



New South Wales

Food Amendment Act 2010 No 108

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Food Act 2003 No 43	3
Schedule 2 Amendment of Food Regulation 2010	8



New South Wales

Food Amendment Act 2010 No 108

Act No 108, 2010

An Act to amend the *Food Act 2003* with respect to the display of nutritional information by certain food businesses; and for other purposes. [Assented to 29 November 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Food Amendment Act 2010*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsections (2) and (3).
- (2) Schedule 2 (other than Schedule 2 [2]) commences on 1 February 2011.
- (3) Schedule 2 [2] commences on 1 February 2012.

Schedule 1 Amendment of Food Act 2003 No 43

[1] Section 43A

Insert after section 43:

43A Powers of authorised officers and food safety auditors may be exercised concurrently

A person who is a food safety auditor and an authorised officer and who is exercising the functions of a food safety auditor in relation to any premises or food transport vehicle may also exercise the functions of an authorised officer but only if the person has first produced his or her certificate of authority issued under section 115:

- (a) to the proprietor of the food business that uses those premises or food transport vehicle or to a person who is apparently in charge of those premises or that vehicle, and
- (b) to any person whom the authorised officer requires to produce anything or to answer any question.

[2] Section 99 Obstructing or impersonating food safety auditors

Insert after section 99 (2):

- (3) A person must not threaten, intimidate or assault a food safety auditor in the exercise of the auditor's functions under this Act.
Maximum penalty: 500 penalty units.

[3] Part 8 Regulation of food businesses

Insert after Division 3:

Division 4 Requirements relating to display of nutritional information for food

106K Definitions

In this Division:

menu means a menu, in printed or electronic form, that lists or otherwise shows one or more items of food and that:

- (a) is on a board, poster, leaflet or the like at the premises from which the item or items of food in the menu are sold, or
- (b) is distributed or available outside of the premises from which the item or items of food in the menu are sold by means of the internet or a printed leaflet.

ready-to-eat food means food that is in a state in which it is ordinarily consumed, but does not include nuts in the shell or raw fruit or vegetables that are intended to be hulled, peeled or washed by the consumer.

sell means sell as defined in section 4 (1), but by retail only.

standard food item—see section 106L.

standard food outlet—see section 106M.

106L Meaning of “standard food item”

- (1) In this Division, ***standard food item*** means an item of ready-to-eat food for sale that is sold in servings that are standardised for portion and content and that:
 - (a) is listed or otherwise shown on a menu, or
 - (b) is displayed for sale with a price tag or label or an identifying tag or label,and includes any item of ready-to-eat food for sale that is of a kind, class or description prescribed by the regulations.
- (2) If a number of standard food items are shown or displayed for sale as referred to in subsection (1) as a combination, the combination is to be treated for the purposes of this Division as a single standard food item.
- (3) If an item of food referred to in subsection (1) is shown or displayed for sale in different standard sizes or portions (for example, small, medium or large), each standard size or portion of the item of food is to be treated as a separate standard food item.
- (4) Despite subsection (1), ***standard food item*** does not include an item of food that is packaged in a way that is prescribed by the regulations as prepackaged.

106M Meaning of “standard food outlet”

- (1) In this Division, a ***standard food outlet*** means premises at which standard food items are sold by a food business if:
 - (a) the food business sells standard food items at other premises or while operating in a chain of food businesses that sell standard food items, and
 - (b) at least one of the standard food items that are sold at the premises has been standardised for portion and content so as to be substantially the same as standard food items of that type sold at those other premises or by the other food businesses in the chain.

- (2) For the purposes of this section, a food business is operating in a chain of food businesses that sell standard food items if:
- (a) it is operating as one of a group of food businesses that sell standard food items under franchise arrangements with a parent business or under common ownership or control, or
 - (b) it sells standard food items under the same trading name as a group of other food businesses that sell standard food items.

