



Victorian Government
Proposal to display kilojoule content of food and
drinks in large chain food outlets and supermarkets
Consultation Paper

Submission from the Obesity Policy Coalition

29 April 2016

Executive Summary

The Obesity Policy Coalition ('OPC') is a coalition between Cancer Council Victoria, Diabetes Victoria and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia.

We welcome and strongly support your proposed introduction of a kilojoule menu labelling scheme in Victoria. There is clear evidence that kilojoule information on chain food outlet menus influences consumers to purchase fewer kilojoules and improves the healthiness of the food sold. We agree that the proposed scheme should be one part of a multi strategy approach to encouraging healthy eating and reducing the impact of obesity.

We agree that Victoria's kilojoule menu labelling scheme should apply to large chains and require the display of kilojoule information for ready to eat, standardised and unpackaged food and non-alcoholic drink items.

Our recommendations include the following:

- Removing the proposed exemptions for service stations, convenience stores and small supermarkets;
- Ensuring that the scheme applies to cinemas and to dine-in only chains;
- Ensuring that the legislation clearly prescribes requirements relating to placement (e.g. that labels be static and adjacent to price), clarity and legibility (e.g. same font, colour, background, weight and size);
- Ensuring that supermarkets and other businesses are subject to the same requirements for the content and manner of display of information (e.g. supermarkets are not permitted to display energy content per 100g or in the same size font as the unit price);
- Requiring businesses that voluntarily display kilojoule information to comply with the scheme's requirements for the content and display of this information ;
- Ensuring penalties for breaches of the scheme are high enough to encourage compliance and deter breaches;
- Delivering an education and social marketing campaign integrated into the existing LiveLighter campaign funded by the Victorian Government and run by Cancer Council Victoria and the Heart Foundation; and
- Evaluating the impact of the scheme on incremental changes in knowledge, purchasing and consumption in the short to medium term and on influence on reformulation and the impact on public health in the long term.

Introduction

The Obesity Policy Coalition (OPC) is a coalition between Cancer Council Victoria, Diabetes Victoria, and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University, with funding from VicHealth. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia.

We are grateful for this opportunity to respond to your Consultation Paper titled 'Proposal to Display Kilojoule Content of Food and Drinks in Large Chain Outlets and Supermarkets'. There is evidence from Australia and internationally that kilojoule menu labelling supports consumers to make informed and healthier food choices. With Australians making 51 million visits to fast food chains each month, mandatory kilojoule menu labelling will be an important component of any multi-strategy approach to improving food choices and reducing the problems of overweight, obesity and related chronic disease.

1. The merits of the proposed approach

The OPC strongly supports the Victorian Government's plan to implement a system of mandatory kilojoule menu labelling at chain food outlets and large supermarkets in Victoria. Victorians consume large quantities of convenience and fast food and have high rates of overweight and obesity. Presently, many ready-to-eat foods are sold in Victoria without any visible nutrition information at the point of sale. Where there is voluntary uptake of kilojoule menu labelling by retailers, approaches are not consistent.

Research supports the effectiveness of providing kilojoule information together with a supportive public education campaign. There is evidence that kilojoule menu labelling in NSW and New York City has resulted in customers purchasing meals with fewer kilojoules (for themselves and their children), and that it has also improved the healthiness of the foods sold.¹ In particular, the evaluation of the Fast Choices initiative in NSW by the NSW Food Authority (for the period May 2011 to January 2013) found a high level of compliance by outlets and a significant reduction in median kilojoules purchased by consumers, with an overall reduction of 519 kJ (from 3355kJ to 2836 kJ or 15% decrease).²

Following the introduction of similar schemes in NSW, ACT and SA and soon QLD, we support Victoria's move towards consistency with other Australian states and territories. We encourage the Victorian Government to build on and improve these schemes in developing a comprehensive kilojoule menu labelling scheme to achieve the best health outcomes for Victorians.

