The same study found that on NSW, average household weekly spending on takeaway meals and fast food was \$24.82 – higher than any other state. This compares to average weekly expenditure on vegetables of \$11.13.

There are almost 17,000 fast food outlets throughout Australia (28% of all commercial foodservice outlets). In total, BIS Shrapnel estimates that 1.64 billion meals and takeaways were served by fast food chains and independent outlets during 2007. This accounts for 44% of all meals served in the commercial food service sector. ABS statistics also reveal a 105% increase in consumption of "fast food" (based on \$ value) over the 10 years from 1999 to 2009.

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<sup>i</sup> BIS Shrapnel, 2009

The evidence supporting the need for nutrition information on menus is clear. Foods eaten away from home have been shown to contain more kilojoules or calories per serve and to be of larger portion size than meals prepared at home. The frequency someone eats out of home is related to weight status, with studies showing frequent fast food consumption is associated with weight gain over time.

These same studies also indicate that the vast majority of consumers considerably underestimate the kilojoules/calories, fat, saturated fat and salt content of unhealthy foods. In one overseas study, consumers underestimated the energy content of unhealthy foods by an average of 642 calories or 2696 kilojoules which is one third of an average adult's daily energy needs.

This is an important insight as it reveals the lack of understanding of the kilojoule content in quick service foods. This presents the question of how consumers can be expected to make informed, healthy choices in the absence of information.

It is this type of insight that has led public health and consumer advocates to demand action from government. The evidence in this regard is still building, but behaviour change is complex and is reliant on a number of factors to enable that behaviour change.

The impact of menu labelling may also affect food choices later in the day. Some studies suggest that the provision of calorie/kilojoule information *combined with* recommended daily intake information may not influence the meal choice at the time, but it may be an important factor in determining food choices at the **next** meal.

### **2.3 Public health and consumer advocates support**

Public health and consumer advocates such as the Heart Foundation, Choice and the George Institute for Global Health have long been committed to challenging food companies to provide healthier food choices. Their experience in working with the food industry and the food service sector demonstrates that the provision of nutrition information and labelling in food service is possible and therefore should be a mandatory requirement. The fundamental principle underlying this issue, according to these advocates, is to make the 'healthy choice the easy choice'.

According to the George Institute for Global Health, there is a direct link between over-consumption of unhealthy foods and obesity. In turn, obesity is concretely linked to increased risks of chronic and acute illnesses such as diabetes, high blood pressure, heart attack and stroke. The rapidly increasing rate of these illnesses in the NSW community places increasing strain on both public health budgets and individual consumers who fund medication and treatment. For example, with respect to hypertension the current cost of addressing hypertension in Australia is estimated to be approximately \$1 billion<sup>ii</sup>.

The Heart Foundation has recently publicly called on Governments to legislate for mandatory menu board labelling at point-of-purchase for standard food items sold in businesses with 20 or more sites including:

- Café or coffee chain outlets and Bakery chains,
- Standard menu retail food businesses, fast food chains, independent fast food outlets, and
- Snack food chains, ice-cream chains outlets, and juice bars.

Consultation conducted through the Premier's QSR Labelling Reference Group has confirmed that, as a first step, the provision of kilojoules accompanied by a reference to daily kilojoule requirements would be an acceptable methodology.

Public health professionals have stressed that, to have the most benefit, this nutrition information should ideally be adjacent to the menu item, at the point-of-purchase, and in a format that ensures consumers have the best chance of noticing the information. The establishment of a consistent monitoring and evaluation system is similarly supported.

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<sup>ii</sup> WHO Technical Report 2006

### **3. Objective of government action**

#### **3.1 Provide clear, unambiguous and simple information**

The key objective of the nutritional information disclosure initiative is to provide clear, unambiguous and simple information to consumers to enable them to make informed purchasing decisions. By providing a consistent, state-wide system, the initiative will prevent the potential proliferation of multiple industry led systems which may lead to greater consumer confusion rather than greater consumer awareness.

#### **3.2 Effect consumer behaviour change in purchases**

Consumer choice in the “fast food” context differs from decisions made in supermarkets and other environments. Consumer behaviour change may not occur upon the first interaction with new nutritional information, as the nature of “fast food” purchases is that they are rapid, convenience based and time driven. For this reason, the provision of supporting educational information will assist consumers in understanding both the meaning of the labelling and the impact of over-consumption of unhealthy foods on long-term health.

