



Australian Capital Territory

Food (Nutritional Information) Amendment Act 2011

A2011-32

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

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Australian Capital Territory

Food (Nutritional Information) Amendment Act 2011

A2011-32

An Act to amend the *Food Act 2001*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Food (Nutritional Information) Amendment Act 2011*.

2 Commencement

This Act commences on 1 January 2013.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Food Act 2001* and the *Food Regulation 2002*.

Note This Act also amends the *Magistrates Court (Food Infringement Notices) Regulation 2005* (see sch 1).

Part 2 Food Act 2001

4 New section 5A

insert

5A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 110 (Certain standard food outlets to display nutritional information)
- s 111 (Voluntary display of nutritional information to meet certain requirements)

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

5 New part 9

insert

Part 9 Display of nutritional information for food

107 Definitions—pt 9

In this part:

menu means a menu, in printed or electronic form, that lists or otherwise shows 1 or more items of food and that—

- (a) is on a board, poster, leaflet or similar thing at the premises where the item or items of food listed or shown on the menu are sold; or
- (b) is distributed or available outside the premises where the item or items of food listed or shown on the menu are sold by the internet or a printed leaflet.

ready-to-eat food means food that is in a state in which it is ordinarily consumed, but does not include nuts in the shell or raw fruit or vegetables.

sell means sell as defined in section 9 (1), but by retail only.

standard food item—see section 108.

standard food outlet—see section 109.

108 Meaning of *standard food item*—pt 9

(1) In this part:

standard food item—

- (a) means an item of ready-to-eat food for sale that is sold in servings that are standardised for portion and content and that—
 - (i) is listed or otherwise shown on a menu; or
 - (ii) is displayed for sale with a price tag or label or an identifying tag or label; and
 - (b) includes an item of ready-to-eat food for sale that is prescribed by regulation; but
 - (c) does not include an item of ready-to-eat food that—
 - (i) arrives at the premises where it is sold in a container or wrapper in or by which the food is wholly enclosed (whether or not the food is also in an outer container or wrapper that contains multiple units of the food); and
 - (ii) is not removed from its container or wrapper (other than any outer container or wrapper) before its sale at the premises.
- (2) If a number of standard food items are shown or displayed for sale as mentioned in subsection (1) as a combination, the combination is to be treated for this part as a single standard food item.
- (3) If an item of food mentioned in subsection (1) is shown or displayed for sale in different standard sizes or portions (for example, small, medium or large), each standard size or portion is to be treated for this part as a separate standard food item.

109 Meaning of *standard food outlet*

- (1) Premises where standard food items are sold by a food business is a *standard food outlet* if—
 - (a) the food business sells standard food items at other premises or while operating in a chain of food businesses that sell standard food items; and
 - (b) at least 1 of the standard food items sold at the premises has been standardised for portion and content so as to be substantially the same as standard food items of that kind sold at the other premises or by the other food businesses in the chain.
- (2) For this section, a food business is operating in a chain of food businesses that sell standard food items if—
 - (a) it is operating as 1 of a group of food businesses that sell standard food items under franchise arrangements with a parent business or under common ownership or control; or
 - (b) it sells standard food items under the same trading name as a group of other food businesses that sell standard food items.

110 Certain standard food outlets to display nutritional information

- (1) This section applies to a standard food outlet of a food business that—
 - (a) sells standard food items at 7 or more places in the ACT or at 50 or more places in Australia; or
 - (b) operates in a chain of food businesses that sell standard food items if together the businesses sell standard food items at 7 or more places in the ACT or at 50 or more places in Australia.

- (2) However, this section does not apply to a standard food outlet of a food business that primarily provides food catering services.
- (3) The proprietor of the standard food outlet must ensure that—
 - (a) the nutritional information prescribed by regulation is displayed in relation to standard food items sold at the outlet; and
 - (b) the nutritional information is worked out in accordance with any requirements prescribed by regulation for nutritional information of that kind; and
 - (c) the nutritional information is displayed in the way and at the places prescribed by regulation for nutritional information of that kind.
- (4) A person must not intentionally contravene subsection (3).
Maximum penalty: 500 penalty units.
- (5) A person must not contravene subsection (3).
Maximum penalty: 100 penalty units.
- (6) An offence against subsection (5) is a strict liability offence.
- (7) If, on the trial of a person charged with an offence against subsection (4), the court is not satisfied that the person committed the offence but is satisfied that the person committed an offence against subsection (5), the court may find the person not guilty of the offence charged but guilty of an offence against subsection (5), but only if the person has been given procedural fairness in relation to that finding of guilt.

111 Voluntary display of nutritional information to meet certain requirements

- (1) This section applies to a standard food outlet other than a standard food outlet to which section 110 applies.
- (2) The proprietor of the standard food outlet must not display nutritional information prescribed by regulation in relation to standard food items sold at the outlet unless the nutritional information—
 - (a) is worked out in accordance with any requirements prescribed by regulation for nutritional information of that kind; and
 - (b) is displayed in the way and at the places prescribed by regulation for nutritional information of that kind.

Maximum penalty: 100 penalty units.

- (3) An offence against this section is a strict liability offence.

112 Commencement of regulation made for s 110 or s 111

Subject to any disallowance or amendment under the Legislation Act, chapter 7, a regulation made for section 110 or section 111 commences—

- (a) if there is a motion to disallow the regulation and the motion is negated by the Legislative Assembly—on the day after the day the disallowance motion is negated; or
- (b) on the day after the 6th sitting day after the day the regulation is presented to the Legislative Assembly under that chapter; or
- (c) if the regulation provides for a later date or time of commencement—on that date or at that time.

