

Regulatory Impact Statement

RIS title: Food Variation Regulations 2012

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Date: 8 December 2011

Executive Summary

Problem:

In South Australia, the costs of poor diet, overweight and obesity are significant. The most recent SA Health data shows that nearly 60 per cent of South Australian adults and 25 per cent of children are overweight or obese.

There is a gap in nutrition information currently available to consumers in fast food and snack food outlets at the point of decision making. On packaged foods, there is nutrition information on labels to assist consumers to make decisions before they purchase. This is not the case in chain food outlets. The provision of kilojoule information at the point of sale would fill this gap by providing nutrition information and could assist consumers in choosing healthier food and beverage options. As part of a multi-strategy approach, this is expected to contribute to improvements in diet, a reduction in overweight and obesity and chronic diet-related diseases at a population level.

Objective:

The primary objective of this proposal is to assist consumers to make healthy food and beverage choices by providing nutrition information at the point of sale.

Proposed options:

Option 1: Status Quo

Scenario 1 – voluntary code of practice which would be developed and implemented by an industry body for the display of kilojoule information at the point of sale and implemented for voluntary take up by food businesses.

Scenario 2 - regulations under the South Australian *Food Act 2001* that require multiple-site food businesses to display kilojoule information at the point of sale if they have 20 or more outlets in South Australia, or 50 or more nationally, and sell standardised foods.

Preferred option:

Mandating the display of energy information at the point of sale, as detailed in scenario two, is the preferred option. This option is expected to have the greatest benefit in terms of filling the information gap that currently exists for energy information at the point of sale in a consistent and understandable manner. This will also provide the most supportive environment for consumers to make healthier food choices.

Consultation:

A formal consultation process was undertaken in August and September 2011 with the release of an explanatory paper on the draft Food Variation Regulations 2012. The majority of stakeholders broadly supported the details of the Regulations. One of the key issues raised

was the importance of national consistency. The Regulations are functionally consistent with the requirements introduced in New South Wales and also the national principles developed by the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC).

Implementation, monitoring and review plan:

The Department for Health and Ageing will develop an implementation and compliance framework for the new requirements. This will include guidance documents for affected businesses and supporting consumer education.

An evaluation strategy will also be developed by the Department for Health and Ageing to monitor the effectiveness of the Regulations.

Element 1 - Problem:

Overweight and obesity is a problem in South Australia

Overweight and obesity are significant problems in South Australia. The most recent SA Health data shows that nearly 60 per cent of South Australian adults and 25 per cent of children are overweight or obese, an increase from an estimated 5 per cent in the 1960s. Obesity carries additional risks compared with overweight, and 23.2 per cent of adults and 6.9 per cent of children are obese. It is estimated that around 458 000 adults are overweight and nearly 300 000 are obese. Around 17 700 South Australian children (5-17 years old) are obese and another 43 300 are overweight¹.

People are consuming more meals away from the home

Approximately 1.64 billion fast food or takeaway meals were served by nearly 17 000 fast food outlets in Australia in 2007. This made up 44 per cent of all meals served in the commercial food service sector. Fast food chains and takeaway outlets are the most popular places for buying a meal or snack, particularly for families with children under 18 years.

In 2009-10, Australians spent \$15.2 billion on takeaways and this is expected to increase to \$17.3 billion by 2016-17. The top three segments purchasing takeaways are those aged 18-24 (30 per cent), 14-17 (22 per cent) and those aged 25-34, many with young children (18 per cent)².

Diet-related chronic disease

Poor diet contributes to risk factors such as overweight and obesity, high blood pressure and high cholesterol. These risk factors in turn contribute to various chronic 'lifestyle' diseases. Obesity alone has been estimated in 2008 to cause 23.8 per cent of Type 2 diabetes, 21.3 per cent of cardiovascular disease, 24.5 per cent of osteoarthritis and 20.5 per cent of colorectal, breast, uterine and kidney cancers. The burden of Type 2 diabetes is increasing and is expected to become the leading cause of disease burden by 2023. In 2010, 37.2 per cent of South Australians reported having at least one chronic condition: these included diabetes, asthma, cardiovascular disease, arthritis, and osteoporosis.

The cost of obesity is high

For South Australia, the costs of poor diet, overweight and obesity are significant. Access Economics estimated that the total cost of obesity for South Australia was \$4.3 billion in 2008, including \$273 million for South Australian employers through productivity losses.³

For the health system, there is also a significant cost impact of overweight and obesity:

- The number of public acute hospital admissions in 2007–08 that can be attributed to overweight and obesity was estimated to be around 9 410, which equates to approximately 43 820 bed days. This activity corresponds to around 120 acute inpatient hospital beds, the equivalent of about four acute inpatient wards at full occupancy. In addition, an estimated

¹ Government of South Australia, 2011, Eat Well Be Active strategy for South Australia 2011-2016.

