

Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trade: Draft Research Report

Productivity Commission

Submission from the Obesity Policy Coalition

Obesity Policy Coalition

The Obesity Policy Coalition (OPC) is a coalition between the Cancer Council Victoria, Diabetes Australia – Victoria, the Victorian Health Promotion Foundation and the World Health Organisation Collaborating Centre on Obesity Prevention at Deakin University. The OPC is concerned about the escalating rates of overweight and obesity in Australia.

The OPC thanks the Productivity Commission (the Commission) for the opportunity to provide comments on the Commission's *Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trades: Draft Research Report* (the Draft Research Report).

The OPC wishes to make particular comment on Chapter 3 – Food Regulation of the Draft Research Report.

Executive summary

Inconsistency in food regulation

The OPC supports the Commission's Draft Response 3.1 that the findings of the Bethwaite review should be publicly released and announced. The recent Council of Australian Governments (COAG) decision to accelerate development and implementation of food regulatory reforms only increases this urgency.

Improving the operations of the Australia New Zealand Food Regulation Ministerial Council.

The OPC opposes the Commission's Draft Response 3.3 that the Australian New Zealand Food Regulation Ministerial Council (the Ministerial Council) should require a majority vote to initiate a review of a draft amendment of the *Australian and New Zealand Food Standards Code* (the Food Standards Code) prepared by Food Standards Australia New Zealand (FSANZ).

The capacity of a single jurisdiction to request a review of national food standards is important for allowing Ministers to ensure the interests of consumers in their States are protected. This capacity should be retained but a majority of jurisdictions should have to make a request before a second review may be conducted.

Food regulation and public health

The Commission's Draft Response 3.5 is based on the idea that food regulation may not be the only, or most efficacious, means of meeting national health objectives. According to the Commission, policy makers should also examine food safety and public health separately as policy issues before determining whether food regulation can help achieve national health objectives. The Australian Health Ministers' Conference (AHMC) should consider public health issues such as obesity in a broad policy context before referring any relevant food regulation matters to the Ministerial Council.

The OPC agrees that food regulation is not the only policy means of combating obesity but notes that there is no single initiative that will solve the obesity crisis. What is really needed is a comprehensive strategy that encompasses community wide programs, policy and regulatory approaches, social marketing, evaluation of measures and co-ordination across government. Nevertheless, food regulation is an important component of this comprehensive strategy, directly affecting consumers' ability to make healthy choices and influencing the type of food they purchase and ultimately consume.

It is also problematic to draw a distinction between food safety and public health but these are, nonetheless, crucial and complementary objectives. This is demonstrated through the *Overarching Strategic Statement for the Food Regulatory System*, which links food safety and public health together in the food regulatory context.

Obesity is a complex issue with significant policy implications that extend beyond health to the social, economic and fiscal spheres. A fresh approach is needed to enable this multitude of factors to be dealt with in a comprehensive, targeted way.

The OPC believes that the creation of a central coordinating agency would provide a mechanism through which the comprehensive, multi-faceted approach necessary to address obesity can be directed and facilitated, including strategic policy directions. This could provide a framework upon which policy makers could build a best practice approach towards targeting obesity, develop collaborative initiatives between the public and private sectors and ensure economies of scale when dealing with obesity.

1. Inconsistency in food regulation

The Commission's Draft Response 3.1:

The Australian Government should publicly announce what reforms are to be implemented, and their timing, as a result of the analysis undertaken as part of the Bethwaite review. In finalising its report on regulatory burdens for this year, the Commission will consider, having regard to any announced reforms, the need for a further limited review to improve national consistency of food regulation.

OPC Position:

The OPC supports Draft Response 3.1. As the Draft Research Report notes, food regulation has been subject to considerable scrutiny in the past decade with three major reviews highlighting major, ongoing regulatory problems facing the food industry.¹ The Bethwaite review, which was commissioned in January 2007, is still not complete.

On 3 July 2008, COAG agreed to accelerate the development and implementation of food regulation reform to reduce the regulatory burden on businesses and not-for-profit organisations. In particular, COAG will focus on consistency in legislation, governance arrangements, uniform enforcement and setting or modifying of food standards.²

Given COAG's recent, enhanced emphasis on food regulatory reform, the OPC considers it to be crucial that the Commonwealth Government urgently release and disseminate the findings of the Bethwaite Review to enable policy makers and stakeholders to consider its findings and recommendations in the context of this ongoing reform.

