



3 June 2021

Ms Gillian Duffy
Director
Population Health Division
Preventive Health Policy Branch
Australian Government Department of Health
GPO Box 9848
Canberra ACT 2601
AUSTRALIA

Email: Australian Department of Health [Consultation Hub](#)
gillian.duffy@health.gov.au
cc: sarah.reader@mpi.govt.nz

Dear Ms Duffy

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Consultation Regulation Impact Statement: Policy Guidance: Menu labelling in Australia and New Zealand 2021*.

Yours sincerely

Katherine Rich
Chief Executive



**Consultation Regulation Impact Statement:
Policy Guidance: Menu labelling in
Australia and New Zealand 2021**

**Submission by the New Zealand Food & Grocery
Council**

3 June 2021

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the *Consultation Regulation Impact Statement: Policy Guidance: Menu labelling in Australia and New Zealand 2021*.
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total goods and services exports.

OVERARCHING COMMENTS

3. NZFGC is concerned that the time for menu board labelling has passed. This is based on:
 - Key changes in the industry over the last several years, accelerated by the Covid events of 2020-2021, particularly in relation to the concept of menu boards, their disappearance, ordering technology, app development and ‘delivery-to-home’ developments
 - Declining numeracy skills in New Zealand and associated difficulty with health literacy (kilojoules vs calories and understanding the impact for the individual consumer)
 - Evidence that benefit is absent or, at best, mixed.
4. In light of the changed environment, the trends in purchase, the decreasing numeracy skills in New Zealand, and the absence of positive impact, NZFGC strongly supports consideration of other initiatives that deliver change to customers such as through reformulation etc. Other initiatives might be developed with industry that do not require the consumer to exercise, in particular, numeracy skills and which will otherwise attract high cost for limited or no return.

DETAILED COMMENTS

Introduction

5. Key parts of the industry have been changing significantly over the last decade and the Covid events of 2020-2021 have accelerated these changes. Since the 2011 principles were published, and even since the New Zealand Food Industry Taskforce report (FIT Report) was published in 2018¹, the concept of menu boards and how they appear and are used has changed massively. Many chains barely have front counters anymore as 70-80% of orders in take away chain restaurants such as McDonalds are made at kiosks. Drive-Thru options now represent more than 50-60% of sales where these are available, and home delivery such as McDelivery through the likes of UberEats is continuing to grow.
6. Apps are becoming even more of a channel with the likelihood that people will have their favourite meals saved, the app will recognise when they get to a restaurant, allow them to order their usual, pay etc without any interaction with people or menus/kiosks. In such an environment, menu board labelling has had its day and the world has moved on.

¹ *Final Report to Ministers of Health and Food Safety: Food Industry Taskforce on Addressing Factors Contributing to Obesity, 20 December 2018*

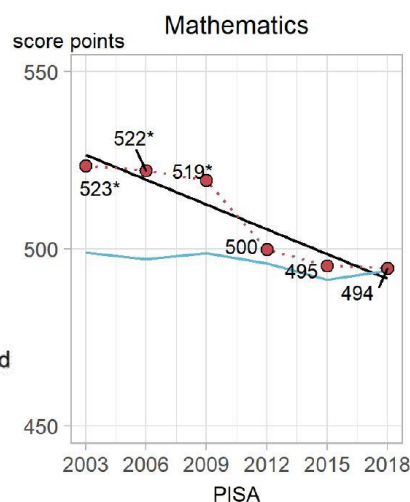
7. As well, numeracy is necessary to interpret energy content in kilojoules. These are not generally small numbers which means a reasonable numeracy level is required. Numeracy skills in New Zealand are decreasing at a rate faster than many countries in the OECD. This trend is shown in the Figure opposite. New Zealand numeracy was trending down in 2018 and can be expected to have continued this decline in 2021.

Figure 1 Legend

● New Zealand — OECD average — Trend - New Zealand

Source: Country Note: Programme for International Student Assessment (PISA) Results from PISA 2018

Figure 1 NZ PISA Scores - Maths



8. The FIT Report recommendations were for review and evaluation of Australian work with menu board labelling and (dependent on the outcome) voluntary uptake of menu board labelling. It was noted in the FIT Report that “Education is also necessary for understanding kilojoule information on menu boards in fast food outlets” (FIT Report, p4). A survey conducted to inform the FIT Report identified only one Quick Service Restaurant (QSR) company labelling menu boards, another that it already provided detailed nutritional information for products across its menu and another offered healthy serving options (FIT Report, p48). These factors have been key reasons for not pursuing the FIT Report recommendations relating to menu board labelling. The recommendations were also delayed until further evidence of positive impact was available. The evidence that has emerged is that there are no or mixed beneficial impacts.
9. In a recent global study of menu board labelling (Patino et al, p19)², it was noted that “...only two published evaluations were available for New South Wales, Australia, that found no significant effects” and the research commissioned by MPI appears to have had mixed results.
10. In light of the changed environment, the trends in purchase, the decreasing numeracy skills in New Zealand, and the absence of positive impact, NZFGC strongly supports consideration of other initiatives that deliver change to customers such as through reformulation etc that do not require the consumer to exercise numeracy skills.