² IbisWorld Industry Report G5125a Fast Food in Australia, August 2011, S. Rowley.

³ Access Economics Pty Ltd. The growing cost of obesity in 2008: three years on. Report for Diabetes Australia, 2008.

11 600 renal dialysis bed days were attributed to diabetic kidney disease related to overweight and obesity in that year.

- The percentage of acute public hospital inpatient expenditure attributable to an excess prevalence of overweight and obesity is estimated to increase from 4.6 per cent in 2007-08 to 5.6 per cent of projected total acute public hospital inpatient expenditure in 2032-33. This equates to a 2.24-fold increase in overweight and obesity-attributable expenditure, from \$73.8 million to \$239 million (a growth of \$165 million) in constant price dollars.
- During the 2007-08 financial year, approximately 41 500 public hospital emergency department attendances in South Australia were also attributed to overweight and obesity, equating to an estimated \$17.7 million in costs, as were around 117 900 outpatient attendances and \$37.6 million of expenditure on public hospital outpatient services.

Promotion of healthy eating in South Australia

There is already considerable investment in South Australia to promote healthy eating and physical activity and prevent and manage overweight and obesity, through:

- Community education – for example the Go for 2&5® social marketing campaign to promote fruit and vegetable consumption and the national ‘Swap it, Don’t Stop it’ social marketing campaign.
- Community level programs – for example OPAL (Obesity Prevention and Lifestyle), the Healthy Eating Local Policies and Programs, and Healthy Workers initiatives, as well as programs in schools and childcare.
- Policies – such as the Right Bite strategy in Government schools and the Healthy Food in South Australian Health Facilities policy to increase availability of healthy food and beverages and decrease availability of unhealthy food and drinks.
- Education and training for service providers including health and education staff.

These initiatives are all supported by education, research, monitoring and evaluation.

Through these and other initiatives, South Australians are provided with a range of positive messages, information and support about healthy eating, physical activity, healthy weight and good health. However, as nutrition information, including kilojoule content, of foods and beverages is not readily available at the point of purchase in chain food outlets, consumers are unable to assess how the foods they may purchase at these outlets conform with these messages and health strategies.

Food labelling

The South Australian *Food Act 2001* requires compliance with labelling requirements prescribed in the Australia New Zealand Food Standards Code (the Code). The Code mandates labelling requirements for packaged foods. One of these requirements is for nutrition information, such as fat, salt, sugar and energy content, to be included on the label of packaged foods sold in South Australia. Food sold at food service establishments, such as fast food outlets, coffee chains and snack food chains, is categorised as unpackaged. Therefore, these food items are not required to display or provide nutrition information to consumers, although some food service outlets voluntarily provide this information in various forms including company websites.

Given the amount of fast food that is consumed in Australia and the fact that it is often of poor nutritional quality — high in energy (kilojoules), fat, saturated fat, sugar and/or sodium and sold in large serving sizes, it is important that consumers are provided with appropriate nutrition

information so that they are able to make informed choices at the time that they make their purchasing decisions.

Most consumers are unaware of the high levels of kilojoules, fat, saturated fat, sugar and sodium found in many menu items. In one study, menu items were underestimated by an average of more than 600 calories (2520kJ). The authors of this study concluded that the provision of nutrition information on restaurant menus could potentially have a positive impact on public health by reducing the consumption of unhealthy foods.⁴

The provision of information at the point of sale is intended to provide consumers with information that can help them to make healthier choices. This in turn is expected to have a positive impact on overweight and obesity, particularly for frequent consumers of fast food.

Strong public support for the display of kilojoule information

Recent SA Health survey data from the Health Monitor telephone survey shows that over 90 per cent of South Australians believe that food outlets such as fast food outlets, takeaways and cafes should make it clear what is in their food in order to help people make healthier choices. This survey also found that around 80% of respondents believed that to be useful, this information should be displayed on the menu. Almost two thirds of people report they would use kilojoule labelling on menus to decide what to order. The survey was conducted in August 2010 and July 2011 and surveyed 2039 South Australian adults aged 18 years and older.

Summary

In South Australia, the costs of poor diet, overweight and obesity are significant.

Public health and consumer advocates state that the lack of energy and nutrient information on menus in South Australian chain food outlets contributes to unhealthy and uninformed food choices that in turn contribute to diet and obesity related chronic diseases, such as heart disease, and their associated risk factors, such as high blood pressure. This is supported by several international studies including one from New York that found a small but positive impact from laws introduced in 2008, showing that one in six customers purchased lower calorie choices after kilojoule information was displayed⁵.

