



## **Submission to Food Standards Australia New Zealand regarding *Proposal P1037 – Amendments associated with Nutrition Content & Health Claims***

Submitted by email: [submissions@foodstandards.gov.au](mailto:submissions@foodstandards.gov.au)

**July 2015**

### **Introduction**

The Obesity Policy Coalition (OPC) is a partnership between Cancer Council Victoria, Diabetes Victoria and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University. The OPC is concerned about poor diets and high rates of overweight and obesity in Australia, particularly among children.

The OPC's comments to Food Standards Australia New Zealand (FSANZ) in relation to Proposal P1037 are confined only to the proposed amendments relating to the Health Star Rating (HSR) system and Percentage Daily Intake (%DI) declarations. In particular, the OPC wishes to highlight:

1. The need to ensure that compliance obligations do not have the effect of dissuading food manufacturers from using the HSR system in preference to %DI labels.
2. The need to amend Standard 1.2.8 to mandate the use of the HSR system if a nutrition claim is made.
3. The need to ensure that a health star rating with the energy icon is required if %DI information for energy alone is to be presented outside the Nutrition Information Panel.

### **Health Star Rating System**

The OPC supports the proposal to exempt the trademarked elements of the HSR system from nutrition content claim and health claim requirements. This approach reflects the intended operation of these trademarked elements of the HSR system and may further encourage the use of this system by food manufacturers.

While the OPC does not object to the HSR positive nutrient icons being considered nutrition claims, it would urge FSANZ to ensure that this approach will not cause the use of an HSR positive nutrient icon to trigger obligations under the Food Code that would not be triggered by the use of a %DI label (outside the NIP) for positive nutrient icons. For example, while the non-trademarked elements of the HSR system would trigger additional labelling requirements for food intended to be prepared or consumed with other food (Standard 1.2.8, clause 11), a %DI label (including for

positive nutrients) would not - as it is not a 'claim requiring nutrition information' under Standard 1.2.8.

Similarly, while the OPC agrees that the use of 'high' and 'low' descriptors should constitute nutrition claims, to ensure consistency with the requirements of Standard 1.2.7, FSANZ should ensure that the use of these descriptors does not trigger obligation that would not be triggered by the use of %DI labels, potentially deterring food manufacturers from using the HSR system over %DI labels. It is obviously in the interest of consumers that 'high' and 'low' descriptors be used in preference to %DI labels.

In other words, FSANZ should be seeking to encourage the uptake of the HSR system over the use of %DI labels and should ensure that food manufacturers will not be dissuaded from using HSR in preference for %DI due to compliance obligations. It should also ensure that consumers are not further disadvantaged by the use of %DI over the HSR system (i.e. by %DI not triggering additional labelling obligations under the Food Code that the HSR system would). The HSR system has been developed largely due to the confusing nature of %DI, to create a simple system capable of meaningfully informing consumers of the nutrition quality of food products and to enable them to choose healthier products. All food labelling reforms should be aimed at influencing food manufacturers to adopt this system and cease the use of %DI labels.

In the interests of consistency in the long term, it may be appropriate that the use of any %DI label (outside the NIP) be considered a nutrition claim. This would ensure the same obligations would ensue under Standards 1.2.7 and 1.2.8 regardless of whether a HSR or %DI label is used, including in the long term if amendments are made to the Food Code that attach further obligations to the use of nutrition claims. Indeed, if %DI labels for energy, saturated fat, sugar and sodium were considered nutrition claims (when HSRs for these trademarked elements would not) FSANZ may encourage the use of the HSR system over %DI. At the very least, %DI labels should be included in the definition of 'claims requiring nutrition information' in Standard 1.2.8 to ensure that obligations such as those under clause 11 of Standard 1.2.8 are triggered by the use of %DI labels.

### **Nutrition content claims**

Given a key purpose of this review is to consider amendments to Standards 1.2.7 and 1.2.8 to accommodate the HSR system, the OPC would also take this opportunity to urge FSANZ to consider amending Standard 1.2.8 to require that the HSR system be mandatory if a nutrition content claim is made on a food product.

Nutrition content claims can be perceived by consumers to be the same or similar to health claims, and have an equal ability to confuse and mislead consumers about the overall nutrition quality of a food product. There is evidence that nutrition claims produce a halo effect, whereby the presence of the claim can cause consumers to rate more highly other nutrition attributes of the food not included in the claim.<sup>1</sup> There is also evidence that consumers do not make clear distinctions between nutrition content claims and health claims.<sup>2</sup> Health Star ratings on these products would enable consumers to, at a glance, correct any misapprehension of the overall quality

---

<sup>1</sup> J. Craig Andrews, Scot Burton and Richard G. Netemeyer (2000) Are Some Comparative Nutrition Claims Misleading? The Role of Nutrition Knowledge, Ad Claim Type and Disclosure Conditions *Journal of Advertising* Vol. 29, No. 3, pp. 29-42

<sup>2</sup> Williams P (2005) Consumer understanding and use of health claims for foods. *Nutr Rev.* Vol 63:245-264.

of the food. Ideally, as advocated for in the past by the OPC, nutrition content claims would not be permitted on a food unless it meets nutrient profiling scoring criteria.

### **Percentage daily intake labelling**

The OPC is not supportive of %DI labels for energy alone being permitted outside the NIP. Again, to encourage the use of the HSR system, %DI for energy alone should only be permitted when used in conjunction with the HSR together with the energy content icon (i.e, also including energy in kilojoules per 100g/mL). An exemption may apply to small packs that have room for an energy icon only, but that icon should be required to include kilojoule information per 100g/mL if a food manufacturer seeks to display %DI for energy alone. This approach would reflect the intention in the HSR system style guide for %DI for energy alone to be permitted in conjunction with the HSR system.

We also note the potential impact of the outcome of FSANZ's current consideration of Labelling Review Recommendation 17: Per Serving Declarations in the NIP. If average quantity per serve information will no longer be mandatory in the NIP, it will be vital that FSANZ proceed as proposed to require that this information be mandatory if a %DI claim is made outside the NIP. This will be necessary to ensure that as mandatory per 100g/mL information in the NIP supports information in HSRs, mandatory per serving size information in the NIP supports information in %DI icons outside the NIP.

### **Conclusion**

We therefore submit that, in considering Proposal P1037, FSANZ should ensure that any differential treatment of the HSR system and %DI labels under the Food Code does not dissuade food manufactures from using the HSR system over %DI labels, and that consumers are not further disadvantaged by the use of %DI labels over HSRS.

If you have any queries or we can provide further information, please contact [REDACTED]  
[REDACTED] Legal Policy Adviser for the Obesity Policy Coalition, on [REDACTED]  
[REDACTED] [REDACTED]