106N Requirement for certain standard food outlets to display nutritional information

- (1) This section applies to a standard food outlet that is of a kind, class or description prescribed by the regulations.
- (2) The proprietor of a standard food outlet to which this section applies must ensure that:
 - (a) nutritional information of a kind prescribed by the regulations is displayed in relation to standard food items that are sold at the outlet, and
 - (b) the nutritional information is determined in accordance with any requirements of the regulations for nutritional information of that kind, and
 - (c) the nutritional information is displayed in the manner and locations prescribed by the regulations for nutritional information of that kind.
- (3) A person must not intentionally contravene subsection (2).
Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.
- (4) A person must not contravene subsection (2).
Maximum penalty: 100 penalty units in the case of an individual and 500 penalty units in the case of a corporation.
- (5) If, on the trial of a person charged with an offence against subsection (3) the court is not satisfied that the person committed the offence but is satisfied that the person committed an offence against subsection (4), the court may find the person not guilty of the offence charged but guilty of an offence against subsection (4), and the person is liable to punishment accordingly.

106O Voluntary display of nutritional information to meet certain requirements

- (1) This section applies to a standard food outlet other than a standard food outlet to which section 106N applies.
- (2) The proprietor of a standard food outlet to which this section applies must not display nutritional information of a kind prescribed by the regulations in relation to standard food items that are sold at the outlet unless the nutritional information:
 - (a) is determined in accordance with any requirements of the regulations for nutritional information of that kind, and
 - (b) is displayed in the manner and locations prescribed by the regulations for nutritional information of that kind.

Maximum penalty: 100 penalty units in the case of an individual and 500 penalty units in the case of a corporation.

106P Regulations relating to explanatory material about nutritional information

The regulations may make provision for or with respect to regulating or prohibiting the display or distribution by a standard food outlet of explanatory material or any other material about nutritional information for food or for any type or class of food.

106Q Exemptions from operation of Division

- (1) The regulations may exempt, with or without conditions, any class of persons, food businesses, premises, food or activities from the operation of all or any of the provisions of this Division.
- (2) Any such exemption has no effect during any period in which a condition to which it is subject is not complied with.

106R Review of Division and regulations under the Division

- (1) The Minister is to review this Division and any regulations made under this Division to determine whether:
 - (a) the policy objectives of this Division and those regulations remain valid, and
 - (b) the terms of this Division and those regulations remain appropriate for securing those objectives, and
 - (c) the terms of this Division or those regulations, or both, should be amended so that the nutritional information to be displayed includes information relating to fat and salt.

- (2) The review is to be undertaken as soon as possible after 1 February 2012.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after that date.

[4] Section 119 Time for instituting proceedings

Omit section 119 (1). Insert instead:

- (1) Proceedings for an offence against this Act or the regulations may be instituted not later than 2 years after the date on which the offence is alleged to have been committed.

[5] Section 128 Certificate evidence and evidence of analysts

Omit section 128 (3).

[6] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Food Amendment Act 2010

[7] Schedule 2, Part 8

Insert after Part 7:

Part 8 Provisions consequent on enactment of Food Amendment Act 2010

25 Application of new offences relating to display of nutritional information by standard food outlets

A person does not commit an offence against section 106N or 106O until on or after 1 February 2012.

Schedule 2 Amendment of Food Regulation 2010

[1] Part 2B

Insert after Part 2A:

Part 2B Requirements for display of nutritional information

16P Definitions

In this Part, expressions defined for the purposes of Division 4 of Part 8 of the Act have the same meanings as in that Division.

16Q Definition of “prepackaged food”

For the purposes of section 106L (4) of the Act, food is *prepackaged* if the food:

- (a) arrives at the premises from which it is sold in a container or wrapper in or by which the food is wholly encased, enclosed, contained or packaged (whether or not the food is also in an outer container or wrapper that encases, encloses, contains or packages multiple units of the food), and
- (b) is not removed from its container or wrapper (other than any such outer container or wrapper) before its sale at those premises.

16R Standard food outlets required to display nutritional information

The following standard food outlets are prescribed as standard food outlets to which section 106N of the Act applies:

- (a) a standard food outlet of a food business that sells standard food items at 20 or more locations in New South Wales or at 50 or more locations in Australia,
- (b) a standard food outlet of a food business that is operating in a chain of food businesses that sell standard food items if together those businesses sell standard food items at 20 or more locations in New South Wales or at 50 or more locations in Australia.

16S Kinds of nutritional information required to be displayed

- (1) For the purposes of section 106N of the Act, the following kinds of nutritional information are prescribed:
 - (a) the average energy content of each standard food item for sale by the standard food outlet concerned expressed in kilojoules,
 - (b) the following statement:

The average adult daily energy intake is 8,700 kJ.
- (2) The method of determining the nutritional information referred to in subclause (1) (a) is to calculate the average energy content of each standard food item in accordance with Standard 1.2.8 of the Food Standards Code, making necessary adjustments to ensure that the calculation is done in relation to the whole of the food item rather than per 100g.
- (3) The number of kilojoules calculated as referred to in subclause (2) may be rounded to the nearest 10 kJ.