There is a gap in nutrition information currently available to consumers in fast food and snack food outlets at the point of decision-making. On packaged foods, there is nutrition information on labels for consumers to make decisions before they purchase. This is not the case in chain food outlets. The provision of kilojoule information at the point of sale would fill this gap by providing nutrition information and can assist consumers in choosing healthier food and drink options. As part of a multi-strategy approach, this could contribute to an improvement in diets and a reduction in overweight and obesity and chronic diet-related diseases at a population level.

As this information is unlikely to be voluntarily provided in a consistent manner by chain food outlets there is a role for Government to act to fill the current information gap in chain food outlets and provide a supportive environment for consumers to make healthier food and beverage choices. This can in turn contribute to reducing the costs of poor diet, overweight and obesity and related illnesses to the public health care system, individuals and the community.

⁴ Burton S. Creyer EH, Kees J, Huggins K, Attacking the Obesity Epidemic: The Potential Health Benefits of Providing Nutrition Information in Restaurants, American Journal of Public Health, 2006 September; 96(9): 1669–1675

⁵ T. Dumanovsky, C. Y. Huang, C. A. Nonas, T. D. Matte, M. T. Bassett, L. D. Silver. Changes in energy content of lunchtime purchases from fast food restaurants after introduction of calorie labelling: cross sectional customer surveys. BMJ, 2011; 343

Element 2 - Objective:

The objective of this proposal is to eliminate the gap in nutrition information available to consumers by requiring kilojoule information to be displayed in chain food outlets at the point where consumers make their purchasing decisions. This is expected to provide consumers with information that can assist them to make healthier choices, which in turn can have a positive impact on the population's diet and levels of overweight and obesity.

This proposal is part of the South Australian Government's multi-strategy approach to:

- Improving population nutritional status and reducing population levels of overweight and obesity in South Australia.
- Addressing the increasing health impacts of poor nutrition, overweight and obesity by assisting consumers to make healthy food choices.

In achieving the principle objective, the Food Variation Regulations also aim to:

- Ensure the availability of energy information at the point of sale.
- Educate consumers about the energy content of meals, and foods and beverages purchased at chain food outlets.
- Encourage consumers to choose healthier options in fast food restaurants and/or reduce their overall consumption of fast food.
- Encourage fast food chains to reformulate products and/or provide and promote healthier options on menus.
- Ensure consistency with regulatory requirements in other States and Territories⁶.
- Prevent the proliferation of numerous voluntary approaches that may result in consumer confusion.

The proposed amendments to the South Australian Food Regulations 2002 are aligned with South Australia's Strategic Plan (SASP). In particular this proposal will contribute to the following SASP targets:

- Target 78: Healthy South Australians
- Target 82: Healthy Weight
- Target 85: Chronic Disease

In addition to this, the Government of South Australia's *Eat Well Be Active Strategy for South Australia 2011-2016* was launched in December 2011. One of the five action areas in this strategy is 'implementing policies to improve the built, social and natural environments that support South Australians to eat well and be active'. One of the objectives in achieving this is to increase the availability and demand for healthy food and reduce the availability, promotion, sale and consumption of unhealthy food. The provision of energy information at the point of sale is expected to contribute to this.

⁶ New South Wales has been the first State to introduce mandatory requirements for the display of nutrition information at multiple-site food businesses. The new laws commenced on 1 February 2011 with businesses having 12 months to comply. This scheme applies to larger food businesses (eg quick service restaurants; supermarkets; pizza, coffee, bakery, ice-cream, donut and juice bar chains).

Element 3 – Statement of options:

Base case: Status Quo

The base case for this proposal is to maintain the status quo and not develop a scheme for the display of nutrition information at the point of sale. This would allow chain food outlets to voluntarily provide nutrition information to consumers, in any style, manner or location, or choose not to provide nutrition information.

Some chain food outlets that are required to display kilojoule information at the point of sale in New South Wales have also begun displaying this information on menus in South Australia on a voluntary basis.

Scenario 1: Voluntary code of practice

Under this scenario, in addition to the base case described above, an industry ‘code of practice’ would be developed and implemented by an industry body for the display of kilojoule information at the point of sale and implemented for voluntary take up by food businesses.

Scenario 2: Mandatory requirements for the display of nutrition information at the point of sale

Under this scenario, Regulations will be introduced under the *Food Act 2001* that require multiple-site food businesses to display kilojoule information at the point of sale if they have 20 or more outlets in South Australia, or 50 or more nationally, and sell standardised foods. These Regulations will be introduced in addition to the existing health promotion activities discussed above in the problem definition.