Improved knowledge and understanding of both nutritional content of “fast food” products and nutritional information generally should lead to a change in consumer choices and a longer term decrease in both childhood and adult obesity associated with over-consumption of unhealthy foods.

#### **3.3 Increase consumer confidence in the nutritional information provided**

Some “fast food” businesses have been early, voluntary adopters of disclosure systems within their restaurants. For example, McDonalds provides nutritional information on packaging of their products. This has had questionable impact for two reasons. Firstly, the information is provided after the sales transaction has occurred and the decision to purchase is irreversible. Secondly, consumers tend to view the information provided by companies as marketing tools, lacking in credibility.

The provision of mandatory information in a style and form prescribed by Government should improve consumer confidence in the information itself. In addition, by requiring the information to be provided when the purchasing decision is being made (ie: at point of sale) there is a significantly improved chance that the information will have a positive impact on the consumer.

#### **3.4 Consistent regulatory environment across NSW and Victoria**

In July 2010 Victoria announced that they would be implementing mandatory disclosure of kilojoule content in quick service restaurants within that state. The implementation of similar disclosure requirements in NSW will achieve alignment with Victoria ensuring a consistent regulatory environment across both states. The Authority understands that other jurisdictions including Queensland and South Australia are also currently giving consideration to mandatory disclosure approaches. Given that both NSW and Victoria are proposing regulatory interventions focussing on mandatory kilojoule disclosure in the first instance, it is likely that both states will be well positioned to advocate for national adoption of a consistent intervention.

#### **3.5 Achieving NSW State Plan priorities**

The proposed amendments to the *NSW Food Act 2003* and related legislation will contribute to the achievement of the following NSW State Plan priorities:

##### ***Reduced preventable hospital admissions***

Reducing chronic and acute illnesses attributable to increasing obesity rates will reduce preventable hospital admissions resulting from these illnesses.

### ***Cut red tape***

The most effective way to achieve consistent disclosure of nutritional information at point of sale within standard menu retail food businesses requires regulatory intervention. From all the options analysed, the Authority has chosen the option which provides for minimum effective regulation to improve long term public health outcomes related to the standard menu retail food industry in NSW.

### **3.6 Alignment with NSW Government policy**

The nutritional information disclosure initiative is consistent with existing NSW Government policy in relation to food regulation.

#### ***NSW food safety funding policy***

The principles that apply to funding of food regulatory activities in NSW were most recently reviewed in 2001 by The Hon. John Kerin<sup>iii</sup>. The review sought to identify circumstances in which specified regulatory activities should be funded by cost recovery, either from the regulated industry or from consumers of the regulated products, or directly by government.

The nutritional information disclosure initiative will be self funded and there will be no additional financial impact on the NSW Government. Cost recovery (eg via existing fees and charges within the Food Act) will provide the funding needed to support the compliance regime.

Therefore, the proposed initiative will be consistent with the NSW Government's current policy position on funding food regulation.

## **4. Consideration of options**

The costs and benefits of Options 1, 2 and 3 are summarised below. While it is not possible at this time to provide detailed quantitative costs, qualitative costs and benefits have been assessed. The quantitative costs of Options 2 and 3 are equivalent as they apply the same requirement to standard menu retail food businesses. It should also be noted that industry's willingness to adopt a code of practice which in form and style is consistent with the preferred option indicates that the implementation of nutritional information disclosure is not considered to be cost-prohibitive. In this regard, it should be noted that standard menu boards are regularly revised to accommodate new products and 'meal deals', so that the mere inclusion of the kilojoule information on these boards would not add significant costs.

### **5.1 Option 1: Do nothing**

This option means maintaining the status quo whereby standard menu retail food businesses provide nutritional information to consumers on a voluntary basis only.

This option will not generate additional costs for NSW neither will it produce a reduction in the \$19 billion per annum cost of obesity in NSW.

This option does not address the need for government action.

### **5.2 Option 2: *Adopt an industry-led "code of practice" model (a self-regulatory approach)***

Under this option the NSW Government, in partnership with the Australian Food and Grocery Council, would develop an industry "Code of Practice" for the provision of nutritional information in standard menu retail food businesses. The NSW Food Authority (the Authority) and NSW Health would conduct an independent evaluation of the initiative. This approach would be endorsed by

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<sup>iii</sup> Kerin, J (2001) *Kerin Funding Review, Final Report*, NSW Government

industry associations but is unlikely to be supported by public health professionals, academics and consumer advocates.

