

Legislative Assembly for the
Australian Capital Territory

Food (Nutritional Information) Amendment
Regulation 2012 (No 1)

SL2012-36

Explanatory Statement

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Food (Nutritional Information) Amendment Regulation 2012 (No 1)

Overview

Part 9 of the *Food Act 2001* requires certain food businesses to display nutritional information about their standard food items. The Food Regulation 2002 provides that this information includes the kilojoule content of captured standard food items and the contextualising statement “The average adult daily energy intake is 8,700 kJ”.

The Food (Nutritional Information) Amendment Regulation 2012 proposes to amend the Food Regulation 2002 concerning the way supermarkets may display kilojoule information. The proposed changes will ensure consistency with the equivalent NSW legislation and will allow the laws to achieve their purpose.

Clauses

Clause 1 provides for the name of the regulation as the Food (Nutritional Information) Amendment Regulation 2012 (No 1).

Clause 2 provides that the regulation commences immediately after the commencement of the *Food (Nutritional Information) Amendment Act*, section 7.

Due to the operation of section 75 (1) of the *Legislation Act 2001* (the Legislation Act) the naming and commencement provisions of this Regulation, clauses 1 and 2, commence automatically on the day the Regulation is notified. A note to that effect is included in the provision.

Clause 3 provides that the legislation that is amended by the regulation is the Food Regulation 2002.

Clause 4 inserts a new section 13A. The section provides a definition for the term *nutrition information panel* that is consistent with the Australia New Zealand Food Standards Code. Section 13A also provides a definition for the term *supermarket* that is similar to the definition provided in the equivalent NSW legislation.

Clause 5 amends section 14 of the Food Regulation 2002 by substituting a new section 14. The new section 14 differentiates between nutritional information required to be displayed at a standard food outlet other than a supermarket and one that *is* a supermarket. This distinction was not previously made.

Section 14 (2) allows supermarkets captured by section 110 (1) of the *Food Act 2001* to display the average energy content of their standard food items in kilojoules per 100g of food *or* in kilojoules for the whole food item. This alternative method for displaying kilojoules has been allowed for supermarkets as requiring supermarkets to display the energy content for the whole food item may, in some instances, create inconsistencies between items on the same shelf. For instance, bakery items made at the premises would otherwise have to display the energy content of the whole item whereas products made externally may only display kilojoules per 100g. This amendment will allow customers to compare products' energy contents on an equal

scale. It would also provide more useful information for products containing multiple serves (e.g. a chocolate mud cake that is intended to be cut into serves).

Clause 6 replaces a reference to sections 14 (2) and (3) that appear in section 15 (2) with a reference instead to a new section 15A. The amended section 15 (2) provides the requirements for working out nutritional information to be displayed stating that “The average energy content of a food item is to be worked out in accordance with the method mentioned in section 15A”.

As the amended section 14 does not provide the requirements for working out nutritional information to be displayed [previously found at section 14 (2) and (3)], the new section 15A prescribes these requirements.

Clause 7 inserts a new section 15A that prescribes the requirements for working out nutritional information to be displayed. This information was previously found at section 14 (2) and (3).

Subsection (1) provides the requirements for working out the average energy content of a standard food item, which are found at Division 1, clauses 1 and 2 of Standard 1.2.8 - *Nutrition Information Requirements* of the Food Standards Code (the Code). The Code can be found at the Food Standards Australia New Zealand website <http://www.foodstandards.gov.au/foodstandards/foodstandardscode.cfm>. Standard 1.2.8 sets out nutrition information requirements in relation to food that is required to be labelled under the Code and prescribes when nutritional information must be provided, and the manner in which such information is provided.

Subsection (2) allows the number of kilojoules to be rounded to the nearest 10kJ to account for a margin of error and to simplify interpretation/calculation of kilojoule information.

Clause 8 substitutes a new heading for section 16. The new heading indicates that the requirements of section 16 apply only to standard food outlets other than supermarkets.

