

2011

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Ms Amanda Bresnan)

# Food (Nutritional Information) Amendment Bill 2011

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# **Food (Nutritional Information) Amendment Bill 2011**

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## **A Bill for**

An Act to amend the *Food Act 2001*, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Food (Nutritional Information) Amendment*  
4 *Act 2011*.

5 **2 Commencement**

6 This Act commences on 1 January 2012.

7 *Note* The naming and commencement provisions automatically commence on  
8 the notification day (see Legislation Act, s 75 (1)).

9 **3 Legislation amended**

10 This Act amends the *Food Act 2001* and the *Food Regulation 2002*.

11 *Note* This Act also amends the *Magistrates Court (Food Infringement*  
12 *Notices) Regulation 2005* (see sch 1).

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1 **Part 2** **Food Act 2001**

2 **4** **New section 5A**

3 *insert*

4 **5A** **Offences against Act—application of Criminal Code etc**

5 Other legislation applies in relation to offences against this Act.

6 *Note 1* *Criminal Code*

7 The Criminal Code, ch 2 applies to the following offences against this  
8 Act (see Code, pt 2.1):

- 9 • s 110 (Certain standard food outlets to display nutritional  
10 information)
- 11 • s 111 (Voluntary display of nutritional information to meet certain  
12 requirements)

13 The chapter sets out the general principles of criminal responsibility  
14 (including burdens of proof and general defences), and defines terms  
15 used for offences to which the Code applies (eg *conduct*, *intention*,  
16 *recklessness* and *strict liability*).

17 *Note 2* *Penalty units*

18 The Legislation Act, s 133 deals with the meaning of offence penalties  
19 that are expressed in penalty units.

1 **5 New part 9**

2 *insert*

3 **Part 9 Display of nutritional information**  
4 **for food**

5 **107 Definitions—pt 9**

6 In this part:

7 *menu* means a menu, in printed or electronic form, that lists or  
8 otherwise shows 1 or more items of food and that—

- 9 (a) is on a board, poster, leaflet or similar thing at the premises  
10 where the item or items of food listed or shown on the menu  
11 are sold; or
- 12 (b) is distributed or available outside the premises where the item  
13 or items of food listed or shown on the menu are sold by the  
14 internet or a printed leaflet.

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

19 *sell* means sell as defined in section 9 (1), but by retail only.

20 *standard food item*—see section 108.

21 *standard food outlet*—see section 109.

- 1     **108**     **Meaning of *standard food item*—pt 9**
- 2             (1) In this part:
- 3                 *standard food item*—
- 4                 (a) means an item of ready-to-eat food for sale that is sold in
- 5                         servings that are standardised for portion and content and
- 6                         that—
- 7                             (i) is listed or otherwise shown on a menu; or
- 8                             (ii) is displayed for sale with a price tag or label or an
- 9                                 identifying tag or label; and
- 10                 (b) includes an item of ready-to-eat food for sale that is prescribed
- 11                         by regulation; but
- 12                 (c) does not include an item of ready-to-eat food that—
- 13                             (i) arrives at the premises where it is sold in a container or
- 14                                 wrapper in or by which the food is wholly enclosed
- 15                                 (whether or not the food is also in an outer container or
- 16                                 wrapper that contains multiple units of the food); and
- 17                             (ii) is not removed from its container or wrapper (other than
- 18                                 any outer container or wrapper) before its sale at the
- 19                                 premises.
- 20             (2) If a number of standard food items are shown or displayed for sale
- 21                         as mentioned in subsection (1) as a combination, the combination is
- 22                         to be treated for this part as a single standard food item.
- 23             (3) If an item of food mentioned in subsection (1) is shown or displayed
- 24                         for sale in different standard sizes or portions (for example, small,
- 25                                 medium or large), each standard size or portion is to be treated for
- 26                         this part as a separate standard food item.

- 1     **109        Meaning of *standard food outlet***
- 2             (1) Premises where standard food items are sold by a food business is a
- 3                *standard food outlet* if—
- 4                (a) the food business sells standard food items at other premises or
- 5                while operating in a chain of food businesses that sell standard
- 6                food items; and
- 7                (b) at least 1 of the standard food items sold at the premises has
- 8                been standardised for portion and content so as to be
- 9                substantially the same as standard food items of that kind sold
- 10              at the other premises or by the other food businesses in the
- 11              chain.
- 12             (2) For this section, a food business is operating in a chain of food
- 13              businesses that sell standard food items if—
- 14              (a) it is operating as 1 of a group of food businesses that sell
- 15              standard food items under franchise arrangements with a parent
- 16              business or under common ownership or control; or
- 17              (b) it sells standard food items under the same trading name as a
- 18              group of other food businesses that sell standard food items.
- 19     **110        Certain standard food outlets to display nutritional**
- 20             **information**
- 21             (1) This section applies to a standard food outlet of a food business
- 22              that—
- 23              (a) sells standard food items at 7 or more places in the ACT or at
- 24              50 or more places in Australia; or
- 25              (b) operates in a chain of food businesses that sell standard food
- 26              items if together the businesses sell standard food items at 7 or
- 27              more places in the ACT or at 50 or more places in Australia.