Section 1: Introduction

1) Is your business voluntarily displaying energy information in New Zealand? Please provide details, where possible.

11. NZFGC is aware that one company responding to the FIT Report survey in 2018 advised it was providing menu board labelling. NZFGC is not aware of any other businesses in New Zealand displaying energy information.

2) Does your New Zealand business sell standard food items and is it a chain (ie more than one outlet operated/owned under franchise arrangements or the same trading name, or owned by one parent company/central owner/corporation)?

² Patino S R-G, Zhou M et al. “Effects of Menu Labeling Policies on Transnational Restaurant Chains to Promote a Healthy Diet: A Scoping Review to Inform Policy and Research”. *Nutrients*, 2020, 12, 1544; doi:10.3390/nu12061544

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12. 'Standard food items' do not generally exist with the move to food offerings changing to better meet consumer demand by providing for the consumer to pick and mix and to better provide variety, seasonality and cost efficiency. Even a 'scoop of chips' is not standard when compared across outlets. This was identified a number of years ago in the course of the conduct of the 'Chip Group' which was convened by the New Zealand Heart Foundation in the early 2000s.

3) Is it a problem for New Zealand consumers that energy information is not mandated at the point-of-sale?

13. No. Given declining numeracy skills, it's unlikely the bulk of consumers would be able to interpret energy information at point of sale. Equity needs to be considered when considering menu labelling as numerical energy labelling requires a level of health literacy as well as numeracy to interpret what the values mean for an individual's energy intake. This is unlikely to be available across the consumer population.

14. NZFGC understands that the forecast growth for eating out of home is in independent outlets. Such a trend would also suggest energy information at point of sale would have decreasing relevance if it had any to start with.

Section 2.1: Nationally inconsistent menu labelling legislation

4) Do these differences between states and territories create problems for Australian businesses

15. Not Applicable.

5) Do these differences impact Australian consumers

16. Not Applicable.

Section 2.2: An uneven playing field with respect to menu labelling for businesses selling standard food items

6) Is the uneven playing field with respect to menu labelling requirements a problem for standard food outlets in Australia?

17. Not Applicable. However, we query the definition of 'standard food outlets'.

7) Is it a problem for Australian consumers that energy information is not at the point-of-sale in all businesses selling standard food items?

18. Not Applicable. However, we query the definition of 'standard food items'.

8) Are there other business types (not already listed in Appendix 3) that are selling standard food items in Australia or New Zealand?

19. NZFGC is not aware of other business types (not already listed in Appendix 3) that are selling any 'standard food items' in New Zealand. We query the definition of 'standard food items'.

Section 2.3: Emerging trends for promoting, offering, and selling standard food items are not addressed by the 2011 Principles

9) What, if any, other new ways of promoting, offering, and selling standard food items have emerged since 2011, or are likely to emerge in the future and are not covered in this document?

20. Ignoring 'standard food items', as noted above, the concept of menu boards and how they appear and are used has changed massively in the past decade. Many chains barely have front counters any more as the bulk of orders in take away chain restaurants are made at kiosks. Drive-Thru options now represent more than 50-60% of sales where these are available, and home delivery through the likes of UberEats is continuing to grow.

21. Apps will continue to become even more of a channel with the likelihood that people will have their favourite meals saved, the app will recognise when they get to a restaurant, allow them to order their usual, pay etc without any interaction with people or menus/kiosks. In such an environment, menu board labelling has had its day and the world has moved on.

10) Is it a problem for consumers when energy information is not available for all menu items and/or on all ordering platforms and menu infrastructure?

22. No. As noted in response to Question 3 above, given declining numeracy skills, its unlikely consumers would be able to interpret energy information at point of sale irrespective of extent of use.

11) Has the increased use of different menu infrastructure and online platforms changed the cost of implementing menu labelling in Australia?

23. Not Applicable.

12) Do you agree with the overall statement of the problem presented (section 2, 2.1-2.3)?

24. Yes. The first two (nationally inconsistent menu labelling legislation and uneven playing field for food retailers) relate only to Australia. The last relating to technological and environmental change applies across Australia and New Zealand and is significant for future any developments.

13) Do you agree that this problem (section 2, 2.1-2.3) requires government intervention?