Scope

This proposal is intended to apply to businesses that sell large volumes of standardised foods. The *Food Act 2001* allows for regulations to be made to require information to be displayed at food chains that have five or more stores in South Australia. An exemption threshold of 20 businesses in South Australia or 50 or more nationally is proposed as it is in line with the New South Wales requirements. While it is acknowledged that there are population size differences between South Australia and New South Wales, lowering the exemption threshold has not been canvassed as an option as it is likely to affect smaller South Australian businesses.

Outlets that sell standardised foods and are likely to be impacted by this proposal include quick service restaurants, pizza chains, coffee chains, ice-cream chains, bakery chains, donut chains and juice bars.

Exemptions will be provided for convenience stores, restaurants where food is intended to be consumed on the premises where it is sold, petrol stations, supermarkets, caterers and not-for-profit delivered meal organisations such as Meals on Wheels South Australia.

National Principles

Principles have been developed to ensure a nationally consistent approach is taken to the provision of nutrition information at the point of sale across Australia. The *Principles for Introducing Point-of-Sale Nutrition Information at Standard Food Outlets* were developed by the Australia New Zealand Food Regulation Ministerial Council’s (ANZFRMC) Food Regulation Standing Committee. These principles are designed to provide consistency when a State or

Territory decides to introduce a scheme of this nature. The Australia New Zealand Food Regulation Ministerial Council endorsed the principles in October 2011⁷.

Display of Energy Information

The average amount of energy in standardised food items is to be displayed as well as the statement 'the average adult daily energy intake is 8700 kilojoules.' This statement is intended to provide consumers with contextual information about how menu items fit with their daily energy requirements. This information is to be clearly and legibly displayed for individual items and for combinations such as meal deals. Requirements for the size and positioning of this information are also included.

This information will need to be listed on typical menus and menu boards in addition to other ways consumers can order food items such as at drive-through windows, internet ordering websites and menus distributed via letterboxes. Catalogues and other advertising material that is not to be used to place an order would not be captured.

Commencement period

It is proposed that the Regulations will be made in February 2012 and will allow for a 12 month commencement period. Penalties for not complying will apply from February 2013. Multiple-site food businesses that are not initially captured by the Regulations, will be provided with a 12 month introductory period if their business numbers increase to 20 or more in South Australia.

Consistent display of information

The Regulations will not mandate the display of kilojoule information for businesses that have less than 20 outlets in South Australia or less than 50 outlets nationally. However, if they choose to voluntarily display energy information, it must be displayed in the same way as the mandatory requirements. The voluntary display requirements are intended to ensure consumers are provided with kilojoule information in a consistent manner at all outlets that choose to display this information.

Other options:

Education campaign

As described in Element 1 - Problem above, the South Australian Government has introduced a range of measures to educate the public on healthy eating with the aim of reducing overweight and obesity. As this proposal is expected to support, complement and build upon these existing strategies, options such as education campaigns have not been assessed as stand-alone strategies in this regulatory impact statement.

Traffic light labelling

There was support from a number of stakeholders during consultation for extending the requirements to more nutrients, for example fat, saturated fat and salt. Some submitters also supported requiring this information to be displayed in a colour-coded interpretive manner. It was suggested in submissions that this would further assist consumers by demonstrating whether the level of a particular nutrient in the menu item is high, medium or low. While it is acknowledged that these options would provide greater information to consumers, this would be expected to increase the regulatory burden on businesses and has therefore not been

⁷ Food Regulation Secretariat: <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-food-safety-pointofsale>

assessed as part of this regulatory impact statement. Extension to include nutrients and interpretive labelling (such as 'traffic lights') will be considered as part of the evaluation of the kilojoule display requirements.

Element 4 - Analysis of costs and benefits

Base case – Status Quo

Under this option Government programs will continue to educate consumers about healthy food choices as described on page 4 under Element 1 - Problem.

The present value (PV) of the cost of this option has been calculated as \$87.7 million. This figure is based on a period of 20 years and a discount rate of 6 per cent. The estimate takes into account annual government spend on health promotion initiatives, including Commonwealth funding for the National Partnership Agreement on Preventative Health, but does not include health system costs associated with overweight and obesity. These costs, although not quantified, are expected to be reduced under both of the following scenarios. The costs to the public health system incurred as a result of overweight and obesity are discussed on pages 3-4 under Problem Definition. They have been estimated at \$4.37 billion in 2008, including \$273 million for South Australian employers through productivity losses.

Benefits associated with this option have not been quantified in the analysis primarily due to data availability. Some chain food outlets in South Australia are currently voluntarily displaying kilojoule content at the point of sale on the back of the New South Wales requirements although there is no obligation to do so in South Australia at this time.