- 1           (2) However, this section does not apply to a standard food outlet of a  
2           food business that primarily provides food catering services.
- 3           (3) The proprietor of the standard food outlet must ensure that—
- 4                 (a) the nutritional information prescribed by regulation is  
5                 displayed in relation to standard food items sold at the outlet;  
6                 and
- 7                 (b) the nutritional information is worked out in accordance with  
8                 any requirements prescribed by regulation for nutritional  
9                 information of that kind; and
- 10                (c) the nutritional information is displayed in the way and at the  
11                places prescribed by regulation for nutritional information of  
12                that kind.
- 13           (4) A person must not intentionally contravene subsection (3).  
14           Maximum penalty: 500 penalty units.
- 15           (5) A person must not contravene subsection (3).  
16           Maximum penalty: 100 penalty units.
- 17           (6) An offence against subsection (5) is a strict liability offence.
- 18           (7) If, on the trial of a person charged with an offence against  
19           subsection (4), the court is not satisfied that the person committed  
20           the offence but is satisfied that the person committed an offence  
21           against subsection (5), the court may find the person not guilty of  
22           the offence charged but guilty of an offence against subsection (5).

- 1     **111       Voluntary display of nutritional information to meet**  
2     **certain requirements**
- 3           (1) This section applies to a standard food outlet other than a standard  
4           food outlet to which section 110 applies.
- 5           (2) The proprietor of the standard food outlet must not display  
6           nutritional information prescribed by regulation in relation to  
7           standard food items sold at the outlet unless the nutritional  
8           information—
- 9               (a) is worked out in accordance with any requirements prescribed  
10              by regulation for nutritional information of that kind; and
- 11              (b) is displayed in the way and at the places prescribed by  
12              regulation for nutritional information of that kind.
- 13           Maximum penalty: 100 penalty units.
- 14           (3) An offence against this section is a strict liability offence.
- 15     **112       Display or distribution of explanatory material etc about**  
16     **nutritional information**
- 17           A regulation may make provision in relation to the display or  
18           distribution by a standard food outlet of explanatory material or any  
19           other material about nutritional information for food.
- 20     **113       Exemptions from pt 9**
- 21           (1) The Minister may exempt, with or without conditions, any people,  
22           food businesses, premises, food or activities from the operation of  
23           all or any provisions of this part.
- 24           (2) An exemption must state the reasons for the exemption.
- 25           (3) An exemption has no effect during any period in which a condition  
26           of the exemption is not complied with.

1 (4) An exemption is a disallowable instrument.

2 *Note* A disallowable instrument must be notified, and presented to the  
3 Legislative Assembly, under the Legislation Act.

#### 4 **114 Review of pt 9**

5 (1) The Minister must review the operation of this part as soon as  
6 practicable after the end of its 1st year of operation.

7 (2) The review must include a consideration of the adequacy of the  
8 nutritional information prescribed for display in relation to standard  
9 food items for section 110 (3) and section 111 (2) and, in particular,  
10 whether 1 or more of the following should be prescribed for display:

11 (a) salt content;

12 (b) fat content;

13 (c) sugar content.

14 (3) The Minister must present a report of the review to the Legislative  
15 Assembly within 6 months after the review is started.

16 (4) This section expires 2 years after the day it commences.

### 17 **6 Dictionary, new definitions**

18 *insert*

19 *menu*, for part 9 (Display of nutritional information for food)—see  
20 section 107.

21 *ready-to-eat food*, for part 9 (Display of nutritional information for  
22 food)—see section 107.

23 *standard food item*, for part 9 (Display of nutritional information for  
24 food)—see section 108.

25 *standard food outlet*, for part 9 (Display of nutritional information  
26 for food)—see section 109.

1 **Part 3 Food Regulation 2002**

2 **7 New part 4**

3 *insert*

4 **Part 4 Display of nutritional information**  
5 **for food**

6 **14 Nutritional information for prescribed standard food**  
7 **outlets—Act, s 110 (3)**

- 8 (1) The following nutritional information is prescribed for each  
9 standard food item for sale by a standard food outlet to which the  
10 Act, section 110 applies:
- 11 (a) the average energy content of the food item, expressed in  
12 kilojoules;
- 13 (b) the following statement:
- 14 The recommended average adult daily energy intake is  
15 8,700 kJ.
- 16 (2) The average energy content of a food item is to be worked out in  
17 accordance with the food standards code, standard 1.2.8 making  
18 necessary adjustments to ensure that the calculation is done in  
19 relation to the whole of the food item rather than per 100g.
- 20 (3) The number of kilojoules calculated may be rounded to the  
21 nearest 10 kJ.