2. Improving the operations of the Australia New Zealand Food Regulation Ministerial Council.

The Commission's Draft Response 3.3:

The Ministerial Council should amend the Food Regulation Agreement to reflect the general practices for decision-making by other Ministerial Councils established to oversight, coordinate and integrate policy, such as the Australian Transport Council, the Gene Technology Ministerial Council and the Ministerial Council on Energy. In particular, the Ministerial Council should require a majority vote to initiate a review of a draft amendment of the Food Standards Code prepared by Food Standards Australia New Zealand.

The Ministerial Council should incorporate, in managing its business, an explicit process step of ensuring that all requests from members of the Ministerial Council to initiate a review provide a justification in terms of the criteria that are specified in Part III of the Food Standards Agreement. The justification for any review should be published.

OPC Position:

¹ Productivity Commission, (2008), *Annual Review of Regulatory Burdens on Business Manufacturing and Distributive Trades Draft Research Report* ("Draft Research Report"), p. 27. Available at http://www.pc.gov.au/data/assets/pdf_file/0005/81599/draft-manufacturing.pdf. Accessed 25 July 2008.

² Business Regulation and Competition Working Group, *Food Regulation*, Council of Australian Governments' Meeting, 3 July 2008. Available at http://www.coag.gov.au/meetings/030708/docs/business_regulation_competition_working_group.rtf. Accessed 24 July 2008.

The OPC opposes Draft Response 3.3's proposal that the Ministerial Council should require a majority vote to initiate a review of a draft amendment of the Food Standards Code and prepared by FSANZ.

The OPC shares the views of CHOICE expressed in its submission to the Commonwealth Senate Community Affairs Committee on the *Food Standards Australia New Zealand Bill 2007*³ on the importance of Ministerial capacity to request reviews of standards applications or proposals for protecting consumers' interests. For example, Ministerial requests for reviews of phytosterol and calcium fortification to further investigate the public health impact of these applications were necessary to protect the interests of consumers.

As the Food Standards Code is given effect by State Food Acts, State Ministers should have the opportunity to request reviews of the Code in order to ensure the interests of consumers in their states are protected. This opportunity should not depend on another jurisdiction also requesting a review. The OPC shares the concerns of CHOICE that limiting the capacity of Ministers to request a review of the Food Standards Code would limit the ability of Ministers to protect consumers' interests.

Therefore, the OPC supports CHOICE's recommendation to the Australian Senate Community Affairs Committee that a single jurisdiction should be entitled to request a first review. The ability of jurisdictions to request a second review should be retained but a second review should have to be requested by a majority of jurisdictions.

3. Food regulation and public health

The Commission's Draft Response 3.5

The Australia and New Zealand Food Regulation Ministerial Council should not consider making decisions on matters of public health through food regulation until such time as the Australian Health Ministers' Conference has considered all policy responses and referred the relevant matters to the Australia and New Zealand Food Regulation Ministerial Council for a food regulation response.

OPC Position:

Addressing obesity as a national health issue

The Commission endorses the idea that diet-related public health issues such as obesity are national ones and should be addressed at that level.⁴

The OPC strongly supports that view. Overweight and obesity is a national epidemic and has been described by the World Health Organization as "one of today's most visible, yet most neglected public health problems."⁵ In 2003, the Australian Institute of Health and Welfare estimated that there may be as many as 3.3 million Australian adults who are obese and 5.6 million who are overweight.⁶

³ CHOICE, (April 2007), *Submission to the Australian Senate Community Affairs Committee on the Food Standards Australia New Zealand Bill 2007*. Available at http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2004-07/food_standards/submissions/sub03.pdf. Accessed 23 July 2008.

⁴ Draft Research Report, p. 44.

⁵ World Health Organization. *Nutrition. Controlling the global obesity epidemic*. Available at: <http://www.who.int/nut/obts.html>. Accessed 22 July 2008.

⁶ Australian Institute of Health and Welfare, (2003), *Indicators of health risk factors the AIHW view*. AIHW Cat. No. PHE 47. Canberra, AIHW.

