



SUBMISSION FORM Proposed Food Regulation 2015 & Regulatory Impact Statement (RIS)

Please use this form to make a submission on the proposed Food Regulation 2015 and/or the Regulatory Impact Statement (RIS).

The proposed Food Regulation 2015 and RIS are on public exhibition between 29 May 2015 and 26 June 2015 at www.foodauthority.nsw.gov.au/industry/legislation/regulation-2010-review. This provides interested stakeholders including industry and members of the wider community with an opportunity to provide input into the regulatory development process for the production and sale of safe food in NSW.

How to make a submission

Anyone can make a submission on the proposed Food Regulation 2015 and/or the RIS. It is recommended you use tables 1 & 2 in this form below (Microsoft® Word format) or an open document format other than Adobe® PDF.

Submissions can be lodged by:

Post	RIS Submissions NSW Food Authority PO Box 6682, Silverwater NSW 1811
Fax	(02) 9741 4888 Attention: RIS Submissions
Email	ris.submissions@foodauthority.nsw.gov.au (as an attachment)

Submissions must be received by the NSW Food Authority **before 5:00pm Friday 26 June 2015**. Submissions received after this time will not be considered.

Confidentiality & privacy

Making a submission is voluntary. If you make a submission, you are under no obligation to provide your personal information, but it will help us to contact you regarding your submission and progress of the Food Regulation 2015.

When you make a submission, we collect (if provided) your name, position, organisation, address, phone and email, and any other personal details that may be contained in your submission. Do not include personal, identifying information about other people in your submission unless you have their consent.

How will personal information be used?

Submissions received may be published on the Food Authority's website. If you wish your submission or your personal details to be treated as confidential for any reason then you can request that this occurs. Please indicate your preference by ticking the relevant box below.

You should be aware that the Food Authority may be required by law to release copies of submissions received to third parties. A request for access to a confidential submission will be determined in accordance with the *Government Information (Public Access) Act 2009*.

Please be aware that if you do not make a request for confidentiality, then the Food Authority may make your submission, including any personal details contained in the submission, available to the public. More information on the Food Authority's privacy policy is available at: www.foodauthority.nsw.gov.au/privacy

Your submission may also be published in reports, or other documents that are produced following the exhibition period. The Food Authority needs to comply with the *Subordinate Legislation Act 1989*, which may include providing comments and submissions to the NSW Parliament's Legislation Review Committee.

Contact details

I would like my submission to be treated as confidential		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
I would like my personal details to be treated as confidential		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Date	26/06/2015		
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Table 1: Regulatory Impact Statement (RIS)

RIS reference		Stakeholder submission
Part 1 – Requirements under the <i>Subordinate Legislation Act 1989</i>		
Section	Page	N/A
Part 2 – Outline of the regulatory proposal		
Section	Page	N/A
Part 3 - Options		
Section	Page	N/A
Part 4 – Cost benefit analysis		
Section	Page	N/A
Part 5 – The preferred option		
Section	Page	N/A
Part 6 - Consultation		
Section	Page	N/A
Part 7 – Evaluation and Review		
Section	Page	N/A
Appendix A: List of stakeholders to be advised of the proposed Regulation & RIS		
Stakeholder		N/A
Appendix B: Comparison table of the 2010 and proposed 2015 Regulation		
Part	Page	N/A
Appendix C: Costings		
Table	1	The estimated compliance costs associated with the provision of nutrition information on menu boards is very small – less than 3% of total estimated costs for 2013-14.
Appendix D: <i>Food Act 2013 (s103)</i> requirements		
Part		
Other		