- 
- 1     **15**           **Prescribed nutritional information for other standard food**  
2                   **outlets—Act, s 111 (2)**
- 3           (1) The average energy content of the food item, expressed in  
4           kilojoules, is prescribed for each standard food item for sale by a  
5           standard food outlet (other than a standard food outlet to which the  
6           Act, section 110 applies).
- 7           (2) The average energy content of a food item is to be worked out in  
8           accordance with the method mentioned in section 14 (2) and (3).
- 9     **16**           **Places for display of nutritional information—Act,**  
10                   **s 110 (3) (c) and s 111 (2) (b)**
- 11          (1) The places where the nutritional information mentioned in  
12          section 14 (1) and section 15 (1) must be displayed in relation to a  
13          standard food item are—
- 14               (a) on each menu on which the name or price of the standard food  
15               item is displayed and on each price tag or label or identifying  
16               tag or label for the item; and
- 17               (b) if there are drive-through facilities—on the drive-through  
18               menu board that displays the name or price of the standard  
19               food item or on a separate adjacent board visible at or before  
20               the point of ordering; and
- 21               (c) adjacent to or in close proximity to the name or price of the  
22               standard food item so as to be clearly associated with the item.
- 23          (2) The places where nutritional information mentioned in  
24          subsection (1) is displayed in relation to a standard food item are to  
25          be consistent with the places where that nutritional information is  
26          displayed for all of the other standard food items that are displayed  
27          with that standard food item.

- 1           (3) The places where the statement mentioned in section 14 (1) (b) must  
2           be displayed are—
- 3           (a) in 1 place on each menu on which the name or price of 1 or  
4           more standard food items is displayed and adjacent to or in  
5           close proximity to the standard food item or items so as to be  
6           clearly associated with the item or items; and
- 7           (b) if there are drive-through facilities—in 1 place on the  
8           drive-through menu board adjacent to or in close proximity to  
9           the standard food item or items so as to be clearly associated  
10          with the item or items; and
- 11          (c) in each area or display cabinet, or on each stand, where  
12          standard food items with price tags or labels or identifying tags  
13          or labels are displayed and adjacent to or in close proximity to  
14          the item or items so as to be clearly associated with the item or  
15          items and conspicuous to a person looking at the item or items.

16       **17           Way of displaying nutritional information—Act,**  
17       **s 110 (3) (c) and s 111 (2) (b)**

- 18          (1) The nutritional information mentioned in section 14 (1) and  
19          section 15 (1) must—
- 20          (a) be clearly legible; and
- 21          (b) display the number of kilojoules in numerals and use the  
22          abbreviation “kJ”; and
- 23          (c) be in the same font, and at least the same font size, as the price  
24          displayed for the standard food item concerned or, if no price is  
25          displayed, as the name displayed for the item.
- 26          (2) The statement mentioned in section 14 (1) (b) must—
- 27          (a) be clearly legible; and
- 28          (b) if only 1 standard food item is displayed on a menu—be in the  
29          same font, and at least the same font size, as the name of the

- 1 item displayed or, if no name is displayed, as the price  
2 displayed for the item; and
- 3 (c) if 2 or more standard food items are listed or displayed on a  
4 menu—be in the same font, and at least the same font size, as  
5 the name of the standard food item with the largest font size  
6 listed or displayed or, if no names are listed or displayed, as the  
7 price of the standard food item with the largest font size listed  
8 or displayed; and
- 9 (d) for a standard food item or items displayed with a price tag or  
10 label or identifying tag or label in any area, display cabinet or  
11 stand—in at least the same font size as the largest font size on  
12 the tags or labels for the standard food item or items in the  
13 area, display cabinet or stand.

## 14 **8 Dictionary, note 3**

### 15 *insert*

- 16 • menu
- 17 • ready-to-eat food
- 18 • standard food item (see s 108)
- 19 • standard food outlet (see s 109)

**Schedule 1** Magistrates Court (Food Infringement Notices) Regulation 2005—  
Consequential amendment

Amendment [1.1]

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1 **Schedule 1** **Magistrates Court (Food**  
2 **Infringement Notices)**  
3 **Regulation 2005—**  
4 **Consequential amendment**

5 (see s 3)

6 **[1.1] Schedule 1, new items 19 and 20**

7 *insert*

19	110 (5)	100	100
20	111 (2)	100	100

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

**2 Notification**

Notified under the Legislation Act on 2011.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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