## **Option 2- Costs in detail**

### ***Design and implementation of new menu boards***

The AFGC has advised that it takes approximately 15 weeks for industry to modify and distribute menu boards. The proposed voluntary approach would utilise a variation of the AFGC “thumbnail” design used to present daily intake percentages (%D.I.) on packaged food. There are sensitivities to the adoption of the AFGC model and imagery and its extension into the standard menu retail food sector. The % D.I. model is contested by public health and consumer advocates on the basis that it is not evidence-based, and has not been demonstrated to be the most effective way of informing consumers. However, this initiative would present just the kilojoule content of the product, albeit within the ‘thumbnail’ design.

### ***NSW standard menu retail food businesses – Staff training***

It is likely that standard menu retail food businesses will need to undertake minor staff training to enable their “crew” to adequately deal with consumer queries. This could be significantly mitigated by the provision of detailed supporting information which meets prescribed requirements in-store.

### ***(NSW) Government – design and delivery of an evaluation program***

The Authority would incur costs associated with developing and rolling out an evaluation of the industry-led initiative.

### ***Consumer Costs – decreased consistency and increased confusion***

It is unlikely that a voluntary code of practice will result in 100% participation by standard menu retail food businesses. This may lead to increased consumer confusion as to what is objective information and what is marketing material. There is also a significant risk that, given the lack of sanctions within voluntary codes, individual businesses will adapt the scheme to “fit in” with their particular marketing approach. This will inevitably lead to decreased consistency in the information provided to consumers and increased confusion due to proliferation of different systems.

## **Option 2- Benefits in detail**

### ***Community & Environment – reduced cost of obesity***

An intervention without the legislative backing of a mandatory requirement for the provision of nutritional information will not be as effective in reducing the risk of over-consumption of unhealthy foods and related increase in obesity rates. It is assumed however that some increase in consumer awareness will lead to a small reduction in over-consumption and therefore a reduction in the public and consumer costs of obesity.

### ***NSW standard menu retail food businesses – improved consumer knowledge of nutritional content***

As has been demonstrated in several standard menu retail food businesses (eg McDonalds) improved availability of healthier options for consumers has led to increased sales more generally. It is acknowledged that the provision of nutritional information in standard menu retail food businesses will not deter most consumers from frequenting these businesses, however it is assumed that consumers will make healthier choices when provided with clear information.

## **5.3 Option 3: Implement mandatory requirements for the provision of nutritional information at point of sale**

Under this option, the Authority would mandate the provision of nutritional information in standard menu retail food businesses. The first stage of this requirement would be limited to the provision

of energy content (in kilojoules) as described below. However the requirement may be extended at a later date to include disclosure of other nutrients such as fat and salt if this is supported by evaluation and cost/benefit analysis.

Standard menu retail food businesses would be required to place the kilojoule content of each food product on the menu board, adjacent to and in text at least as clear and legible as the price for each item. Given the consumer familiarity with the packaged-food “thumbnail” design and industry support of this representation, it is likely that a similar approach in standard menu retail food businesses will be of benefit. For this reason, the form and style to be prescribed by Regulation would be a modified version of the “thumbnail”, utilising the familiar shape but adopting a more simple approach of including the kilojoule content only (with no reference to percentages or other variables). In addition, a statement advising of the recommended daily kilojoule intake (8700kJ) would be required to be placed prominently on the menu board

The requirements would apply to standard menu retail food businesses with 20 or more sites in NSW (or 50 sites nationally) who sell standard production food items. For example this would include café and coffee chain outlets, bakery chains, snack food chains, juice bars, ice cream chains and fast food chains.

Under Option 3, businesses who do not meet the threshold number of sites will be enabled to “opt in” to the nutritional information disclosure system, provided they meet the prescribed requirements for disclosure. Similarly, all businesses affected by the requirements will be encouraged to provide supporting nutritional information to consumers provided it complies with a prescribed guideline

### **Option 3- Costs in detail**

#### ***Industry costs***

These would be equivalent to those under Option 2.

#### ***(NSW) Government – cost of undertaking evaluation***

The Authority would incur costs associated with developing and rolling out an evaluation of the regulatory intervention. This would be done in line with the Authority's existing risk management evaluation framework.