It is possible that without either a voluntary code or mandated requirements, a variety of voluntary schemes for providing energy information to consumers will evolve. This is likely to result in inconsistent display of kilojoule information and make it difficult for consumers to compare food items both at the point of sale and between outlets.

Scenario 1 - Code of Practice

This scenario assumes that, in addition to the Government's existing education programs, a voluntary code would be developed by an industry body.

A net present value has not been calculated for this option due to the difficulty in estimating the number of businesses likely to adopt a voluntary code. Some national chain food outlets operating in South Australia are already voluntarily displaying kilojoule content at the point of sale in conjunction with their roll out in other jurisdictions. It is expected that a voluntary code of practice would encourage additional businesses to comply, however it is unlikely to be as widely adopted as the coverage under a mandated scheme (scenario 2).

Recent experience in voluntary self-regulatory schemes for food advertisers directing television marketing to children in Australia may provide relevant learning in this area. The Australian Food and Grocery Council Responsible Children's Marketing Initiative came into effect in January 2009⁸. A recent monitoring report into television food advertising to children in South Australia by the CSIRO⁹ demonstrated that this self-regulatory approach did not:

- reduce children's exposure to television junk food advertising

⁸ <http://www.afgc.org.au/industry-codes/advertising-kids.html> and the Australian Association of National Advertisers Codes for Advertising and Marketing Communications to Children were released in August 2009 http://www.aana.com.au/childrens_code.html.

⁹ Brindal E, Corsini N & Hendrie G. Television Food Advertising to Children in South Australia. Final Report by CSIRO, commissioned by SA Health. March 2011.

- change the pattern of advertising by the signatories of the self-regulations
- ensure consistent and unambiguous terminology to prevent loopholes in the codes and protect children's health interests.

A voluntary code of practice is therefore expected to be more effective than the base case but less effective than scenario 2 in providing consistent and accurate information to consumers at the point of sale, influencing consumer choice, and ultimately contributing to improved diets, reducing overweight and obesity and reducing diet and weight related chronic diseases.

Costs

Business

A voluntary code of practice will have cost implications for the industry body that develops the code. Businesses that are not already voluntarily displaying kilojoule information and choose to adopt the requirements will also incur costs.

The initial costs to business associated with complying with a code of practice are expected to include:

- updating, re-design and printing of new menus, menu boards and/or food tags;
- analysis of food products to ascertain kilojoule content for businesses that do not already have this information (though it is understood that the vast majority of chain food businesses already hold this information);
- training to assist staff in handling customer questions relating to energy content; and
- design and printing of pamphlets and other education materials to communicate information to consumers.

The ongoing costs for business of complying with a voluntary code are likely to be minor, but would include the cost of analysing new menu items to ascertain their kilojoule content¹⁰. There are not expected to be significant additional ongoing costs associated with updating the kilojoule display on menu boards once an initial re-design has occurred.

Consumers

Under this scenario consumers may be presented with kilojoule information in a variety of different formats, which could lead to consumer confusion. It is also expected that consumers will not be presented with energy information at as many food outlets as proposed under scenario 2. This scenario is therefore likely to be less effective than scenario 2 in informing consumers' food choices and allowing them to compare food energy content across various outlets.

Government

A voluntary code of practice would be developed and implemented by an industry body. The Government would continue to educate consumers about healthy food choices but would not be responsible for monitoring compliance with the code. As such, this scenario is not expected to result in additional costs to Government above those discussed in the base case.

¹⁰ Depending on the types of food products sold, food businesses can minimise their costs by utilising the Food Standards Australia New Zealand nutrition information panel calculator, which is a free online tool.

Benefits

Consumers

Compared with the base case, it is expected that there will be more information available to consumers at chain food outlets about the energy content of food items. This will increase consumers' ability to make informed food choices at the outlet and may also influence their purchasing behaviour or eating habits throughout the day.

A positive impact on levels of overweight and obesity could be expected compared with the base case, but this is likely to be less than the benefit achievable under scenario 2 due to lower levels of uptake and less monitoring and enforcement and the absence of a State supported associated education campaign.

Government

There would be fewer Government resources required to develop, implement, monitor, evaluate and review a voluntary industry code of practice than would be the case for the mandatory requirements proposed under scenario 2.

An expected positive impact on levels of overweight and obesity through scenario 1 is likely to result in cost savings to the public health system, however these savings are expected to be less than those achievable under scenario 2 given lower levels of uptake and less monitoring and enforcement are expected compared with scenario 2.

On balance, scenario 1 is expected to deliver a higher PV than the base case, but lower than that for scenario 2.

