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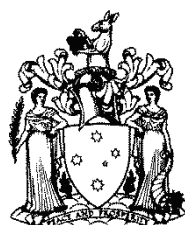
Food Amendment (Kilojoule Labelling Scheme and Other Matters) Act 2017

No. 2 of 2017

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Authorised Version



Victoria

Food Amendment (Kilojoule Labelling Scheme and Other Matters) Act 2017[†]

No. 2 of 2017

[Assented to 14 February 2017]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to amend the **Food Act 1984**—

- (a) to provide for a kilojoule labelling scheme;
and
- (b) to make miscellaneous and technical amendments.

2 Commencement

- (1) This Act (except Parts 2 and 3) comes into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), Parts 2 and 3 come into operation on a day to be proclaimed.
- (3) If Parts 2 and 3 do not come into operation before 1 July 2018, they come into operation on that day.

3 Principal Act

In this Act, the **Food Act 1984** is called the Principal Act.

Part 2—New Part IIA—Kilojoule labelling scheme

4 New Part IIA inserted

After section 17H of the Principal Act **insert—**

'Part IIA—Kilojoule labelling scheme

Division 1—Definitions

18 Definitions

For the purposes of this Part—

chain food premises has the meaning given in section 18A;

chain supermarket has the meaning given in section 18B;

floor area in relation to a supermarket premises means the continuous internal floor area of the supermarket premises that is used to display items available for sale to consumers and excludes any part of the floor area available for the consumption of food at the supermarket premises;

food label in relation to a standard food item means, irrespective of whether or not the standard food item is listed on a menu—

- (a) a price ticket attached to, or closely associated with, the standard food item; or
- (b) an identifying name label attached to, or closely associated with, the standard food item;

kilojoule labelling scheme means the requirements set out in this Part regarding the display of kilojoule information about standard food items sold by certain food businesses;

menu means a list or other depiction of at least one standard food item (together with its name or price) that is printed or is in electronic form and that—

- (a) appears on a board, poster, leaflet or similar thing at the food premises at which the standard food item is sold; or
- (b) in the case of a drive-through facility, appears on a board, poster, leaflet or similar thing visible at or before the point of ordering the standard food item; or
- (c) is distributed or is available other than at the food premises from which the standard food item is sold;

proprietor of a chain food premises means—

- (a) the person carrying on a food business at the chain food premises; or
- (b) if the person referred to in paragraph (a) cannot be identified, the person in charge of the chain food premises;

proprietor of a chain supermarket means—

- (a) the person carrying on a supermarket business at the chain supermarket; or
- (b) if the person referred to in paragraph (a) cannot be identified, the person in charge of the chain supermarket;

ready-to-eat food means food that is for sale in a state in which it is ordinarily consumed;

standard food item has the meaning given in section 18C;

supermarket business means a food business which involves the sale of all of the following items of food—

- (a) bread;
- (b) breakfast cereal;
- (c) butter;
- (d) eggs;
- (e) flour;
- (f) fresh fruit;
- (g) fresh milk;
- (h) fresh vegetables;
- (i) meat;
- (j) rice;
- (k) sugar;
- (l) food (other than any item of food that is referred to in any preceding paragraph in this definition) that is in a package;

supermarket premises means a food premises at which a supermarket business operates, other than those parts of the food premises that are a chain food premises.

18A What is a *chain food premises*?

(1) In this Part—

chain food premises means a food premises (other than a supermarket premises) at which a food business—

- (a) sells at least one standard food item; and
- (b) operates as part of a chain of food businesses.

(2) For the purposes of this section, a food business *operates as part of a chain of food businesses* if—

- (a) the chain of food businesses comprises of at least—
 - (i) 20 food premises in Victoria; or
 - (ii) 50 food premises in Australia, including at least one in Victoria; and
- (b) at least 2 food premises referred to in paragraph (a) sell the same standard food item; and
- (c) the food businesses which comprise the chain—
 - (i) operate under franchise arrangements with a parent business; or

- (ii) operate under the same trading name or brand or trade mark; or
- (iii) are under common ownership or control.

18B What is a *chain supermarket*?

- (1) In this Part—

chain supermarket means a supermarket premises—

- (a) at which a supermarket business—
 - (i) sells at least one standard food item; and
 - (ii) operates as part of a chain of supermarket businesses; and
- (b) with a floor area of over 1000 square metres.

- (2) For the purposes of subsection (1), a supermarket business *operates as part of a chain of supermarket businesses* if—

- (a) the chain of supermarket businesses comprises of at least—
 - (i) 20 supermarket premises in Victoria; or
 - (ii) 50 supermarket premises in Australia, including at least one in Victoria; and
- (b) at least 2 supermarket premises referred to in paragraph (a) sell the same standard food item; and

- (c) the supermarket businesses which comprise the chain—
 - (i) operate under franchise arrangements with a parent business; or
 - (ii) operate under the same trading name or brand or trade mark; or
 - (iii) are under common ownership or control.