25. Since two of the three problems identified in the problem statement relate only to Australia NZFGC has no view on further government intervention in Australia.

26. In relation to the third problem relating to technological and environmental change, the changes are being made at such pace that government intervention is unlikely to be relevant, meaningful and beneficial to the objective of providing information to consumers on the healthfulness of options they might choose. Other non-regulatory options should be considered that do not rely as heavily on visual cues noting the environment is often characterised as 'fast' food and the associated 'fast' decision-making.

Section 3: Objectives

13) Do you agree with the proposed objectives?

27. New Zealand has no menu labelling system, therefore objective 1 is Australian only and should therefore read:

"Minimise the proliferation of different menu labelling systems across Australia;"

28. Objective 2 assumes that all businesses sell 'standard food items'. 'Standard food items' do not exist and even if proposed, they would differ by business and within business. In any case, for the Australian context, this should refer to 'any businesses' not 'all businesses' since many may be exempt. As well this objective assumes the play field is not level when it is New Zealand. This objective therefore does not apply to New Zealand.

29. In relation to Objective 3, ("ensure that different modes of sale and types of menus enable comparison of menu options to assist people make healthier food purchase choices at the point-of-sale") it is not clear if this is within or across businesses. If the latter, we suggest this is an impossible objective since there are as many different modes of sale and types of menus as there are food businesses. We believe the prospect of delivering this at point-of-sale cost effectively is impossible. 'Ensure' means to make certain that (something) will occur or be the case. It is not possible to ensure. Nor is it possible to deliver across modes and menus.

30. A more feasible objective might be:

"Ensure that Provide that different modes of sale and types of menus, to the greatest extent possible, enable comparison of menu options to assist people to make healthier food purchase choices at the point-of-sale."

Section 4: Options

14) Are the proposed options appropriate to address the stated problem and achieve the proposed objectives?

31. No. Three of the four options are presented to address Australian problems and potentially share that problem with New Zealand (a problem shared etc). For New Zealand only Option 4 (Encourage industry to voluntarily implement enhancements to menu labelling) could be viable for New Zealand. However, its description is misleading as it presents status quo for Australia. This underlines the need for the solutions to be considered as for Australia only.

Section 5: Impact analysis

16) Would your business incur higher implementation costs if legislative changes were not timely and uniform across all jurisdictions?

32. Not Applicable

17a) Are the benefits and costs associated with the four proposed options and the complementary strategies accurate?

33. Option 1 presents no costs to New Zealand of maintaining menu board labelling since there is none. It is therefore accurate.

34. Option 2 (update principles and encourage jurisdictions to implement) is not relevant to New Zealand since the 2011 principles have been treated as Australia only. There are no costs as noted.

35. Option 3 (Policy guidelines and an ANZ menu labelling standard) is high cost. Post Covid, when the industry has already faced serious pressures and business closures, such an intervention would be seen as poorly targeted and ill-timed for dubious outcomes. As well, start-up costs of AUS\$1,585 appears seriously under-estimated for changing both a static board and an electronic board (in terms of cost of determining energy of each item of multi-ingredient combinations, artwork etc).

36. Option 4 is linked to the impossible objective and therefore questionable as to real-life feasibility. The costs are not assessed.

17b) Are there any other benefits, costs or unintended consequences which have not been identified above?

37. See response to Question 17a).

18) Are the average annual regulatory costs representative of the costs incurred/likely to be incurred by your business?

38. NZFGC is not aware of costing models used by Australian businesses for these proposals.

19) If the regulatory costs outlined above do not represent the costs incurred /likely to be incurred by your business, what are / would be the costs per year to comply with the proposed changes to menu labelling regulation? Please indicate if costs are for initial implementation or for ongoing maintenance, the type of costs (e.g. administrative, menu design and printing, nutritional analysis) and which jurisdiction/s your business operates in. For businesses already implementing menu labelling, please only provide the additional costs associated with implementing the proposed changes to the regulation. Please only provide the cost of providing energy information, and do not include business-as-usual costs that would be incurred in the absence of menu labelling regulation.

39. NZFGC is not aware of costing models used by businesses for these proposals.

20a) Would your Australian business be likely to meet the proposed definition of a standard food outlet?

40. Not Applicable

20b) If not, is the reason because you do not sell standard food items, do not meet the business size threshold, or do not operate as a chain? Note for New Zealand businesses, this information is sought at Question 2.

41. Not Applicable

Section 7: Preferred option

21) What is your preferred option and why?

42. Option 1 for New Zealand since this exercise is about addressing Australian problems rather than looking at alternative options for addressing healthy options in QSR environments.

22) If Option 4 is your preferred option, how do you see it being implemented and operationalised?

43. Not Applicable