Overweight and obesity has contributed substantially to significant increases in the incidence of chronic disease (including type 2 diabetes, cardiovascular disease and cancer) and has serious consequences for the health system and the economy. For example, as rates of obesity have accelerated, it has been predicted that life expectancy will fall as a result.⁷ A recent report on the economic costs of obesity estimated that its total cost in Australia in 2005 was \$21.0 billion, comprising \$3.8 billion in financial costs and \$17.2 billion in net costs of lost wellbeing.⁸

The Commonwealth Government has reinforced the need to address obesity at a national level through its establishment of the Preventative Health Taskforce (the Taskforce). The Taskforce's role is to provide evidence-based advice to government and health providers on preventative health programs. It will also support the development of a National Preventative Health Strategy, which will provide a blueprint for tackling the burden of chronic disease currently caused by obesity (as well as tobacco and excessive consumption of alcohol).⁹

Commission's Draft Response 3.5

The Commission queries whether food regulation is the most effective policy means of addressing public health issues such as obesity on two grounds. First, the Commission states that food regulation may not be the only, or most efficacious, means of meeting national health objectives.¹⁰ Second, the Commission refers to the question of what role food regulation should play in meeting national health objectives.¹¹ One view is that food regulation should be used to address a range of diet-related national health issues such as obesity whereas another is that food regulation should only apply to food safety issues.

The Commission has taken the view that to effectively address the first question – whether there are other policy options outside food regulation to deal with public health issues such as obesity – means that policy makers must, at least as a preliminary step, deal with food safety and public health separately.

This approach is reflected in the Commission's Draft Response 3.5, which proposes that the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council) should not consider making decisions on matters of public health through food regulation until the Australian Health Ministers' Conference (AHMC) has considered all policy responses and referred the relevant matters to the Ministerial Council for a food regulation response.

Policy approaches to addressing obesity

The OPC agrees that food regulation is not the only policy means of combating obesity. In its submission to the House of Representatives Standing Committee on Health and Ageing's *Inquiry into Obesity*,¹² the OPC indicated that addressing obesity required a comprehensive portfolio of interventions. In effect, what is needed is a whole of government strategic plan to tackle obesity, which includes community wide programs, policy and regulatory approaches,

⁷ S.J., Olshansky, D.J. Passaro, R.C Hershov, J. Layden, B.C Carnes, J. Brody, L. Hayflick, L., R.N. Butler, D.B. Allison, D.S Ludwig, (2005), 'A potential decline in life expectancy in the United States in the 21st century.' *New England Journal of Medicine*, 352: 11, 1138-1145.

⁸ Access Economics, (October 2006), *The Economic Costs of Obesity*, prepared for Diabetes Australia.

⁹ Nicola Roxon MP. *New health taskforce on prevention - tobacco, alcohol and obesity priorities*. Available at <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr08-nr-nr046.htm?OpenDocument&yr=2008&mth=4>. Accessed 24 July 2008.

¹⁰ Draft Research Report, p. 44.

¹¹ Draft Research Report, p. 43.

¹² OPC, (17 June 2008), *Submission to House of Representatives Standing Committee on Health and Ageing Inquiry into Obesity*.

social marketing, evaluation of the impact and outcome of measures and co-ordination across government.

The OPC recognises that there is no single initiative that will solve the obesity crisis and that each component part of a comprehensive strategy may not create a significant impact on its own. Instead, it is the complementary and reinforcing action of each component part that will be critically important to effecting change.

Therefore, the OPC considers that food regulation, with its Australia wide application, is an important part of this comprehensive strategy. Effective food regulation can play an important role in preventing obesity, particularly as it relates to the quality of food available to consumers and consumers' ability to make healthy food choices. The implementation of such regulations should not be contingent on all other policy or program options (many of which lie outside the health jurisdiction) being implemented. If a piece of food regulation is a feasible and promising option to contribute to improved population nutrition it should be implemented. Food regulation is part of a mix of strategies which need to be implemented together, rather than being at the end of a linear sequence of possible strategies.

For example, a key cause of obesity is over-consumption of energy-dense processed foods. Major factors contributing to the over-consumption of these foods and to accelerating rates of obesity include the greater production and availability, increased portion sizes, misleading or inadequate labelling and heavy marketing of these foods.

Food regulatory controls such as the Food Standards Code have the potential to help control these influences, just as non-regulatory measures such as education and social marketing can. It is not one or the other. The Food Standards Code controls the quality and composition of food around Australia and the way food is labelled and marketed to consumers. It, therefore, directly affects consumers' ability to make healthy choices and influences the types of foods they purchase and ultimately consume. In OPC's view, improved regulation of food labelling, marketing and composition must be part of a multi-strategy approach to deal with the obesity epidemic.