18C What is a *standard food item*?

- (1) In this Part—

standard food item means an item of ready-to-eat food that is standardised for size and content and is for sale at—

- (a) at least 2 chain food premises, each operated by a food business operating in the same chain of food businesses; or
 - (b) at least 2 chain supermarkets, each operated by a supermarket business operating in the same chain of supermarket businesses.
- (2) Despite subsection (1), *standard food item* does not include—
- (a) nuts in the shell or raw fruit or vegetables that are usually washed or peeled or hulled by the consumer; or
 - (b) an alcoholic beverage; or
 - (c) food that is available for sale in a package on which there is a nutrition information panel within the meaning of the Food Standards Code; or

- (d) a food item (which would otherwise be included in the definition of *standard food item*) that—
- (i) is available for sale at a chain food premises or chain supermarket for a period of not more than 60 days; and
 - (ii) is available for sale in Victoria at—
 - (A) not more than 5 chain food premises, each operated by a food business operating as part of the same chain of food businesses; or
 - (B) not more than 5 chain supermarkets, each operated by a supermarket business operating as part of the same chain of supermarket businesses; and
 - (iii) was not available for sale before the period referred to in subparagraph (i) at any chain food premises or chain supermarket referred to in subparagraph (ii), as the case may be; or
- (e) food that is prescribed as an exempt food item.
- (3) If a number of standard food items are shown or displayed for sale as a combination, the combination is taken to be a single standard food item for the purposes of this Part.

- (4) If a standard food item is shown or displayed for sale in different standard sizes such as small, medium or large, each standard size of the item of food is taken to be a separate standard food item.

Division 2—Requirement for proprietor of chain food premises to display kilojoule information

18D Requirement for proprietor of chain food premises to display kilojoule information

- (1) The proprietor of a chain food premises must, in accordance with section 18E, display—
- (a) the following statement—
"The average adult daily energy intake is 8 700 kJ."; and
 - (b) in relation to each standard food item sold at the chain food premises, the average energy content of the standard food item.

Penalty: 20 penalty units in the case of an individual;
100 penalty units in the case of a corporation.

- (2) The average energy content of a standard food item is to be determined in accordance with Standard 1.2.8 of the Food Standards Code, rounded to the nearest 10 kilojoules.
- (3) In any proceedings for an offence under this section, it is no defence that the proprietor of the chain food premises had a mistaken but reasonable belief as to the facts that constituted the offence.

- (4) Despite anything to the contrary in subsection (3), in any proceedings for an offence under this section, it is a defence if it is proved that the proprietor of the chain food premises exercised all due diligence to prevent the commission of the offence by the proprietor or by a person under the proprietor's control.

18E Chain food premises—manner and location of display of kilojoule information

- (1) The statement required by section 18D(1)(a) must—
- (a) be clearly legible; and
 - (b) if a standard food item is on display in or on a display cabinet, stand or area and a food label is attached to, or closely associated with, the standard food item—
 - (i) be in a prominent place in or on that display cabinet, stand or area; and
 - (ii) be in at least the same font size as the largest font size used on the food label; and
 - (c) if a standard food item is listed or otherwise depicted on a menu, be displayed at least once in a prominent place on the menu in at least the same font size as the largest font size used on the menu for—
 - (i) the name of a standard food item; or
 - (ii) if no name is displayed, the price of a standard food item.

- (2) The average energy content of a standard food item required by section 18D(1)(b) must—
- (a) be clearly legible; and
 - (b) be expressed in numerals followed by the abbreviation "kJ"; and
 - (c) if a food label is attached to, or closely associated with, the standard food item, be displayed on the food label in at least the same font size as the largest font size used on the food label for—
 - (i) the price of the standard food item; or
 - (ii) if no price is displayed, the name of the standard food item; and
 - (d) if the standard food item is listed or otherwise depicted on a menu—
 - (i) be adjacent to the standard food item on the menu; and
 - (ii) be in at least the same font size as the largest font size used on the menu for—
 - (A) the price of the standard food item; or
 - (B) if no price is displayed, the name of the standard food item.

**Division 3—Requirement for proprietor
of chain supermarket to display
kilojoule labelling**

**18F Requirement for proprietor of chain
supermarket to display kilojoule
information**

- (1) The proprietor of a chain supermarket must, in accordance with section 18G, display—
 - (a) the following statement—

"The average adult daily energy intake is 8 700 kJ."; and
 - (b) in relation to each standard food item sold at the chain supermarket, the average energy content of the standard food item or of 100 g of the standard food item.

Penalty: 20 penalty units in the case of an individual;

100 penalty units in the case of a corporation.