Table 2: Proposed Food Regulation 2015

Proposed Food Regulation 2015 reference	Stakeholder submission
Part 1 – Preliminary	
Clause	N/A
Part 2 – Miscellaneous	
Clause	N/A
Part 3 – Fees and charges	
Clause	N/A
Part 4 – Food safety supervisors	
Clause	N/A
Part 5 – Requirements for display of nutritional information	
Clause	Section 33: Kinds of nutritional information required to be displayed Section 36: Manner of displaying nutritional information Please see detailed submission below
Part 6 – Provisions relating to Food Standards Code	
Clause	N/A
Part 7 – Food safety schemes – general provisions	
Clause	N/A
Part 8 – Dairy food safety scheme	
Clause	N/A
Part 9 – Meat food safety scheme	
Clause	N/A
Part 10 – Plant products food safety scheme	
Clause	N/A
Part 11 – seafood safety scheme	
Clause	N/A
Part 12 – Vulnerable persons food safety scheme	
Clause	N/A
Part 13 – Egg food safety scheme	
Clause	N/A
Schedule 1 – Form	
	N/A
Schedule 2 – Penalty notices	
Part	N/A

Proposed Food Regulation 2015 reference	Stakeholder submission
Schedule 3 – Licence fees	
Part	N/A
Schedule 4 – Standards for animal food processing plants	
Clause	N/A
Schedule 5 – Prescribed brands for abattoir meat	
Clause	N/A
Schedule 6 – Prescribed brands for game meat	
Clause	N/A
Schedule 7 – Provisions relating to members and procedure of local shellfish committee	
Clause	N/A
Other	N/A

Introduction

Cancer Council NSW welcomes the opportunity to comment on the *Food Regulation 2015* consultation. Of particular interest to us is *Part 5 Requirements for display of nutritional information*. As such, this submission focuses on this Part of the proposed *Food Regulation 2015*.

Cancer Council NSW is the leading not-for-profit cancer charity in NSW. Our mission is to lead, empower and mobilise the community to beat cancer. Our key priorities include funding and conducting world-class research that reduces the impact of cancer, and encouraging people to lead healthy, cancer-smart lifestyles. Cancer Council NSW has a series of evidence-based recommendations aimed at preventing cancer at the population level, and one of these includes maintaining a healthy bodyweight.

There is convincing evidence that excess body fat is a cause of bowel cancer, post-menopausal breast cancer and cancers of the kidney, pancreas, oesophagus and endometrium.¹ Excess body fat has also been shown to be a probable cause of ovarian, gallbladder and prostate cancer.¹

As the public is eating away from home more frequently, initiatives to assist them in choosing healthier fast food options are becoming increasingly important. Kilojoule menu labelling legislation became mandatory in 2012 for chains with more than 20 outlets in NSW and/or more than 50 outlets in Australia.² Initial evaluation of the implementation of kilojoule labelling (menu labelling) in fast food chains in NSW showed that consumers purchased significantly less kilojoules at fast food outlets after the implementation of menu labelling than before.³ This finding is consistent with international research.^{4:5}

As several countries, including Australia, have now implemented menu labelling, research is moving towards how consumers can better understand and apply menu labelling in the fast food setting. Small changes in the way information is presented at the point-of-sale may increase the utility of menu labelling for consumers.⁶

Although no review of Part 5 Requirements for display of nutritional information has been proposed in the consultation for *Food Regulation 2015*, the current review provides an opportune time to also review the requirements relating to fast food menu labelling.

Summary of recommendations

To ensure consumers are able to use the kilojoule menu labelling currently available in chain outlets, Cancer Council NSW recommends:

1. All fast food chains covered by Part 5 Requirements for display of nutritional information should be required to provide in-store the kilojoule values for all menu items and meals available, either on the menu board or other in-store information.
2. Stricter guidelines on how kilojoules must be displayed on menu boards are introduced and enforced, to enable consumers to see and use the kilojoules.

Specifically:

- a. Guidelines from the US⁷ should be adopted in NSW in relation to colour, in that kilojoules should be displayed in the same colour or a colour at least as conspicuous as that used for the name of the associated standard menu item.
- b. Guidelines from the US⁷ should be adopted in NSW, so in relation to contrast, in that kilojoules should be displayed with the same contrasting background

- or a background at least as contrasting as that used for the name of the associated standard menu item.
 - c. If bolding is used for the product name and/or price, then the kilojoules should be required to be bolded also, to make kilojoules as prominent as price and product name.
3. To ensure that chains, and all outlets of the chains, are providing kilojoule values for all menu items and meals on the menu board, enforcement efforts should be enhanced. Regular compliance checks should be conducted and action taken when breaches are identified.