¹ NSW Food Authority. Evaluation of Kilojoule Menu Labelling. NSW Government, 2013; Dumanovsky, T., C. Y. Huang, et al. (2011) Changes in energy content of lunchtime purchases from fast food restaurants after introduction of calorie labelling: cross sectional customer surveys." *BMJ* 343: Tandon, P.S, et al. (2010) Nutrition menu labeling may lead to lower-calorie restaurant meal choices for children *Pediatrics* Vol. 125(2), 244-248

² NSW Food Authority. Evaluation of Kilojoule Menu Labelling. NSW Government, 2013

2. The proposed scope of the scheme – covering large chain food outlets and supermarkets

We support the application of the scheme to large chain food outlets and supermarkets in Victoria and recognise that the proposal to capture chains with 20 outlets in Victoria or 50 outlets nationally would be consistent with schemes operating in NSW, ACT and SA. We believe that the scope of the proposed scheme would cover the largest chain food outlets operating across Victoria.

Exclusion of supermarkets, convenience stores and service stations

We ask the Victorian Government to widen the scope of the scheme by removing proposed exclusions for small supermarkets, convenience stores and service stations. These chains represent a significant source of ready to eat standardised food items in Victoria and offer products that are often likely to be high in energy, such as slushies, donuts, pies, sausage rolls and some sandwiches. We are concerned that excluding these chains from the scheme will reduce its effect as significant numbers of consumers will be purchasing ready to eat food items without information about energy content. Regardless of whether they purchase ready to eat foods at a fast food outlet, supermarket, convenience store or service station, consumers should be able to obtain information about the kilojoule content of foods available so that they can compare offerings and make informed, healthier choices.

On a practical level, barriers to implementing the scheme at these chains are likely to be low, or no greater than at any other business covered by the scheme. As the proposed scheme will only apply to large chains, those businesses within its scope have sufficient resources to implement the scheme's requirements. We also note that standardised ready to eat food items are likely to be provided by the same suppliers across all or the majority of outlets of these large chains. The chains that would be excluded from the currently proposed scheme include chains such as 7-11 and Coles Express, both large chains with a significant retail presence in Victoria. For example, according to their websites, Coles Express operates approximately 685 outlets in Australia and 7-11 operates more than 615 outlets. We consider that chains of this size should fall within the scope of the scheme.

We are particularly concerned that excluding small supermarkets, convenience stores and service stations will create inconsistency that will negatively affect both consumers and businesses. We believe that consistent application of the scheme across all large chains where ready to eat standardised food items are available is of fundamental importance. This is because it is important that the scheme's effect is maximised by covering as many chains as possible, but also because a central purpose of the scheme is to enable consumers to compare the energy content of food products and to make informed, healthier choices. Where a significant part of the market is not covered by the scheme, consumers cannot effectively make comparisons between products and choose healthier options. For example,

a consumer who purchases a muffin each week may be able to choose between several chains including a large bakery chain, a convenience store and a service station. Under the Victorian Government's proposal, this consumer would not be able to compare the energy content of the muffins available at all three chains and would not have the information needed to make an informed choice about which muffin to purchase.

We also note that as well as having a negative effect on the consumer's ability to compare products and make healthier choices, the inconsistent application of the scheme may also create an uneven playing field between businesses and serve to unfairly penalise businesses that are covered by the scheme.

Victoria's scheme will follow the introduction of similar schemes in NSW, ACT, SA and soon QLD. Across jurisdictions there are differing approaches to the types of outlets that are and are not included within the kilojoule menu labelling schemes. For example, the ACT scheme has no exclusion for convenience stores or service stations and defines supermarkets without reference to a set floor space.³ The NSW scheme adopts a definition of supermarket based on floor space and exempts convenience stores and service stations. We encourage the Victorian Government to follow the example set by the ACT in applying its scheme more broadly. Further, we encourage the Victorian Government to lead in this area and apply its scheme to all outlets of large supermarket chains regardless of floor size, and to require supermarkets to comply with the content and display rules applying to all other large chains (see more on page 8).

Small supermarkets

We wish to draw particular attention to the Victorian Government's proposal to exclude supermarkets with a floor space of less than 1000 square metres from the scheme. We ask the Victorian Government to reconsider this proposal and extend the scheme to all stores of large supermarket chains.