- (2) The average energy content of a standard food item or 100 g of a standard food item is to be determined in accordance with Standard 1.2.8 of the Food Standards Code, rounded to the nearest 10 kilojoules.
- (3) In any proceedings for an offence under this section, it is no defence that the proprietor of the chain supermarket had a mistaken but reasonable belief as to the facts that constituted the offence.

- (4) Despite anything to the contrary in subsection (3), in any proceedings for an offence under this section, it is a defence if it is proved that the proprietor of the chain supermarket exercised all due diligence to prevent the commission of the offence by the proprietor or by a person under the proprietor's control.

18G Chain supermarket—manner and location of display of kilojoule information

- (1) The statement required by section 18F(1)(a) must—
- (a) be clearly legible; and
 - (b) if a standard food item is on display in or on a display cabinet, stand or area and a food label is attached to, or closely associated with, the standard food item—
 - (i) be in a prominent place in or on that display cabinet, stand or area; and
 - (ii) be in at least the same font size as the largest font size used on the food label; and
 - (c) if a standard food item is listed or otherwise depicted on a menu, be displayed at least once in a prominent place on the menu in at least the same font size as the largest font size used on the menu for—
 - (i) the name of the standard food item; or
 - (ii) if no name is displayed, the price of the standard food item.

- (2) The average energy content of a standard food item required by section 18F(1)(b) must—
- (a) be clearly legible; and
 - (b) be expressed in numerals followed by the abbreviation "kJ"; and
 - (c) if a food label is attached to, or closely associated with, the standard food item, be displayed on the food label in at least the same font size as the font size used on the food label for the price or unit price of the standard food item; and
 - (d) if the standard food item is listed or otherwise depicted on a menu—
 - (i) be adjacent to the standard food item on the menu; and
 - (ii) be in at least the same font size as the font size used on the menu for the price or unit price of the standard food item.

Division 4—Exemptions

18H Exemptions

Sections 18D(1) and 18F(1) do not apply in relation to standard food items sold—

- (a) by a food business operated by the same business operating the cinema at which the food business is located; or
- (b) by a food business, or that part of a food business, that provides food catering services; or
- (c) at a food vending machine; or
- (d) at a temporary food premises; or

- (e) at a mobile food premises; or
- (f) at a service station by a business selling petrol or other fuel for motor vehicles; or
- (g) by a not-for-profit food business providing services delivering meals to persons in their homes; or
- (h) by a prescribed food business or food premises or a prescribed class of food business or food premises.'

Part 3—Consequential amendments

5 Misleading conduct relating to sale of food

In section 13(1), (2) and (3) of the Principal Act, for "A person" **substitute** "Despite anything to the contrary in Part IIA, a person".

6 False descriptions of food

In section 17A(1) of the Principal Act, after "Part" **insert** "and despite anything to the contrary in Part IIA".

7 Burden of proof as to statements on packages etc.

In section 45A of the Principal Act, after "Act" **insert** "(other than in relation to an offence in Part IIA)".

8 Evidentiary certificate signed by the Secretary DH

(1) In section 50AA(j) of the Principal Act, for "paid." **substitute** "paid;".

(2) After section 50AA(j) of the Principal Act **insert**—

"(k) a statement referred to in section 18D(1)(a) or 18F(1)(a), or a photograph of that statement, attached to the certificate was displayed on a stated day or during a stated period at a stated chain food premises or chain supermarket;

(l) a menu or food label referred to in section 18D(1)(b) or 18F(1)(b), or a photograph of that menu or food label, attached to the certificate was a menu or food label in relation to a stated standard food item sold by a food business operating a stated chain food premises or chain supermarket on a stated day or during a stated period."

9 Evidentiary certificate signed by chief executive officer of a council

(1) In section 50AB(j) of the Principal Act, for "paid." **substitute** "paid;".

(2) After section 50AB(j) of the Principal Act **insert**—

"(k) a statement referred to in section 18D(1)(a) or 18F(1)(a), or a photograph of that statement, attached to the certificate was displayed on a stated day or during a stated period at a stated chain food premises or chain supermarket;

(l) a menu or food label referred to in section 18D(1)(b) or 18F(1)(b), or a photograph of that menu or food label, attached to the certificate was a menu or food label in relation to a stated standard food item sold by a food business operating a stated chain food premises or chain supermarket on a stated day or during a stated period."

10 Criminal liability of officers of bodies corporate—failure to exercise due diligence (legal burden of proof)

After section 51B(2)(l) of the Principal Act **insert**—

"(la) section 18D(1);

(lb) section 18F(1);".

11 Court may order corrective advertising

In section 53B of the Principal Act, for "Part 2" **substitute** "Part II or Part IIA".