#### ***(Local) Government – minimal (if any) additional costs***

Minimal (if any) additional costs to local councils will arise. Option 3 will require a minor change to local government inspection checklists. Existing records of Local Government Activity Reports will require an additional field in which to report on standard menu retail food business nutritional information labeling enforcement activities. The Authority will provide support and assistance through its Food Regulation partnership program.

### **Option 3- Benefits in detail**

#### ***Community & Environment – reduced cost of illness associated with obesity***

Obesity and related chronic disease costs an estimated **\$19 billion** per annum in NSW alone. This cost is borne not only by the public health system but also by individuals within the community. Measures to enable families to “make the healthy choice the easy choice” will minimise the risks of obesity and related chronic illnesses and over the long term will lower health care costs and productivity impacts.

#### ***Community & Environment – increased understanding of nutritional information***

The provision of mandatory information in a style and form prescribed by Government should improve consumer understanding of and confidence in the information itself. It is also anticipated

that supporting information will be produced to encourage consumer understanding of nutrition issues and the variations that occur with age, gender and activity levels.

***Community & Environment – empowerment to apply knowledge in other contexts***

Evidence from overseas jurisdictions indicates that consumers do not limit their use of nutritional information to the context in which it is received. It is expected that the increased awareness of recommended daily intake levels and other parameters will empower consumers to make adjustments in their consumption habits in a variety of settings. For example, by understanding that a particular choice in a standard menu retail food business will account for one-third of their daily kilojoule intake, it is anticipated that the consumer will make adjustments in other purchases throughout the day.

***NSW Standard Menu Retail Food businesses – regulatory certainty***

Under Option 3 standard menu retail food businesses will be provided with certainty as to government requirements with respect to disclosure of nutritional information. This avoids the potential difficulty presented by the potential for voluntary initiatives to fail, namely that businesses will incur costs to adopt the voluntary model only to have government require a different approach at some future date.

By taking all possible steps to harmonise with other jurisdictions considering similar interventions, NSW can also provide those standard menu retail food businesses that operate on a national scale the reassurance that compliance with NSW requirements will ensure compliance with requirements in those states.

Further, as many of the affected standard menu retail food businesses produce materials such as menu boards and posters from a central location, it is anticipated that the NSW approach will generate significant savings to business via simple economy of scale. For this reason, NSW will be advocating strongly at the national level for consistent regulatory intervention.

Finally, Option 3 provides a level playing field in that it applies to all standard menu retail food businesses, irrespective of the type of food produced and sold. This ensures that not only traditional “fast food” retailers are required to disclose nutritional information, but also other players in the market.

***(NSW) Government – Decreased public health costs associated with obesity***

Under Option 3, the likelihood of affecting consumer behaviour and, over the long term, decreasing obesity due to over-consumption of energy dense foods is significantly higher than under Option 2. The broad focus on energy dense food, rather than a single narrow segment of industry means that nutritional information disclosed will reach the widest possible audience. This in turn increases the capacity for this information to become familiar and be used by consumers in a variety of contexts, resulting in an overall decrease in the \$19 billion dollar cost associated with obesity and related chronic diseases.

Option 3 produces the most benefits for NSW and the standard menu retail food industry as it provides regulatory certainty, an approach harmonised with Victoria and a higher likelihood of achieving behavioural changes needed to achieve public health outcomes. By focusing on energy dense foods generally, rather than limiting the intervention to a narrow segment of industry, Option 3 provides the greatest opportunity for increased consumer understanding and subsequent behaviour change.

## 5. Consultation

### 5.1 The consultation process to date

#### ***Establishment of the Premier's Quick Service Restaurant Labelling Reference Group***

In line with the Premier's commitment at the 19 August NSW Food Forum, the Authority has been working collaboratively with the QSR industry, public health and consumer advocates to develop policy approaches to disclosure of nutritional information at point of sale through the Premier's QSR Labelling Reference Group. It is envisaged that this Reference Group will continue to serve as a consultation and monitoring mechanism throughout the implementation and evaluation processes. The group is chaired by the NSW Food Authority and includes representatives from the following organisations:

<b>Stakeholder Organisations</b>
Australian Food and Grocery Council – QSR Forum (3 representatives)
The Heart Foundation
The George Institute for Global Health
The Boden Institute
Choice
NSW Department of Health
NSW Department of Premier and Cabinet

The group has met face-to-face on one occasion and via teleconference on a number of occasions over the past month. A further face-to-face meeting is scheduled for Monday 25<sup>th</sup> October 2010.