We see no justification for an exclusion based on the physical size of the premises where a standard food item is sold. In our view this proposal is likely to create significant inconsistency across similar businesses and even within individual chains. For example, a chain may be required to provide kilojoule information at some stores and not others. We are particularly concerned that this rule would apply to some supermarkets that are part of major chains, for example Coles and Woolworths. For example, Woolworths, in addition to its large supermarkets, operates smaller city stores under the brand Woolworths Metro. Regardless of the floor space of these stores, they are clearly supermarkets and should be included in the scheme, particularly as they form part of such a major chain.

³ *Food Regulation 2002* (ACT) reg 13A

We highlight the impact of this supermarket size restriction in creating inconsistency in the information provided to consumers when purchasing ready to eat standard food items. As kilojoule information will not be provided at all supermarkets it means consumers will not have adequate information to compare the energy content of food provided from various outlets. For example, consumers can shop at a large supermarket and be provided kilojoule information before making a choice on the food they purchase, however if making the same decision at a small supermarket, no information would be provided. We see no reason for this distinction and note that the health effects of consuming foods high in energy are the same regardless of where the food was purchased.

Application to cinemas

We support the inclusion of cinemas within the proposed scheme and note that the Victorian Government's proposal makes no exception for cinemas. Cinemas remain a popular destination for children and adults. It is well known that they sell standard food items and that many of these items are energy dense and nutrient poor, as well as being sold in large serving sizes. Kilojoule information would assist consumers when making choices within and across food categories (including choosing serving sizes) and would also assist consumers to understand the extra kilojoules they would be consuming by accepting an offer to 'up size' their popcorn and/or sugary drink.

Dine-in only outlets

We support the Victorian Government's proposal to apply the scheme to outlets that only offer dine-in meals with no take away service. The OPC's position is that customers of all large chain outlets selling ready to eat standardised food should be presented with information about the energy content of food items before they make a decision to purchase. We see no reason to make a distinction between outlets that offer take away and dine-in services and those that offer dine-in only, and we support this element of the Victorian Government's proposal.

Application to smaller businesses voluntarily displaying nutritional information

We ask the Victorian Government to reconsider its proposal not to require businesses who voluntarily display kilojoule information to comply with the requirements of the scheme. We note that NSW, SA and ACT require businesses that voluntarily display nutritional information about the food available to comply with scheme requirements, even where they would otherwise be outside the scope of the scheme. We support this approach and encourage the Victorian Government to legislate consistently with other jurisdictions in this area.

We support businesses that choose to provide their customers with information about the energy content of their food, even where not legally required to do so. We consider, however, that it is important to ensure that these businesses are providing consumers with information that is consistent, both in content and in the manner and location of display, with information provided by larger businesses operating under the kilojoule menu labelling scheme. This is because consumers should be provided with consistent information regardless of where they purchase standard food items and should be able to confidently assess and compare information provided at one business with information provided at another.

3. Any operational, practical, implementation or other issues that the proposed approach may raise that are relevant to your business or organisation

Information required to be displayed

We support the proposal that businesses subject to the scheme should be required to display the kilojoule content of standard food items.

We support the Victorian Government's proposal to require businesses subject to the scheme to display the energy content on menus, menu boards, price tags, food tags, drive-through menus, online ordering menus and phone apps. We believe it is important to present consumers with the energy content of food items at the time they are making a decision about which items to order. This requires the display of kilojoule information in multiple locations including both in-store and online.

We also support the Victorian Government's proposal to require businesses to display the reference statement "*The average adult daily energy intake is 8700 kj*" on menus, menu boards, online menus and display cabinets or stands. The inclusion of this statement enables consumers to put the kilojoule content of a particular food item in context and assess the percentage of the average daily intake it provides.