12 Schedule 1—Infringements

After item 3 of Schedule 1 to the Principal Act
insert—

"3A	An offence against section 18D(1)	2 penalty units for a natural person; 4 penalty units for a body corporate	Chain food premises—failure to display kilojoule information
3B	An offence against section 18F(1)	2 penalty units for a natural person; 4 penalty units for a body corporate	Chain supermarket—failure to display kilojoule information".

Part 4—Other amendments and statute law revision

13 Authorized officers

In section 20(5) of the Principal Act **omit** "by or on behalf of the Crown or".

14 Cross reference correction

In section 28(b) of the Principal Act, for "section 26(4)" **substitute** "section 26(5)".

15 Schedule 1—Infringements

In column 2 of item 1 of Schedule 1 to the Principal Act, for "24(1)(a), 24(1)(b)" **substitute** "24(1)(a)".

16 Amendments relating to Department name changes

(1) In section 4(1) of the Principal Act—

(a) in the definition of *Department*, after "Health" **insert** "and Human Services";

(b) in the definition of *Secretary*—

(i) in paragraph (a), for "Secretary DH or the Secretary DPI" **substitute** "Secretary DHHS or the Secretary DEDJTR";

(ii) in paragraph (b), for "Secretary DH" **substitute** "Secretary DHHS";

(c) in the definition of *Secretary DH*, for "*Secretary DH*" **substitute** "*Secretary DHHS*";

- (d) for the definition of *Secretary DPI substitute*—
- "Secretary DEDJTR* means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Economic Development, Jobs, Transport and Resources;"
- (2) Section 4(1A) of the Principal Act is **repealed**.
- (3) In section 5 of the Principal Act—
- (a) in subsection (5), for "Secretary DH or the Secretary DPI" **substitute** "Secretary DHHS or the Secretary DEDJTR";
- (b) in subsection (6), for "Secretary DPI" **substitute** "Secretary DEDJTR".
- (4) In the heading to section 7BA of the Principal Act, for "**Primary Industries**" **substitute** "**Economic Development, Jobs, Transport and Resources**".
- (5) In section 7BA of the Principal Act—
- (a) for "Primary Industries" **substitute** "Economic Development, Jobs, Transport and Resources";
- (b) for "Secretary DPI" (where twice occurring) **substitute** "Secretary DEDJTR";
- (c) for "Secretary DH" **substitute** "Secretary DHHS".
- (6) In section 19AA(10) of the Principal Act, in the definition of *relevant authority*—
- (a) in paragraphs (a)(i) and (b)(i), for "Secretary DPI" **substitute** "Secretary DEDJTR";
- (b) in paragraph (b)(ii), for "Secretary DH" **substitute** "Secretary DHHS".

- (7) In section 26(5) of the Principal Act—
- (a) for "Secretary DH" (wherever occurring) **substitute** "Secretary DHHS";
 - (b) for "Secretary DPI" (wherever occurring) **substitute** "Secretary DEDJTR".
- (8) In section 48(4) of the Principal Act—
- (a) in paragraph (a), for "Secretary DPI" (wherever occurring) **substitute** "Secretary DEDJTR";
 - (b) in paragraph (d) of the Principal Act, for "Secretary DH" **substitute** "Secretary DHHS".
- (9) In the heading to section 50AA of the Principal Act, for "**DH**" **substitute** "**DHHS**".
- (10) In section 50AA of the Principal Act, for "Secretary DH" **substitute** "Secretary DHHS".
- (11) In the heading to section 50AAB of the Principal Act, for "**Secretary DPI**" **substitute** "**Secretary DEDJTR**".
- (12) In section 50AAB of the Principal Act, for "Secretary DPI" **substitute** "Secretary DEDJTR".
- (13) In section 50AC of the Principal Act, for "Secretary DH, the Secretary DPI" **substitute** "Secretary DHHS, the Secretary DEDJTR".
- (14) In section 56(3) of the Principal Act—
- (a) in paragraph (a), for "Secretary DH" (where twice occurring) **substitute** "Secretary DHHS";
 - (b) in paragraph (b), for "Secretary DPI" (where twice occurring) **substitute** "Secretary DEDJTR".

- (15) In the heading to section 58AB of the Principal Act, for "**Secretary DPI**" **substitute** "**Secretary DEDJTR**".
- (16) In section 58AB(1) of the Principal Act, for "Secretary DPI" (where twice occurring) **substitute** "Secretary DEDJTR".
- (17) In section 63(1A)(d) and (1B) of the Principal Act, for "Secretary DPI" **substitute** "Secretary DEDJTR".

Part 5—Repeal of amending Act

17 Repeal of amending Act

This Act is **repealed** on 1 July 2019.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 15 September 2016

Legislative Council: 13 October 2016

The long title for the Bill for this Act was "A Bill for an Act to amend the **Food Act 1984** to provide for a kilojoule labelling scheme and for other purposes."