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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

FOOD (NUTRITIONAL INFORMATION) AMENDMENT BILL 2011

EXPLANATORY STATEMENT

**Circulated by
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OVERVIEW

The *Food (Nutritional Information) Amendment Bill 2011* creates a requirement for defined food retailers in the ACT to disclose the energy content (expressed in kilojoules) of the food items they sell. This initiative is one means of combating obesity within the community and assisting people to understand the implications of their purchasing decisions.

The scheme applies primarily to 'fast food' chains; though its application extends to other food business as well. The key objective of this bill is to provide clear, simple and unambiguous information to consumers across the ACT about the food they purchase.

The Bill requires the kilojoule content of food to be published on all menu displays, both in store and distributed either electronically or in print. The requirements apply to food businesses with seven or more sites in the ACT or 50 or more sites nationally. This means that only relatively large business will have to comply. Small food business will not be affected.

The Bill also requires that the recommended daily kilojoule intake for adults, as recommended by the National Health and Medical Research Council (NHMRC), be displayed at point of sale. The daily intake recommendation is for an average adult and this is intended to give people a point of reference and place in context the energy content of the food they are contemplating purchasing.

Reference is made to the Australia New Zealand Food Standards Code - Standard 1.2.8 - Nutrition Information Requirements (referred to as the "the Food Standards Code") both in the Bill and this explanatory statement. The code is made under the *Food Standards Australian and New Zealand Act (1991)* (Cth) and can be found on the Commonwealth Legislation Website at <http://www.comlaw.gov.au/Details/F2010C00339>

The Food Standards Code provides useful context and assistance in the application of the scheme proposed in this Bill.

The Bill is modelled on the *Food Act 2003 (NSW)* and the *Food Regulation 2010 (NSW)*. With some minor changes the Bill applies the NSW scheme to the ACT.

HUMAN RIGHTS

The Bill does not engage any human rights. Section 6 of the Human Rights Act 2004 sets out that only individuals have human rights. The provisions of the Bill regulate business activity and create obligations for defined food business rather than individuals.

SUMMARY OF CLAUSES

Clause 1 Name of the Act

This clause sets out the name of the proposed Act as the *Food (Nutritional Information) Amendment Act 2011*.

Clause 2 Commencement

This clause sets out when commencement of the Act will occur. The Act will commence on 1 January 2012.

Clause 3 Legislation amended

This clause identifies the Act and Regulations to be amended, namely the *Food Act 2001*, *Food Regulation 2002* and *Magistrates Court (Food Infringement Notices) Regulation 2005*.

Clause 4 New Section 5A

This clause applies other legislation to the offense provisions created by the Bill.

Clause 5 New Part 9

New Section 107 – Definitions

This section defines the key terms used in the scheme. The definition of menu includes all representations of the food available for purchase, both displayed within the business premises and distributed outside the business premises. Ready to eat food means prepared food ready for consumption and does not include unprocessed foods in their natural state. This section also provides that the scheme proposed by this Bill only applies to retail sales and amends the application of Section 9 of the Act to the proposed new Part 9.

New Section 108 - Meaning of standard food item

Section 108 defines standard food item as meaning an item of prepared ready-to-eat food shown on a menu (as defined by section 107) that is served in a set standardised size.

The definition covers food items sold in combination for example a “meal deal” that includes both food and a drink must be labelled collectively (as well as individually if they are offered separately). Also where the same food item is sold in different size servings each serving size must have the required nutritional information displayed for that serving size.

The display requirements do not include pre-packaged food. The Food Standards Code creates a requirement that all packaged food (with some listed exemptions) must disclose the proscribed nutritional information that includes the energy requirement required to be disclosed by this Bill. It is therefore unnecessary to

require this information be disclosed as part of this scheme as it is already available to consumers.

New Section 109 - Meaning of standard food outlet

This section defines standard food outlet as premises at which prepared ready to eat food is sold by a food business that is one of a chain. Typically these are 'fast food' businesses however the Bill covers all food business (as defined by Section 10 and subject to Section 110) provided they sell at least one item that is the same as is sold by other business in the chain.

Businesses that do fall into this category (and are covered by Section 110) will have to meet the display requirements for each item they sell not just the items that are the same across the chain (see also clause 7 amendment to *Food Regulation 2002 Section 14*).

New Section 110 - Certain standard food outlets to display nutritional information

This section provides that food businesses that have either 7 or more stores within the ACT or 50 or more stores nationally will be required to display the nutritional information (energy content – see clause 7) of the food they sell.