Scenario 2 - Regulation

This scenario is consistent with similar requirements in New South Wales and the Australian Capital Territory and also with the national *Principles for Introducing Point-of-Sale Nutrition Information at Standard Food Outlets*. A consistent regulatory approach is expected to minimise costs to food businesses operating across multiple jurisdictions.

As discussed below, when compared to the base case and scenario 1, scenario 2 results in additional costs that predominantly fall on business. The Government will also incur additional costs associated with implementing and evaluating the Regulations but is expected to benefit through expected higher effectiveness of the scheme resulting in reduced burden on the health system. Consumers are expected to benefit from this proposal through the wide availability and consistent presentation of information on the energy content of menu items and associated public education.

Compared with both the base case and scenario 1, this scenario is expected to result in more informed and healthy purchase decisions and have the greatest impact on levels of overweight and obesity.

The PV of the costs associated with this scenario is estimated to be between \$89.8 million and \$90.8 million. The expected benefits associated with this scenario have not been quantified primarily due to data availability but are discussed in detail below.

Costs

Business

All of the chain food businesses that will initially be captured by the South Australian regulations are already required to comply in New South Wales. The New South Wales

requirements have been in place for some months and several national chain outlets are already complying with these requirements in other States. Several chain food outlets have begun displaying kilojoule information at the point of sale in South Australia on a voluntary basis and the proposed Regulations will not impose any additional costs on these businesses.

The businesses initially captured by the introduction of South Australian Regulations will not have to do anything differently from compliance with interstate Regulations.

The PV of business costs associated with this scenario is estimated to be between \$2.0 million and \$3.0 million, depending on assumptions regarding the number of menu items to be tested and initial compliance costs¹¹. The initial costs included in this figure are based on figures provided by the Australian Food and Grocery Council during consultation for the cost to business of compliance. These costs are assumed to encompass the initial costs for business discussed under scenario 1 such as re-designing and re-printing menu boards and staff training¹².

Ongoing costs to business include the testing of new menu items for kilojoule content and updating menus to include kilojoule information. While it is likely for national chains that the costs of testing would be allocated across businesses in all jurisdictions, the analysis has assumed that South Australian businesses incur the full cost of testing.

Guidance material and support will be provided by SA Health to food businesses through the proposed user guide. Consumer education material will also be developed by SA Health which will ensure that businesses do not need to develop this material themselves. This information is also expected to assist staff respond to consumer questions, thereby reducing staff training requirements.

While the businesses that will be initially captured by the introduction of Regulations in South Australia are already required to comply in New South Wales, there are some local food chains that currently operate 19 South Australian outlets. Should these chains expand by one or more outlet, they will incur compliance costs for all existing sites. The estimated costs of compliance to these chains have been included in the PV calculation. To minimise the burden on these businesses and to reduce the disincentive for them to expand their operations, a 12 month transition arrangement will be provided to South Australian businesses that expand their operations to 20 or more outlets.

Consumers

Costs are not expected to be imposed on consumers under this scenario.

Government

The PV of the estimated cost to Government of scenario 2 is \$87.8 million. This is a slight increase over the base case estimate.

SA Health will incur moderate initial costs from the introduction of mandatory requirements, including:

- Educating businesses on the new requirements; and¹³

¹¹ Compliance cost estimates are based on the submission from the Australian Food and Grocery Council that estimated initial costs of between \$3500 and \$4500 per store.

¹² SA Health will develop consumer education materials, minimising the cost to business of educating staff.

¹³ Educating business on the new requirements would be done through the SA Health website and through a user guide, similar to that provided to businesses in New South Wales. Work is being undertaken at a national level to

- Developing consumer education materials¹⁴.

Ongoing costs to Government under scenario 2 will include the following costs of evaluation, monitoring and review of the Regulations:

- Assistance will be sought from Local Government Environmental Health Officers (EHOs) for assessing whether kilojoule information is displayed where required. It is proposed that these checks will take place within the existing food business inspection regime and EHOs will report non-compliance to SA Health for follow-up. Local Government will therefore incur minimal costs as a result of the new regulations. SA Health will advise EHOs of the new requirements through its existing communication mechanisms.
- Testing of 800 food samples is currently required under the Health Portfolio Statement. Ensuring the kilojoule information that is displayed on menus is accurate, through analytical sampling, will be included as part of the existing monitoring and sampling regime conducted by SA Health. The cost of this analysis is therefore excluded from the analysis.
- As outlined in Element 7, an evaluation of the kilojoule display scheme will occur after three years. Evaluation costs will include surveys, interviews, data collection and staff resources.
- Under the *Subordinate Legislation Act 1978*, a review of the Regulations is required to be undertaken within 10 years. This review will expand on the data collected during the evaluation. The estimated costs of this review are included in the analysis.