### 5.2 Central themes arising from consultations

The main themes arising from consultations with stakeholders were:

- Concerns about the cost impact of the nutritional information disclosure initiative on NSW standard menu retail food business businesses.
- Concerns about the adoption of appropriate models for representation of nutritional information
- Requests that businesses are given adequate lead time to undergo develop point of sale menu boards.
- Requests that NSW aligns with Victoria regarding the proposed model.
- Requests that NSW align with any national approach that may be adopted.

#### ***Minimising cost impacts for NSW standard menu retail food businesses***

The QSR industry, through QSR Labelling Reference Group, strongly supports the provision of nutritional information at point of sale. The preferred model has adopted the industry proposed approach to disclosure of nutritional information. It should be noted that the industry preference is for self-regulation or, if regulation is implemented that this be done in a nationally consistent manner.

Stakeholders were most concerned about the requirements of information disclosure in terms of content and format.

Consistent with the approach taken in Victoria, NSW will require the provision of kilojoule content only, in absolute terms and a reference to the recommended daily kilojoule intake to be placed on the menu board.

### ***Providing adequate lead times***

In response to stakeholder concerns about businesses having adequate lead time to prepare appropriate menu boards and conduct associated staff training, a staged implementation process is proposed as follows:

Stage 1	Standard menu retail food business represented during the consultation process	1 February 2011
Stage 2	All other standard menu retail food businesses (excepting pizza standard menu retail food businesses)	1 May 2011
Stage 3	Standard menu retail food businesses whose primary ready to eat product is pizza	1 August 2011

This approach is warranted as it will enable the Authority to conduct further rounds of consultation with affected businesses and address the practical concerns of stakeholders throughout.

### ***Alignment with Victoria***

Victoria has announced its intention to require the provision of nutritional information in the form of kilojoule content by 2012. The NSW proposal aligns with this approach.

### ***Alignment with national processes***

Industry has expressed concern that NSW act in a manner consistent with uniform national approaches to food regulation.

The Blewett review is expected to provide its report to the Australia New Zealand Food Regulation Ministerial Council in December 2010. It is not anticipated that the NSW approach will be in conflict with the recommendations of this report.

Further, by ensuring that NSW and Victoria's approaches are harmonised, the two states will be in a strong position to advocate at the national level for the adoption of requirements that align with the proposed approach in NSW.

## **6. Preferred option**

The preferred option is **Option 3 – Implement mandatory nutritional information disclosure requirements** because:

- It is a cost effective risk management approach which will improve long term food safety and public health outcomes for NSW standard menu retail food business businesses and support consumer protection *objectives*.
- It is preferred on economic efficiency and public health grounds where Option 3 is far more likely to generate significant reductions in the \$19 billion annual cost of obesity in NSW.
- Option 3 will address the gap in food labelling requirements that currently exists with respect to "fast food"
- The implementation of similar requirements in NSW and Victoria will create a consistent regulatory environment across the two most populous states.

## 6.1 Roles and responsibilities under Option 3

The table below summarises the roles and responsibilities of relevant parties under Option 3.

Party	Responsibility
NSW standard menu retail food business businesses	<ul style="list-style-type: none"> <li>• Develop and display appropriate nutritional information at point of sale</li> <li>• Enable distribution of supporting educational materials in-store</li> <li>•</li> </ul>
State Government- NSW Food Authority	<ul style="list-style-type: none"> <li>• Develop and implement compliance framework</li> <li>• Develop and distribute supporting educational material</li> <li>• Monitor industry uptake and compliance</li> <li>• Conduct formal evaluation after 12 months</li> </ul>
State Government- NSW Health	<ul style="list-style-type: none"> <li>• Collaborate with NSW Food Authority in the educational, monitoring and evaluation activities.</li> </ul>
QSR Labelling Reference Group	<ul style="list-style-type: none"> <li>• Ongoing operation as a reference during the development and implementation phases</li> <li>• Participate in monitoring implementation</li> <li>• Participate in formal evaluation, led by the NSW Food Authority</li> </ul>
Local Government- Councils	<ul style="list-style-type: none"> <li>• Ensure businesses comply with disclosure requirement (as part of existing retail food business food safety and hygiene inspection regime)</li> <li>• Investigate reported breaches and take appropriate enforcement action (eg issue penalty infringement notices, issue improvement notices, issue prohibition orders, undertake prosecutions)</li> </ul>

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