Observations from Cancer Council NSW fast food research

Cancer Council NSW has conducted a large body of work in the fast food environment, and has been able to identify instances of how menu labelling could be improved to better aid the consumer. This has been further supplemented by observations gained while collecting in-store fast food nutrition data on behalf of the NSW Ministry of Health. These observations form the basis of this submission.

Coverage of the entire menu

The *Food Regulation 2010* state that kilojoules must be present for each standard menu item on the menu where there is a name or price.² However, there is no requirement for chains to present the whole menu on the menu boards (see Figure 1). Alternatively, chains often provide only kilojoules for meals rather than listing single menu items. Thus, in-store, chains are only presenting small sections of their menus on the menu boards, even though other products are available for purchase. This limits the amount of information available for consumers, making it difficult for them to compare menu items and make informed fast food purchasing decisions.

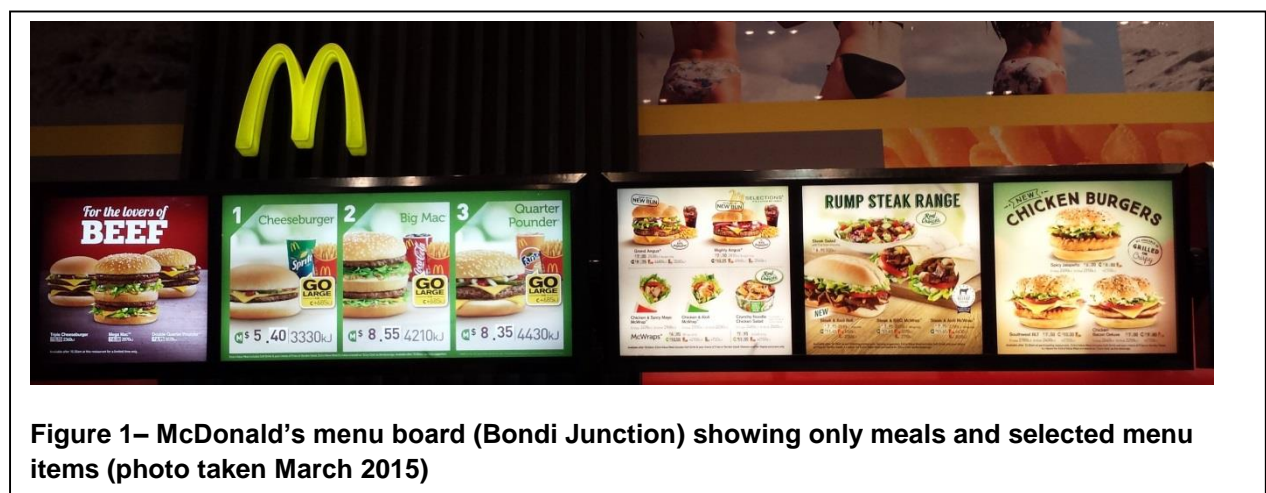


Figure 1– McDonald’s menu board (Bondi Junction) showing only meals and selected menu items (photo taken March 2015)

McDonald’s and Easy Way have demonstrated that kilojoules can be presented for all menu items, as seen in the Fairfield food court store, where a poster listing all the kilojoules in all menu items is available on the wall for all consumers to use (see Figure 2). Requiring fast food chains to provide the kilojoules for all menu items will enable consumers to use these values to base their purchasing decisions.