Benefits

Business

To avoid additional costs on businesses operating across jurisdictions, South Australian regulations will be consistent with similar regulations in other jurisdictions.

Consumers

Mandating the display of energy information at the point of sale in chain food outlets is likely to be the most effective way of filling the information gap that currently exists regarding the lack of display of the energy content of foods and beverages.

Kilojoule information would be displayed consistently at all large chain food outlets in a location, format, size and font that allows consumers to easily see the information. Requiring food outlets to display the information in a specific manner is expected to minimise consumer confusion and enable easy comparison of the kilojoule content of foods at the point of sale and across different outlets. An increase in consumers understanding of the energy content of foods sold at chain food outlets is also expected.

ensure there is a consistent approach for the implementation of point of sale disclosure schemes in different States and Territories. Industry assistance materials will form part of this work, therefore the development of industry assistance materials will not be a significant cost impost to SA Health.

¹⁴ As with the industry assistance materials, it is expected that there will be some national guidance developed for consumer education materials which will reduce the costs to SA Health.

A display of the reference daily intake of 8700kJ for adults will also be required under this scenario, allowing consumers to determine how the menu items fit into their daily intake requirements and further informing their choices.

This scenario is also expected to benefit families and communities by assisting parents' to make informed choices about the energy content of the food they buy for their children.

The positive impacts of improved nutrition are well documented. These include reducing population levels of overweight and obesity, and prevention of diseases such as heart disease, cancer and type 2 diabetes. Compared with both the base case and scenario 1, this scenario is expected to result in more informed and healthy food purchase decisions and ultimately have a greater benefit on improved diet and levels of overweight and obesity, particularly for frequent purchasers of foods from chain food outlets.

Government

This scenario is most likely to achieve the objective of having energy content displayed at the point of sale of large chain food outlets. It is expected that a larger proportion of businesses selling fast food, snack food and beverages would be required to display this information than would occur under a voluntary code of practice. It is also expected that monitoring and enforcement under a mandatory scheme will be more effective than scenario 1 as it can be undertaken within the current mechanisms provided for under the *South Australian Food Act 2001*.

It is difficult to quantify the impact of this proposal on the public health system at this stage; however evaluation and monitoring would enable measurement of the impacts over time.

A threshold analysis shows that a reduction in overweight and obesity related acute public hospital inpatient admissions of approximately 20 people per year over 20 years would justify the implementation of scenario 2.

Changes in consumer behaviour and the reformulation of food products by chain food outlets towards healthier alternatives could also result from mandating the display of kilojoule information. Since the introduction of the requirements in New South Wales, one large chain food outlet has significantly changed its traditional meal deals by offering the consumer either salad or fries with a meal. Previously fries were the only option.

As part of a multi-strategy approach, the mandating of kilojoule display is expected to build upon existing strategies to enhance their effectiveness and contribute to improved diets and a reduction in overweight and obesity and chronic diet-related diseases, in turn reducing the significant costs to Government, individuals and society associated with these problems.

Element 5 – Recommended Option

Mandating the display of energy information at the point of sale, as detailed in scenario two, is the preferred option. This option is expected to have the greatest benefit in terms of filling the information gap that currently exists with the lack of energy information at the point of sale in a consistent and understandable manner. This will also provide the most supportive environment for consumers to make healthier food choices. Mandating the display of energy information will provide a greater incentive for businesses to reformulate products and to provide healthier menu options.

The lack of kilojoule information at the point of decision making in chain food outlets will continue to result in less informed and less healthy purchasing decisions by consumers. This information gap is considered to have a negative impact on quality of diet and levels of overweight and obesity, particularly for frequent consumers of fast food. Without either an industry led code of practice (scenario 1) or mandatory requirements (scenario 2) it is likely that this information gap will continue.

A voluntary industry Code of Practice may generate some benefit for Government and consumers due to an increase in businesses that voluntarily display energy information at the point of sale. However this scenario presents difficulties for Government in terms of monitoring and enforcement. Voluntary uptake by businesses is expected to be less than 100 per cent. There will therefore still be a gap in information available to consumers at some outlets. Additionally, it is still likely there will be issues with consistency in the ways in which businesses display information, making it more difficult for consumers to compare options between businesses. outlets.

While not quantified, it is expected that there would be a marginal benefit associated with scenario one, the benefits of scenario two are greater when weighed against the costs. While the costs of scenario two are higher, and fall predominately on businesses, this scenario will provide the greatest net benefit to the Government and the community.