16T Kind of nutritional information voluntarily displayed that must comply with requirements

For the purposes of section 106O of the Act:

- (a) the kind of nutritional information that is prescribed is the energy content of any standard food item for sale at the standard food outlet concerned, and
- (b) that nutritional information is to be determined in kilojoules and in accordance with the method referred to in clause 16S (2) and (3).

16U Locations for display of nutritional information

- (1) For the purposes of sections 106N and 106O of the Act, the locations where nutritional information referred to in clauses 16S (1) (a) and 16T (a) must be displayed in relation to a standard food item are:
 - (a) on each menu on which the name or price of the standard food item is displayed and on each price tag or label or identifying tag or label for the item, and
 - (b) if there are drive-through facilities, on the drive-through menu board that displays the name or price of the standard food item or on a separate adjacent board visible at or before the point of ordering, and

- (c) adjacent to or in close proximity to the name or price of the standard food item so as to be clearly associated with the item.
- (2) The locations where nutritional information referred to in subclause (1) is displayed in relation to a standard food item are to be consistent with the locations where such nutritional information is displayed for all of the other standard food items that are displayed with that standard food item.
- (3) For the purposes of section 106N of the Act, the locations where the statement referred to in clause 16S (1) (b) must be displayed are:
 - (a) in one location on each menu on which the name or price of one or more standard food items is displayed and adjacent to or in close proximity to the standard food item or items so as to be clearly associated with the item or items, and
 - (b) if there are drive-through facilities, in one location on the drive-through menu board adjacent to or in close proximity to the standard food item or items so as to be clearly associated with the item or items, and
 - (c) in each area or display cabinet, or on each stand, where standard food items with price tags or labels or identifying tags or labels are displayed and adjacent to or in close proximity to the item or items so as to be clearly associated with the item or items and conspicuous to a person looking at the item or items.

16V Manner of displaying nutritional information

- (1) For the purposes of sections 106N and 106O of the Act, the nutritional information referred to in clauses 16S (1) (a) and 16T (a) must:
 - (a) be clearly legible, and
 - (b) display the number of kilojoules in numerals and use the abbreviation “kJ”, and
 - (c) be in the same font, and at least the same font size, as the price displayed for the standard food item concerned or, if no price is displayed, as the name displayed for the item.
- (2) For the purposes of section 106N of the Act, the statement referred to in clause 16S (1) (b) must:
 - (a) be clearly legible, and

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- (b) in a case where only one standard food item is displayed on a menu, be in the same font, and at least the same font size, as the name of the item displayed or, if no name is displayed, as the price displayed for the item, and
 - (c) in a case where a number of standard food items are listed or displayed on a menu, be in the same font, and at least the same font size, as the name of the standard food item with the largest font size listed or displayed or, if no names are listed or displayed, as the price of the standard food item with the largest font size listed or displayed, and
 - (d) in the case of a standard food item or items displayed with a price tag or label or identifying tag or label in any area, display cabinet or stand, be in at least the same font size as the largest font size on the tags or labels for the standard food item or items in the area, display cabinet or stand.

16W Exemptions

- (1) The following food businesses are exempt from the operation of section 106N of the Act:
 - (a) convenience stores,
 - (b) service stations selling petrol or other fuel for motor vehicles,
 - (c) food businesses that primarily provide food catering services,
 - (d) food businesses that only sell food that is intended to be consumed on the premises at which it is sold.
- (2) Food sold by retail at a health care facility is exempt from the operation of section 106N of the Act.

Food Amendment Act 2010 No 108

Schedule 2 Amendment of Food Regulation 2010

[2] Schedule 2 Penalty notices

Insert in Columns 1, 2 and 3 of Part 1 of Schedule 2 in appropriate order of section number:

Section 106N (3)	\$880	\$1760
Section 106N (4)	\$330	\$660
Section 106O (2)	\$330	\$660

[Agreement in principle speech made in Legislative Assembly on 10 November 2010
Second reading speech made in Legislative Council on 23 November 2010]

BY AUTHORITY