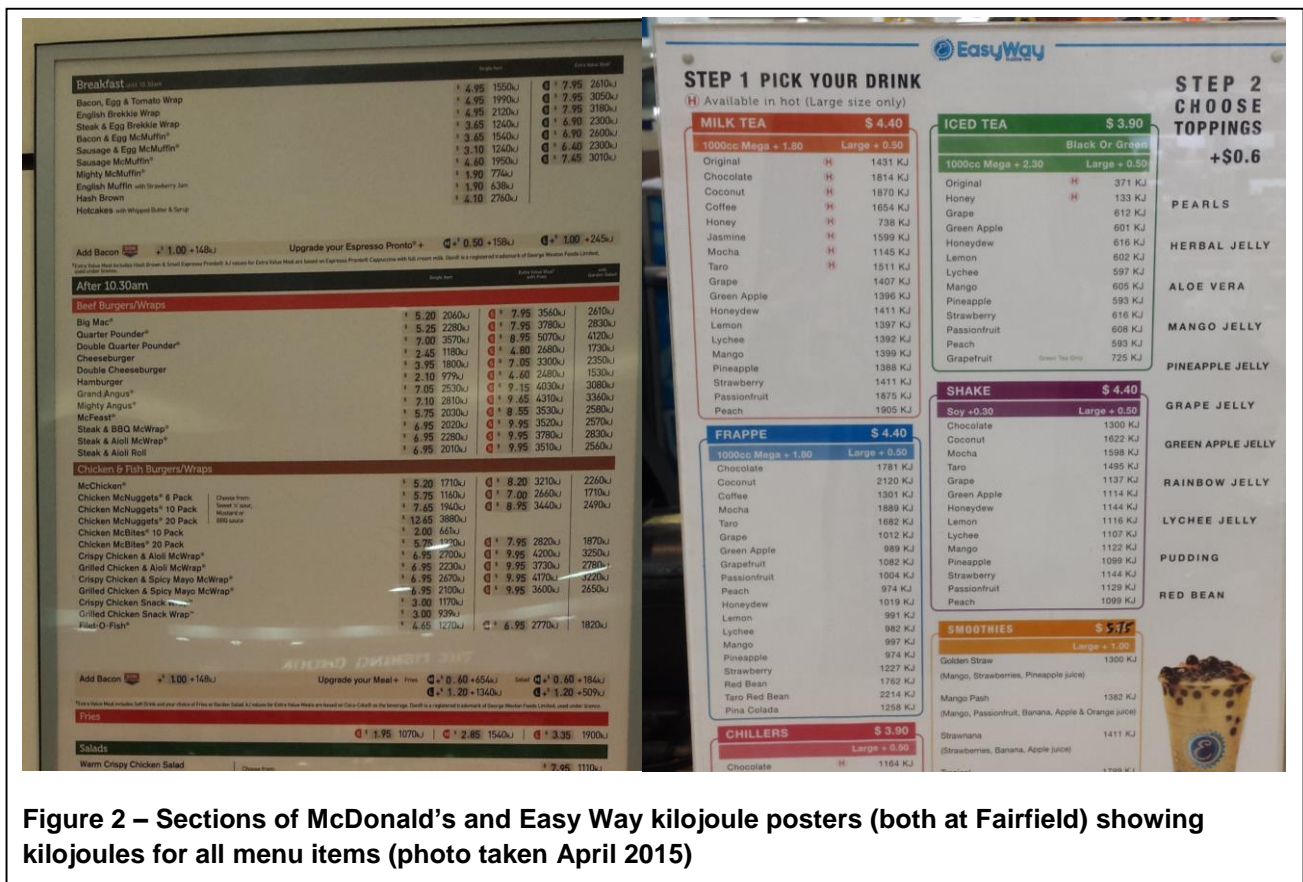


Figure 2 – Sections of McDonald’s and Easy Way kilojoule posters (both at Fairfield) showing kilojoules for all menu items (photo taken April 2015)

Cancer Council NSW recommends:

- All fast food chains covered by Part 5 Requirements for display of nutritional information should be required to provide in-store the kilojoule values for all menu items and meals available, either on the menu board or other in-store information.

Usability of the kilojoule labels

Although Clause 36 has guidelines on how nutritional information should be displayed on menu boards, instances have been observed where these guidelines are not adhered to. For example, kilojoule labelling in The Coffee Emporium stores are presented in dark brown font on a black background, and the kilojoules appear smaller than the price (see Figure 3).

Other examples of poor readability of kilojoules include:

- The kilojoule, name and/or price font being the same size, but the name and price being bolded, making the kilojoule value less visible.
- The kilojoule label being in the same font as the name and/or price but displayed in a different colour that has less contrast and poorer legibility.
- The kilojoule label being in the same font as the name and/or price but the name and price are highlighted with a lighter colour to make it stand out, where the kilojoule label is not.