We support the Victorian Government's proposal to require businesses under the scheme to display the combined kilojoule amount of any meal where multiple items, for example a drink and food item, are sold together for one price. Combination meals, often promoted as 'meal deals' or 'combos' are commonly offered at large chains that fall within the proposed scheme. We consider it is important that consumers are presented with the total energy content for these types of meals as consumers may not otherwise calculate the total energy provided by the meal.

Information displayed by supermarkets

We strongly oppose the Victorian Government's proposal to allow large supermarkets to choose to display kilojoule content on a per serve basis or per 100g. We ask the Victorian Government to reconsider this proposal and require supermarkets to display the same information as all other businesses, being the kilojoule content of each standard food item. We do not consider there is any justification for allowing supermarkets to provide different information. As with the proposal to altogether exclude particular types of businesses, this inconsistency means consumers cannot effectively compare energy information provided by different chains and creates an uneven playing field for business.

In particular, we are concerned that allowing supermarkets to display energy content per 100g may result in products appearing to have less energy than those displayed per item. This is because the information is likely to be displayed in this way when the item size is larger than 100g. In our view, there is no practical reason why a supermarket cannot display the energy content for each standard food item. The scheme as proposed applies only to ready to eat food that is standardised for content and portion. This means the supermarket must know the size of each food item and could easily display the information on a per item basis. We strongly encourage the Victorian Government to change this element of its proposal.

Presentation of kilojoule information

We note that the Victorian Government's Consultation Paper provided limited information on how businesses would be required to display the kilojoule information. We generally support the NSW approach to the presentation of kilojoule information, however we ask Victoria to depart from the NSW approach as follows:

- NSW legislation requires the kilojoule content and reference statement to be displayed in the same font and to be at least the same size as the comparison text⁴ (either the price, unit price or the name of the item depending on the circumstances). We ask that, in addition to these requirements, the Victorian Government requires the kilojoule content and the reference statement to be the same colour, weight and to have the same background contrast as the comparison text. This is to prevent the required information being displayed in a text that is a lighter colour or is a faded out or otherwise less prominent version than the price or name of the item.
- We ask that the Victorian Government does not allow supermarkets to display the kilojoule content at the same size as the unit price instead of the price of the item. This is because unit pricing may be in very small text. We ask the Victorian

⁴ *Food Regulation 2015 (NSW)*, reg 36

Government to apply the same requirements for the presentation of the text to supermarkets as apply to all other businesses.

- We ask that the Victorian Government requires the kilojoule content and the reference statement to be the same size (or larger than) the largest price displayed if the price is displayed more than once on a menu. This is to avoid a situation where a business displays, for example, a poster showing a food item with two prices – one small and one large – with the kilojoule content and reference statement being displayed in the smaller text.
- We ask that the Victorian Government requires the kilojoule content and the reference statement to remain permanently visible, i.e. static on menu boards. This is to avoid businesses introducing rolling digital menu boards that do not continually display kilojoule information and require consumers to wait before the kilojoule information is briefly displayed. The absence of kilojoule information adjacent to all standard food items and in static form makes it particularly difficult for consumers to compare the kilojoule content of food items and make informed and healthier choices.

See below for an example of a digital menu displaying kilojoule content at the bottom. The kilojoule content scrolled between each menu item.

BEEF

	Single Item	Medium Meal
Big Mac®	\$4.40	\$10.40
Quarter Pounder®	\$4.40	\$10.40
McFeast®	\$4.90	\$10.90
Cheeseburger	\$3.55	\$8.55
Grand Angus®	\$4.00	\$10.40
Mighty Angus®	\$6.40	\$10.40

CHICKEN & FISH

	Single Item	Medium Meal
McChicken®	\$4.40	\$10.40
Spicy Jalapeño	\$4.40	\$10.40
Southwest BLT	\$4.90	\$10.90
Chicken Bacon Deluxe	\$3.55	\$9.55
Chicken McNuggets® 6pk	\$4.00	\$9.75
Filet-O-Fish®	\$4.35	\$9.85
Chicken McBites® 10pk	\$2.40	\$8.40



