

# Food (Nutritional Information Displays) Exemption 2012 No (1)

## Disallowable instrument DI2012-192

made under the

Food Act 2001, s 114 (Exemptions from pt 9)

## EXPLANATORY STATEMENT

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Section 114(1) of the *Food Act 2001* allows the Minister to exempt, with or without conditions, any people, food businesses, premises, food or activities from the nutritional display requirements.

This instrument is a disallowable instrument and exempts nursing homes for the aged, low care aged care establishments, hospital food services for patients, hospices, respite care facilities, certain charitable organisations, certain crisis accommodation providers, schools and licensed childcare centres from Part 9 of the *Food Act 2001*.

Section 114(2) requires that any exemption must state the reason for the exemption. Clause 4 of the disallowable instrument gives effect to that requirement.

Part 9 of the *Food Act 2001* requires certain food businesses to display nutritional information about their standard food items. The Food Regulation 2002 provides that this information includes the kilojoule (kJ) content of captured standard food items and the contextualising statement “The average adult daily energy intake is 8,700 kJ”.

The Explanatory Statement for the Food (Nutritional Information) Amendment Bill 2011 (which created Part 9 of the *Food Act 2001*) states that the nutritional information provided by Part 9 “is intended to give people a point of reference and place in context the energy content of the food they are contemplating purchasing”.

This reference point is inappropriate for the populations found in aged cared facilities, hospital wards, hospices, respite care facilities, schools and childcare centres. Requiring these facilities to display kJs is not the intent of Part 9. Displaying kJs to these populations may also contradict existing advice within these places. For instance:

- some ACT school canteens have systems in place (e.g. traffic lights) to indicate the healthfulness of canteen foods. kJ displays may confuse children and appear to contradict traffic-light displays (because high energy foods are not necessarily unhealthy e.g. raw nuts);
- kJ displays may encourage misinformed ‘dieting’ behaviour in children, teenagers and at-risk hospital patients (e.g. those being treated for eating disorders);

- kJ displays may contradict or compete with medical advice in aged care facilities, hospitals, hospices and respite care facilities;
- kJ displays may cause confusion (e.g. in dementia patients) and discourage eating in care facilities (thus exacerbating, or increasing the risk of, malnutrition).

Charitable organisations endorsed under subdivision 50-B of the *Income Tax Assessment Act 1997* (Cwlth) and crisis accommodation providers declared under the *Residential Tenancies Act 1997* should be exempt from the operation of Part 9 of the *Food Act 2001* as these organisations do not sell food to the general community. Such organisations may sell standard food items to those with specific needs (e.g. home delivered meals for the elderly or disabled, meals for those in crisis situations). These organisations have requirements regarding who may access these food services.

The objective of Part 9 (according to the Food (Nutritional Information) Amendment Bill’s explanatory statement) is to provide nutrition information to the general community of the ACT by requiring “relatively large businesses” (primarily ‘fast food’ chains) to display the energy content of their standard food items. Charitable organisations and emergency accommodation providers’ food services do not sell food to the general community. It is not the intent of the Part 9 to require such organisations to display kJ information.

## Definitions

*Nursing homes for the aged* is defined in the Schedule of Standard 3.3.1 of the Australia New Zealand Food Standards Code (the Code) as:

Establishments which provide long-term care involving regular basic nursing care to aged persons and including any:

- (a) Private charitable nursing home for the aged;
- (b) Private profit nursing home for the aged;
- (c) Government nursing home for the aged.

*Low care aged care establishments* are defined in the Schedule of Standard 3.3.1 of the Code as:

Establishments where aged persons live independently but on-call assistance, including the provision of meals, is provided if needed.

*Hospices* are defined in the Schedule of Standard 3.3.1 of the Code as:

Freestanding establishments providing palliative care to terminally ill patients, including any:

- (a) Public hospice;
- (b) Private hospice.

Hospital food services for patients include food services in *acute care hospitals* and *psychiatric hospitals* (as defined in Standard 3.3.1 of the Australia New Zealand Food Standards Code). Hospital food services for patients do not include hospital food services that sell food to the general public (that is, publicly accessible hospital canteens, cafés, etc).

Tertiary and/or adult education facilities are not included in the exemption.

Part 9 of the *Food Act 2001* was created by the *Food (Nutritional Information) Amendment Act 2011*, which was notified on 5 September 2011. The Food (Nutritional Information) Amendment Act will commence on 1 January 2013.

Although Part 9 has not commenced, pursuant to section 81(3) of the *Legislation Act 2001*, the Minister can make this disallowable instrument prior to commencement of Part 9. Hence commencement of the disallowable instrument is identical to that of Part 9.