The Food Standards Code is implemented by the Food Act and enforced at a state and local level. Therefore, if the Food Standards Code were amended to facilitate the protection of public health measures as described above, the OPC considers it important that this objective be recognised as an explicit object of the Food Act. Protection of public health should also be defined to include protecting the public from long-term harm caused by chronic diseases associated with food consumption.

Food safety and public health

The Commission has taken the view that regulators should examine food safety and public health separately as policy issues before determining whether food regulation can help achieve national health objectives. The Draft Research Report also refers to the difficulty of drawing a distinction between food safety and public health issues.¹³

The OPC agrees that it is problematic to draw a line between food safety and public health but they are, nonetheless, crucial and complementary objectives. This idea is reflected in the *Overarching Strategic Statement for the Food Regulatory System*¹⁴, (the Strategic Statement)

¹³ Draft Research Report, p. 44.

¹⁴ *Overarching Strategic Statement for the Food Regulatory System*. Available at [http://www.health.gov.au/internet/main/Publishing.nsf/Content/D2F454EFBC8845E5CA256F190003B07D/\\$File/Overarching%20Strategic%20Statement.pdf](http://www.health.gov.au/internet/main/Publishing.nsf/Content/D2F454EFBC8845E5CA256F190003B07D/$File/Overarching%20Strategic%20Statement.pdf). Accessed 25 July 2008.

which was approved by the Ministerial Council on 2 May 2008 to clarify the objectives of the Australian food regulatory system.

Part D of the Strategic Statement provides that food regulatory system goals include:

- protecting the health and safety of consumers by reducing risks related to food; and
- supporting public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues.¹⁵

The Strategic Statement ties public health and food safety objectives together by determining that public health and safety in relation to food “refers to all those aspects of food consumption that could adversely affect the general population or a particular community’s health either in the short or long term. Adverse impacts include preventable diet-related disease, illness and disability as well as acute food safety concerns.”¹⁶ It also identifies strategies that fulfil both food safety and public health objectives such as food labelling requirements, which can enable consumers to make informed choices about the safety of food and also facilitate healthy food choices through labelling food to indicate their nutritive value.

The Commission’s proposal to separate food safety and public health is arguably influenced by the idea that it is easier to create a case for regulatory intervention on food safety issues given that this remains the prime public health concern of food laws.¹⁷ However, this does not mean that the case for regulatory intervention on public health grounds should also not be considered by policy makers. An effective regulatory approach to obesity, in the OPC’s view, will involve sophisticated food regulation where food safety and public health objectives are interdependent and interlinked – promoting improved health and nutrition outcomes as well as protecting the public against the harm caused by chronic disease. Such regulation could aim to improve the quality of the food supply and promote healthier eating through measures such as restrictions on marketing of unhealthy foods or controls on food labelling.

A National Obesity Agency

The Commission proposed that that the Ministerial Council should not consider making decisions on matters of public health through food regulation until the AHMC has considered all policy responses and referred the relevant matters to the Ministerial Council for a food regulation response.

The OPC agrees that the full range of policy options for addressing public health issues such as obesity should be examined in a broad context. However, broad strategic direction and actions of the AHMC should be complimented by the establishment of a central coordinating agency. This agency could combine public health policy with sustained educative programs, social marketing and research to tackle obesity on multiple fronts.

Obesity is a complex issue with significant policy implications that extend beyond health to the social, economic and fiscal spheres. A fresh approach is needed to enable this multiplicity of factors to be dealt with in a comprehensive, targeted way.

This proposal readily translates to the national level for the creation of a national agency that targets all Australians and not just children. The OPC believes that such an agency would be a potentially valuable mechanism through which the comprehensive, multi-faceted approach necessary to address obesity can be directed and facilitated. The agency would also provide

¹⁵ As above, 10.

¹⁶ As above, 13.

¹⁷ Christopher Reynolds, *Public Health Law and Regulation*, Federation Press, 2004, p. 188.

the framework upon which policy makers could build a best practice approach towards addressing obesity. This would involve a cross-sectoral, coordinated collaboration between government and private partners, ensuring economies of scale and complementing the existing COAG and Taskforce agenda, particularly in relation to the prevention of chronic diseases.

The OPC notes that the Taskforce, which is currently considering obesity from a national, multi-disciplinary perspective, is due to produce a three-year work program by September 2008 and a National Preventative Health Strategy by June 2009. This could provide the ideal basis for the foundation and development of a central coordinating agency and its work program.