Figure 3 – The Coffee Emporium menu board (Top Ryde) showing how difficult it is to see kilojoules on some menu boards (photo taken April 2015)

To improve consumers' ability to see and read the kilojoule labels, tighter regulations need to be introduced. Two examples of how this could be improved can be seen in the menu labelling legislation from the United States (US), which states that the number of calories must be stated:⁷

- *“In the same color, or a color at least as conspicuous as that used for the name of the associated standard menu item; and*
- *With the same contrasting background or a background at least as contrasting as that used for the name of the associated standard menu item”*

Cancer Council NSW recommends:

- Stricter guidelines on how kilojoules must be displayed on menu boards are introduced and enforced, to enable consumers to see and use the kilojoules. Specifically:
 - a. Guidelines from the US⁷ should be adopted in NSW in relation to colour, in that kilojoules should be displayed in the same colour or a colour at least as conspicuous as that used for the name of the associated standard menu item.
 - b. Guidelines from the US⁷ should be adopted in NSW in relation to contrast, in that kilojoules should be displayed with the same contrasting background or a background at least as contrasting as that used for the name of the associated standard menu item.
 - c. If bolding is used for the product name and/or price, then the kilojoules should be required to be bolded also, to make kilojoules as prominent as price and product name.

Enforcement

Research conducted in 2012 by Cancer Council NSW in over 200 fast food outlets found that even though kilojoule labels are available on menu boards, 97% of outlets (n=203) did not display these for the entire menu. Additional observations gathered while collecting nutrition information data on behalf of the NSW Ministry of Health in March-June 2015 found that some chains were not compliant with the legislation (e.g. see Figure 3).



Figure 3 – Michel's Patisserie menu board (Fairfield) showing no kilojoules for the drinks menu (photo taken April 2015)

Cancer Council NSW recommends:

- To ensure that chains, and all outlets of the chains, are providing kilojoule values for all menu items and meals on the menu board, enforcement efforts should be enhanced. Regular compliance checks should be conducted and action taken when breaches are identified.

Conclusion

Access to nutrition information at the point-of-sale can empower consumers to make healthier fast food choices. However, currently fast food outlets are either not providing consumers with the kilojoules for the entire menu or providing them in a manner that is not legible when making purchasing decisions. Cancer Council NSW recommends that *Part 5 Requirements for display of nutritional information* of the *Food Regulation 2015* should be tightened to ensure the public are able to access and use kilojoules on menu boards, thereby maximising the effectiveness of kilojoule labelling in promoting healthier fast food choices.

Contact

Thank you once again for the opportunity to comment on the *Food Regulation 2015*. If you would like to discuss any of the matters raised please contact Clare Hughes, Nutrition Program Manager on 9334 1762 or clareh@nswcc.org.au

References

- (1) World Cancer Research Fund, American Institute for Cancer Research. Food, nutrition, physical activity, and the prevention of cancer: a global perspective. Washington DC: AICR; 2007.
- (2) Food Act 2003, 43, NSW Government, (2014).
- (3) TNS Social Research. Fast Choices: An evaluation of energy purchased and consumer information. NSW Food Authority 2013 January [cited 2014 Nov 20]; Available from: http://www.foodauthority.nsw.gov.au/Documents/science/fast_choices_TNS_report.pdf
- (4) Cioffi CE, Levitsky DA, Pacanowski CR, et al. A nudge in a healthy direction. The effect of nutrition labels on food purchasing behaviors in university dining facilities. *Appetite* 2015 Sep 1; 92:7-14.
- (5) Green JE, Brown AG, Ohri-Vachaspati P. Sociodemographic disparities among fast-food restaurant customers who notice and use calorie menu labels. *Journal of the Academy of Nutrition and Dietetics* 2015; In Press.
- (6) Platkin C, Yeh MC, Hirsch K, et al. The effect of menu labeling with calories and exercise equivalents on food selection and consumption. *BMC Obesity* 2014; 1(21).
- (7) Food and Drug Administration. Food labeling; nutrition labeling of standard menu items in restaurants and similar retail food establishments. Final rule. *Federal Register* 2014 Dec 1; 79(230):71155-259.