Big Mac® Meal
SMALL \$4.40 2060kJ MED \$10.40 2790kJ LRG \$11.40 3120kJ



McChicken® Meal
SMALL \$4.40 2060kJ MED \$10.40 2790kJ LRG \$11.40 3120kJ

Penalties

We note that the Victorian Government has not specified the number of penalty units that it proposes to apply as a penalty for businesses that breach the requirements of the scheme. We encourage the Victorian Government to set the penalties high enough to encourage compliance and deter breaches. We support the penalties that apply for breaches of the NSW scheme and encourage the Victorian Government to adopt the NSW approach in this area. In particular, we support the application of higher penalties to corporations as a measure to encourage compliance by large corporations and to deter engagement in tactics that undermine the objectives of the proposed scheme.

4. Any other relevant matters

Importance of social marketing and education

There is considerable evidence that food labelling is more effective when accompanied by education and information programs.⁵ We therefore encourage the Victorian Government to combine the introduction of its kilojoule menu labelling scheme with a community and industry awareness and education campaign. We encourage the Victorian Government to consider an education campaign that is integrated into the LiveLighter campaign funded by the Victorian Government and run by Cancer Council Victoria and the Heart Foundation. As this program is already established it would be a cost effective way to deliver a comprehensive education and social marketing campaign.

With appropriate education campaigns and materials, consumers will understand that kilojoule information provided by relevant standard food outlets has been mandated by government, and that this is information that they can rely on. Consumers will also become accustomed to looking at kilojoule information when assessing and comparing products in supermarkets, at home and in other contexts.

A diverse range of education materials will of course be required for consumers to ensure that the widest range of the Victorian population is reached. Consideration should be given to the use of a social marketing campaign, and targeted materials and campaigns particularly aimed at informing low SES/education and culturally and linguistically diverse groups. Most importantly, the targeted materials should aim to:

- Inform consumers of the availability of kilojoule information in chain food outlets;

⁵ WCRF and AICR. Policy and Action for Cancer Prevention - Food, Nutrition, and Physical Activity: a Global Perspective. 2009. p.61 – 63; NSW Food Authority. Evaluation of Kilojoule Menu Labelling. NSW Government, 2013

- Clearly explain what kilojoule information is and how consumers may use it to choose healthier products;
- Inform consumers of the different kilojoule needs of different groups of consumers, and the consequences of under- and over-consuming kilojoules; and
- Improve consumers' general understanding of the importance of eating a healthy diet.

Guidance may of course be taken from the education campaign in NSW, whereby the NSW Government provided \$1.18M for a campaign targeted towards 18 to 24 year olds (high frequenters of chain outlets). It also launched the 8700 campaign in March 2011, based around the average daily energy intake of 8700 kilojoules and used digital, social and radio media, targeting high consumers. It ran in two phases until December 2012.⁶

Education strategies to assist industry to understand and comply with the scheme should provide clear guidance with respect to the requirements of the scheme and kilojoule content testing processes. Guidance should also be provided with respect to acceptable menu design, emphasise the importance of compliance and the consequences of breaching the regulations.

Evaluation of scheme effect

We support an evaluation of the scheme once in operation. This evaluation should measure the impact on incremental changes in knowledge, purchasing and consumption in the short to medium term and influence on reformulation and the impact on public health in the long term.

Ongoing evaluation will enable the system to be refined and improved into the future, it will also provide industry with confidence that a level playing field is being maintained and that the regulations are necessary and effective. The reach and understanding of the education campaign across all quintiles of the population should be evaluated to ensure that the messaging is understood by those with lower education and income.

Conclusion

We thank you again for the opportunity to comment on your Consultation Paper. Kilojoule menu labelling reforms must be an essential component of any multi-strategy approach to better informing consumers about the nutrition content of their food choices, improving the diets of Victorians and reducing the problems of overweight, obesity and related chronic disease.

⁶ NSW Food Authority. Evaluation of Kilojoule Menu Labelling. NSW Government, 2013

Please contact Katarnya Hickey, Legal Policy Adviser, Obesity Policy Coalition on (03) 9514 6446 or Katarnya.Hickey@cancervic.org.au if you have any questions or need further information in relation to this submission.