Catering services are exempted from the requirement. Consistent with the requirements in section 107 that provides that the Bill is intended to cover retail only and the intention that the final consumer have the information available to inform their decision; it is not appropriate to cover catering services who are not providing the food directly to the final consumer.

This section also creates the obligation to display nutritional information in the manner set out by regulation. The regulations are provided in this Bill at clause 7.

Two separate offence provisions are also created. A higher penalty is imposed where intention can be proved and a lesser penalty where the offense occurs but intention cannot be proved.

New Section 111 - Voluntary display of nutritional information to meet certain requirements

This section provides for a food retailer who is not compelled by the Bill to display the nutritional information but wishes to do so anyway. The provision requires that they must do so correctly and consistently with the provisions of the Act. This is to ensure that the community can feel confident in the information being presented to them. This is an additional and specific safeguard to what is provided under the *Competition and Consumer Act 2010* (Cth)

New Section 112 - Display or distribution of explanatory material etc about nutritional information

This section provides for regulations to be made to regulate the provision of additional explanatory information. Again to ensure the integrity of the scheme it is appropriate to delegate this power to the Minister to ensure that the provision of

additional material is regulated and consistent with the proposed scheme to ensure the community can be confident in relying on the material.

New Section 113 - Exemptions from pt 9

This section allows the Minister to exempt any food business from the operation of the Bill. No guidance is provided in the Bill as to how this power should be exercised because it is reasonable to assume that there will be circumstances in which it is unreasonable to apply these provisions to a food business. The safeguard provided is that the reasons for the decision must be stated in the instrument and the Assembly may disallow the exemption.

New Section 114 - Review of pt 9

This section creates a requirement for the Minister to review the operation of the scheme after its first 12 months of operation. The Bill only creates a requirement to display the energy content of food. This is the first step in encouraging awareness of healthy eating. There is much evidence to suggest that the salt, fat and sugar content of food is also very important both in raising awareness and preventing serious illnesses. This is why the Bill provides for the specific consideration of these issues.

Clause 6 Dictionary, new definitions

The four terms are defined by reference to the applicable sections (107,108 and 109) discussed above.

Food Regulation 2002

Clause 7 New part 4

New Section 14 - Nutritional information for prescribed standard food outlets – Act, s 110 (3)

This section provides that the nutritional information required to be published by the new Section 110(3) (see clause 5 above) is the energy content of the food item expressed in kilojoules. The methodology for calculating the energy content is also proscribed by reference to the Food Standards Code.

The Section also provides that the statement “The recommended average adult daily energy intake is 8,700kJ” must also be published on each menu (see section 16 below). This is as recommended by the National Health and Medical Research Council (NHMRC) (for more information on recommended dietary intakes see <http://www.nhmrc.gov.au/files/nhmrc/file/publications/synopses/n31.pdf>).

New Section 15 - Prescribed nutritional information for other standard food outlets – Act, s 111 (2)

This section provides that those food businesses who voluntarily participate in the scheme must display the same nutritional information, energy content expressed in

kilojoules, and the recommended daily intake statement as other regulated food businesses.

New Section 16 - Places for Display of nutritional information – Act, s 110 (2) (c) and s 111 (2) (b)

Nutritional Information must be displayed on all menus, and any tags or labels, alongside the name and price of the item and the display of nutritional information must be consistent across items on the menu.

The recommended daily adult intake statement (see new Section 14(1)(b) above) must be displayed once on each menu, drive through menu board and on any food display cabinet so that it is clearly associated with the items on the menu on in the display.

New Section 17 - Way of displaying nutritional information – Act, s 110 (2) (c) and s 111 (2) (b)

New Section 17 regulates how nutritional information is to be displayed in food outlets.

This section adds to the new Section 16 and proscribes the manner in which nutritional information must be displayed. The information will be required to be presented in the same font size as the name of the item on the menu, or for food items that are displayed with a price tag or other label the font size on the tag or label, and if multiple items are listed in the largest font size used in the name of any menu item, or display item. If no name is displayed, the size of the price is the reference point for the size of the nutritional information display.

The same requirements apply to the display of the daily adult intake statement (see new Section 14(1)(b) above).

Clause 8 Dictionary, note 3

This clause adds four terms to the note in the Regulations providing that the definitions to the terms used in the Regulation are defined in the Act.

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

Clause 9 Schedule 1, new items 19 and 20

This clause amends the *Magistrates Court (Food Infringement Notices) Regulation 2005* by inserting the new offence provisions and allow for infringement notices to be issued under the *Magistrates Court Act 1930* in relation to those offences.