Clause 9 inserts a new section 16 (1A) before section 16 (1) that states, “This section applies to a standard food outlet other than a supermarket”.

Clause 10 replaces a reference to section 14 (1) that appears in section 16 (1) with a reference instead to section 14 (1) (a). This amends section 16 (1) so that it reads, “The places where the nutritional information mentioned in section 14 (1) (a) and section 15 (1) must be displayed in relation to a standard food item are - ”.

Clause 11 omits ‘The places where nutritional information mentioned in subsection (1)’ from section 16 (2) and substitutes ‘The places mentioned in subsection (1) where nutritional information’. This amendment is intended to provide clearer wording on the intent of section 16 (2).

Clause 12 inserts a new section 16A. The section prescribes the places where nutritional information must be displayed in standard food outlets that are

supermarkets. These places include those that apply to standard food outlets that are not supermarkets (i.e. those places mentioned in section 16 (1), such as on each menu, price tag or label that names a standard food item). Alternatively, this new section allows supermarkets to use a nutrition information panel displayed on the standard food item's packaging as the place where nutritional information is displayed. The nutrition information panel must meet the requirements for these panels set out in the Australia New Zealand Food Standards Code. The nutrition information panel must also be able to be seen by customers before the point of purchase without assistance from a person working at the standard food outlet. For instance, a nutritional information panel would not be an acceptable method for displaying nutritional information if the food item was kept in a deli cabinet that required staff to retrieve the item for a customer.

This amendment has been made for supermarkets as supermarket customers generally select their food item prior to the point of decision to purchase (unlike other standard food outlets). Many of these food items already have nutrition information available on their labels in the form of nutrition information panels. As such, requiring menu or ticket displays of nutrition information creates inconsistencies in the placement of nutrition information between pre-packaged foods and those made at a supermarket. This was not the intent of the laws. Nutrition information panels also provide more information than simple kJ displays.

Clause 13 substitutes a new heading for section 17. The new heading reflects the fact that the way of displaying nutritional information is different for standard food outlets that are not supermarkets and those that are supermarkets.

Clause 14 inserts a new section 17 (1A) that states that this section applies to a standard food outlet other than a supermarket. This further clarifies that the way of displaying nutritional information is different for standard food outlets that are not supermarkets and those that are supermarkets.

Clause 15 replaces a reference to section 14 (1) that appears in section 17 (1) with a reference instead to section 14 (1) (a). This amends section 17 (1) so that it reads, "The nutritional information mentioned in section 14 (1) (a) and section 15 (1) must –".

Clause 16 inserts a new section 18 that prescribes the requirements for displaying nutritional information and the contextualising statement for supermarkets.

Section 18 states that the prescribed nutrition information must be displayed so that: it is clearly legible; it displays the kilojoule content of food items in numerals followed by the abbreviation 'kJ'; and it displays the nutritional information in the same font, and at least the same font size, as the largest *shelf ticket price* for the standard food item. It also prescribes that the statement mentioned in section 14 (2) (b) must be in the same font, and at least the same font size, as the largest *shelf ticket price* for the standard food item.

This new section draws a distinction between the minimum font display size for the prescribed information that must be displayed in standard food outlets that are

supermarkets and the minimum font size that applies to standard food outlets other than supermarkets.

Section 17 of the Regulation states that the prescribed nutritional information and the statement must be in at least the same font, and at least the same size font, as the largest price displayed for the standard food item/s concerned, or if no price is displayed, as the name displayed for the item/s. While this is considered reasonable for most standard food outlets where the customer is served food, supermarket signs are often large to allow customers to locate individual items by themselves. As such, the required kilojoule displays would be equally large. This was not the intent of the laws.

As such, this new section prescribes that the nutritional information and statement must be of at least the same size font as the largest *shelf ticket price* (the shelf ticket being the standard price/name display format used in supermarkets).

Clause 17 inserts new definitions for the terms *nutrition information panel* and *supermarket* into the Regulation's dictionary.