Element 6 - Consultation

A formal consultation process was undertaken in August and September 2011 with the release of an explanatory paper on the draft Food Variation Regulations 2012. Consultation included a mail-out to approximately 110 identified stakeholders. This included food businesses, peak bodies, non-Government organisations, consumer and public health advocacy groups. This was supported by advertisements in The Advertiser and an online presence.

Nineteen submissions were received to the explanatory paper. Submitters reflected a representative cross-section of stakeholders.

In addition to the formal consultation processes, meetings, teleconferences and discussions were held with a number of stakeholders during the development of the Food Variation Regulations including supermarket chains, fast food chains, peak industry bodies and non-Government organisations.

The majority of stakeholders broadly supported the details of the Regulations. One of the key issues raised was the importance of national consistency. The Regulations are functionally consistent with the requirements introduced in New South Wales and also the national principles developed by the ANZFRMC.

Other issues raised during consultation were:

- The Regulations should allow for legitimate product trials to be conducted. This has been addressed in the Regulations by exempting trials conducted at less than five stores for less than 60 days.
- Implementation issues in some environments, particularly supermarkets and convenience stores. Supermarkets and convenience stores have at this stage been exempted from the Regulations.
- Some stakeholders noted that the display of energy information is an important first step, but consideration should be given to requiring other nutrients including fat and salt in the future. This will be considered in the evaluation of the scheme.
- There was broad support for the proposed scope of the scheme in terms of the number of outlets that a business must have in order to be captured, i.e. 20 or more outlets in South Australia or 50 or more across Australia, with a few submitters proposing the cut-off be lower. The threshold of 20/50 has been retained initially to reduce the impact on smaller businesses.
- Support for allowing for the kilojoule content of products to be rounded to the nearest 10kJ. Rounding has therefore been included in the Regulations.
- Most submitters considered it appropriate that the South Australian Regulations include exemptions as per the New South Wales scheme. The Regulations incorporate stakeholder feedback by including exemptions for supermarkets, convenience stores, petrol stations, caterers, restaurants and not-for-profit delivered meal organisations such as Meals on Wheels.

The proposed 12 month implementation period was considered appropriate by the vast majority of stakeholders. Businesses that are currently just within the exemption threshold number of less than 20 outlets in South Australia will be given a 12 month implementation period from the time they reach the stipulated number of businesses (20).

Element 7 – Implementation, monitoring and review

The Department for Health and Ageing will develop an implementation and evaluation/compliance framework for the new requirements. This will include guidance documents for affected businesses and supporting consumer education.

Responsibilities for monitoring compliance will be included in this framework and are summarised below:

Issue	Responsibility
Assessment of whether kilojoule information is displayed at chain food outlets (during the course of normal duties)	Local Government
Follow-up and any enforcement action against non-compliant businesses	Department for Health and Ageing
Monitoring accuracy of kilojoule information displayed through product analysis or paper trail	Department for Health and Ageing

Local Government Environmental Health Officers (EHOs) routinely inspect the affected businesses for food safety. It is therefore proposed that EHOs assess whether these businesses are complying with the requirements in the course of their normal duties. As monitoring compliance with labelling requirements is the responsibility of the Department for Health and Ageing, it is further proposed that any reports of non-compliance are forwarded to the Department for appropriate enforcement action.

An evaluation strategy will also be developed by the Department for Health and Ageing to monitor the effectiveness of the regulations. The following elements will be included in the evaluation framework:

- Business compliance with the Regulations – Local Government will conduct compliance checks to ensure businesses are complying. As outlined above this would be undertaken during routine food business inspections and as such is expected to have very limited resource implications.
- Consumer knowledge that kilojoule information is available at the point of sale, whether they understand what the kilojoule information means and their attitudes including intention to change. This will be measured via consumer interviews and/or focus groups and/or phone surveys.
- Whether the new Regulations result in consumer behaviour change. This would include whether the average kJs purchased by consumers at qualifying standard food outlets is reduced following the introduction of the Regulations. This will be measured via telephone or on-line surveys or intercept surveys of consumers exiting standard food outlets, coupled with calculation of kJ purchased using outlets' menu items kilojoule information.
- Whether businesses reformulate their products or promote or offer a healthier range of menu options as a result of the Regulations.
- Analysis of food products sold at food outlets captured by the Regulations to verify that they are accurate when compared to the values listed on the menu. The Department for Health

and Ageing will undertake this component of the evaluation through analytical testing as part of its annual sampling program.

This evaluation will be undertaken over a three year period, prior to and following the new Regulations being made. Depending on the evaluation findings a review of the Regulations may then be required.

A national framework for implementation, monitoring and evaluation is also being developed for the provision of energy information at the point of sale. This framework will be taken into account during the development of the South Australian framework to ensure consistency for affected food businesses and consumers.