113 Display or distribution of explanatory material etc about nutritional information

A regulation may make provision in relation to the display or distribution by a standard food outlet of explanatory material or any other material about nutritional information for food.

114 Exemptions from pt 9

- (1) The Minister may exempt, with or without conditions, any people, food businesses, premises, food or activities from the operation of all or any provisions of this part.
- (2) An exemption must state the reasons for the exemption.
- (3) An exemption has no effect during any period in which a condition of the exemption is not complied with.
- (4) An exemption is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

115 Review of pt 9

- (1) The Minister must review the operation of this part as soon as practicable after the end of its 3rd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 1 year after the review is started.
- (3) The Minister must also present with the report any study or review prepared by the Commonwealth or a State that deals with the requirement to display at food outlets nutritional information about the following contents of food sold at the outlet:
 - (a) salt content;
 - (b) fat content;
 - (c) carbohydrate content.

- (4) This section expires 5 years after the day it commences.

6 Dictionary, new definitions

insert

menu, for part 9 (Display of nutritional information for food)—see section 107.

ready-to-eat food, for part 9 (Display of nutritional information for food)—see section 107.

standard food item, for part 9 (Display of nutritional information for food)—see section 108.

standard food outlet, for part 9 (Display of nutritional information for food)—see section 109.

Part 3 Food Regulation 2002

7 New part 4

insert

Part 4 Display of nutritional information for food

14 Nutritional information for prescribed standard food outlets—Act, s 110 (3)

- (1) The following nutritional information is prescribed for each standard food item for sale by a standard food outlet to which the Act, section 110 applies:
 - (a) the average energy content of the food item, expressed in kilojoules;
 - (b) the following statement:

The average adult daily energy intake is 8,700 kJ.
- (2) The average energy content of a food item is to be worked out in accordance with the food standards code, standard 1.2.8 making necessary adjustments to ensure that the calculation is done in relation to the whole of the food item rather than per 100g.
- (3) The number of kilojoules calculated may be rounded to the nearest 10 kJ.

15 Prescribed nutritional information for other standard food outlets—Act, s 111 (2)

- (1) The average energy content of the food item, expressed in kilojoules, is prescribed for each standard food item for sale by a standard food outlet (other than a standard food outlet to which the Act, section 110 applies).
- (2) The average energy content of a food item is to be worked out in accordance with the method mentioned in section 14 (2) and (3).

16 Places for display of nutritional information—Act, s 110 (3) (c) and s 111 (2) (b)

- (1) The places where the nutritional information mentioned in section 14 (1) and section 15 (1) must be displayed in relation to a standard food item are—
 - (a) on each menu on which the name or price of the standard food item is displayed and on each price tag or label or identifying tag or label for the item; and
 - (b) if there are drive-through facilities—on the drive-through menu board that displays the name or price of the standard food item or on a separate adjacent board visible at or before the point of ordering; and
 - (c) adjacent to or in close proximity to the name or price of the standard food item so as to be clearly associated with the item.
- (2) The places where nutritional information mentioned in subsection (1) is displayed in relation to a standard food item are to be consistent with the places where that nutritional information is displayed for all of the other standard food items that are displayed with that standard food item.

- (3) The places where the statement mentioned in section 14 (1) (b) must be displayed are—
- (a) in 1 place on each menu on which the name or price of 1 or more standard food items is displayed and adjacent to or in close proximity to the standard food item or items so as to be clearly associated with the item or items; and
 - (b) if there are drive-through facilities—in 1 place on the drive-through menu board adjacent to or in close proximity to the standard food item or items so as to be clearly associated with the item or items; and
 - (c) in each area or display cabinet, or on each stand, where standard food items with price tags or labels or identifying tags or labels are displayed and adjacent to or in close proximity to the item or items so as to be clearly associated with the item or items and conspicuous to a person looking at the item or items.

**17 Way of displaying nutritional information—Act,
s 110 (3) (c) and s 111 (2) (b)**

- (1) The nutritional information mentioned in section 14 (1) and section 15 (1) must—
- (a) be clearly legible; and
 - (b) display the number of kilojoules in numerals and use the abbreviation “kJ”; and
 - (c) be in the same font, and at least the same font size, as the price displayed for the standard food item concerned or, if no price is displayed, as the name displayed for the item.
- (2) The statement mentioned in section 14 (1) (b) must—
- (a) be clearly legible; and
 - (b) if only 1 standard food item is displayed on a menu—be in the same font, and at least the same font size, as the name of the

item displayed or, if no name is displayed, as the price displayed for the item; and

- (c) if 2 or more standard food items are listed or displayed on a menu—be in the same font, and at least the same font size, as the name of the standard food item with the largest font size listed or displayed or, if no names are listed or displayed, as the price of the standard food item with the largest font size listed or displayed; and
- (d) for a standard food item or items displayed with a price tag or label or identifying tag or label in any area, display cabinet or stand—in at least the same font size as the largest font size on the tags or labels for the standard food item or items in the area, display cabinet or stand.

8 Dictionary, note 3

insert

- menu
- ready-to-eat food
- standard food item (see s 108)
- standard food outlet (see s 109)

**Schedule 1 Magistrates Court (Food
Infringement Notices)
Regulation 2005—
Consequential amendment**

(see s 3)

[1.1] Schedule 1, new items 19 and 20

insert

19	110 (5)	100	100
20	111 (2)	100	100

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 6 April 2011.

2 Notification

Notified under the Legislation Act on 5 September 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Food (Nutritional Information) Amendment Bill 2011, which was passed by the Legislative Assembly on 24 August 2011.

Clerk of the Legislative Assembly

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