

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Food Act 2003* (***the Principal Act***):

(a) to require certain prescribed food businesses that operate at more than one premises or in a chain (***standard food outlets***) to display certain nutritional information in relation to standard food items that they sell, and

(b) to require other standard food outlets that voluntarily display certain nutritional information to meet certain requirements in relation to the display of that information, and

(c) to make other changes to improve the administration of that Act.

The Bill also amends the *Food Regulation 2010* (***the Principal Regulation***):

(a) to prescribe the standard food outlets referred to in paragraph (a) above, and

(b) to prescribe the kind of nutritional information referred to above and the manner of determining and displaying it, and

(c) to make other related amendments.

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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Food Act 2003 No 43

Amendments relating to nutritional information

Schedule 1 [3] inserts proposed Division 4 of Part 8 into the Principal Act which consists of the following provisions:

Proposed section 106K contains definitions used in the proposed Division.

Proposed section 106L defines ***standard food item*** as meaning an item of ready-to-eat food that is sold in servings that are standardised for portion and content and that is shown on a menu (whether on a board, leaflet or the like or in electronic form) or displayed with a price or identifying tag or label. It does not include food prescribed by the regulations as prepackaged food but includes any item of ready-to-eat food prescribed by the regulations.

Proposed section 106M defines ***standard food outlet*** as meaning premises at which standard food items are sold by retail by a food business that sells standard food items at other premises, or as one of a chain of food businesses that sell standard food items, if at least one of the standard food items sold is substantially the same as other standard food items of that type sold at the other premises or by the other food businesses in the chain.

Proposed section 106N requires standard food outlets prescribed by the regulations to display nutritional information of a kind prescribed by the regulations and determined in accordance with the regulations and to display that information in a manner and in locations prescribed by the regulations.

Proposed section 106O prevents standard food outlets that are not required under proposed section 106N to display nutritional information from voluntarily displaying nutritional information of a kind prescribed by the regulations unless the information is determined in accordance with the regulations and is displayed in a manner and in locations prescribed by the regulations.

Proposed section 106P enables regulations to be made regulating or prohibiting the display or distribution of material about nutritional information by standard food outlets.

Proposed section 106Q enables the regulations to prescribe exemptions in relation to the operation of the proposed Division.

Schedule 1 [7] amends Schedule 2 to the Principal Act to provide that a person does

not commit an offence against proposed section 106N or 106O until 1 February 2012.

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Other amendments

Schedule 1 [1] inserts proposed section 43A into the Principal Act to make it clear that a person who is an authorised officer and also a food safety auditor can exercise the functions of both of those offices when on premises or in relation to a food transport vehicle so long as the person produces his or her certificate of authority as an authorised officer.

Schedule 1 [2] amends section 99 of the Principal Act to make it an offence for a person to threaten, intimidate or assault a food safety auditor in the exercise of his or her functions.

Schedule 1 [4] amends section 119 of the Principal Act to extend the time for instituting proceedings for offences against the Act or the regulations to not later than 2 years after the date on which the offence was alleged to have been committed.

Schedule 1 [5] amends section 128 of the Principal Act to remove a provision that currently prevents the prosecution in proceedings for an offence against the Act or the regulations from relying on an analysis as evidence unless it was carried out by an approved laboratory or approved analyst under the Act or under the supervision of an approved analyst.

Schedule 1 [6] amends Schedule 2 to the Principal Act to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Food Regulation 2010

Schedule 2 [1] inserts proposed Part 2B into the Principal Regulation which contains the following provisions:

Proposed clause 16P provides that terms used in the proposed Part have the same meanings as in proposed Division 4 of Part 8 of the Principal Act.

Proposed clause 16Q defines *prepackaged food* to generally mean food that arrives at the premises at which it is sold in packaging and is not removed from that packaging before its sale.

Proposed clause 16R prescribes the standard food outlets for which nutritional information is required to be displayed for the purposes of proposed section 106N of the Principal Act. They are standard food outlets of food businesses that sell standard food items by retail at 20 or more locations in New South Wales or at 50 or more locations in Australia or in a chain of food businesses that together sell standard food items at 20 or more locations in New South Wales or at 50 or more locations in Australia.

Proposed clause 16S prescribes the kind of nutritional information that must be displayed for the purposes of proposed section 106N of the Principal Act. That information is the average energy content expressed in kilojoules of each standard food item sold and the statement that “The average adult daily energy intake

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is 8,700 kJ.”. The proposed clause also prescribes the method for determining the average energy content of a food item.

Proposed clause 16T prescribes, for the purposes of proposed section 106O of the Principal Act, the kind of nutritional information which, if displayed, must be determined in accordance with the prescribed requirements and displayed in the prescribed manner and locations. That information is the energy content of any standard food item sold.

Proposed clause 16U prescribes the locations in which the nutritional information

must be displayed.

Proposed clause 16V prescribes the manner in which the nutritional information must be displayed.

Proposed clause 16W prescribes food businesses that are, and food that is, exempt from the operation of proposed section 106N of the Principal Act.

Schedule 2 [2] amends Schedule 2 to the Principal Regulation to prescribe offences against proposed section 106N or 106O of the Principal Act as penalty notice offences and to prescribe the amount of the fines that will apply.